**IN THE SUPREME COURT OF IOWA**

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**NO. 20-0303**

**IOWA DISTRICT COURT**
**FOR MILLS COUNTY**
**CASE NO. LACV026844**

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**TERRY K. JONES & CHRISTINE JONES,**
**Plaintiff-Appellees,**

**v.**

**THE GLENWOOD GOLF CORPORATION,**
**Defendant-Appellant**

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**APPEAL FROM THE IOWA DISTRICT COURT**
**FOR MILLS COUNTY**
**HONORABLE JUDGE RICHARD DAVIDSON, PRESIDING**

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# FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT OF DEFENDANT/APPELLANT

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# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Statutes**



**Other Authorities**

## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

### I. WHETHER THE DISTRICT COURT ERRED IN THE APPLICATION OF CHAPTER 668

AUTHORITIES

CASES

*Beganovic v. Muxfeldt*, 775 N.W.2d 313 (Iowa 2009)
*Biddle v. Sartori Memorial Hosp.,* 518 N.W.2d 795 (Iowa 1994)
*Jamieson v. Harrison*, 532 N.W.2d 779, 781 (Iowa 1995)
*Johnson v. Junkmann*, 395 N.W.2d 862 (Iowa 1986)
*Kragnes v. City of Des Moines*, 714 N.W.2d 632 (Iowa 2006)
*Mercy Hosp. v. Goodner*, 858 N.W.2d 36 (table op.), 2014 WL 5243377 at *1 (Iowa Ct. App. 2014)
*Thomas v. Solberg*, 442 N.W.2d 73, 77 (Iowa 1989)

STATUTES

Iowa Code § 668.2
Iowa Code § 668.3
Iowa Code § 668.7

OTHER AUTHORITIES

## II. WHETHER THE DISTRICT COURT ERRED IN DENYING DEFENDANT/APPELLANT'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' CLAIM UNDER IOWA CODE § 321.493

AUTHORITIES

CASES

*Aid Ins. Co. v. Davis* County, 426 N.W.2d 631 (Iowa 1988)
*Beganovic v. Muxfeldt*, 775 N.W.2d 313, 318 (Iowa 2009)
*Biddle v. Sartori Memorial Hosp.,* 518 N.W.2d 795 (Iowa 1994)
*Bruce's Estate v. B.C.D., Inc.*, 396 F. Supp. 157 (S.D. Iowa 1975)
*Cunha v. Colon*, 792 A.2d 832 (Conn. 2002)
*DelSanto v. Hyundai Motor Finance Co.*, 882 A.2d 561 (R.I. 2005)
*Estate of Dean by Dean v. Air Exec, Inc.*, 534 N.W.2d 103 (Iowa 1995)
*Estate of Williams ex rel. Williams v. Vandeberg*, 620 N.W.2d 187 (S.D. 2000)
*Hook v. Trevino*, 839 N.W.2d 434 (Iowa 2013)
*Kaiser v. Allen*, 746 N.W.2d 92 (Mich. 2008)
*Kragnes v. City of Des Moines*, 714 N.W.2d 632 (Iowa 2006)
*Nelson v. Johnson*, 599 N.W.2d 246 (N.D.1999).
*Peters v. Lyons*, 168 N.W.2d 759 (Iowa 1969)
*Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339 (Iowa 1999)
*Smith v. CRST Intern., Inc.*, 553 N.W.2d 890 (Iowa 1996)
*Stuart v. Pilgrim*, 74 N.W.2d 212 (Iowa 1956).
*Theophelis v. Lansing General Hospital*, 424 N.W.2d 478 (Mich. 1988)
*Thomas v. Solberg*, 442 N.W.2d 73, 77 (Iowa 1989)
*Waits v. United Fire & Cas. Co.*, 572 N.W.2d 565 (Iowa 1997)

STATUTES

Iowa Code § 321.493
Iowa Code § 668.7

OTHER AUTHORITIES

Iowa R. Civ. P. 1.981(3).
Black's Law Dictionary 1335 (5th ed. 1979)

## III. WHETHER THE DISTRICT COURT ERRED IN GRANTING PLAINTIFF/APPELLEE'S MOTION FOR NEW TRIAL

AUTHORITIES

CASES

*Blume v. Auer*, 576 N.W.2d 122 (Iowa Ct. App. 1997)
*Brant v. Bockholt*, 532 N.W.2d 801 (Iowa 1995)
*Bryant v. Parr*, 872 N.W.2d 366 (Iowa 2015).
*Claus v. Whyle*, 526 N.W.2d 519 (Iowa 1994)
*Cowan v. Flannery*¸461 N.W.2d 155 (Iowa 1990)
*Ege v. Born*, 236 N.W. 75, 82 (Iowa 1931)
*Estate of Pearson ex rel. Latta v. Interstate Power and Light Co.*, 700 N.W.2d 333 (Iowa 2005)
*Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889 (Iowa 1996)
*Fry v. Blauvelt*, 818 N.W.2d 123 (Iowa 2012)
*Gorden v. Carey*, 603 N.W.2d 588 (Iowa 1999)
*Kerndt v. Rolling Hills Nat. Bank*, 558 N.W.2d 410 (Iowa 1997).
*Olsen v. Drahos*, 229 N.W.2d 741 (Iowa 1975)
*Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150 (Iowa 2004)
*Roling v. Daily*, 596 N.W.2d 72 (Iowa 1999)
*Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611 (Iowa 1996)

STATUTES

OTHER AUTHORITIES

## ROUTING STATEMENT

This case should be retained by the Supreme Court because it presents certain issues of first impression with regard to the owner's responsibility statute under Iowa Code § 321.493. Iowa R. App. P. 6.1101(2)(e). Furthermore, the application of Chapter 668, a released party, and the proportionate credit rule is an issue of broad importance that should be addressed by the Supreme Court. Iowa R. App. P. 6.1101(2)(d).

## STATEMENT OF THE CASE/FACTS AND PROCEDURAL HISTORY OF THE LITIGATION

The Glenwood Golf Corporation is the named defendant in the above-captioned matter, which is pending in the District Court for Mills County, Iowa. (App. 7–9). The Petition was filed on August 31, 2018. (*Id.*). Defendant filed an answer on September 14, 2018. (App. 10–12). This matter proceeded to jury trial on October 1, 2019. The jury returned a verdict at approximately 4:00 p.m. on October 4, 2019. (App. 104).

This case arises out of a golf cart accident that occurred at The Glenwood Golf Course located in Mills County, Iowa, on September 14, 2017. (App. 7–8). Plaintiff Terry K. Jones was a passenger in a golf cart driven by his son, Jeff Jones,[1] at the Glenwood Golf Course. (*Id.*). The

[1] Jeffrey Jones will be referred to throughout as "Jeff" Jones, although he is referred to as both "Jeffrey" and "Jeff" throughout the pleadings.

Glenwood Golf Course is owned and operated by Defendant, the Glenwood Golf Corporation (hereinafter "Glenwood). (App. 7–10). Jeff Jones and Plaintiff Terry K. Jones were crossing a bridge in the golf cart when Jeff Jones struck the left side of the bridge, thereby ejecting Plaintiff Terry K. Jones from the passenger seat onto the creek bed below the bridge. (App. 7–8).

Prior to the commencement of this lawsuit, Plaintiffs entered into a settlement agreement with Jeff Jones and Liberty Mutual Insurance Company, releasing Jeff Jones from any liability related to the accident that is the subject of this litigation. (App. 27–38). The plain language of the release "covers the released parties' proportionate responsibility for all injuries and damages, whether known or not, and which may hereafter appear or develop arising from the matters referred to above." (App. 31).

Plaintiffs brought two claims against Defendant in this lawsuit. First, Plaintiffs alleged that Defendant Glenwood is liable "for damages caused by reason of the negligence of the driver of such vehicle in accordance with Chapter 321.493 of the Iowa Code." (App. 8, ¶ 17). Plaintiffs also alleged that Glenwood "breached its duty as the owner of the Glenwood Golf Course, pursuant to the Restatement (Second) of Torts, Section 344, to

protect Plaintiff Terry K. Jones from the accidental, negligent, or intentional harmful acts of third persons, including Jeff Jones." (App. 8, ¶ 16).

On October 24, 2018, Glenwood filed a Motion for Summary Judgment seeking dismissal of Plaintiffs' claims against it. (App. 13–14). Glenwood argued that Jeff Jones was a released party and thus, any claim against Glenwood under the owner's consent statute found in Iowa Code § 321.493 is extinguished. (App. 15–24, 52–58). Plaintiffs subsequently filed their own motion for summary judgment. (*See* App. 59). A hearing on both parties' motions for summary judgment was held before the Honorable Judge Richard H. Davidson on January 8, 2019.[2] (App. 59). The District Court, in its Order dated March 1, 2019, denied both Glenwood's motion and Plaintiffs' motion.[3]

At trial, the jury found Glenwood, as owner of the golf course, not at fault under Plaintiffs' premises liability theory pursuant to section 344 of the Restatement (Second) of Torts. (App. 101–103). Under the owner's responsibility claim, the jury found Jeff Jones, the driver of the golf cart and released party, 100 percent at fault. (*Id.*). The jury awarded Plaintiffs $500,000 in damages. (*Id.*). The Court entered a judgment entry and setoff

[2] The Order Ruling on Plaintiffs' and Defendant's Motions for Summary Judgment, incorrectly notes that this hearing was held on December 7, 2018.
[3] Glenwood also moved for dismissal of Plaintiffs' claim under section 344 of the Restatement (Second). However, this portion of the motion is not at issue in this appeal.

on October 15, 2019. (App. 104–105). In doing so, the Court stated as follows:

> Jeffrey Jones is a released party having entered into a settlement with Plaintiffs. The amount paid to Plaintiffs by Jeffrey Jones in that settlement is in excess of the total damages awarded by the jury in this case under the owner liability claim. Because the jury did not find or assign Glenwood Golf Corporation any percentage of fault under the tort claim theory the court must reduce Plaintiffs' recovery considering the Jeffrey Jones settlement. Accordingly, the court reduces the award of $500,000 against Defendant Glenwood Golf Corporation, as owner of the golf cart operated by Jeffrey Jones, to zero dollars.

(App. 105).

Plaintiffs subsequently filed a motion for new trial and request for additur on October 18, 2019. (App. 107–113). This motion for new trial requested a new trial solely on the issue of the damages awarded to Plaintiff Terry K. Jones. (*Id.*). Plaintiffs did not contest the apportionment of fault allocated by the jury, did not file a motion for new trial on liability, and did not request a new trial or additur relating to the damages awarded to Christine Jones. (*Id.*). On February 9, 2020, the Court granted Plaintiffs' motion for a new trial and ordered a new trial on the issue of damages. (App. 134–138). This includes a new trial on the damages awarded to Plaintiff Christine Jones, despite Plaintiffs not having asked for a motion for new trial or additur relating to Plaintiff Christine Jones' damages. (*See* App. 107–113).

Defendant appeals the ruling on the motion for new trial, the denial of Defendant's motion for summary judgment, and the application of Chapter 668, maintaining that Jeff Jones' fault should have been discharged under the comparative fault act. Plaintiff/Appellees have not filed a cross-appeal in this matter, therefore, the apportionment of fault and the finding of no liability under the premises liability claim is not at issue.

## ARGUMENT

### I. THE DISTRICT COURT ERRED IN THE APPLICATION OF CHAPTER 668

### ERROR PRESERVATION

Defendant/Appellant preserved error on this issue by moving for summary judgment on the grounds that Plaintiffs' Claim under the owner's responsibility statute should be dismissed pursuant to Chapter 668. The District Court, in ruling on Defendant's Motion for Summary Judgment, decided how it would apply Chapter 668 at the time of trial. At the time that the Court entered its judgment entry and setoff following trial, Defendant/Appellant owed nothing as the damages were reduced to zero. Now that Plaintiff/Appellee's Motion for New Trial has been granted, the Court's application of chapter 668, originally decided via summary judgment, and later employed in the judgment entry and setoff, is ripe for

judicial review. This includes the district court's consideration of, and ruling on Plaintiffs' Motion for New Trial.

## STANDARD OF REVIEW

The Court reviews a District Court's entry of judgment for errors at law. *Mercy Hosp. v. Goodner*, 858 N.W.2d 36 (table op.), 2014 WL 5243377 at *1 (Iowa Ct. App. 2014) (citations omitted). Additionally, the Court reviews a summary judgment ruling for errors at law. *See Kragnes v. City of Des Moines*, 714 N.W.2d 632, 637 (Iowa 2006). "[The] scope of review of a ruling on a motion for a new trial depends on the grounds asserted in the motion. To the extent the motion is based on a discretionary ground, [it is] review[ed] for an abuse of discretion." *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999).

### A. The Iowa Comparative Fault Act Mandates The Discharge of Jeff Jones' Fault

While Defendant maintains that the owner's responsibility claim should have been disposed of previously via summary judgment, the issue on appeal is now black and white—as Jeff Jones, a released party, has been assigned 100 percent of the fault in this action by the jury, his proportionate fault should be discharged, as mandated by the Iowa Comparative Fault Act.

Iowa Code § 668.7 reads as follows: "A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable

discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same unless it so provides. However, the claim of the releasing person against other persons **is** reduced by the amount of the released person's equitable share of the obligation, as determined in section 668.3, subsection 4." Iowa Code § 668.7 (Iowa 2019) (emphasis added).

This is a comparative fault case. As such, the district court is bound by the Comparative Fault Act. Under the Comparative Fault Act found in Iowa Code § 668.3(2)(b), Glenwood and Jeff Jones were treated as a single party for the purposes of determining the percentage of fault attributable to Jeff Jones for any liability arising under the owner's responsibility statute. *See Beganovic v. Muxfeldt*, 775 N.W.2d 313, 318 n.4 (Iowa 2009). The treatment of Jeff Jones and Glenwood as a single party for purposes of this claim is evidenced by Jeff Jones' line on the verdict form.

Based on the plain language of the Comparative Fault Act, the claim of Terry and Christine Jones is required to be discharged by the released person's equitable share of the obligation—i.e., Jeff Jones' share. As Jeff Jones was found 100 percent at fault in this action, the court should not have reached the issue of setoff, let alone considered a motion for new trial,

because Glenwood's liability was discharged when Plaintiff released Jeff Jones.

However, in the judgment entry and setoff, the district court stated as follows:

> Jeffrey Jones is a released party having entered into a settlement with Plaintiffs. The amount paid to Plaintiffs by Jeffrey Jones in that settlement claim is in excess of the total damages awarded by the jury in this case under the owner liability claim. Because the jury did not find or assign Glenwood Golf Corporation any percentage of fault under the tort claim theory the court must reduce Plaintiffs' recovery considering the Jeffrey Jones settlement. Accordingly, the court reduces the award of $500,000 against Defendant Glenwood Golf Corporation, as owner of the golf cart operated by Jeffrey Jones, to zero dollars.

(App. 105).

While the law under the comparative fault act is clear, it is evident the court disregarded this concept while entering the jury verdict following trial and in even considering a new trial, even though the court admitted being aware that the Iowa Comparative Fault Act controlled at the time of its ruling on Defendant's motion for summary judgment:

> [A]ccording to Iowa Code § 668.3(4) . . . "any damages allowed shall be diminished in proportion to the amount of fault attributable to the claimant." (citation omitted). "The claim of the released person against other persons is reduced by the amount of the released person's equitable share of the obligation, as determined in § 668.3 (4). Iowa Code § 668.7.

(App. 63).

Despite correctly quoting this language, the court continued, "Therefore a credit would be applied if liability was found against Glenwood to offset the prior settlement with Jeff Jones." *Id.* The court ultimately followed this reasoning after trial in applying a *pro tanto* credit in the judgment entry and setoff.

The court has since granted a new trial on the issue of damages, in a case where a released party's degree of fault as determined by the jury should have been discharged under the Iowa Comparative Fault Act.[4]

### B. Glenwood and Jeff Jones Were Treated as a Single Party under the Comparative Fault Act.

As mentioned above, under the Comparative Fault Act found in Iowa Code § 668.3(2) (b), the District Court has discretion to "determine that two or more persons are to be treated as a single party" for the purposes of allocating fault. Here, the district court correctly determined that Jeff Jones, and Glenwood as owner of the golf cart, were to be treated as a single party on the verdict form. (App. 88, 101–102). This is consistent with the Comparative Fault Act and the owner's responsibility statute, which "impos[es] liability on an owner for the actionable negligence of the driver,"

[4] This includes the granting of a new trial on damages for Plaintiff Christine Jones, relief which was not sought in Plaintiffs' motion for new trial.

as there is no "actionable negligence" on behalf of Glenwood for purposes of this claim. *Beganovic*, 775 N.W.2d at 318 n.4.

Therefore, as mandated by Iowa Code §§ 668.7 and 668.3(4), the verdict and damages are to be reduced by Jeff Jones' equitable share of the obligation, i.e., 100 percent. The discharge of fault should equally discharge Glenwood from the same claim, as there is no independent act of negligence for which the jury assigned Glenwood fault.

To the extent that there is disagreement on the treatment of Jeff Jones and Glenwood as a single party for purposes of liability under Plaintiffs' claim under the owner's responsibility statute, liability, the allocation of fault, the verdict form, and the treatment of Jeff Jones and Appellant as a single party are not at issue on appeal.

### C. The Proportionate Credit Rule and not the *Pro Tanto* Rule Applies.

In the judgment entry and considering Plaintiffs' motion for new trial, the Court applied a *pro tanto* credit, rather than applying the proportionate credit rule. (App. 104–105). The case of *Thomas v. Solberg*, 442 N.W.2d 73 (Iowa 1989) is controlling on the application of the proportionate credit rule.

The case involved three defendants, two of whom settled before trial. *Thomas*, 442 N.W.2d at 73. The two settling defendants were Steven

White and Sheila White. *Id.* At 73–74. Steven was the driver of the vehicle owned by Sheila White, who was named as a defendant pursuant to her ownership of the vehicle. *Id.* At trial, Steven White and Sheila White were treated as one party for purposes of allocating fault pursuant to Iowa Code Section 668.3(2) (b). *Id.* at *74*. The jury assigned 49 percent of the fault to Steven White. *Id.* The remaining 51 percent of fault was allocated to Diane Solberg, the remaining defendant at trial. *Id.*

The question before the Iowa Supreme Court on appeal from the non-settling defendant was whether, under Iowa's comparative fault act, the favorable settlement should inure to the benefit of the plaintiff or the non-settling defendant. *Id.* In other words, the Iowa Supreme Court considered whether the plaintiff's recovery should be reduced by the amount paid by the settling defendant (*pro tanto*), or whether the recovery against a non-settling defendant should be reduced by the percentage of fault attributed to the settling defendant (proportionate credit). *See Id.* at 75. The Iowa Supreme Court by and through Justice Lavorato reasoned that the combined effect of Iowa Code sections 668.7 and 668.3(2) (b) compelled application of the proportionate credit rule. *Id.* at 78. The court stated that the "language in sections 668.7 and 668.3 can be reduced to the following statement: the

plaintiff's recovery against non-settling defendants is reduced by the percentage of fault allocated to settling defendants." *Id.* at 76–77.

Accordingly, the Iowa Supreme Court held that the district court correctly reduced the verdict by the degree of fault attributed to Steven White, as the released party/driver of a vehicle owned by Sheila White, as there was no separate finding of fault against Sheila White as the owner of the vehicle. *See id.* at 78; Iowa Code § 668.3(2) (b) (instructing court to treat defendants, where appropriate, "as a single party" for purposes of allocating fault); *Biddle v. Sartori Memorial Hosp.,* 518 N.W.2d 795, 799 (Iowa 1994) (stating doctor and hospital-vicariously liable for doctor's negligence-"were properly 'treated as a single party'" for purposes of release obtained by doctor (citing Iowa Code section 668.3(2) (b))).

Consequently, a reading of Code Section 668.7 and Iowa case law indicates that Plaintiffs' recovery should be reduced by the released party, Jeff Jones' equitable share of the obligation—in this case 100 percent.

Appellee will almost certainly argue that the court correctly applied a *pro tanto* credit. It is true that the *pro tanto* credit rule continues to apply to cases not within the scope of the comparative fault statute." *See Jamieson v. Harrison*, 532 N.W.2d 779, 781 (Iowa 1995) (citations omitted) (noting that comparative fault was inapplicable to a dram shop action). However, this

case falls squarely within the Iowa Comparative Fault Act and the confines of Chapter 668, as Plaintiff sued Glenwood under a premises liability theory, in addition to the claim under the owner's responsibility statute for the negligence of Jeff Jones. "[T]he principles of comparative fault are triggered by 'any claim involving the fault of more than one party to the claim.'" *Johnson v. Junkmann*, 395 N.W.2d 862 (Iowa 1986) (quoting Iowa Code § 668.3(2)). A "party" includes "a person who has been released pursuant to section 668.7." Iowa Code § 668.2 (2019).

As such, the Court must reduce the verdict by Jeff Jones' proportionate share of fault as mandated by the Comparative Fault Act.[5]

The jury has already found that Jeff Jones is 100 percent at fault for the underlying accident. The plaintiffs did not ask the district court to grant a new trial on liability. Thus, if the case is remanded for a retrial on damages, the plaintiffs still should not recover any additional damages, as any award should be reduced by the percentage of fault allocated to settling defendant, Jeff Jones. A retrial on damages is not warranted as this issue should be determined on appeal, prior to incurring the costs and resources involved in a new trial, and ultimately, another appeal.

[5] It is reiterated that the jury found no liability on the part of Glenwood under the premises liability claim under section 344 of the Restatement (Second) of Torts, and that issue is not part of this appeal.

Therefore, the district court erred in deciding on summary judgment the manner in which it would apply chapter 668 at trial, in the application of Chapter 668 following trial, and in granting Plaintiffs' motion for new trial. This court should overturn the district court's rulings, and direct judgment to be entered on behalf of Glenwood.

## II. THE DISTRICT COURT ERRED IN DENYING DEFENDANT/APPELLANT'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' CLAIM UNDER IOWA CODE § 321.493

To the extent that the appellate court determines the foregoing is not enough to decide the issue on appeal, the district court also erred in denying Glenwood's Motion for Summary Judgment on Plaintiffs' claim under Iowa Code § 321.493. For the reasons discussed below, the Court should overturn the district court, and enter judgment in favor of Defendant/Appellant, Glenwood.

### ERROR PRESERVATION

Defendant/Appellant preserved error on this issue by moving for summary judgment on the grounds that Plaintiffs' Claim under the owner's responsibility statute should be dismissed.

### STANDARD OF REVIEW

The Court reviews a District Court's denial of a motion for summary judgment for correction of errors at law. *See Kragnes v. City of Des Moines*, 714 N.W.2d 632, 637 (Iowa 2006). Summary judgment is appropriate if the record shows that there is no genuine issue of material fact and the moving part is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3).

### A. The Settlement between Plaintiffs and Jeff Jones Should Operate to Extinguish Glenwood's Liability under the Owner's Responsibility Claim

On August 28, 2018, Plaintiffs entered into a settlement and release with the driver of the golf cart, Jeff Jones. The plain language of this release provides: "*this Release and Indemnity Agreement covers the released parties' proportionate responsibility for all injuries and damages*, *whether known or not, and which may hereafter appear or develop arising from the matters referred to above*." (App. 31). As any liability under the owner's responsibility statute contained in Iowa Code § 321.493 is based on Jeff Jones' proportionate fault, Defendant should be released as the terms of the settlement documents clearly contemplate compensation for Jeff Jones' negligence.

Glenwood concedes that it is not a party to the release. *See Aid Ins. Co. v. Davis* County, 426 N.W.2d 631, 635 (Iowa 1988) (discussing that by enacting Iowa Code § 668.7, the legislature intended to require the naming

of any tortfeasor that is to be released). Furthermore, the release may not rise to the level of a "satisfaction" as it is does not contain language evidencing an intent to discharge Glenwood from liability. However, based on the specific language of the release and the framework of Iowa Code § 321.493, Jeff Jones has satisfied any negligence attributable to his conduct, and Glenwood should be discharged from liability under the owner's responsibility statute, as liability under the statute is based entirely on Jeff Jones' negligence. In other words, Glenwood is not a tortfeasor—whose naming was required to be released.

"[T]he effect of a settlement is determined by the intent of the parties to the settlement as shown by the terms of the settlement documents." *Waits v. United Fire & Cas. Co.*, 572 N.W.2d 565, 572 (Iowa 1997). It is of no consequence that Plaintiffs specifically reserved the right to sue Glenwood.[6] The only potential liability of Glenwood, as found by the jury, is solely based on Jeff Jones' misdeeds, who is now a released party that has satisfied his "proportionate responsibility" for the accident. *See Bruce's Estate v. B.C.D., Inc.*, 396 F. Supp. 157, 161–62 (S.D. Iowa 1975) ("[A] valid release of that employee-agent releases the employer or principal from liability,

[6] Plaintiffs had the right to and did sue Glenwood under a premises liability theory, on which the jury ruled in Glenwood's favor.

even though the release specifically reserves all claims against the employer-principal").

However, even if it is determined that Glenwood is not discharged due to the plain language of the release satisfying Jeff Jones' proportionate share of responsibility arising from the accident, the operative effect of the release should equally discharge Glenwood, due to the vicarious nature of the relationship between Glenwood and Jeff Jones.

The Iowa Supreme Court has not considered a case under Iowa Code § 321.493 where the underlying driver/tortfeasor is a released party, with the owner of the vehicle not being simultaneously released by the plaintiff. It is admitted that Iowa Code § 321.493 does not explicitly create a principal/agent relationship, and Glenwood is not arguing that there was a principal/agent relationship between Jeff Jones and Glenwood. *See Stuart v. Pilgrim*, 74 N.W.2d 212, 219 (Iowa 1956). However, "[t]he rationale for imposing liability on a consent owner is consistent with the rationale for . . . the common-law rule of vicarious liability for the master–servant relationship." *Beganovic v. Muxfeldt*, 775 N.W.2d at 318. As such, the vicarious liability framework employing the principal/agent and master/servant analysis is therefore instructive with regard to the theory underlying Glenwood's argument—that Glenwood cannot be liable under

the Plaintiffs' owner's responsibility claim because its liability is premised on Jeff Jones' negligence, and Jeff Jones is a released party under Chapter 668, Thus, Jeff Jones has satisfied his proportionate responsibility relating to the accident, and thereby has satisfied Glenwood's responsibility as well.

In *Biddle v. Sartori Memorial Hospital*, the Iowa Supreme Court considered whether a hospital was discharged from any vicarious liability after the plaintiff settled with and released all claims against the doctor of the hospital, but still sought to recover against the hospital upon the same acts of negligence. *See* 518 N.W.2d 795 (Iowa 1994). The Court concluded that "[b]y releasing the doctor, Biddle satisfied the percentage of fault attributable to him and, vicariously, attributable to the hospital." *Id.* at 798–99. That is, the settlement wiped out any fault derived from the doctor's conduct, separate and apart from the hospital's own negligence, for which it remained accountable at trial. *Id.* (citations omitted) (noting that a "settlement with the agent effectively adjudicates and satisfies the vicarious claim" as a single share theory of liability results in the treatment of both the principal and agent as one).

The central theme of the Plaintiff's argument in *Biddle* was that under the Iowa Comparative Fault Act and *Thomas v. Solberg*, 442 N.W.2d 73 (Iowa 1989), any distinction between the hospital's liability as a joint

tortfeasor and the hospital's vicarious liability was irrelevant, and the jury should have been permitted to assess additional damages to the hospital irrespective of the settlement based on the fault of the doctor. *See Biddle*, 518 N.W.2d at 797. The Court distinguished *Thomas*, emphasizing "the fundamental distinction between the full recovery permitted under the doctrine of joint and several liability, and the limitations inherent in a claim that rests on the doctrine of vicarious liability." *Id.* Whereas the defendants in *Thomas* were joint tortfeasors,[7] the defendants in *Biddle* were liable only on the basis of vicarious liability.

Like the Iowa Supreme Court, the Michigan Supreme Court has also determined that release of the agent is release of the principal even where an express reservation to sue was present in the release. *See Theophelis v. Lansing General Hospital,* 424 N.W.2d 478 (Mich. 1988). The Michigan Supreme Court poignantly stated, "[T]he principal, having committed no tortious act, is not a 'tortfeasor' as the term is commonly defined," thus the release of the culpable party extinguishes any liability of the non-guilty principal. *Id.* at 483 (citing Black's Law Dictionary 1335 (5th ed. 1979)

[7] This reference is strictly with relation to the two Defendants on the verdict line, Steven White and Diane Solberg, as Steven White and Sheila White were treated as a single party due to Sheila's ownership of the vehicle. *Thomas v. Solberg*, 442 N.W.2d 73, 74 (Iowa 1989).

(defining a tortfeasor as "a wrong-doer; one who commits or is guilty of a tort")).

Here, the Plaintiffs' claim against Glenwood under the owners' responsibility statute is purely derivative, based on the fault of Jeff Jones. Thus, the Plaintiffs' "settlement with Jeff Jones wiped out any fault derived from [Defendant's] conduct, separate and apart from [Defendant's] own negligence.…" *See Biddle*, 518 N.W.2d at 799 (finding "[t]he 'percentage of negligence' attributable to the conduct of the servant constitutes the entire 'single share' of liability attributable jointly to the master and servant" (internal citations omitted)); *Hook v. Trevino*, 839 N.W.2d 434, 443 n.3 (Iowa 2013) (discussing that the settlement in *Biddle* made the doctor a released party under Chapter 668 immune from contribution claims); *see also Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 344–45 (Iowa 1999) ('Our holding in *Biddle* was limited to the situation in which the release of an agent operated as a release of the principal from any vicarious liability for the agent's tortious conduct.").

Plaintiffs will presumably point to the cases of the *Estate of Dean by Dean v. Air Exec, Inc.*, 534 N.W.2d 103 (Iowa 1995) and *Smith v. CRST Intern., Inc.*, 553 N.W.2d 890 (Iowa 1996). In *Dean*, the estate of a deceased employee brought suit against the lessor of an aircraft. *See* 534 N.W.2d at

103. On appeal, the Iowa Supreme Court held that the owner of the aircraft was not entitled to the immunities afforded under the employer and co-employee pilot under the Iowa Workers' Compensation Act. *Id.* at 106. In *Smith*, the issue was "whether an employee injured in a motor vehicle (tractor-trailer) accident can recover civil damages under Iowa Code section 321.493 (1991) from the non-employer owner of the motor vehicle and two other defendants for the negligent act of the co-employee driver of the vehicle." *See* 553 N.W.2d at 891. In reversing the district court's grant of summary judgment in favor of the owner of the vehicle, the Supreme Court determined that the driver's status as a co-employee does not bar the claim of negligence against the non-employer owner of the vehicle. *Id.* at 895-96.

While these cases discussed the liability versus negligence dichotomy involved in a claim under Iowa Code § 321.493, the cases are differentiated by the fact that they considered whether workers' compensation defenses inured to the benefit of the non-employer owner of the vehicle/aircraft. Furthermore, and most importantly, the cases did not consider the effect that a release of the negligent driver would have on the claim against an owner under section 321.493, or the implications of such a release in the context of the Iowa Comparative Fault Act.

Under the Comparative Fault Act, Glenwood could not and cannot file a claim for contribution against Jeff Jones as the negligent operator of the golf cart as he is a released party under the statute. *See* Iowa Code § 668.7 (2019) ("a release discharges that person from all liability for contribution"). As noted in *Biddle*, "[W]hen a comparative fault statute like ours extinguishes the non-settling party's right to contribution following settlement, similar equitable considerations favor the release of the principal in the vicarious liability context." *Biddle,* 518 N.W.2d at 798.

In *Bruce's Estate v. B.C.D., Inc.*, 396 F. Supp. 157, (S.D. Iowa 1975), the United States District Court for the Southern District of Iowa, Western Division, considered a case where Plaintiffs settled a claim against the driver of a vehicle, and subsequently brought suit against both the driver's employer and the owner of the vehicle. *See* 396 F. Supp. 157 (S.D. Iowa 1975). The released driver was impleaded as a third party defendant, and subsequently filed a cross-claim against Plaintiffs asserting a claim for indemnification relating to the hold harmless clause of the release. *See id.* at 159–160. The employer of the driver and the owner of the vehicle both filed motions for summary judgment, arguing that Plaintiffs' release of the negligent driver operates to absolve them against liability. The Court granted the Defendant employer's motion for summary judgment, finding that "in a

tort action based exclusively on the alleged negligence of an employee or agent, a valid release of that employee-agent releases the employer or principal from liability, even though the release specifically reserves all claims against the employer-principal." *Id.* at 161–62.

With regard to the owner of the vehicle's motion, the Court reasoned that the issue was whether the respondeat superior doctrine, which exonerated the employer, is equally applicable to the owner, and specifically, whether the owner could seek indemnity against the driver. *See Id.* at 162. The Court held that "where the owner of an automobile has become liable to a third person injured by one to whom the owner has granted permission to drive his car solely by virtue of the Financial Responsibility Act, such owner is entitled to recover indemnity from the operator of the car in the absence of any active negligence chargeable to the owner." *Id.* at 164. Therefore, the Court granted the owner's motion for summary judgment, and, in doing so, acknowledged the "circuity of litigation" that would arise due to the hold harmless provisions in the release, and the Iowa cases holding that Iowa Code § 321.493 does not create a strict agency relationship.[8] *See Id.* at 163–166.

[8] The Court also noted that "[e]qually unavailing is the argument that the literal terms of the statute prevent any such shifting of liability[,]" discussing the case of *Peters v. Lyons*, 168 N.W.2d 759 (Iowa 1969). *Bruce's Estate*, 396 F. Supp. at 164.

North Dakota has also addressed the circuity of action that would result if the release of an agent did not serve to also release the principal:

> [A] circle of indemnity would be created if the release of the servant did not release the vicarious liability of the master: If the plaintiff recovered at trial from the non-settling master, the master would have a right of indemnity against the released servant, who, under the terms of the release, would have a right of indemnity against the plaintiff. Thus, the circle is completed, leaving the plaintiff with no additional recovery through the suit against the master . . . The release of the servant effectively precludes any meaningful recovery from the vicariously liable master.

*Nelson v. Johnson*, 599 N.W.2d 246, 249 (N.D.1999) (internal citations omitted).

Based on the rationale in *Bruce's Estate*, it could be posited that Glenwood should have filed a claim for indemnity against Jeff Jones after his settlement with Plaintiffs. However, the aforementioned circuity of litigation would have ensued due to the plain language of the release, providing that Plaintiff/Appellees would hold harmless and defend and indemnify Jeff Jones from any suits or claims. (App. 31). Such a claim against Jeff Jones is the exact circuity of litigation that was discussed in *Biddle* and *Bruce's Estate*, and evidences the sound public policy rationale for the proposition that the release of Jeff Jones extinguishes the claim under the owner's responsibility statute against Glenwood. This is further

supported by the foreclosure of a claim of contribution for additional insurance money available under Jeff Jones' policy or from any non-exempt assets, as the settlement was below the purported policy limits of Jeff Jones' policy. (App. 145–148).

Other jurisdictions have considered the issue and explained a similar rationale underlying the theory of Glenwood's argument—that a release of the underlying tortfeasor operates as a release of the owner, as the claim is based solely on the underlying tortfeasor's negligence, and to hold otherwise would result in circuity of action and a windfall of recovery. *See DelSanto v. Hyundai Motor Finance Co.*, 882 A.2d 561, 565 (R.I. 2005) (holding that the motorist's release of the driver also operated to release the lessor, noting "the legal construct of vicarious liability does not transmogrify a non-tortfeasor into a tortfeasor"); *Cunha v. Colon*, 792 A.2d 832 (Conn. 2002) (holding that summary judgment was appropriate for lessor as the motorist's release of the driver operated to also release the lessor); *Estate of Williams ex rel. Williams v. Vandeberg*, 620 N.W.2d 187, 191 (S.D. 2000) (adopting the rationale of *Biddle* and holding that "the release of an agent is the release of a principal even when the release contains an express reservation …."); *see also Kaiser v. Allen*, 746 N.W.2d 92, 96–97 (Mich. 2008) (holding the basis of the owners' liability statute is entirely derivative and allowing

plaintiff to recover the settlement amount and verdict would lead to double recovery).

It is acknowledged that this Court has long expressed a public policy favoring settlements. However, this is not the typical settlement that should inure only to the Plaintiffs and the released party. *See Biddle*, 518 N.W.2d at 799. Here, Jeff Jones settled with Plaintiffs for his "proportionate share of responsibility" for the accident. Not only does the plain language of the release satisfy his equitable share of the obligation, but the operation of the release of a driver in the context of a claim under Iowa Code § 321.493 should extinguish any claim against Glenwood arising out of Jeff Jones' negligence. Therefore, Glenwood respectfully requests that the Court overturn the District Court's ruling on Defendant's motion for summary judgment, and enter judgment in favor of Glenwood.

## III. THE COURT ERRED IN GRANTING PLAINTIFFS A NEW TRIAL ON DAMAGES

### ERROR PRESERVATION

Defendant/Appellant preserved error on this issue by resisting Plaintiffs' Motion for New Trial.

### STANDARD OF REVIEW

"[The] scope of review of a ruling on a motion for a new trial depends on the grounds asserted in the motion. To the extent the motion is based on a

discretionary ground, [it is] review[ed] for an abuse of discretion." *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999).

### A. The District Court Abused its Discretion in Granting a New Trial on Damages

While the Court's decision in granting a new trial should be overturned due to the reasons already outlined in this brief, the Court abused its discretion in granting a new trial on damages, as the damages were adequately awarded at trial. According to the Iowa Supreme Court:

> Whether damages awarded are adequate in a particular case depends on the facts of the situation. The test we must apply is "whether the verdict fairly and reasonably compensates the injury the party sustained." Although evidence presented at trial may justify a high damage award, this alone does not control. The key question is whether after examining the record, "giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties."

*Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996) (internal citations omitted).

The Supreme Court has further stated, "[t]he jury's verdict should not be set aside or altered unless the plaintiff proves the verdict: (1) is flagrantly excessive or inadequate; or (2) is so out of reason as to shock the conscience or sense of justice; or (3) raises a presumption it is the result of passion,

prejudice or other ulterior motive; or (4) is lacking in evidential support." *Gorden v. Carey*, 603 N.W.2d 588, 590 (Iowa 1999).

The district court's focus in granting Plaintiffs' motion for new trial was on the jury awarding $20,000 in past medical expenses, where after trial the parties agreed at the very least the past medical expenses incurred were $295,463.57—the net amount paid by the plaintiffs' health insurer—i.e., the "*Pexa*" amount. (*See* App. 126–130). However, while the court briefly discussed the effect that Plaintiffs' strategy could have had on the jury at trial—in arguing the perceived gross amount of medical expenses of $1.4 million,[9] rather than the "net" amount of $295,463.57—the court failed to take into account the significance of such a strategic choice, and disregarded the jury's discretion in awarding medical expenses.

In proving past medical expenses, "the Plaintiff has the burden to prove the reasonable value of the medical services rendered." *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 156 (Iowa 2004). "[T]he jury is not bound by the testimony of an expert with respect to the reasonable value of medical services, but 'may use and be guided by their own judgment in such matters.'" *Id.* (citing *Ege v. Born*, 236 N.W. 75, 82 (Iowa 1931). It is clear

[9] As noted in Defendant's Resistance to the Motion for new trial, Ex. H, filed on October 22, 2019, the gross amount of expenses was actually $1,218,662.34. There is no evidence in the record supporting a figure of $1.4 million, which Plaintiff continued to argue in post-trial filings. (*See* App. 111; *compare* App. 122–124).

that Plaintiffs made a conscious determination at trial to inflate both the billed and paid amount of medical expenses incurred by Plaintiff as shown by the evidence in this case. (App. 110–113; 122–124; 141–142). The Court should not have rewarded Plaintiffs' exaggeration of past medical expenses in this case. To do so would incentivize plaintiffs to exaggerate in argument the billed and charged amounts in every case, armed with the knowledge that the court will save them from the perils involved with invoking such a strategy with an after-the-fact additur or granting of a new trial.

Plaintiffs should not be allowed to employ such a strategy with little to no consequences, as it is conceivable and reasonable to believe that the jury was conscious of this exaggeration, and that the current award reflects this determination. *See Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996) (citing *Claus v. Whyle*, 526 N.W.2d 519, 523 (Iowa 1994) ("The trier of fact . . . has the prerogative to determine which evidence is entitled to belief"). The Plaintiffs' strategic choice and apparent belief that the Court would reward such strategy is evidenced in the pretrial filings. (App. 142, ¶¶ 21, 23) ("It is the practice of the local court to allow only the amount charged as evidence before the jury and correct any finding in that regard and limit it to the amount actually paid by collateral sources." "The only figure that should be submitted to the jury based on the evidence

that will be presented at trial is the fair and reasonable cost confirmed by the experts. . . with any adjustment to what the jury awards in that regard"). Thus, the Plaintiffs should not be rewarded with a new trial as a result of their grave strategic error in presenting evidence on past medical expenses.

Additionally, the Court relied on the "anchor" figure of $295,463.57 in coming to the conclusion that a new trial was warranted. While Appellant does not dispute this figure, Plaintiffs did not argue anchoring at the time of trial. There was no stipulation as to the net medical expenses, providing the jury a floor from which to the award past medical expenses. (*See* App. 117, ¶ 8). Thus, the jury was entitled to determine the amount of expenses that were fair and reasonable, and the verdict demonstrates that Plaintiffs did not meet their burden of proof in proving up such expenses. The district court discussed how a deviation of 93 percent is not justice. (App. 135). However, the deviation may accurately reflect the jury's weighing of the evidence, and demonstrate their acknowledgment of Plaintiffs' lack of credibility in asking for a figure that was more than 350 percent greater than the paid amounts.

The district court was also concerned with the award for past pain and suffering, present value for future pain and suffering, and past and future loss of function of mind and body. In ruling on the motion for new trial, the court stated, "The court's greatest concern aside from past medical expenses

is the award for past pain and suffering, present value for future pain and suffering and past and future loss of function of mind and body." (App. 136). "Damages for physical and mental pain and suffering cannot be measured by any exact or mathematical standard and must be left to the sound judgment of the jury." *Estate of Pearson ex rel. Latta v. Interstate Power and Light Co.*, 700 N.W.2d 333, 346 (Iowa 2005). Courts "will not interfere unless the jury's award is so small or so large that it 'shocks the conscience'" *Blume v. Auer*, 576 N.W.2d 122, 126 (Iowa Ct. App. 1997) (citing *Cowan v. Flannery*,461 N.W.2d 155, 158 (Iowa 1990).

The jury awarded Plaintiff Terry Jones $220,000 for past and future pain and suffering. The court should not disturb the jury's determination of such damages after hearing the evidence in this case, as there is nothing small about an award of $220,000, and certainly nothing that "shocks the conscience."

Nor is the award of $110,000 for past and future loss of mind and body inappropriate. While Glenwood does not dispute that Terry Jones suffered loss of function as a result of his injury caused solely by the negligence of Jeff Jones, the jury could have reasonably concluded that Terry Jones suffered $110,000 in damages for loss of function in the past and in the future. "Loss of function of the body relates to functional

impairment of a body part. It does not include conditions of incapacity embraced within the definition of pain and suffering." *See Blume*, 576 N.W.2d at 126 n.2 (citing *Brant v. Bockholt*, 532 N.W.2d 801, 805 (Iowa 1995)). The jury was presented with evidence that Plaintiff Terry Jones suffered from chronic medical problems, including diabetes, high blood pressure, and a rare skin condition, bullous pemphigoid. (App. 152, Transcript of Brent Crouse, M.D, p. 9-10, ¶¶ 18-25, 1-2). This evidence, coupled with the jury instruction relating to Plaintiff Terry Jones' life expectancy, provide ample basis for the jury's six-figure award in this discretionary category of damages. (App. 95; *See Pexa*, 686 N.W.2d at 158) ("Evidence concerning other medical conditions that have and will impact [Plaintiff's] physical and mental well-being and his ability to enjoy life are clearly relevant to the plaintiff's damage claim.").

### B. The District Court Erred in Considering a New Trial on Christine Jones' Damages

Plaintiffs did not move for a new trial or additur on the damages awarded to Christine Jones. Thus, the district court erred in awarding a new trial on damages to Plaintiff Christine Jones. (App. 107–113). In fact, Plaintiffs' post-trial motion prayer for relief specifically reads as follows: "Plaintiffs respectfully request that the Court grant this motion for new trial

on Plaintiff Terry K. Jones' damages . . . ." (App. 109).[10] The District Court *sua sponte* awarded a new trial on all claims for damages, including Christine Jones' claim for loss of consortium damages. (App. 136) ("The court believes the damages awarded to Christine Jones for future spousal consortium of $55,000 are too low . . . the motion for new trial, on damages only, is granted"). It is important to note even Christine Jones did not believe the award was inadequate, or she would have moved for a new trial or additur on the same.

Plaintiffs failed to move for a new trial on the issue of Christine Jones damages. The Court erred in granting the motion in this regard. *See Fry v. Blauvelt*, 818 N.W.2d 123, 128 (Iowa 2012) ("We review . . . a motion for new trial based on the grounds asserted in the motion" (citations and quotations omitted)).

Concerning the substance of the District Court's ruling relating to the damage award for loss of consortium to Christine Jones, "[d]amages for loss of consortium are incapable of precise pecuniary measurement by the witnesses. Consequently, they are left to the sound discretion of the jury." *Estate of Pearson ex rel. Latta*, 700 N.W.2d at 346. Plaintiff Christine Jones

[10] It is admitted that in Plaintiffs' brief in support of the motion for new trial, there is brief mention that Christine Jones was awarded monetary damages for past and future loss of consortium. (App. 110). However, the brief does not argue or urge inadequacy of this damage award.

was awarded $110,000 for past and future damages for loss of consortium. (App. 102). Despite these damages being incapable of a pecuniary measurement, the District Court also decided that it was in a better position than the jury to determine the adequacy of the loss suffered by Plaintiff Christine Jones. (App. 134–137).

### C. In the Event that the Jury's Award is Deemed Insufficient, Additur was the More Appropriate Remedy

As a practical matter, the Court determined that an award of half a million dollars is inadequate. "The amount of damages awarded is peculiarly a jury, not a court, function." *Gorden*, 603 N.W.2d at 590. Thus, the Court should not have disturbed the jury verdict regarding damages. "Where the verdict is within a reasonable range as indicated by the evidence we will not interfere with what is primary a jury question." *Olsen v. Drahos*, 229 N.W.2d 741, 742 (Iowa 1975) (citations omitted).

The Iowa Supreme Court has acknowledged that jury determinations about elements of damage can be influenced by the awards for other elements of damages. However, subtracting the awarded past medical expenses, Plaintiffs were awarded $480,000 in the remaining category of damages. This is not a case where Plaintiffs were awarded damages on one line of the verdict from and not another. The jury awarded a sum of damages on every line. Thus, there are no inconsistencies between the amounts

awarded that would compel the rendition of different judgments. *See Bryant v. Parr*, 872 N.W.2d 366, 376 (Iowa 2015). It is nothing more than speculation and conjecture to determine that the jury's award for past medical expenses influenced the award for the remaining categories of damages.

While Appellant maintains that the Court abused its discretion in granting a new trial for all of the above reasons, in the event that this Court disagrees, additur on the single concerning element of past medical expenses was the more appropriate remedy.

"In cases involving . . . damages reasonably susceptible to precise calculation, additur is appropriate." *Kerndt v. Rolling Hills Nat. Bank*, 558 N.W.2d 410, 417 (Iowa 1997). At trial, the two damage items subject to precise calculation are future medical expenses and past lost income. Appellee did not seem to take issue with the award for past lost income in the motion for additur and new trial, and the court did not mention it in the ruling on the motion for new trial. (App. 107–113; 134–137). As the damages for past/future pain and suffering and past/future loss of function are within the province of the jury, the District Court, to the extent that it was concerned with past medical expenses, should have granted additur to the agreed upon past medical figure in the amount of $295,463.57. There is

nothing preventing this court from doing so at this time. *See Kerndt*, 558 N.W.2d at 417; *Pexa*, 686 N.W.2d at 162.

## CONCLUSION

For the reasons expressed herein, Defendant/Appellant the Glenwood Golf Corporation respectfully requests that the Court overturn the District Court's application of Chapter 668, the order granting Plaintiff/Appellee's motion for new trial, the order on Defendant/Appellant's Motion for Summary Judgment, and enter judgment on behalf of Defendant/Appellant the Glenwood Golf Corporation.

## REQUEST FOR ORAL SUBMISSION

Appellant asks to be heard on oral argument.

## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1) (d) and 6.903(1) (g) (1) or (2) because:

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/s/ William H. Larson July 14, 2020

## CERTIFICATE OF SERVICE

I, William H. Larson, hereby certify that on the 14th day of July, 2020, I served Appellant's Final Brief on all other parties to this appeal by emailing one copy thereof to the following counsel for the parties at the following addresses:

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## CERTIFICATE OF FILING

I, William H. Larson, further certify that I filed Appellant's Final Brief via EDMS on the 14th day of July, 2020.

/s/ William H. Larson

## CERTIFICATE OF COST

It is certified that the actual cost paid by Appellant for submitting this brief was $0.00 as it was filed electronically by EDMS.