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

CRAIG ROBERTS and KRISTIN ROBERTS,

Plaintiffs-Appellants,

v.

GRINNELL SELECT INSURANCE COMPANY &
GRINNELL MUTUAL REINSURANCE COMPANY,

Defendants-Appellees.

DEFENDANTS-APPELLEES BRIEF

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

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. Did Craig and Kristin Roberts Fail to Substantially Comply with Auto Insurance Policy Duties, Barring a Breach of Auto Policy Lawsuit Against Their Insurers?

II. Does the Roberts' Umbrella Policy Provide Insurance Coverage?

III. Are the Roberts Able to Establish Bad Faith Denial of Insurance Benefits?

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court as it involves issues of first impression and broad importance. Iowa R. App. P. 6.1102(2)(c) & (d).

NATURE OF THE CASE

The central dispute in this case pertains to the obligation of Craig and Kristin Roberts to comply with terms and conditions of an auto insurance policy. The Roberts are appealing a decision wherein the Iowa District Court for Greene County granted, in its entirety, a Motion for Summary Judgment filed by Defendants-Appellants' Grinnell Select Insurance Company and Grinnell Mutual Reinsurance Company (hereinafter "Grinnell Mutual"). (D0025, D. Ct. Order, 2/17/25). The district court held that the Roberts failed to substantially comply with an auto policy, so the Roberts had no underinsured motorist insurance coverage or right to pursue a breach of contract (breach of auto policy) suit against Grinnell. (D0025, D. Ct. Order, at P. 6-9, 2/17/25). The district court further held that because the auto policy provided no coverage, neither did an umbrella policy,

and that no legal basis existed for a bad faith claim against Grinnell. (D0025, D. Ct. Order, at P. 9, 2/17/25).

STATEMENT OF THE FACTS

Craig Roberts was allegedly injured in a motor vehicle accident with an underinsured motorist on November 7, 2022. (D0003, Petition, at ¶¶ 9-13, 5/20/24). The auto insurer of the driver who was allegedly at fault for the accident tendered its liability policy limits of $300,000 to the Roberts. (D0015, Strunk Affidavit, at ¶ 4, 10/31/24).

Previously, Grinnell Mutual had issued the Roberts an automobile insurance policy and umbrella policy with an underinsured motorist endorsement. (D0015, Walton Affidavit, at ¶¶ 3-4, 10/31/24). The automobile policy included underinsured motorist coverage provisions. (D0015, Walton Affidavit, at ¶ 4, 10/31/24).

Pertinent terms of Grinnell Mutual's auto policy are as follows:

> A person seeking any coverage must:
>
> (1) Cooperate with us in the investigation, settlement or defense of any claim or suit.
> …
> (3) Submit, as often as we reasonably require:
>
> a. To physical exams by physicians we select. We will pay for these exams.
>
> b. To examination under oath and subscribe the same.

(4) Authorize us to obtain:

a. Medical reports; and
b. Other pertinent records.

(D0015, Exhibit C, Auto Policy, P. GM1163).

The policy further states, "No legal action may be brought against us until there has been full compliance with all the terms of this policy." (D0015, Exhibit C, Auto Policy, P. GM1163).

On March 25, 2024, the Roberts' attorney submitted a twenty-two (22) page demand letter to Grinnell Mutual. (D0015, Grinnell Statement Undisputed Facts at ¶ 5, 10/31/24). The demand was for a total of $1,250,000 in insurance benefits, the combined limits of the Roberts' auto and umbrella policies. (D0015, Strunk Affidavit, at ¶ 3, 10/31/24).

On April 23, 2024, the undersigned attorney for Grinnell Mutual emailed the Roberts' attorneys, stating as follows:

> In follow up to my email last week, I wanted to touch base on this claim. Given the multiple previously unidentified injuries outlined in the demand, Grinnell Mutual is not in the position at this time to complete an evaluation of Mr. Roberts' injury claims nor make its decision within the timeline provided in the demand. Accordingly, based upon the information provided in the March 25, 2024 demand, Grinnell Mutual would make the following requests under the auto policy to assist in its evaluation of Mr. Roberts' claims:
>
> ► That Mr. Roberts presents for a physical exam with Dr. Michael S. Lee, located at Capital Orthopaedics & Sports Medicine, PC. Available dates include Wednesday 5/8/2024 at 11:30 am, Wednesday 5/15/2024 at

11:30am, or Wednesday 5/22/2024 at 11:30am. Please let me know which works for Mr. Roberts;
►That Mr. Roberts presents for an exam under oath. Please advise if June 18-21 would work. We are open on the preferred location for this;
►Provide a signed patient's waiver (standard ISBA form is attached) and a list of all Mr. Roberts' medical providers dating five (5) years before the subject accident to current;
►Provide a signed SSA waiver (standard form attached) to obtain SSDI records; and
►provide any USPS documents regarding Mr. Robert's early retirement referenced in the demand.

Let me know if you have any questions. Our office looks forward to working with yours on this claim.

Thank you.

(D0015, Exhibit B, Correspondence).

On April 24, 2024, the Roberts' attorney responded, "Thank you for the below. We will be filing suit soon and will forward onto you to accept service." (D0015, Exhibit B – Correspondence). Mr. Roberts did not present for a physical examination or exam under oath, nor did the Roberts' attorney provide any of the requested documents before filing suit. (D0015, Strunk Affidavit, at ¶ 6, 10/31/24).

On May 20, 2024, the Roberts' attorney filed suit on behalf of the Roberts. (D0003, Petition, 5/20/24). The Petition alleges that Grinnell Mutual breached the auto and umbrella policies, and the Roberts are entitled to insurance benefits pursuant to the policies. (D0003, Petition, Counts I & II, 5/20/24). The Petition also includes a bad faith tort claim, which involves an allegation that Grinnell

Mutual "rejected" the Roberts' settlement demand in bad faith. (D0003, Petition, Count III, 5/20/24). Grinnell Mutual filed an Answer and Affirmative Defenses, therein specifically referencing failure to comply with conditions precedent to insurance recovery (failure to comply with requests for an exam under oath, submission to an independent medical exam, and documents). (D0004, Answer & Affirmative Defenses, 6/20/24).

On October 31, 2024, Grinnell Mutual filed a Motion for Summary Judgment on all counts. (D0014, MSJ, 10/31/24). The Roberts resisted, and Grinnell Mutual filed a reply to the resistance. (D0020, Resistance to MSJ, 11/15/24; D0022, Reply to Resistance to MSJ, 11/22/24). On February 25, 2025, the district court granted the Motion for Summary Judgment in its entirety because the Roberts failed to substantially comply with their auto policy, which in turn left them with no viable breach of umbrella policy contractual claim, or bad faith tort claim. (D0025, D. Ct. Order, 2/17/25).

The Roberts filed a Motion to Reconsider, Enlarge, and/or Amend, which Grinnell Mutual resisted. (D0027, Rule 1.904(2) Motion, 3/3/25; D0028, Resistance to Rule 1.904(2) Motion, 3/13/25). The district court denied the Motion to Reconsider on March 14, 2025. (D0029, Order Denying Rule 1.904(2) Motion, 3/14/25). This appeal followed. (D0030, Notice Appeal, 4/3/25).

ARGUMENT

I. The Roberts Failed to Comply with Conditions Precedent to Recovery of Insurance Benefits, and Their Suit is Barred.

A. Preservation of Error.

Grinnell Mutual agrees with the Roberts' statements regarding preservation of error, as set forth on Page 11 of the Roberts' Brief.

B. Scope and Standard of Review.

Grinnell Mutual agrees with the Roberts' statements regarding scope and standard of review, as set forth on Pages 11-12 of the Roberts' Brief.

C. The Roberts Have Failed to Show Policy Compliance, Excuse, or Waiver of Policy Conditions, and Prejudice to Grinnell Mutual is Presumed; Consequently, the Breach of Auto Policy Claim Is Barred.

The Roberts argue that they are entitled to take their case to a jury because Grinnell Mutual did not demonstrate prejudice resulting from the Roberts' non-compliance with policy duties. This position disregards Iowa's legal framework for evaluating non-compliance with insurance policy duties and the effect thereof.

In *Watson v. National Surety Corporation*, the Iowa Supreme Court held that an insured's failure to submit to an exam under oath, pursuant to the terms of a fire insurance policy, was a material breach of a policy, such that the insured had no right of recovery against the defendant insurer. 468 N.W.2d 448, 451-52 (Iowa 1991). The Court explained that "submission to questions under oath is a

condition precedent to an insured's recovery under an insurance policy." *Id*. at 451. The Court further stated, "We have placed the burden to prove compliance with a condition precedent of an insurance policy on the insured." *Id*. (citing *Am. Guar. & Liab. Ins. Co. v. Chandler Mfg. Co., Inc.*, 467 N.W.2d 226 (Iowa 1991)). The burden is on the insured to prove "substantial compliance" with conditions precedent to recovery. *Id*. (citing *Hoekstra v. Farm Bureau Mut. Ins. Co*., 382 N.W.2d 100, 107 (Iowa 1986); *see also Sleister v. State Farm Fire & Cas. Co.*, No. 18-2022, 2019 Iowa App. LEXIS 766, at *7-*8 (Iowa Ct. App. Aug. 7, 2019) (dismissing a plaintiff's case, due to failure to comply with policy terms).

Watson does not mention "prejudice" or include any specific analysis of "prejudice," per se. As such, *Watson* implies that failure to comply with a request for an exam under oath is inherently a prejudicial, material breach of the policy contract.

In cases after *Watson*, the Iowa Supreme Court endorsed the following analytical framework relating to policy conditions precedent to recovery:

> Whenever policy provisions are conditions precedent to coverage under an insurance contract, an insured must show substantial compliance with such conditions. (internal citations omitted). If an insured cannot prove substantial compliance, he or she must show that (1) failure to comply was excused, (2) the requirements of the condition were waived, or (3) failure to comply was not prejudicial to the insurer.
>
> **If an insured fails to prove substantial compliance, excuse, or waiver, prejudice to the insurer is presumed**. (internal citation omitted). Although this presumption is rebuttable, it will defeat an

> insured's recovery unless it is overcome by a satisfactory showing of lack of prejudice.

Simpson v. United States Fid. & Guar. Co., 562 N.W.2d 627, 631-32 (Iowa 1997) (emphasis added); *Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 641 (Iowa 2000) ("Where excuse or waiver is not proved, there is a rebuttable presumption of prejudice.").

Applying the above law to this case, the Roberts make no argument of substantial compliance with Grinnell Mutual's requests. Mr. Roberts failed to submit to both an exam under oath and a physical exam, as well as both Roberts having failed to authorize Grinnell Mutual to obtain medical reports and pertinent records before filing a lawsuit. (D0015, Strunk Affidavit, at ¶ 6, 10/31/24). Therefore, the Roberts did not comply with policy conditions and breached the policy contract. *See Watson*, 468 N.W.2d at 450-52 (finding failure to timely comply with a duty to provide an exam under oath barred suit against the insurer); *De Farrari v. Gov't Employees Ins. Co*., 613 So. 2d 101, 103 (Fla. Dist. Ct. App. 1993) (granting summary judgment where an insured did not submit to a physical exam and thus did not comply with policy); *Vanhaaren v. State Farm Mutual Automobile Ins. Co.*, 989 F.2d 1, 6-7(1st Cir. 1993) (finding an insured forfeited coverage by not complying with a request for a physical exam); *Williamson v. State Farm Ins. Co.*, No. 20182, 2004 Ohio App. LEXIS 2429, at *13–14 (Ohio Ct. App. May 28, 2004) (finding "State Farm established that its contract required [the

insured] to cooperate with a medical examination with a doctor of the company's choice" and, by failing to cooperate, the insured was not entitled to uninsured/underinsured motorist coverage from State Farm); *Allstate Ins. Co. v. Eaton*, 448 S.E.2d 652, 653–55 (Va. 1994) (finding failure to cooperate with a medical examination was a breach of insurance contract and barred suit); *Lockwood v. Porter*, 390 S.E.2d 742, 743–44 (N.C. Ct. App. 1990) (noting that the insurer's right to have the insured "examined by its physician is a material part of the insurance contract, and [the insured's] unjustified refusal to be examined violated the cooperation clause of the policy and bars his action as a matter of law").

The Roberts make no argument of waiver of conditions precedent to recovery. Therefore, waiver is not at issue in this appeal.

Turning to excuse, the Roberts claim non-compliance with policy conditions should be excused because their attorney believed that requested examinations could occur, and requested documents could be provided, as part of the discovery process. Even assuming the Roberts' attorney had this belief (questionable, considering such a belief was never communicated to counsel for Grinnell Mutual), the belief was unreasonable and does not excuse past and ongoing noncompliance with policy conditions. Such a belief is unreasonable because established Iowa case law specifically states that "belated" offers to comply with

policy conditions are insufficient to constitute compliance (or, in other words, to excuse past non-compliance). *Watson*, 468 N.W.2d at 449-450.

It is true that, during litigation, the Iowa Rules of Civil Procedure provide mechanisms for taking a deposition, obtaining a physical or mental examination of a person, and obtaining records. *See* Iowa R. Civ. P. 1.515 (physical and mental examinations); 1.1701 – 1.717 (depositions); and, 1.512 (production of documents). However, these methods of discovery are not the same as pre-suit investigation. Grinnell Mutual did not make any of its pre-suit requests pursuant to the Iowa Rules of Civil Procedure, as the Rules do not apply pre-suit. *See* Iowa R. Civ. P. 1.101 (stating Rules apply to practice and procedure within courts of Iowa). Grinnell Mutual's pre-suit requests related to obligations established within the Roberts' auto insurance policy—which exist outside the context of litigation. The Roberts' focus on the post-litigation timeline fails to address the fact that the policy requires compliance with terms before legal action can be brought. (D0015, Exhibit C, Auto Policy, P. GM1163) ("No legal action may be brought against us until there has been full compliance with all the terms of this policy."). Nothing in the auto policy required Grinnell Mutual to wait until litigation was filed and to only investigate through litigation processes (discovery, depositions, etc.).

The Roberts have not provided any case law supporting the position that pre-suit requests can be ignored (or refused) based on an intent to participate in later

depositions, written discovery or other litigation processes. In fact, *Watson* indicates that providing sworn statements in contexts outside of an exam under oath is not sufficient to constitute compliance with the policy duty of providing an exam under oath. *Watson*, 468 N.W.2d at 452 (finding that unsworn statements of an insured, even if later "verified" or sworn, are not substantial compliance with the insurer's request for questioning under oath). Also, an exam under oath is an established method of insurance claim investigation, not a deposition subject to the Rules of Civil Procedure.

The Roberts further claim that non-compliance with policy conditions is excused because Grinnell Mutual did not "warn" the Roberts, repeatedly, that their coverage required them to to submit to an exam under oath, submit to a physical exam, and provide requested documentation. There is no case law that Grinnell Mutual had a duty to inform a represented party of the legal consequences of a failure to substantially comply with policy conditions, or stated another way a material breach of a written contract. The auto policy itself expressly states policy duties and the consequence of failure to comply – namely, an inability to pursue a lawsuit. (D0015, Exhibit C, Auto Policy, P. GM1163). Furthermore, the communications were between two licensed attorneys, opposing one another as advocates for their clients. It was the role of the Roberts' counsel, not Grinnell Mutual, to give legal advice to the Roberts about the terms of the Roberts'

insurance contracts and the consequences of disregarding the insurer's valid requests.

In summary, the Roberts have not established substantial compliance, excuse for noncompliance or waiver of policy conditions. Therefore, prejudice to Grinnell Mutual is presumed. *Simpson*, 562 N.W.2d at 631-32. Grinnell Mutual does not bear any burden to prove the existence of prejudice. 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. (D0015, Exhibit C, Auto Policy, P. GM1163).

The presumption of prejudice is rebuttable only through an insured's satisfactory showing of lack of prejudice. *Interstate Power Co. v. Ins. Co. of N. Am.*, 603 N.W.2d 751, 757 (Iowa 1999). The Roberts cannot make that showing here. In the district court, in an attempt to make a satisfactory showing of a lack of prejudice, the Roberts filed an affidavit from their own attorney that he is not aware of any reasons why Grinnell Mutual would be prejudiced. (D0018, Pechota Affidavit). The Roberts argue that the district court was required to accept the Affidavit as undisputed fact because Grinnell Mutual did not "respond" to the Affidavit under Iowa Rule of Civil Procedure 1.981(3). Rule 1.981(3) did not require Grinnell Mutual to submit a response to the statements in the Roberts' attorney's Affidavit, which the Roberts filed along with their Resistance to

Grinnell Mutual's Motion for Summary Judgment. *See* Iowa R. Civ. P. 1.981(3) (2025). Further, Rule 1.981(3) pertains to a resistance to a motion for summary judgment, not a reply. *Id.* Further still, how does one respond to an affidavit regarding the affiant's lack of awareness of some particular thing? Finally, the motion and reply make it quite clear that there is actual prejudice and objectively contradicts Plaintiffs' counsel's affidavit.

Moreover, with regard to the issue of prejudice, the Roberts' reliance on *Great Western Bank v. Creger*, No. 06-1550, 2007 Iowa App. LEXIS 1231 (Iowa Ct. App. Nov. 29, 2007) is misplaced. That case involved a question of fact regarding whether or not the signatures on legal documents were forged or not. Here, the pertinent facts pertaining to failure to comply with policy conditions are undisputed, and the district court properly recognized that the question of prejudice in this case was one of law. (D0025, D. Ct. Order, at PP. 7-8, 2/17/25).

At any rate, it is rather obvious from the circumstances of this case that non-compliance with policy conditions has been prejudicial to Grinnell Mutual. (D0028, Resistance to Rule 1.904(2) Motion, 3/13/25). The Roberts argue that Grinnell Mutual is liable for bad faith "rejection" of their pre-suit demand when it is the Roberts themselves who denied Grinnell Mutual an opportunity to investigate the demand. It is *per se* prejudicial that Grinnell Mutual has had to defend itself from a patently baseless bad faith claim because the Roberts made an

intentional and strategic decision to obstruct the pre-suit investigation process. The Roberts' position implies that Grinnell Mutual should have simply paid $1,250,000 in UIM benefits without doing any of its own investigation, which defies the terms of the auto policy. The Roberts' conduct appears to have been deliberately calculated to force Grinnell Mutual into an inequitable situation: either outright pay the $1,250,000 without pre-suit investigation, or defend a bad faith suit for failure to outright pay the $1,250,000 demand.

Because the Roberts have not complied with auto policy conditions, their claim for breach of the auto policy is barred by policy language requiring compliance with policy terms. (Exhibit C, p. GM1163). *See Jones v. Lockner (In re Jones)*, 829 N.W.2d 589 (Iowa Ct. App. 2013) (finding Nationwide was entitled to summary judgment where policyholder did not comply with policy); *Brown v. Danish Mut. Ins. Ass'n*, 550 N.W.2d 171, 173–75 (Iowa Ct. App. 1996) (finding a plaintiff failed to substantially comply with an examination under oath provision, so summary judgment was properly granted to an insurer).

D. The Roberts' Umbrella Policy Does Not Provide Coverage.

An umbrella policy is not required to provide underinsured motorist coverage, or coverage beyond the requirements of a primary policy. *Jalas v. State Farm Fire & Casualty Co.*, 505 N.W.2d 811, 813 (Iowa, 1993) (finding Iowa Code

section § 516A.1 does not require umbrella liability insurers to provide underinsured coverage).

The Underinsured Motorists Coverage endorsement in the Roberts' umbrella policy states, "Our obligation to pay legal damages exists only if coverage is provided to the 'insured' for the acts of an operator of an underinsured motor vehicle under the "underlying insurance." (D0015, Exhibit D, Umbrella Policy, P. GM1221). The "insured[s]" are the Roberts. (D0015, Exhibit D, Umbrella Policy, "Definitions"). The operator of an underinsured motor vehicle is the alleged tortfeasor, Mr. Abel Vargas. (*See* D003, Petition, ¶¶17, 23, 5/20/24). The underlying insurance is the Roberts' primary automobile insurance policy, policy no. 9400160913. (*See* D0015, Exhibit D, Umbrella Policy, "Definitions" (defining underlying insurance as "any policy providing the insured with primary liability insurance . . .")).

The Roberts breached the auto insurance agreement, as previously explained. Therefore, coverage does not exist under the underlying insuring agreement. *Id.* The Roberts' umbrella policy specifically states that if coverage is not afforded under the insureds' underlying insurance, then the insurer is not obligated to pay damages under the umbrella policy. Since the Roberts breached the terms of the underlying auto policy, Grinnell Mutual is not obligated to pay any benefits under the Roberts' umbrella policy underinsured motorist's endorsement.

E. The Roberts Cannot Establish the Requisite Elements of a Bad Faith Claim.

1. Applicable Law

As a requisite element of the underinsured motorist claim, an insured is required to prove the damages he or she would have been legally entitled to recover had a lawsuit against the underinsured motorist been taken to judgment. *Paine v. Am. Fam. Mut. Ins. Co.*, 899 N.W.2d 741 (Iowa Ct. App. 2017); *see also Waits v. United Fire & Cas. Co.*, 572 N.W.2d 565, 574 (Iowa 1997) (finding "legally-entitled-to-recover" is meant to limit UIM benefits to what the injured person would have been entitled to recover if the underinsured motorist had been adequately insured and if a tort suit against the underinsured motorist had been pursued). In other words, whether damages exceed the underinsured policy is a matter to be proven at trial. *Paine,* 899 N.W.2d *5.

The long-standing elements for bad faith were set out in *Paine*, that (1) the insurer had no reasonable basis for denying the claim and (2) the insurer knew or had reason to know that its denial or refusal was without reasonable basis. *Id*. at *6. The first of these elements is discussed below.

In *Paine,* The Iowa Court of Appeals affirmed the district court's dismissal of the insured's bad faith claim, finding that the insurer had no duty to pay the UIM claim because it had a reasonable basis to deny the insured's UIM claim due to the uncertainty of the damage amounts. *Id.* at *3-5. The insured plaintiff in

Paine alleged entitlement to "the full UIM limits" of his underinsured policy and argued that the insurer acted in bad faith by refusing to make any UIM payments. *Id*. at *2. While past medical expenses were undisputed and the insurer conceded the existence of damages, it did not concede the extent of the insured's damages. *Id*. at *3-5. In affirming the district court's dismissal of the insured's bad faith claim, the Court held that an insurer has no duty to settle or pay an underinsured motorist claim when the extent of the damages to one insured hit by an underinsured motorist is unknown. *Id*. at *5-8.

In discussing the reasonable basis analysis, the *Paine* court found that a reasonable basis exists to deny UIM benefits if the insured's claim is fairly debatable either on a matter of fact or law. *Id* at *6 (internal citation omitted). A claim is fairly debatable when it is open to dispute on any logical basis or if reasonable minds can differ on the coverage-determining facts or law. *Id*.

Whether a claim is fairly debatable can generally be decided as a matter of law by the court. *Rodda v. Vermeer Mfg,* 734 N.W.2d 480, 483 (Iowa, 2007) (quoting *Gardner v. Hartford Ins. Accident & Indem. Co.*, 659 N.W.2d 198, 206 (Iowa, 2003) ("That is because '[w]here an objectively reasonable basis for denial of a claim *actually* exists, the insurer cannot be held liable for bad faith as a matter of law'."); s*ee also Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 482

(Iowa 2005) (finding "an insurance company simply cannot be expected, at its peril, to predict the exact amount a jury will award.") (internal citations omitted).

The Iowa Supreme Court in *Bellville* cited a string of cases that have found a claim is "fairly debatable" where there is a genuine dispute as to the value of the insured's damages. *See id.*, 702 N.W.2d at 473-74; *Sampson v. Am. Std. Ins. Co.*, 582 N.W.2d 146, 152 (Iowa, 1998); *Cent. Life. Ins. Co. v. Aetna Cas. & Sur. Co.*, 466 N.W.2d 257, 263 (Iowa, 1991); *Thompson v. U.S. Fid. & Guar. Co.,* 559 N.W.2d 288, 292 (Iowa, 1997); *Dirks v. Farm Bureau Mut. Ins. Co.,* 465 N.W.2d 857, 862 (Iowa 1991).

The second element of a bad faith claim is whether the insurer "knew or should have known" that the basis for denying the insured's claim was unreasonable. *Bellville,* 702 N.W.2d at 474-75 (finding an insurer's negligent or sub-par investigation or evaluation of a claim is relevant to the fact finder's determination of whether an insurer knew or should have known that the denial of the claim lacked a reasonable basis). The *Bellville* Court reiterated that "an improper investigation, standing alone, is not sufficient cause for recovery if the insurer in fact has an objectively reasonable basis for denying the claim." *Id.* (internal citation omitted).

2. <u>The Roberts' Bad Faith Claim Must Be Dismissed As A Matter of Law</u>

The Roberts allege that Defendants' refusal to pay Plaintiff's pre-suit settlement demand was in bad faith. (D0003, Petition, ¶ 28, 5/20/24). The Roberts' bad faith claim must be dismissed for three reasons. First, the Roberts cannot prove the two requisite elements of a bad faith action. Second, Grinnell Mutual never denied the Roberts' claim. Third, because there is no UIM coverage under either the auto or umbrella policies, as previously explained, there can be no bad faith.

The Roberts allege that they provided Grinnell Mutual with all of the medical records and bills necessary to "fully and appropriately evaluate [their] claims." (D0003, Petition, ¶ 28, 5/20/24). However, Defendants have not conceded the amount of past medical expenses, nor determined the amount or extent of the Roberts' damage claims. The amount of potential damages is unknown, because Grinnell Mutual was deprived of the opportunity to fully investigate and evaluate damages through a physical exam, an examination under oath, and a request for documents.

An insurer must actually deny a claim in order for a bad faith claim to exist, since the unreasonableness of an insurer's denial is the basis of a bad faith claim. The Roberts allege they are legally entitled to recover under the underinsured motorist provisions of their insurance policy, because damages exceed the liability limits available for the vehicle being operated by the tortfeasor. (*See* D0003,

Petition, ¶15, ¶18, 5/20/24). The Roberts, as an element of their underinsured claim, are required to prove that Grinnell Mutual had no reasonable basis for denying the claim. However, Grinnell Mutual never denied the Roberts' claim; additional information was needed, in order to reasonably respond to the Roberts' demand. (*See* D0003, Petition ¶ 28, 5/20/24; D0015, Exhibit B, Correspondence). Even if this could be considered refusal of a settlement demand, refusing a settlement demand is simply disputing the amount of damages claimed in the demand, not a denial of the claim itself.

The Roberts did not provide the information and documentation requested in order to investigate and evaluate the demand. Mr. Roberts also failed to submit to a physical exam and exam under oath. Grinnell Mutual did not deny the UIM claim, but rather requested compliance with the terms and conditions of the auto policy so that the claim and demand could be more thoroughly evaluated. There was not enough information to evaluate the claim and demand, and reasonable minds could dispute the $1.25 million value of the Roberts' claims set forth in the demand. Therefore, the bad faith claim has no basis in law or in fact and was properly dismissed by the district court.

Furthermore, because there is no underinsured coverage under either the auto or umbrella policy due to the Roberts' failure to comply with the duties after loss, there can be no bad faith refusal to pay the Roberts' claim.

CONCLUSION

The Roberts failed to comply with their contractual duties to submit to a physical exam and examination under oath, and to provide pertinent documents—in direct violation of the express terms of the underlying auto insurance policy. Such conduct constitutes a material breach of the policy. Given that the underlying primary policy was breached, the umbrella policy is not applicable. No bad faith claim exists as a matter of law, given lack of auto and umbrella policy coverage, no "denial" of the Roberts' claim, and failure of the Roberts to be able to prove the requisite two elements of a bad faith claim. Defendants respectfully request that the Cout affirm the district court's order granting Grinnell Mutual summary judgment and dismissing the Roberts' claims in their entirety.

REQUEST FOR ORAL ARGUMENT

Grinnell Mutual requests the opportunity for oral argument.

Respectfully Submitted,

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on August 29, 2025, the foregoing Brief was filed via the appellate e-filing system and served on counsel for the Plaintiffs-Appellants, as identified below, via the e-filing system.

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By /s/ *Allison J. Frederick* 08/29/25

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS, TYLE-VOLUME LIMITATION FOR BRIEFS

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