IN THE IOWA SUPREME COURT
23–0239

THE UNIVERSITY OF IOWA, BOARD OF REGENTS, and STATE OF IOWA,

Counterclaim Defendants–Appellants,

vs.

MODERN PIPING, INC.

Intervenor/Plaintiff–Appellee,

Appeal from the Iowa District Court
For Johnson County, EQCV078007
The Honorable Chad A. Kepros, District Judge

APPELLANTS' FINAL BRIEF

BRENNA BIRD
Attorney General of Iowa

TESSA M. REGISTER
Assistant Solicitor General

RYAN SHEAHAN
Assistant Attorney General
Iowa Department of Justice
1305 E. Walnut Street
Des Moines, Iowa 50319
Ph: 515-281-5112
Tessa.Register@ag.iowa.gov
Ryan.Sheahan@ag.iowa.gov

ATTORNEYS FOR APPELLANTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

ISSUES PRESENTED

I. Whether a temporary injunction that did not name Modern Piping, nor enjoin Modern Piping from initiating dispute resolution or invoking any other rights under a contract, nevertheless caused Modern Piping's alleged breach-of-contract damages?

Behrens v. McKenzie, 23 Iowa 333 (1867)

Frank v. Hollands, 46 N.W. 979 (Iowa 1890)

Marks v. Jordan, 208 N.W. 296 (Iowa 1926)

Marksbury v. State, 322 N.W.2d 281 (Iowa 1982)

Shadle v. Borrusch, 125 N.W.2d 507 (Iowa 1963)

Schmidt v. Meredith, 228 N.W. 568, 568 (Iowa 1930)

Iowa Code § 624.4

Iowa R. Civ. P. 6.907

II. Whether a party seeking damages from a later-dissolved injunction is entitled to seek unjust enrichment damages, including disgorgement of profits?

Bryant v. Mattel, Inc., 2010 WL 11463865 (C.D. Cal. Oct. 5, 2010)

City of Corning v. Iowa-Nebraska Light & Power Co., 282 N.W. 791 (1938)

Fin. Mktg. Servs., Inc. v. Hawkeye Bank & Tr. of Des Moines, 588 N.W.2d 450 (Iowa 1999)

Gaume v. New Mexico Interstate Stream Comm'n, 450 P.3d 476 (N.M. Ct. App. 2019)

Greenwood Cnty. v. Duke Power Co., 107 F.2d 484 (4th Cir. 1939)

In re UAL Corp. 412 F.3d 775 (7th Cir. 2005)

Iowa Waste Sys., Inc. v. Buchanan Cnty., 617 N.W.2d 23 (Iowa Ct. App. 2000)

Monolith Portland Midwest Co. v. R.F.C., 128 F. Supp. 824 (S.D. Cal. 1955)

Shadle v. Borrusch, 125 N.W.2d 507 (Iowa 1963)

Schmidt v. Meredith, 228 N.W. 568 (Iowa 1930)

III. Whether the district court erred in allowing Modern Piping to reopen a closed case to bring a new claim when final judgment in the case was affirmed on appeal, the affirmance contained no remand instructions, and procedendo was issued six weeks before?

Fin. Mktg. Servs., Inc. v. Hawkeye Bank & Tr. of Des Moines, 588 N.W.2d 450 (Iowa 1999)

Franzen v. Deere & Co., 409 N.W.2d 672 (Iowa 1987)

In re 2018 Grand Jury of Dallas Cnty., 939 N.W.2d 50 (Iowa 2020)

Schooler v. Iowa Dep't of Transp., 576 N.W.2d 604 (Iowa 1998)

Wellmark, Inc. v. Iowa Dist. Ct. for Polk Cnty., 890 N.W.2d 636 (Iowa 2017)

IV. Whether Modern Piping's wrongful injunction claim, which sought consequential damages, is barred by the Iowa Tort Claims Act because it is the functional equivalent of malicious prosecution or abuse of process?

Consumer Fin. Prot. Bureau v. Howard, No. 8:17-cv-00161, 2017 WL 10378954 (C.D. Cal. Oct. 13, 2017)

Fed. Trade Comm'n v. Apply Knowledge, LLC, No. 2:14-cv-00088, 2015 WL 12780893 (D. Utah Apr. 9, 2015)

Fed. Trade Comm'n v. BF Labs Inc., 4:14–CV–00815, 2015 WL 12834056 (W.D. Mo. June 15, 2015)

Feltes v. State, 385 N.W.2d 544, 546 (Iowa 1986)

In re 2018 Grand Jury of Dallas Cnty., 939 N.W.2d 50 (Iowa 2020)

Lee v. State, 844 N.W.2d 668 (Iowa 2014)

Minor v. State, 819 N.W.2d 383, 406 (Iowa 2012)

Provident Mgmt. Corp. v. City of Treasure Island, 796 So.2d 481, 486–87 (Fla. 2001)

Schooler v. Iowa Dep't of Transp., 576 N.W.2d 604 (Iowa 1998)

State ex rel. Schmidt v. Nye, 440 P.3d 585, 589–90 (Kan. Ct. App. 2019)

Iowa Code § 669.14(4)

V. Whether the district court erred in awarding prejudgment interest when Modern Piping was not deprived of the rightful use of any money or property during the pendency of the proceedings?

Catipovic v. I, No. C-11-3074, 2015 WL 401374 (N.D. Iowa Feb. 17, 2015)

Gosch v. Juelfs, 701 N.W.2d 90 (Iowa 2005)

In re Marriage of Baculis, 430 N.W.2d 399 (Iowa 1988)

State v. Hagen, 840 N.W.2d 140 (Iowa 2013)

Iowa Code § 535.3

ROUTING STATEMENT

The Supreme Court should retain this case. Appellee Modern Piping obtained a $12.7 million judgment against Appellants, State of Iowa, Board of Regents, and the University of Iowa, for its wrongful-injunction claim. Appellee's claim is for damages arising from an injunction that was ultimately dissolved on the merits. The $12.7 million judgment did not result from any damage done to Modern Piping; instead, it followed from a novel disgorgement-of-profits theory never before recognized as a remedy for wrongful injunction in Iowa. This is that remedy's first application against *any* party, and its first application against the State of Iowa. Whether and when that remedy is available for a wrongful-injunction claim is a weighty issue and one of first impression. The Supreme Court should decide the issue.

STATEMENT OF THE CASE

This appeal presents a claim of "wrongful injunction"—a rarely litigated and often misunderstood doctrine in Iowa caselaw in which, "upon dissolution of an injunction," the enjoined party may bring a claim for "damages *as are the necessary and proximate result*" of the injunction's restraint. *City of Corning v. Iowa-Nebraska Light & Power Co.*, 282 N.W. 791, 794 (1938) (quoting 2 James L. High, A Treatise on the Law of Injunctions § 1673 (4th ed. 1905)) (emphasis in original).

In April 2016, the University[1] filed a petition and requested a temporary injunction against the American Arbitration Association (AAA). (App. Vol. I, at 07–13). The district court granted the injunction *ex parte*, temporarily enjoining the AAA from arbitrating a construction dispute between the University and Modern Piping over issues related to the construction of the new Children's Hospital that overlooks Kinnick Stadium. (App. Vol. I, at 14–16).

The temporary injunction went unchallenged for longer than seven months. Aside from answering the petition, the AAA took no action in the case. And Modern Piping, which was aware of the

[1] For ease of reference, we refer to the University of Iowa, Board of Regents, and State in the singular as "the University," unless otherwise noted. There is no distinguishing feature between the three State parties for purposes of this appeal.

injunction, made no effort to intervene in the lawsuit until November. At that time, Modern Piping moved to dissolve the injunction, contending that the AAA was immune from suit under the arbitral-immunity doctrine and thus that the arbitration should continue. (Dkt 14).

The district court agreed with Modern Piping's argument, entering an order two months later, in January 2017, that dissolved the temporary injunction and allowed the arbitration between the University and Modern Piping to proceed. (App. Vol. I, at 17–20). Three months after that, in April, the district court granted and entered summary judgment to AAA on the arbitral immunity issue, dismissed the University's petition, and entered final judgment. (Dkt. 40). The University appealed and on January 9, 2019—ten months after the arbitration's completion—the Court of Appeals affirmed that ruling. *Univ. of Iowa v. Am. Arbitration Assoc.*, No. 17-0949, 2019 WL 141003 (Iowa Ct. App. Jan. 9, 2019).

With the petition dismissed in its entirety and judgment affirmed, this case should have ended. Yet six weeks after procedendo issued, and thus after the Court of Appeals affirmed the dismissal of the case and the final judgment, Modern Piping moved for to leave to add a counterclaim for "wrongful injunction" to the already-dismissed lawsuit. As alleged by Modern Piping, the temporary injunction was wrongful. Modern Piping alleged that the

court dissolved the injunction based on Modern Piping's arbitral-immunity argument and that the injunction injured Modern Piping by delaying arbitration. (App. Vol. I, at 53–59). Modern Piping requested, "without limitation[,] compensatory, consequential, and restitutionary, damages[,] attorney's fees and expenses that it incurred." (App. Vol. I, at 58).

The University resisted, explaining that a party cannot add a claim to an already-dismissed lawsuit. (App. Vol. I, at 34–35). The University also argued that sovereign immunity barred this new damages claim and that, in any event, Modern Piping could not bring a wrongful-injunction claim based on an injunction that did not enjoin Modern Piping—the injunction was only against the AAA. (App. Vol. I, at 35–38).

The district court rejected the University's arguments and granted Modern Piping's request to add the new claim to the dismissed lawsuit. (App. Vol. I, at 44). The court concluded that Modern Piping had standing to bring the claim, as it was affected by the injunction even if it was not the enjoined party. (App. Vol. I, at 48). And the court concluded that the University waived sovereign immunity by requesting the temporary injunction. (App. Vol. I, at 50–51).

The district court also explained that it believed it had the authority to allow a new claim to the already-dismissed lawsuit

because Modern Piping was an intervenor rather than a defendant that was subject to the dismissed claim. (App. Vol. I, at 48). And the court reasoned that it had authority to add new claims to the dismissed case because Modern Piping's ancillary motion for attorney's fees and cost, which was filed after the court dissolved the temporary injunction and before the appeal, "remain[ed] pending and in need of resolution." (*Id.*).

At bottom, the district court concluded that "there may be a right of recovery under some set of facts *for the delay of arbitration* caused by the State of Iowa seeking and securing a temporary injunction," so it granted Modern Piping's motion for leave to file the counterclaim. (App. Vol. I, at 51) (emphasis added).

Over the next two-and-a-half years, as the litigation progressed, Modern Piping's wrongful-injunction claim morphed. At first, the district court characterized the State's sovereign immunity waiver in the context of damages "for the delay of arbitration" caused by the dissolved injunction. (*Id.*) Yet from those clean and simple roots grew a more gnarled argument. By trial, Modern Piping converted its sole cause of action to a breach-of-contract claim that it litigated through a wrongful-injunction label in an equitable proceeding based on an unjust-enrichment theory under which it sought disgorgement of profits from the University. The district court submitted that Frankenstein "wrongful

injunction" claim to the jury, which returned a verdict for over $12.7 million in unjust enrichment and $21,784.50 for cost, expenses, and attorney fees. (App. Vol. I, at 143–44).

The University filed post-trial motions for remittitur and judgment notwithstanding the verdict. (App. Vol. I, App. 148–57; 158–78). The district court denied those motions, and the University timely filed this appeal.

STATEMENT OF FACTS

Modern Piping had a single theory at trial: that the temporary injunction against the AAA—which delayed but did not extinguish Modern Piping's ability to arbitrate its disputes with the University through the AAA—somehow caused the University to breach the "partial occupancy" clause of the construction contract, causing $2.5 million in damage to Modern Piping and giving the University $12.7 million in unjust profits. Modern Piping never submitted that factual background concerning the injunction, alleged partial-occupancy breach, and subsequent damages to arbitration.

Modern Piping alleges that the University breached the partial-occupancy clause of the contract between Modern Piping and the University. That provision, section 9.7.1, provided that the University "may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated

by separate agreement with the Contractor." (App. Vol. III, at 149). Modern Piping contends that provision intends to ameliorate a construction company's added risk that rises when an owner moves into a new building before construction is complete. That period in construction often incurs additional costs as the construction crew works around the owner's operations. (Tr. Vol. 1, 80:20–81:7). The contract thus requires the parties to agree to a separate financial arrangement if the owner wants to occupy part of the building before the construction is complete.

The University began to occupy the new hospital the month after obtaining the temporary injunction, in May 2016, before Modern's Piping's construction was complete.[2] At that time, the parties had not entered into a partial-occupancy agreement per section 9.7.1 of the contract. Indeed, at no point did the parties enter into such an agreement. Modern Piping offered to negotiate a partial-occupancy agreement, but according to one of the owners of the company and the senior executive project manager for the Children's Hospital project, Michael Shive, the University would not discuss the issue with him. (Tr. Vol 1, 79:11-15; Tr. Vol. 2, 44:24–45:2).

[2] Modern Piping's work was completed in May 2017. (Tr. Vol. 1, 34:12-14; 35:9-12).

Shive acknowledged, however, the temporary injunction did not contain any provision preventing Modern Piping and the University from entering into a partial-occupancy agreement. (Tr. Vol. 2, 44:24–45:5; 121:3-6). Still, because the University refused to enter into an agreement concerning its occupying part of the hospital before construction ended, Modern Piping claimed that the University breached section 9.7.1—the contract's partial-occupancy clause.

Modern Piping's financial expert opined that the University's partial occupancy cost Modern Piping $2.5 million—the value of the additional costs and risks Modern Piping took on when the University moved in early. And the same expert testified that the financial benefit to the University of moving in early was $1,598,022 per month. Modern Piping asked the jury to award it eight months of those estimated profits (which was the length of the temporary injunction but not the entire 12-month period of the partial occupancy) in the form of unjust enrichment damages. (Tr. Vol. 3, 54:3–55:6). The total for those eight months (May 2016 to January 2017) came to $12,784,177.

Modern Piping called Justice Michael Streit as an expert witness to opine on whether the injunction was wrongful and to try to connect that temporary injunction against the AAA to the University's breach of the partial-occupancy clause. (Tr. Vol 2,

65:8). He testified that the injunction "delayed Modern Piping from being paid what they were supposed to be paid for the temporary occupancy" because it temporarily enjoined the AAA from arbitrating that breach of contract. (Tr. Vol 2, 108:8-15). Modern Piping presented no evidence about the cost of the *delay* in arbitrating the ultimate breach-of-contract claim; instead, it only entered evidence on the damage caused by, and the profits the University earned from, the alleged underlying breach of the partial-occupancy clause.

The construction contract did not require that arbitration over the partial-occupancy clause occur with the AAA, the only enjoined party. (Tr. Vol. 2, 120:22-24). And even if Modern Piping only wanted to arbitrate through the AAA, Justice Streit conceded that, while the injunction was in place, Modern Piping could have started the dispute-resolution process for the alleged breach of the partial-occupancy clause, but Modern Piping chose not to. (Tr. Vol. 2, 122:16-20).

Section 4.2.5 of the contract provided that the "Design Professional" had the authority to "interpret the Contract Documents and judge the performance thereunder." (App. Vol. III, at 135). "Either party" was allowed to "make written request to the Design Professional" for interpterion of the contract, and all "[c]laims, disputes and other matters in question between the

[Modern Piping] and the [University] relating to the execution or progress of the Work or the interpretation of the Contract Documents" were required to be "referred initially to the Design Professional for recommendation which the Design Professional will render in writing within a reasonable time." (*Id.*)

The contract also tasked the Design Professional with "endeavor[ing] to secure faithful performance by both" the University and Modern Piping. Only if the Design Professional failed to do so would any remaining dispute be subject to arbitration. (*Id.*)

Modern Piping never raised the partial-occupancy issue with the Design Professional—not during the temporary injunction or after the injunction expired and the University was still partially occupying the Children's Hospital. (Tr. Vol. 1, 102:1-4; Tr. Vol. 2 p. 36:1-9). As Justice Streit conceded (and the face of the temporary injunction shows), that the injunction did not preclude Modern Piping from referring that dispute to the Design Professional. Nor did it enjoin the Design Professional—who was not an agent of the AAA—from doing his work. (Tr. Vol. 2, 22:10-20).

When the University asked Modern Piping's project manager, Michael Shive, why he did not submit the partial-occupancy breach to the Design Professional to begin the dispute-resolution process, Shive stated that he was too busy—that he was "spending a lot of

time trying to get the Children's Hospital built." (Tr. Vol. 2, 39:15–40:3).[3]

On February 21, 2017—more than a month after the district court dissolved the temporary injunction—Modern Piping sent the University a proposed partial-occupancy agreement. (Dkt. 279, Exh. 16). The University did not sign it and (again) Modern Piping did not refer the issue to the Design Professional. The "partial occupancy" continued until May 2016, when Modern Piping finished its work.

At the close of trial, the University moved for directed verdict and objected to the jury instructions on wrongful injunction and unjust enrichment. (App. Vol. I, at 113–121; Tr. Vol. 3, 23:18-28). First, the University argued that Modern Piping's claim was barred by sovereign immunity. (Tr. Vol. 3, at 24). The University also argued that restitution and unjust enrichment are unavailable remedies in a wrongful-injunction claim or when there are available

[3] As for the breach-of-claims that Modern Piping did submit to the Design Professional, the AAA arbitration panel entered its final decision on May 5, 2018, awarding Modern Piping $14,882,457 in damages, $283,098 in costs and expenses, $416,790 in attorney's fees, $931,978 in prejudgment interest that began accruing from the day Modern Piping filed for arbitration (and thus continued to accrue during the injunction, compensating Modern Piping for any delay), and another $102,910 in interest on retainage. (Dkt. 301, Final Award at 8, 11, 22).

contractual remedies. (*Id.* at 25:23–27:24). Next, the University argued that there was no evidence that, because of the injunction, Modern Piping bestowed a $12.7 million benefit onto the University or that Modern Piping lost a $2.5 million property or contract right. (*Id.* at 8:9–9:11). That loss and that benefit may have occurred *because of the breach* of the early occupancy clause, but the breach was not caused by the injunction. The injunction simply would have delayed arbitration, had Modern Piping referred the claim to the Design Professional and then to the AAA (or another arbitrator) for arbitration. (*Id).*

The court rejected the University's arguments, concluding that there was "substantial evidence to show that Modern Piping conferred a benefit in compliance with the wrongful injunction or had property or contract rights taken as a result of that injunction." (*Id.* at 11:21–25).

Given that rejection, the court instructed the jury that to establish its claim for wrongful injunction, "Modern Piping must prove the following propositions by preponderance of the evidence: (1) The University of Iowa's injunction was wrongful in its inception, or at least continued owing to some wrong on the part of the University of Iowa," and "(2) The need for restitution to avoid unjust enrichment." (App. Vol. I, at 132). The court also instructed the jury that Modern Piping "is entitled to recover damages in some

amount" if the company "conferred a benefit upon the University of Iowa in compliance with the wrongful injunction or had property or contract rights take thereunder," and the "circumstances surrounding the University of Iowa's receipt of this benefit makes it inequitable for the University of Iowa to retain the benefit." (App. Vol. I, at 134).

The jury returned a verdict for Modern Piping, determining that because of the injunction, the University was unjustly enriched by $12,784,177 and that Modern Piping expended $21,784.50 in costs and attorney's fees to dissolve it. (App. Vol. I, at 143–44).

SUMMARY OF THE ARGUMENT

This case should have never been tried because the district court did not have jurisdiction to add a new claim, and thus the entire trial was impermissible. When a judgment is affirmed on appeal and there is no remand with further instructions, "the case is over," meaning district court has no jurisdiction to entertain any new claims, for any reason. *Wellmark, Inc. v. Iowa Dist. Ct. for Polk Cnty.*, 890 N.W.2d 636, 643 (Iowa 2017). That happened here, so the district court's order granting leave to file the counterclaim—after the Court of Appeals affirmed final judgment—is void and the new judgment against the University must be reversed.

But even if the district court had authority to add a wrongful-injunction claim to the already-dismissed lawsuit, there are multiple reasons why the district court should have never let *this* wrongful-injunction claim go to the jury.

For starters, the district court should not have submitted the claim for unjust enrichment to the jury because unjust enrichment is not a proper remedy for a wrongful-injunction claim under Iowa law. While federal courts have allowed restitution in limited circumstances, this Court has never done so. And even under federal caselaw, "restitution" in a wrongful-injunction claim does not include disgorgement of profits.

Fundamentally, the $12.7 million unjust-enrichment damages fail because the basis for the claim—that the injunction somehow caused Modern Piping to lose the ability to arbitrate and recover damages for breach of the partial occupancy clause—is factually and legally deficient. Modern Piping could have submitted its partial-occupancy breach to the Design Professional, per the contract. And once the injunction was lifted, it could have arbitrated that claim with the AAA for arbitration. But Modern Piping chose to do neither.

In short, the injunction did not cause the breach of the partial-occupancy clause, nor did it foreclose Modern Piping's ability to recover damages for that breach. The injunction's sole effect on

partial occupancy would have been to delay arbitration with the AAA over the breach. But Modern Piping offered no evidence about the damage for delay (rather than the damage caused by the breach itself).

Indeed, Modern Piping submitted no evidence to the record because no evidence about damages for the delay can exist—Modern Piping chose to never start the arbitration process. Again, it did not file for arbitration with the AAA during the injunction *or after*. Instead, Modern Piping sued for a wrongful-injunction theory that does not fit. That theory cannot provide the remedy Modern Piping seeks on this record. The district court thus erred by submitting the unjust enrichment instruction to the jury. The $12.7 million award must be reversed.

The errors in trial rose, in part, based on incomplete caselaw in Iowa on wrongful injunctions and their proper remedy. Some of the most important guidepost precedents date back to the 1930s and have not been updated to account for changes in law or circumstance since then. But even with the aid of those precedents, the inchoate wrongful injunction jurisprudence may lead litigants astray. This case presents the Court with the opportunity to help build that jurisprudence to avoid future confusion. But the Court need not go so far, though, because Modern Piping's theory of the case—conflating the injunction damages with the breach of contract

damages—is so deficient that the Court can reverse on that basis alone.

ARGUMENT

I. The temporary injunction did not cause Modern Piping to be damaged by the University's partial occupancy, nor did it cause the University to be unjustly enriched by it.

A. Standard of review.

This is an equitable action and Modern Piping's request for unjust enrichment was based solely in equity. As a result, the trial is reviewed *de novo*. Indeed, both the Appellate Rules and Iowa Code require as much. *See* Iowa R. Civ. P. 6.907 ("Review in equity cases shall be *de novo*."); Iowa Code § 624.4 ("The evidence in actions cognizable in equity shall be presented on appeal to the appellate court, which shall try such causes anew.").

To be sure, the case was tried to a jury. But that does not change the equitable nature of the claim and relief requested, and so it does not change the standard of review. *See Frank v. Hollands*, 46 N.W. 979, 980 (Iowa 1890) (explaining when equitable cases are submitted to the jury, the supreme court is "not deprived of jurisdiction to try the cases de novo on appeal"); *Marksbury v. State*, 322 N.W.2d 281, 284 (Iowa 1982) (applying *de novo* review where the case's "main objective was to obtain" equitable relief, despite case being "one of mixed law and equity").

In any event, the standard on review is not dispositive. The $12.7 million judgment must be reversed even if review is for correction of errors at law and the evidence is viewed in the light most favorable to the verdict. The material facts are not disputed. For purposes of this appeal, the University is not disputing that it breached the partial occupancy clause; it is not challenging Modern Piping's claim that the breach caused $2.5 million in damage to Modern Piping; and it is not challenging that the University earned $12.7 million in profits during the first eight months of the partial occupancy. The question at issue is simply whether the injunction *caused* that breach or whether it took away Modern Piping's ability to recover damages in an arbitration for the breach of the partial-occupancy clause of the contract. As a matter of fact, law, and logic, it did not.

B. Error preservation.

The University made this argument in its written and oral motion for directed verdict, (App. Vol. I, at 113–121; Tr. Vol. 3, 8:9:–9:11), and in its motion for judgment notwithstanding the verdict, (App. Vol. I, 187–194; 148–157). The University also objected to the court's jury instruction allowing the jury to award unjust enrichment. (App. Vol. I, at113–121; Tr. Vol. 3, 25:6-22). The error is preserved.

C. The district court's injunction, which at most temporarily delayed a potential AAA arbitration, did not take away Modern Piping's ability to collect damages for the breach of the partial-occupancy clause.

Modern Piping's labyrinthine legal theory is carefully constructed but ultimately has no exit. Modern Piping's claim at trial followed this path:

(1) The University breached section 9.7.1 of the construction contract by occupying the Children's Hospital before construction was complete, and without entering into a separate agreement with Modern Piping to do so.

(2) Modern Piping's damages from that breach—that is, the estimated value of a partial-occupancy agreement—was $2.5 million. The benefit to the University of moving into the Children's Hospital early to treat patients was approximately $12.7 million in profits.

(3) The University got an injunction that *would have* temporarily stopped Modern Piping from arbitrating this breach-of-contract claim with the AAA, *if* Modern Piping had submitted the partial-occupancy claim to the Design Professional, and then filed for arbitration.

(4) A temporary delay in the possibility of arbitration (which Modern Piping never exercised) means that Modern Piping should

get unjust enrichment damages equal to the total profits garnered by the Children's Hospital during the pendency of the unchallenged and unenforced injunction.

The Parties' clash on whether that fourth point causally and legally follows from the first three points. Again, for purposes of this appeal, the University is not disputing that it breached the partial-occupancy clause, that the breach caused Modern Piping $2.5 million in damage, and that the University, by moving in early without an agreement, earned $12.7 million in profits. But those numbers are not causally connected to the injunction.

Had Modern Piping submitted that breach-of-contract claim to the Design Professional, the Design Professional might have told the University that it needed to enter an agreement with Modern Piping to partially occupy the hospital before it was finished. And if the University still refused to enter an agreement, Modern Piping could have submitted that claim to the AAA (or another arbitrator) and then arbitrated that claim once the injunction was lifted. But Modern Piping opted not to submit the breach-of-contract claim to the Design Professional at any point before, during, or after the injunction. Nor did Modern Piping attempt to arbitrate the breach after the injunction.

In other words, the injunction did not cause Modern Piping to lose its ability to obtain breach-of-contract damages against the

University in an arbitration. At most, the injunction would have delayed that arbitration during the time that the injunction prevented arbitration prior to its dissolution. But Modern Piping put on no evidence of how the potential delay in litigating the breach of contract caused Modern Piping any damage or unjustly enriched the University. Instead, Modern Piping's sole damage and unjust-enrichment testimony was based on the value of the underlying breach itself.

The complexity of the case and the legal theory undergirded the district court's denial of the University's motion for a directed verdict. The court explained that Modern Piping had the "right to negotiate a partial use agreement [under the contract] and the right to have that dispute arbitrated, neither one of which could be effectuated as a result of the injunction." (Tr. Vol. 3, 11:24–12:3). The University is not disputing the court's first two points, but disagrees with the court's final conclusion. Modern Piping did not lose the "right to negotiate a partial use agreement" because of the injunction. That "right" was the same before, during, and after the injunction.

To be sure, Modern Piping stated that the University would not enter into negotiations with Modern Piping on the topic (hence the claim of breach). But that was a choice by the University, not a restraint of the injunction. And, as explained above, Modern Piping

did not lose the right to arbitrate the claim for breach of the partial-occupancy clause; any potential arbitration over the partial-occupancy dispute was merely delayed during the injunction period.

Modern Piping tried a breach-of-contract claim under the guise of a wrongful injunction. It's key witness and project manager, Michael Shive, made that clear: "We're here today because the University of Iowa would not get into an agreement with me and Modern Piping as the principal for [partial occupancy], which was in their contract." (Tr. Vol. 2 p. 63:23-25). Fair enough, but if Shive and Modern Piping wanted damages for a breach of contract, they should have brought a breach-of-contract claim in arbitration. They did not.

This is not the first Iowa case in which a party made a conscious choice not to act and then later attempted to pin losses on an erroneously issued temporary injunction. In *Shadle v. Borrusch*, a landlord and farm tenant had a contract that governed how the corn crop was to be harvested and how the corn was to be divided between them. 125 N.W.2d 507, 508 (Iowa 1963). The tenant agreed to harvest the entire property, with half going to the landlord as rent and the other half going to the tenant. *Id.* But under the contract, the landlord's share had to be harvested first. *Id.* If the tenant failed to harvest the corn, the contract provided that the

landlord could hire someone else and charge the tenant for the cost. *Id.*

When it came time to harvest, the tenant started to harvest his share of corn first, instead of the landlord's share. *Id.* The landlord therefore sought and obtained a temporary injunction restraining the tenant from "picking corn in a manner different from that provided in the quoted agreement." *Id.* at 509.

In response to the injunction, the tenant stopped harvesting corn entirely—even though the injunction only prohibiting harvesting the tenant's share first. *Id.* The landlord then arranged for a third party to harvest much of the corn, but some was left unharvested. *Id.* The tenant then filed a wrongful-injunction counterclaim against the landlord. *Id.*

The matter proceeded to trial, and the tenant won—the court dissolved the injunction and the court entered judgment for the tenant on the wrongful-injunction counterclaim. *Id.* at 508. As damages, the court awarded the tenant the full value of his half of the corn, including the value of the corn that the tenant had left rotting in the field. *Id.*

On appeal, this Court reversed the judgment on the tenant's wrongful injunction claim because the injunction did not in fact prevent the tenant "from harvesting the rest of the crop or warranted his refusal to do so." *Id.* "Notwithstanding the

injunction," the tenant "could have proceeded to pick and crib [the landlord's] corn in the manner agreed upon." *Id.* at 510–11. Because the tenant's lost profits on the unharvested corn was not caused by the injunction, "judgment on the counterclaim [was] based on findings with which [the Court] could not agree."[4] *Id.*

The same is true here. Notwithstanding the injunction, Modern Piping could have submitted its partial-occupancy claim to the Design Professional and ultimately arbitrated its claim—albeit in a delayed manner. Whatever damages there might have been for the delay in obtaining a judgment in arbitration—of which there are none since Modern Piping never started the dispute-resolution process, even after the injunction was dissolved—those damages would not have been either $12.7 million in profits or $2.5 million

[4] The landlord acknowledged that the tenant's portion of the corn that the landlord harvested still belonged to the tenant, and thus under the agreement the landlord had to pay the tenant half of the value of that *harvested* corn. The court conceptualized the landlord's conceded duty to remit half the value of the *harvested* corn (less the cost of hiring a new picker) as avoiding unjust enrichment, but this unjust enrichment was not a remedy ordered by the court for the wrongful injunction; it was a separate matter. *Id.* at 510–11. Instead, the court noted prior precedent that "a tenant's matured crops belong to him, even after the expiration of a lease, subject to the landlord's lien." *Id.* Because the landlord could not justly retain the tenant's share of the harvested crop, remand was required to determine its value (less the cost of paying a third party to harvest).

in costs. At most, those damages would have been the interest on any potential arbitration judgment from the date that Modern Piping submitted the claim to arbitration and the date the injunction was dissolved.[5]

Other wrongful-injunction actions in Iowa have similarly failed when the injunction did not cause the harm alleged by the enjoined party, even when the injunction was ultimately withdrawn or dissolved. *See, e.g., Marks v. Jordan*, 208 N.W. 296, 296 (Iowa 1926) (finding no causation and reversing jury verdict because plaintiff offered insufficient evidence to link the foul odor on his property to the injunction prohibiting him from opening an embankment); *Schmidt v. Meredith*, 228 N.W. 568, 568 (Iowa 1930) (finding no causation and affirming jury verdict for defendant because plaintiff was only enjoined from selling or otherwise disposing of a note and mortgage, and plaintiff had previously stipulated she had no intent to sell or otherwise dispose of the note and mortgage). And successful wrongful-injunction actions show losses directly caused by the wrongful preliminary injunction. *Behrens v. McKenzie*, 23 Iowa 333, 340 (1867) (finding causation and affirming jury verdict because the "injunction was iron-clad"

[5] That remedy is clearer given the context that Modern Piping obtained such interest on the claims it chose to arbitrate.

and indeed prohibited the party from using his land, causing actual losses).

The temporary injunction neither harmed Modern Piping (nor profited the University) from the partial occupancy, the sole basis for Modern Piping's unjust enrichment claim. The award for unjust enrichment must therefore be reversed.

II. Even if Modern Piping had established causation between the breach and the injunction, unjust-enrichment damages are not available.

A. Error preservation and standard of review.

The University argued on directed verdict and in its motion for judgment notwithstanding the verdict that, under Iowa law, unjust-enrichment damages—especially in the form of disgorgement of profits—are unavailable in a wrongful-injunction claim. (Dkts. 264, 318, 330). As well, the University argued for remittitur after trial. (Dkt. 323). The argument is preserved. And the viability of an unjust enrichment claim is reviewed de novo. *Iowa Waste Sys., Inc. v. Buchanan Cnty.*, 617 N.W.2d 23, 30 (Iowa Ct. App. 2000) ("As a claim for unjust enrichment is rooted solely in equitable principles, our review is de novo.").

B. Unjust enrichment damages, including disgorgement of profits, are not available for a wrongful-injunction claim under Iowa law.

The caselaw and established jurisprudence concerning wrongful injunctions in Iowa is spare. The most recent case, *Financial Marketing Services, Inc. v. Hawkeye Bank & Trust of Des Moines*, does not discuss the substantive elements of the claim but does note that a wrongful injunction is a separate cause of action. 588 N.W.2d 450, 460 (Iowa 1999). The case before that, *Shadle v. Borrusch*, held that the district court erroneously awarded the enjoined party damages for harm that was not caused by the injunction. 125 N.W.2d at 510–11. But that case, too, does not discuss the elements or underlying justification for the claim.

We must go back to 1938 to find the substantive law that Modern Piping (and the district court) relied on. In *City of Corning v. Iowa-Nebraska Light & Power Co.*, this Court held that parties are entitled to compensation for damage they suffer as a result of a dissolved temporary injunction, and that in "determining the amount of damages to be allowed upon the dissolution of an injunction restraining one from exercising acts of ownership over his real property, the courts are not governed by arbitrary rules, but proceed upon equitable principles; the defendant being entitled to such damages *as are the necessary and proximate result of such deprivation*." 282 N.W. at 794.

No Iowa court has yet relied on that principle. But that is the sole basis on which Modern Piping argued, and the district court agreed, that "damage as are the necessary and proximate result of" the injunction can equate to disgorgement of the enjoining party's profits. That was error and a wrongful extension of this Court's precedent.

Iowa's early cases discussing wrongful-injunction remedies are more generous than modern federal and state courts. Those courts follow principles established by the English High Court of Chancery, where a party subject to an injunction that is ultimately dissolved cannot collect damages unless the original plaintiff filed an injunction bond[6] or that plaintiff could prove a separate claim of malicious prosecution. *See Gaume v. New Mexico Interstate Stream Comm'n*, 450 P.3d 476, 480 (N.M. Ct. App. 2019) (discussing the history of wrongful-injunction actions).

Some federal courts have also stated that, even without any bond or malicious prosecution, a wrongfully enjoined party can seek restitution. *Bryant v. Mattel, Inc.*, 2010 WL 11463865 (C.D. Cal. Oct. 5, 2010). But restitution, at least in that context, does not

[6] *See In re UAL Corp.*, 412 F.3d 775, 780 (7th Cir. 2005) (Easterbrook, J.) (explaining that "the no-damages rule reflects the norm in American litigation that the parties bear their own expenses" and that "the injunction bond creates a *limited* exception to that norm") (emphasis added).

equate to disgorgement of profits. Instead, "[n]one of the case law on this issue allows a wrongfully enjoined party to recover all 'unjust enrichment' caused by the injunction. Most of the cases instead limit recovery to amounts compelled to be transferred by the injunction itself." *Id.*

Restitution as a remedy for a wrongful injunction "cannot be awarded" when the enjoined party "has lost nothing which the [enjoining party] has received as a result of the injunctive orders of the court." *Greenwood Cnty. v. Duke Power Co.*, 107 F.2d 484, 487 (4th Cir. 1939).[7] That follows the logic of wrongful injunction by awarding compensation to the enjoined party to restore it to pre-injunction status. It does not give the enjoined party a windfall, nor is the remedy punitive. The $12.7 million judgment for disgorgement of profits here is accurately characterized as both punitive and a windfall.

Judge Easterbrook explained restitution's limits well in *In re UAL Corp.* 412 F.3d 775 (7th Cir. 2005). Noting the "that restitution

---

[7] *See also Monolith Portland Midwest Co. v. R.F.C.,* 128 F. Supp. 824, 878 (S.D. Cal. 1955) ("Under these authorities and the facts of this case no recovery may be had by R.F.C. on the theory of restitution. *No benefit was received by Monolith which was in fact taken from R.F.C.* There is no basis for the application of the equitable cause of action of money had and received.") (emphasis added).

'might be' an exception to the norm that compensation for an erroneous injunction cannot exceed the bond," he explained that restitution in this context intends to return the enjoined party to the status quo. *Id.* at 789.

For example, where "[a] nursing home claims a right to compensation at high rates for services rendered to clients in the Medicaid program and obtains a preliminary injunction requiring state officials to pay the claimed rates," the "court may require the nursing home to return the excess compensation, in order to give full effect to the state's schedule of payments." *Id.* at 780. And "[l]ikewise, if a preliminary injunction compels Defendant to hand a valuable painting over to Plaintiff, then on the injunction's reversal Plaintiff must return the painting." *Id.* As restitution is an equitable remedy, and here an equitable remedy attempting to right a wrongfully issued injunction, damages above what is required to return the enjoined party to the pre-injunction status quo are inappropriate.

This Court has not and should not recognize disgorgement of profits as a remedy in a wrongful-injunction action. There is no reason to break new ground and go beyond what this Court said in *City of Corning*, which is that the enjoined party can receive "such damages as are the *necessary and proximate result of such deprivation*." 282 N.W. at 794. And if this Court is inclined to

modernize its jurisprudence, it should conform available remedies for wrongful injunctions to align more closely with federal law.

III. The district court did not have jurisdiction to add the wrongful injunction claim to this case.

A. Error preservation and standard of review.

The University argued in its resistance to Modern Piping's motion for leave to file the wrongful injunction claim that the district court did not have jurisdiction to add new claims to this case. (App. Vol. I, at 34–35). Because the district court issued a definitive and dispositive ruling on that question, error is preserved. *See Schooler v. Iowa Dep't of Transp.,* 576 N.W.2d 604, 607 (Iowa 1998) ("We find that the DOT properly preserved error by raising the issue in its motion to dismiss. The district court's decision on that motion was definitive and dispositive of the issue. Requiring a party to file additional motions when the district court has already addressed the precise issue in a prior ruling would be a waste of judicial resources."). And "[t]he standard of review for district court determinations regarding authority and jurisdiction of a district court are . . . reviewed for correction of errors at law." *In re 2018 Grand Jury of Dallas Cnty.*, 939 N.W.2d 50, 55 (Iowa 2020).

B. Because the district court entered final judgment on the only claim in the lawsuit, and the Court of Appeals affirmed that judgment, no new claims could be added to this case.

This case started with the University petitioning solely for injunctive relief against AAA, and the district court dismissed that petition in its entirety on April 27, 2017. (Dkt. 40). Then, the district court granted the AAA's motion for summary judgment. (*Id.*). The Court of Appeals affirmed that judgment, in its entirety, on January 9, 2019. That ended the case, so the district court had no jurisdiction to allow Modern Piping to add a wrongful-injunction claim. Once a court enters final judgment and that judgment is affirmed on appeal, the district court has no discretion to add new claims on the lawsuit. *Wellmark, Inc.*, 890 N.W.2d at 642.

Here, the district court claimed that it had authority to allow Modern Piping to add claims after judgment was entered because Modern Piping was an intervenor, not an original party. (App. Vol. I, at 48). That is a distinction without a difference. Intervenors are parties; they get no greater rights than a plaintiff or defendant, and their presence does not expand the district court's jurisdiction.

The court also concluded that it retained jurisdiction to add new claims because, before final judgment, Modern Piping had filed a motion for attorney fees and costs related to the dissolution of the injunction. (*Id.*). But that attorney-fees motion was ancillary to the

temporary injunction and thus that attorney-fees motion was within the ancillary jurisdiction the court retains "during and after appeal from its final judgment to enforce the judgment itself." *Wellmark*, 890 N.W.2d at 643. Indeed, that motion must have been ancillary because the summary judgment was a final, appealable order. But ancillary jurisdiction to consider motions for attorney fees, even while a case is pending on appeal, does not give the district court authority "to render a new judgment" on new claims. *Franzen v. Deere & Co.*, 409 N.W.2d 672, 674 (Iowa 1987). That power ends with the dismissal of the case and the affirmance of that order. *Id.*

That authority to add claims is what Modern Piping sought from the court in its motion for a new cause of action—to enter a new judgment, even after the court had entered a final judgment dismissing the case and the Court of Appeals affirmed it. Because a wrongful-injunction claim, with a request for damages, is more than just a request for attorney's fees; it is a separate cause of action. *See Hawkeye Bank & Tr. of Des Moines*, 588 N.W.2d at 460 (explaining "[u]pon dissolution of the injunction, the enjoined party may bring an action against the party who sought the injunction as well as its surety to recover damages," and noting that the appellant had filed a separate petition, in a separate case, to do so).

Thus, if Modern Piping wanted to bring that new cause of action, it needed to file an original action because final judgment had been entered in this case, so the district court was without jurisdiction to consider new causes of action. Because Modern Piping instead chose to add its claim to an otherwise closed case, its new judgment for wrongful injunction is void.

IV. Modern Piping's wrongful-injunction claim is barred by sovereign immunity.

Additionally and alternatively, this claim should have been dismissed because the University retained its sovereign immunity under Iowa Code section 669.14(4) (retaining immunity for abuse-of-process and malicious-prosecution claims).

A. Error preservation and standard of review.

The University preserved error on whether Modern Piping's wrongful-injunction action was barred by the Iowa Tort Claims Act by raising the jurisdictional issue throughout the proceedings. It first raised the issue in Resistance to Modern Piping's Motion to Add Counterclaims. (App. Vol. I, at 35–38). It raised the issue again in a Motion to Dismiss for lack of jurisdiction. (App. Vol. I, at 60–70). The district court issued a definitive and dispositive ruling on the matter. (App. Vol. I, at 79–82); *Schooler,* 576 N.W.2d at 607. And sovereign immunity was raised while objecting to the jury instructions. (Tr. Vol. 3, 23:18–24:25; 28:20–29:22). The court

overruled the objection, noting it's prior ruling. (Tr. Vol. 3, 32:18-20). Error is preserved.

This Court reviews "determinations regarding authority and jurisdiction of a district court are . . . reviewed for correction of errors at law." *In re 2018 Grand Jury of Dallas Cnty.*, 939 N.W.2d at 55.

B. Wrongful-injunction actions sound in tort, and the district court erred in allowing Modern Piping to bring a tort claim, and effectively seek punitive damages, outside the Iowa Tort Claims Act.

Courts are divided on whether wrongful-injunction claims may be brought against government defendants. One line of cases recognizes that seeking "consequential damages" arising from a wrongful injunction is barred because the claim is the functional equivalent of malicious prosecution or abuse of process. *See, e.g.*, *Consumer Fin. Prot. Bureau v. Howard*, No. 8:17-cv-00161, 2017 WL 10378954, at *2 (C.D. Cal. Oct. 13, 2017) (barring claims because the "common law right to be made whole at the conclusion of litigation is limited to an independent action for abuse of process or malicious prosecution" and no statute waived federal government immunity); *Fed. Trade Comm'n v. Apply Knowledge, LLC*, No. 2:14-cv-00088, 2015 WL 12780893, at *1–2 (D. Utah Apr. 9, 2015) ("The Sonnenberg Companies' wrongful injunction claim against the FTC does not sound in contract; it sounds in tort,

resembling a claim for malicious prosecution or wrongful use of civil proceedings"); *Fed. Trade Comm'n v. BF Labs Inc.*, 4:14–CV–00815, 2015 WL 12834056, at *2 (W.D. Mo. June 15, 2015) ("In its wrongful injunction counterclaim, BFL alleges that Plaintiff sought and obtained the TRO based on 'fundamentally flawed, incomplete, misleading and ultimately incorrect allegations' and that Plaintiff 'never had proper grounds for requesting and obtaining the TRO, asset freeze, and receivership.' . . . Because this counterclaim rests on the alleged malicious prosecution and abuse of process that occurred when Plaintiff moved for the TRO, the Court concludes this counterclaim is not covered by the FTCA's waiver of sovereign immunity.").

Another line of cases allows governments to be sued following a dissolved injunction. *See, e.g.*, *Provident Mgmt. Corp. v. City of Treasure Island*, 796 So.2d 481, 486–87 (Fla. 2001) (holding government waives immunity by affirmatively seeking an injunction); *State ex rel. Schmidt v. Nye*, 440 P.3d 585, 589–90 (Kan. Ct. App. 2019) (same).

Here, Modern Piping repeatedly told the jury that the University had ill-intent, that it defrauded the court, and that it knew the injunction was frivolous. Indeed, much of Justice Streit's testimony was spent delving into matters wholly irrelevant to a wrongful-injunction claim—which resembles strict liability—but

highly relevant to a malicious-prosecution or abuse-of-process claim.

Justice Streit testified that an *ex parte* injunction is rare, that it "should be rarely granted, because it just lessens the credibility of our court system," (Tr. Vol. 2, 87:22-25), and (over objection) that he has never "been involved in a case where a commercial entity asks for an *ex parte* injunction." (Tr. Vol. 2, 84:25–85:5). He also complained that the University did not list Modern Piping as a defendant because "we [referring to Modern Piping] should be the ones here if we're going to argue about arbitrability." (Tr. Vol. 2, 93:5-6). By suing AAA rather than Modern Piping, Justice Streit told the jury "it was just totally violative of any notions we have of fair process, of due process." (Tr. Vol. 2, 94:22–95:2). Justice Streit also testified that the University, through its attorneys, "funneled all the information around the judge," and he implied that the district court entered the injunction because the "University of Iowa, of course, it's a big player here in Iowa City, but they're trusted people, and the judge put some trust there." (Tr Vol. 2, at 94:15-21). Modern Piping's malicious-prosecution framing was successful—it obtained a damages award that bore no relationship to its actual losses in unwinding the injunction, but instead amounted to a punitive damages award against the University.

It is one thing to say an injunction was "wrongful" because it was erroneously issued. It is another, however, to say that the injunction was "wrongful," because it was maliciously sought or a knowingly improper use of the judicial process. And that is how Modern Piping tried its case and how the district court, over the University's objection, allowed it to be tried. But the State and its subdivisions have not waived sovereign immunity over abuse-of-process and malicious-prosecution claims. Nor can the State's sovereign immunity be defeated through artful pleading—if the essence of the claim presented is an exempted tort, then the State retains its immunity. *Minor v. State*, 819 N.W.2d 383, 406 (Iowa 2012).

Lee v. State does not control here. 844 N.W.2d 668 (Iowa 2014). *Lee* turned on whether a party's requested relief was retrospective or prospective, such that it could fall within the *Ex Parte Young* waiver of sovereign immunity. *Id.* at 680. The court concluded that relief following an order for an employee's reinstatement was prospective, and thus did not violate sovereign immunity. *Id.* at 681–82. Here, conversely, Modern Piping seeks no refuge in an *Ex Parte Young* prospective-relief waiver of immunity, instead exclusively seeking substantial retrospective damages.

Lee indeed discussed established law that litigation conduct can sometimes cause an implied waiver of sovereign immunity for

certain claims. *Id.* at 681, 683 (citing *Lapides v. Bd. of Regents of Univ. Sys.*, 535 U.S. 613 (2002)). But *Lee* did not hold that all litigation efforts are affirmative conduct that waives liability for any and all possible claims. If that were true, the abuse-of-process and malicious-prosecution exemptions would be rendered inoperative—the claims exclusively flow from litigation conduct.

Because the gravamen of Modern Piping's case is malicious prosecution and abuse of process, the claim should have been dismissed for want of jurisdiction. *Feltes v. State*, 385 N.W.2d 544, 546 (Iowa 1986).

V. The district court improperly awarded prejudgment interest.

Finally, even if Modern Piping could show that the injunction caused the alleged harm; and even if its novel disgorgement theory is permissible; and even if the district court had jurisdiction to add new claims to a dismissed, final action; and even if sovereign immunity did not bar the claim; the ultimate award still must be amended because the district court erred in assessing prejudgment interest dating back to January 1, 2018.

A. Error preservation and standard of review.

The State preserved error by resisting Modern Piping's Motion for Judgment of Error with Inclusion of Prejudgment Interest. (Dkt. 328). Challenges to prejudgment interest have been

reviewed for correction of errors at law. *Gosch v. Juelfs*, 701 N.W.2d 90, 91 (Iowa 2005).

B. Prejudgment interest is neither equitable nor appropriate because Modern Piping was not deprived of the rightful use of the Children's Hospital's profits during the proceedings.

The "consonance between the purposes of restitution and the purposes of prejudgment interest" lies in making the wronged party whole—returning to them what they should have had all along and paying for the period of deprivation. *State v. Hagen*, 840 N.W.2d 140, 154 (Iowa 2013) (collecting cases). But Modern Piping had no property interest in the University's profits from operating the Children's Hospital, nor would it have received the $12.7 million from the University but for the injunction. Thus, prejudgment interest plays no equitable role in this case and "would not effectuate the legislative purpose of compensating a [party] for a loss of use of the funds." *In re Marriage of Baculis*, 430 N.W.2d 399, 401 (Iowa 1988) (quoting *Saber v. Saber*, 379 N.W.2d 478, 480 (Mich. Ct. App. 1985)). Because Modern Piping did not lose the rightful use of its own funds or property through these proceedings, prejudgment interest serves no equitable purpose.

Iowa caselaw has "drawn a more careful distinction" between "equity cases and actions at law" when exempting judgments from prejudgment interest. *Id.* at 402. For example, if "it cannot be said

that [the awarded party] was deprived of the use of the property or its value during the pendency of the proceedings," then prejudgment interest does not make the awarded party whole, and instead "amount to unjust enrichment . . . to allow [the awarded party] to collect interest on money that was not owed her until the judgment was entered." *Id.* at 403. Modern Piping was not owed the Children's Hospital's $12.7 million in profits until judgment was entered, and prejudgment interest on the sum would result in improper enrichment to Modern Piping.

But even if prejudgment interest could apply, Modern Piping's $12.7 million disgorgement theory is not the type of "complete damages" that could be subject to prejudgment interest under Iowa Code section 535.3. Unlike other prejudgment interest cases in which the damages were agreed to and readily ascertainable, Modern Piping's own expert opined on a possible range of damages—$2,280,243 to $12,784,177. (Dkt. 280, Ex. 18, 5–6). Within that range, the jury chose Modern Piping's disgorgement theory, deciding it was equitable for Modern Piping to receive the upper limit of the expert's possible range of damages. But the very fact that a range of different damages was presented to the jury belies any conclusion that Modern Piping's damages were complete and readily ascertainable before judgment.

Catipovic v. Turley is instructive. There, a dispute surrounding construction of ethanol production facilities led to a lawsuit, and a jury awarded the plaintiff $2 million for his claim of unjust enrichment. No. C-11-3074, 2015 WL 401374, at *1 (N.D. Iowa Feb. 17, 2015). As Modern Piping does here, the plaintiff argued his damages were complete before judgment—indeed before litigation was even initiated—and thus prejudgment interest was appropriate. *Id.* Judge Bennett disagreed, explaining "interest runs from the time money becomes due and payable, and in the case of unliquidated claims this is the date they become liquidated, ordinarily the date of judgment." *Id.* at *2 (quoting *Midwest Mgmt. Corp. v. Stephens*, 353 N.W.2d 76, 83 (Iowa 1984)). Because the unjust enrichment verdict resulted from "the profit of the Hungarian ethanol plant that [the defendant] later built," his damages were not complete until the jury assessed the nature of the defendant's enrichment, and the interest must run from the date of judgment. *Id.*

So too here. The $12.7 million award was not known or liquidated until the jury rendered its verdict. Under section 535.3, interest must similarly run from the date of judgment.

CONCLUSION

For the stated reasons, the verdict and award must be reversed. The University is entitled to judgment because Modern Piping failed to show the injunction caused its claimed damages. Additionally, the district court erred by allowing Modern Piping to add a claim to a final, dismissed case. The court further erred by allowing the claim to invade the State's sovereign immunity. Even if Modern Piping supplied a causal link, the disgorgement award is unauthorized and contrary to Iowa law, and thus must be vacated or remitted. And if some amount of damages is affirmed, the court erred in assessing prejudgment interest.

REQUEST FOR ORAL ARGUMENT

The State requests to be heard in oral argument.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

/s/ Tessa M. Register
TESSA M. REGISTER
Assistant Solicitor General

/s/ Ryan Sheahan
RYAN SHEAHAN
Assistant Attorney General
Iowa Department of Justice
1305 East Walnut Street, 2nd Fl.

Des Moines, Iowa 50319
Ph: 515-281-5112
Tessa.Register@ag.iowa.gov
Ryan.Sheahan@ag.iowa.gov
ATTORNEYS FOR APPELLANTS

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) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 9,025 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Tessa Register
Assistant Solicitor General

CERTIFICATE OF FILING AND SERVICE

I, Tessa M. Register, hereby certify that on the 5th of October, 2023, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal with via EDMS.

/s/ Tessa Register
Assistant Solicitor General