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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' RESISTANCE TO APPLICATION FOR FURTHER REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

ARGUMENT 4

I. FURTHER REVIEW IS NOT WARRANTED 4

CONCLUSION AND RELIEF SOUGHT.....10

CERTIFICATE OF COMPLIANCE 10

PROOF OF SERVICE AND CERTIFICATE OF FILING.....11

TABLE OF AUTHORITIES

CASES

Antolik v. McMahon, 744 N.W.2d 82 (Iowa 2007).....6

Martins v. Dull (In re Est. of Dull), 303 N.W.2d 402 (Iowa 1981).....6

Recio v. Fridley, 30 N.W.3d 532 (Iowa 2025).....7

State v. Brown, 32 N.W.3d 774 (Iowa 2026).....6

State v. Warren, 955 N.W.2d 848 (Iowa 2021) 5-6

STATUTES, RULES AND OTHER AUTHORITIES

Iowa R. Civ. P. 1.421(1) 6

ARGUMENT

I. FURTHER REVIEW IS NOT WARRANTED

Plaintiffs-Appellants largely rely on the well-written opinion of the majority of the Court of Appeals. Plaintiffs-Appellants wish to make a few additional points.

First, Grinnell asserts that this "case warrants further review due to its broad relevance throughout Iowa for insurance claim handling and coverage decisions" and that the Court of Appeals "gutted insurers' contractual right to pre-suit claims investigations." Grinnell App. Further Review at p. 4.

Grinnell ignores that the result of this case is a self-inflicted wound. Grinnell is the one that drafted the relevant contractual language changing the burden for prejudice. If Grinnell had wanted to follow Iowa case law regarding prejudice, including a presumption of prejudice, Grinnell could easily have drafted the policy to do so. Grinnell is free to redraft its policies for the future if it wishes.

Further, there is absolutely no evidence that this issue has arisen in other cases, particularly with policies written by other insurers. There is no evidence that other insurers have language, similar or otherwise, in their policies altering Iowa law on the burden of showing prejudice in any way. There is not even any evidence that Grinnell has a substantial number of policies with similar language.

As far as the record shows, this is the only policy with burden shifting language in existence. As noted, Grinnell, as well as other insurers if appropriate, are free to change the language of its policies to bring those policies in line with Iowa law on how the burden of demonstrating prejudice works.

Thus, there is no factual basis for Grinnell to assert either that this case has "broad relevance" in the insurance industry or that contractual rights of insurers have been "gutted."

Second, with regard to the dissent by Judge Greer, Plaintiffs-Appellants make several observations.

First, Judge Greer completely ignores that Grinnell made no specific argument in the District Court as to how or why it was prejudiced. Judge Greer further ignores that Grinnell's appellate briefing made no specific argument as to how or why it was prejudiced. Grinnell, in the District Court and the appellate briefing, relied solely on the "presumption" of prejudice established in Iowa case law. Grinnell did not make any specific argument as to how and why it was prejudiced until oral argument before the Court of Appeals, apparently when it finally realized it was losing the argument on the policy language placing the burden of proving prejudice on Grinnell.

> Generally, "we do not decide or consider arguments raised for the first time during oral argument." *State v. Warren*, 955

> N.W.2d 848, 860 (Iowa 2021); *see also Martins v. Dull (In re Est. of Dull)*, 303 N.W.2d 402, 407 (Iowa 1981) ("The scope of appellate review is defined by the issues raised by the parties' briefs …."), *superseded on other grounds by court rule*, Iowa R. Civ. P. 1.421(1), as recognized in, *Antolik v. McMahon*, 744 N.W.2d 82 (Iowa 2007).

State v. Brown, 32 N.W.3d 774, 777 n.1 (Iowa 2026). Thus, Grinnell never properly preserved its specific prejudice arguments.

Second, Judge Greer asserts that the filing of the bad faith claim demonstrates the prejudice. However, Grinnell can certainly defend the bad faith claim on the grounds that it did not have adequate time to investigate the claim or that Plaintiffs did not provide the requested examinations and other information.

On the other hand, the settlement opportunity letter was sent on March 25, 2024, and expired on April 24, 2024, at 5 p.m. (D0018, Ex. 1, Settlement Opportunity Letter, filed 11/15/24). Grinnell did not make any request for an independent medical examination, examination under oath, and other information until April 23, 2024, at 11:12 am. (D0015, Grinnell Ex. B - emails, filed 10/31/24), approximately 30 hours before the settlement opportunity expired. There would not have been time to complete the examinations and provide additional information before the settlement opportunity expired.

Further, although it is not directly stated in the record when Grinnell first became aware of the claim, the policy requires that Grinnell "must be notified

promptly of how, when and where the accident or loss happened." (D0015, Grinnell Ex. C, Policy at Part E(A), filed 10/31/24). The date of the accident was November 7, 2022. (D0018). Grinnell has made no claim that it was not timely notified of the accident. Grinnell had plenty of time (likely over a year) to request the examinations and other information.

Judge Greer's reasoning also ignores the fact that Plaintiffs had no obligation to make a settlement proposal at all. Plaintiffs could simply have filed suit.[1] In that case, Grinnell would have the same exposure to litigation costs in defending the lawsuit. "'Settlement agreements are contracts'; we apply contract law principles when determining whether a settlement is formed and in interpreting its provisions." *Recio v. Fridley*, 30 N.W.3d 532, 539 (Iowa 2025). Either party can propose any resolution (except perhaps an illegal one) of a dispute. A settlement proposal becomes a contract only when both parties have agreed upon all of the terms. There is no reason why a plaintiff can not place a time limit on their settlement proposal or state that the settlement proposal is the only one that will be made. Parties place time limits on their settlement proposals all the time. There is no requirement that a party's "final offer or demand" cannot be their first offer or

1 It is readily apparent that Grinnell's request for examinations and other information was triggered by the settlement opportunity letter. If Plaintiffs had simply filed suit, there would have been no pre-suit requests to comply with.

demand. Likewise, an insurer could make a settlement proposal to pay a portion of the policy limits, place a time limit on it, and say that the proposal will be the only one made.

Thus, the bad faith claim does not prejudice Grinnell in any way. Grinnell is free to defend the bad faith claim based on the facts and circumstances of the case, including an argument that Plaintiffs did not comply with its requests for examinations and information. Whether or not Plaintiffs or Grinnell will ultimately win the bad faith claim has nothing to do with whether Grinnell was prejudiced.

With regard to the interpretation of the policy language, Judge Greer observes that the prior case law does not specifically state whether the policies involved contained language similar to the Grinnell policy. Obviously, those cases do not say that such language existed in the policies. It is a logical assumption that, if those policies had contained language similar to the Grinnell policy, it would have been discussed in the opinion since such language would have been highly relevant, and perhaps determinative, to the outcome of the case. It is very unlikely that the parties in those cases or this Court would have missed such language in the policies. It is much more likely that the policies contained no language regarding prejudice or burden of proof at all. Thus, this Court was left

with fashioning a default rule. It is pure speculation that the policies involved in the prior case law "might" have contained such language. It is not speculation that the Grinnell policy, as the majority aptly found, does contain language placing the burden to prove prejudice on Grinnell.

Judge Greer in her dissent, as does Grinnell in its Application, also conflates conditions precedent and failure to substantially comply with prejudice. The issue in this case is not whether there were conditions precedent to suit or substantial compliance. The issue is whether any non-compliance with any conditions precedent to suit by Plaintiffs prejudiced Grinnell. The related issue is who has the burden of showing prejudice. Under the case law, when the policy is silent, prejudice is presumed and the insured must overcome the presumption. However, Grinnell, by its own choice, altered that presumption and expressly placed the burden on itself to demonstrate that it was prejudiced. To the extent that the policy language "conflicts" with case law, Grinnell created that conflict. Grinnell, which up to oral argument in the Court of Appeals had pointed only to the inapplicable presumption created by the case law, has wholly failed to prove that it was prejudiced by any noncompliance with any condition precedent as required by the express language of the policy.

CONCLUSION AND RELIEF SOUGHT

For the above stated reasons, this Court should deny Grinnell's Application for Further Review and let the Court of Appeals opinion stand as the final appellate decision in this matter.

Respectfully Submitted,

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

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1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i) because this brief contains 1,382 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 Times New Roman 14 font, and converted to a searchable pdf using Adobe.

Date: August 17, 2026

By:___/s/ Dominic F. Pechota__
DOMINIC F. PECHOTA

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 17th day of August, 2026, 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____
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