IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

P&L APARTMENTS LLC AND PHG INC. DBA PINNACLE ROOFING CONSULTANTS, Plaintiff, vs. NATIONWIDE MUTUAL INSURANCE COMPANY, Defendant.	Case. No. 2:24-cv-01028-CJW-MAR PLAINTIFFS' BRIEF IN RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Federal Rule of Civil Procedure 56, and Local Rule 56(b)(1), Plaintiffs P&L Apartments LLC ("P&L") and PHG, Inc. dba Pinnacle Roofing ("Pinnacle") (collectively, "Plaintiffs"), by and through their counsel of record, file this Brief in Support of their Response in Opposition to Defendant Nationwide Mutual Insurance Company's ("Defendant" or "Nationwide") Motion for Summary Judgment (the "Defendant's Motion"). The Plaintiffs would respectfully show this Court the following.

FACTS

This case stems from a hail and wind storm which occurred on July 28, 2023 (the "Storm"), which damaged Plaintiff's property, located at 3700-3716 Pennsylvania Avenue, Dubuque, Iowa 52002 (the "Property"). Plaintiff P&L, along with its public adjuster, Semper Fi Public Adjusters, LLC ("Semper Fi" or "the PA") filed a claim under the property insurance policy it had purchased from Defendant, Policy No. ACP CPO13200968770 (the "Policy"). Defendant assigned the number 165301GP to the claim (the "Claim"). P&L executed a document which assigned the benefits of the Claim to Plaintiff Pinnacle. [SAMF at 1].

Following an investigation of the Claim, Defendant issued payment on December 6, 2023 in the amount of $348,241.41. [SAMF at 2]. On July 11, 2024, Plaintiff submitted a sworn proof of loss to Defendant, which included the named insureds under the Policy and persons or entities with ownership interests in the Property. [SAMF at 3]. This Sworn Proof of Loss also included Semper Fi's estimate of the damages, $16,403,076.10. *Id*.

This lawsuit ensued. Plaintiff and Pinnacle filed a petition in the District Court of Dubuque, Iowa seeking damages for breach of contract and common law bad faith adjustment of an insurance claim under *Dolan v. Aid Ins. Co.*, 431 N.W.2d 790 (Iowa). Defendant removed this case to the present Court, and filed its motion for summary judgment on June 13, 2025 seeking summary judgment on all Plaintiff's claims in this case. [Dkt. 20]. Plaintiffs hereby tenders their response.

LEGAL STANDARD

The Eighth Circuit recognizes "that summary judgment is a drastic remedy and must be exercised with extreme care to prevent taking genuine issues of fact away from juries." *Wabun–Inini v. Sessions*, 900 F.2d 1234, 1238 (8th Cir.1990). A court considering a motion for summary judgment must view all the facts in the light most favorable to the nonmoving party. *Matsushita v. Zenith Radio Corp*., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). "The necessary proof that the nonmoving party must produce is not precisely measurable, but it must be enough evidence so that a reasonable jury could return a verdict for the nonmovant." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 257, 106 S.Ct. 2505, 2514, 91 L.Ed.2d 202 (1986). "[A] summary judgment motion should be interpreted by the trial court to accomplish its purpose of disposing of factually unsupported claims, and the trial judge's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial." *Johnson v. Enron Corp*., 906 F.2d 1234, 1237 (8th Cir.1990). The trial court, therefore,

must "assess the adequacy of the nonmovants' response and whether that showing, on admissible evidence, would be sufficient to carry the burden of proof at trial." *Hartnagel v. Norman*, 953 F.2d 394, 396 (8th Cir. 1992) (*citing Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986)). If the court can conclude that a reasonable trier of fact could return a verdict for the nonmovant, then summary judgment should not be granted. *Anderson*, 477 U.S. at 248, 106 S.Ct. at 2510.

ARGUMENT

As fully illustrated below, Defendant is not entitled to summary judgment on Plaintiffs' claims for the following reasons: (1) Under Iowa Law, Defendant Waived Any Argument For Forfeiture by Continuing to Process the Claim Following the Assignment; (2) The Law of the State of Iowa and the 8th Circuit Prescribe Voidance of a Pre-Loss Assignment Rather Than Voidance of Coverage Under An Insurance Policy; (3) Defendant Has Failed to Prove Intentional Misrepresentation, and the Alleged Misrepresentation is Not Material As Required Under the Policy; and (4) Plaintiffs' claims for bad faith insurance practices must survive because Plaintiffs' claims for breach of contract must also survive, and in the alternative, further discovery is reasonably likely to uncover evidence of bad faith insurance practices.

(1) UNDER IOWA LAW, DEFENDANT WAIVED ANY ARGUMENT FOR FORFEITURE BY CONTINUING TO PROCESS THE CLAIM.

Defendant argues that Plaintiffs' claim for breach of contract necessarily fails because its assignment of the claim to Pinnacle voided its own insurance contract by operation of law, and that Plaintiffs therefore cannot assert any legal claims under the terms of the Policy. However, under Iowa State Law, Defendant's continued handling of the Claim following the assignment undermines this argument.

P&L assigned the benefits of the Claim to Pinnacle on April 1, 2023. [SAMF at 5]. Following the July 2023 date of loss, Defendant investigated the Claim and, on December 6, 2023, issued a letter to Plaintiffs regarding its payment on the Claim. [SAMF at 2]. In so doing, Defendant adjusted the claim, including an investigation and subsequent payment based thereupon, in spite of the assignment which existed during the entirety of its investigation. *Id*.

Furthermore, the owner of this Property, Gregory Ladehoff ("Mr. Ladehoff") was involved in several previous claims with Defendant for damage to other properties, the benefits of which had been assigned to Pinnacle. [SAMF at 4; Dkt 20-2 at 1]. In each claim, Mr. Ladehoff, through his representatives, filed this claim following several others in which the benefits of the claims had been assigned to Pinnacle, all with Defendant or one of its associated family of insurance carriers. [SAMF at 4; Dkt. 20-1 at 1]. In each claim, Defendant continued with the adjustment following the assignment, including finalization of each claim and either payment or denial which resulted in litigation. [SAMF at 4]. Defendant Nationwide, the same insurance carrier that adjusted the above-referenced claims, was therefore had knowledge of Pinnacles' involvement in the claim by virtue of several other claims filed before this one, which featured the same arrangement. *Id*.; *see also* Dkt. 20-1 at 1-2.

Neiman v. Hawkeye Sec. Fire Ins. Co. proves instructive in this scenario:

> It is a well-settled principle of insurance law that, although by the terms of the policy it is provided that a change of ownership of the insured property will defeat the rights of the insured or an assignee of the policy, the insurer may consent to carry the risk notwithstanding the change of title, and by acts and conduct on its part, through its duly constituted agent, may waive such provision or be estopped by its acts and conduct. In other words, if, with knowledge of the facts constituting a forfeiture of the policy, the insurer continues to treat the contract as a binding contract and induces the insured to act in that belief, the forfeiture is waived.

205 Iowa 119, 217 N.W. 258, 260 (1927).

Through Defendant's acts and conduct on its part, including the investigation, determination of coverage, and subsequent payment on the Claim following the assignment [SAMF at 2], Nationwide therefore waived any claim that Plaintiffs forfeited their rights to the Claim under the Policy. Any argument based thereupon is without merit.

(2) THE LAW OF THE STATE OF IOWA AND THE 8TH CIRCUIT PRESCRIBE VOIDANCE OF A PRE-LOSS ASSIGNMENT RATHER THAN VOIDANCE OF COVERAGE UNDER AN INSURANCE POLICY.

The Iowa Supreme Court makes it clear that the remedy for a pre-loss assignment of the benefits is the *invalidation* of the assignment, rather than finding that the insured forfeited any rights to make a claim under the policy by virtue of the pre-loss assignment. "In fact, [Iowa Courts have] previously ***invalidated*** **the assignment** of an insurance policy and its underlying claims prior to the occurrence of the condition triggering liability under the policy." *See Neiman v. Hawkeye Sec. Fire Ins. Co*., 205 Iowa 119, 125, 217 N.W. 258, 261 (1927) (emphasis added); *Davis v. Bremer County Farmers' Mut. Fire Ins. Ass'n*, 154 Iowa 326, 329, 134 N.W. 860, 862 (1912); *see also Welch v. Taylor*, 218 Iowa 209, 212, 254 N.W. 299, 301 (1934); *Conrad Bros. v. John Deere Ins. Co*., 640 N.W.2d 231, 236 (Iowa 2001).

Likewise, case Law under the 8th Circuit concurs with Iowa's treatment of pre-loss assignments, and its rulings establish that such assignments are invalid and unenforceable by operation of law. *See In re Archdiocese of Saint Paul & Minneapolis*, 579 B.R. 188, 201 (Bankr. D. Minn. 2017), *citing Stand Up Multipositional Advantage MRI, P.A. v. Am. Family Ins. Co*., 878 N.W.2d 21, 27, (Minn. Ct. App. 2016), aff'd, 889 N.W.2d 543 (Minn. 2017) ("When an assignment at issue is pre-loss, the anti-assignment clause is valid and enforceable, **making the *assignment* invalid and unenforceable**.") (emphasis added).

8th Circuit law dictates that the invalid assignment contract means that the assignment was either void or voidable, and thus Plaintiff retained all rights to the Claim. *E. Cent. Water Dist. v. City of Grand Forks*, No. 3:20-CV-208, 2023 WL 11841660, at *3–4 (D.N.D. Nov. 28, 2023), certified question answered, 2024 ND 135, 9 N.W.3d 705 ("[T]here are different types of invalid contracts. Some . . . are void *ab initio* . . . [which] means a bargain is null from the beginning, as from the first moment when the purported contract was entered into. . . . Other invalid contracts are voidable but capable of ratification.") (cleaned up). "If the agreement is void as to either party, it is void as to both." *Cole v. Brown-Hurley Hardware Co*., 139 Iowa 487, 117 N.W. 746, 750 (1908).

Therefore, whether the assignment contract was void by operation of law or merely voidable, it is of no legal effect according to the law of the State of Iowa and the 8th Circuit. Policyholders such as P&L therefore retain all rights to the Claim, and the benefits derived therefrom, including the right to pursue legal claims pursuant to the Policy.

(3) DEFENDANT HAS FAILED TO PROVE INTENTIONAL AND MATERIAL MISREPRESENTATION AS REQUIRED UNDER THE POLICY.

Defendant claims that Plaintiffs intentionally concealed or misrepresented Pinnacle's involvement in this claim, which triggered a provision that calls for the forfeiture of its right to legal action under the Policy. This argument is erroneous for two reasons: (a) Plaintiffs never intentionally concealed nor misrepresented the assignment of the claim, and (b) the assignment is not a material element which affects coverage under the Policy.

(a) PLAINTIFFS NEVER INTENTIONALLY MISREPRESENTED NOR CONCEALED THE ASSIGNMENT OF THE CLAIM.

The Policy includes the following language:

> **Concealment, Misrepresentation or Fraud**: This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if

> you or any other insured, at any time, **intentionally conceal or misrepresent** a material fact concerning (1) This Coverage Part; (2) This Covered Property; (3) Your interest in the Covered Property; or (4) A claim under this Coverage Part.

[SAMF at 5] (emphasis added).

Plaintiffs' first argument revolves around a single word, "intentionally", which Defendant has not proved in this case.

The Sworn Proof of Loss at issue includes the following language regarding the named insureds under the Policy and interest in the Property:

> 3. **Other Named Insureds on Policy having an interest in the damaged covered property:**
> DUTRAC COMMUNITY CREDIT UNION and Semper Fi Public Adjusters LLC
>
> 4. **Title and Interest:** At the time of the loss, P&L Apartments LLC had full ownership interest in the claimed property except:
> DUTRAC COMMUNITY CREDIT UNION and Semper Fi Public Adjusters LLC

[SUMF at 3].

The Sworn Proof of Loss contains an error in which the list of named insureds includes the public adjuster, Semper Fi. *Id*. This error is repeated on the subsequent line, which lists ownership interests in the Property. *Id*. Semper Fi is neither a named insured on the Policy, nor holds any ownership interest in the Property. [SAMF at 6 and 7]. In fact, nowhere in the sworn proof of loss is there any statement regarding persons or entities who have rights to the Claim at issue, only the Property and the Policy. [SAMF at 3]. The assignment at issue transfers no rights to the Property, nor does it transfer the named insured with Pinnacle, only rights to the benefits derive from the Claim. [SAMF at 1]. The Sworn Proof of Loss therefore contains no misrepresentations, let alone an intentional one, which would reasonably affect Defendant's adjustment of the claim.

Grinnell Mut. Reinsurance Co. v. Curry Yard Art, Inc., No. 23-2027, 2025 WL 1067532 (Iowa Ct. App. Apr. 9, 2025) illustrates the crucial difference between an intentional misrepresentation, as Defendant asserts here, and what amounts to, at worst, an unintentional

omission which does not call for forfeiture of rights under the Policy. In *Curry*, the policyholder claimed that he had made additions or improvements to a building on his property for which he sought reimbursement under this policy. *Id*. at *1. However, thorough investigation, including the taking of an examination under oath (EUO), soon revealed that he had made no additions or improvements as he had claimed. *Id*. at *2. The Iowa Court of Appeals held that the policyholder's "material misrepresentation about Building 2 was sufficient to void all further coverage under the policy." *Id*. at *4. In essence, the policyholder had voided coverage under his own policy because he had sought payment for improvements he never made. *Id*. The Court of Appeals agreed that this was, indeed, an intentional misrepresentation, verified by the policyholder's documentation and testimony during the EUO. *Id*.

In contrast, Plaintiffs never misrepresented to Defendant that Pinnacle had no interest in the claim. The Sworn Proof of Loss lists named insureds under the Policy, and persons and entities with ownership interest in the Property, with the mistaken inclusion of Semper Fi, which holds no such interest. [SAMF at 3, 6, and 7].

"[A] statement challenged as a material misrepresentation must actually be a misrepresentation, i.e. untrue, incorrect, or misleading." *Warren v. State Farm Fire & Cas. Co*., 531 F.3d 693, 699 (8th Cir. 2008) (internal quotation marks omitted). Defendant offers deposition testimony provided by P&L's owner, Greg Ladehoff ("Mr. Ladehoff") which was taken in relation to a different case than the one at issue, *Ladehoff Family Retirement Account LLC and PHG, INC dba Pinnacle Roofing Consultants*, Case No. 3:24-cv-00008-SHL-SBJ. Mr. Ladehoff openly testified that the assignment existed, and made no attempt to hide this fact. [Def. Ex. A ¶ 41 at 54:7-10]. The testimony proffered by Defendant demonstrates no effort to conceal Pinnacle's involvement in that claim, nor with the claim at issue in this case. Mr. Ladehoff likewise never

misrepresented Pinnacle's assignment in any of those other claims, but rather openly admitted that the assignment existed.

Therefore, Defendant can assert no evidence that Plaintiffs intentionally misrepresented the assignment at issue in its arguments.

(b) THE ASSIGNMENT IS NOT A MATERIAL ELEMENT WHICH AFFECTS COVERAGE UNDER THE POLICY.

Plaintiffs' second argument against Defendant's erroneous assertion revolves around another word included in the Policy language: "material". As illustrated below, Pinnacle's involvement in the Claim was not a material fact which affected Defendant's handling of the Claim.

"[A] fact or circumstance is material if it pertains to facts that are relevant to the company's rights to enable the company to decide upon its obligations and to protect itself against false claims." *Warren v. State Farm Fire & Cas. Co*., 531 F.3d 693, 699 (8th Cir. 2008). Defendant adjusted several other claims for storm damage to properties owned by Mr. Ladehoff. [SAMF at 4]. In those claims, Mr. Ladehoff had either assigned the benefits to Pinnacle, or retained Pinnacle to represent the property outright in all interactions with Defendant. *Id*. Defendant nonetheless continued its adjustment of those claims, including final determination and payment, which resulted in litigation. *Id*. There is therefore no evidence to support the inference called for by Defendant, which is that the assignment at issue in this case had any bearing on Defendant's final determination of the Claim. This assignment lacks the element of materiality required by the Policy to support Defendant's contention that Plaintiff voided coverage through a "material misrepresentation."

In sum, Plaintiffs made no intentional misrepresentation nor concealment of any material fact regarding the Claim which would call for forfeiture of his rights under the Policy.

(4) PLAINTIFFS' CLAIMS FOR BAD FAITH INSURANCE PRACTICES MUST SURVIVE BECAUSE PLAINTIFFS' CLAIMS FOR BREACH OF CONTRACT MUST ALSO SURVIVE, AND IN THE ALTERNATIVE, FURTHER DISCOVERY IS REASONABLY LIKELY TO UNCOVER EVIDENCE OF BAD FAITH INSURANCE PRACTICES.

Defendant argues that Plaintiffs are not entitled to summary judgment on claims for bad faith handling of an insurance claim under *Dolan v. Aid Ins. Co.*, 431 N.W.2d 790 (Iowa 1988) because Plaintiffs cannot establish standing to assert any claim due to its voidance of the policy. As illustrated above, the applicable law of the State of Iowa and the 8th Circuit support Plaintiffs' claim for breach of contract. Therefore, Defendant's first argument in favor of summary judgment on Plaintiffs' claim for bad faith insurance practices must necessarily fail.

Defendant's second argument is based on a lack of evidence to support said contentions. Written discovery has already begun, and discovery in this case closes on October 24, 2025. It is reasonably likely that further discovery will produce the evidence required to support Plaintiffs' claim for insurance bad faith under *Dolan*. Fed. R. Ev. 11(b)(3). Therefore, the time is not ripe for this Court to make any final determination on this claim.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs P&L Apartments, LLC and PHG, Inc. dba Pinnacle Roofing Consultants pray that this Honorable Court deny Nationwide's Motion for Summary Judgment, and that the Court grant any further relief that the Court deems necessary and proper.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served upon all counsel of record and unrepresented parties via the Court's electronic CM/ECF document filing system on this 18th of July, 2025, and submitted to the following recipients:

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