No. 25-1758

In the United States Court of Appeals for the Eighth Circuit

MMIC INSURANCE INC.,
Plaintiff-Appellee,

v.

OBSTETRIC AND GYNECOLOGIC ASSOCIATES OF IOWA CITY AND CORALVILLE, P.C.,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Iowa (Eastern)
Case No. 3:23-cv-00039-SMR-WPK (The Hon. Stephanie M. Rose)

REPLY BRIEF OF DEFENDANT-APPELLANT

NICHOLAS C. ROWLEY
DOMINIC PECHOTA
CLINTON EHRLICH
TRIAL LAWYERS FOR JUSTICE
421 West Water Street
Decorah, IA 52101
(563) 382-5071

DEEPAK GUPTA
JONATHAN E. TAYLOR
GREGORY A. BECK
GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741
deepak@guptawessler.com

April 16, 2026

Counsel for Defendant-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other authorities

INTRODUCTION

The purpose of liability insurance is to protect businesses from the risk of catastrophic financial loss that might otherwise threaten to end their operations. To manage such risk, however, businesses must know in advance what a policy covers and what it excludes. The Iowa Supreme Court has thus long insisted that insurance policies must clearly set out the scope of their coverage, holding that limitations to coverage must be plainly stated and that ambiguities must be construed against the insurer. If a policy's coverage could retroactively be forfeited based on conduct that the insurer never clearly prohibited, businesses would be left holding the bag on liability that they reasonably believed was covered. Such a rule would offer no real protection at all—only the illusion of protection.

In this appeal, MMIC asks this Court to sanction exactly that result, arguing that a medical clinic lost its right to any insurance coverage based on conduct that the policy's plain language allowed and that no reasonable policy could prohibit. MMIC consistently refused even to consider reasonable settlement offers, secure in the knowledge that its own liability was capped by the policy limit. In these circumstances, the clinic did no more than any rationally operated business would have done when faced with an existential threat of liability: It hired independent counsel to explore a negotiated settlement rather than leaving its fate in the hands of an insurance company whose interests radically diverged from its own. MMIC does

not dispute that, if its policy had prohibited the clinic from taking that step, it would have run afoul of the limits on conflicted representation imposed by the Iowa Rules of Professional Conduct. But even assuming that MMIC could have lawfully drafted its policy to require insureds to sacrifice their interests in favor of its own, no rational business would have purchased such a policy.

MMIC identifies no decisions of the Iowa Supreme Court—or any other court for that matter—finding breach of an insurance contract for anything close to what the clinic did here. Nor has MMIC identified any evidence that the supposed breaches were material or that the clinic's actions prejudiced it in any way. Although a breach-of-contract claim under Iowa law requires a showing of both materiality and prejudice, MMIC contends that these requirements are presumptively satisfied by *any* breach of its policy terms—even the most technical breach of a term implied by the policy language, and even if the breach is temporary and causes no harm to anyone. Again, no authority supports this approach.

And not even MMIC can bring itself to defend the district court's extreme decision to remedy the alleged breach by voiding the entire policy, stripping the clinic of coverage for "any and all" claims during the policy period and leaving it without representation on remand to the trial court. That holding sends a troubling message to every Iowa business: If you do not subordinate your interests to those of your insurer (and perhaps even if you do), your coverage may unexpectedly evaporate at

the moment you need it most. Under the district court's rule, an insured's effort to protect itself from a judgment that its insurer refuses to settle is punished with total forfeiture of coverage, forcing businesses to bet their futures on the judgment and good faith of an insurer whose interests may be diametrically opposed to its own. No appellate court in the country has adopted that punishing rule, and this Court should not be the first.

MMIC's failure to defend the district court's extreme choice of remedy makes clear that reversal is required—at least so that the district court can limit its judgment to the relief to which MMIC claims it is entitled. But the Court shouldn't stop there. To "void" the policy even as to the specific claim at issue here, as MMIC asks the Court to do, would still leave the clinic facing ruinous liability for conduct that the policy did not prohibit and that caused no real-world harm. Because MMIC has not shown any entitlement to such a remedy, this Court should reverse the district court's grant of summary judgment in its entirety.

ARGUMENT

I. MMIC fails to identify any concrete policy language that the clinic purportedly violated.

MMIC's argument stumbles at the very first step: It fails to identify any policy language that the clinic allegedly breached. In Iowa, the "cardinal principle" guiding the interpretation of insurance contracts is that "the language of the policy" controls "unless the meaning of that language is ambiguous." *Nat'l Sur. Corp. v. Westlake Inv.,*

LLC, 880 N.W.2d 724, 733–34 (Iowa 2016).[1] Here, MMIC argues generally (at 3) that the clinic "repeatedly breached material terms," "many of" which it says the clinic's brief on appeal leaves "wholly unaddressed." But when it finally identifies (at 22) the "four different … obligations" that it claims the clinic failed to honor (each of which was, in fact, addressed in the clinic's brief), it does not explain how the clinic violated the contract's language on any of them.

Unable to identify any policy language that the clinic arguably breached, MMIC begins instead (at 20) with decisions from other states that it claims have imposed "broader" common-law duties "[e]ven without such language." Even assuming that MMIC is right about the common law in those jurisdictions, the law in Iowa is clear that "the construction of insurance policies … is determined by what the policy itself says." *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 681 (Iowa 2008). "If there is no ambiguity" in the policy language, Iowa courts "will not write a new contract of insurance" to immunize the insurer from its obligations. *Id.* at 682. And here, as explained below, the policy language not only fails to support MMIC's position, but flatly refutes it.

Even if ambiguity did exist, MMIC does not dispute that doubts about the policy's meaning must be resolved in the clinic's favor. "Because insurance policies

[1] Unless otherwise specified, all internal quotation marks, emphases, alterations, and citations are omitted from quotations throughout.

are contracts of adhesion, an insurer assumes a duty to define in clear and explicit terms any limitations or exclusions to the scope of coverage a policy affords." *Nat'l Sur. Corp.*, 880 N.W.2d at 733–34. The contract's provisions must therefore be "construed in the light most favorable to the insured," with "[e]xclusions from coverage construed strictly against the insurer." *Iowa Comprehensive Petrol. Underground Storage Tank Fund Bd. v. Federated Mut. Ins. Co.*, 596 N.W.2d 546, 550 (Iowa 1999). MMIC is thus forced to argue (at 20) not only that the policy's language supports its position, but that it does so with "unambiguous language." Given that nothing that the clinic did breaches any express contract language, MMIC cannot possibly make that showing here.

1. Right to select counsel. MMIC first claims (at 22) that the clinic violated the insurer's right to "control of defense and the Clinic's consent to counsel." But it doesn't quote the relevant policy provision until five pages later, at the very end of the section, and, even then, it fails to explain how anything the clinic did violated the provision's plain language. That language gives MMIC "the right to control the defense of" covered claims, including the right to "retain an attorney to defend any claim." App. 75; R. Doc. 22-3, at 12. As our opening brief explains (at 25–26), MMIC did just that here. Although the clinic temporarily objected to Mr. Booher's appearance at argument before the Iowa Supreme Court, it ultimately "agreed that [he could] represent" it. App. 216; R. Doc. 27-3, at 12. Mr. Booher then appeared at

argument, presented the argument that MMIC wished to make, and prevailed in the appeal. MMIC thus got everything to which its policy entitled it: It "control[led] the defense" throughout the litigation and "retain[ed]" attorneys who represented the clinic at every stage of the case—including at oral argument in the Iowa Supreme Court.

More fundamentally, as our opening brief explained (at 27–30), MMIC could not (consistent with the Iowa Rules of Professional Conduct) have forced the clinic to accept conflicted counsel without the opportunity to give informed consent. MMIC has no answer to this point. Instead, it doubts the veracity of the clinic's concerns (at 24), characterizing the conflict of interest as a post-hoc rationalization raised for the first time on appeal to justify the clinic's actions. But MMIC is wrong that the clinic never raised the conflict below. As the clinic told the district court in its response to MMIC's summary-judgment motion, the record-setting judgment in this case left the clinic and MMIC with significantly "different and conflicting interests." R. Doc 27-1, at 7. MMIC, it explained, sought "to obtain either a defense verdict or a verdict less than its $12,000,000 policy limits," while the clinic was "largely seeking to avoid liability for the excess judgment." *Id.*

And the clinic told the Iowa Supreme Court the same thing. Its motion to stay the appeal in that Court, for example, relied expressly on a "conflict of interest" that, it wrote, likely required withdrawal of the insurance company's chosen counsel. App.

145; R. Doc. 22-3, at 159 (citing Iowa Rule of Professional Conduct 32:1.7(a)(1) & (2)). The motion explained that the appeal "serve[d] the interests of MMIC and nobody else," in part because, "despite a significant risk to the [clinic] of a verdict for the Plaintiff in the tens of millions of dollars, and despite the fact that the Clinic and its partner physicians as well as the personal counsel for the partner physicians pleaded with their insurer MMIC to resolve the case within the available policy limits, MMIC unreasonably refused to offer a single dollar to resolve the claim." App. 147; R. Doc. 22-3, at 161; *see also* App. 148–49; R. Doc. 22-3, at 162–63 (explaining "that the actual parties to this case want to reach a settlement, but that MMIC is … forcing this case to continue forward"). And it directed both the district court below and the Iowa Supreme Court to its state-court complaint against MMIC for bad faith, which lays out the same conflict in detail. App. 125–42; R. Doc. 22-3, at 137–42.[2]

MMIC also disputes that Mr. Booher's appearance in the Iowa Supreme Court was the precipitating cause of the clinic's objection, noting (at 23–24) that his initial appearance was entered fourteen months earlier. But while MMIC is correct that Mr. Booher entered an appearance at the beginning of the appeal, our brief stated (correctly) that he did not file his appearance as the clinic's *lead counsel* until

[2] The clinic repeatedly raised the conflict in its other filings as well. *See, e.g.*, App. 191; R. Doc. 22-3, at 223 (stating that MMIC's appeal "prioritizes its financial interests over the welfare of its insured"); App. 192; R. Doc. 22-3, at 224 (stating that Mr. Booher's representation "raises serious concerns regarding conflicts of interest").

after MMIC's lawyers at Shuttleworth & Ingersoll had withdrawn from the case, putting him in position to appear at oral argument on behalf of the clinic just weeks before that argument was scheduled to occur. App. 151; R. Doc. 22-3, at 165. And Mr. Booher filed that appearance without disclosing his conflict of interest, without seeking the clinic's waiver of that conflict, and without contacting the clinic to inform it of his representation. Given that, even Mr. Booher acknowledged that the clinic's objection was "understandable." App. 50; R. Doc. 19-2, at 1.

2. Right to control settlement. MMIC also argues (at 22) that the clinic breached the insurer's right to the "control of settlement and negotiations." But again, the policy's language gives it no such right. To the contrary, the policy expressly provides that the clinic may settle claims "at the insured's own expense." App. 72; R. Doc. 22-3, at 9. And although it requires the clinic to "fully cooperate" in MMIC's own "negotiation of settlements," no such negotiation (despite the repeated requests of both the clinic and the injured plaintiff) ever occurred here. Add. 23; App. 253; R. Doc. 89, at 23.

Some kinds of policies (like underinsured motorist coverage) do commonly include "consent-to-settlement" clauses requiring the insurer's written consent before a settlement is entered. *See, e.g.*, *Grinnell Mut. Reinsurance Co. v. Recker*, 561 N.W.2d 63, 68 (Iowa 1997) (policy foreclosed coverage when the insured "makes a settlement without [the insurer's] written consent"); *Kapadia v. Preferred Risk Mut. Ins.*

Co., 418 N.W.2d 848, 850 (Iowa 1988) (similar). MMIC could have included similar language but chose not to. Although it made its own right to "settle any claim" subject "to the policyholder's right to consent," App. 75, R. Doc. 22-3, at 12, it imposed no limit on the clinic's right to settle. *See also* App. 79; R. Doc. 22-3, at 16 (prohibiting MMIC from "settl[ing] a claim … without the prior written consent of the policyholder").

MMIC's real objection is not that the clinic settled the case without its consent, but that it engaged in settlement *negotiations* that never came to fruition. MMIC repeatedly takes the clinic to task for *attempting* to settle the case, complaining (at 3) that it went "to the precipice" of a breach "before retrenching." But that's just the point: The clinic never actually breached the contract's terms. And there is no cause of action in Iowa for attempted breach of contract.

In any event, as our opening brief explained (at 38–39), MMIC waived its right to demand the clinic's cooperation in settlement when it failed to honor the persistent requests of both the clinic and the injured plaintiff to settle within policy limits. *See Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 639 (Iowa 2000). MMIC responds (at 51) by reading the Iowa Supreme Court's decision in *Kelly* "narrowly" to apply only in cases where an insurer rejects a settlement proposal while *also* denying coverage entirely (or defending under a reservation of rights). But that reading cannot be squared with *Kelly* itself, which holds without qualification that, "if the insurance

company has breached the contract by wrongfully rejecting a reasonable settlement offer, the insured may accept the settlement offer over the insurer's objection without breaching policy duties." *Id.* As the court has recognized, an insurance company's failure to settle can violate the duty of good faith in cases where there was no failure to defend or reservation of rights. *See, e.g., Kooyman v. Farm Bureau Mut. Ins. Co.*, 315 N.W.2d 30, 33 (Iowa 1982) (holding that the covenant of good faith "includes a duty to settle claims without litigation in appropriate cases"); *see also, e.g., Dolan v. Aid Ins. Co.*, 431 N.W.2d 790, 793 (Iowa 1988).

3. Obligation to cooperate. Next, MMIC contends (at 22) that the clinic breached its contractual "obligation to cooperate." But it once again ignores the language of the relevant provision, which requires cooperation only "in the investigation of claims, the negotiation of settlements, and the conduct of litigation." App. 72; R. Doc. 22-3, at 9. Although MMIC claims (at 32) that the clinic breached this provision "in six discrete ways," none of the alleged breaches it cites is rooted in the cooperation clause's actual language. For the reasons set forth above, the clinic did not actually interfere with MMIC's "conduct of litigation" or "negotiation of settlements." And nothing in the cooperation clause's language arguably gives MMIC the right to control, for example, an appeal in a separate bankruptcy case or the clinic's speech outside of court.

Rather, cooperation provisions like this one serve the same purpose as notice provisions in insurance policies, "essentially requir[ing] the insured to assist the insurance company in its preparation for settlement or trial" by, for example, "attending hearings and trials, assisting in effecting settlement, securing and giving evidence, and obtaining the attendance of witnesses." *Paint Shuttle, Inc. v. Cont'l Cas. Co.*, 733 N.E.2d 513, 521 (Ind. Ct. App. 2000). MMIC has not argued that the clinic failed in any way to assist in the preparation of its defense, and we are aware of no court in the country (other than the district court below) that has held a cooperation clause to extend to circumstances as far afield as those that MMIC invokes here.

4. Prohibition against collusion. MMIC's final claimed breach (at 22) is an alleged breach of a claimed "prohibition against … 'collusion.'" Yet again, the policy contains no such express prohibition. MMIC relies instead on the Iowa Supreme Court's recognition of an implied covenant of good faith, which generally requires "that neither party will do anything to injure the rights of the other in receiving the benefits of the agreement." *Kooyman*, 315 N.W.2d at 33. MMIC lacks any authority, however, supporting its contention that the clinic violated that good-faith duty by engaging in some sort of "collusion" here. And the out-of-state decisions on which it relies are not on point: There is no evidence here—much less is it an undisputed fact—that "the insured and the third party claimant work[ed] together to manufacture a cause of action for bad faith against the insurer." MMIC Br. 35

(quoting *Safeco Ins. Co. of Am. v. Parks*, 170 Cal. App. 4th 992, 1013 (2009)); *see also Laster v. Am. Nat. Fire Ins. Co.*, 775 F. Supp. 985, 999 (N.D. Tex. 1991) (describing "conduct designed to 'set up' [the insurer] for bad faith").

To the contrary, the clinic had an undisputed right to bring a bad-faith case against MMIC for its unreasonable failure to settle within policy limits—a right that is recognized both in decisions of the Iowa Supreme Court, *see, e.g.*, *Kelly*, 620 N.W.2d at 639, and in the language of the policy itself, *see* App. 72; R. Doc. 22-3, at 9. There is nothing collusive or otherwise improper about an insured bringing such a bad-faith claim, and that is true whether or not the claim ultimately proves to have merit. *See Johnson v. Farm Bureau Mut. Ins. Co.*, 533 N.W.2d 203, 208 (Iowa 1995) (rejecting a cause of action against the insured for "reverse bad faith").

The closest that MMIC comes to supporting authority (at 30–31) is its citation to a 1994 law-review article, written by an insurance-law practitioner, which warns that "[c]reative plaintiffs' attorneys" may attempt to "expand the insurer's policy limits by staging facts that would give rise to bad faith liability." Stephen R. Schmidt, *The Bad Faith Setup*, 29 Tort & Ins. L.J. 705, 705 (1994). MMIC reads this article (at 38) as suggesting that it is "collusion per se" for an insured party to assign its bad-faith claim to an injured tort claimant and stipulate to entry of a judgment collectible only from the insurer. But even setting aside the fact that no such settlement (or any settlement at all) was entered here, the article—which does not

purport to discuss Iowa law—does not contend that such settlements are inherently improper. Rather, there must be actual collusion, such as in a case where the parties stipulated to a judgment "in excess of policy limits to create a claim for bad faith failure to settle." *Id.* MMIC's out-of-state cases hold the same. *See Parks*, 170 Cal. App. 4th at 1013 ("[C]ollusion occurs when the insured and the third party claimant work together to manufacture a cause of action for bad faith against the insurer…."); *Carlson v. Zellaha*, 482 N.W.2d 281, 284 (Neb. 1992) (finding collusion where the insured sought to profit from the consent agreement).

Indeed, the Iowa Supreme Court later expressly approved of just the kinds of settlement that MMIC calls "collusion per se" (those that assign bad-faith claims to injured tort claimants and stipulate to judgments collectible only from the insurer). *See Red Giant Oil Co. v. Lawlor*, 528 N.W.2d 524, 534 (Iowa 1995). The mere "fear that fraud or collusion is possible" in such a settlement, the Court explained, is not enough to render the settlement improper. *Id.* Thus, even in cases where a binding settlement is entered without the insurance company's approval, "an insurer, relying on fraud or collusion, must plead and prove these defenses." *Id.* at 535. In "the absence of contrary evidence," the presumption in Iowa is that the settlement was entered "fairly, honestly, and in good faith." *Id.* at 534.

Here, MMIC has not made, and cannot make, the required evidentiary showing. Far from engaging in any improper collusion, the clinic was open about its

settlement efforts and submitted its proposed settlement for court approval. Indeed, the clinic's very openness about its attempts to settle the case is the only source of evidence on which MMIC bases its collusion claim. At a minimum, the district court erred in drawing inferences against the clinic to find collusion on summary judgment. But there is not even a possibility of collusion here, given that, unlike the cases on which MMIC relies, no binding agreement was ever entered in this case. *See Sargent v. Johnson*, 551 F.2d 221, 232 (8th Cir. 1977) (finding collusion where the insured "enter[ed] into a settlement of the pending litigation without the insurer's consent" in "violation of the [policy's] terms"). Without agreement, there can be no collusion. *Cf. Reppert v. Reppert*, 241 N.W. 487, 491 (Iowa 1932) ("Before there can be collusion there must be an agreement between the parties."); *Runyan v. Farmers' Bank of Liberty Ctr.*, 230 N.W. 418, 421 (Iowa 1930) ("No one can collude … with himself.").

II. MMIC does not try to meet its burden of showing that any of its alleged breaches are material.

A. For a breach of contract to excuse another party's contractual obligations, "the breach must be material." *Kelly*, 620 N.W.2d at 641; *see also* Restatement (Second) of Contracts § 237, at 215 (1981). Although MMIC has the burden to show materiality, it makes no effort to demonstrate that any of the four claimed breaches it identifies satisfy the materiality test. Nor could it hope to make that showing. The "[m]ost significant" factor in determining materiality, the Iowa Supreme Court has held, "is the extent to which the breach will deprive the injured party of the benefit that it

justifiably expected." *Van Oort Constr. Co. v. Nuckoll's Concrete Serv., Inc.*, 599 N.W.2d 684, 692 (Iowa 1999). Here, the clinic's temporary withdrawal of consent and participation in abortive settlement discussions did not deprive MMIC of anything. Nor, for the reasons explained above, did the clinic's purported breach of the "cooperation" clause or its so-called "collusion" deprive MMIC of any benefit it was entitled to expect under the policy.

Rather than attempting to meet its burden, MMIC rests its argument on *Dolly Investments, LLC v. MMG Sioux City, LLC*, in which the Iowa Supreme Court held that no materiality inquiry was necessary where the contract itself "define[d] the circumstances … amount[ing] to a material breach." 984 N.W.2d 168, 175 (Iowa 2023). But the contract in *Dolly* did so by expressly authorizing a landlord to terminate a tenant's lease if rent was not paid within 15 days of notice. *See id.* The contract here, by contrast, never purports to define its material terms. MMIC points only to a section providing that "[n]o legal action may be brought against [it] unless there has been full compliance by the insured with all of the terms and conditions of this policy." MMIC Br. at 21 (quoting App. 72; R. Doc. 22-3, at 9). Unlike the contract in *Dolly*, however, that provision doesn't define the circumstances under which a violation of the policy's "terms and conditions" triggers termination of the contract. All that language does is withhold the right to sue until the insured has complied with

its contractual obligations. But that is not, as in *Dolly*, "the type[] of remed[y] that contract law traditionally attributes to material breaches." 984 N.W.2d at 175.

If MMIC's reading were correct, it would mean that *any* violation of the policy's "terms and conditions" by the insured (no matter how minor) would constitute a material breach that voids the entire policy. No reasonable party reading the contract's language would expect such a harsh result. But even if that interpretation were a reasonable one, it would not help MMIC here, given that—as explained in the previous section—its policy's "terms and conditions" do not expressly include any of the obligations that MMIC reads into them. MMIC cannot claim that it designated terms as material when those terms appear nowhere in the contract's language.

III. MMIC likewise makes no attempt to show prejudice.

MMIC also fails to show prejudice here, given that both the clinic's objection to Mr. Booher and its participation in settlement talks ultimately came to nothing. At the end of the day, the only consequence to MMIC from the clinic's efforts was a temporary stay of the oral argument in the Iowa Supreme Court. MMIC identifies no Iowa authority finding actual prejudice in anything close to these circumstances. For a showing of actual prejudice under Iowa law, "mere speculation that prejudice

to an insurer may exist" is not enough. *Fireman's Fund Ins. Co. v. ACC Chem. Co.*, 538 N.W.2d 259, 265–66 (Iowa 1995). Yet that is all that MMIC offers—mere speculation.[3]

MMIC is thus forced to stake its case on its claim that Iowa law *presumes* prejudice in these circumstances. Just as with materiality, it argues, *any* breach of its policy terms—no matter how brief or inconsequential—creates a presumption of prejudice that the insured must disprove to avoid liability. The Iowa Supreme Court, however, has "adopted and followed" a different rule, under which only "a *substantial* breach of a condition precedent … must be presumed prejudicial to the insurer." *Am. Guarantee & Liab. Ins. Co. v. Chandler Mfg. Co.*, 467 N.W.2d 226, 228 (Iowa 1991) (emphasis added); *see also Watson v. Nat'l Sur. Corp. of Chicago, Illinois*, 468 N.W.2d 448, 451 (Iowa 1991) ("[P]roof of strict compliance is not required."). The clinic's temporary objection to Mr. Booher's representation, its unfinished settlement discussions, and its various tangential acts of alleged non-cooperation all fail that test. Even assuming that one or more of these acts breached an implied policy term, such a term—which the policy does not expressly mention—cannot be a "basic and essential provision[]" of the policy that goes to "the very essence of the agreement." *Henderson v. Hawkeye-*

[3] For the first time on appeal, MMIC claims (at 47) that it "was financially prejudiced through the accrual of interest that S.K. never returned." Neither MMIC nor the district court relied on that fact on summary judgment below. In any event, MMIC's claim that S.K. paid no interest on the judgment is totally unrelated to the clinic's alleged breaches of the contract's terms. There is no reason to believe that S.K. would have paid interest, for example, if the clinic had never objected to Mr. Booher's representation or never engaged in settlement discussions.

Sec. Ins. Co., 106 N.W.2d 86, 92 (Iowa 1960). MMIC identifies no decision, in Iowa or elsewhere, suggesting otherwise.

Even if MMIC were right that a presumption of prejudice applies, that "presumption is rebuttable." *Id.* And it is easily rebutted here. MMIC cannot show actual prejudice from a delay in oral argument in the Iowa Supreme Court, especially considering that it ultimately argued and prevailed in the appeal. Likewise, nothing about the clinic's alleged "collusion" is related to, or could have prejudiced, MMIC's defense.

IV. MMIC has no defense of the district court's extreme remedy of voiding the policy entirely, leaving the clinic without representation on remand.

Finally, MMIC has nothing to say in defense of the district court's decision to void the clinic's entire liability policy as a remedy for the alleged breach. As our opening brief explained (at 50–51), a "material breach of contract discharges the duties of the non-breaching party, but not automatically." *Aesthetic Elements, Inc. v. Meera Enter., LLC*, 19 N.W.3d 711 (Iowa Ct. App. 2025). When, as here, "the contract is silent on the consequences of breach," black-letter Iowa law holds that "a non-breaching party's performance is suspended pending the breaching party's opportunity to cure." *Id.*; *see also* Restatement (Second) of Contracts § 242 & cmt. a. "Only when it is too late to cure will the non-breaching party's obligations be finally discharged." *Aesthetic Elements*, 19 N.W.3d at 711; *see, e.g.*, *Mart v. Mart*, 824 N.W.2d 535,

544 (Iowa Ct. App. 2012) (holding that "forfeiture was not justified" where a landlord had "not incurred any significant damages" and the tenant had "cured his material breach"). To the extent any breach occurred here, it would have been cured when the clinic withdrew its opposition to Mr. Booher's representation and abandoned its settlement efforts. The district court erred in voiding the policy anyway.

MMIC has no answer to this point. Instead, it denies ever requesting that relief, claiming that it had "long argued" that the district court should "effectuate only a void on this claim" (whatever that may mean). MMIC Br. at 54 (quoting R. Doc. 57, at 6 n.5). To back up its claim, however, MMIC cites only a footnote from a supplemental brief. The relief that MMIC actually requested in its summary judgment papers, in contrast, was a declaratory judgment that "the Policy is void" and that "*any and all causes of action* on the Policy … are now foreclosed." App. 54; R. Doc. 22, at 1 (emphasis added). And more to the point, that is the relief that the district court granted. The court held that the clinic's purported "breaches have voided the Policy and foreclosed any rights the Clinic might otherwise have under it." Add. 33; App. 313; R. Doc. 89, at 33. And it gave MMIC precisely the relief that it asked for, entering a declaratory judgment that the clinic "materially breached the Policy, rendering the Policy void," and that "[a]ny and all causes of action on the Policy are now foreclosed." Add. 34; App. 314; R. Doc. 89, at 34.

MMIC's failure to defend the relief that the district court granted is a virtual admission that reversal is required here. In adopting that extreme remedy, the court effectively doomed the clinic by leaving it unprotected against not only the claims in this case, but also against any other claims for injuries during the policy period—claims that the clinic reasonably expected it was insured against. *See id.*

If allowed to stand, the district court's decision would risk upending the coverage expectations of all insured parties in Iowa. The ability of businesses to rely on their contractual coverage allows them to structure their primary conduct to manage exposure to risk. *See Emps. Mut. Cas. Co. v. Cedar Rapids Television Co.*, 552 N.W.2d 639, 643–44 (Iowa 1996) (noting that insurance coverage allows an "insured [to] control [its] own conduct and insure against damages arising from such conduct"). As the Iowa Supreme Court has recognized, "insurance policies are sold on the basis of the coverage they promise," *Clark-Peterson Co. v. Indep. Ins. Assocs., Ltd.*, 492 N.W.2d 675, 679 (Iowa 1992), and premiums "are charged upon the theory that [those promises] can be relied upon, and the business be safely done." *State Ins. Co. v. Richmond*, 32 N.W. 496, 498–99 (Iowa 1887). The district court's decision to retroactively deprive the clinic of its contractual protection shatters those expectations by "effectively gut[ting] … coverage previously agreed to." *Clark-Peterson Co.*, 492 N.W.2d at 678.

That result runs afoul of the fundamental rule in diversity cases that federal courts should "do no harm to state jurisprudence." *U.S. Fid. & Guar. Co. v. Lee Investments LLC*, 641 F.3d 1126, 1133 (9th Cir. 2011). The role of the federal courts in diversity cases, this Court has explained, "is to interpret state law, not to fashion it" or "expand [it] in ways not foreshadowed by state precedent." *Kingman v. Dillard's, Inc.*, 643 F.3d 607, 615 (8th Cir. 2011). Yet that is just what the district court did here in holding the clinic's policy void under Iowa law. Despite repeated opportunities to do so, MMIC has still not identified a single Iowa decision—or any other decision from any other jurisdiction for that matter—that has found a material breach by an insured, or prejudice to an insurer, under anything close to circumstances like these. Much less has it pointed to a case voiding an insurance policy in such circumstances. For "a federal court sitting in diversity," that should have been "the end of [the] inquiry." *Salier v. Walmart, Inc.*, 76 F.4th 796, 802 (8th Cir. 2023). Because the district court went further, this Court should reverse.

CONCLUSION

This Court should reverse the district court's grant of summary judgment to MMIC.

Respectfully submitted,

/s/ Deepak Gupta
DEEPAK GUPTA
JONATHAN E. TAYLOR
GREGORY A. BECK

GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741
deepak@guptawessler.com

NICHOLAS C. ROWLEY
DOMINIC PECHOTA
CLINTON EHRLICH
TRIAL LAWYERS FOR JUSTICE
421 West Water Street
Decorah, IA 52101
(563) 382-5071

April 16, 2026

Counsel for Defendant-Appellant

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 5,438 words excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Baskerville font. This brief has been scanned for viruses and is virus-free.

April 16, 2026

/s/ Deepak Gupta
Deepak Gupta

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Eighth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Deepak Gupta
Deepak Gupta