

IN THE SUPREME COURT OF IOWA

Supreme Court No. 19-0241
Kossuth County No. LACV027055

WMG, L.C.,

Defendant-Appellant,

v.

NCJC, Inc.,

Plaintiff-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR KOSSUTH COUNTY
THE HONORABLE CARL J. PETERSEN

**DEFENDANT-APPELLANT'S FINAL REPLY BRIEF AND
REQUEST FOR ORAL ARGUMENT**

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED BY FAILING TO INCLUDE POST-OFFER ATTORNEY FEES IN ITS AWARD OF COSTS TO WMG UNDER IOWA CODE §§ 677.10 AND 625.22.

Cases

Brockhouse v. State, 449 N.W.2d 380, 383 (Iowa 1989)

Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992)

CSS2 Enterprise vs. Farmers Coop. Co., 2015 WL 4935834, 2-3, 7 & 10 (Iowa App.)

Dutcher v. Randall Foods, 546 N.W.2d 889, 895-897 (Iowa 1996)

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Sheer Construction, Inc. v. W. Hodgman and Sons, Inc., 326 N.W.2d 328, 330-331, 333-334 (Iowa 1982)

Tilton v. Iowa Power & Light Co., 94 N.W.2d 782 (Iowa 1959)

Weaver Construction Co. v. Heitland, 348 N.W.2d 230, 232-233 (Iowa 1984)

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Iowa Code § 472.33 (now Iowa Code § 6B.33)

Iowa Code § 573.16

Iowa Code § 625.22

Iowa Code § 677.10

Iowa Code §§ 677.4-6

Iowa Code § 677.7

Iowa Code § 717A.3

Iowa Code Chapter 677

II. WHETHER THE DISTRICT COURT ERRED IN AWARDING POST-OFFER ATTORNEY FEES TO NCJC WHEN NCJC RECOVERED LESS THAN THE WMG'S IOWA CODE CHAPTER 677 OFFER AND BECAUSE IOWA CODE § 625.25 PRECLUDES NCJC FROM RECOVERING ANY FEES.

Cases

Boyle v. Alum-Line, 773 N.W.2d 829, 833 (Iowa 2009), quoting *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897 (Iowa 1990)

Sheer Construction, Inc. v. W. Hodgman and Sons, Inc., 326 N.W.2d 328 (Iowa 1982)

Statutes

Iowa Code § 625.22

Iowa Code § 625.25

Iowa Code § 677.10

Iowa Code § 677.4

III. WHETHER THE DISTRICT COURT ERRED BY FAILING TO SEGREGATE NCJC'S PRE-OFFER ATTORNEY FEES FROM ITS POST-OFFER ATTORNEY FEES SO EACH COULD BE EVALUATED SEPARATELY.

Cases

Boyle v. Alum-Line, 773 N.W.2d 829 (Iowa 2009), quoting *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897 (Iowa 1990)

Statutes

Iowa Code § 677.10

IV. WHETHER THE DISTRICT COURT ERRED BY FAILING TO AWARD WMG ITS ATTORNEY FEES UNDER IOWA CODE § 625.22 ON THOSE CLAIMS FOR WHICH WMG PREVAILED.

Iowa Code § 625.22

ROUTING STATEMENT

This case should be transferred to the Court of Appeals as it involves the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

A. Nature of the Case.

Because NCJC's Statement of the Case is primarily "argument", Defendant-Appellant WMG will make its response in the "Argument" sections below.

It is significant however, that NCJC does not dispute that had it accepted WMG's Iowa Code § 677.4 offer, not only would NCJC have recovered more money - \$75,000 rather than its \$41,453.57 jury verdict - it would have come without the additional and unnecessary legal expense associated with a trial which is now the cause of this appeal.

STATEMENT OF FACTS

NCJC does not dispute that nearly as soon as it reduced its reimbursement claim to \$74,446.09, it could have terminated this litigation by accepting WMG's \$75,000 offer to confess. (11/17/17 Notice of

Defendant's Offer to Confess Judgment; App. 58). NCJC does not dispute that after rejecting WMG's Iowa Code § 677.4 offer that NCJC incurred significant attorney fees for five more months of legal efforts and a trial which recovered, not more than \$75,000, but less – a \$41,453.57 jury verdict.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY AWARDED WMG COSTS UNDER IOWA CODE § 677.10 BUT INCORRECTLY FAILED TO INCLUDE WMG'S POST-OFFER ATTORNEY FEES AS PART OF COSTS.

A. Scope/Standard of Review and Preservation Of Error.

NCJC does not dispute that WMG preserved error.

B. The Trial Court Incorrectly Applied Iowa Code § 625.22 Which Mandates that WMG's Post-Offer Attorney Fees Should Be Taxed as Costs Under Iowa Code § 677.10.

NCJC agrees that under Iowa Code § 677.10, WMG, not NCJC, is the winning, successful and prevailing party for the post-offer period and entitled to costs. (NCJC Brief, pp. 13-14). A controlling issue is what are considered "costs." NCJC's resistance is almost entirely based on its misapplication of two cases: *Dutcher v. Randall Foods*, 546 N.W.2d 889

(Iowa 1996) and *Weaver Construction Co. v. Heitland*, 348 N.W.2d 230 (Iowa 1984).

In *Dutcher*, the plaintiff was awarded more than defendant's offer to confess and fees were awarded under a combination of a federal statute and the Iowa Civil Rights statute. *Dutcher v. Randall Foods*, 546 N.W.2d at 895-897. Simply stated, *Dutcher* was not an Iowa Code Chapter 677 case.

Weaver specifically makes a pre-offer/post-offer distinction for taxation of Iowa Code Chapter 677 costs. *Weaver Construction Co. v. Heitland*, 348 N.W.2d at 232-233. WMG agrees. *Weaver* also says that Iowa Code Chapter 677 is not an independent grant of fee shifting and holds that fees are not costs unless a statute or agreement declares otherwise. *Id.* WMG again agrees. In this case, a statute - Iowa Code § 625.22 - does say otherwise by providing: "*When judgment is recovered upon a written contract containing an agreement to pay an attorney fee, the court shall allow and tax as a part of the costs, a reasonable attorney fee to be determined by the court.*" It is the parties' agreement that shifts fees through the combined effect of Iowa Code § 625.22 and Iowa Code Chapter 677. WMG will provide further analysis of *Dutcher* and *Weaver* below.

NCJC's Brief provides no real response to the plain language Iowa Code § 625.22, which says that attorney fees are "considered *part of the costs.*" (NCJC Brief, pp. 16-18). Further, NCJC does not dispute that the lease was "*a written contract containing an agreement to pay an attorney fee.*" (11/29/18 Ruling, p. 2; Ex. 1, ¶ 20; App. 265-266, 314). Because Iowa Code § 625.22 mandates that attorney fees are "costs," that means WMG can recover its post-offer fees as costs and NCJC cannot recover its post-offer fees as costs.

NCJC Incorrectly Argues "No Iowa Cases Support WMG's Position"

Contrary to NCJC's argument that "[n]o Iowa Cases Support WMG's Position" (NCJC Brief, pp. 18-21), WMG did cite to caselaw supporting its position that attorney fees in this case are "*costs.*" *CSS2 Enterprise vs. Farmers Coop. Co.*, 2015 WL 4935834, 10 (Iowa App.) supports WMG's argument that when a statute – here Iowa Code § 625.22 - taxes attorney fees as costs then attorney fees are considered costs under Iowa Code § 677.10. *CSS2 Enterprise* also cites to three published Iowa cases where attorney fees are considered court costs, namely: *Brockhouse v. State*, 449 N.W.2d 380 (Iowa 1989), *Sheer Construction, Inc. v. W. Hodgman and Sons, Inc.*, 326 N.W.2d 328 (Iowa 1982), and *Tilton v. Iowa Power & Light Co.*, 94

N.W.2d 782 (Iowa 1959).

CSS2 Enterprise involved both an offer to confess judgment and Iowa Code § 717A.3, which provides a remedy for damage to crops including “reasonable attorney fees, which shall be taxed as part of the costs.” In *CSS2 Enterprise*, the defendant offered to confess judgment under Iowa Code § 677.7 for a sum certain with no mention of costs. *CSS2 Enterprise vs. Farmers Coop. Co.*, 2015 WL 4935834, 2-3 (Iowa App.) Plaintiff accepted and then asked that attorney fees be taxed as part of the court costs. *Id.* Defendant resisted. *Id.* The court held that under Iowa Code § 677.7, “costs follow” and then taxed attorney fees as part of court costs because of the statute taxing fees ‘as part of the costs.’ *CSS2 Enterprise vs. Farmers Coop. Co.*, 2015 WL 4935834, 7 & 10 (Iowa App.)

Brockhouse v. State was a condemnation case involving then Iowa Code § 472.33 (now Iowa Code § 6B.33) which awards attorney fees to the condemnee, if he recovers more than what the compensation commission awarded. *Brockhouse v. State*, 449 N.W.2d 380 (Iowa 1989). There the compensation commission assessed damages at \$6,400. *Id.* The state then made an Iowa Code § 677.7 offer to confess for \$10,000, which the plaintiff rejected and the jury awarded only \$7,500. *Id.* The district court then went

ahead and awarded the condemnee costs, including over \$9,000 in attorney fees under Iowa Code § 472.33 (now § 6B.33) which the state appealed. *Id.* The Supreme Court, in striking all attorney fees after the Iowa Code § 677.7 offer, makes it clear – without the need for much discussion - that attorney fees are considered costs:

The trial court's award of attorney fees for the Brockhouses' attorneys included fees for services provided after the time of the department's offer. They are not entitled to these fees. See Iowa Code § 677.10 (1987). We reverse and remand to the trial court for recomputation of costs.

Brockhouse v. State, 449 N.W.2d 380, 383 (Iowa 1989).

Brockhouse is almost factually indistinguishable from the NCJC-WMG facts and directly contradicts NCJC's Brief Point II argument where it urges NCJC was the post-offer prevailing party. (NCJC Brief, pp. 12-18).

The next case, *Sheer Construction, Inc. v. W. Hodgman and Sons, Inc.*, 326 N.W.2d 328 (Iowa 1982) involved a late completion dispute between two contractors on an Iowa DOT project. That case also involved an oral offer to confess judgment for \$3,500 made under Iowa Code §§ 677.4-6 and Iowa Code § 573.16 which provides, in part, that: "*the court may tax, as costs, a reasonable attorney fee in favor of any claimant for*

labor or materials who has, in whole or in part, established a claim.” Sheer Construction, Inc., 326 N.W.2d at 333. Sheer Construction refused the offer, and after trial, the court granted it a judgment for only \$3500 – the same as the offer to confess - and then assessed costs against Sheer. Sheer Construction, Inc., 326 N.W.2d at 330-331. Although the court denied Sheer fees because it did not recover more than the offer to confess, the court clearly implies that when a statute includes fees as costs, then attorney fees are “costs”, by stating: “Even where attorney fees are to be included in costs, such fees need not be specifically mentioned.” Sheer Construction, Inc. v. W. Hodgman and Sons, Inc., 326 N.W.2d 328, 334 (Iowa 1982).

The last case, *Tilton*, like *Brockhouse*, was also a condemnation case involving § 472.33 (now § 6B.33) where the court held that “‘reasonable attorney fees to be taxed by the court’ are included with the term of ‘costs’ of appeal”. *Tilton v. Iowa Power & Light Co.*, 94 N.W.2d 782 (Iowa 1959), (partly quoting from Iowa Code § 472.33 now Iowa Code § 6B.33).

The four cases cited above, like the NCJC-WMG case, each contain a statute – here Iowa Code § 625.22 – which taxes attorney fees as costs.

The Cases Cited by NCJC Are Legally and Factually Distinguishable, and Inapplicable

The cases cited by NCJC, *Weaver Construction Co. v. Heitland*, 348

N.W.2d 230, 232 (Iowa 1984), *Coker v. Abell-Howe Co.*, 491 N.W.2d 143 (Iowa 1992), *Dutcher v. Randall Foods*, 546 N.W.2d 889 (Iowa 1996), and *Lee v. State*, 874 N.W.2d 631 (Iowa 2016) are inapposite. (NCJC Brief, pp. 12-17). In *Weaver* and *Coker*, there was no statute like Iowa Code § 625.22 that taxes fees as cost. Further, neither of those cases – or any case - cited by NCJC involved a plaintiff who lost under Iowa Code § 677.10, but nevertheless, like NCJC, was still arguing it was a “prevailing party.” *Dutcher* involved an offer to confess and Iowa Civil Rights and Federal Equal Pay Act claims. *Dutcher v. Randall Foods*, 546 N.W.2d at 895-896. That case is inapplicable because there the claimant recovered more than defendant’s offer and the fees were awarded under a federal statute (FSLA) and the Iowa Civil Rights Statute. *Id.* Iowa Code Chapter 677 was not even part of the case.¹ *Lee v. State* is inapplicable because (1) it did not involve an Iowa Code Chapter 677 offer, and (2) it again involved a federal statute (FMLA) mandating an award of attorney fees. *Lee v. State*, 874 N.W.2d 631, 645 (Iowa 2016).

¹ The court seems to limit application of its “prevailing party” analysis by isolating it to civil rights cases, by holding “*the vindication of civil rights is so significant that the method of calculating attorney fees should not vary between state and federal court. Therefore, we adopt the federal analytical framework for the calculation.*” *Dutcher v. Randall Foods*, 546 N.W.2d at 895-896.

Because Iowa Code § 625.22 taxes attorney fees as part of costs, WMG's post-offer attorney fees should be included as part of costs. Similarly, NCJC cannot recover post-offer attorney fees because attorney fees are a component of costs. The Court should reverse the Trial Court's Ruling, remand it, and direct the Trial Court to tax as costs all of WMG's post-offer attorney fees, and deny NCJC all post-offer costs, including its attorney fees, because attorney fees are costs.

Specifically, WMG's post-offer fees totaling \$30,883.95, as shown on WMG's 6/4/18 Affidavit, as well as appellate fees attorney fees, should be awarded by this Court, or by the District Court on remand. (6/04/18 Affidavit; App. 163).

II. THE DISTRICT COURT INCORRECTLY AWARDED POST-OFFER ATTORNEY FEES TO NCJC.

A. Scope/Standard Of Review And Preservation Of Error.

WMG repeats Division I(A) regarding Standard of Review and Preservation of Error. NCJC does not dispute that WMG preserved error.

B. An Offer to Confess Made Under Iowa Code §§ 677.4 and 677.10 Permits Only One Winning Party and Because WMG Is the Winning Party, the Trial Court was Precluded from Awarding NCJC Any Post-Offer Attorney Fees.

There cannot be two “winning” parties under Iowa Code § 677.10. Iowa Code § 677.10 provides: “*If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff cannot recover costs, but shall pay defendant’s cost from the time of the offer*”. This prohibits the Court from awarding NCJC any post-offer costs. Because Iowa Code § 625.22 provides that attorney fees are allowed and taxed “as part of the costs”, attorney fees are, in fact, costs. The Trial Court’s Ruling awarding NCJC fees, if not error, was an abuse of discretion. In accord, *Sheer Construction, Inc. v. W. Hodgman and Sons, Inc.*, 326 N.W.2d 328 (Iowa 1982). WMG otherwise repeats its arguments set out in Division I(B).

The Trial Court’s Ruling awarding fees to NCJC should be reversed.

C. NCJC’S Post-Offer Attorney Fees Are Per Se Unreasonable.

NCJC’s Brief provides no explanation or justifications to how any of its post-offer attorney fees are reasonable, when, by NCJC’s own admission, its claim did not exceed \$74,446.09 and it rejected an Iowa Code § 677.10 offer of \$75,000. NCJC not only could have avoided all fees after 11/17/17

had it simply accepted WMG's offer to confess judgment, it would have recovered \$75,000 instead of only \$41,453.57. Any post-offer attorney fees sought by NCJC post-offer are *per se*, unreasonable. *"The district court must look at the whole picture and, using independent judgment with the benefit of hindsight, decide on a total fee appropriate for handling the complete case."* *Boyle v. Alum-Line*, 773 N.W.2d 829, 833 (Iowa 2009), quoting *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897 (Iowa 1990). Even without the benefit of "*hindsight*", NCJC should have known that asking \$190,000 for an unsupported reimbursement claim was unreasonable. Now having the benefit of "*hindsight*," the Court can even more clearly see that NCJC's litigation and collection practices were unreasonable, obtuse, and counterproductive. Awarding any post-offer attorney fees to NCJC eviscerates the intended purpose of Iowa Code § 677.10 and improperly overshadows the Court's own award of post-offer costs to WMG. WMG otherwise repeats its arguments set out in Division I(B).

The Court should reverse the Trial Court's Ruling awarding to NCJC post-offer costs, including attorney fees, and direct such other relief as is just and equitable.

D. Iowa Code § 625.25 Precludes the Taxing of Any Attorney Fees in Favor of NCJC Because NCJC Did Not Provide WMG With A Reasonable Opportunity to Pay the Debt Before NCJC Filed Suit.

NCJC's Brief does not explain how WMG, during the pre-suit period, was supposed to pay the debt when NCJC itself was unable to provide the information to calculate the debt until well after suit was filed.

Iowa Code § 625.25 provides: "*No such attorney fee shall be taxed . . . unless it shall be made to appear that such defendant had information of and a reasonable opportunity to pay the debt before action was brought.*"

WMG could hardly be expected to pay anything to NCJC until NCJC could get its own facts right.

NCJC's Brief offers no explanation for its rushing to file a lawsuit – which has a ten (10) year statute of limitations and with the *Afshar* suit being filed before the debt was even due - demanding \$190,000, rather than waiting until after 11/13/17 when it could provide documentation to WMG supporting its \$74,446.09 claim. Had NCJC pursued its claim reasonably, not only would WMG have paid it, WMG tried to pay it. The clear inference from these case facts is that for NCJC, this case is not about money. NCJC did not want WMG to pay because NCJC wanted to litigate and generate legal fees to punish WMG. NCJC offers no explanation as to how its

rejection of WMG's \$75,000 offer can be considered reasonable. As a matter of law, NCJC did not provide WMG with a pre-suit reasonable basis to pay this claim.

The Trial Court erred in holding that "*Iowa Code § 625.25 will not determine the issue of attorney fees.*" The Trial Court's Ruling awarding NCJC pre-offer attorney fees should be reversed because NCJC did not provide WMG with a reasonable opportunity to pay its \$41,453.57 claim pre-suit.

III. BECAUSE THE DISTRICT COURT ERRED IN AWARDING POST-OFFER ATTORNEY FEES TO NCJC, THE CASE SHOULD BE REMANDED WITH DIRECTIONS FOR THE TRIAL COURT TO SEGREGATE NCJC'S PRE-OFFER FEES FROM POST-OFFER FEES SO EACH BE EVALUATED SEPARATELY.

A. Scope/Standard Of Review And Preservation Of Error.

WMG repeats Division I(A) regarding Standard of Review and Preservation of Error. NCJC does not dispute that WMG preserved error.

B. The Trial Court Incorrectly Failed to Segregate NCJC's Pre-Offer Fees From Post-Offer Fees.

WMG repeats its arguments set out in Divisions I(B) and II(B). NCJC is not entitled to fees after WMG's 11/17/17 offer. Iowa Code § 677.10.

Because the Trial Court incorrectly awarded NCJC post-offer fees, the case should be reversed and remanded, with directions to segregate NCJC's pre-offer from its post-offer attorney fees, and after the NCJC's post-offer attorney fees are segregated, the Court should deny them in total.

C. WMG, Not NCJC, is the Pre-Offer Prevailing Party.

NCJC does not dispute that for the pre-offer period, WMG successfully defended five claims exceeding \$884,000 and also caused NCJC to reduce its reimbursement claim from \$190,564.62 to \$74,446.09, which WMG then promptly offered to pay. (Ex. 102; 12/12/18 Motion to Enlarge & Reconsider & Ex. A; App. 316-318, 270-290, 282-284, 288). *"The district court must look at the whole picture and, using independent judgment with the benefit of hindsight, decide on a total fee appropriate for handling the complete case."* *Boyle v. Alum-Line*, 773 N.W.2d 829 (Iowa 2009) quoting *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897 (Iowa 1990). When looking at only the pre-offer facts and using "*hindsight*," WMG is the only party that can legitimately be considered as "prevailing." WMG otherwise repeats its arguments set out in Divisions I(B) and II(B).

The Trial Court's Ruling awarding NCJC pre-offer attorney fees should be reversed because WMG, not NCJC, is the "prevailing party."

IV. THE COURT FAILED TO AWARD WMG PRE-OFFER ATTORNEY FEES ON THOSE CLAIMS FOR WHICH WMG PREVAILED.

A. Scope/Standard of Review And Preservation Of Error.

WMG repeats Division I(A) regarding Standard of Review and Preservation of Error. NCJC does not dispute that WMG preserved error.

B. The Trial Court Incorrectly Ruled That WMG Was Not The Prevailing Party On Those Claims Which WMG Successfully Defended.

NCJC does not dispute that WMG was the prevailing party on those claims that the Trial Court dismissed by summary judgment on 2/28/18. (2/28/18 Ruling; 12/12/18 1.904 Motion, Ex. A; App. 270-290, 288). WMG repeats its arguments set out in Divisions I(B), II(B), and III(B).

The Court should reverse the Trial Court's decision, and remand the case with directions holding that WMG was the prevailing party both under the lease and also under Iowa Code § 625.22 for those claims the Court dismissed by summary judgment. The Court should remand this case to the Trial Court for entry of the sum of \$9,423.67 for pre-offer attorney fees to WMG, on those claims which it successfully defended. (WMG's 6/4/18 Affidavit; App.162-163).

CONCLUSION

The Trial Court incorrectly failed to include WMG's attorney fees as part of the post-offer court costs awarded to WMG under Iowa Code § 677.10. Further, the Trial Court incorrectly awarded NCJC post-offer attorney fees. Also, the Court failed to segregate NCJC's pre-offer attorney fees from NCJC's post-offer attorney fees so each could be evaluated separately. Further, the Trial Court incorrectly held that NCJC was the pre-offer prevailing party. Also, the Court incorrectly held that NCJC satisfied the Iowa Code § 625.25 condition of providing WMG with a reasonable opportunity to pay NCJC's \$41,453.57 reimbursement claim prior to NCJC filing suit. Finally, the Trial Court failed to rule that WMG was the prevailing party on those claims that WMG successfully defended, and incorrectly failed to award WMG attorney fees.

The Court should:

- reverse the Trial Court's decision failing to award WMG post-offer attorney fees as part of costs, and remand the case to the Trial Court with directions to award post-offer attorney fees to WMG;
- reverse the Trial Court's Order awarding NCJC any post-

offer fees;

- reverse the Trial Court's decision awarding NCJC fees and direct the Trial Court to segregate NCJC's pre-offer fees from post-offer fees so each can be evaluated separately;

- reverse the Trial Court's decision holding that NCJC was a pre-offer prevailing party;

- reverse the Trial Court's decision that Iowa Code § 625.22 does not control NCJC's fee request and hold that as a matter of law, NCJC did not provide WMG with a reasonable opportunity to pay pre-suit;

- reverse the Trial Court's decision failing to hold that WMG was the prevailing party on those claims WMG successfully defended, and remand the case for a determination of an award of fees to WMG;

- order such other relief as the court deems just and equitable.

REQUEST FOR ORAL ARGUMENT

Appellant WMG respectfully requests to be heard in oral argument on this matter.

ATTORNEY'S COST CERTIFICATE

There was no cost for printing this document as it was electronically filed with the Iowa Judicial System Electronic Document Management System.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE AND TYPE-STYLE REQUIREMENTS

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

this Brief contains 3,382 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

this Brief uses a monospaced typeface and contains [state the number of] lines of text, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

this Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14 font size and Times New Roman type style, or

[] this Brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

Dated: June 10, 2019.

RESPECTFULLY SUBMITTED,

PETERSON & LIPPS



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I certify that on June 10, 2019, I electronically filed the foregoing document with the Clerk of the Supreme Court of Iowa using the Iowa Judicial System Electronic Document Management System, which will send notification of such filing to the counsel below:

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