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IN THE SUPREME COURT OF IOWA
NO. 25-0562
(Greene County No. LACV022313)

CRAIG ROBERTS, individually; and KRISTIN ROBERTS, individually,	)
Plaintiffs-Appellants,	)
vs.	)
GRINNELL SELECT INSURANCE COMPANY and GRINNELL MUTUAL REINSURANCE COMPANY,	)
Defendants-Appellees.	)

APPEAL FROM THE IOWA DISTRICT COURT
FOR GREENE COUNTY
THE HONORABLE ASHLEY SPARKS, DISTRICT JUDGE

PLAINTIFFS-APPELLANTS REPLY BRIEF

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ARGUMENT

I. ROBERTS DID NOT MATERIALLY BREACH THE POLICY AND GRINNELL HAS NOT DEMONSTRATED, OR EVEN ALLEGED, PREJUDICE AS REQUIRED BY THE POLICY

A. Grinnell Concedes, By Failing to Argue the Point, That It Bore the Burden Under the Policy Language to Prove Prejudice. Grinnell Has Failed to Demonstrate Prejudice

Like Grinnell did in the District Court, Grinnell completely and utterly ignores the key policy language. The introductory paragraph to the relevant provision specifically provides:

> We have no duty to provide coverage under this policy if the failure to comply with the following duties *is prejudicial to us*:

D0015, Def. Ex. C, at GM1163 (emphasis added). "Ordinarily, the burden of proof on an issue is upon the party would suffer loss if the issue were not established." Iowa R. App. P. 6.904(3)(e). To avoid its duty to provide coverage, Grinnell has to prove that any failure to comply on the part of the Roberts with a duty under the policy is prejudicial to Grinnell.[1] Grinnell is the party that would suffer "loss" (the ability to deny coverage) if prejudice is not established.

1Numerous cases in other jurisdictions hold that the insurer bears the burden when it seeks to deny coverage on a policy exclusion. *See*, *e.g.*, *Federal Insurance Co. v. Northfield Insurance Co.*, 837 F.3d 548, 552-553 (5th Cir. 2016); *Bowman, Heintz, Boscia & Vician, P.C. v. Valiant Ins. Co.*, 35 F.Supp.3d 1015, 1023 (N.D. Ind. 2014) (citation omitted); *Blackburn v. Nat'l Union Fire Ins. Co.*, 784 So. 2d 637, 641 (La. 2001); *Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999).

Grinnell makes absolutely no response to the Roberts' major point that, to deny coverage under that provision, Grinnell must demonstrate that Grinnell was prejudiced.[2] Grinnell likely does not respond on this issue because Grinnell knows there is no credible response. Grinnell's failure to offer any alternative interpretation of the policy must be deemed a concession that the policy requires Grinnell to demonstrate prejudice. *See* Iowa R. App. P. 6.903(2)(a)(8)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."); Iowa R. App. P. 6.903(3) ("If the appellee files a brief, the brief must conform to the requirements of rule 6.903(2).").

As previously discussed, Grinnell presented no evidence and made no argument in the District Court as to how it was prejudiced. Now on appeal, Grinnell makes a token argument (without citation to any authority), which Grinnell did not make in the District Court, that it has been prejudiced by the Roberts asserting a bad faith claim. *See* Grinnell's Brief at 17-18. While that argument could be presented at trial in defense of the bad faith claim, that is not the type of prejudice currently at issue. *See*, *e.g.*, *State v. Brown*, 656 N.W.2d 355,

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[2]In the only statement in its Brief that is arguably on this issue, Grinnell generally states "Although the Roberts claim the policy language itself puts the burden to Grinnell Mutual to establish prejudice, the policy does not say anything about burdens of proof." Grinnell Brief at 16. Grinnell does not discuss anywhere in its Brief, the specific policy language that the Roberts invoke.

363 (Iowa 2003) (internal citations omitted) ("To establish actual prejudice a defendant must show loss of evidence or testimony has meaningfully impaired his ability to present a defense." Generalized claims of prejudice, such as "loss of memory, loss of witnesses, or loss of evidence" do not constitute actual prejudice) (in context of delay in prosecution).

As discussed in the Roberts' opening Brief, the cases relied upon by Grinnell, such as *Watson v. National Surety Corporation*, 468 N.W.2d 448 (Iowa 1991), are not on point because of the differing policy language.

This Court can, and should, stop there. Regardless of the case law, the *policy* places the burden on Grinnell to prove that it was prejudiced. Grinnell has made no effort to do so. Grinnell cannot do so because Grinnell was not prejudiced. The policy must be enforced as written, not as how Grinnell would like it to read.

In sum, the policy squarely places the burden to demonstrate prejudice on Grinnell. Grinnell has failed to show any prejudice. Summary judgment was improperly granted.

B. Even If There Is a Presumption of Prejudice, The Roberts Have Rebutted Any Presumption. At a Minimum, There is a Factual Dispute Regarding Presumption That Precludes Summary Judgment

The Roberts largely rely on the discussion in their opening Brief on these issues as Grinnell says little that needs response. The Roberts presented evidence (the Affidavit of Dominic Pechota) that they are unaware of any prejudice to Grinnell. Further, as discussed in the opening Brief, the facts and circumstances of the case as a whole show that Grinnell has not been prejudiced. The Roberts can do little else to rebut any presumption when Grinnell refuses to state why or how it was prejudiced. As discussed above, Grinnell's belated assertion that the mere filing of a bad faith claim prejudices it fails to hold water.

Grinnell argues that the Iowa Rules of Civil Procedure do not apply to Statements of Additional Fact asserted in resistance to summary judgment. It is true that the Iowa Rules of Civil Procedure do not expressly address that issue. As discussed in the Roberts' opening Brief, federal case law on the similar Federal Rule of Civil Procedure 56 does require that *all* assertions of fact be admitted or denied, and if denied, the denial must be supported with evidence. It makes sense that if the party resisting a summary judgment motion asserts additional facts, then the moving party should respond to those additional facts or suffer the consequence of those additional facts being deemed admitted. What can a court do

besides deem those additional facts admitted if they are not controverted by the moving party? The correct result cannot be to simply ignore the additional facts as Grinnell appears to urge. At a minimum, Mr. Pechota's Affidavit and the general circumstances of the case previously discussed, create a fact dispute regarding prejudice precluding summary judgment whether or not Grinnell is deemed to to have admitted the assertions in Mr. Pechota's Affidavit. That point is discussed in *Great Western Bank v. Creger*, No. 06-1550 (Iowa Ct. App. 11/29/07), and in the Roberts' opening Brief.[3] *Creger* is not distinguishable on this point.

Grinnell also asks "how does one respond to an affidavit regarding the affiant's lack of awareness of some particular thing?" Grinnell Brief at 17. The answer to that question is simple. Grinnell responds by asserting and providing supporting evidence as to how and why it was prejudiced. In other words, respond by presenting affirmative evidence that the "particular thing" does actually exist. Since Grinnell was not prejudiced in any way, Grinnell cannot and did not make that response.

In sum, even if there is a rebuttable presumption of prejudice, the Roberts have rebutted the presumption. At a minimum, there is a fact dispute regarding prejudice precluding summary judgment.

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[3]Grinnell does not particularly address whether there is a fact dispute regarding prejudice precluding summary judgment in its Brief.

II. THE UMBRELLA POLICY PROVIDES COVERAGE

Grinnell argues that the umbrella policy does not provide coverage beyond the coverage provided by the primary policy. However, Grinnell's sole argument is that the umbrella policy does not provide coverage because the underlying primary automobile policy does not provide coverage. Grinnell makes no argument that the umbrella policy does not provide coverage even if the underlying automobile policy provides coverage. As discussed above and as previously discussed, the underlying policy provides coverage. Thus, the umbrella policy provides coverage as well.

III. THERE ARE NO GROUNDS TO DISMISS THE BAD FAITH CLAIM

The District Court did not rule on this issue. Thus, this Court could find that error was not preserved. However, since summary judgment can be affirmed based on any ground appearing in the record,[4] the Roberts addressed this issue in their opening Brief.

In its Brief before this Court, Grinnell has cleaned up and changed its argument. Now, Grinnell argues that the amount of the Roberts' damages is fairly

4"[W]e can affirm the summary judgment on a ground not relied upon by the district court provided the ground was urged in that court and is also urged on appeal." *Veatch v. City of Waverly*, 858 N.W.2d 1, 7 (Iowa 2015) (citations omitted).

debatable and, therefore, there cannot be any bad faith on the part of Grinnell. It cannot be disputed, however, that the Roberts suffered damages in excess of the $300,000 limits of the tortfeasor's automobile policy. (D0018, Attachment – Settlement Opportunity Letter, 11/15/24). That, in and of itself, creates a bad faith claim when Grinnell refuses to pay *any* amount of its policy limits. The amount of the Roberts' damages in that case is an issue for the jury.

Beyond that, as Grinnell failed to present any evidence to dispute the damages claimed by the Roberts, at this point in time there can also be no dispute that the Roberts' damages exceed the combined limits of the underlying policy, the underinsured limits of Grinnell's automobile policy, and the umbrella policy. *Id*. Grinnell provided no evidence, only a bare assertion that the Roberts' claimed damages are excessive, in response to the evidence presented of the Roberts' damages. There is no dispute, and Grinnell raises none, that the tortfeasor was at fault for the accident and Mr. Roberts' injuries.

Grinnell argues that, by the Roberts not submitting to an independent medical examination, an examination under oath, or providing other information, Grinnell was unable to fairly evaluate the claim. While that argument may be reasonable to make to a jury with respect to Grinnell's defense to the bad faith claim, it is not grounds for summary judgment. There are numerous fact disputes

that preclude summary judgment, including but not limited to whether Grinnell did have enough information to fairly evaluate the claim.

Additionally, with regard to the question of whether Grinnell's denial of the claim was without reasonable basis, discovery as to Grinnell's internal decision making process has not occurred. As the District Court did not rule on this portion of Grinnell's Motion for Summary Judgment, the District Court also did not rule on the Roberts' request pursuant to Iowa Rule of Civil Procedure 1.981(6) to conduct discovery on that issue. See D0021, Roberts' Brief at 9, 11/15/24; D0018, Pechota Affidavit at ¶ 10, 11/15/24). Any final ruling on summary judgment on the bad faith claim should await completion of the relevant discovery.

CONCLUSION AND RELIEF SOUGHT

For the above stated reasons and reasons previously stated, Plaintiffs-Appellants Roberts respectfully request this Court to reverse the District Court's Order dismissing this case and to remand this matter for further proceedings, including discovery and a trial on the merits.

Respectfully Submitted,

By: _____***/s/ Dominic F. Pechota***_____

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Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i) because this brief contains 1,593 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1)

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) because this brief has been prepared in a proportionately spaced typeface using Open Office in Century 14 font, and converted to a searchable pdf using Power PDF

Date: September 19, 2025 By:___/s/ Dominic F. Pechota__
DOMINIC F. PECHOTA

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 19th day of September, 2025, I electronically filed this document with the Clerk of the Supreme Court of Iowa by filing it through EDMS, which will send notice to all registered filers who have appeared in this matter.

_____/s/ Dominic F. Pechota____
DOMINIC F. PECHOTA