No. 25-1293

In the Supreme Court of the United States

DAN SCHMIDT,

Petitioner,

v.

CITY OF OMRO, WISCONSIN ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of Wisconsin, District II

PETITION FOR A WRIT OF CERTIORARI

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April 28, 2026
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QUESTIONS PRESENTED

1. Does the 14th Amendment require a state trial court judge to inform a party of Wisconsin's absolute right to appeal in a civil tort case at a hearing on a Motion to Dismiss and in its written order of dismissal?

2. If so, is there in an equitable exception when the trial court merely states its dismissal was with prejudice and assumes that the party knows what that term meant?

LIST OF PARTIES

Petitioner and Plaintiff-Appellant Below

- Dan Schmidt

Respondents and Defendants-Appellees Below

- City of Omro, Wisconsin
- Benjamin D. Brand
- Steve Bilkey
- James Chatterton
- Steve Jungwirth
- John M. Kelly
- Dan Lenz
- Joe Schuster
- National Exchange Nebat Foundation

LIST OF PROCEEDINGS

Supreme Court State of Wisconsin
No. 2025AP128
Schmidt v. City of Omro, et al.
Order denying petition for review: October 6, 2025

Court of Appeals, State of Wisconsin
No. 2025AP128
Schmidt v. City of Omro, et al.
Order Dismissing Appeal: April 9, 2025
Reconsideration Denial: April 23, 2025

Circuit Court of Wisconsin, Winnebago County Order
No. 2023CV000177
Schmidt v. EMC Insurance
Order Granting Motion Dismiss:
July 27, 2023
Declined to Issue Final Order:
January 17, 2025

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PETITION FOR WRIT OF CERTIORARI

Dan Schmidt, a *pro se* civil tort litigant involving property and personal injuries, respectfully petitions this Court for a writ of certiorari to reverse the Wisconsin Supreme Court's order denying his Petition for Review, after resolving the conflict of whether a trial court judge is required to admonish a civil tort litigant concerning the right to appeal under the 14th Amendment, and, if so, to what extent.

OPINIONS BELOW

The October 6, 2025, decision by the Wisconsin Supreme Court summarily denying Petitioner's Petition for Review that raised his 14th Amendment claim merely stated Petitioner's petition was "denied," and he was punished with a $50 fine for costs. This decision is not reported. App.1a. The Wisconsin Court of Appeals dismissed Petitioner's notice of appeal as untimely. App.3a, 8a.

JURISDICTION

Petitioner initially filed a petition for writ of certiorari in this Court within 90 days of the Wisconsin Supreme Court's October 6, 2025 Order denying review. By letter dated April 1, 2026, the Clerk of this Court

provided Petitioner an additional 60 days to file a booklet petition formatted under Sup. Ct. R. 33.1. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation (emphasis added).

United States Constitution, Amendment XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (emphasis added).

STATEMENT OF THE CASE

I. Petitioner's Purchase of His Home and Leading to the Filing and Prosecution of His Lawsuit Filed in the Winnebago County Circuit Court in Oshkosh, Wisconsin (the Trial Court) and Its Dismissal

In 2019, Petitioner purchased a home and garage in desperate need of repair located in a little city named Omro, Wisconsin (8 miles west of Oshkosh—the EAA meets in Oshkosh every year). Doc. 9/Exhibit 1 (pictures).[1] Petitioner, who restores both homes and classic GTO's and other such muscle cars, had used the bank's parking lot (National Exchange Bank and Trust (NEBAT)) next door to his home to gain access to his own property to park his cars, truck, and trailer, both on his property and behind his garage. *Id.* One day, NEBAT Manager, Dan Lenz (Lenz), asked Petitioner not use the Bank's parking lot when it was open; and, of course, Petitioner complied and stated no problem, and it was so. Doc. 10/Exhibit 2 (pictures).

But Lenz covertly did not like the fact that Petitioner used NEBAT's parking lot, even though they were neighbors. Acting with NEBAT President James Chatterton (Chatterton)) they decided to remove the asphalt parking lot and install a new concrete

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[1] Petitioner requests that this Court take judicial notice of the Wisconsin appellate court file in *Schmidt v. EMC Insurance Co., et.al.,* Case No. 2025AP000128 for all docket entries referred to in this Petition to support it identified as "Doc.," followed by the item number, *e.g.*, Doc.1. *See* Fed. R. Evid. 201

parking lot and trespassed on Petitioner's property to do so. Doc.10/Exhibit 2 (pictures of the Bank's asphalt parking lot), Doc. 11/Exhibit 3 (pictures of the Bank's new concrete parking lot), and Doc. 12/ Exhibit 4 (pictures of the Bank's completed concrete parking lot project in background while Petitioner was restoring his garage). Additionally, this new concrete parking lot was elevated so that it was now above Petitioner's property and included a 12–14-inch vertical wall of concrete to separate Petitioner's adjoining property from NEBAT property, and the Ice Cream shop's adjoining property and parking lot next door to separate it from NEBAT property as well. Doc.11/Exhibit 3 (pictures).

It took approximately a year for Petitioner to realize and conclude that all the excess water on his property and causing him problems was caused by NEBAT's installation of its new concrete parking lot as he was restoring his garage and continued to occur from then to present. Doc. 12/Exhibit 4, Doc. 13/Exhibit 5, Doc. 32/Exhibit 6, Doc. 35/Exhibit 11, Doc. 36/Exhibit 12, and Doc.27/Exhibit 16. Note the 3-foot drop on Doc. 13/Exhibit 5 at page 2, and all the cracks in the solid oak beams, and shifts in the block foundation. None of which had been present when Petitioner replaced the flooring in the house. *See* Doc.170/Exhibit 34 (pictures) at pages 6-7 especially and compare to Doc. 13/Exhibit 5 at page 2 as that is the same wall after the house fell off the foundation. All the excess water basically turned Petitioner's property into a retention pond (this is disputed, of course, notwithstanding Petitioner's pictures and other evidence). See pictures identified above in Doc. 11-13, and Doc. 32/Exhibit 3-6, and 13 and Compare to Doc. 26/Exhibit 15. The excess water pooled, ponded, and collected on

Petitioner's property, especially under the crawl space of his 1890's-built home (the lowest point—remember: the laws of physics shows water finds the path of least resistance to pool, pond, and collect) and was unimaginable, causing Petitioner's home to shift and fall approximately three feet off its foundation. *Id.* Doc.32/Exhibit 6 (pictures) and Doc. 31/Exhibit 7 (rain report). Additionally, the excess water caused mold to invade Petitioner's home and caused him to suffer for almost a year from mold poisoning (while misdiagnosed with the flu) which allowed COVID-19 pneumonia to set in that almost killed him. Doc. 33/Exhibit 8, Doc. 25/Exhibit 14, Doc. 28/Exhibit 17, and Doc. 29/Exhibit 18.

On March 13, 2023, Petitioner filed a civil lawsuit in Winnebago County Circuit Court alleging five causes action:

COUNT 1
NEGLIGENCE OF MAYOR JUNGWIRTH, PUBLIC WORKS DIRECTOR BILKEY, AND CHIEF OF POLICE SCHUSTER AND THE CITY OF OMRO *PRIOR TO AND DURING* THE INSTALLATION OF THE NEW NEBAT CONCRETE PARKING LOT
COUNT 2
INTENTIONAL MISCONDUCT AND DELIBERATE INDIFFERENCE INFLICTED BY MAYOR JUNGWIRTH, PUBLIC WORKS DIRECTOR BILKEY, AND CHIEF OF POLICE SCHUSTER, *AFTER COMPLETION AND CONSTRUCTION AND BEING INFORMED OF PLAINTIFFS DAMAGES AND ITS CAUSE* BEING NEBAT'S NEW CONCRETE PARKING

> LOT BEING INSTALLED AND NOW BEING MAINTAINED TO CONTINUE TO DAMAGE PLAINTIFF'S PROPERTY ON A DAILY BASIS SINCE INSTALLATION TO PRESENT
>
> COUNT 3
>
> EMC INSURANCE AND ADJUSTER CARUSO ARE GUILTY OF BREACH OF CONTRACT AND BAD FAITH REFUSAL TO SETTLE ON BEHALF OF THE CITY OF OMRO TOWARD PLAINTIFF SCHMIDT AS AN INTENDED THIRD-PARTY BENEFICIARY
>
> COUNT 4
>
> CREATING AND/OR MAINTAINING A PRIVATE NUISANCE (DEFENDANTS NEBAT, CHATTERTON, LENZ, AND STONE)
>
> COUNT 5
>
> THREATENING AND INTIMIDATING PLAINTIFF NOT TO PURSUE LITIGATION TO COVER-UP NEBAT'S TORTIOUS ACTIONS SURROUNDING THE INSTALLATION OF ITS NEW CONCRETE PARKING LOT WITHOUT A PERMIT AND THE DAMAGES IT CAUSED, AND CONTINUES TO CAUSE, TO AVOID LIABILITY, BY ACTING IN CONCERT

Doc. 7 (Initial Complaint). Petitioner's Initial Complaint was followed by his First and Second Amended Complaint and associated filings. *See* Doc. 68 (First Amended Complaint), Doc. 119 (Second Amended Complaint), Doc. 177 (Memorandum of Law In Support of Second Amended Complaint), Doc. 112 (Motion for Leave to File Second Amended Complaint). Defendants'

actions almost killed Petitioner. Doc. 119, at pages 18-19. Petitioner sought compensatory and punitive damages and other relief that included, but was not limited to, an Injunction being issued to NEBAT to remove the concrete parking lot and to reinstall the asphalt parking lot. *Id.,* at pages 29-30.

Plaintiff set forth his case for what he would prove at trial as to both civilian and expert witnesses as follows:

- Petitioner will testify that he purchased the home/property/garage without any foundation problems as reflected in Doc. 170/Exhibit 34, especially at pages 6-7 versus after NEBAT's installation of its new concrete parking lot as reflected in Doc. 13/Exhibit 5, at pages 2-4 especially, and other pictures identified above.
- Faith Miller will testify that there were no problems with the fieldstone/block/concrete foundation of the house and garage when she sold the place to Petitioner as reflected in the pictures of Doc. 170/Exhibit 34. *See* Doc. 25/Exhibit 14.
- Petitioner will testify that his home, garage, and property were damaged (and continues to be damages every day to date) as reflected in the pictures provided above. Doc. 119, pgs. 7-13.
- University of Wisconsin-Oshkosh Professor Mamadou Coulibaly will testify that he has a PhD in Geography, a master's degree in Geology, and studies urban flash flooding. Doc. 33/Exhibit 8. On July 19, 2021, he examined the same pictures identified above with regard

to NEBAT's asphalt parking lot versus NEBAT's new concrete parking lot, and that there is no doubt in his opinion that NEBAT's new concrete parking lot is the cause of all of the Petitioner's pooling, ponding, collecting, and flooding of Petitioner's property and associated damages. *Id.*

- Westwood Infrastructure Engineer Terry Van Hout will testify that he agrees with Professor Coulibaly's opinion and had prepared a detailed mapping of where the water is pooling, ponding, and collecting. Doc. 28/Exhibit 17.

- Barbara Van Clake, the City of Omro Clerk / Deputy Treasurer responded to Petitioner's July 22, 2021, Open Records Request for copies of permits that NEBAT pulled for new construction to remove the asphalt parking lot and install the new concrete parking lot, Doc. 34/Exhibit 9, and admitted that the City officials did not require a permit because: "They [NEBAT] simply replaced the concrete and added a curb, which does not require a permit as they are not working in the city right of way." *See* Doc. 37/Exhibit 10. Knowing that this representation was not true and notwithstanding the fact that NEBAT's new construction changed the City's topography, engineering, and natural water course as depicted in Petitioner's pictures resulting in Petitioner's property being turned into a retention pond. *Id.* at 9-10; Doc. 11-13, and 32/Exhibits. 3-6.

- Environmental Initiatives of North America Senior Microbiologist Cassidy Kuchenbecker will testify that he examined the Petitioner's home and determined that his house was contaminated with black mold with heavier concentrations in some places more than others. Doc. 28/Exhibit 17.
- Dr. Craig Maskil will testify that he was Petitioner's primary care physician and that he thought Petitioner had been suffering from the flu when, in reality, it appeared that Petitioner had been suffering from mold poisoning which caused or contributed to Petitioner's immune system weakening and causing him to catch COVID-19 Pneumonia. Doc. 29/Exhibit 18.
- Aurora Medical Center staff will testify that Petitioner was admitted into the Hospital through the Emergency Room with a 67 Respiratory bpm (breaths per minute) and suffering from the effects of COVID-19 Pneumonia and near death. Doc. 119, at pages 18-19.
- Insurance Adjuster Rafael Navarro estimated Petitioner's property loss for replacement was/is approximately 750,000.00 dollars. Doc. 30/Exhibit 19.

Id.

On April 19, 2023, EMC Insurance Company and Adjuster Caruso (Respondents herein) filed a Motion to Dismiss alleging that Petitioner could not sue them because he was not an intended third-party beneficiary of the Insurance Policy with the City of Omro and thus

did not evidence bad faith refusal to settle. App.14a-16a. Defendants argued that the Wisconsin Supreme Court's decision in *Kranzush v. Badger State Mut. Cas. Co.*, 103 Wis. 2d 56, 73, 307 N.W.2d 256 (1981) (explaining "[t]he insurer's duty of good faith and fair dealing arises from the insurance contract and runs to the insured" and holding that "[n]o such duty can be implied in favor of the claimant from the contract since the claimant is a stranger to the contract and to the fiduciary relationship it signifies") foreclosed his cause of action. *Id.*

On May 1st, 2023, Petitioner then filed his First Amended Complaint (FAC) adding National Exchange Bank and Trust (NEBAT) with bank officials and their attorneys as Defendants for their roles in the criminally tortious acts. Doc. 68.

EMC and Adjuster Caruso then filed a Renewed Motion to Dismiss because the Appellant's First Amended Complaint became the operative pleading. App.14a-16a.

On July 21, 2023, Petitioner filed a Second Amended Complaint (SAC), Doc. 119, a separate and detailed Memorandum of Law in support of Petitioner's SAC, Doc. 177, and a Motion for Leave to Amend to correct a misnomer from National Exchange Bank Foundation to National Exchange Bank Corp. (NEB Corp.) and other issues. Doc. 112. In his Memorandum of Law to support his SAC, Petitioner argued that the appellate court's decision in *Meleski v. Schbohm LLC*, 2012 WI App 63, P1, 341 Wis. 2d 716, 717, 817 N.W.2d 887, 888 (Injured individual's entitlement to medical expenses was fixed when she fell in a covered area, and as the policy obligated the insurer to pay expenses regardless of fault, the individual's claim was vested. The insurer

was subject to the individual's bad faith action, and she could enforce her third-party beneficiary rights against the insured) was directly on point and it distinguished *Kranzush* from other Wisconsin cases. Doc. 177, at pages 19-26.

On July 25, 2023, a hearing was held on various motions including EMC and Adjuster Caruso's Renewed Motion to Dismiss. Doc. 171. The trial court granted EMC and Adjuster Caruso's Motion to Dismiss, notwithstanding Petitioner's argument that he was and is an intended third-party beneficiary under *Meleski, supra,* which distinguished it from this Court's decision in *Kranzusch, supra. Id.*, at pages 28-54.

On July 27, 2023, the trial court issued a written order which states as follows:

> IT IS HEREBY ORDERED AND ADJUDGED that, in accordance with *Kranzush v. Badger State Mut. Cas. Co.*, 103 Wis. 2d 56, 74, 307 N.W.2d 256, 265 (1981), Plaintiff has no viable cause of action against Defendants Employers Mutual Casualty Company d/b/a EMC Insurance Company or Andrew Caruso for breach of contract or bad faith failure to settle and that Defendants Employers Mutual Casualty Company d/b/a EMC Insurance Company and Andrew Caruso are therefore hereby dismissed with prejudice as parties to the action for all the reasons set forth on the record.

Doc. 136. App.14a-16a.

On August 14, 2024, Petitioner filed a motion for reconsideration of the dismissal with prejudice, Doc.

163, which the circuit court denied in an order entered on January 22, 2024. Doc. 218.

The trial court judge did not inform Petitioner of his right to appeal at the hearing and did not include any plain language informing Petitioner of his right to appeal in its written orders granting EMC and Adjuster Caruso's Motion to Dismiss and did not include any language in its order denying Petitioner's Motion for Reconsideration. Doc. 136, Doc. 171 at pages 28-54, and Doc. 218. App.14a-16a.

On January 17, 2025, Petitioner filed a letter in the trial court with several proposed orders that contained the required information to trigger the finality of the Court's orders to invoke appellate jurisdiction, inclusive of the order granting EMC and Adjuster Caruso's Motion to Dismiss. The trial court judge declined to issue the proposed orders declaring that the orders issued thus far WERE NOT FINAL Doc. 322-325, at 322. *And see* App.11a-13a.

II. Direct Appeal in the Wisconsin Court of Appeals and the Wisconsin Supreme Court on Petition for Review

A Notice of Appeal was also filed on January 17, 2025, and an Amended Notice of appeal was filed on January 23, 2025. Doc. 318, Doc. 320, Doc. 363.

On February 19, 2025, EMC and Adjuster Caruso filed a Motion to Dismiss for failing to file a timely Notice of Appeal based on its perception of the controlling Wisconsin precedent. App.19a-25a.

On February 19, 2025, Petitioner filed a timely Response and Affidavit pointing out:

- that the trial court judge did not inform him of his constitutional and statutory right to appeal at the hearing and also did not do so in its written order granting EMC and Adjuster Caruso's Motion to Dismiss, despite being required to do so in plain terms, and said orders should be construed as enabling Petitioner to prosecute his appeal;
- the Wisconsin Supreme Court's decisions in the area of requiring an admonishment of the right to appeal contains an equitable exception that, if applied, cancels out the required admonishment and operates as an unconstitutional deprivation of the constitutional right to appeal and should be disavowed forthwith;
- he was led to believe that his right to appeal was not triggered yet because the trial court judge did not inform him of his rights in any of its orders nor at any hearings, and had just recently refused to issue final orders to enable Petitioner to appeal stating the Orders he wants to appeal from are "NOT A FINAL ORDER"; and
- the plain statement rule should require the trial court judge in every civil case to inform the parties of their right to appeal at the hearings and in its written order and judgment.

App.26a-43a.

On February 28, 2025, the appellate court afforded EMC and Adjuster Caruso an opportunity to file a

timely Reply to Petitioner's Response and Affidavit in Opposition. App.8a-10a.

On March 7, 2025, EMC and Adjuster Caruso filed their Reply with a separate Affidavit in Support in opposition to Petitioner's position based on the equitable exception that the trial court judge uttered the magic words of with prejudice. App.44a-49a.

On April 9, 2025, the appellate court granted EMC and Adjuster Caruso's Motion to Dismiss, without analyzing the merits of Petitioner's constitutional issues, applying the equitable exception, posing that Petitioner was informed of his right to appeal when the trial court dismissed his lawsuit stating it was "with prejudice" or "on the merits." App.3a-7a.

On April 22, 2025, Petitioner filed a timely Motion for Reconsideration arguing the court below erroneously exercised its discretion by not exercising it by not addressing the merits of the Petitioner's constitutional claims and applying the equitable exception, because it prejudicially denies Petitioner of his absolute constitutional and statutory rights to appeal. App.50a-56a.

On April 23, 2025, the appellate court denied Petitioner's Motion for Reconsideration. App.17a-18a.

On May 27, 2025, Petitioner filed a timely Petition for Review raising his 14th Amendment constitutional claim within thirty (30) days of the appellate court's denial of Petitioner's Motion for Reconsideration on April 23, 2025. App.57a-73a. On June 10, 2025, Respondent filed a Response in Opposition arguing that the appellate court's decision was correct and that this Court never held that the

cases from this Court in the criminal context were never applied to the civil context. App.74a-80a.

On October 6, 2025, the Wisconsin Supreme Court denied Petitioner's Petition for Review, "with $50 costs" that Petitioner is required to pay for raising his constitutional claim apparently concluding it was meritless. App.1a-2a.

On January 2, 2026, Petitioner filed a timely Petition for Writ of Certiorari in this Court. On January 23, 2026, this Clerk's Office rejected Petitioner's Petition for non-compliance with the formatting requirements and afforded him 60 days to file a conforming Petition and Appendix. *Id.*

This Corrected Petition with Appendix is timely filed well within the sixty-day time period.

REASONS FOR GRANTING THE PETITION

I. TO AVOID ERRONEOUS DEPRIVATION OF THE RIGHT TO APPEAL IN CIVIL TORT CASES SUCH AS THIS CASE INVOLVING PERSONAL PROPERTY AND PERSONAL INJURIES, THIS COURT SHOULD APPLY THE 14TH AMENDMENT REQUIREMENT THAT STATE TRIAL COURT JUDGES ARE REQUIRED TO ADMONISH A PARTY OF THE STATE CREATED RIGHT TO APPEAL AT THE HEARING GRANTING A MOTION TO DISMISS, AND IN ITS WRITTEN ORDER OF DISMISSAL, TO THE SAME EXTENT REQUIRED IN CRIMINAL CASES, AND NOT MERELY STATE THAT DISMISSAL IS WITH PREJUDICE

Long ago, this Court had recognized that the Fourteenth Amendment— which applies the first Ten Amendments of the United States Constitution to the States—tells "state governments []: Let there be no law made or enforced to diminish one of the privileges and immunities of the people of the United States; nor law to deprive them of their life, liberty, property, or protection without trial." *See Slaughter-House Cases*, 83 U.S. 36, 57, 21 L. Ed. 394, 402, 16 Wall. 36 (1873) (quotation marks omitted). Approximately twenty-one years later, this Court had held that the 14th Amendment does not require States to grant appeals as of right to criminal defendants seeking to review alleged trial court errors. *See McKane v. Durston*, 153 U.S. 684 (1894). Almost 60 years after *McKane*, however, this Court held that if a State has created appellate courts as "an integral part of the . . . system for finally adjudicating the guilt or innocence of a defendant", *Griffin v. Illinois*, 351 U.S., at 18, the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution." *See Evitts v. Lucey*, 469 U.S. 387, 393, 105 S. Ct. 830, 834, 83 L. Ed. 2d 821, 827 (1985) (citation omitted; emphasis added). Although this court held as much in criminal cases, it never had the occasion to apply the 14th Amendment rule of law to civil tort and personal injury appeals as Respondent admits. *See* App.75a.

This Court is currently considering *Hunter v. United States* (No. 24-1063, filed April 8, 2025), a major case that will clarify when a defendant's waiver of the right to appeal in a plea agreement is enforceable. *Id.* (certiorari granted October 10, 2025; Petitioner's Brief and Joint Appendix due December 4, 2025;

Respondent's Brief due January 14, 2026; Oral Argument has not yet been scheduled).

Historically, the Court has recognized appeal waivers but has not fully resolved the limits and exceptions. In *Hunter*, the issue is "Whether an appeal waiver in a plea agreement bars a defendant from appealing when the sentencing judge tells him he has a right to appeal and the government does not object." The key issues the court is addressing are:

- Judicial Statements vs. Waiver Contracts: If a judge tells a defendant he can appeal, does that override the waiver?
- Government Silence: If prosecutors fail to object when a judge mentions appeal rights, does that weaken the waiver?
- Exceptions: Courts have recognized exceptions for claims like ineffective assistance of counsel, unconstitutional sentences, or prosecutorial misconduct.

In sum, broadly speaking, of course, *Hunter* is going to resolve a case involving the right to appeal which is the same issue in this case albeit this case is a civil tort case involving personal property and injury to Petitioner's person. Granting Petitioner a Petition for Writ of Certiorari will complete the picture concerning the hallowed right to a civil appeal and the role the 14th Amendment plays in them in cases such as property damage and personal injury, in addition to the well-established decisions from this Court in criminal appeals.

In *Rodriguez v. United States*, 395 U.S. 327 (1969), this Court held when a criminal defendant is not

informed of the right to appeal by the trial court judge, or counsel fails to file an appeal after being asked, the defendant is entitled to a delayed appeal. *Id.* This Court stressed that the right to appeal is a critical safeguard, and defendants must be made aware of it at sentencing and in the trial court's written judgment of conviction and sentence. *Id.* Denying this right without notice, this Court held, undermines fairness and due process. *Id. Accord Lott v. United States*, 367 U.S. 421, 422, 81 S. Ct. 1563, 1564, 6 L. Ed. 2d 940, 941 (1961) (The court held that it was the judgment of conviction and sentence, not the tender and acceptance of the pleas of nolo contendere, that constituted the determination of defendants' guilt within the meaning of Fed. R. Crim. P. 34. And, since motions in arrest were made within five days after that determination of guilt, as required by Fed. R. Crim. P. 34, and thus, as required by Fed. R. Crim. P. (a)(2), the appeals were taken within 10 days after entry of the order denying the motion. Therefore, defendants' appeals were timely filed and the dismissal of the appeals was reversed.).

In related criminal cases, even if a defendant signs an appeal waiver, counsel must still file a notice of appeal if requested. *See Garza v. Idaho,* 586 U.S. 232 (2019). This requirement reinforces that the state created right to appeal cannot be silently extinguished.

But in *Peguero v. United States*, 526 U.S. 23 (1999) this Court held that a district court's failure to advise a defendant of the right to appeal does not automatically entitle the defendant to relief if the defendant already knew of the right. *Id.* The key of duty still exists, but prejudice must be shown as held in *Peguero* if the Defendant was otherwise aware of their rights from the record. *Id.*

Only a few cases exist from this Court concerning the right to appeal in a civil case. For example, in *Pacific R.R v. Ketchum,* 101 U.S 289, 296, 25 L. Ed. 932, 11 Otto 289 (1880), in a civil settlement case, this Court held that parties may waive the right to appellate review by agreement and the waiver is enforceable if voluntary. *Id.* Thereafter, this Court held in a consent decree case that a party who voluntarily consents to judgment generally waives the right to appeal that judgment. *See United States v. Babbitt,* 104 U.S. 767, 768, 26 L. Ed. 921, 922, 14 Otto 767 (1882). In *Swift & Co. v. United States*, 276 U.S. 311, 318, 48 S. Ct. 311, 312, 72 L. Ed. 587, 594, (1928), an Anti-Trust consent decree case, this Court held that parties cannot expand judicial review of arbitration awards beyond statutory grounds and by implication suggests that parties waive broader appellate review. *Id.* In *Matsushita Electric Industrial Co. v. Epstein,* 516 U.S. 367, 116 S. Ct. 873, 134 L. Ed. 2d 6 (1996), this Court held court approved settlement agreements can waive appellate rights if the waiver is voluntary, explicit, and part of the bargain. In *Hall Street Associates v. Mattel, Inc.,* 552 U.S. 576, 128 S. Ct. 1396, 170 L. Ed. 2d 254 (2008), this Court held that parties cannot expand judicial review of arbitration awards beyond statutory grounds and broader appellate review is waived if voluntary. *Id.*

All 50 states recognize the right to appeal in civil cases in several contexts. However, state courts only enforce waivers of appeal rights when they are knowingly and voluntarily made—most often in consent judgments, settlements, and arbitration agreements.[2].

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[2] *Ex parte Walters*, 646 So.2d 631 (Ala. 1994)(consent judgments

waive appeal rights); *Anchorage Chrysler Ctr. v. DaimlerChrysler Motors*,129 P.3d 905 (Alaska 2006)(arbitration agreements limiting appeal enforceable.);*Bolo Corp. v. Homes & Son Constr.*, 105 Ariz. 343 (1969)(waiver of appeal valid if explicit); *Wilson v. Wilson*, 228 Ark. 789 (1958) (consent decrees treated as contracts; appeal waived); *In re Marriage of Corona*, 659 P.2d 669 (Colo. 1983)(waiver enforceable if voluntary); *Ackerman v. Sobol Family Partnership*, 298 Conn. 495 (2010)(arbitration waiver upheld); *Chrysler Corp. v. Chaplake Holdings*, 822 A.2d 1024 (Del. 2003) (settlement waivers enforceable); *Gessa v. Manor Care of Fla.*, 86 So.3d 484 (Fla. 2011) (arbitration agreements waiving appeal valid unless unconscionable); *Harris v. Harris*, 256 Ga. 280 (1986) (consent judgments waive appeal); *Bennett v. Yoshina*, 140 F.3d 1218 (9th Cir. 1998, applying HI law)(Waiver enforceable in settlement); *Mason v. Tucker*, 202 P.3d 1186 (Idaho 2009)(waiver valid if clear); *People ex rel. Waite v. Bristow*, 391 Ill. 101 (1945) (consent decrees waive appeal rights); *Geiger v. Geiger*, 649 N.E.2d 661 (Ind. Ct. App. 1995)(waiver enforceable in settlement); *In re Marriage of Brown*, 778 N.W.2d 47 (Iowa Ct. App. 2009)(waiver valid if explicit); *In re Marriage of Brown*, 247 Kan. 152 (1990)(consent judgments waive appeal); *Commonwealth v. Wine*, 694 S.W.2d 689 (Ky. 1985)(waiver enforceable in civil consent decrees); *Succession of Simmons*, 109 So.2d 843 (La. 1959) (waiver valid in settlement); *Estate of Snow*, 2014 ME 105 (Me 2014)(Waiver enforceable if voluntary); *Mercy Med. Ctr. v. United Healthcare*, 815 A.2d 821 (Md. 2003) (arbitration waiver upheld); *Franchi v. Stella*, 42 Mass. App. Ct. 251 (1997)(waiver valid in settlement); *Renny v. Port Huron Hosp.*, 427 Mich. 415 (1986)(consent judgments waive appeal); *State v. Givens*, 544 N.W.2d 774 (Minn. 1996)(waiver enforceable if knowing); *Harris v. Bailey*, 574 So.2d 1211 (Miss. 1990)(waiver valid in settlement); *State ex rel. Koster v. Cain*, 383 S.W.3d 105 (Mo. App. 2012) (consent decrees waive appeal); *In re Marriage of Shupe*, 276 Mont. 409 (1996)(waiver enforceable); *State v. Alford*, 278 Neb. 818 (2009)(waiver valid if explicit); *Clark v. Clark*, 80 Nev. 52 (1964)(consent judgments waive appeal); *In re Estate of King*, 149 N.H. 226 (2003)(waiver enforceable); *Atalese v. U.S. Legal Servs. Group*, 219 N.J. 430 (2014)(arbitration waiver valid if clear); *Cordova v. World Finance Corp.*, 146 N.M. 256 (2009)(waiver enforceable in arbitration); *Matter of NYC Asbestos Litig.*, 27 N.Y.3d 765 (2016)(consent judgments waive appeal); *State v.*

In many if not all of these civil cases cited in footnotes 2 and 3, the trial court judge is not required, some states say, to inform a party of the right to appeal and rests upon the assumption of that right being known.[3] And none of these cases raise the questions

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*Pimental,*153 N.C. App. 69 (2002)(waiver enforceable); *In re Estate of Stanton,* 472 N.W.2d 741 (N.D. 1991)(waiver valid); *State ex rel. Kline v. Carroll,* 96 Ohio St.3d 404 (2002)(waiver enforceable); *Rogers v. Rogers*, 2001 OK 87 (OK 2001)(waiver valid in settlement); *McMillan v. State Farm,* 283 Or. 736 (1978)(waiver enforceable); *Commonwealth v. Brown*, 485 Pa. 368 (1979)(consent judgments waive appeal); *School Comm. of N. Kingstown v. Crouch,* 808 A.2d 1074 (R.I. 2002)(waiver enforceable); *State v. Thrift*, 312 S.C. 282 (1993)(waiver valid); *In re Estate of Jetter*,1999 SD 33(SD 1999)(waiver enforceable); *Jackson v. Aldridge,* 6 Tenn. 554 (1823)(early recognition of waiver); *In re Prudential Ins. Co.*, 148 S.W.3d 124 (Tex. 2004)(arbitration waivers enforceable); *Swaner v. Union Mortg.*,99 Utah 298 (1940)(waiver valid); *In re Estate of Peters*, 2002 VT 13 (Vt. 2013)(waiver enforceable); *Commonwealth v. Williams,* 262 Va. 661 (2001) (consent judgments waive appeal); *In re Marriage of Ferree*, 71 Wash. App. 35 (1993)(waiver enforceable); *State ex rel. Johnson v. Robinson,* 162 W.Va. 579 (1979)(waiver valid); *Loren Imhoff Homebuilder v. Taylor,* 2022 WI 12 (Wis. 2012)(waiver = intentional relinquishment of known right); *In re Estate of George,* 2011 WY 157 (Wy. 2011)(waiver enforceable).

[3] *Estreen v. Bluhm*, 79 Wis. 2d 142 (1977)(civil litigants must protect their own appellate rights; no duty on trial court to advise); *Loren Imhoff Homebuilder v. Taylor* (waiver must be intentional, but judges are not required to advise civil parties of appeal rights); *In re Marriage of Corona*, 172 Cal. App. 4th 1205 (2009)(failure to advise of appeal rights in civil dissolution not reversible error; litigants must act themselves); *Matter of NYC Asbestos Litigation,* 27 N.Y.3d 765 (2016)(consent judgments waive appeal; courts not required to advise civil parties of appellate rights); *In re Prudential Ins. Co. of America,* 148 S.W.3d 124 (Tex. 2004)(arbitration agreements limiting appeal enforceable; civil litigants presumed to understand appellate rights); *People ex rel. Waite v. Bristow,* 391 Ill. 101 (1945)(consent

that the Petitioner has raised herein to make a reasonable application of this Court's decisions in criminal cases to civil cases such as personal property damage and personal injury.

Ironically, effective September 1, 2007, the Wisconsin Supreme Court held that final orders and judgments shall state that they are final for purposes of appeal pursuant to Wis. Stats. 808.03(1). *See also Wambolt v. West Bend Mutual Insurance Co.*, 299 Wis. 2d 723, 728 N.W.2d 670 (2009) (Court of appeals erred in dismissing appeal as untimely because memorandum decision was not a final order or final judgment within meaning of Wis. Stat. § 808.03(1); later order containing explicit statement dismissing entire matter was the final, appealable order and appellants' notice of appeal filed 36 days after the order was, therefore timely). "A document does not fulfill this requirement with a particular phrase or magic words, but must make clear on its face, that it is the document from which appeal may follow as a matter of right under sub. (1). Absent such a statement, appellate courts should liberally construe ambiguities to preserve the right of appeal." *Id.*

A document constitutes the final document for purposes of appeal when it: 1) has been entered by the

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decrees operate as contracts; no judicial duty to advise of appeal rights); *Harris v. Harris*, 256 Ga. 280 (1986)(consent judgments waive appeal; no advisement duty in civil cases); *State ex rel. Koster v. Cain*, 383 S.W.3d 105 (Mo. App. 2012) (consent decrees waive appeal; civil litigants must know their rights); *Gessa v. Manor Care of Fla.*, 86 So.3d 484 (Fla. 2011) (arbitration waivers valid; no obligation on trial court to advise civil litigants); *Commonwealth v. Brown*, 485 Pa. 368 (1979)(consent judgments waive appeal; courts not required to advise civil parties).

circuit court; 2) disposes of the entire matter in litigation as to one or more parties; and 3) states on the face of the document that it is the final document for purposes of appeal. *Id.* When a document would otherwise constitute the final document, but for not including a finality statement, appellate courts are directed to construe the document liberally in favor of preserving the right to appeal. *Tyler v. Riverbank*, 2007 WI 33, 299 Wis. 2d 751, 728 N.W.2d 686. *Accord*, *Morway v. Morway*, 2025 WI 3, P23, 2025 Wisc. LEXIS 5, *11-12 (Wis. January 22, 2025) ("in an effort to provide greater clarity to litigants, we required that a final judgment or order contain on its face a statement indicating that it is final for purposes of appeal. Absent such a statement, we instructed courts to liberally construe any ambiguities in the judgment or order at issue to preserve the right to appeal." (citations omitted)).

More incredibly, there is a consensus in the Wisconsin Supreme Court's decisions that if the trial court judge uses the magic words "with prejudice" that a party should know that the time limit to appeal is triggered at that time and if not timely filed from that point the party cannot appeal. *Wambolt v. West Bend Mutual Insurance Co.*, *supra.* That is to say, that an equitable exception exists despite the holding that: "A document does not fulfill this requirement with a particular phrase or magic words, but must make clear on its face, that it is the document from which appeal may follow as a matter of right under sub. (1). Absent such a statement, appellate courts should liberally construe ambiguities to preserve the right of appeal." *Id.*

Accordingly, like *Hunter*, in which certiorari review was granted to decide that criminal case (as stated above), Petitioner requests this Court to grant certiorari review to resolve the conflict in state court decisions of whether a trial court judge is required to inform a civil tort and personal injury party of their right to appeal and if so to what extent. That is to say, at the hearing when the right to appeal is triggered? In a document or order when the right is triggered? Both? Petitioner submits that there should be both the due process and equal protection clauses of the 14th Amendment by a reasonable application of this Court's decisions in criminal cases, and that there is no equitable exception. "With technical rules, above all others, it is imperative that [courts] adhere strictly to what we have stated the rules to be. A technical rule with equitable exceptions is no rule at all. Three strikes is out." *See Jones v. Thomas*, 491 U.S. 376, 396, 109 S. Ct. 2522, 2533, 105 L. Ed. 2d 322, 341 (1989) (SCALIA, J., dissenting, with BRENNAN and MARSHALL, JJ., concurring).

Here, Petitioner was not admonished of his right to appeal at the hearing on the Motion to Dismiss nor in the trial court's written order of dismissal. *See* Doc. 171, Doc. 136, Doc. 163, and Doc. 218. Had Petitioner been so admonished he would have filed a timely notice of appeal and not be in this position and obtained appellate review and reversal of the trial court's decision on appeal based on *Meleski*, *supra*, in a timely manner.

Petitioner anticipates that the Respondent will argue that the Petitioner must still show prejudice pursuant to this Court's holding in *Peguero*, *supra*. Petitioner responds and states that a waiver of the

right to appeal will not be presumed from a silent record. *See e.g., Carnley v. Cochran*, 369 U.S. 506, 516 (1962) and *Rodriguez v. United States*. Therefore, the Respondent's argument would be meritless as a matter of law in light of the fact that there was no admonishment in the transcript at the hearing on the motion to dismiss nor in the written order. *See* Doc. 171, Doc. 136, Doc. 163, and Doc. 218.

Additionally, assuming, without conceding that the Petitioner would be required to show prejudice, Petitioner readily meets this burden. The trial court erred by applying the Wisconsin Supreme Court's decision in *Kranzush v. Badger State Mut. Cas. Co.*, and not *Meleski v. Schbohm LLC*, 2012 WI App 63, P1, 341 Wis. 2d 716, 717, 817 N.W.2d 887, 888, because Petitioner is an intended third-party beneficiary under EMC's contract with the City of Omro. *See* Doc. 118. As such, Petitioner would be prejudicially denied due process and equal protection and access to courts in violation of the First, Fifth, and Fourteenth Amendment to obtain reversal of the trial court's order dismissing Petitioner's lawsuit as it related to EMC Insurance Company and Adjuster Caruso. *Id.*

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those lumps sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have

the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section III– Limits of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments-Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1 of Section II-Who Is An Insured and no "employee"

authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1 of Section II-Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1 of Section II-Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury."

Doc. 118, at pg. 13.

EMC's linebacker coverage insurance provides protection for liability and costs for the wrongful acts of policyholders that may occur through the process of conducting business: actual or alleged errors, misstatements or misleading statements, acts or omissions, and neglect or breach of duty." https://www.emcins.com/errors-omissions-insurance/.

Thus, *Meleski* controls the disposition of the Petitioner's case and not *Kranzush*.

CONCLUSION

WHEREFORE, Petitioner prays that this Court grant him a writ of certiorari and reverse the Wisconsin Supreme Court's Order and to direct the appellate court to reinstate Petitioner's appeal against Respondents in the appellate court in *Schmidt v. EMC Insurance Company, et.al.,* Case No. 2025AP000128.

Petitioner further prays that this Court issue such and further orders it deems law, justice, and equity require.

Respectfully submitted,

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April 28, 2026