Contracts/Commercial Case Law Update

Andrea D. Mason
Lane & Waterman LLP
220 N. Main St., Ste. 600
Davenport, Iowa 52801
563-333-6681
amason@L-WLaw.com

Iowa Supreme Court

Luana Savings Bank v. Pro-Build Holdings, Inc. and United Building Centers Iowa Supreme Court No. 13-0060 Feb. 23, 2015

Facts: Bank sued builder of apartment complex the bank acquired by deed in lieu of foreclosure due to the apartment being mold-infested. The bank's theory was that the implied warranty of workmanlike construction was applicable to protect the bank, alleging the builder exercised shoddy construction.

Issue: Whether the doctrine of implied warranty of workmanlike construction is applicable to a lender that acquires a multiunit residential apartment complex by a deed in lieu of foreclosure?

Holding: No, the doctrine of implied warranty of workmanlike construction is not applicable to a bank acquiring property by deed in lieu of foreclosure.

Reasoning: The implied warranty doctrine was created to redress the disparity in bargaining power and expertise between homeowners and professional builders, and to provide a remedy for consumers living in defectively constructed homes. The doctrine's rationale does not support extending it to the bank, as a sophisticated financial institution can protect itself through other measures.

Amish Connection, Inc. v. State Farm Fire and Casualty Company Iowa Supreme Court No. 13-0124 March 20, 2015

Facts: A summer rainstorm caused an interior drainpipe to burst. The pipe carried rainwater from the roof to a storm sewer. The insurance policy only covers damage "caused by rain" if an insured event first ruptures the roof or exterior walls to allow the rain to enter or if the damage results from melting ice or snow. Insured argued that the water damaging the interior was no longer "rain" and the actual cause of the loss was the failure of the drainage pipe. Insured also argued that the coverage is available because the damage resulted from the "breaking or cracking of any part of a system containing water or steam." The district court granted summary judgment for the insurer, concluding the water damage was caused by rain. The court of appeals reversed, concluding that damage from "rainwater" flowing from the broken interior drainpipe is not damage "cause by rain."

Issue: Whether the damage was "caused by rain" within the meaning of the policy limitations of coverage?

Holding: Decision of the Court of Appeals vacated; District Court summary judgment affirmed. The unambiguous language of the rain limitation precludes coverage for the damage caused by the rainwater escaping the ruptured interior drainpipe. In addition, coverage is not available because the damage resulted from the breaking or cracking of any part of a system containing water or steam because the policy does not provide coverage for damage "caused by rain" even if a system containing water was involved.

Reasoning: The rules governing the construction and interpretation of insurance policies are well-settled. "The cardinal principle . . . is that the intent of the parties at the time the policy was sold must control." *LeMars Mut. Ins. Co. v. Joffer*, 574 N.W.2d 303, 307 (Iowa 1998). When there are no ambiguity, the court looks to the policy itself. If a word is not defined in the policy, the court will give the word its ordinary meaning. A policy is ambiguous if the language is susceptible to two reasonable interpretations when the policy is read as a whole. If the policy is found to be ambiguous, the court will adopt the interpretation most favorable to the insured. Exclusions within the policy will be construed strictly against the insurer, yet the court will enforce unambiguous exclusions as written. Here, the "rainwater" was "caused by rain."
The insured's second argument is there is coverage from the provision containing the following: "water damage, meaning accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam." The court found that an exception to an exclusion in a policy does not create coverage that otherwise is lacking. The State Farm policy has an anti-concurrent-clause provision. This means that the rain limitation controls regardless of whether the breaking drainpipe is considered a concurrent cause of the rainwater damage. Under the unambiguous terms of State Farm's policy, damage from rainwater released by a breaking drainpipe during a rainstorm is not an insured loss because the damage is caused by rain within the meaning of the rain limitation, even though the breaking drainpipe is a concurrent issue.

Dissent: Hecht, Wiggins, and Appel.

***Shelby County Cookers, L.L.C v. Utility Consultants International, Inc.*,** Iowa Supreme Court No. 13-0253, November 7, 2014:

Facts: A company contracted with a consultant to review utility bills and pursue refunds of overpayments. The company terminated the contract with the consultant after reviewing only four utility bills. The company sought a declaratory judgment establishing that it had no remaining contractual obligation to the consultant, and the consultant counterclaimed for breach of contract.

Issue: Whether the contract between the parties was lawfully terminated or anticipatory repudiated by a letter?

Holding: The duration of the contract, when not within the language of the contract, will be ascertained by the court based on the implied nature and circumstances of the contract. Once the court ascertains the purpose of the contract, it can determine a reasonable durational term. Supplying under a reasonable durational term under the circumstances present in this case comports with Iowa's "standards of fairness and policy". Remand to District Court to determine whether the letter constituted a repudiation amounting to an anticipatory breach of contract.

Reasoning:

1. A court is to look at the language of the four corners of the document to determine if the document expressed the contract's duration.
2. When there was no specific language in the contract as to the duration of the contract, the court is to look to see whether the omitted term can be implied from the nature and circumstances of the contract. The court is aided by the Restatement (second) of Contracts section 204 which provides when contracting parties "have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court."
3. Because the durational term of the contract to the parties is essential for determining whether the Plaintiff had a viable breach of contract claim, the court relied on several

factors to determine the term of the contract. First and most importantly the court looked to the parties' intent. "[T]he probability that a particular term would have been used if the question had been raised" is also a factor the court relies on in determining the durational term of a contract, although it is not dispositive. Restatement (Second) of Contracts §204 cmt. D, at 98. The court's goal in ascertaining a term not within the contract is reasonableness. A term is reasonable when it comports with "community standards of fairness and policy." Restatement (Second) of Contracts § 204 cmt. D, at 98. The court will only find a contract for services terminable at will only if it cannot ascertain a durational term by considering the above factors.

4. Once the court determines the purpose of the contract, it will consider the duration of the agreement the parties would have deemed reasonable had the question been raised.

Alta Vista Properties, LLC v. Mauer Vision Center, PC, No. 13-0496, October 31, 2014

Facts: A commercial landlord appeals a summary judgment ruling interpreting the parties' lease as prohibiting the landlord from showing the property to prospective purchasers until ninety days before the end of the lease term.

Issue: Whether the commercial lease provisions which provides that the landlord may erect "For Rent" or "For Sale" signs during the last ninety days of the tenancy means that this is the only time the landlord can access the property to show it to potential buyers or does the landlord's right to sell the property encompass the right to show the property during the least term at reasonable times to prospective buyers?

Holding: Decision of Court of Appeals vacated; District Court judgment reversed and case remanded with instructions. Landlord's lease provisions that makes the tenant's use of the premises "non-exclusive" gives the landlord the right to sell the property, mortgage it, or assign the lease interest at any time during the lease terms means that this right to sell the property encompasses the right to show the property during the lease term at reasonable times to prospective buyers.

Reasoning: The lease is a contract, therefore contract principles apply to determine its meaning and legal effect. Therefore the court will consider the lease as a whole as well as any pertinent extrinsic evidence. An interpretation which gives a reasonable, lawful, and effective meaning to all the terms of the contract or lease is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect. In addition, a lease includes not only what is expressly stated by its terms but also what is necessarily implied to give effect to its express terms. The provision does not say that prospective tenants and buyers are only allowed on the premise the last ninety days of the lease term. Rule of contract interpretation that "*expression unius est exclusion alterius* – "[T]he expression of one thing of a class implies the exclusion of others not express" is only one principle of interpretation, not necessarily a legal trump card. Lastly, an interpretation that means that the landlord can only access the property during the last ninety days of the lease to show it to potential buyers operates as a restraint on alienation.

Courtney M. Kay-Decker, Director, Iowa Department of Revenue v. Iowa State Board of Tax Review and Cable One, Inc., No 13-0925, December 19, 2014

Facts: Cable One, Inc. is an Arizona-based company operating in nineteen states, including Iowa. Cable One, Inc. offers cable television, internet access, and VoIP in the Sioux City Area. VoIP is a service that enables two-way voice communications over broadband Internet connection. The service is "fixed," meaning that the customer must make the call from a

telephone permanently located in his or her residence. The difference between Cable One's VoIP and traditional phone service is how the voice signal is initially transmitted. With traditional telephone service, the voice call travels from the customer's phone to the telephone com

Issue: Whether a company providing voice over internet protocol telephone service is subject to central assessment for property tax purpose.

Holding: Wiring installed originally for cable television purposes but now also used to provide VoIP service is, a "telephone line", therefore the company operating these lines is subject to central assessment for property tax purposes as a telephone company. In addition, the primary use test does not prevent the company from being assessed as an operator of telephone lines and federal law does not preempt state taxation of VoIP provides are telephone companies. Lastly, Federal law does not prevent the Department of Revenue from taxing it as a telephone line.

Reasoning: In interpreting Chapter 433 and its applicability to Cable One's VoIP service, the court found that Chapter 433 does not require that a company operate a specific type of telephone line or use any particular technology. In addition, there is no requirement that the telephone line have been built originally for that purpose. Therefore, a cable ore wire used for telephone service is a telephone line. When the technology at issues did not exist when the legislature enacted the statute, the court will apply language of the statute in a common-sense manner rather than assuming that the legislature intended to capture only technologies that existed when the law was enacted. In addition, the court's primary test does not apply to Chapter 433. Chapter 433 extends to any company that operates a "telephone line" regardless of whether the line is used for something else. Chapter 422 is not preempted by federal law because it is well established that federal regulation of an activity does not generally preempt state taxation of companies operating in that area.

Dolphin Residential Cooperative, Inc. v. Iowa City Board of Review, No. 13-1031, May 15, 2015

Facts: Purported cooperative brought action to contest city board of review's refusal to reclassify 22 multiunit apartment buildings as residential property rather than commercial. The district court ordered reclassification, and the board appealed.

Issue: Whether Dolphin was properly established under Iowa Code section 499A.1(1)? Whether attorneys Dawley and McMenimen are lawful organizers of the residential cooperative? And if Iowa Code section 499A imposes a residency requirement (majority of initial members must be Iowa residents), does that provision violate the dormant commerce clause?

Holding: Reverse the summary judgment entered in favor of Dolphin and remand for the district court to enter summary judgment in favor of the Board. Because Dolphin was not properly established under Iowa Code section 499A.1(1), summary judgment should be entered in favor of the Board. The attorneys who organized the cooperative did not "organize themselves" as required to create a valid cooperative. Iowa Code section 499A does not have a residency requirement that runs afoul to the dormant commerce clause, instead the statute has an "organize themselves" requirement that does not require residency, and therefore does not violate the dormant commerce clause.

Reasoning:

Iowa Code chapters 497 and 499A relate to the various types of cooperatives. Iowa Code section 499A.1(1) applies to residential cooperatives. To determine if a property is "residential" under section 499A.1(1) the court uses an "organizational" test with no reference to the property's actual use. The "organizational" test does not preclude the court from considering whether persons are "qualified organizers" of the residential cooperative. Therefore, the Board may challenge whether Dolphin was properly organized at its inception. In applying Iowa Code section 499A.1(1), persons must "organize themselves" for purposes such as ownership of residential, business property on a cooperative basis. The plain meaning of the statute is that organizers cannot organize others, but must organize themselves for purposes of ownership of residential property. Organizers therefore must have a direct interest in the residential cooperative itself, rather than be a bystander with no direct interest in the enterprise. While corporations under Iowa Code section 499A.1(1) are persons, limited liability companies are not. Lastly, the statute requires that a majority of the organizers be citizens of Iowa. Dolphin Enterprise, an Illinois limited liability company and RBJ, an Illinois corporation, are the owners of the Enclave. It is unlikely that a corporation and limited liability corporation organized in Illinois will be found to be citizens of Iowa. And the Iowa residents, Dawley and McMenimen, were not found to be organizing themselves for the purposes of ownership of the residential business property on a cooperative basis, so their residence cannot be considered.

The "organize themselves" interpretation of Iowa Code section 499A does not require residency because there is no requirement that members occupy their units. But organizers must have some "skin in the game" when they organize residential cooperatives.

***Rosauer Corporation v. Sapp Development, L.L.C; Todd Sapp; Whispering Creek, L.L.C; and W.C. Development, Inc.*,** No. 13-1285, Filed December 12, 2014, Amended February 23, 2015.

Facts: Residential developer seeks further review of court of appeals decision affirming summary judgment that dismisses a claim of implied warranty of workmanlike construction as to the sale of building lot without a dwelling. Plaintiff is a contractor-developer who bought the lot of land from a realtor to build townhomes. Plaintiff alleged that the lot had improperly compacted backfill, requiring extensive additional work to get it ready for construction. Plaintiff sued the original developers whose contract had performed the substandard soil work.

Issue: Whether the doctrine of implied warrant of workmanlike construction should be extended to the sale of a residential lot, without a home or other structure?

Holding: Affirmed Summary Judgment: Implied warrant of workmanlike construction does not apply to the sale of a lot with no dwelling.

Reasoning: The implied warranty was judicially created to protect residents from substandard living conditions. The purpose of implied warranty is to redress the disparity in expertise and bargaining power between consumers and builder-vendors in recognition for the difficulty of discovery latent defects in complex modern residential structures. Because developers are able to protect themselves through express contract terms and simple soil test, the court declines to extend the implied warranty for the sale of land.

Ahmad S. Vossoughi and C, N, & A, Inc. v. Joseph A. Polascheck and Michael J. Meloy, No. 13-1381, Filed February 13, 2015 Amended April 22, 2015

Facts: Plaintiff and a company owned by him brought a legal malpractice action against attorneys who prepared documents in connection with the sale of real and personal property. Plaintiff appeals from a district court ruling granting summary judgment to both attorneys.

Issue: Whether the district court correctly ruled the claims against Meloy are time-barred? When does an injury in a legal malpractice claim give rise to a cause of action? Does insecurity constitute an actual injury? What satisfies "proof of causation" in a legal malpractice case?

Holding: Summary judgment should not have been granted in favor of either attorney, reverse and remand.

Injury in a legal malpractice claim gives rise to a cause of action when the injured plaintiff has actual or imputed knowledge of all the elements of the action. There must be proof of an actual loss rather than a breach of professional duty causing speculative harm or threat of future harm.

Insecurity alone does not constitute an actual injury.

"Proof of causation" requirement in legal malpractice cases require plaintiff to make a showing of the money or rights that the plaintiff would have collected in the absence of the lawyer's negligence, which is referred to as proof "collectability."

Reasoning:

Legal malpractice claims sound in negligence. Claims based on negligence do no accrue and the statute of limitations does not begin to run, until the injured plaintiff "has actual or imputed knowledge of all the elements of the action." There must be proof of actual loss rather than a breach of a professional duty causing speculative harm or threat of future harm.

Insecurity alone does not constitute an actual injury.

The Discovery Rule can extend the applicable deadline for filing legal malpractice actions.

Proof of causation requires plaintiff to make a showing of the rights or money that it would have collected in the absence of the lawyer's negligence. Collectability need not be shown if a plaintiff alleges legal malpractice directly cause actual loss. But if the legal malpractice claim is alleging that the legal malpractice prevent the plaintiff's recovery, then collectability is a critical element. When the loss arises from negligently prosecuting a prior case, the client has the burden of proving not only the amount of the judgment he would have obtained but for the negligence, but also what he would have collected. It is a rare case when an issue of collectability in a malpractice case is so clear that it can be decided as a matter of law.

Northeast Community School District v. Easton Valley Community School District, No. 13-1636, December 19, 2014

Facts: After first and second school districts entered into whole grade sharing agreement, and after second district merged with third school district to form reorganized school district, first district brought declaratory judgment action against reorganized district, alleging that reorganized school district was bound by whole grade sharing agreement. The district court entered summary judgment for reorganized school district. First district appealed.

Issue: Whether an agreement entered into by a predecessor school district that merged into a reorganized school district can bind a reorganized school?

Holding: Reversed and Remanded: The whole grade sharing agreement can bind the reorganized school district. When a city or county merger with another, the consolidation does not later any liabilities in effect at the time of the election. This principle also applies to school districts because a school district is a political subdivision of the state, just as a city or county is a subdivision of the state.

Reasoning:

In Iowa, public agencies are able to enter into contracts with one another pursuant to a 29(E) agreement. School districts, as a political subdivision of the state, fall under the definition of a public agency for the purposes of a 28(E) agreement. The whole grad sharing agreement between Northeast and East Central was a valid contract.

A municipal corporation may, by contract, curtail its right to exercise functions of a business or proprietary nature, but, in the absence of express authority from the legislature, such a corporation cannot surrender or contract away its governmental functions and powers, and any attempt to barter or surrender them is invalid. Accordingly, a municipal corporation cannot, by contract, ordinance, or other means, surrender or curtail its legislative powers and duties, its police power, or its administrative authority. In addition, in the absence of a statute, the court does not generally recognize a distinction between a municipal corporation and private corporation contract liability. There is not statute that requires the court to treat the agreement differently than a contract between two private corporations. Generally, after a corporation purchases the assets of another, the purchasing corporation assumes no liability for the transferring corporation's debts and liabilities. Exception arise in only four situations: (1) the buyer agrees to be held liable; (2) the two corporations consolidate or merger; (3) the buyer is a "mere continuation" of the seller; or (4) the transaction amounts to fraud. Because the two districts merged, the reorganized school district is bound by the whole grade sharing agreement of the first and second district.

Sioux Pharm, Inc. and Sioux Biochemical, Inc. v. Summit Nutritionals International, Inc., No. 13-1754, Filed January 30, 2015, Amended April 7, 2015

Facts: Sioux Pharm, Inc. is an Iowa corporation that manufactures a supplement for joint health. Eagle Laboratories, Inc. is an Iowa corporation and Sioux Pharm's competitor. Eagle Labs sells and ships chondroitin sulfate monthly to Summit, a New Jersey corporation with its principal place of business in Branchburg, New Jersey. Summit packages and resells the chondroitin sulfate. Summit's website erroneously claimed that Summit had a manufacturing facility in Sioux Center, Iowa. Listed on the website was an Iowa address which was actually owned and operated by Eagle Labs. Summit has no Iowa office, agent, or employees. It has never been registered to do business in Iowa. It neither owns nor leases any real or personal property in Iowa. Summit has no Iowa bank accounts and has never been a party in litigation in Iowa before this case. Summit has never specifically directed advertising at Iowa markets or sold its products to anyone in Iowa except for a sample purchased by Sioux Pharm to test for purposes of this lawsuit. Summit purchases its chondroitin sulfate from Eagle Labs under an annual contract to supply Summit's requirements through monthly shipments. Summit's president traveled to Iowa once to inspect Eagle's Lab's facility, but he flew in and out of an airport in South Dakota and only spent a few hours in Iowa. No other employee of Summit has ever visited Iowa on its behalf. Sioux Pharm brought an action against Summit asserting claims for unfair competition, intentional interference with contractual relationships, and civil conspiracy. Summit moved to dismiss and the district court denied the motion. Summit sought interlocutory review.

Issue: Whether a nonresident corporation's inaccurate statement on its passive website (that it had a manufacturing facility in Sioux Center, Iowa) subjected it to personal jurisdiction in Iowa in a lawsuit by an Iowa plaintiff alleging unfair competition?

Holding: District Court order denying defendant's motion to dismiss affirmed. The District Court erred by exercising general jurisdiction over Summit based solely on the inaccurate statement on its passive website. Proof is required that the nonresident defendant is "essentially at home in the forum State" to establish general jurisdiction and such proof is lacking here. The website statement that Summit had an Iowa manufacturing facility is insufficient to subject Summit to personal jurisdiction. But the totality of the nonresident's contacts with Iowa, including its website statement, Iowa supply contract, and its sale of the product to the plaintiff here in Iowa are sufficient to subject it to specific jurisdiction here on claims related to those contacts.

Reasoning:

A state's power to exercise personal jurisdiction over a nonresident is limited by both the state's jurisdictional rules and the Due Process Clause of the Fourteenth Amendment. Iowa's jurisdictional rules authorizes the widest exercise of personal jurisdiction allowed by the Due Process Clause. The Due Process analysis requires a determination of whether the defendant has sufficient minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. The defendant must have sufficient contracts to reasonably anticipate being hauled into court in the forum state. Therefore, it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of the conducting activities within the forum State, thus invoking the benefits and protections of its laws. There are two forms of personal jurisdiction, general jurisdiction and specific jurisdiction.

General jurisdiction refers to the power of the state to adjudicate any cause of action involving a particular defendant, regardless of where the cause of action arose, therefore allowing claims unrelated to the defendant's contacts with the forum. General jurisdiction exists if the defendant's affiliations with the State are so continuous and systematic as to render the defendant essentially at home in the forum state.

By contrast, specific jurisdiction refers to the jurisdiction over causes of action arising from or related to a defendant's actions within the forum state. Specific jurisdiction has two requirements: (1) the defendant has purposefully directed his activities at the residents of the forum and (2) the litigation results from alleged injuries that arise out of or relate to those activities. It sufficient minimum contacts exist, the court must then determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice.

The website holding out that the corporation had an Iowa manufacturing facility is insufficient for general jurisdiction under the recent United States Supreme Court decision requiring a showing that the defendant's affiliations with the State are so continuous and systematic as it render it essentially at home in the forum state. There are also policy reasons against basing general jurisdiction solely on Internet activity: the Internet is now accessible from almost any point on the globe and courts should consider the ripple effects before subjecting a nonresident to general jurisdiction based solely on information based on the defendant's websites. The court held that both the Calder effects test and the Zippo sliding scale approach can be used to evaluate personal jurisdiction based on website activity. Under the Calder effects test, foreseeable effects from the intentional tort can occasionally support jurisdiction when the primary effect of the tort is felt within the forum. Under the Zippo approach, the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of the commercial activity that any entity conducts over the internet. The Zippo sliding scale approach can be used to evaluate both specific and general jurisdiction. Because Summit's

website merely gave an addresses and was not interactive, it falls on the passive end of the Zippo's sliding-scale approach.

Because Plaintiff's allegations against Summit are related to Summit's Iowa contacts, those contacts in their totality are sufficient to subject it to specific jurisdiction. Summit sold one shipment of the product to Plaintiff in Iowa. Courts have held that one sale is sufficient to establish specific jurisdiction over the seller.

Dylan Book and Karen Book v. Voma Tire Corporation, Hunter Engineering Company, Iowa Tire, Inc., Holt Sales and Service, Inc., Sice, S.p.A and Sice Automotive Equipment Societa Italiana Costruzioni Elettromeccanciche S.I.C.E.-S.p.A and Doublestart Dongfeng Tyre Company, LTD., No. 13-1793, Filed March 6, 2015, Amended May 4, 2015.

Facts: Plaintiffs in products-liability action, who seek recovery for personal injuries from allegedly defective tire that exploded during inflation at Iowa workplace, appeal ruling dismissing Chinese tire manufacturer for lack of personal jurisdiction.

Issue: Whether a Chinese tire manufacturer that sold thousands of tire in Iowa through an American distributor may be compelled to defend a lawsuit here consistent with the Due Process Clause of the United States Constitution? Whether Iowa follows the *Svendsen* test, which applies the *World-Wide Volkswagen* test or the more stringent "stream-of-commerce plus" test in the plurality opinion of *J. McIntyre Machinery*.

Holding:

Reverse the district court's jurisdictional ruling and remand the case to proceed on the merits. The Federal Constitution permits the exercise of personal jurisdiction over this high-volume, foreign manufacturer whose allegedly dangerous product purchased in Iowa injured a resident here. Doublestar's direct shipments to Iowa of thousands of tires and indirect shipments of thousands more to this state through its American distributors, including the allegedly hazardous "accident tire" that injured the Iowa plaintiff at his workplace in Iowa, makes Doublestar subject to personal jurisdiction in Iowa.

Iowa will continue to apply the *Svendsen* test for products liability cases rather than the more stringent "stream-of-commerce" plus test.

Reasoning:

When there is no majority opinion, the narrower holding controls. Therefore Justice Breyer's concurrence controls the holding of *J. McIntyre Machinery v. Nicastro*. Justice Breyer's concurrence expressly relies on existing precedent and disclaims any new stream-of-commerce test. Therefore the stream-of-commerce test of *World-Wide Volkswagen and Svendsen* remain good law even after *J. McIntyre Machinery*.

The court's survey of contemporary precedent nationwide persuaded the court that the *Svendsen* test used in Iowa product-liability cases should be applied in this case. The court declined to adopt a more restrictive test as to a high-volume manufacturer of a potentially hazardous product. In applying this test, the court found that Doublestar is subject to jurisdiction in Iowa.

Under the test applied in *World-Wide Volkswagen*, a court can exercise jurisdiction only if the "defendant's conduct and connection with the forum State are such that he should reasonably anticipate being hauled into court here." A corporate defendant is on notice it is subject to suite when it "purposefully avails itself of the privilege of conducting activities within the forum State."

First the court found that Doublestar had the requisite minimum contacts in Iowa. Doublestar shipped over 12,000 tires directly to Des Moines, Iowa in one year. The Doublestar employees knew that the shipments were going to Iowa. Indirect shipments to the Tennessee

distributor also count. Therefore Doublestar at least indirectly served the Iowa market through the Tennessee distributor with the expectation that its tires would be purchased by consumers in the forum State. *World-Wide Volkswagen*.

The court determined next that the assertion of personal jurisdiction would comport with fair play and substantial justice. The burden is on the defendant to present a compelling case that the presence of some other consideration would render jurisdiction unreasonable. Doublestar conceded it is subject to jurisdiction in Tennessee and failed to show that defending the case in Iowa rather than Tennessee would be more burdensome. It would be far more burdensome for the plaintiff to present its case in Tennessee than in Iowa. Iowa has a strong interest in protecting its residents from damages resulting from the tortious acts of nonresident defendants. Systemic judicial interest also favors jurisdiction in Iowa because the key occurrence and damages witnesses are located here.

Steven Mueller, Bradley Brown, Mark Kruse, Kevin Miller and Larry Phipps v. Wellmark, Inc., d/b/a Wellmark Blue Cross and Blue Shield of Iowa and Wellmark Health Plan of Iowa, Inc., No 13-1872, Filed February 27, 2015, Amended June 5, 2015.

Facts: Plaintiff chiropractors appeal from a summary judgment entered by the district court in favor of defendant health insurers on per se antitrust claims under the Iowa Competition Law. Wellmark has contracted with health care providers in Iowa to provide services at certain reimbursement rates. By agreement, Wellmark makes those rates available both to self-insured Iowa plans that it administers and to out-of-state Blue Cross Blue Shield affiliates when those entities provide coverage for services provided in Iowa. Plaintiff alleged that Wellmark had engaged in per se price-fixing when it entered into agreement with self-insuring Iowa employers to make its network and claims administrator available to them. Plaintiff also alleged that Wellmark had engaged in per se price-fixing when it participated in the national BlueCard program under which BCBS entities agreed to make their in-state networks available to each other when their respective customers needed out-of-state-services. The district court entered summary judgment for insurer and chiropractors appealed. The Supreme Court affirmed in part, reversed in part, and remanded. On remand, the district court granted summary judgment in favor of insurer on chiropractors' remaining claim and chiropractors appealed.

Issue: Whether the agreements between Wellmark and self-insuring employers and between Wellmark and out-of-state BCBS affiliates amount to per se violations of Iowa antitrust law?

Holding: Affirmed. 1. The insurer's arrangements with self-insured employers and out-of-state licensees are not subject to the per se rule of analysis for a restraint of trade claim. These arrangements are not the simple horizontal conspiracies that historically have qualified for per se treatment. The court did not foreclose a rule of reason claim against Wellmark if it were shown that the anticompetitive consequences of its practices exceeded their procompetitive benefits.

Reasoning:

Under federal antitrust laws, challenged agreements or conspiracies are presumptively analyzed through the "rule of reason". The "rule of reason" requires a plaintiff to show that a particular agreement is "in fact unreasonable and anticompetitive before it will be found unlawful. Per se liability is reserved only for those agreements that are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality.

Price fixing violations have been viewed as per se violations, versus the rule of reasons. But not all agreements on price are governed by the per se rule. Because the present case does not involves sale, but rather collaboration on purchases the concern is over the potential monopsony power, not the monopoly power. But monopsonistic conduct is still a concern

because it can create economic dislocation by forcing supplier prices down below the competitive level, just as monopolistic conduct can lead to dislocation by driving consumer prices above a competitive level.

Wellmark's arrangements with self-insured employers and out-of-state BCBS affiliates are government by the rule of reason, not the per se rule. First, these arrangements are not naked price-fixing arraignments but are more akin to joint ventures. The self-insureds are not entering into bare agreements to refrain from competing on price with Wellmark – they are buying claims-administration service from Wellmark. Part of the service includes Wellmark's negotiated pricing. Wellmark's health care provider network provides a mechanism by which an otherwise unavailable product (self-financed health coverage) can be offered. Insurance involves both claims-handling and risk-spreading. A large number of Iowa employers want some of the package but not all of it. This additional option is not a per se violation of the antitrust law.

Wellmark's reciprocal arrangements with out-of-state BCBS licensees allows it to efficiently utilize other licensees' rates when Iowans insured by Wellmark need services outside of Iowa. Also, neither of the types of Wellmark arrangements truly represents a horizontal agreement between competitors. Wellmark does not really compete with its self-insured clients. Nor does Wellmark compete with the out-of-state BCBS licensees. In addition, while it may be true that Wellmark has market power in health insurance in Iowa, this allegation is not relevant in per se claim.

Ghost Player, L.L.C and CH Investors, L.L.C., v. State of Iowa, No. 14-0339, Filed February 27, 2015

Facts: Claimants of tax credits under Iowa Code sections 15.391-.393 (2009) brought an action in district court to collect certain tax credits it contended the State owed them. The district court dismissed the claimant's petition on the grounds it did not have the authority to hear the case because the claimants failed to exhaust their administrative remedies.

Issue: Whether the district court correctly decided it did not have the authority to hear the case because Ghost Player failed to exhaust its remedies under the chapter 17A, the Iowa Administrative Procedure Act? And whether the failure of the IDED to have administrative rules in place deprived Ghost Player of due process?

Holding: Affirmed. The actions taken by the agency in denying the credits was other agency action, requiring the claimants to exhaust their administrative remedies. Failure to exhaust those administrative remedies deprives the district court of the authority to hear the case. In addition, the process used by the agency in processing the claimant's claim for tax credits did not offend Due Process Clauses of the Iowa or United States Constitutions.

Reasoning: Chapter 17A of the Code classifies three types of agency action. They are rulemaking, contested cases, and other agency action. There is no claim that the IDED actions were rulemaking or contested cases. Other agency action is action taken by an agency that is "neither rulemaking nor a contested case." In other words, agency action taken without a hearing required by statute or constitution or action taken after a required hearing that does not rise to the level of an evidentiary hearing is other agency action. If the action or inaction of the agency in question bears a discernible relationship to the statutory mandate of the agency as evidenced by express or implied statutory authorization, a party must first present the claim to the agency for other agency action before the party can proceed to district court. Here the duty of the IDED to verify and issue the tax credits found in Iowa Code section 15.393(2)(a)(3), (b)(2), bears a discernible relationship to the statutory mandate of the IDED as evidenced by the express

statutory authorization. In addition, the legislature has not devised a separate remedial statutory scheme to process a claim for film tax credits.

Joseph H. Sanford and Suzanna L. Sanford, v. Lynn Fillenwarth and Julie Fillenwarth, as Executors of the Estate of Kenneth Fillenwarth and James Lawler, No. 14-0411, Filed May 8, 2015

Facts: Fillenwarth Beach is a resort in Arnold's Park, Iowa on Lake Okoboji. Fillenwarth Beach offers for its guest complimentary cruises on Lake Okoboji in Fillenwarth-owned boats where free soft drinks, alcoholic beverages, and other beverages are served. The cruises are limited to resort guests. Kenneth Fillenwarth holds two liquor licenses that authorize it is sell and serve alcoholic beverages. It offers wine and beer tastings and occasional social hours under a class "B" license and serves alcoholic beverages to guest on boat cruises around West Okoboji Lake under a class "D" license. James Lawler consumed a number of drinks on the cruise. Approximately a half an hour after the end of the cruise there was an encounter between James and Joseph Sanford that escalated into physical violence that resulted in James assaulting Joseph. The district court granted summary judgment on behalf of Fillenwarth Beach because under the Dramshop laws, no sale took place because James did not provide any consideration for the alcoholic beverages served to him, as his father was paying for the stay at the resort. The Sanfords sought interlocutory review.

Issue: What is the meaning of the word "sold" within the Iowa Dramshop Law, Iowa Code section 123.92 (2011)?

Holding: Reversed and Remanded. The statute can encompass indirect sales under the facts alleged in this case.

Reasoning: The legislature has drawn a line between a sale and a gift under the dramshop statutes and has limited dramshop liability for licensees and permitees only when they sell and serve the alcoholic beverage to the intoxicated person who injured another person. The court will first look of the presence of consideration, which is a basic element of the traditional notion of sale. Second, the court will look to evidence of a payment, although it may be implied from the circumstances. Lastly, the court has chosen not to adopt the theory that a sale under the statute can be established by the way a licensee or permittee may treat the service of alcoholic beverages for accounting and tax purposes or by the way the basic economic principle of "no free lunch" may apply to the transaction. The intent of the legislature under the Dramshop statute was to capture all direct and indirect sales supported by consideration tangibly benefiting the dramshop. Under the facts in this case, there is an inference that boat cruises with alcoholic beverages were part of the consideration for the hotel stay. They were advertised to prospective guests as one of the amenities of the stay. The serving of alcoholic beverages to Fillenwarth Beach guests on the cruise was party of its regular resort package, not an isolated occasion. If an amenity is only provided at a specific price point and above, the necessary implication is that the cost of that amenity is only covered at the higher price point and it's therefore part of the higher price. Lastly, James was a third party beneficiary to the contract between his father and Fillenwarth.

LSCP, LLLP v. Courtney Kay-Decker, Director, Iowa Department of Revenue, No. 14-0494, Filed April 10, 2015.

Facts: Ethanol producer appeals after the Iowa Department of Revenue and the district court both concluded Iowa's excise tax on natural gas delivery is constitutional. LSCP's manufacturing process uses a substantial volume of natural gas. There are no natural gas producers in Iowa.

Therefore, all natural gas consumed in the state must come from out-of-state suppliers through federally regulated interstate pipelines. Some consumers of natural gas bypass LDCs (LDCs connect to the interstate pipeline, redirect the natural gas at a reduced pressure into pipes that are smaller in diameter, and move it to the locations where it is ultimately consumed). Companies owning interstate pipelines must allow direct connections to any consumer agreeing to certain terms and conditions. LSCP bypass an LDC and connect directly to an interstate pipeline. In 1998 the legislature restructured the statutes authorizing taxes on electricity and natural gas providers. The new system taxes activity rather than property. Interstate pipeline companies are exempt from the replacement tax. Yet, those who bypass LDCs by directly connecting to an interstate pipeline do not avoid the replacement tax under section 437A.5. LSCP claims that the replacement tax in section 437A.5(2) is unconstitutional because it is based on the CSA in which a taxpayer is located. (CSA is a competitive service area). LSCP claims that the section violates the Federal Equal Protection Clause, article I, section 6 of the Iowa Constitution and the dormant Commerce Clause.

Issue: Whether the replacement tax in section 437A is constitutional under state and federal constitutions?

Holding: Affirmed. The natural gas replacement tax structure is rationally related, therefore it does not violate the Equal Protection Clause. Nor does the natural gas replacement tax structure violate the dormant Commerce Clause.

Reasoning:

The United States Supreme Court has explained that state tax classifications require only a rational basis to satisfy the Equal Protection Clause. There are rational bases for the natural gas replacement structure. The legislature may have wished to promote economic development in municipalities by creating CSAs featuring municipal LDCs offering tax advantages for new business prospects. These objectives supply a rational basis under the standard expressed by the Supreme Court, therefore the tax rates survive LSCP's equal protection challenge based on the Fourteenth Amendment. Therefore the court does not need to consider whether the replacement delivery tax is also rationally related to other state interests. The court ensure uniform operation under the Iowa Constitution by reviewing economic legislation under a rational basis test. To pass the rational basis test, the statue must be "rationally related to a legitimate state interest." First the court must identify the classes of similarly situated person singled out for differential treatment. The court must then examine the legitimacy of the end to be achieved and then scrutinize the means used to achieve that end. To determine whether the ends are legitimate, the court must ask whether the claimed interest is realistically conceivable. Then it must be determined whether the relationship between the classification and the purpose of the classification is so weak that the classification must be viewed as arbitrary. The legislature expressly identified the interests it sought to advance when it enacted chapter 437A. The legislature also expressly announced its objective to preserve revenue neutrality and debt capacity for local governments and taxpayers by creating new and different systems generating tax revenue calculated to replicate the amount that was collectible under the prior framework. To advance this objective the legislature created a new variable tax rate dependent on the centrally assessed property tax liability allocated to the natural gas service of each taxpayer principally serving each CSA. Under rational basis, the court will uphold a classification against an equal protection challenge statue if it is rationally related to at least one legitimate state interest. The court will evaluate whether the classification features extreme degrees of overinclusion and underinclusion in relation to the particular goal. None of LSCP's assertions identifies a classification that is extremely overinclusive or underinclusive.

The dormant Commerce Clause limits the power of the states to erect barriers against interstate trade. A party must have standing to raise a dormant Commerce Clause claim. In state plaintiffs are not precluded from raising dormant Commerce Clause challenges. But even if LSCP has standing, the replacement delivery tax framework does not violate the dormant Commerce Clause. The Supreme Court stated that a tax can survive a Commerce Clause challenge when the tax is applied to an activity with a substantial nexus to the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State. The replacement tax on natural gas delivery clearly has a nexus to Iowa because it involves taxation of natural gas delivered into Iowa for consumption here. The replacement tax is fairly apportioned because Iowa only taxes activity within the state – natural gas delivered into Iowa. The tax is fairly related to services provided by the State because the replacement tax is related only to the natural gas delivered in Iowa. To determine whether the tax is discriminatory, the court recognizes that a regulation can be directly and facially discriminatory or have discriminatory effect. Iowa's replacement tax is not per se discriminatory because it applies to all therms of natural gas delivered within the state, regardless of whether the gas goes directly from the interstate pipeline to the consumer or is first routed through an LDC. The replacement tax is also does not have a discriminatory effect. The replacement tax begins from a point of equivalence. The statute imposes the same tax on both LDCs and directly connected consumers.

Pauline McKee v. Isle of Capri Casinos, Inc. and IOC Black Hawk County, Inc., No. 14-0802, Filed April 24, 2015

Facts: Casino patron who sued to recover a bonus allegedly won on a slot machine appeals the district court's grant of summary judgment to the casino. Casino patron obtain a win of 185 credits or $1.85 based on how the symbols lined up. However, at the same time a message appeared on the screen stating "Bonus Award - $41797550.16." The casino refused to pay the alleged bonus, claiming it was an error and not part of the game. The patron brought suit against the casino, asserting breach of contract, estoppel, and consumer fraud.

Issue: Whether there was an express or implied contract between the patron and the casino? Whether Plaintiff successfully brought a claim for promissory or equitable estoppel, and whether Plaintiff presented proof of a Consumer Fraud claim?

Holding: Affirmed. The rules of the game formed a contract between the patron and the casino, and the patron was not entitled to the bonus under those rules. The patron failed to prove the necessary elements of either promissory or equitable estoppel. At no time did the casino represent to her that a bonus would be available if she played the game, nor did the casino promise to pay the $41 million after the notice was displayed. The patron did not detrimentally rely on any representation by the casino. Lastly, the patron failed to present proof of an ascertainable loss sufficient to warrant recovery on her consumer fraud claim.

Reasoning:

The Miss Kitty rules of the game are the relevant contract here and they form an express contract between the parties. In addition, the Miss Kitty rules did not provide for any kind of bonus. Therefore, McKee had no contractual right to a bonus. The parties express contract did not include the possibility of winning a bonus, but was rather limited to the display of different reel combinations and their corresponding credit values. When a machine generates an award that is not within the rules of the game, isolating the cause of what happened is not necessary. It is sufficient for present purposes that the award was erroneous in the sense that is was not part of the game. In addition, the casino does not need to rely on a mistake defense because it is following the contract terms, not seeking to avoid them.

There is no evidence that the casino made a representation on which McKee relied to her prejudice. Until the "Bonus Award" message appeared on the screen, McKee had received no information about a bonus and therefore could not have played the game in reliance on the possibility of a bonus. Nor was there an inducement of detrimental reliance on McKee's party. The rules and paytable of the Miss Kitty game listed all the winning combinations of reels and did not include the possibility of additional bonus wins.

Lastly, McKee cannot show an ascertainable loss of money or property to successfully bring a Consumer Frauds claim under Iowa Code section 714H.1. Since McKee had no contractual right to the bonus, she could not have suffered an ascertainable loss of money or property when she was denied that bonus.

Iowa Department of Human Services v. Community Care, Inc., and Dewitt Bank & Trust Company, DAC, Inc. and Jackie Scott, Morrisonanderson and Associates, LTD., Bank Iowa, No. 14-1522, Filed April 10, 2015, Amended May 6, 2015.

Facts: Bank appeals a district court decision permitting the payment of receivership expenses out of property in which it had a prior perfected security interest. Community Care, Inc. (CCI) provided health care services for persons with developmental disabilities. Payment for CCI's services came in larger part from the Medicaid program. DeWitt Bank & Trust Company (The Bank) was CCI's primary lender and held perfected security interest on much of CCI's real and personal property. The Iowa Department of Human Services (DHS) determined there was a credible allegation CCI had committed Medicaid fraud. DHS therefore suspended part of its Medicaid payments to CCI. In return, CCI agreed to appoint a third-party manager for its operations. The manager resigned. DHS filed an application for injunctive relief under Iowa Code section 249A.44. The district court granted DHS's request and enjoined CCI from transferring property or otherwise taking any action inconsistent with DHS's right to recover overpayments of medical assistance from CCI. CCI ceased operations and leased much of its real and personal property to DAC, Inc. (DAC). DHS and CCI filed a joint motion for appointment of receiver for CCI. The court's order seemingly provided that the receiver's compensation could be paid out of CCI assets in which the Bank had a prior perfected security interest. The district court held that Iowa law required the expenses of the receiver to be paid before the creditors, including secured creditors. The Bank applied for interlocutory review.

Issue: Whether Iowa Code section 249A.44(3) and 680.7 authorize the payment of a receiver's expenses out of property in which a secured creditor had a prior perfected security interest.

Holding: Reversed and remanded with directions. Sections 249A.44(3) and 680.7 do not authorize a receiver to be paid out of assets that are subject to a prior perfected lien. Iowa follows the common law rule that receivership expenses may be charged to secured property only to the extent that the secured creditor has received a benefit from the receivership or the secured creditor has consented to the receivership.

Reasoning: Section 249A.44(3) is not determinative. Section 680.7, part of the general law relating to receiverships does not govern, but instead section 680.5 governs. Because 680.7 was added after 680.5, it supports the inference that section 680.7 was not intended to disturb the existing law regarding the relative priority of secured and unsecured claims. Rather it was designed to address the separate subject of priority among *unsecured* claims. Allowing DHS to charge the costs of a receivership against a secured creditor's collateral without any showing of benefit to the secured creditor and without even notifying the secured creditor would raise serious constitutional concerns. The general rules is that receivership expenses may be paid out of encumbered property only to the extent the lien creditor benefits from or consents to the

receivership. Therefore, neither Iowa Code section 249A.44(3) nor Iowa Code section 680.7 authorizes the expenses of a receiver appointed under section 249A.44(3) to be charged against a secured creditor's collateral. Instead, Iowa follows the general equitable rule on receiverships, under which the costs of a receiver may be charged against a third party's security interest only to the extent the secured party has been shown to benefit from the receiver's services or in the event the secured party has consented to the receiver.

Iowa Department of Human Services v. Klaasmeyer & Associates, Inc. and Bank Iowa, No. 14-1542, Filed April 10, 2015

Facts: Bank appeals a district court decision permitting the payment of receivership expenses out of property in which it has a prior perfected security interest. This is the companion interlocutory appeal with facts that mirror *Iowa Department of Human Services v. DeWitt Bank and Trust Co.,* ___ N.W.2d ___ 9Iowa 2015).

Holding: Reversed and remanded with direction.

Roselene Sanon and Nemi Sanon, Individually and as Administrators of the Estate of Nehmson D. Sanon, and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Hrispin, v. City of Pella**,** No 13-1438, Filed June 26, 2015

Facts: Plaintiffs appeal and the city cross-appeals from a district court's grant of partial summary judgment on claims arising out of the drowning death of two boys at the city's swimming pool. The parties of two children filed a claim for negligence against a city following a drowning in the municipal pool. The parents also filed a constitutional due process claim against the city for the drowning incident under the state-created danger doctrine. The city filed a motion for summary judgment claiming it had statutory immunity under Iowa Code section 670.4(12) (2009) as to the negligence claims. Section 670.4(12) grants the city immunity from liability, unless the parents' claim is based upon an act or omission of an officer or employee of the city that constitutes a criminal offense. The city also alleged there is no genuine issue of material fact to allow the claim under the state-created danger doctrine to proceed. The district court granted summary judgment on all of the parent's negligence claims except that part of the claim in which the parents allege the city employee's acts constitute the criminal offense of involuntary manslaughter. The district court found that there was no genuine issue of material fact as to the due process claim. Both parties filed applications for interlocutory appeal which the Iowa Supreme Court granted. The parents withdrew their argument concerning the due process claim.

Issue: Whether a violation of an administrative rule promulgated by the Iowa Department of Public Health constitutes a crime and removes the immunity provided under Iowa Code section 670.4(12)? Whether the district court was correct in finding manslaughter to be a criminal offense removing the immunity provided under section 670.4(12), and if so, what level of proof is needed to remove this claim from the immunity?

Holding: Affirmed in part, reversed in part, and case remanded with instructions. The parents have alleged the city violated administrative rules constituting criminal offenses under the Iowa Code. Therefore if the city violated these rules, the city is not entitled to immunity under Iowa Code section 670.4(12). The parents must prove by a preponderance of the evidence that the city's acts or omissions constitute involuntary manslaughter to remove it from the immunity granted by section 670.4(12).

Reasoning:

State regulations require lighting sufficient "so that all portions of the swimming pool, including the bottom and main drain, may be clearly seen." Iowa Admin. Code r. 641 – 15.4(4)(*m*)(2)(1) (2009). The City of Pella had constructed the pool with underwater lighting, but in late 2004, rust appeared on the back light sockets and the City's aquatics manager and the community services director decided to no longer use the underwater lights. The city employees did not consult with anyone within the City's electrical department, the architect or engineer responsible for the lighting system. In 2006 the City inspected the electrical system and found numerous construction defects. The City filed a breach of contract, breach of express and implied warranties, negligence, and fraud suit against CEC who was responsible for the electrical work on the pool. During the lawsuit, the city had experts testify that using only overhead lighting at the pool would not meet Iowa regulations. The pool became murky on the night in question. The two boys used the drop slide in the deep end of the pool. The lifeguards on duty did not notice the boys failed to surface and exit the pool. At the end of the night, the boys' absence was noticed. The boys' bodies were found in the deep end of the pool near the main drain. The 1933 amendments show the legislature's intent that the penalty provisions of section 135.38 apply to department rules adopted under other sections of the Code within the control of the department. A violation of the department rules relied upon by the parents is a misdemeanor under section 135.38. The enactment of section 135I.5 did not change or amend the original legislative intent of 135.38 criminalizing a violation of a department rule. When section 135.38 and section 135I.5 are read in tandem, section 135.38 criminalizes a violation of the department rules, while section 135I.5 criminalizes a violation of a statute contained in chapter 135I.

The city argues that because there has been no criminal conviction or criminal prosecution to the involuntary manslaughter charges used by the parent to exclude the city from the immunity provided under section 670.4(12), the parents must prove manslaughter beyond a reasonable doubt. The term criminal offense refers to conduct which is prohibited by statute and is *punishable* by fine or imprisonment. Conduct need not be punished or result in a conviction to be punishable. Therefore no conviction is required to avoid the immunity defense.

The parents need only prove by a preponderance of the evidence that a city employee or officer committed the criminal act causing injury. This is a civil action for money damages. The civil burden of proof applies. Iowa law allows civil and criminal remedies to be pursued independently. And tort law routinely allows proof of criminal offenses by a preponderance of the evidence to recover civil damages.

Siouxx Pharm, Inc. and Sioux Biochemical, Inc., v. Eagle Laboratories, Inc.; Bio-Kinetics Corporation, and Dana Summers, No. 13-1525, Filed June 26, 2015

Facts: Interlocutory appeal on a discovery issue. The district court order required redesignation of the plaintiffs' standard operating procedures (SOPs) from "attorneys' eyes only" to "confidential." The protective order allowed each party to designate highly sensitive proprietary or trade-secret information whose disclosure to another party in the case would cause severe competitive damage as "attorneys' eyes only." Under this designation, only court personnel, attorneys, and outside experts would review the material. The district court removed the "attorneys' eyes only" designation for any of plaintiffs' SOPs alleged to have been misappropriated, converted, or used without authorization by the defendants. With the modification, these material would remain confidential and not disclosed to the public, but would be disclosed to the defendants themselves.

Issue: Whether the district court erred in requiring plaintiffs to redesignate its standard operating procedures (SOPs) from "attorneys' eyes only" to "confidential"?

Holding: Reverse and Remand. The district court abused its discretion. The district court may have had reasons other than the conclusory assertions by defendants and the fact that the defendants, unlike the plaintiffs, have elected to not hire an expert in order to save money, to order redesignation of the SOPs, but these grounds alone are not enough. Removing the "attorneys' eyes only" designation may be appropriate if there are other reasons found for redesignation.

Reasoning:

The defendants did not argue below that the plaintiffs improperly designated materials under the order and did not provide any basis for modifying the order other than conclusory assertions and a statement that they, unlike plaintiffs, have elected not to hire an expert in order to save money. These alone are not valid grounds for ordering redesignation. Defendant filed a motion to have Plaintiff's SOPs redesignated from "attorney eyes' only" to "confidential" reasoning it would be impossible for Defendants to adequately prepare their case for trial unless the SOPs is redesignated. There was no affidavit or other evidence given to support Defendant's motion. Plaintiff must produce complete, unabridged versions of the SOPs to allow the defendants to defend the case fairly. When claims hinge on a close textual comparison of each side's SOPs containing detailed technical information and alleged trade secrets, there is simply no alternative to the production of unredacted SOPs.

The Iowa legislature in the Uniform Trade Secrets Act has directed courts to preserve trade secrets in litigation by reasonable means. Nevertheless, a trade secret must and should be disclosed if the disclosure is relevant and necessary to the proper presentation of a plaintiff or defendant's case. If information sought in discover is a trade secret, the district court must determine whether good cause exists for a protective order. The district court can strike a balance between the harm from disclosure against the need for the information. The issue here is whether material that have been designated "attorneys' eyes only" under a stipulated protective order that permits this redesignation should be reclassified as confidential. The risk of harm from disclosure to a competitor is generally greater than the risk of harm related to disclosure to a noncompetitor. On the other hand, the opposing party seeking disclosure, even if a competitor, may claim that disclosure of documents to its decision-makers is necessary to allow it to litigate effectively. (Like when an opposing party's decision-makers have unusual expertise in the subject matter of the litigation that might not be available to outside experts). But a naked contention that access will affect the ability of the defendant to defend its case, without more, is not sufficient. A party uncertain whether its trade secret was stolen should not have to reveal the secret to the thief to find out. Redesignation also should not be ordered merely because a party chooses not to retain an expert. Sufficient reasons for redesignation are when the material does not qualify for AEO treatment under the existing stipulated order because it is not "confidential, non-public, and/or proprietary information containing highly sensitive proprietary, financial, or trade secret information, which would cause severe competitive damage if disclosed to another party to this action." Here defendant did not dispute that the material had been properly designated as AEO and there is evidence on the record supporting such designation. Another consideration to be taken by the district court is whether the defendants were going to see the plaintiff's full SPOs anyway when the case went to trial.

Iowa Court of Appeals

No. 12-2156
AFFIRMED.
MCCLEARY v. ECKLEY
Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. Considered by Vaitheswaran, P.J., Bower, J., and Miller, S.J. Opinion by Miller, S.J. (7 pages)
Jaysen McCleary appeals from the denial of his application to vacate the Polk County Bar Association Fee Arbitration Committee's arbitration award.
OPINION HOLDS: McCleary's argument there was evident partiality by Committee members fails because McCleary is unable to demonstrate he was actually prejudiced by the nominal relationships he complains of. Furthermore, it was unnecessary for the district court judge to recuse himself from hearing McCleary's application or to remove references to McCleary's attempts at ex-parte communication with the court from its order. Because McCleary failed to prove a provision of section 679A.12(1) (2011) was violated, we need not consider the accord-and-satisfaction argument as an alternate ground for affirming.

No. 13-1801
AFFIRMED.
THOR MANUFACTURING v. CEDAR RIVER POULTRY
Appeal from the Iowa District Court for Floyd County, Paul W. Riffel, Judge. Considered by Danilson, C.J., and Potterfield and McDonald, JJ. Opinion by Danilson, C.J. (6 pages)
Cedar River Poultry (Poultry) appeals the district court's judgment for Thor Manufacturing (Thor) on a breach-of-contract claim. Poultry claims Thor has not proved the necessary contract element of mutual assent and, consequently, insufficient evidence exists to support the district court's breach-of-contract finding.
OPINION HOLDS: We affirm the district court's decision entering judgment for Thor, finding the evidence presented at trial was sufficient to support the existence of an oral contract.

No. 13-1036
REVERSED AND
REMANDED WITH
INSTRUCTIONS.
KOEHN v. KOEHN BROS. FARMS, LLC
Appeal from the Iowa District Court for Clayton County, Richard D. Stochl, Judge. Considered by Danilson, C.J., Mullins, J. and Mahan, S.J. Opinion by Mullins, J. (27 pages)
William (Jeff) and Kelly Koehn, along with their company Koehn Bros. Farms, L.L.C., (collectively the Koehn Bros.) appeal the district court's order that declared a real estate contract between Koehn Bros. Farms and William and Sharon Koehn, the parents of Jeff and Kelly, null and void based on undue influence. The Koehn Bros. claim on appeal the district court incorrectly determined a confidential relationship existed between them and the parents,

Sharon did not have full knowledge of the facts, and her conveyance was not an intelligent and voluntary act. The Koehn Bros. claim that even if there was a confidential relationship, they fully rebutted the presumption that the transaction was the result of undue influence. They also assert that if the district court's decision is to be upheld, fairness requires the parents to repay the amount the parents received from the Koehn Bros. minus what they would have received had no contract been executed. Finally, the Koehn Bros. ask that we reform the contract and the quitclaim deed to reflect the intent of the parties that the parents would receive a life estate in the house only and the Koehn Bros. would be responsible to provide a house in town should the parents ever want to leave the homestead.

OPINION HOLDS: Because we find the evidence admitted does not prove the Koehn Bros. exerted undue influence over Sharon and William with regarding to the execution of the real estate contract, we reverse the decision of the district court and hold the contract is not rescinded. In addition, we find the Koehn Bros. established the real estate contract and quitclaim deed did not accurately reflect the intent of the parties, and we grant relief by reforming the real estate contract and declaring the quitclaim deed null and void. We remand to the district court to determine an appropriate legal description for the property subject to the life estate and enter such orders as are necessary to accomplish the holding of this opinion.

No. 13-1623
AFFIRMED.
DELOUIS v. IOWA BD. OF MEDICINE

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge. Considered by Danilson, C.J., and Vogel and Bower, JJ. Opinion by Bower, J. (11 pages)

Dr. Donna DeLouis appeals the district court decision affirming the ruling of the Iowa Board of Medicine refusing her request to rescind a settlement agreement.

OPINION HOLDS: We conclude the district court was correct in determining it did not have the ability to review the validity or the terms of the settlement agreement as the petition for judicial review was untimely to challenge a contested case proceeding. Alternatively, Dr. DeLouis claims she timely filed a petition for judicial review challenging "other agency action" of the board. However, the actions of the board, which Dr. DeLouis characterizes as "other agency action," were actually part of the resolution in a contested case proceeding. We affirm the decision of the district court.

No. 13-0930
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
PRIMMER v. LANGER

Appeal from the Iowa District Court for Benton County, Marsha A. Bergan and Ian Thornhill, Judges. Considered by Danilson, C.J., and Potterfield and McDonald, JJ. Opinion by Danilson, C.J. (22 pages)

Richard and Pamela Primmer, as well as Primmer Transportation, Inc. (collectively "Primmer") appeal the district court's rulings granting summary

judgment on all counts to defendants, John Langer, Lance Lillibridge, and Lillibridge Transportation, Inc. (LTI). Primmer's petition alleged various counts, and they appeal the summary judgment of each: violation of a noncompetition agreement, misappropriation of trade secrets, conversion or destruction of property, interference with contract, acting in concert, and defamation. Primmer contends, contrary to the district court's ruling, that they can recover punitive damages against the defendants because the defendants' conduct from which their claims arose constituted willful and wanton disregard for Primmer's rights. Primmer also maintains the district court erred in awarding the defendants trial attorney fees and assessing costs against Primmer, pursuant to Iowa Code section 500.6 (2011). Primmer asks that we reverse the rulings of the district court and remand for further proceedings. The defendants ask that we award them appellate attorney fees, pursuant to section 500.6.
OPINION HOLDS: Upon
review, we decline to award the defendants appellate attorney fees, and we affirm in part, reverse in part, and remand.

No. 13-0332
AFFIRMED.
ASCHLIMAN v. HETTINGER
Appeal from the Iowa District Court for Clayton County, Margaret Lingreen, Judge. Heard by Vaitheswaran, P.J., and McDonald and Bower, JJ. Opinion by McDonald, J. (10 pages)
David Aschliman appeals a judgment decree and order adverse to him and in favor of Rodney Hettinger in a real estate dispute.
OPINION HOLDS: Aschliman's quiet title and declaratory judgment action are collateral attacks on Hettinger's real estate contract with Edward and Frank Gibbs. Because Hettinger has obtained a final judgment against the Gibbses for the disputed property, Aschliman cannot attack that judgment through his current action and must instead attempt to have Hettinger's default judgment modified or vacated. Even if Aschliman were able to attack the contract, he cannot prove the Hettinger-Gibbs agreements were procured by fraud or were otherwise invalid and cannot show he was a bona fide purchaser for value because he had actual and constructive notice of the contracts. We agree with the district court's recommendation that a $221,000 equitable lien in favor of Aschliman is appropriate as it does justice between the parties due to Aschliman's payment of various liens and encumbrances on the disputed property now belonging to Hettinger. We also agree with the district court substantial evidence supports the finding that Aschliman committed interference with Hettinger's contracts and conversion of Hettinger's property. We decline Hettinger's request to award appellate attorney fees.

No. 13-1506
AFFIRMED.
UNITED PARCEL SERVICE, INC. v. EMPLOYMENT APPEAL BD.
Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge. Heard by Potterfield, P.J., and Tabor and Mullins, JJ. Opinion by Tabor, J. (17 pages)
United Parcel Service (UPS) appeals a judicial review order affirming a citation and administrative penalties assessed under the general duty clause of

the Iowa Occupational Safety and Health Act.
OPINION HOLDS: Substantial
evidence supports the Employment Appeal Board's (EAB) ruling that UPS recognized the crushing hazard caused by inadequate lighting and a feasible means of abatement existed. Similarly, substantial evidence supports the EAB's ruling that UPS recognized the crushing hazard caused by a lack of training on gate-opening procedures and a feasible means of abatement existed. Further, the EAB ruling was not an irrational, illogical, or wholly unjustifiable application of law to fact, nor was it arbitrary and capricious.

No. 13-1713
AFFIRMED.
SCHLICHTE v. SCHLICHTE
Appeal from the Iowa District Court for Plymouth County, Duane E. Hoffmeyer, Judge. Heard by Vaitheswaran, P.J., and Doyle and McDonald, JJ. Opinion by McDonald, J. (9 pages)
Jeannie Schlichte appeals from an adverse grant of summary judgment dismissing her fraudulent conveyance action against her father's estate and her siblings. Jeannie contends her father's transfer of land to her and her five siblings was fraudulently made to defraud her (an alleged victim of her father's sex abuse) and the State of Iowa (which might have a claim for restitution and costs in criminal proceedings against the father for unrelated (but proven) sex abuse claims).
OPINION HOLDS: Jeannie is barred by the statute of limitations from bringing this suit as it was brought more than five years after the transfer was made and more than one year after Jeannie had actual and imputed knowledge of facts that would alert a reasonable person of the need to investigate the transaction further. Jeannie also had constructive notice of the transfer because her father recorded the deeds. Assuming arguendo Jeannie's claim was not untimely filed, her claim fails as a matter of law because her father's transfer of land was made as a legitimate estate planning transaction and was not made to defraud creditors.

No. 13-1917
AFFIRMED.
STATE CENTRAL BANK v. MERIWETHER
Appeal from the Iowa District Court for Dubuque County, Thomas A. Bitter, Judge. Considered by Vaitheswaran, P.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (3 pages)
State Central Bank appeals from the district court's grant of summary judgment in favor of Bruce Meriwether on its petition alleging Meriwether breached a consulting and non-compete agreement.
OPINION HOLDS: We affirm the
district court's grant of summary judgment in favor of Meriwether.

No. 13-1922
AFFIRMED.
IN RE PROPERTY SEIZED FROM HARRIS
Appeal from the Iowa District Court for Marshall County, Steven J. Oeth, Judge. Considered by Vaitheswaran, P.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (8 pages)
Debra Armstrong challenges a forfeiture order, claiming the State failed to follow proper procedures in obtaining the order.
OPINION HOLDS: We affirm the district court's ruling denying Armstrong's petition to vacate the forfeiture order regarding her vehicle.

No. 14-0406
AFFIRMED.
JONES v. ESTATE OF JONES
Appeal from the Iowa District Court for Clarke County, John D. Lloyd, Judge. Considered by Danilson, C.J., and Vogel and Bower, JJ. Opinion by Vogel, J. (6 pages)
Petitioner Richard Jones appeals the district court decision granting a motion to enforce a consent decree.
OPINION HOLDS: Because the narrow issue he raises on appeal, whether a settlement agreement that formed the basis for a consent order is enforceable as a contract because it either lacked mutual assent or there was mutual mistake, was neither presented to nor ruled upon by the district court, he has not preserved error. Therefore, we affirm the decision of the district court.

No. 13-1866
AFFIRMED.
RAWLINGS v. PESCHONG
Appeal from the Iowa District Court for Marshall County, James A. McGlynn, Judge. Considered by Potterfield, P.J., Tabor, J., and Miller, S.J. Opinion by Miller, S.J. (5 pages)
Brian Rawlings appeals the grant of summary judgment in favor of Mike Peschong on his claim Peschong breached an oral contract.
OPINION HOLDS: Rawlings contends the court erred in determining he was judicially estopped from alleging Peschong failed to obtain a valid insurance policy on his home. Because Rawlings waived his challenge to the district court's finding that he failed to dispute the existence of a valid insurance policy, we affirm.

No. 14-0099
AFFIRMED ON APPEAL; AFFIRMED ON CROSS-APPEAL.
SUMMIT INTERESTS INC. v. MESCHER
Appeal from the Iowa District Court for Linn County, Ian K. Thornhill, Judge. Considered by Danilson, C.J., and Vogel and Bower, JJ. Opinion by Bower, J. (10 pages)
Steven Mescher appeals the district court's dismissal of his motion to vacate or modify a judgment and for a stay of the application to register a foreign judgment filed by Summit Interests (d/b/a Colorado Backcountry Rentals).

Mescher claims the Colorado judgment should not be given full faith and credit as he did not have an adequate opportunity to be heard, and the requirement of a filing fee in order to file his answer violated his due process rights. He also claims the court erred in entering a judgment for an amount in excess of the amount claimed in the initial complaint served on Mescher. Summit cross-appeals, claiming Mescher's claims are precluded from consideration, he received adequate notice, waived his right to respond, and the trial court did not err in entering a judgment in excess of the amount in the original complaint.
OPINION HOLDS: We find Mescher's claims are precluded by the judgment entered in Colorado and affirm the district court's ruling.

No. 14-0237
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
HALSTEAD v. LANGEL
Appeal from the Iowa District Court for Fayette County, Kellyann M. Lekar, Judge. Considered by Potterfield, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (12 pages)
A contractor appeals the district court decision denying his petition seeking a money judgment and enforcement of his mechanic's lien, and granting the defendants' counterclaim for damages.
OPINION HOLDS: We agree with the district court's determination the contractor cannot enforce his mechanic's lien because he did not show substantial performance of the contract. We conclude, however, the contractor should be paid for the work he performed on the project and for which he had not been paid, as adjusted by the cost of remedying defective work. We affirm the denial of the mechanic's lien, reverse the decision of the district court on damages, and remand for a further hearing on the amount of damages.

No. 13-1039
AFFIRMED.
SOMMESE v. AMERICAN BANK & TRUST CO.
Appeal from the Iowa District Court for Scott County, Mary E. Howes, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Mullins, J. (12 pages)
American Bank & Trust (ABT) appeals from a jury verdict that it breached an employment contract with Frank Sommese. ABT contends the district court abused its discretion when it excluded various documents as irrelevant.
OPINION HOLDS: We find the district court did not abuse its discretion in excluding the offered documents as irrelevant or otherwise excludable. We find no substantial rights of ABT were affected and, consequently, we affirm.

No. 13-1624
AFFIRMED ON BOTH
APPEALS.
GJERDE v. UNITED HEALTH CARE
Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge. Heard by Danilson, C.J., and Doyle and Tabor, JJ. Opinion by Doyle, J. (15 pages)
Ryan and Jaime Gjerde challenge the district court's judicial review decision under Iowa Code chapter 514J (2013) of an external review decision upholding the denial of coverage by UnitedHealthcare Plan of the River Valley, Inc., doing business as UnitedHealthcare ("United"), for certain intensive therapy services for their son's cerebral palsy and developmental delay. United crossappeals, challenging the district court's failure to determine whether one of the services at issue was covered under the insurance policy.
OPINION HOLDS: Because the district court committed no error in concluding the sensory services at issue were not covered under the United policy and the question raised by United need not be reached, we affirm on both appeals.

No. 13-1498
AFFIRMED.
A.D., L.L.C. v. 2004 SC PARTNERS, L.L.C.
Appeal from the Iowa District Court for Woodbury County, Jeffrey L. Poulson, Judge. Heard by Vogel, P.J., and Vaitheswaran and Potterfield, JJ. Opinion by Potterfield, J. (21 pages)
The owner of an apartment complex, 2004 SC Partners, L.L.C., appeals from the district court's grant of equitable relief to the owner of adjoining property, A.D., L.L.C., in this action involving the drainage of surface water from a dominant estate to a servient estate. Partners contends the district court erred in ruling it could be held liable for not abating a condition on its property, in concluding A.D.'s claim was not barred by the statute of limitations, in awarding a recovery to A.D. despite finding A.D. sixty-five percent at fault, and in granting equitable relief to A.D. without balancing the equities. **OPINION HOLDS:** I. Partners was given ample notice by the pleadings, the summary judgment ruling, and the evidence presented by A.D. that its drainage system was ineffective and unstable and its duty of ordinary care was at issue. Partners' failure to maintain its drainage system continues to cause actual damage for which the servient owner is entitled to relief. II. While we agree with Partners that A.D. had notice that there was surface water being discharged from the dominant estate when it purchased the lower lying property, only after purchasing the adjoining property, did A.D. became aware that in order to alleviate excess erosion on A.D.'s property it needed to be able to tie into or alter the conditions on Partners' property. It was at this point that A.D. knew of both the fact of injury and its cause, and the petition was filed within the five-year statute of limitations. III. The Iowa Comparative Fault Act does not bar A.D. from obtaining equitable relief. IV. A consideration of the relevant factors weighs in favor of granting A.D. injunctive relief.

No. 13-1710
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED WITH
DIRECTIONS.
GANNON v. RYAN
Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge. Considered by Danilson, C.J., Bower, J., and Sackett, S.J. Opinion by Danilson, C.J. (14 pages)
Robert Gannon appeals the district court's judgment on a breach of contract claim, finding in favor of the plaintiffs, Maureen and Michael Ryan and Ryan Data Exchange, LTD. Gannon contends the district court relied on improperly admitted evidence in finding that the terms of the contract did not include payment of interest, that Michael Ryan was not a party to the loan, and that the debt was satisfied when the Ryans tendered a check for $5500.
OPINION HOLDS: We find the court did not abuse its discretion in admitting evidence of bias and its error in taking judicial notice of two court files was not prejudicial. We also find substantial evidence supports the court's finding Michael Ryan was not party to the loan agreement and payment of interest was not a term of the loan agreement. Because we find the court erred in its conclusion that the debt was satisfied at the time the Ryans tendered the check for $5500, we reverse and remand with directions for judgment to be entered for Gannon for $5500 with instructions for him to return the Ryans' previous check. Accordingly, we affirm in part, reverse in part, and remand with directions.

No. 13-1776
AFFIRMED AND
REMANDED WITH
DIRECTIONS.
GRANT INS. AGENCY, INC. v. CLEM INS. SERVICES, INC.
Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Mullins, J. (16 pages)
Buyers of an insurance agency appeal the judgment entered in favor of the sellers on several contract claims. They contend the district court erred in failing to find the sellers breached the purchase agreement, in interpreting the contract, and in awarding the sellers liquidated damages and attorney fees.
OPINION HOLDS: We affirm the denial of the buyers' breach-of-contract claim because the buyers failed to prove "information of a material nature" was not disclosed in writing. We find no error in the district court's plain language interpretation of the contract provision requiring the buyers to pay a commission for "new business" generated by one of the sellers. Because the failure to pay the commission was willful and intentional, liquidated damages were properly awarded. Under the contract, the sellers are entitled to an award of their trial and appellate attorney fees. We affirm the district court's award of damages and attorney fees, and we remand the case to the district court for the limited purpose of an evidentiary hearing on and the fixing of appellate attorney fees.

No. 13-2018
AFFIRMED.
KING v. WILSON
Appeal from the Iowa District Court for Guthrie County, Gregory A. Hulse, Judge. Considered by Vaitheswaran, P.J., and Doyle and McDonald, JJ. Opinion by McDonald, J. (10 pages)
Douglas King appeals the district court's grant of Daniel Wilson's motion for directed verdict and dismissal with prejudice of King's claims arising out of a real estate transaction between King and Wilson's corporation, Prairie Pork Farms, Inc. King asserted three claims: (1) piercing the corporate veil, (2) fraudulent transfer, and (3) equitable fraud.
OPINION HOLDS: (1) King failed to prove the relevant factors to pierce the corporate veil. (2) The claim was untimely. In addition, there was no transfer to a third party to avoid King's claim as a creditor. (3) There is no merit to the claim and no evidence of several of the elements of fraud. The district court did not err in granting Wilson's motion for directed verdict.

No. 13-1927
REVERSED AND
REMANDED.
LINSER v. CROSS
Appeal from the Iowa District Court for Marshall County, Steven J. Oeth, Judge. Heard by Vaitheswaran, P.J., Mullins, J., and Goodhue, S.J. Opinion by Mullins, J. (14 pages)
Defendant Ardene Cross appeals the amount of damages awarded in a breach of contract action.
OPINION HOLDS: There could be no breach of the employment contract beyond the one-year term of the contract; and thus, no damages for future lost profits were recoverable by the plaintiff under this theory. Ardene is entitled to trial and appellate attorney fees for breach of the sales contract. Furthermore, the district court erred in determining that Ardene was not entitled to additional compensation of $7302.09. The decision of the district court is reversed and remanded.

No. 13-0725
AFFIRMED AS
MODIFIED ON APPEAL
AND REMANDED;
AFFIRMED ON CROSSAPPEAL.
IRONPLANET v. RITCHIE BROS.
Appeal from the Iowa District Court for Jackson County, Gary D. McKenrick, Judge. Heard by Vogel, P.J., and Vaitheswaran and Potterfield, JJ. Opinion by Potterfield, J. (32 pages)
Defendants Ritchie Brothers Auctioneers, Inc. and Scheckel Construction, Inc. appeal from judgment entered on a jury verdict and award against them. The jury found Scheckel liable for breach of contract relative to an agreement with plaintiff IronPlanet. It found Ritchie liable for tortious interference with the IronPlanet-Scheckel contract. IronPlanet cross-appeals from the district court's partial grant of judgment notwithstanding the verdict (JNOV) reducing compensatory damages.
OPINION HOLDS: The district court properly excluded

cumulative evidence. It properly exercised its discretion in declining to modify the trial transcript. It did not abuse its discretion in declining to submit a redundant special interrogatory to the jury, nor did it err in failing to issue additional findings of fact on the same matter. It did not err in denying on all grounds the defendants' motions for judgment as a matter of law because the record reflects substantial evidence upon which a jury could make adverse findings. The jury instructions, in context, give rise to no danger of prejudice. The court's partial grant of JNOV was proper. However, the amount of punitive damages awarded was excessive, and we order remittitur to correct it and remand.

No. 13-1555
AFFIRMED.
CURRY'S TRANSPORTATION SERVICES, INC. v. DOTSON
Appeal from the Iowa District Court for Muscatine County, Joel W. Barrows, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by McDonald, J. (14 pages)
Curry's Transportation Services, Inc. ("CTS") appeals from the judgment dismissing its claims of civil conspiracy, breach of contract, and intentional interference with business relationships against three of its former employees/contractors who left CTS's service and started competing in the trucking industry.
OPINION HOLDS: The applicable standard of review is largely dispositive of CTS's claim. Because the essential character of the present action is at law, our review is for correction of errors at law. When viewed in the light most favorable to the district court's judgment, there is substantial evidence 1) CTS, Ryner, and RT abandoned the contract; 2) any restrictive covenants were unenforceable as not reasonably necessary to protect CTS's business; 3) CTS failed to establish enforceable contracts or wrongful interference to prove intentional interference with existing and prospective business relationships; and 4) CTS did not show a discrete harm from the employee/contractor departure.

No. 13-1560
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
TRUSTEES OF THE IOWA LABORERS DISTRICT COUNCIL AND WELFARE TRUST v. ANKENY COMMUNITY SCHOOL DISTRICT
Appeal from the Iowa District Court for Polk County, Rebecca Goodgame Ebinger, Judge. Heard by Vogel, P.J., and Vaitheswaran and Potterfield, JJ. Opinion by Potterfield, J. (19 pages)
Oldcastle APG West, Inc. ("Oldcastle") appeals from the district court's denial of its crossclaim for an amount owed under an open account with Grove Masonry, Inc. ("Grove Masonry"). It also appeals the district court's award of direct and consequential damages to Grove Masonry on its counterclaim against Oldcastle for defective product.
OPINION HOLDS: (1) As to Oldcastle's claim that Grove Masonry was entirely precluded from recovery because it failed to plead the condition precedent that it gave timely notice of the defect, we affirm the district court. (2) As to Oldcastle's claim that Grove Masonry was partially precluded from recovery because it failed in fact to provide timely notice of the patently defective shotgun block, we reverse the judgment entered and remand for recalculation of

direct and consequential damages. (3) As to Oldcastle's claim that the district court's consequential damages award was improper because it was not foreseeable, we affirm the district court. (4) As to Oldcastle's claim that the district court's consequential damages award was improper because it was speculative, we affirm the district court. (5) As to Oldcastle's open account claim, we reverse the district court's entry of judgment in Grove Masonry's favor and remand for further proceedings.

No. 13-1598
AFFIRMED.
MT. ZION MISSIONARY BAPTIST CHURCH v. CHURCH MUT. INS. CO.
Appeal from the Iowa District Court for Linn County, Ian K. Thornhill, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Bower, J. (6 pages)
Mt. Zion Missionary Baptist Church sought coverage from its insurer, Church Mutual Insurance Company, for damage sustained during a flood. Zion claims the insurance policy language was ambiguous and the district court erred in finding the doctrine of reasonable expectations inapplicable.
OPINION
HOLDS: Pursuant to our holding in *Lifeline Ministries Church v. Church Mut. Ins. Co.*, No. 12-1181, 2013 WL 2107408 (Iowa Ct. App. May 15, 2013), we find the district court did not err in its interpretation of the insurance policy and affirm.

No. 13-1667
AFFIRMED.
WAILES v. HY-VEE, INC.
Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge. Considered by Vaitheswaran, P.J., and Doyle and McDonald, JJ. Opinion by McDonald, J. (10 pages)
Leline Wailes sued Hy-Vee, Inc., and Derek Webb d/b/a Webb Snow Removal after Wailes slipped and fell in the parking lot of a Hy-Vee store on a snowy day. Hy-Vee had contracted with Webb to perform snow removal services at the premises. The jury found the defendants not at fault, and the district court entered judgment on the verdict dismissing Wailes's claims. Wailes filed a motion for new trial, arguing (1) the district court abused its discretion in excluding evidence regarding the defendants' post-fall use of ice melt and post-fall snow removal efforts and (2) the district court erred in instructing the jury on the "continuing storm" doctrine. The court denied the motion.
OPINION HOLDS: Wailes did not preserve error on her evidentiary claim because she did not offer the evidence at trial after the court's equivocal ruling on defendants' motion in limine. Wailes's claim involved both the manner and timing of the snow removal. The court properly gave the continuing-storm instruction concerning the timing of the snow removal.

No. 13-1746
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
EHERENMAN v. WARREN
Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. Heard by Vogel, P.J., and Vaitheswaran and Potterfield, JJ. Opinion by Vaitheswaran, J. (9 pages)
Homeowners John and Sandra Warren appeal several aspects of a district court ruling foreclosing the mechanic's lien of Jack Eherenman, doing business as Eherenman Construction.
OPINION HOLDS: We conclude the Warrens hindered performance of the contract, which excused Eherenman's obligation to substantially perform the contract. We further conclude Eherenman was entitled to payment for work performed on the contract and the signed portions of the written change order as well as work performed pursuant to verbal change orders. Finally, we conclude the damage award of $45,940.90 must be reduced by the lost profits of $9469.92 and the surcharges of $1181.67, $1097.53, and $1973.50, resulting in a total reduction of $13,722.62. We affirm the ruling foreclosing the mechanic's lien, but reverse the judgment in rem of $45,945.90, and remand for entry of a judgment in rem in the amount of $32,218.28.

No. 13-2026
AFFIRMED.
LENZ v. HEIAR FENCING
Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge. Considered by Danilson, C.J., and Doyle and Tabor, JJ. Opinion by Doyle, J. (7 pages)
Gary Lenz and Advance Designs, Inc. ("Lenz") appeal the district court's dismissal of their claim for breach of an oral contract.
OPINION HOLDS: Here, viewing the evidence in the light most favorable to Lenz and affording plaintiffs every legitimate inference that reasonably may be deduced from the evidence, we agree with trial court's conclusion that the record does not contain substantial evidence from which the jury reasonably could have found the existence of an oral agreement. Accordingly, we affirm the district court's

No. 14-0298
REVERSED AND
REMANDED.
VILLARREAL v. UNITED FIRE & CASUALTY CO.
Appeal from the Iowa District Court for Cerro Gordo County, Rustin T. Davenport, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Bower, J. McDonald, J., dissents. (29 pages)
The plaintiffs appeal the district court order granting summary judgment to defendant United Fire & Casualty Company on their claim alleging the intentional tort of bad faith. In ruling, the district court upheld United Fire's defense that the plaintiffs' bad faith claim is barred by the doctrine of claim preclusion based on the plaintiff's first action alleging United Fire's breach of contract.

OPINION HOLDS: Because the protected right, the alleged wrong, the recovery sought, and the relevant evidence in the current tort lawsuit are different than in the prior contract lawsuit, claim preclusion does not apply to bar the plaintiffs' tort claim.
DISSENT ASSERTS: I respectfully dissent. The plaintiffs' second claim, as pleaded by the plaintiffs, arises out of the same nucleus of operative facts as their first claim and is the "same claim" for claim preclusion purposes. I would affirm the judgment of the district court.

No. 13-1634
AFFIRMED.
LAKIN v. RICHARDS FARM LTD.
Appeal from the Iowa District Court for Mills County, James S. Heckerman, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Bower, J. (16 pages)
Charles Lakin appeals the district court's denial of his motion for judgment notwithstanding the verdict. The case was tried before a jury, which found in favor of Lakin on his breach-of-contract claim in the amount of $319,951, and for Jeffrey Richards on his counterclaim for interference with prospective contractual relationships in the amount of $353,465 and awarded punitive damages to Richards in the amount of $1.4 million. On appeal, Lakin argues there was insufficient evidence to submit the interference with prospective contractual relationships claim to the jury, and the award of punitive damages was improper for three reasons: insufficiency of the evidence, vague jury instructions, and the award violated his due process rights because it was excessive. Richards claims Lakin failed to preserve error on his claims, except the due process claim. Richards cross-appeals claiming the district court erred in submitting the determination of Lakin's attorney fees to the jury.
OPINION HOLDS: We find
Lakin failed to preserve error on his claims. We find Richards failed to preserve error on his counterclaim. We limit our review to Lakin's claim his due process rights were violated by the excessive punitive damage award and find Lakin's due process rights were not violated and affirm the district court.

No. 14-0758
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
LAMBERT v. GEICO
Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge. Considered by Danilson, C.J., and Doyle and Tabor, JJ. Opinion by Doyle, J. (15 pages)
The Lamberts appeal from the district court's ruling granting summary judgment in favor of the Lamberts' underinsured motorist carrier, GEICO, finding GEICO established as a matter of law it had canceled the Lamberts' insurance policy prior to the date of their automobile collision.
OPINION HOLDS: Because
we agree with the Lamberts that a fact question existed as to whether their GEICO policy was reinstated and in effect at the time of their collision, we reverse the district court's grant of summary judgment on that issue. Additionally, in so far as the district court found a cancellation notice was not required under Iowa Code section 515D.5(1) (2011) even if the policy was reinstated, we reverse the district

court's grant of summary judgment on this issue. Finally, because we agree with the district court that the Lamberts failed to establish a genuine issue of material fact on the issue of the claimed custom of GEICO of accepting premium payments past the effective date of cancellation, we affirm on this issue. Accordingly, we affirm in part and reverse in part the district court's summary judgment ruling, and we remand for reinstatement of the Lamberts' petition and for further proceedings consistent with this opinion.

No. 13-1126
AFFIRMED.
REAL ESTATE CLOSING v. TRIO SOLUTIONS
Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge. Heard by Vogel, P.J., and Doyle and McDonald, JJ. Opinion by Vogel, P.J. (13 pages)
Real Estate Title Closing and Title Services, also known as Patriot Title and Escrow, appeals the district court's grant of the motion to dismiss filed by Trio Solutions, LLC. Patriot asserts the court erred in finding claim preclusion prohibited Patriot from bringing its current claim of replevin, arguing that the replevin action could not have been brought in the first breach of contract suit due to the statutory prohibition of joining other claims with a replevin cause of action. It further asserts the replevin claim was not ripe until after the verdict was rendered against Patriot in the contract case.
OPINION HOLDS: We conclude and Patriot concedes it could have brought a conversion claim against the property in the first action as the transfer of assets was an integral part of the failed contract negotiations. Moreover, because both suits involve the same underlying transactions, facts, and evidence, claim preclusion bars Patriot from bringing its current replevin action. Consequently, the district court properly granted Trio's motion, and we affirm.

No. 13-1777
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
SENECA WASTE SOLUTIONS v. D & K MANAGING CONSULTANTS
Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge. Heard by Vogel, P.J., and Vaitheswaran and Potterfield, JJ. Opinion by Vaitheswaran, J. (26 pages)
Seneca Waste Solution Services challenges a district court's adverse rulings following trial on its claims of breach of contract, intentional interference with prospective business advantage, and intentional interference with contract. Additionally, Seneca challenges the court's treatment of certain default admissions and the court's conclusions on the merits.
OPINION HOLDS: We affirm the dismissal of the breach-of-contract claim against defendant D & K, the dismissal of the tortious interference with business advantage claims against all the defendants, and the tortious interference with contract claims against defendants D & K and MPS. We reverse the dismissal of the breach-of-contract claim and the tortious interference with contract claim against defendant Keith Koskela and remand for entry of judgment against him in the amount of $285,000.

No. 14-0132
REVERSED AND
REMANDED.
BENSON v. 13 ASSOCIATES, L.L.C.
Appeal from the Iowa District Court for Black Hawk County, Joel Dalrymple, Judge. Heard by Danilson, C.J., and Doyle and Tabor, JJ. Opinion by Tabor, J. (21 pages)
Sandra Benson was injured when a light fixture fell on her while she was working in a space owned by 13 Associates, L.L.C, and leased to her employer. The district court granted 13 Associates' motion for summary judgment, concluding the landlord owed no duty to Benson. **OPINION HOLDS:** We find two circumstances supporting the imposition of a duty of care. First, 13 Associates retained control over Benson's workspace because of the unusual lease arrangement where 13 Associates did not demise a specific portion of the property to Benson's employer, but instead reserved the right to impose a definite demarcation if additional tenants moved in. Second, although Benson's employer agreed in the lease to take the property "as is," 13 Associates agreed to keep the structural parts of the building (including the ceiling and the lighting) in good repair. By taking on that contractual responsibility, 13 Associates owed a duty of reasonable care to Benson.

No. 14-0241
AFFIRMED.
MERCY HOSPITAL v. MCNULTY
Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, Judge. Heard by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Mullins, J. (11 pages)
Charles Johnston appeals from a district court order granting a motion for directed verdict adverse to his breach-of-contract claim against appellees Martin and Loyola McNulty (McNultys). Appellee Mercy Medical Center (Mercy) sued the McNultys for breach of a purchase agreement and sought declaratory judgment that a right of first refusal, held by Johnston, was invalid. Johnston brought a cross-claim that was dismissed by directed verdict. Johnston appeals this ruling. **OPINION HOLDS:** Johnston's right-of-first-refusal was unenforceable because Johnston was not ready, willing, and able to complete the purchase pursuant to its terms. Accordingly, the district court did not err in granting a motion for directed verdict in Mercy's declaratory judgment action. We affirm.

No. 14-0485
AFFIRMED.
ANDERSEN v. KAMLINE HIGHWAY MARKINGS
Appeal from the Iowa District Court for Carroll County, William C. Ostlund, Judge. Considered by Danilson, C.J., and Doyle and Tabor, JJ. Opinion by Doyle, J. (9 pages)
Kimberly Andersen and Michael Andersen, individually and as next friends of Hannah Andersen and Caden Andersen, appeal from an order by the district court finding they entered into an agreement to settle their underlying lawsuit against Kamline Highway Markings, L.L.C., and Darrell Lee Hocking (collectively, Kamline) stemming from injuries Kimberly sustained in a 2009 automobile collision allegedly caused by Kamline.

OPINION HOLDS: Because we conclude the district court did not err in finding there was a binding settlement between the parties, we affirm the court's order granting Kamline's motion to enforce settlement.

No. 14-0503
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED WITH
DIRECTIONS.
KIZER v. SIEVERS
Appeal from the Iowa District Court for Buena Vista County, Carl J. Petersen, Judge. Heard by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Danilson, C.J. (18 pages)
Susan Kizer and Serenity Salon and Spa, Inc. appeal from the district court's ruling dissolving the corporation and denying their claim of breach of a purchase agreement by Kim Sievers. Kizer contends the court inappropriately dissolved the corporation and considered a director's breach of fiduciary duties. Kizer also contends Sievers breached the stock purchase agreement and guaranty, and further, that the district court erred in finding an oral contract existed.
OPINION HOLDS: We conclude the personal guaranty is unenforceable due to a failure of consideration. The trial court erred in dissolving the corporation, a remedy not requested and unnecessary, and we remand to revise the judgment entry, but we otherwise affirm the settlement of the rights and obligations of the parties.

No. 14-0690
AFFIRMED IN PART,
REVERSED AND
MODIFIED IN PART,
AND REMANDED WITH
DIRECTIONS.
POCAHONTAS AERIAL SPRAY SERVS. L.L.C. v. GALLAGHER
Appeal from the Iowa District Court for Pocahontas County, Kurt J. Stoebe, Judge. Heard by Danilson, C.J., and Doyle and Bower, JJ. Opinion by Danilson, C.J. (17 pages)
Pocahontas Aerial Spray Services, L.L.C. (PASS), an agricultural aerial spraying business, brought this action for damages and injunctive relief against its former employee, Heather Gallagher, and her newly established agricultural aerial spraying business, Blue Sky Spray Service, L.L.C., alleging misappropriation of trade secrets and breach of fiduciary duty. The defendants appeal from an adverse judgment, contending there is insufficient evidence to establish the existence of a trade secret or its misuse. They contend the trial court erred as a matter of law because PASS did not protect its customer list sufficiently for it to constitute a trade secret. They also assert the damages awarded are not supported by sufficient evidence and there is no basis for imposing the lengthy injunction ordered by the trial court.
OPINION HOLDS: We affirm judgment for PASS. However, based on error in the trial court's calculation of damages, we reverse the judgment and remand for entry of new judgment in favor of the plaintiff

in the amount of $47,200. The district court shall also modify the injunction to terminate on December 31, 2015. Costs on appeal are taxed three-fourths to Gallagher and one-fourth to Pocahontas Aerial Spray Services.

No. 14-0800
AFFIRMED.
HOYT v. WENDLING QUARRIES
Appeal from the Iowa District Court for Polk County, Mary Pat Gunderson, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by McDonald, J. (7 pages)
This case presents the question of whether Iowa Code section 85.27 (2013) requires an employer to provide individualized counseling to an injured employee's spouse. The Iowa Workers' Compensation Commissioner concluded it did not, and the district court affirmed the agency's decision.
OPINION
HOLDS: The statute limits the employer's obligation to provide care to "an injured employee," not an injured employee's spouse. The statute also limits the employer's obligation to provide services suited to treat "the injury," which is the compensable injury suffered in the course of employment with the employer.

No. 13-1879
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
URBANDALE BEST, LLC v. R & R REALTY GROUP, LLC
Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. Heard by Danilson, C.J., and Doyle and Tabor, JJ. Opinion by Tabor, J. Danilson, C.J., concurs in part and dissents in part. (51 pages)
This case involves differing interpretations of a 2008 real estate operating agreement between the two fifty-fifty members of Paragon Best, a limited liability corporation developing agricultural land into the Highland Pointe Office Park in Urbandale. Under the Paragon Best operating agreement, R&R Realty Group, LLC is the managing member in charge of the day-to-day business operations, and Urbandale Best, LLC is the non-managing member and investor whose role is limited to approving "major decisions." During the development process, R&R executed a series of documents setting up the governance of the Highland Pointe Office Park and giving its officers a majority vote. R&R then conveyed a deed to the new owners' association for a storm water detention pond on Outlot A. Urbandale Best believed those unilateral actions constituted "major decisions" under the operating agreement, which required its approval. To enforce its belief, Urbandale Best sued for breach of contract, seeking declaratory and injunctive relief. R&R filed a counterclaim for breach of contract, alleging Urbandale Best acted in bad faith and obstructed R&R's performance. The district court ruled in favor of R&R; Urbandale Best appeals.
OPINION HOLDS: Our de novo review of the record shows Urbandale Best's challenge to the Outlot A deed is without merit. As to the governance documents, we find both parties intended and acted to implement the prior operating agreement without engaging in a hypertechnical interpretation of the "major decision" matrix. Rather, consistent with the general practices in commercial real estate, the parties expected R&R to unilaterally execute the governance documents and other deeds and easements that are

"ministerial" or "ancillary" and "necessary to make the bigger deal go forward" in the ordinary course of business. But because the district court reached beyond the request of R&R, we vacate its sua sponte listing of other actions it found did not constitute major decisions. We agree with the district court that Urbandale Best failed to prove its entitlement to injunctive relief. But unlike the district court, we conclude R&R is not entitled to relief on its counterclaim and vacate the award of damages.

PARTIAL DISSENT ASSERTS: I concur in the majority's decision to reverse the district court's ruling on R&R's counterclaim and to vacate both the damage award as well as the district court's listing of non-major decisions. However, because I agree with Urbandale Best that the owners' association's articles of incorporation and bylaws filed by R&R have caused Urbandale Best to lose its contractual right to jointly share in the major decisions of the real estate development, I would I would reverse the district court's denial of the relief sought by Urbandale Best.

No. 13-2025
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
QUAD CITY BANK & TRUST V ELDERKIN & PIRNIE, P.L.C.

Appeal from the Iowa District Court for Dubuque County, Thomas A. Bitter, Judge. Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (23 pages)

The law firm of Elderkin & Pirnie (the law firm) appeals the judgment entered in this legal malpractice action brought by the firm's former client, Quad City Bank & Trust (the bank). The law firm claims the evidence offered by the bank was insufficient on a number of elements to sustain the bank's burden of proof. It also claims the court erred in granting the bank's motion for additur. The bank cross-appeals claiming the court erred in denying its requests to recover the attorney fees it paid to the law firm for prosecuting the underlying case.

OPINION HOLDS: Because we find the evidence sufficient and the court's amendment of the jury verdict proper, we affirm the jury's verdict in this case. However, because we conclude attorney fees are a component of damage recoverable in legal malpractice cases, we reverse the district court's order precluding the introduction of evidence supporting the element of damage and remand the case to the district court for a new trial on the sole issue of the amount of attorney fees the bank is entitled to recover from the law firm as a result of the law firm's negligence in the Kircher lawsuit.

No. 14-0416
AFFIRMED.
JIRAK CONSTRUCTION v. BALK

Appeal from the Iowa District Court for Chickasaw County, Richard D. Stochl, Judge. Considered by Danilson, C.J., and Doyle and Tabor, JJ. Opinion by Tabor, J. (5 pages)

Homeowners appeal a district court ruling rejecting their contract claim against a construction company. They argue the initial written estimate by the construction company constituted an offer and their acceptance of the offer locked in the quoted price, despite the project undergoing significant changes after the estimate and during performance.

OPINION HOLDS: Because we find the homeowners and construction company orally modified the contract when all parties agreed to the changes in the building plans, we affirm. The homeowners are responsible for the fair and reasonable costs of the modifications to the project.

No. 14-0626
REVERSED AND
REMANDED.
WENDLING QUARRIES, INC. v. PROPERTY ASSESSMENT APPEAL BD.
Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, Judge. Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (14 pages)
Wendling Quarries, Inc. (WQI) appeals from a decision of the district court, upon its petition for judicial review, affirming the order of the Property Assessment Appeal Board of the State of Iowa (PAAB). WQI contends the district court erred in affirming PAAB's finding that its quarry scale was a taxable improvement on the land under Iowa Code chapter 427A (2013).
OPINION HOLDS: We find the district court erred in affirming PAAB's decision. On our review of the record or applicable law, we find the scale is equipment attached to the taxable concrete structure or improvement on which it rests. We remand to PAAB for a determination of whether the exception under section 427A.1(3) applies to exclude the scale itself from taxation as real property.

No. 14-0032
AFFIRMED.
JEFFRIES v. GENERAL CASUALTY INSURANCE COMPANIES
Appeal from the Iowa District Court for Jasper County, Darrell Goodhue, Judge. Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Goodhue, S.J., takes no part. Opinion by Vaitheswaran, P.J. (10 pages)
The Estate of Fanchon B. Jeffries appeals from the district court's grant of summary judgment to all defendants.
OPINION HOLDS: We conclude the contract between Jasper and the City of Centerville does not express a clear and unambiguous intent to indemnify Reinier and Kopp for Kopp's negligence. The district court correctly granted summary judgment. Further, we conclude that Interstate did not breach its duty to use reasonable care, diligence, and judgment in procuring insurance. We affirm.

No. 14-0636
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED WITH
DIRECTIONS.
MUJKIC v. LYNX
Appeal from the Iowa District Court for Black Hawk County, Joel A. Dalrymple, Judge. Heard by Vogel, P.J., and Doyle and McDonald, JJ. Opinion by Doyle, J. (14 pages)
Rifet Mujkic appeals the district court's ruling denying his Iowa Code chapter 91A (2011) and promissory estoppel claims against Lynx, Inc.

OPINION HOLDS: (i) In regard to Rifet Mujkic's Iowa Code chapter 91A claim against Lynx, Inc., we find no error in the district court's conclusion that Mukjic was an independent contractor during the time period of April through July 2012, and therefore that Mujkic cannot prevail on his chapter 91A claim for damages during that time. (ii) We reverse the district court's ruling on Mujkic's claim for damages stemming from Lynx's chapter 91A violation during February and March 2012, during which Mujkic was an employee of Lynx, with regard to the escrow payments withheld or diverted from Mujkic's wages. We remand to the district court for a determination of damages and attorney fees and costs incurred by Mujkic, if any, and whether a penalty should be assessed to Lynx. (iii) We affirm the district court's ruling denying Mujkic's promissory estoppel claims against Lynx.

No. 14-0922
AFFIRMED.
ESTATE OF HELMERS
Appeal from the Iowa District Court for Humboldt County, Gary L. McMinimee, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by McDonald, J. (3 pages)
The administrator of the estate of Brian Helmers appeals from the district court's order allowing Jane Dickey's claim against the estate based on an oral loan agreement with the decedent.
OPINION HOLDS: The district court's findings are supported by substantial evidence, and its conclusions of law are not erroneous. We affirm without further opinion. *See* Iowa Ct. R. 21.26(a), (b), (d), and (e).

No. 13-1007
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
MOSHER v. DEWAAY FIN. NETWORK, LLC
Appeal from the Iowa District Court for Decatur County, John D. Lloyd, Judge. Heard by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Danilson, C.J. (20 pages)
We must decide if a non-opt-out, limited-fund class action was appropriately certified and settled. The intervenors in these actions contend the district court abused its discretion in certifying a class and that the settlement is unfair and unreasonable. They also maintain the district court unreasonably restricted their discovery, abused its discretion in consolidating the actions, and erred as a matter of law in denying their motion to transfer venue.
OPINION HOLDS: We conclude the district court abused its discretion in approving this non-opt-out, limited-fund class certification for purposes of settlement because there has been no determination of the "maximum" amount of funds available for settlement. We deny the relief requested by the intervenors with respect to discovery, consolidation, and venue. We reverse in part and remand for further proceedings.

No. 14-0230
AFFIRMED.
MARTIN v. CHEMTECH, INC.
Appeal from the Iowa District Court for Dallas County, Randy V. Hefner, Judge. Heard by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Danilson, C.J. (20 pages)
Chemtech, Inc., and Dale Eastman, the defendants, appeal from the district court's judgment and award of damages for Andrew Martin in a fraudulent misrepresentation action. The defendants maintain that non-reliance provisions in agreements signed by Martin bar his claim of fraud. Alternatively, they maintain that Martin waived his right to avail himself of legal remedies for fraud.
OPINION HOLDS: Because neither of these claims is preserved for our review, we do not consider them. The defendants also maintain the factual record does not support a finding of fraud as a matter of law. Because we find substantial evidence in the record supports the district court's finding of facts, and the facts support the district court's judgment in favor of Martin in the fraud action, we affirm the judgment and award of damages.

No. 14-0480
AFFIRMED.
GRAVETT v. GRAVETT
Appeal from the Iowa District Court for Davis County, Myron L. Gookin, Judge. Considered by Vogel, P.J., McDonald, J., and Scott, S.J. Opinion by Scott, S.J. (5 pages)
Defendant Alan Gravett appeals the district court decision finding he breached an oral contract to purchase hay from Bryan Gravett.
OPINION HOLDS: Alan has not shown he was prejudiced by the court's ruling prohibiting him from presenting evidence of Bryan's alcohol use. He did not preserve error on his claim based on the statute of frauds. We affirm the decision of the district court.

No. 14-0817
REVERSED AND
REMANDED ON
APPEAL; AFFIRMED
ON CROSS-APPEAL.
REILLY CONSTRUCTION CO., INC. v. BACHELDER, INC.
Appeal from the Iowa District Court for Winneshiek County, John J. Bauercamper, Judge. Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Tabor, J. (20 pages)
A builder, Reilly Construction Co., Inc., filed a mechanic's lien against Bachelder, Inc., a landowner, for not paying for the remedial digging required to fix Reilly's initial construction of a pond. The district court declined to foreclose the mechanic's lien but also rejected Bachelder's counterclaims for breach of either express or implied warranties. Both sides appeal.
OPINION HOLDS: The district court should have found a breach of an express warranty or an implied warranty of workmanlike construction or fitness for a particular purpose when the pond failed to hold water. We reverse and remand for a hearing on Bachelder's damages. As we find no implied contract to perform additional work on the pond, we affirm on Reilly's cross-appeal.

No. 14-0871
AFFIRMED.
SHAW v. OSTRANDER
Appeal from the Iowa District Court for Winnebago County, Gregg R. Rosenbladt, Judge. Considered by Vogel, P.J., and Doyle and McDonald, JJ. Opinion by Vogel, P.J. (8 pages)
Susan Ostrander appeals a district court decision interpreting a family settlement agreement to give her sister, Angela Shaw, a first option to purchase farmland**.**
OPINION HOLDS: We agree with the district court's conclusion that the language of the family settlement agreement is "very clear and unambiguous," that Shaw may purchase the land either by an installment contract or by cash purchase and that Shaw properly exercised her option. We affirm the decision of the district court.

No. 14-0921
APPEAL DISMISSED.
FRANK BAXTER GENERAL CONTRACTOR, INC. v. WASHINGTON CMTY. SCH. DIST.
Appeal from the Iowa District Court for Washington County, Joel D. Yates, Judge. Considered by Danilson, C.J., and Doyle and Tabor, JJ. Opinion by Danilson, C.J. (5 pages)
Subcontractor Quincy Lighting and Home Center, Inc., appeals from the district court's order following a voluntary motion to dismiss by Frank Baxter General Contractor, Inc. Quincy maintains the district court erred when it concluded it had no jurisdiction to consider Quincy's claim following Baxter's voluntary motion to dismiss. **OPINION HOLDS:** Because the district court properly concluded it lacked jurisdiction, we dismiss Quincy's appeal.

No. 14-1197
AFFIRMED.
HARGRAVE v. GRAIN PROCESSING CORP.
Appeal from the Iowa District Court for Muscatine County, Joel W. Barrows, Judge. Considered by Vaitheswaran, P.J., Tabor, J., and Mahan, S.J. Opinion by Mahan, S.J. (6 pages)
Plaintiff Matthew Hargrave appeals the district court decision granting summary judgment to Grain Processing Corporation (GPC) on his tort claims.
OPINION HOLDS: Hargrave was employed by Team Staffing Solutions, Inc., which had an agreement to provide temporary employees for GPC. Hargrave was injured while working for Team Staffing at a plant owned by GPC. We conclude the district court properly granted summary judgment to GPC based on the terms of the waiver of legal remedies signed by Hargrave in his employment application with Team Staffing.

No. 13-0259
REVERSED AND
REMANDED.
SHI R2 SOLUTIONS v. PELLA CORPORATION
Appeal from the Iowa District Court for Tama County, Marsha M. Beckelman, Judge. Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Vaitheswaran, P.J. (14 pages)
A company that sued Pella Corporation for misappropriation of trade secrets and breach of contract appeals the district court's grant of summary judgment in favor of Pella.
OPINION HOLDS: We conclude Deimco's exhibits and testimony generated a genuine issue of material fact on whether its efforts to maintain the secrecy of its information were reasonable under the circumstances. Further, these materials generated a genuine issue of material fact on the question of whether the contract language prohibited Pella from reverse engineering the machine and whether the information was readily ascertainable. Accordingly, we reverse the grant of summary judgment as to Deimco's statutory common-law misappropriation-of-trade-secrets claims and its breach-of-contract claim. We remand for further proceedings.

No. 13-2034
AFFIRMED.
WOODROFFE v. WOODROFFE
Appeal from the Iowa District Court for Lee (North) County, John G. Linn, Judge. Considered by Potterfield, P.J., and Sackett and Eisenhauer, S.J. Opinion by Sackett, S.J. (11 pages)
The plaintiffs appeal from the district court ruling denying their trespass claim and finding the defendants have an easement by implication. **OPINION HOLDS: A.** The district court did not err in finding estoppel by acquiescence where the plaintiffs knew of the presence of the defendants' septic tank on their property and took no action to remove it for nearly ten years. The plaintiffs consented to allow the septic tank to remain on the property until the holder of the Although there is no record of the agreement between the prior landowners as to the placement of
the septic tank, they recognized and acquiesced in the placement of the septic tank more than half a century ago. **B.** Although not ruled on by the district court, the question of whether a prescriptive easement exists was properly before the district court and therefore is a basis for affirming the district court. We find a prescriptive easement has been established given the labor and money put towards the installation of the septic system, coupled with the fact that the system has been in place for over fifty years and no one had complained.

No. 13-2086
REVERSED AND
REMANDED.
SALEM UNITED METHODIST CHURCH v. CHURCH MUTUAL INS. CO.
Appeal from the Iowa District Court for Linn County, Ian K. Thornhill, Judge. Considered by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Danilson, C.J. (12 pages)
Salem United Methodist Church of Cedar Rapids, Iowa, sought coverage from its insurer, Church Mutual Insurance Company, for damage sustained during

a flood. Following a jury trial, Salem prevailed. On appeal, Church Mutual contends the district court improperly construed clear and unambiguous exclusions in the policy and awarded damages in an amount contrary to the terms of the policy and the jury's answers to special interrogatories.
OPINION HOLDS: Because we find the court erred in construction of the insurance policy and we are unable to harmonize the jury's answers under the evidence and the law, we reverse the district court's judgment and remand for a new trial.

No. 14-0539
REVERSED AND
REMANDED.
SLACH v. HEICK
Appeal from the Iowa District Court for Johnson County, Douglas S. Russell, Judge. Considered by Danilson, C.J., and Doyle and Tabor, JJ. Opinion by Tabor, J. (18 pages)
The question in this appeal is whether a farm tenant can recover against a landlord who entered his rented fields before the lease expired and chisel plowed corn stalks the tenant had planned to bale.
OPINION HOLDS: To answer this question, we look to the terms of the lease and the applicability of Iowa Code section 562.5A, which was enacted in 2010 and allows a farm tenant to take stalks after harvest. Finding, the statute applies, we reverse the district court's rejection of the tenant's trespass claim and remand for a determination of damages.

No. 14-0157
AFFIRMED IN PART
AND REVERSED IN
PART.
COOPER v. JORDAN
Appeal from the Iowa District Court for Jones County, Robert Sosalla, Judge. Heard by Vogel, P.J., McDonald, J., and Scott, S.J. Opinion by McDonald, J. (12 pages)
Linda Cooper sued her sibling Lynnette (Sue) Jordan, successor trustee of their mother's trust, asserting claims for negligence and breach of trust. Following a bench trial, the district court entered judgment in favor of Sue and dismissed Linda's petition. The district court denied Linda's request for costs and expenses and granted Sue's request for the same.
OPINION HOLDS: Linda did not prove Sue was negligent or that the alleged negligence caused damage. The court did not abuse its discretion in awarding Sue costs and expenses, except for the costs and expenses relating to depositions not used at trial.

No. 14-0293
AFFIRMED AND
REMANDED.
GANNON v. WILLOW CREEK CENTURY FARMS, L.L.C.
Appeal from the Iowa District Court for Worth County, Gregg Rosenbladt, Judge. Considered by Mullins, P.J., and Bower and McDonald, JJ. Opinion by Bower, J. (11 pages)
Willow Creek Century Farms, L.L.C. (Willow Creek) appeals the district court's denial of its motions for new trial and judgment notwithstanding the verdict

(JNOV). Willow Creek claims the damages awarded to Steve Gannon were speculative, Gannon untimely disclosed expert witnesses, and Gannon should not have been awarded trial attorney fees. Gannon asks for appellate attorney fees. **OPINION HOLDS:** We find the evidence supports the award of damages as the damages were not overly speculative. We find Willow Creek failed to preserve error on its challenge to Gannon's expert witnesses, and the district court did not abuse its discretion by awarding Gannon trial attorney fees. We find Gannon is entitled to appellate attorney fees and remand to the district court for the limited purpose of an evidentiary hearing on, and the fixing of, appellate attorney fees.

No. 14-0632
AFFIRMED ON
APPEAL; REMANDED
ON CROSS-APPEAL.
DES MOINES FLYING SERVICES INC. v. AERIAL SERVICES INC.
Appeal from the Iowa District Court for Black Hawk County, Andrea J. Dryer, Judge. Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Tabor, J. (13 pages)
Aerial Services, Inc., claims Des Moines Flying Service, Inc. (DMFS), which sold and installed an airplane windshield, breached an implied warranty of merchantability under Iowa Code section 554.2314 (2011) when the windshield cracked during flight. The district court granted summary judgment for DMFS, ruling the seller-installer was immune from suit under Iowa Code section 613.18. On appeal, Aerial contends section 613.18 applies only to tort suits, and, therefore, does not provide DMFS immunity on this commercial contract claim. DMFS cross-appeals contending the district court improperly calculated pre-judgment interest on its damage award**.**
OPINION HOLDS: We find the plain language of section 613.18 allows its application here. We affirm the district court's ruling on immunity. We remand for entry of an amended pre-judgment interest amount.

No. 14-1346
AFFIRMED.
WESTFIELD NATIONAL INSURANCE CO. v. ESTATE OF FREA
Appeal from the Iowa District Court for Johnson County, Carl D. Baker, Judge. Considered by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Potterfield, J. (7 pages)
The Estate of Rebecca Frea (Estate) appeals from summary judgment entered in favor of Westfield National Insurance Company (Westfield), contending the district court erred in interpreting the automobile insurance policy at issue.
OPINION HOLDS: The district court concluded the exclusion provided in the Westfield policy is not void on public policy grounds, citing *Jones v*. *American Star Insurance Co*., 501 N.W.2d 536, 537-38 (Iowa 1993), where the court held that an exclusion denying benefits under an underinsured motorist clause of an automobile policy when the liability portion of the same policy has been paid in full, is not void on public policy grounds. Finding no error in the court's interpretation, we affirm.

No. 14-0154
AFFIRMED IN PART,
VACATED IN PART, AND
REMANDED WITH
DIRECTIONS.
BRONNER v. RANDALL
Appeal from the Iowa District Court for Howard County, John J. Bauercamper, Judge. Heard by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (30 pages)
This case involves a dispute over the number and identity of the beneficiaries of the late Edith Benson's investment account with Ameriprise Financial. Kenneth Bronner filed suit asserting Susan Randall, Glen Benson, and Elsie Pint intentionally interfered with Edith's designation of him as a one-sixth beneficiary of the account. He also sought to have the beneficiary designation executed by Edith in 2010 set aside due to undue influence and a lack of mental capacity. The jury agreed with Kenneth, awarding him, and assessing against Susan, Glen and Elsie, actual damages, attorney fees, and punitive damages. Susan, Glen, and Elsie appeal asserting the court should have directed the verdict in their favor or ordered a new trial. They also assert the judgment should not have been entered on the jury's verdict as it resulted in duplicative damages.
OPINION HOLDS: We conclude sufficient evidence was admitted for the jury to conclude Edith lacked mental capacity in July of 2010 when she executed the beneficiary change form and there was evidence the change was procured through undue influence. However, there is a complete lack of evidence to support an award of attorney fees in favor of Kenneth and the jury's verdict in this case resulted in duplicative damages. We therefore vacate the court's judgment entry, and remand the case for entry of judgment on count one, setting aside the 2010 beneficiary designation and reinstating the prior beneficiary designation executed by Edith in 2005. The award of attorney fees on count two is stricken for lack of proof, and the award of "expectancy" damages is stricken because it duplicates the award from count one. However, the award of punitive damages on count two is affirmed.

No. 14-0564
AFFIRMED.
AHRENS v. AHRENS AGRICULTURAL INDUSTRIES CO.
Appeal from the Iowa District Court for Poweshiek County, Annette J. Scieszinski, Judge. Heard by Danilson, C.J., and Potterfield and Bower, JJ. Opinion by Bower, J. (14 pages)
Richard Ahrens appeals the district court's dismissal of his claims for financial compensation and other equitable relief, including breach of fiduciary duty, oppression, and unjust enrichment.
OPINION HOLDS: We find Richard's claims are not supported by the evidence and affirm the district court's dismissal.

No. 14-1152
AFFIRMED.
ELSON v. KOEHLMOOS
Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. Considered by Vogel, P.J., and Doyle and McDonald, JJ. Opinion by McDonald, J. (3 pages)
Koehlmoos appeals from an order granting specific performance that was entered following a grant of partial summary judgment in favor of Elson on Elson's claim for breach of contract, arguing the contract was ambiguous.
OPINION HOLDS: The district court correctly stated and applied the controlling law and correctly determined there was no genuine issue of material fact. As set forth in the district court's thorough and well-reasoned rulings on the motion for summary judgment and order granting specific performance, the language of the contract to be enforced was plain and unambiguous, Koehlmoos breached the contract, and Elson was entitled to specific performance.

No. 14-0199
AFFIRMED ON BOTH APPEALS.
WINGER v. CM HOLDINGS, L.L.C.
Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge. Heard by Danilson, C.J., and Vaitheswaran and Doyle, JJ. Opinion by Danilson, C.J. Special concurrence by Vaitheswaran, J. Dissent by Doyle, J. (20 pages)
The plaintiffs appeal from the district court's grant of a new trial in this negligence action. The defendant cross-appeals from the court's denial of its motion for directed verdict. This appeal and cross-appeal involve the tragic death of the plaintiffs' twenty-one-year-old daughter after a fall from a balcony. The jury was instructed as a matter of law that the defendant was negligent for failing to have balcony guardrails at least forty-two inches in height. The jury awarded damages to the plaintiffs, and subsequently, the district court granted a new trial concluding it had erroneously instructed the jury.
OPINION HOLDS: In dispute is whether a violation of Des Moines Municipal Housing Code, Neighborhood Inspection Rental Code section 60-127, which requires guardrails "not less than 42 inches in height," is negligence per se. We conclude the answer is "no," but may be evidence of negligence. Accordingly, we agree with the district court's grant of a new trial. We also reject the defendant's contention it was entitled to a directed verdict and affirm the trial court's grant of a new trial.
SPECIAL CONCURRENCE ASSERTS: I specially concur. I agree CM Holdings's violation of the Des Moines housing code's balcony guardrail height requirement was evidence of negligence rather than negligence per se but I write separately because I reach the conclusion for somewhat different reasons. First, I am not convinced this court's opinion in *Struve v. Payvandi*, 740 N.W.2d 436 (Iowa Ct. App. 2007), is controlling, nor do I believe *Griglione v. Martin*, 525 N.W.2d 810 (Iowa 1994), forecloses the possibility of a conclusion that a violation of a municipal housing code is negligence per se. However, in *Montgomery v. Engel*, 179 N.W.2d 478 (Iowa 1970), the Iowa Supreme Court squarely addresses the precise issue we face— whether a landlord's violation of a very specific municipal housing code requirement should constitute negligence per se or evidence of negligence. In

my view, the court's holding that the violation is simply evidence of negligence rather than negligence per se is controlling. Accordingly, I concur in the majority opinion affirming the grant of a new trial. **DISSENT ASSERTS:** I respectfully dissent. Ultimately, I would reverse the district court's grant of a new trial, and I would reinstate the jury's verdict because I believe the violation of the Des Moines Municipal Housing Code's balcony-guardrail-minimum height requirement was negligence per se, not merely evidence of negligence.

No. 14-0633
REVERSED AND
REMANDED.
PRO COMMERCIAL LLC v. K & L CUSTOM FARMS, INC.
Appeal from the Iowa District Court for Story County, Dale E. Ruigh, Judge. Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (18 pages)
K & L Custom Farms d/b/a K & L Landscape and Construction, Inc. (K & L) appeals the district court's decision concluding it breached the terms of a subcontract with Pro Commercial, LLC. K & L claims the district court incorrectly interpreted the terms of the subcontract and also should have awarded K & L damages in its counterclaim for breach of contract against Pro Commercial. Finally, K & L claims, in the event we affirm the district court's decision regarding the breach of contract, the district court erred in not giving it credit for the work it performed under the contract with Pro Commercial.
OPINION HOLDS: We find the district court erred in concluding the contract at issue required K & L to perform work that was not included in its estimate. We reverse the district court's decision holding Pro Commercial proved its breach-of-contract claim. Because K & L failed to prove the amount of money it is entitled to recover for its partial performance of the contract, it is not entitled to recover under its breach-of-contract claim any amounts beyond those already paid by Pro Commercial. However, we conclude K & L is entitled to a judgment in the amount of $40,442.20 for work completed that was outside the terms of the written contract under its unjust-enrichment claim. We remand the case to the district court for the entry of an order of judgment.

No. 14-1054
AFFIRMED.
TWC I, L.L.C. v. DAMOS
Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge. Heard by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (15 pages)
Craig Damos appeals the district court's valuation of his shares of corporate stock in TWC I, L.L.C, f/k/a The Weitz Company I, Inc. and TWC II, L.L.C., f/k/a The Weitz Company II, Inc. (the Weitz companies). He claims the court's valuation was not supported by substantial evidence because the Weitz companies did not offer a valuation that met the standards laid out in Iowa law. He also claims the district court should have awarded him attorney fees and costs. In addition to defending the district court's decision, the Weitz companies cross-appeal claiming the district court should have awarded attorney fees and costs to them.
OPINION HOLDS: Because we find
substantial evidence to support the district court's valuation of the price of the

shares corporate stock, we affirm the district court's decision. We also find substantial evidence to support the district court's decision to deny both parties' claims for attorney fees and costs.

No. 14-1362
AFFIRMED.
CONCERNED CITIZENS OF SOUTHEAST POLK SCHOOL DIST. v. CITY OF PLEASANT HILL
Appeal from the Iowa District Court for Polk County, Eliza Ovrom, Judge. Heard by Danilson, C.J., Vaitheswaran and Doyle, JJ. Opinion by Doyle, J. (15 pages)
Plaintiff Concerned Citizens of Southeast Polk School District and Intervenor Southeast Polk Community School District appeal from adverse rulings by the district court on petitions for declaratory and injunctive relief regarding the 2013 amendment of the City of Pleasant Hill and the City Council of the City of Pleasant Hill to an urban renewal area near the Southeast Polk High School.
OPINION HOLDS: We affirm the district court's rulings. The 2013 amendment did not illegally extend the life of the 1994 urban renewal plan, and it is consistent with the City's 2005 comprehensive development plan.

No. 14-0309
AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.
FIRST AMERICAN BANK v. FOBIAN FARMS, INC.
Appeal from the Iowa District Court for Johnson County, Ian K. Thornhill, Judge. Heard by Danilson, C.J., and Vaitheswaran and Doyle, JJ. Opinion by Danilson, C.J. (24 pages)
Fobian Farms, Inc., Hoover Highway Business Park, Inc., and Gateway Ltd. appeal from the district court's ruling in an action to quiet title, initiated by C.J. Land, L.L.C. and First American Bank (hereinafter collectively referred to as the plaintiffs). Fobian Farms maintains the district court's ruling to quiet title to the restaurant site and reform the corresponding legal documents was not equitable. Fobian Farms also maintains the district court abused its discretion in assessing sanctions against Fobian Farms for violating the rule governing certification of motions, pleadings, or other papers.
OPINION HOLDS: Because we find there was a mutual mistake made in the expression of the deed and reformation is an appropriate remedy, we affirm the district court's ruling to reform the corresponding legal documents. We modify the district court's ruling to grant an easement for the 1.3 foot strip for so long as the current restaurant building exists rather than what appears to be a forced sale of the strip. We find the district court did not abuse its discretion in assessing sanctions. However, because the court failed to make the necessary findings to determine if the amount of the award is appropriate, we remand to the district court to make the required specific findings and reconsider the amount of sanctions awarded.

No. 14-1060
AFFIRMED.
EARTH LINKED WIND SOLUTIONS L.L.C. v. HEARTLAND ENERGY SOLUTIONS, L.L.C.
Appeal from the Iowa District Court for Ringgold County, Gary G. Kimes, Judge. Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Vaitheswaran, P.J. (6 pages)
The plaintiff appeals the district court's order denying its motion for new trial following a jury verdict finding neither party breached the contract, claiming (1) the jury rendered an inconsistent verdict and (2) the verdict was not supported by substantial evidence and amounted to substantial injustice.
OPINION HOLDS: Absent a meeting of the minds, no contract existed and there could be no breach by either party, as the jury found. Because the findings were consistent, the district court did not err in denying the plaintiff's new trial motion. Sufficient evidence supports the jury's findings of no breach, the verdict accomplished substantial justice, and the district court did not abuse its discretion in denying the new trial motion. We affirm.

No. 14-1131
AFFIRMED.
NEWTON MANUFACTURING CO. v. CLEMMONS
Appeal from the Iowa District Court for Jasper County, Randy V. Hefner, Judge. Heard by Tabor, P.J., and Bower and McDonald, JJ. Opinion by Tabor, J. McDonald, J., concurs specially. (30 pages)
This case involves a series of contracts between Newton Manufacturing Company (Newton) and Doyle Clemmons, an independent contractor from Texas who sold Newton's products. Newton terminated its June 2012 sales agreement with Clemmons, effective November 2012. At the time of the termination, Clemmons owed Newton more than $58,000 in incentives Newton had advanced under the parties' previous contracts. Newton sued to recover the incentive balance, and Clemmons, as an affirmative defense, claimed Newton materially breached the 2012 sales agreement, excusing his own performance. Clemmons also counterclaimed, alleging breach of contract for unpaid commissions involving a software product and for Newton assigning the 2012 sales contract without Clemmons's permission. The district court entered judgment for Newton in the amount of $39,521.59, ruling Clemmons owed Newton for the incentives, Newton owed Clemmons unpaid commissions for two months, Newton's failure to pay those commissions was not a material breach, and Clemmons's "assignment" counterclaim was without merit. Clemmons now appeals.
OPINION HOLDS: The district court did not err in offsetting the unpaid commissions Newton owed Clemmons against the unpaid incentives Clemmons owed Newton. The district court correctly determined Newton's failure to pay two months of commissions did not constitute a material breach. We find no error in the court's rejection of Clemmons's "assignment" counterclaim.
SPECIAL CONCURRENCE ASSETS: I conclude the doctrine of substantial performance is inapplicable here. However, I conclude Newton's breach was immaterial because the duty breached was independent of Clemons's duty to perform.

No 13-1974
MICHAEL SUTCLIFFE, D.O. V. MERCY CLINICS, INC.
Filed September 17, 2014

Facts: Mercy Clinics, Inc. (Mercy) appeals from the district court's ruling denying its motion to compel arbitration on a breach of contract action, claiming the arbitration provision in its employment contract with Michael Sutliffe, D.O., is enforceable pursuant to the Federal Arbitration Act. The district court found the FAA inapplicable because the contract failed to satisfy the interstate commerce nexus, because the contract was formed in Iowa, for the practice of medicine in Iowa. The district court turned to Iowa Code section 379A.1 (2013), which excludes contracts "between employers and employees" from mandatory arbitration. As a result, the district court found the arbitration clause to be unenforceable.

Issue: Whether the arbitration provisions in the employment contract between Dr. Sutliffe and Mercy is enforceable?

Holding: Reverse and Remand. Yes, the Federal Arbitration Act, 98 U.S.C. § 2 applies and therefore the arbitration provision in the employment contract is enforceable.

Reasoning:
The record establishes the interstate commerce nexus required to trigger application of the FAA to this employment contract. The FAA is applicable to employment contracts. By excluding "contract[s] between employers and employees," the Iowa statue is in conflict with the FAA. Thus, if the federal act is applicable, it preempts the Iowa statute by operation of the Supremacy Clause. Under the FAA, parties who have contracted to arbitrate claims arising between them are bound to do so. The FAA is broad in scope and questions as to whether an issue is arbitrable are to be resolved in favor of arbitration.
The party seeking to compel FAA arbitration must show the existence of a written agreement which contains an arbitration clause and involves interstate commerce. The FAA term "involving commerce" has been interpreted as "the functional equivalent of the more familiar term "affecting commerce" – words of art that ordinarily signal the broadest permissible exercise of Congress' Commerce Clause power. Health-related services affect interstate commerce with regard to application of the FAA. Courts rely on evidence of different types of information such as: acceptance of out-of-state and multi-state insurer reimbursements; purchase and receipt of goods, equipment, medication, and services from out-of-state vendors; out-of-state corporate offices; recruitment of physicians from out-of-state; service to out-of-state patients; and receipt of federal funds, such as Medicare reimbursements.
Here, Medicare patients were treated at the Mercy clinic where Dr. Sutcliffe was contracted to provide medical services. Receipt of Medicare reimbursements involves interstate commerce.

No. 14-0006
PHI FINANCIAL SERVICES, INC., V. MATTHEW R. POWERS
Filed September 17, 2014.

Facts: Matthew Powers appeals the district court's determination the creditor's lawsuit is not barred by claim preclusion. In this contract action, borrower Matthew Powers contends the district court erred in rejecting his defense of claim preclusion. The claim-preclusion issue involves two deferred loan payment agreements for farm supplies – one signed in 2005 and one signed in 2006. Those two agreement led to the two lawsuits filed by his creditor, PHI Financial Services, Inc. After the court granted Power's motion for summary judgment, PHI sued Power individually for breach of the 2006 contract and sought to recover the funds it advanced in 2009. Powers

asserted the affirmative defense of claim preclusion. PHI asserted claim preclusion did not apply to the latter case arising from a completely independent claim. Powers claims the district court committed legal error when it held the defense of claim preclusion does not apply in the second lawsuit between the same parties involved in a claim that could have been litigated in the first case.

Issue: Whether the creditor's lawsuit was barred by claim preclusion?

Holding: Affirmed by memorandum opinion.

Reasoning: Court of Appeals adopted district court's analysis. Claim preclusion holds that a valid and final judgment on a claim bars a second action on the adjudicated claim or any part thereof. Powers must successfully prove, among other elements, the "fighting issue" that "the claim made in the second action could have been fully and fairly adjudicated in the prior case." To determine whether the claim could have been fully and fairly adjudicated in the first case, the court considered (1) the protected right, (2) the alleged wrong, and (3) the relevant evidence. Powers did not prove the second action could have been fully and fairly litigated. The protected right in the initial case was the 2005 agreement. The protected right in the present case stems from an independent agreement executed in 2006. The court correctly held that the adjudication in Power's favor in the prior lawsuit should not form the basis for a bar of the second lawsuit, especially when Powers successfully object to the inclusion of the very claim in the first lawsuit he now contends was fairly and fully litigated.

No. 14-0633 **PRO COMMERCIAL LLC v. K & L CUSTOM FARMS, INC.**

REVERSED AND REMANDED.

Appeal from the Iowa District Court for Story County, Dale E. Ruigh, Judge. Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Mullins, J. (18 pages)

K & L Custom Farms d/b/a K & L Landscape and Construction, Inc. (K & L) appeals the district court's decision concluding it breached the terms of a subcontract with Pro Commercial, LLC. K & L claims the district court incorrectly interpreted the terms of the subcontract and also should have awarded K & L damages in its counterclaim for breach of contract against Pro Commercial. Finally, K & L claims, in the event we affirm the district court's decision regarding the breach of contract, the district court erred in not giving it credit for the work it performed under the contract with Pro Commercial.

OPINION HOLDS: We find the district court erred in concluding the contract at issue required K & L to perform work that was not included in its estimate. We reverse the district court's decision holding Pro Commercial proved its breach-of-contract claim. Because K & L failed to prove the amount of money it is entitled to recover for its partial performance of the contract, it is not entitled to recover under its breach-of-contract claim any amounts beyond those already paid by Pro Commercial. However, we conclude K & L is entitled to a judgment in the amount of $40,442.20 for work completed that was outside the terms of the written contract under its unjust-enrichment claim. We remand the case to the district court for the entry of an order of judgment.

No. 14-1054 **TWC I, L.L.C. v. DAMOS**

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge. Heard by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (15 pages)

Craig Damos appeals the district court's valuation of his shares of corporate stock in TWC I, L.L.C, f/k/a The Weitz Company I, Inc. and TWC II, L.L.C., f/k/a The Weitz Company II, Inc. (the Weitz companies). He claims the court's valuation was not supported by substantial evidence because the Weitz companies did not offer a valuation that met the standards laid out in Iowa law. He also claims the district court should have awarded him attorney fees and costs. In addition to defending the district court's decision, the Weitz companies' cross-appeal claiming the district court should have awarded attorney fees and costs to them.
OPINION HOLDS: Because we find substantial evidence to support the district court's valuation of the price of the shares corporate stock, we affirm the district court's decision. We also find substantial evidence to support the district court's decision to deny both parties' claims for attorney fees and costs.

No. 14-1536 **U.S. BANK NATIONAL ASSOCIATION v. CALLEN**

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (6 pages)

A mortgagor appeals a foreclosure decree, arguing that the bank's prior judgment was extinguished per Iowa Code section 615.1 (2013) as being more than two years old, and that the bank's notice of rescission of its foreclosure action pursuant to section 654.17 was ineffective as having been filed after the expiration of the section 615.1 statute of limitations.
OPINION HOLDS: Neither section 615.1 nor 654.17 operated to eliminate the bank's unsatisfied mortgage lien which remained enforceable notwithstanding the status of the first judgment. The district court properly granted summary judgment to the bank on its subsequent petition for foreclosure.

No. 14-0165 **CANAVAN v. CONLAN**

AFFIRMED.

Appeal from the Iowa District Court for Linn County, Ian K. Thornhill, Judge. Heard by Danilson, C.J., and Vaitheswaran and Doyle, JJ. Opinion by Danilson, C.J. (21 pages)

A home buyer appeals from an adverse judgment following jury trial of her breach-of-contract, negligence, and misrepresentation claims against the seller. Donna Canavan contends the trial court (1) erred in not granting a new trial when the jury's verdict was not sustained by sufficient evidence; (2) erred in failing to grant a directed verdict in regard to the individual liability of defendants Michael Sauser and Joe Conlan; (3) erred in submitting two special verdict questions to the jury; and (4) erred in instructing the jury regarding mitigation. She also contends she is entitled to a new trial because opposing counsel engaged in misconduct.

OPINION HOLDS: Addressing only those claims properly preserved, and viewing the evidence in the light most favorable to the prevailing party, we conclude substantial evidence supports the jury's verdicts. The trial court did not abuse its discretion in its evidentiary rulings or in denying the post-trial motions. We therefore affirm.

No. 14-0926 **K.N.T. v. AMERICAN FAMILY INSURANCE COMPANY**

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Appeal from the Iowa District Court for Cerro Gordo County, James M. Drew, Judge. Heard by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (21 pages)

K.N.T. and her mother, Megan Fox, (the plaintiffs) appeal following trial on their first-party bad faith claim against American Family Mutual Insurance Company (American Family). The plaintiffs appeal the district court's grant of directed verdict on the issues of emotional distress damages awarded by the jury to K.N.T. and punitive damages authorized by the jury against American Family. They additionally appeal the district court's protective order and order to seal trial exhibits.

OPINION HOLDS: Regarding the district court's grants of directed verdict, we affirm the grant as to K.N.T.'s emotional distress damages. We reverse the grant as to punitive damages and remand for a new trial limited to the determination of the proper amount of punitive damages to be awarded. Regarding the district court's protective order, we find the order was within the court's wide discretion and affirm. Because the plaintiffs have failed to demonstrate that they have standing to challenge the post-trial order sealing trial exhibits, we affirm.

No. 14-1215 **BRUENING ROCK PRODUCTS, INC. v. HAWKEYE INTERNATIONAL TRUCKS**

REVERSED AND REMANDED ON APPEAL; AFFIRMED ON CROSS-APPEAL.

Appeal from the Iowa District Court for Winneshiek County, Margaret L. Lingreen, Judge. Heard by Danilson, C.J., and Vaitheswaran and Doyle, JJ. Opinion by Vaitheswaran, J. (7 pages)

Following a jury verdict in Bruening's favor, Bruening appeals a district court's grant of Hawkeye's motion for directed verdict. Hawkeye cross-appeals, asserting the district court should have ruled in its favor on other grounds within the motion for directed verdict.

OPINION HOLDS: We conclude substantial evidence supports the jury's verdict in favor of Bruening. While Hawkeye argues that Bruening's claim was miscast as a breach-of-contract claim—rather than a breach-of-implied-warranty claim—and was thus barred by the applicable statute of limitations, the issue was not raised until the motion for directed verdict, and therefore was waived. Because the jury verdict was supported by substantial evidence, we reverse the grant of Hawkeye's motion for directed verdict and remand for reinstatement of the jury's verdict. We affirm the district court decision on all issues raised in the cross-appeal.

No. 14-0412 **TAMCO PORK II, LLC v. HEARTLAND CO-OP**

AFFIRMED.

Appeal from the Iowa District Court for Marshall County, James C. Ellefson, Judge. Considered by Vogel, P.J., McDonald, J., and Zimmer, S.J. Opinion by McDonald, J. (20 pages)

Plaintiffs appeal from the district court's order denying their motion for new trial. In this case, arising out of a fire at a hog-production facility, the plaintiffs contend the district court erred in refusing to instruct the jury on general negligence (res ipsa loquitur). **OPINION HOLDS:** The district court did not abuse its discretion in refusing to give the requested instruction. Plaintiffs failed to establish the instrumentality causing injury was under the exclusive control or management of the defendants.

No. 14-1215 **BRUENING ROCK PRODUCTS, INC. v. HAWKEYE INTERNATIONAL TRUCKS**

REVESED AND REMANDED ON APPEAL; AFFIRMED ON CROSS-APPEAL.

Appeal from the Iowa District Court for Winneshiek County, Margaret L. Lingreen, Judge. Heard by Danilson, C.J., and Vaitheswaran and Doyle, JJ. Opinion by Vaitheswaran, J. (9 pages)

Following a jury verdict in Bruening's favor, Bruening appeals a district court's grant of Hawkeye's motion for directed verdict. Hawkeye cross-appeals, asserting the district court should have ruled in its favor on other grounds within the motion for directed verdict. **OPINION HOLDS:** We conclude substantial evidence supports the jury's verdict in favor of Bruening. While Hawkeye argues that Bruening's claim was miscast as a breach-of-contract claim—rather than a breach-of-implied-warranty claim—and was thus barred by the applicable statute of limitations, the issue was not raised until the motion for directed verdict, and therefore was waived. Because the jury verdict was supported by substantial evidence, we reverse the grant of Hawkeye's motion for directed verdict and remand for reinstatement of the jury's verdict. We affirm the district court decision on all issues raised in the cross-appeal.

No. 14-1297 **LARIVIERE v. SURGICAL SERVICES, P.C.**

AFFIRMED.

Appeal from the Iowa District Court for Johnson County, Paul D. Miller, Judge. Considered by Tabor, P.J., McDonald, J., and Eisenhauer, S.J. Opinion by Tabor, P.J. (11 pages)

Dr. Gene Lariviere appeals the district court's holding that his employer, Surgical Services, P.C., breached their employment agreement by not paying him deferred compensation after he voluntarily terminated his employment. Dr. Lariviere argues that the court incorrectly interpreted the contract. **OPINION HOLDS:** Because the plain language of the employment agreement did not require deferred compensation in the event of voluntary termination, we affirm.

No. 14-1584 **McHOSE v. PROPERTY ASSESSMENT APPEAL BOARD**

REVERSED.

Appeal from the Iowa District Court for Polk County, Lawrence P. McLellan, Judge. Considered by Danilson, C.J., and Vaitheswaran and Doyle, JJ. Opinion by Danilson, C.J. (6 pages)

The Property Assessment Appeal Board (PAAB) appeals from the district court's reversal of its appeal decision on judicial review, which affirmed the board of review's modified property assessment. **OPINION HOLDS:** The district court erred in concluding substantial evidence did not support the PAAP's ruling; we therefore reverse.

No. 14-1625 **JERRY'S HARDWARE L.L.C. v. HILLCREST PARTNERS**

AFFIRMED ON APPEAL; AFFIRMED ON CROSS-APPEAL.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve, J. Hobart Darbyshire, Henry Latham, and Mary E. Howes, Judges. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (14 pages)

Hillcrest Partners, Charles Ruhl, and Steven Fry appeal the district court's ruling awarding Jerry's Hardware, L.L.C. damages after Hillcrest's breach of the parties' lease agreement. Jerry's Hardware cross-appeals. **OPINION HOLDS:** The district court did not abuse its discretion in its determinations on Hillcrest's multiple motions to continue the trial. The court properly determined the lease agreement was enforceable between the parties. We affirm the damages awarded by the district court. As to the cross-appeal, the district court properly rejected the request to convert the rent abatement clause to monetary damages. It properly rejected the claim for damages that occurred because Jerry's failed to reasonably mitigate its damages. We affirm.

United States Court of Appeals for the Eighth Circuit

AUGUST 2014 OPINIONS:

131391P.pdf **08/08/2014 Syngenta Seeds, Inc. v. Bunge North America, Inc.**
U.S. Court of Appeals Case No: 13-1391
U.S. District Court for the Northern District of Iowa - Sioux City
[PUBLISHED] [Bye, Author, with Bright and Smith, Circuit Judges]
Civil Case - Lanham Act. Action by biotechnology company that produces genetically modified corn may not sue warehouse for damages relating to lost market share, profits and goodwill under the United States Warehouse Act; private right of action is limited to actions with respect to bonds. Neither the text of 7 U.S.C. sec. 247 nor the structure of the USWA demonstrates that Congress intended to imply a private cause of action for violations of a warehouse operator's fair treatment obligation. The district court did not err in dismissing the third-party beneficiary claim under the License Agreement. The district court's grant of summary judgment on a claim of false advertising is remanded for reconsideration in light of the Supreme Court's decision in Lexmark Int'l, Inc. v. Static Control Components, Inc. to determine whether Syngenta has standing to bring a claim under the zone-of-interests test and proximate causality requirement.

131654P.pdf **08/29/2014 USA ex rel Susan Thayer v. Planned Parenthood**
U.S. Court of Appeals Case No: 13-1654
U.S. District Court for the Southern District of Iowa - Des Moines
[PUBLISHED] [Wollman, Author, with Colloton and Gruender, Circuit Judges]
Civil case - False Claims Act. In qui tam action alleging Planned Parenthood submitted false or fraudulent claims for Medicaid reimbursement, the district court erred in dismissing certain of plaintiff's claims as she had pled sufficiently particularized facts to support her allegations that defendant violated the False Claims Act by filing claims for (1) unnecessary quantities of birth control pills, (2) birth control bills dispensed without a prescription, (3) abortion-related services, and (4) the full amount of services where a portion or all of the charges had been paid by "'donations' Planned Parenthood coerced from patients;" however, plaintiff's allegations that Planned Parenthood violated the Act by causing other hospitals to unknowingly submit claims for abortion-related services and by upcoding were not sufficiently pled to satisfy Rule 9(b) and were properly dismissed; the courts' decision that certain claims were sufficiently pled to meet Rule 9(b)'s requirements should not be read as in any way expressing a view as to whether they survive Planned Parenthood's Rule 12(b)(6) arguments, which the district court did not address in light of its ruling that the complaint was insufficient under Rule 9(b).

132084P.pdf **08/25/2014 Key Medical Supply, Inc. v. Kathleen Sebelius**
U.S. Court of Appeals Case No: 13-2084
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Melloy, Author, with Wollman and Benton, Circuit Judges]
Civil case - Administrative law - Medicare. 42 U.S.C. Sec. 1395w-3 gave the Department of Health and Human Services broad authority to establish competitive acquisition procedures for durable medical goods and created a statutory bar to the type of challenge mounted here; while there is a possibility of review for ultra vires actions, the actions of the agency were not ultra vires; challenge to the competitive bidding regime on the ground it was an unconstitutional taking is rejected.

132184P.pdf **08/13/2014 National Union Fire Ins. Co. v. Hometown Bank, N.A.**
U.S. Court of Appeals Case No: 13-2184
U.S. District Court for the Western District of Missouri - Joplin
[PUBLISHED] [Kelly, Author, with Murphy and Colloton, Circuit Judges]
Civil case. In action by insurer alleging the defendant bank had been negligent in failing to determine whether an investment advisor had authority to open a "d/b/a account" using the name of his employer, the insured party under the insurance policy in question, the district court did not err in dismissing the action on the ground the bank owed no recognized duty to the employer.

132345P.pdf **08/22/2014 Don Downing v. Goldman Phipps**
U.S. Court of Appeals Case No: 13-2345
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Murphy, Author, with Colloton and Kelly, Circuit Judges]
Civil case - Equity. In action for unjust enrichment and quantum meruit against the plaintiff lawyers in a large MDL action alleging the plaintiff lawyers benefited in their state court actions from litigation and work product generated in the underlying MDL by Downing and others but refused to pay for it, the district court erred in granting the plaintiff lawyers' motion to dismiss for lack of personal jurisdiction; where the plaintiff lawyers voluntarily entered Missouri more than once to negotiate settlement of their state court cases, their voluntary entry into Missouri for financial benefit was both the transaction of business as that term is used in the Missouri long arm statute and constitutionally sufficient minimum contacts under the Due Process Clause.

132405P.pdf **08/19/2014 PSC Custom, LP v. United Steel, Paper, etc.**
U.S. Court of Appeals Case No: 13-2405
U.S. District Court for the Western District of Missouri - Springfield
[PUBLISHED] Wollman, Author, with Bye and Shepherd, Circuit Judges]
Civil case - Arbitration. The district court erred in vacating the arbitrator' award as the arbitrator did not exceed his authority by concluding PSC did not have just cause to discharge an employee and by reducing the penalty from discharge to suspension because the award draws its essence from the parties' Collective Bargaining Agreement.

132509P.pdf **08/07/2014 Lonnie Paulos v. Stryker Corporation**
U.S. Court of Appeals Case No: 13-2509
and No: 13-2647
U.S. District Court for the Western District of Missouri - Kansas City
[PUBLISHED] [Chief Judge Riley, Author, with Benton and Kelly, Circuit Judges]
Civil Case - False Claims Act. Claim that manufacturers of pain pumps violated the False Claims Act by marketing pain pumps to encourage the placement directly into patients' joint spaces after orthopedic procedures and causing the submission of false or fraudulent claims for payment was properly dismissed, as allegations had been publicly disclosed and relator was not the original source of the information.

132673P.pdf **08/04/2014 J-McDaniel Construction Co v. Mid-Continent Casualty Company**
U.S. Court of Appeals Case No: 13-2673
U.S. District Court for the Eastern District of Arkansas - Little Rock
[PUBLISHED] [Smith, Author, with Colloton and Gruender, Circuit Judges]
Civil case - Insurance. The Commercial General Liability policy did not cover faulty workmanship by plaintiff's subcontractor as it was not an "occurrence" within the meaning of the policy; plaintiff's proposed amendment would not have stated a claim under Arkansas law, and the district court did not err in denying the motion to amend.

132706P.pdf **08/01/2014 The Grandoe Corporation v. Gander Mountain Company**
U.S. Court of Appeals Case No: 13-2706
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Wollman, Author, with Bye and Benton, Circuit Judges]
Civil case - contracts. The district court did not err in submitting to the jury the issue of whether defendant had orally agreed to purchase $3.05 million worth of gloves from plaintiff as two written documents - the Vendor Buying Agreement and the Resource Allowance Contact - did not, as a matter of law, render the oral commitment void; a reasonable jury could, on the basis of the evidence presented, find the parties had entered into a valid oral agreement for sale of the gloves; no error in awarding plaintiff pre-judgment interest as plaintiff's damages were readily ascertainable.

132709P.pdf **08/21/2014 Geoffrey Varga v. U.S. Bank National Association**
U.S. Court of Appeals Case No: 13-2709
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Gruender, Author, with Loken and Beam, Circuit Judges]
Civil case. The liquidating trustee's claim the bank aided and abetted tortious conduct by Palm Beach's directors failed because he did not plausibly plead that the bank knew of and assisted a breach of fiduciary duty by the directors; the bank had no duty to notify Palm Beach about the flow of funds in and out of a collateral account and could not have been negligent in the absence of a duty.

132753P.pdf **08/07/2014 Nebraska Machinery Company v. Cargotec Solutions, LLC**
U.S. Court of Appeals Case No: 13-2753
U.S. District Court for the District of Nebraska - Omaha
[PUBLISHED] [Beam, Author, with Smith and Shepherd, Circuit Judges]
Civil Case - arbitrability. Issue as to whether the arbitration clause was part of the parties' agreement is a matter for judicial determination. District court erred in determining as matter of law that the parties' agreed to arbitration and indemnification, as issues of fact remained on the formation of the arbitration agreement. Case is remanded for a non-jury trial and application of appropriate UCC provisions in light of those facts.

132830P.pdf **08/08/2014 ASARCO v. Union Pacific Railroad Company**
U.S. Court of Appeals Case No: 13-2830
U.S. District Court for the District of Nebraska - Omaha
[PUBLISHED] [Chief Judge Riley, Author, with Beam and Smith, Circuit Judges]
Civil Case - CERCLA. Union Pacific's settlement with the EPA and Asarco's failure to object during the comment period or the district court's approval of the consent decree, protects Union Pacific from Asarco''s breach of contract and contribution claims and district court did not err in dismissing the collateral action. The district court correctly concluded Union Pacific did not waive the contribution protection under state law or breach the tolling agreement. Estoppel claim was not presented to the district court and thus that claim is forfeited.

133065P.pdf **08/05/2014 Valerie Hawkins v. Community Bank of Raymore**
U.S. Court of Appeals Case No: 13-3065
U.S. District Court for the Western District of Missouri - Kansas City
[PUBLISHED] [Gruender, Author, with Smith and Colloton, Circuit Judges]
Civil case - Equal Credit Opportunity Act. Under the Act, a person does not qualify as an applicant solely by virtue of executing a guaranty to secure the debt of another; as a result, the plaintiffs, who guaranteed loans for their husbands' development company, are not protected from marital-status discrimination by the Act. Judge Colloton, concurring.

133185P.pdf **08/28/2014 Donald Kern v. Goebel Fixture Co.**
U.S. Court of Appeals Case No: 13-3185
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Loken, Author, with Beam and Gruender, Circuit Judges]
Civil case - Labor law. In action to recover unpaid health and welfare benefits the district court did not err in granting defendant's motion for summary judgment as it was undisputed that the union did not represent the employees at the plant in question and the union had no right to the contributions under the terms of the Trust Agreement it was seeking to enforce.

141343U.pdf **08/25/2014 Frederick A. Johnson v. The Bank of New York Mellon**
U.S. Court of Appeals Case No: 14-1343
U.S. District Court for the District of Minnesota - Minneapolis
[UNPUBLISHED] [Per Curiam - Before Murphy, Shepherd and Kelly, Circuit Judges]
Civil case - Mortgages. In action claiming defendant could not institute foreclosure proceedings the district court did not err in determining the claim was not plausible on its face, as the short chain of mortgage assignments was complete and defendant could show the assignment of record.

SEPTEMBER 2014 OPINIONS:

141340U.pdf **09/26/2014 Joshua Brenner v. American Education Services**
U.S. Court of Appeals Case No: 14-1340
U.S. District Court for the Eastern District of Missouri - St. Louis
[UNPUBLISHED] [Per Curiam - Before Murphy, Bowman and Benton, Circuit Judges]
Civil case - Telephone Consumer Protection Act. While the district court did not err in finding that plaintiff had provided defendant his phone number and had consented to being contacted by an automatic telephone dialing system, the district court did not address plaintiff's argument that he had revoked his consent and that defendant had contacted him after he did so; reversed and remanded for further proceedings as to whether plaintiff's evidence supporting his contention that he revoked his consent was sufficient to preclude summary judgment.

141647U.pdf **09/25/2014 Rickey Harrell v. G4S Secure Solutions, etc.**
U.S. Court of Appeals Case No: 14-1647
U.S. District Court for the District of Nebraska - Omaha
[UNPUBLISHED] [Per Curiam - Before Wollman, Bye and Smith, Circuit Judges]
Civil case. Appeal dismissed as premature as the order appealed from did not resolve defendant's counterclaims and is not a final order from which an appeal lies.

123239P.pdf **09/08/2014 Bank of America v. JB Hanna**
U.S. Court of Appeals Case No: 12-3239
and No: 12-3352
U.S. District Court for the Western District of Arkansas - Fayetteville
[PUBLISHED] [Colloton, Author, with Loken and Bye, Circuit Judges]
Civil case - Contracts. Defendant did not waive its right to a jury trial with respect to a 2005 loan agreement, and the district court did not err in submitting the matter to the jury; the plaintiff failed to file a preverdict motion pursuant to Rule 50(a), and the district court properly denied the defendant's Rule 50(b) motion; however, the district court abused its discretion by denying plaintiff's Rule 59 motion for a new trial as the verdict in favor of defendant on plaintiff's claim that defendant breached the loan agreements was against the great weight of the evidence, which showed the contracts were valid and enforceable, that the

defendants breached their obligations and that the plaintiff suffered damages as a result of the breach; on defendants' cross-appeal, the district court did not err in granting plaintiff's motion for summary judgment on defendant's counter-claims for fraud, breach of fiduciary duty, deceptive trade practices, negligence because the statute of limitations barred the claims; nor did the court err in granting plaintiff summary judgment on defendant's counterclaims for breach of contract or reformation; the case is remanded for a new trial on plaintiff's breach of contract claim; defendants' attorney's fees award vacated based on the vacation of defendant's judgment on the breach of contract claim.

131118P.pdf **09/05/2014 Annex Medical, Inc. v. Kathleen Sebelius**
U.S. Court of Appeals Case No: 13-1118
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Riley, Author, with Colloton and Kelly, Circuit Judges]
Civil case - Religious Freedom Restoration Act - Affordable Health Care Act. In this appeal challenging the district court denial of a motion to preliminarily enjoin the contraceptive mandate under 42 U.S.C. Sec. 2000bb-1(a), appellant Janus had no standing to appeal the order; appellant Annex did not have a sufficient number of employees to be required to offer any health insurance and the mandate did not apply to it; the court could not determine on the basis of this record whether Annex's and Lind's claimed injury - that independent third parties (private health insurers not involved in the case) are unable to sell Annex a health insurance plan that excludes healthcare inconsistent with Lind's religious beliefs - could establish standing, and the matter is remanded for further proceedings. Judge Colloton, concurring in the judgment.

132919P.pdf **09/05/2014 G&K Services Co., Inc. v. Bill's Super Foods, Inc.**
U.S. Court of Appeals Case No: 13-2919
U.S. District Court for the Eastern District of Arkansas - Jonesboro
[PUBLISHED] [Colloton, Author, with Bye and Gruender, Circuit Judges]
Civil case - Contracts. The award of attorney's fees to plaintiff based on its success on its breach of contract claim is affirmed; an award of attorney's fees in not mandatory under the Arkansas Deceptive Trade Practices Act; the Act establishes an independent basis for awarding fees, and the Act does not restrict awards to only the party that prevails in whatever larger litigation involves a claim under the Act; the district court erred, therefore, in concluding that since plaintiff was the prevailing party on its breach of contract claim, Arkansas Code Sec. 16-22-308 precluded an award of fees to defendant on its successful claim under the Act; remanded for further proceedings.

132679P.pdf **09/02/2014 Occidental Fire & Casualty Co. v. Adam Soczynski**
U.S. Court of Appeals Case No: 13-2679
and No: 13-2949
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Bye, Author, with Melloy and Benton, Circuit Judges]
Civil case - Insurance. The district court did not err in determining a bobtail policy issued by Occidental to defendant Hipp's Trucking provided coverage for damages arising out of a collision involving trucker Thomas Hipp's semi-tractor and trailer and that the amount of coverage was $1 million.

OCTOBER 2014 OPINIONS:

141037P.pdf **10/21/2014 Quam Construction Co., Inc. v. City of Redfield**
U.S. Court of Appeals Case No: 14-1037
U.S. District Court for the District of South Dakota - Aberdeen
[PUBLISHED] [Kelly, Author, with Riley, Chief Judge, and Loken, Circuit Judge]
Civil case - Arbitration. The parties' contract does not mandate arbitration, and the district court did not err in denying plaintiff's motion to compel arbitration.

131391P.pdf **10/20/2014 Syngenta Seeds, Inc. v. Bunge North America, Inc.**
U.S. Court of Appeals Case No: 13-1391
U.S. District Court for the Northern District of Iowa - Sioux City
[PUBLISHED] [Bye, Author, with Bright and Smith, Circuit Judges]
Civil case. The United States Warehouse Act did not authorize Plaintiff's action against Bunge based on a claim Bunge violated its obligations of fair dealing after it refused to accept corn grown with plaintiff's genetically-modified corn seed sold under the name "Viptera," as nothing in the text or legislative history of the Act indicates Congress intended to authorize injured third parties to sue a breaching warehouse rather than the surety; there is no implied private cause of action in 7 U.S.C. Sec. 247(a); plaintiff was not a third-party beneficiary of the applicable licensing agreement; plaintiff's Lanham Act claim is remanded for further proceedings under the Supreme Court's recent decision in Lexmark Int'l, Inc. v. Static Control Components, Inc., 134 S. Ct 1377 (2014), to permit the district court to determine in the first instance whether plaintiff had standing to bring the claim under the zone-of-interests test and proximate causality requirement.

141173U.pdf **10/14/2014 American Family Mutual Ins. Co v. John Martin Donaldson**
U.S. Court of Appeals Case No: 14-1173
U.S. District Court for the District of Minnesota - Minneapolis
[UNPUBLISHED] [Per Curiam. Before Chief Judge Riley, Wollman, and Bye, Circuit Judges]
Civil Case - diversity. In insurance coverage dispute, subsequent conviction of insured warrants remand for the district court to address in the first instance any remaining unresolved issues relating to the conviction that may prevent the court from considering the

violation-of-law exclusion as an alternative ground for affirming the district court's judgment in favor of the insurance company.

131688P.pdf **10/07/2014 Hudson Specialty Insurance Co v. Brash Tygr, LLC**
U.S. Court of Appeals Case No: 13-1688
and No: 13-1742
U.S. District Court for the Western District of Missouri - Kansas City
[PUBLISHED] [Loken, Author, with Bye and Colloton, Circuit Judges]
Civil case - Insurance. The district court erred when it determined that the driver of a non-company owned vehicle was acting in the course of defendant's business when he struck a pedestrian as he was not acting on the defendant's business as a matter of law, and the insurer was entitled to summary judgment on the coverage issue; defendants' cross-appeal is an alternative argument in support of the district court's decision and is an unnecessary complication of the case; the cross-appeal is dismissed; in any event, the district court did not err in determining that defendants were entitled to summary judgment based on a collateral estoppel theory. Judge Bye, concurring in part and dissenting in part.

132032P.pdf **10/06/2014 Trip Mate, Inc. v. Stonebridge Casualty Insurance**
U.S. Court of Appeals Case No: 13-2032
U.S. District Court for the Western District of Missouri - Kansas City
[PUBLISHED] [Beam, Author, with Benton and Shepherd, Circuit Judges]
Civil case - Contracts. The parties did not expressly consent to trying the "implied amendment" issue the district court relied on in reaching its decision in favor of Trip Mate, nor did the parties try the issue by implied consent; as the district court erred in adding the implied amendment theory to the pleadings, the judgment in favor of Trip Mate is reversed.

131816P.pdf **10/02/2014 A. D. Smith v. Palestine-Wheatley School Dist**
U.S. Court of Appeals Case No: 13-1816
U.S. District Court for the Eastern District of Arkansas - Little Rock
[PUBLISHED] [Loken, Author, with Murphy and Colloton, Circuit Judges]
Civil case - School Desegregation. The district court did not err in applying the standards set out in Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992) to the defendant school district's motion to modify or terminate the consent decree governing the desegregation of the district; nor did the court abuse its discretion in modifying the decree as the district established changed circumstances warranting the modification of the decree and the proposed modification - transfer of middle school grades to a new campus - was suitably tailored to the changed circumstances; under the circumstances, the court is confident that the district court did not intend that is Order would terminate the entire consent decree, and the court would so construe its order.

NOVEMBER 2014 OPINIONS:

141192P.pdf **11/17/2014 Hot Stuff Foods, LLC v. Houston Casualty Company**
U.S. Court of Appeals Case No: 14-1192
and No: 14-1194
U.S. District Court for the District of South Dakota - Sioux Falls
[PUBLISHED] [Loken, Author, with Riley, Chief Judge, and Kelly, Circuit Judge]
Civil case - Insurance. Where the plaintiff manufacturer voluntarily recalled some of its sandwich products because their labeling failed to disclose the presence of MSG, the manufacturer bore the burden under the insurance policy in question of proving that consuming the mislabeled sandwiches may likely result in physical symptoms of bodily injury, sickness or disease, and on the record before it, the district court erred in granting partial summary judgment for the manufacturer on the coverage issue; on remand, unless the district court determines that summary judgment is appropriate on the full trial record, the coverage issue must be submitted to a jury; the district court did not err in denying the insurer's motion for judgment as a matter of law on the manufacturer's claim for lost profits; there was no clear error in denying the manufacturer's request for an award of attorney's fees under South Dakota Codified Law Section 58-12-3 which allows recovery of attorneys' fees in cases where the insurer has vexatiously or without reasonable cause refused to pay the full amount of the loss.

DECEMBER 2014 OPINIONS:

133576P.pdf **12/29/2014 United States v. Robert Lee Bailey**
U.S. Court of Appeals Case No: 13-3576
U.S. District Court for the District of Minnesota - St. Paul
[PUBLISHED] [Murphy, Author, with Bye and Shepherd, Circuit Judges]
Civil case. For the court's prior opinion reversing and remanding the denial of Bailey's Rule 41 motion so that it could be converted into an action for damages, see United States v. Bailey, 700 F.3d 1149 (8th Cir. 2013). Where the government agreed to settle Bailey's claim for lost property for $2,500 but he did not receive a check for the funds because it was offset against his existing $45,956 child support debt, the government did not breach the settlement agreement as Bailey received a benefit - an offset against his debt - even if he did not receive the funds personally; further, Bailey was notified during the settlement discussions that any federal payments he received were subject to offset, and he received what he bargained for.

132334P.pdf **12/19/2014 Plymouth County, Iowa v. Merscorp, Inc.**
U.S. Court of Appeals Case No: 13-2334
U.S. District Court for the Northern District of Iowa - Sioux City
[PUBLISHED] [Shepherd, Author, with Riley, Chief Judge, and Colloton, Circuit Judge]
Civil case - Mortgages. In action alleging defendants improperly deprived plaintiff county of revenue by using the Mortgage Electronic Registration

System to avoid paying recording fees on mortgage assignments, the county suffered a loss of fees and interference with its recording system and had standing to bring this action; the district court did not err in dismissing the county's unjust enrichment and conspiracy claims or in denying its requests to pierce the veil and grant injunctive and declaratory relief as Iowa law does not impose a duty on assignees to record assignments of real estate mortgages; proposed amendment to complaint would be futile, and the district court did not err in denying the county's motion to alter or amend its complaint.

133732P.pdf **12/19/2014 Modesto Paulino v. Chartis Claims, Inc.**
U.S. Court of Appeals Case No: 13-3732
U.S. District Court for the Southern District of Iowa - Davenport
[PUBLISHED] [Gruender, Author, with Bye and Colloton, Circuit Judges]
Civil case - Insurance. In action alleging bad-faith denial of benefits, the text of the statute in question and the relevant case law rendered the claim fairly debatable and accordingly there was a reasonable basis for the insurer's decision to deny plaintiff's claim.

133153P.pdf **12/18/2014 CeCelia Ibson v. United Healthcare Services**
U.S. Court of Appeals Case No: 13-3153
U.S. District Court for the Southern District of Iowa - Des Moines
[PUBLISHED] [Shepherd, Author, with Riley, Chief Judge, and Beam, Circuit Judge]
Civil case - ERISA. Where defendant erroneously informed plaintiff's health care providers that she no longer had insurance coverage, her state court contract and negligence claims were preempted by ERISA; however, the district court erred in finding the complaint was barred by a one-year limitations periods in the insurance policy, and the matter is remanded for further consideration of whether the three-year limitations period from another provision applies.

131367P.pdf **12/16/2014 Kevin Schriener v. Quicken Loans, Inc.**
U.S. Court of Appeals Case No: 13-1367
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Gruender, Author, with Wollman and Murphy, Circuit Judges]
Civil case - Missouri Merchandising Practices Act. Where defendant charged no fee for the preparation of a deed of trust, it did not, under Missouri law, engage in the law business; plaintiff's concession that defendant did not charge him also undermines his unjust-enrichment claim and his claim that defendant violated the Missouri Merchandising Practices Act; no error in denying motion to alter or amend the judgment as plaintiff's proposed amendments to his complaint would have been futile.

141164P.pdf **12/04/2014 Sarah McIvor v. Credit Control Services, Inc.**
U.S. Court of Appeals Case No: 14-1164
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Murphy, Author, with Smith and Gruender, Circuit Judge]
Civil case - Fair Debt Collection Practices Act. The district court did not err in dismissing plaintiff's complaint for failure to state a claim

under the Act as it neither plausibly alleged that the communication at issue was "false, deceptive, or misleading" nor that it was "in connection with the collection of any debt."

133663P.pdf **12/02/2014 Shirley Brinkley v. Pliva, Inc.**
U.S. Court of Appeals Case No: 13-3663
U.S. District Court for the Western District of Missouri - Kansas City
[PUBLISHED] [Riley, Author, with Smith and Kelly, Circuit Judges]
Civil case - Products liability. The prescribing physician's exclusive reliance on information from the brand-name drug manufacturers broke any causal link between Pliva's failure to incorporate a 2004 label change and the plaintiff's injury; federal law preempts any state law claim requiring a generic drug manufacturer to design its drug, change its labeling or leave the market to avoid liability under state law, and plaintiff's design defect and implied warranty claims were properly dismissed.

JANUARY 2015 OPINIONS:

132915P.pdf **01/15/2015 ACUITY v. Bryan C. Johnson, etc.**
U.S. Court of Appeals Case No: 13-2915
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Smith, Author, with Murphy and Gruender, Circuit Judges]
Civil case - Insurance. Western National adequately pleaded its theory of the case and the district court did not err in denying Acuity's motion in limine; Western National had standing as a potential excess insurer to challenge the interpretation and application of contract terms between Acuity and the insured even if it was not a party to that insurance contract; the district court did not err in rejecting Acuity's requests for instructions regarding contract reformation as the case pivoted on the question of whether Acuity had removed a vehicle from coverage without the insured's consent rather than the question of contract reformation; the court did not err in allowing the insured to participate in the case after he settled with Acuity, as his participation was de minimus and did not adversely affect the jury verdict.

131754P.pdf **01/14/2015 Northwest Airlines, Inc. v. Westchester Fire Insurance Co.**
U.S. Court of Appeals Case No: 13-1754
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Riley, Author, with Wollman and Bye, Circuit Judges]
Civil case - Insurance. The purpose of a local ordinance requiring maintenance firms at the Las Vegas airport to maintain insurance coverage was to protect anyone whose property was in the care, custody and control of operators at the airport and Northwest, which entrusted its airliner to a local maintenance operator insured by Westchester, was in the class protected by the ordinance and was entitled to coverage under the policy Westchester issued to the maintenance operator.

132831P.pdf **01/13/2015 Laura Powers v. Credit Management Services, In**
U.S. Court of Appeals Case No: 13-2831
U.S. District Court for the District of Nebraska - Omaha
[PUBLISHED] [Loken, Author, with Wollman and Murphy, Circuit Judges]
Civil case - Class Actions. In this action alleging defendant's standard-form complaints and discovery requests violated various provisions of the Fair Debt Collections Practices Act and the Nebraska Consumer Protection Act, the court erred in certifying four classes of Nebraska consumers as the court did not conduct the rigorous analysis of what plaintiffs must prove to prevail on their facial invalidity theories; the standard-form complaint classes do not meet the commonality, predominance and superiority requirements of Rule 23; class certification of the standard-form discovery requests was also improper because plaintiffs' facial invalidity claims do not meet the commonality and predominance requirements of Rules 23(a) and 23(b)(3)

133160P.pdf **01/13/2015 Hutterville Hutterian Brethren v. Jeffrey Sveen**
U.S. Court of Appeals Case No: 13-3160
U.S. District Court for the District of South Dakota - Aberdeen
[PUBLISHED] [Riley, Author, with Loken and Kelly, Circuit Judges]
Civil case. In this dispute over control of the Hutterville Hutterian Brethern, Inc., a South Dakota religious nonprofit corporation, the key issue is who rightly controls Hutterville, a question which cannot be answered without determining issues such as church membership, the validity of excommunications and the proper designation of the "true Schmiedeleut," all of which are questions impermissible for secular courts; having argued to the South Dakota Supreme Court that the issues were church governance issues not subject to resolution in secular courts, plaintiffs may not now argue that the issues are subject to resolution in federal court.

133381P.pdf **01/09/2015 Philadelphia Cons. Holding v. Hodell-Natco Industries**
U.S. Court of Appeals Case No: 13-3381
and No: 13-3397
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Kelly, Author, with Riley, Chief Judge, and Smith, Circuit Judge]
Civil case - Insurance. The district court did not err in finding there was no coverage under the 2007 insurance policy in question because the insured did not give notice of a claim or potential claim within the 2007 policy period; nor did the court err in determining that the claim made against the insured was made before the 2008 policy took effect.

132620P.pdf **01/08/2015 David Oetting v. Green Jacobson**
U.S. Court of Appeals Case No: 13-2620
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Loken, Author, with Wollman and Murphy, Circuit Judges]
Civil case - Class Actions. The district court erred in ordering a cy pres distribution of the more than $2.4 million remaining in the NationsBank Classes settlement fund to the Legal Services of Eastern Missouri because a further distribution to members of the classes was economically viable

and the members of the classes had not been compensated in full; the district court further erred by failing to make its cy pres proposal publicly available and to allow class members to object or suggest alternatives before making the distribution; additionally, while Legal Services is a worthy charity, it was not the "next best" recipient of the unclaimed settlement funds in this nationwide class action seeking damages for violations of federal and state securities law as there are potential recipients devoted to preventing and aiding the victims of securities fraud, and these alternatives should be explored before an unrelated charity is selected; award of attorneys' fees vacated in light of this remand order. Judge Murphy, dissenting.

141028P.pdf **01/05/2015 Lincoln Provision v. Aron Puretz**
U.S. Court of Appeals Case No: 14-1028
U.S. District Court for the District of Nebraska - Omaha
[PUBLISHED] [Wollman, Author, with Riley, Chief Judge, and Bye, Circuit Judge]
Civil case. In action seeking a determination of the fair value of plaintiff's interest in a company, the value of plaintiff's interest was limited to its initial $100,000 earnest money contribution, plus interest from the date of plaintiff's dissociation from the company; reversed and remanded for entry of judgment.

FEBRUARY 2015 OPINIONS:

133586P.pdf **02/27/2015 Hamid Yazdianpour v. Safeblood Technologies, Inc.**
U.S. Court of Appeals Case No: 13-3586
and No: 13-3632
and No: 13-3639
U.S. District Court for the Eastern District of Arkansas - Little Rock
[PUBLISHED] [Wollman, Author, with Colloton and Benton, Circuit Judges]
Civil case - Fraud. With respect to plaintiffs' fraud claim, the district court erred in granting defendants' motion for summary judgment as there was a disputed issue of material fact as to whether plaintiffs justifiably relied on statements made by defendants as to whether defendants owned the rights to the patent in question outside the United States; under Arkansas law, the district court did not err in instructing the jury that plaintiffs could not recover under the Arkansas Deceptive Trade Practices Act if the only injury they suffered was diminution in the value of the product; plaintiffs waived their inconsistent verdict argument by failing to raise the objection before the jury was discharged; with respect to defendants' cross-appeal, their claim that the verdict was against the weight of the evidence could not be considered because they failed to renew their motions for judgment as a matter of law under Rule 50(b); under Arkansas law, the district court abused its discretion when it awarded plaintiffs prejudgment interest on their breach-of-contract claim; remanded for trial of plaintiffs' fraud claim.

133252P.pdf **02/11/2015 Argonaut Great Central Ins. v. Audrain County Joint**
U.S. Court of Appeals Case No: 13-3252
U.S. District Court for the Eastern District of Missouri - Hannibal
[PUBLISHED] [Bye, Author, with Colloton and Gruender, Circuit Judges]
Civil case - Torts. In suit alleging defendant's negligence in monitoring a private security firm's alarm panels resulting in damages to Argonuat's insured, the court had jurisdiction in this interlocutory appeal over the question of whether defendant's purchase of insurance waived the common law sovereign immunity it might otherwise enjoy under Mo. Rev. Stat. Section 537.600; the court lacked jurisdiction to address the question whether defendant's purchase of insurance also waived any statutory immunity it might enjoy under Mo. Rev. Stat. Section 190.307 as a 911 call center as the statutory section does not extend defendant a substantive right to be free from the burdens of litigation; with respect to the issue of common law sovereign immunity, the district court did not err in finding defendant had not presented sufficient evidence of a pre-existing agreement with its insurer to attach a sovereign immunity endorsement to the policy; as a result, the district court's finding that defendant had waived the immunity provided by the statute through its insurance purchase is affirmed.

133492P.pdf **02/06/2015 Germain Real Estate Company v. HCH Toyota**
U.S. Court of Appeals Case No: 13-3492
and No: 13-3723
U.S. District Court for the Western District of Arkansas - Fayetteville
[PUBLISHED] [Wollman, Author, with Colloton and Benton, Circuit Judges]
Civil case - Contacts. The court concludes that the Arkansas Supreme Court would hold that a dismissal without prejudice for failure to state facts upon which relief could be granted was a final judgment for purposes of issue preclusion; as a result, plaintiff were barred from relitigating the issue of plaintiff's purchase option in federal court; based on the state court's conclusion and the terms of the parties' subordination agreement, plaintiff was not entitled to specific performance of the option, and the district court properly dismissed plaintiffs' federal declaratory-judgment action; attorneys' fees award was not an abuse of the district court's discretion and is affirmed.

133671P.pdf **02/06/2015 NanoMech, Inc. v. Arunya Suresh**
U.S. Court of Appeals Case No: 13-3671
U.S. District Court for the Western District of Arkansas - Fayetteville
[PUBLISHED] [Colloton, Author, with Bye and Gruender, Circuit Judges]
Civil case - Contracts. Plaintiffs' pleadings were closed at the time defendant filed her motion to dismiss, and any error in the district court's decision to convert defendant's motion to dismiss into a Rule 12(c) motion for judgment on the pleadings was harmless; the district court did not err in determining the non-compete provision in defendant's employment contract, which prohibited her from working anywhere in any capacity for any business which competed with plaintiff, was overbroad, unreasonable and unenforceable.

MARCH 2015 OPINIONS:

141356P.pdf **03/26/2015 Selective Insurance Company v. Smart Candle, LLC**
U.S. Court of Appeals Case No: 14-1356
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Kelly, Author, with Gruender and Shepherd, Circuit Judges]
Civil case - Insurance. Because there are no allegations in the complaint - in either form or substance - regarding misuse of an advertising slogan, the insurer properly concluded it did not have a duty to defend the claim against its insured Smart Candle.

141741P.pdf **03/26/2015 Menard, Inc. v. Terry L. Clauff**
U.S. Court of Appeals Case No: 14-1741
U.S. District Court for the District of Nebraska - Lincoln
[PUBLISHED] [Beam, Author, with Loken and Colloton, Circuit Judges]
Civil case - Contracts. In an action holding defendant Clauff jointly and severally liable for a contract he signed on behalf of an LLC before it came into existence, the district court did not err in finding, based on the summary judgment record, that Clauff was not authorized to obligate the LLC to a lease assignment because the LLC not yet properly organized under Nebraska law and could not transact business or incur debt that was not incidental to its organization; assuming the parties intended the LLC to receive the assignment of the lease, Clauff cannot escape liability under Nebraska Revised Statute Sec. 21-2635 (repealed 2013) merely because the parties did not intend him to be personally liable; however, the matter should be remanded for further proceedings on the question of whether Nebraska common law and/or Sec. 21-365 preclude Clauff's argument that his liability under the Lease Assignment may be relieved or avoided because the LLC came into existence, adopted the contract and commenced performance. Judge Colloton, dissenting.

141567P.pdf **03/25/2015 Jose Torres v. Simpatico, Inc.**
U.S. Court of Appeals Case No: 14-1567
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] Wollman, Author, with Smith and Shepherd, Circuit Judges]
Civil case - Arbitration. Arbitration provision in plaintiffs' franchise agreements was enforceable and was not unconscionable because of the costs associated with individual arbitration proceedings; argument that the agreements were unconscionable because they waived punitive or exemplary damages and attorneys' fees went to the merits of the dispute and were for the arbitrator to resolve; agreements were broad enough to permit non-signatory parties, as third party beneficiaries of the agreement, to invoke and enforce the arbitration provision.

132918P.pdf **03/19/2015 Sletten & Brettin Orthodontics v. Continental Casualty Company**
U.S. Court of Appeals Case No: 13-2918
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Gruender, Author, with Murphy and Smith, Circuit Judges]
Civil case - Insurance. The policy in question excluded coverage for intent-to-injure acts; since the complaint against the insured alleged defamation with intent to injure, the policy did not provide coverage and

the insurer did not have a duty to defend the suit.

133252P.pdf **03/17/2015 Argonaut Great Central Ins. v. Audrain County Joint**
U.S. Court of Appeals Case No: 13-3252
U.S. District Court for the Eastern District of Missouri - Hannibal
[PUBLISHED] [Bye, Author, with Colloton and Gruender, Circuit Judges]
Civil case - Torts. The court had jurisdiction in this interlocutory appeal over the question of whether defendant's purchase of insurance waived the common law sovereign immunity it might otherwise have under Mo. Rev. Stat. Sec. 537.600; the court lacked jurisdiction to address the question of whether defendant's purchase of insurance also waived any statutory immunity it might have under Mo. Rev. Stat. Sec. 190.307 as a 911 call center, as that statute does not extend to defendant a substantive right to be free from the burdens of litigation; the district court did not err in determining that defendant did not present sufficient evidence that it and its insurer had a pre-existing agreement to attach a sovereign immunity endorsement to the insurance policy and made a mutual mistake when they failed to do so; the district court did not err, therefore in determining defendant waived the common law sovereign immunity provided by Sec. 537.600 through the purchase of insurance.

141210P.pdf **03/13/2015 PHL Variable Insurance Company v. Bank of Utah**
U.S. Court of Appeals Case No: 14-1210
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Loken, Author, with Colloton and Shepherd, Circuit Judges]
Civil case - Insurance. In action seeking a declaration that a stranger-owned-life-insurance police (STOLI) was void ab initio as contrary to public policy for lack of an insurable interest, the district court erred in determining that a policy may be challenged for lack of an insurable interest beyond the contestability period; first, it is unlikely that the Minnesota courts would permit an insure to obtain a windfall of collected premiums and renege on its contractual obligations because a third party "schemed" with the insured before the policy was issued to help him buy a policy on his own life for resale, an intent which, if unilateral, was consistent with the public policy recognizing that insurance policies are legitimate investments, as well as insurance; second, the court erred in finding the insurer's position was not foreclosed by Minnesota's incontestability statute as whether the insured has an agreement with an insurance agent, broker or premium financing company at the time the policy is issued that it will be sold, either to an identified person who lacks an insurable interest or, more typically, into a secondary market of insurance policy investors, is a risk the insurer can promptly investigate. Judge Colloton, concurring in the judgment.

141619P.pdf **03/11/2015 St. Jude Medical S.C., Inc. v. Thomas Tormey, Jr.**
U.S. Court of Appeals Case No: 14-1619
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Bye, Author, with Riley, Chief Judge, and Wollman, Circuit Judge]
Civil case - Contracts. Because plaintiff failed to present evidence that a claimed "walk-away" agreement releasing him from liability to repay a loan was in writing as required by Minn. Stat. Sec. 513.33, the district court did not err in granting defendant judgment as a matter of law on this defense or on its collection claim; plaintiff's counterclaims were time-barred; plaintiff failed to object under Fed. R. Civ. P. 72(a)to the magistrate's order denying certain of his discovery requests, and the court was without jurisdiction to review the issue.

141829P.pdf **03/09/2015 Jacqueline Conners v. Gusano's Chicago Style Pizzeri**
U.S. Court of Appeals Case No: 14-1829
U.S. District Court for the Eastern District of Arkansas - Little Rock
[PUBLISHED] [Riley, Author, with Beam and Colloton, Circuit Judges]
Civil case - Fair Labor Standards Act. Defendants' former employees lacked standing to challenge an arbitration policy which applied to current employees; because the former employees lacked standing, the district court was without jurisdiction to enjoin enforcement of the arbitration agreement; the district court's injunction is vacated and the case is remanded for further proceedings.

133354P.pdf **03/04/2015 IPSCO Tubulars, Inc. v. Ajax TOCCO Magnathermic Corp.**
U.S. Court of Appeals Case No: 13-3354
and No: 13-3466
U.S. District Court for the Eastern District of Arkansas - Jonesboro
[PUBLISHED] [Benton, Author, with Wollman and Colloton, Circuit Judges]
Civil case - Contracts. Applying the principles of Arkansas law, the most reasonable interpretation of the contract as a whole obligated defendant to provide equipment that could uniformly heat-treat pipe, at 96 fpm, without causing distortion, cracks or inconsistencies that would prevent the pipe's conversion to higher API grades; the evidence supported the court's conclusion that defendant breached the contract; the evidence was sufficient to establish that the defects in defendant's equipment was the cause of the defects in the pipe; the court's damage award was not fully explained, and this court cannot, in the absence of additional explanation, perform a meaningful review of the award; remanded to permit the district court to enter findings of fact and conclusions of law regarding the damage award; with respect to plaintiff's cross-appeal, the district court did not err in finding plaintiff had failed to establish its gross negligence claim.

133324P.pdf **03/03/2015 BancInsure, Inc. v. Highland Bank**
U.S. Court of Appeals Case No: 13-3324
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Loken, Author, with Beam and Gruender, Circuit Judges]
Civil case - Insurance. Where the plaintiff denied a claim under the Financial Institution Bond it issued to the Highland Bank, the district court did not err in determining that the Bank's claim did not fall within the coverage; while a provision of the Bond protected the Bank from a forged guaranty, under the facts of this case, the Bank's loss did not result directly from the forged personal guaranty because the guaranty was worthless to the Bank when it entered into the transactions in question.

142016P.pdf **03/02/2015 The Midwestern Indemnity Co. v. Malissa Brooks**
U.S. Court of Appeals Case No: 14-2016
U.S. District Court for the Western District of Missouri - Kansas City
[PUBLISHED] [Riley, Author, with Colloton and Kelly, Circuit Judges]
Civil case - Insurance. The insurance policy in question clearly forbids stacking of underinsured motorist coverage, and the district court did not err in granting the insurer's motion for summary judgment.

APRIL 2015 OPINIONS:

141749P.pdf **04/27/2015 Chavis Van & Storage, etc. v. United Van Lines**
U.S. Court of Appeals Case No: 14-1749
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Smith, Author, with Benton and Shepherd, Circuit Judges]
Civil Case - diversity - contract. In claim for breach of contract in which Chavis Van & Storage claimed it was not assigned the role of origin agency and destination agent by United Van Lines, the grant of summary judgment to United is affirmed. The agency agreement is not ambiguous. None of documents Chavis identifies support that it is the only "authorized" agent to its home market for non-military shipments or the exclusive agent for military shipments, and thus United did not breach the agreement. The district court did not abuse its discretion in denying the motion to compel discovery.

141646P.pdf **04/22/2015 Eagle Technology v. Expander Americas**
U.S. Court of Appeals Case No: 14-1646
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Smith, Author, with Benton and Shepherd, Circuit Judges]
Civil case - Contracts. Plaintiff Bakker did not carry his burden of establishing a prima facie case of personal jurisdiction over defendant Expander Global; nor did the district court err in granting defendants' motion for summary judgment on plaintiffs' remaining contract claim as the documents plaintiffs relied on to establish the existence of a contact did not satisfy the writing requirements of Arizona's statute of frauds.

122508P.pdf **04/15/2015 Bank of America v. Gary Peterson**
U.S. Court of Appeals Case No: 12-2508
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Wollman, Author, with Bye and Colloton, Circuit Judges]
Civil case - Truth in Lending Act. On remand from the Supreme court for reconsideration in light of Jesinoski v. Countrywide Home Loans, 135 S. Ct. 790 (2015). For the court's prior opinion in the case, see Peterson v. Bank of America, N.A., 746 F.3d 357 (8th Cir. 2014). In light of the Jesinoski opinion, the court vacates that portion of the judgment that granted Bank of America summary judgment on the Petersons' claim for rescission, reinstates that portion of the judgment that vacated the grant of summary judgment to Bank of America on the Peterson's counterclaim for statutory damages and remands the matter to the district court for further proceedings.

141783P.pdf **04/15/2015 American Automobile Ins. Co. v. Omega Flex**
U.S. Court of Appeals Case No: 14-1783
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Loken, Author, with Melloy and Gruender, Circuit Judges]
Civil case - Products liability. Evidentiary rulings excluding plaintiff's expert's testimony that a gas pipe was improperly designed and admitting defendant's expert's testimony criticizing plaintiff's expert's fire causation theory affirmed.

133607P.pdf **04/01/2015 Robl Construction, Inc. v. Andrew Homoly**
U.S. Court of Appeals Case No: 13-3607
U.S. District Court for the Western District of Missouri - St. Joseph
[PUBLISHED] [Riley, Author, with Smith and Kelly, Circuit Judges]
Civil case - Contracts. The district court erred in granting defendant Homoly's motion for summary judgment on plaintiff Robl's breach of contract claims as there were genuine issues of material fact as to whether Homloy authorized and personally guaranteed all or part of a loan in accordance with the parties' agreement. Judge Smith, dissenting.

MAY 2015 OPINIONS:

142083P.pdf **05/28/2015 Tracy L. Reid v. BCBSM, Inc.**
U.S. Court of Appeals Case No: 14-2083
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Per Curiam - Before Gruender, Shepherd and Kelly, Circuit Judges]
Civil case. In an action seeking to enjoin plaintiff's insurer from excluding certain therapy from coverage, where the district court dismissed certain claims but allowed plaintiff's Minnesota Human Rights Act and ADA claims to proceed, this court has jurisdiction to review the district court's subsequent order granting plaintiff's motion to dismiss the action and denying defendant's motion for vacatur of the ruling permitting the two claims to proceed; the district court did not provide

any explanation for its decision to deny vacatur, and the matter is remanded to the district court with directions to provide an explanation for its decision.

141112P.pdf **05/26/2015 Nicholas Minden v. Atain Specialty Insurance Co.**
U.S. Court of Appeals Case No: 14-1112
and No: 14-1116
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Beam, Author, with Colloton and Kelly, Circuit Judges]
Civil case - Insurance. Under Missouri law, the automobile exclusion did not bar Atain's coverage for plaintiff's premises liability claims as the provision could be interpreted either to deny or provide coverage in these circumstances, and a "tie" goes to the insured rather than the insurer seeking to bar coverage; the policy's exclusion for assault and battery did not apply to an incident where the actor pleaded guilty to involuntary manslaughter, a reckless and not an intentional crime; the district court did not err in rejecting plaintiff's claim for vexatious refusal to pay as the insurer's decision not to defend was reasonably based on "close calls" as to whether the exclusions precluded coverage.

141892P.pdf **05/26/2015 Unison Co., Ltd. v. Juhl Energy Development, Inc.**
U.S. Court of Appeals Case No: 14-1892
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Kelly, Author, with Gruender and Shepherd, Circuit Judges]
Civil case - Arbitration. The relevant language of the supply contract between the parties covered any dispute that arose in connection with the agreement or any legal relationship associated with or contemplated by the supply agreement and was broad enough to cover a dispute arising out of the parties' separate financing agreement; the district court erred, therefore, in denying a motion to compel arbitration; on remand, the district court should determine whether it is appropriate to dismiss the action or stay the action. Judge Shepherd, concurring.

133581P.pdf **05/21/2015 James Marshall v. National Football League**
U.S. Court of Appeals Case No: 13-3581
and No: 13-3582
and No: 13-3666
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Bye, Author, with Smith and Kelly, Circuit Judges]
Civil case - Sports law. In this class-action, nearly 25,000 former NFL players sued the NFL alleging that NFL Films, the commercial film-making wing of the league, had used their likenesses in a variety of videos in violation of their publicity rights; following extensive negotiations, the parties reached a settlement which creates a licensing agency to assist former players in marketing their publicity rights and establishes up to a $42 million payout to members of the class. Here, six former players challenged the settlement on the grounds that it did not provide for direct payouts to former players and was not fair, reasonable and

adequate. Held, the district court did not abuse its discretion in approving the settlement as it provides a direct benefit to all class members and was fair and reasonable considering the complexity and expense of further litigation, the limited amount of opposition and the merits of the plaintiffs' case. Judge Smith, concurring.

141882P.pdf **05/21/2015 Zup's of Babbitt-Aurora, Inc. v. West Bend Mutual Insurance Co.**
U.S. Court of Appeals Case No: 14-1882
and No: 14-1950
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Gruender, Author, with Shepherd and Kelly, Circuit Judges]
Civil case - Insurer. In an action to determine which insurer was responsible for the insured's lost income following a fire which destroyed its store and adjacent shopping mall, applying either the "closeness to the risk" test or the "total policy insuring intent" test, Security National's coverage of lost income from the supermarket was the primary coverage and West Bend only had liability if Security National's coverage was exhausted; since it is undisputed that Security's coverage was not exhausted, Security was responsible for the insure's lost supermarket income.

122146P.pdf **05/14/2015 Dirk Beukes v. GMAC Mortgage, LLC**
U.S. Court of Appeals Case No: 12-2146
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Colloton, Author, with Shepherd and Kelly, Circuit Judges]
Civil case - Truth in Lending Act. The district court erred in finding that the case should be dismissed on the ground that the plaintiffs failed to file suit within three years of the mortgage transaction, see Jesinoski v. Countrywide Home Loans, Inc, 135 S. Ct. 790 (2015); the court's alternative holding that the lender had accurately disclosed the finance charge when the transaction was consummated, thereby giving plaintiffs three days to rescind under 15 U.S.C. Sec. 1635(a), was a valid basis for dismissal, and the judgment of the district court is affirmed.

133744P.pdf **05/12/2015 The Weitz Company v. Lexington Insurance Company**
U.S. Court of Appeals Case No: 13-3744
U.S. District Court for the Southern District of Iowa - Des Moines
[PUBLISHED] [Beam, Author, with Loken and Colloton, Circuit Judges]
Civil case - Insurance. District court did not abuse its discretion in determining plaintiff had not established the elements of equitable subrogation; claim for unjust enrichment failed as a matter of law.

141755P.pdf **05/07/2015 Patricia Jackson v. Allstate Insurance Company**
U.S. Court of Appeals Case No: 14-1755
U.S. District Court for the Eastern District of Arkansas - Little Rock
[PUBLISHED] [Beam, author, with Riley, Chief Judge, and Colloton, Circuit Judge]
Civil case - Insurance. Plaintiff's claims for unjust enrichment and estoppel were quasi-contractual and precluded under Arkansas law by the existence of the insurance contract in question; the district court did not err in dismissing plaintiff's bad faith claim as there was no evidence that Allstate's denial of her claim was "dishonest, malicious or oppressive;" discovery rulings affirmed; rulings excluding character witnesses and limiting time to present evidence at trial affirmed; late disclosure of an expert's field study was harmless; attempt to admit Google Maps printout regarding drive time was properly rejected as hearsay; no error in denying plaintiff's attempt to introduce evidence that no criminal charges were filed in this arson; the court could not review plaintiff's argument that the evidence was insufficient to support the jury's verdict for Allstate on plaintiff's breach of contract claim as she failed to file a Rule 50(b) motion after the entry of judgment; no error in denying plaintiff's motion to require Allstate to pay her mortgage company or in denying her request for a statutory penalty and attorneys' fees under Ark. Code Sec. 23-79-208(a)(1).

141853P.pdf **05/07/2015 Arena Holdings Charitable, LLC v. Harman Professional, Inc.**
U.S. Court of Appeals Case No: 14-1853
U.S. District Court for the District of North Dakota - Bismarck
[PUBLISHED] [Beam, Author, with Riley, Chief Judge, and Gruender, Circuit Judge]
Civil case - Torts. In the absence of any intervening decision by North Dakota courts, the panel is bound by the prior decision in Dakota Gassification Co. v. Pascoe Building Systems, 91, F.3d 1094 (8th Cir. 1996), which held that the North Dakota Supreme Court would likely conclude that the economic loss doctrine extends to preclude liability in tort for physical damage to other nearby property of commercial purchasers who could foresee such risks at the time of purchase," and the district court did not err in finding the economic loss doctrine precluded plaintiff from recovering tort damages; here, it was foreseeable to the contracting parties that a defect in an amplifier or sound system as a whole could lead to fire and resulting loss, and plaintiff's fire-related losses were not recoverable in tort. Chief Judge Riley, dissenting.

JUNE 2015 OPINIONS:

142484P.pdf **06/08/2015 Ron Golan v. Veritas Entertainment, LLC**
U.S. Court of Appeals Case No: 14-2484
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Murphy, Author, with Shepherd, Circuit Judge, and Brooks, District Judge]
Civil case - Telephone Consumer Protection Act. Here, the context of the

calls plaintiffs received on their answering machine indicates they were made for the purpose of promoting a movie, "Last Ounce of Courage," and were part of nationwide campaign to promote the film; as such, the calls qualified as telemarketing and the district court erred in finding the calls were exempt from regulation and that the plaintiffs had failed to allege an injury in fact sufficient to confer Article III standing; further, the court erred in finding the plaintiffs were inadequate class representatives because they could not show their claims were typical of putative class members; reversed and remanded for further proceedings.

141265P.pdf **06/02/2015 Avon State Bank v. BancInsure, Inc.**
U.S. Court of Appeals Case No: 14-1265
and No: 14-2202
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Shepherd, Author, with Gruender and Kelly, Circuit Judges]
Civil case - Insurance. The indemnity bond issued to the bank requiring defendant to indemnify Avon for any loss resulting directly from dishonest or fraudulent acts committed by a bank employee was not limited to first party losses and covered third party losses such as occurred in this case where Avon suffered the loss of third-party property in its possession; as the district court did not err in holding that the bond covered Avon's loss and the bond covered Avon's entire loss, the court did not need to consider Avon's cross-appeal on the question of whether the loss was covered under its Directors and Officers liability policy; district court correctly applied Minnesota law in determining Avon's prejudgment interest.

142636P.pdf **06/01/2015 LoRoad, LLC v. Global Expedition Vehicles LLC**
U.S. Court of Appeals Case No: 14-2636
U.S. District Court for the Western District of Missouri - Springfield
[PUBLISHED] [Loken, Author, with Smith and Colloton, Circuit Judges]
Civil case - Arbitration. Plaintiff failed to show the existence of a final, enforceable assembly agreement between the parties and there was, therefore, no enforceable agreement to arbitrate.

143435P.pdf **06/29/2015 Troy K. Scheffler v. Messerli & Kramer P.A.**
U.S. Court of Appeals Case No: 14-3435
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Per Curiam - Before Loken, Bye and Kelly, Circuit Judges]
Civil case - Fair Debt Collection Practices Act. There was no evidence that plaintiff had sent defendant a cease-and-desist letter and even if there had been such a letter, defendant's actions in sending defendant a garnishment letter was permissible under the Act; defendant did not have to notify plaintiff that it was using or viewing his credit report in connection with the collection of a debt; service of a garnishment action is not an adverse action which requires notice under the Act; collection of bank account information was not an invasion of privacy under Minnesota law.

141514P.pdf **06/26/2015 The Stonebridge Collection v. Keith Carmichael**
U.S. Court of Appeals Case No: 14-1514
and No: 14-1601
U.S. District Court for the Western District of Arkansas - Hot Springs
[PUBLISHED] [Riley, Author, with Loken and Smith, Circuit Judges]
Civil case - Fraud. Following Arkansas law, the district court did not err in determining defendants converted copies of certain customer files created by plaintiff; the district court did not clearly err in awarding damages based on defendants; unjust enrichment; since defendant Cutting Edge had unlimited access to the files plaintiff created for Cutting Edge's customers, the district court did not err in finding for Cutting Edge on plaintiff's claim that Cutting Edge had wrongfully converted the files; the district court did not err in finding plaintiff failed to establish the existence of a business expectancy under Arkansas law; the district court did not err in finding Cutting Edge fraudulently induced plaintiff to send sample knives while intending to use defendant TaylorMade as its engraver for any orders TaylorMade's customers made after seeing the samples; Arkansas's Deceptive Trade Practices Act does not apply to claims regarding business between a manufacturer and a distributor when consumers are not deceived or defrauded; plaintiff failed to prove its RICO claim; attorneys' fees award affirmed; remanded to permit the district court to correct a math error in the calculation of plaintiff's damages on the claim for unjust enrichment.

141947P.pdf **06/22/2015 Thomas Podraza v. Richard Whiting**
U.S. Court of Appeals Case No: 14-1947
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Shepherd, Author, with Wollman and Smith, Circuit Judges]
Civil case - Securities Fraud. In action by shareholders alleging defendants, officers of Patriot Coal, violated various provisions of the Securities and Exchange Act by fraudulently capitalizing environmental remediation facilities' installations costs to avoid the impact expensing the costs would have had on Patriot's bottom line, the district court did not err in dismissing the action on the ground the complaint did not meet the Private Securities Litigation Reform Act of 1995's heightened requirement for pleading scienter.

123919P.pdf **06/15/2015 Cedar Rapids Lodge & Suites v. Lightowler Johnson Assoc.**
U.S. Court of Appeals Case No: 12-3919
U.S. District Court for the Northern District of Iowa - Cedar Rapids
[PUBLISHED] [Colloton, Author, with Bye and Gruender, Circuit Judges]
Civil case - Torts. The court could not say that Iowa courts would expand the adverse domination doctrine to extend the statute of limitations to cover the situation where a plaintiff brings a claim of negligence against third parties, such as defendant Lightowler, who are not agents of the corporation or alleged co-conspirators of corporate agents; plaintiff's claims were time-barred as plaintiff had notice of the defects in

November, 2003, more than five years before it brought suit.

142575P.pdf **06/11/2015 Jerry Friedman v. Kelly Farmer**
U.S. Court of Appeals Case No: 14-2575
U.S. District Court for the Eastern District of Arkansas - Pine Bluff
[PUBLISHED] [Kelly, Author, with Murphy and Colloton, Circuit Judges]
Civil case - Contracts. Assuming that the situation in this case would meet an exception to the prohibition of unjust enrichment in contract cases because the oral contract could no longer be completed, there is no evidence the Farmers received money or its equivalent in an unjust fashion; nor was there any evidence that they acted outside the scope of their employment with defendant Arkat; plaintiff abandoned a piece of equipment at Arkat's plant and abandonment is a complete defense to plaintiff's claim the equipment was improperly converted; no error in denying motion to amend complaint on the ground amendment would be futile

JULY 2015 OPINIONS:

142313P.pdf **07/14/2015 AVR Communications, Ltd. v. American Hearing Systems, Inc.**
U.S. Court of Appeals Case No: 14-2313
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Bye, Author, with Beam and Benton, Circuit Judges]
Civil case - Convention on the Recognition and Enforcement of Foreign Arbitral Awards. District court had jurisdiction to recognize and enforce the Israeli arbitration award and the court did not err in determining the Israeli court judgments should be given preclusive effect; order confirming the Israeli arbitration award affirmed

142578P.pdf **07/10/2015 Alpine Glass, Inc. v. Country Mutual Insurance Co.**
U.S. Court of Appeals Case No: 14-2578
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Melloy, Author, with Riley, Chief Judge, and Murphy, Circuit Judge]
Civil case - Arbitration. Order confirming an arbitration award was not a final order for purposes of appeal as hundreds of these claims remained pending, and the order had not been certified for appeal under Rule 54(b); to the extent Alpine is urging the court to treat this "test claim" as an independent action, the amount in controversy is only $398.77 and does not meet the jurisdictional threshold in diversity cases; to the extent Alpine wishes to treat the appeal as a petition for a writ of mandamus, the case does not meet the stringent standards associated with issuing the writ, and the petition is denied.

151084U.pdf **07/08/2015 Stephen Roberts v. Ocwen Loan Servicing, LLC**
U.S. Court of Appeals Case No: 15-1084
U.S. District Court for the District of Minnesota - Minneapolis
[UNPUBLISHED] [per Curiam - Before Shepherd, Bye and Kelly, Circuit Judges]
Civil case - Contracts. The court lacked ancillary jurisdiction to rule on a motion to enforce a settlement because the court's dismissal order did not incorporate the terms of the settlement agreement, the court retained jurisdiction for only 60 days and no action was taken by any party within that 60 day period; the order on the motion to enforce the settlement is vacated and the matter is remanded with instructions to dismiss the motion and to enter a separate judgment based on the dismissal order.

142174P.pdf **07/07/2015 American Family Mutual Ins. v. Steven G. Graham**
U.S. Court of Appeals Case No: 14-2174
U.S. District Court for the District of Minnesota - Minneapolis
[PUBLISHED] [Kelly, Author, with Gruender, Shepherd, Circuit Judges]
Civil case - Contracts. The evidence was sufficient to support the jury verdict that defendant had violated the provisions of his Agent Agreement by contacting former customers after plaintiff terminated him and inducing them to cancel their policies and place their insurance with him; admission of another agent's testimony that defendant had, in his view, violated the Agent Agreement was a small portion of his overall testimony and was not so prejudicial that a new trial would likely produce a different result; with respect to defendant's counterclaim that his Agent Agreement had been wrongfully terminated, the district court did not err in rejecting his proposed instruction on "dishonest," as the court properly instructed the jury under applicable Wisconsin law; the court did not err in determining that a provision of the Agent Agreement was a valid stipulated-damages clause rather than an unenforceable penalty.

141560P.pdf **07/06/2015 David Meyer and Nancy Meyer v. U.S. Bank National Association**
U.S. Court of Appeals Case No: 14-1560
U.S. District Court for the District of Nebraska - Lincoln
[PUBLISHED] [Loken, Author, with Riley, Chief Judge, and Smith, Circuit Judge]
Civil case - Torts. For the court's prior opinion in the matter, see Meyer v. U.S. Bank Nat'l Ass'n, 715 F.3d 703 (8th Cir. 2013). In this action alleging tortious interference with the plaintiff's contractual relations with a feed supplier, the district court did not err in granting summary judgment based on matters outside the pleadings where all parties were given a change to present material pertinent to the motion; the district court did not err in imposing Rule 11 sanctions against plaintiffs where they repackaged the prior suit under a different cause of action and made claims regarding the trust's status as plaintiff which were contradicted by their contentions in the prior case and the evidence in the record; the trust's appeal of the sanctions order was not frivolous; however, by arguing that the district court erred in granting a Rule 12(b)(6) dismissal when the district court clearly granted summary judgment in the

case, and by misrepresenting governing law in their reply brief, plaintiffs had frivolously argued the appeal, and defendant is entitled to double appeals costs as a sanction.

142164P.pdf **07/02/2015 Avnet, Inc. v. David Wild**
U.S. Court of Appeals Case No: 14-2164
U.S. District Court for the Northern District of Iowa - Cedar Rapids
[PUBLISHED] [Bye, Author, with Beam and Benton, Circuit Judges]
Civil case - Suretyship and Guaranty. The District Court did not err in determining that Iowa courts would adopt the rule set forth in Restatement (Third) of Suretyship and Guaranty Section 13, which generally allows a creditor's assignee to enforce a guaranty even if it would have traditionally been considered a special guaranty under common law; none of the exceptions contained in Section 13 applied, and the district court did not err in enforcing defendant's guaranty.

142274P.pdf **07/02/2015 City of Osceola, Arkansas v. Entergy Arkansas, Inc.**
U.S. Court of Appeals Case No: 14-2274
U.S. District Court for the Eastern District of Arkansas - Jonesboro
[PUBLISHED] [Murphy, Author, with Shepherd, Circuit Judge, and Harpool, District Judge]
Civil case - Contracts. The case was properly removed to federal court as the contract plaintiff seeks to enforce is its Power Coordination, Interchange and Transmission Agreement with defendant, an agreement which had to filed with the Federal Energy Regulatory Commission and which FERC had approved; since plaintiff was seeking to enforce a tariff contained in the agreement approved by FERC, the suit arose under federal law and was properly removed; this claim was not barred by the filed rate doctrine as the suit does not challenge a filed rate over which FERC has exclusive jurisdiction; however, FERC does have primary jurisdiction to determine the appropriate treatment of the bandwidth payments at issue; based on the record and FERC's expertise in implementing and supervising bandwidth remedy, allowing FERC to exercise its primary jurisdiction would best ensure uniform treatment of bandwidth charges; the dismissal of the action is affirmed, but modified to be without prejudice.

142592P.pdf **07/02/2015 Lori Anderson v. K-V Pharmaceutical Company**
U.S. Court of Appeals Case No: 14-2592
U.S. District Court for the Eastern District of Missouri - St. Louis
[PUBLISHED] [Shepherd, Author, with Murphy, Circuit Judge, and Harpool, District Judge]
Civil case - Securities Fraud. In action alleging K-V and three of its officers made materially false or misleading statements or omissions related to the product launch of the drug Makena, the district court did not err in finding defendants' statements about FDA exclusivity were protected by the safe-harbor provisions of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. Sec. 78u-4(b) as forward-looking statements accompanied by meaningful cautionary language; the district

court did not abuse its discretion by denying plaintiffs' motion for reconsideration of the scope of leave to amend the complaint.

141407P.pdf **07/01/2015 Bryant Lewis v. Enerquest Oil and Gas**
U.S. Court of Appeals Case No: 14-1407
U.S. District Court for the Western District of Arkansas - El Dorado
[PUBLISHED] [Colloton, Author, with Wollman and Benton, Circuit Judges]
Civil case - Oil and Gas. In an action to cancel oil and gas leases on the ground the defendant lessees breached implied covenants in the leases to develop the oil and gas deposits, the district court correctly determined that lessors had not provided defendants with the required notice and opportunity to cure the breach before bringing suit to cancel the leases.

142811P.pdf **07/15/2015 H & Q Properties, Inc. v. David Doll**
U.S. Court of Appeals Case No: 14-2811
U.S. District Court for the District of Nebraska - Omaha
[PUBLISHED] [Smith, Author, with Wollman and Benton, Circuit Judges]
Civil case - RICO. Plaintiffs failed to allege that defendants defraud Malvern Bank or engaged in the requisite false or fraudulent activities to obtain bank property within the meaning of 18 U.S.C. Sec. 1344, and the district court did not err in finding that plaintiff failed to adequately allege bank fraud; similarly, plaintiffs failed to adequately allege wire and mail fraud; no error in denying plaintiffs' motion for leave to amend as the proposed amendments did not cure the defects in plaintiffs' RICO allegations.

142270P.pdf **07/16/2015 Michigan Millers Mutual Ins. v. Asoyia, Inc.**
U.S. Court of Appeals Case No: 14-2270
U.S. District Court for the Southern District of Iowa - Davenport
[PUBLISHED] Riley, Author, with Loken and Shepherd, Circuit Judges]
Civil case - Insurance. The district court did not err in denying Michigan Millers' post-trial motion for judgment as a matter of law as the evidence supported the jury's verdict that Michigan Millers' was not prejudiced by Asoyia's delay in providing it notice of a fire claim, as there was detailed evidence from which the jury could conclude that defendant insurer United Fire had rebutted the presumption of prejudice which attaches to delay; the district court did not err in deciding the policies in question between Michigan Millers and Aosyia were ambiguous and that defendant Jennings, Asoyia's former chief executive, was covered.

142819P.pdf **07/16/2015 Joetta Hearing v. Nikole C. Holloway**
U.S. Court of Appeals Case No: 14-2819
U.S. District Court for the Northern District of Iowa - Sioux City
[PUBLISHED] [Colloton, Author, with Murphy and Kelly, Circuit Judges]
Civil case - Insurance. In a dispute over whether the insured had taken adequate steps to change the beneficiary of his life insurance policy, the district court did not err in finding that the insured had not filed a

written request with the insurer to change the beneficiary and that a handwritten note found near his body at the time of his death was, under Iowa law, an expression of unexecuted intent to make a change insufficient to comply with the notice requirements of the policy; defendant was not entitled to a constructive trust over the policy proceeds as she failed to show that plaintiff obtained her beneficiary status through any wrongdoing; defendant had adequate notice the district court would treat plaintiff's motion to dismiss as a motion for summary judgment.

143081P.pdf **07/16/2015 Darren Lee v. Airgas - Mid South, Inc.**
U.S. Court of Appeals Case No: 14-3081
U.S. District Court for the Western District of Arkansas - Fayetteville
[PUBLISHED] [Riley, Author, with Loken and Shepherd, Circuit Judges]
Civil case - Products liability. District court did not err in finding the complaint was time-barred and that plaintiff's amended complaint did not relate back to the original complaint because the newly-named defendant did not have notice within 120 days after the complaint was filed; the complaint failed to state any claim against the John Doe defendants, and the court did not err in dismissing them.

141683P.pdf **07/17/2015 Macquarie Bank Limited v. Bradley D. Knickel**
U.S. Court of Appeals Case No: 14-1683
and No: 14-1684
U.S. District Court for the District of North Dakota - Bismarck
[PUBLISHED] [Wollman, Author, with Beam and Loken, Circuit Judge]
Civil case. District court did not err in determining the contract documents did not require defendants LexMac and Novus to renew certain expires collateral leases, and the leases did not serve as collateral under the contract; the district court did not err in granting summary judgment against plaintiff on its claims of deceit, fraud and promissory estoppel; defendant Lexar's misappropriation of trade secrets claim fails because the trade secrets were misappropriated from defendants LexMac and Novus, not Lexar; North Dakota's Uniform Trade Secrets Act displaces a unlawful-interference claim on the same facts; no error in finding Macquarie had misappropriated LexMac and Novus's trade secrets, and the award of damages and attorneys' fees is affirmed.

142947P.pdf **07/17/2015 RSA 1 Limited Partnership v. Paramount Software Associates**
U.S. Court of Appeals Case No: 14-2947
and No: 14-3382
U.S. District Court for the Southern District of Iowa - Council Bluffs
[PUBLISHED] [Gruender, Author, with Wollman, Circuit Judge, and Doty, District Judge]
Civil case - Contracts. The district court did not err in finding plaintiffs terminated the parties' contract and triggered the early-termination provision; the liquidated damages provision of the contract applied to the renewal terms in the contract and not just the initial, three-year term of the contract; on these facts, the liquidated

damages provision of the contract, which was based on lost revenue, was enforceable under Texas law; plaintiffs' argument that the proper amount of liquidated damages was $0.00 is rejected.

United States Supreme Court

Kimble et al. v. Marvel Entertainment, LLC, Successor to Marvel Enterprises, Inc. No. 13-720, Decided June 22, 2015:

Facts: Marvel Entertainment's corporate predecessor agreed to purchase petitioner Stephen Kimble's patent for a Spider-Man toy in exchange for a lump sum plus a 3% royalty on future sales. The agreement set no end date for royalties. As the patent neared the end of its statutory 20 year-term, Marvel discovered *Brulotte v. Thys Co.,* 379 U.S. 29, in which this Court held that a patentee cannot continue to receive royalties for sales made after his patent expires. Marvel then sought a declaratory judgment in federal district court confirming that it could stop paying Kimble royalties. The district court granted relief, and the Ninth Circuit affirmed. Kimble now asks this Court to overrule *Brulotte*.

Issue: Whether the Court should overrule *Brulotte* and its holding that a patentee cannot continue to receive royalties for sales made after his patent expires?

Holding: *Stare decisis* requires this Court to adhere to *Brulotte*. A patent typically expires 20 years from its application date. 35 U.S.C. § 154(a)(2). At that point, the unrestricted right to make or use the article passes to the public. This Court has carefully guarded the significance of that expiration date, declining to enforce laws and contracts that restrict free public access to formerly patented, as well as unpatentable, inventions. *Brulotte* applied that principle to a patent licensing agreement that provided for the payment of royalties accruing after the patent's expiration. The Court held that the post-patent royalty provisions was "unlawful *per se,*" because it continued "the patent monopoly beyond the patent period and in so doing, conflicted with patent law's policy of establishing a "post expiration . . . public domain." Critics of the *Brulotte* rule must seek relief not from this Court but from Congress.

Reasoning: There are no strong justifications for overruling *Brulotte*. First, *Brulotte's* doctrinal underpinnings have not eroded over time. The patent statute in *Brulotte* is essentially unchanged. And the precedent on which the *Brulotte* Court primarily relied, like other decisions enforcing a patent's cut-off date, remains good law. Second, nothing about *Brulotte* has proved unworkable. In addition, *Brulotte* lies at the intersection of two areas of law: property (patents) and contracts (licensing agreements). The Court has often recognized that in such context, considerations favoring *stare decisis* are at their acme. Parties are especially likely to rely on such precedents when ordering their affairs.

Baker Botts LLP v. Asarco LLC No. 14-103, Decided June 15, 2015

Facts: Asarco LLC hired law firms to assist it in carrying out its duties as a Chapter 11 debtor in possession. When Asarco emerged from bankruptcy, the law firms filed feel applications requesting frees. Asarco challenged the applications but the Bankruptcy Court rejected Asarco's objections and awarded the law firm fees for time spent defending the applications. Asarco appealed to the District Court, which held that the law firms could be awarded fees for defending their fee applications. The Fifth Circuit reversed, holding that §330(a)(1) did not authorize fee awards for defending fee applications.

Issue: Whether §330(a)(1) authorizes fee awards for defending applications?

Holding: Affirmed. §330(a)(1) does not permit bankruptcy courts to award fees to §327(a) professionals for defending fee applications.

Reasoning: The American Rule provides the "basic point of reference" for awards of attorney's fees: "Each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." Because the rule is deeply rooted in common law, this Court will not deviate from it "absent explicit statutory authority." Congress did not depart from the American Rule in §330(a)(1) for fee-defense litigation. Time spent litigating a fee application against the bankruptcy estate's administrator cannot be fairly described as "labor performed for" – let alone "disinterested service to" – that administrator. Had Congress wished to shift the burdens of fee-defense litigation under §330(a)(1), it could have done so, as it had done in other bankruptcy provisions.

Commil USA, LLC v. Cisco Systems, Inc., No. 13-896, Decided May 26, 2015

Facts: Commil USA, LLC, holder of a patent for a method of implementing short-range wireless networks, filed suit, claiming that Cisco Systems, Inc., a maker and seller of wireless networking equipment, had directly infringed Commil's patent in its networking equipment and had induced others to infringe the patent by selling the infringing equipment for them to use. After two trials, Cisco was found liable for direct and induced infringement. With regard to inducement, Cisco had raised the defense that it had a good-faith belief that Commil's patent was invalid but the District Court found Cicso's supporting evidence inadmissible. The Federal Circuit affirmed the District Court's judgment in part, vacated in part, and remanded, holding, as relevant here, that the trial court erred in excluding Cicso's evidence of its good-faith belief that Commil's patent was invalid.

Issue: Whether a defendant's belief regarding patent validity is a defense to an induced infringement claim?

Holding: Vacated and remanded. A defendant's belief regarding patent validity is not a defense to an induced infringement claim.

Reasoning:
Inducement liability only attaches if the defendant knew of the patent and that the induced acts constituted patent infringement. The discussion here also refers to direct infringement, a strict-liability offense in which the defendant's mental state is irrelevant, and contributory infringement, which, like inducement liability, requires knowledge of the patent in suit and knowledge of patent infringement. Inducement liability is found when there is not only the knowledge of the existence of a patent, but also the fact that a person demonstrates that it knew it would be causing customers to infringe on that patent. There must be proof that the defendant knew the acts were infringing.
Induced infringement and validity are separate issues and have separate defenses under the act. Belief regarding validity cannot negate §271(b)'s scienter requirement of "actively induce[d] infringement" – i.e. the intent to bring about the desired result of infringement. Therefore, when infringement is the issue, the patent's validity is not the question to be confronted.

Tibble et al, v. Edison International et al. No. 13-550, Decided May 18, 2015

Facts: In 2007, petitioners, beneficiaries of the Edison 401(k) Savings Plan (Plan), sued Plan fiduciaries, respondents Edison International and others, to recover damages for alleged losses suffered by the Plan from alleged breaches of respondent's fiduciary duties. Petitioners argued that respondents violated their fiduciary duties with respect to three mutual funds added to the Plan in 1999 and three mutual funds added to the Plan in 2002. Petitioners argued that

respondents acted imprudently by offering six higher priced retail-class mutual funds as Plan investments when materially identical lower priced institutional-class mutual funds were available. Because ERISA requires a breach of fiduciary duty complaint to be filed no more than six years after "the date of the last action which constitutes a part of the breach or violation" or "in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, the District Court held that petitioners' complaint as to the 1999 funds was untimely because they were included in the Plan more than six years before the complaint filed, and the circumstances had not changed enough within the 6-year statutory period to place respondents under an obligation to review the mutual funds and to convert them to lower priced institutional-class funds. The Ninth Circuit affirmed, concluding that petitioners had not established a change in circumstances that might trigger an obligation to conduct a full due diligence review of the 1999 funds within the 6-year statutory period.

Issue: Whether petitioners' breach of fiduciary duty claim was timely filed?

Holding: Remand for the Ninth Circuit to consider petitioners' claim that respondents breached their duties within the relevant 6-year statutory period under §1113. The Ninth Circuit erred by applying §1113's statutory bar to a breach of fiduciary duty claim based on the initial selection of the investments without considering the contours of the alleged breach of fiduciary duty.

Reasoning: ERISA's fiduciary duty is derived from the common law of trusts, which provides that a trustee has a continuing duty – separate and apart from the duty to exercise prudence in selecting investments at the outset – to monitor, and remove imprudent, trust investments. So long as a plaintiff's claim alleging breach of the continuing duty of prudence occurred within six years of suit, the claim is timely. This Court expresses no view on the scope of the respondent's fiduciary duty in this case.

United States v. Kwai Fun Wong**,** No. 13-1074, Decided April 22, 2015

Facts: The Federal Tort Claims Act (FTCA) provides that a tort claim against the United States "shall be forever barred" unless the claimant meets two deadlines. First, a claim must be presented to the appropriate federal agency for administrative review within two years after the claim accrues and second, if the agency denies the claim, the claimant may file suit in federal court within six months of the agency's denial. Wong and June each missed one of these deadlines. The District Court dismissed the FTCA claim for failure to satisfy §2401(b)'s time bars, holding that, despite any justification for delay, those time bars are jurisdictional and not subject to equitable tolling. The Ninth Circuit reversed in both cases, concluding §2401(b)'s time bars may be equitably tolled.

Issue: Whether section 2401(b)'s time limits are subject to equitable tolling?

Holding: Affirmed and remanded. Yes. Section 2401(b)'s time limits are subject to equitable tolling.

Reasoning: The Court adopted a "rebuttable presumption" that time bars on suits against the government may be equitably tolled. One way to rebut the presumption is to demonstrate that the statute of limitations is jurisdictional. If so, the statute cannot be equitably tolled. But this Court will not conclude that a time bar is jurisdictional unless Congress provides a "clear statement" to that effect. And most times bars, even if mandatory and emphatic, are nonjurisdictional. Congress thus must do something special to tag a statute of limitations as jurisdiction. Congress has done no such thing here.

***B, Inc., et al. v. Learjet, Inc., et al.*,** No. 13-271, Decided April 21, 2015

Facts: Respondents are a group of manufacturers, hospitals, and other institutions that buy natural gas directly from interstate pipelines and sued petitioner interstate pipelines, claiming that the pipelines had engaged in behavior that violated state antitrust laws. Respondents alleged that petitioners reported false information to the natural-gas indices on which respondents' natural-gas contract were based. The indices affected not only retail natural-gas prices, but also wholesale natural-gas prices. After removing the case to federal court, the petitioner pipelines sought summary judgment on the ground that the Natural Gas Act pre-empted respondents' state-law claims. That Act gives the Federal Energy Regulatory Commission (FERC) the authority to determine whether rates charged by natural-gas companies or practices affecting such rates are unreasonable. But the Act also limits FERC's jurisdiction to the transportation of natural gas in interstate commerce, and the sale in interstate commerce. The Act leaves regulation of other portions of the industry, such as retail sales, to the States. The District Court granted petitioners' motion for summary judgment, reasoning that because petitioners' challenged practices directly affecting wholesale as well as retail prices, they were pre-empted by the act. The Ninth Circuit reversed. While acknowledging that the pipelines' index manipulation increased wholesale prices as well as retail prices, it held that the state-law claims were not preempted because they were aimed at obtaining damages only for excessively high retail prices.

Issue: Whether the antitrust claims are pre-empted by the Natural Gas Act?

Holding: Affirmed. No. Respondent's state-law antitrust claims are not within the field of matters pre-empted by the Natural Gas Act.

Reasoning: The Act was drawn with meticulous regard for the continued exercise of state power. Where, as here, a practice affects nonjurisdictional as well as jurisdictional sales, preemption can be found only where a detailed examination convincingly demonstrates that a matter falls within the pre-empted filed as defined by this Court's precedents. Precedent emphasizes the importance of considering the target at which the state-law claims aim. Here, respondent's claims are aimed at the practices affecting retail prices, a matter firmly on the States' side of the dividing line.

Armstrong et al. v. Exceptional Child Center, Inc., et al., No. 14-15, Decided March 31, 2015:

Facts: Providers of "habitual services" under Idaho's Medicaid plan are reimbursed by the States' Department of Health and Welfare. Section 30(A) of the Medicaid Act requires Idaho's plan to "assure that payments are consistent with efficiency, economy, and quality of care" while "safeguard[ing] against unnecessary utilization of . . . care and servicers." 42 U.S.C. §1396a(a)(30)(A). Respondents sued petitioners claiming that Idaho reimbursed them at rates lower than §30(A) permits, and seeking to enjoin petitioners to increase these rates. The District Court entered summary judgment for the providers. The Ninth Circuit affirmed, concluding that the Supremacy Clause gave the providers an implied right of action, and that they could sue under this implied right of action to seek an injunction requiring Idaho to comply with §30(A).

Issue: Whether the Supremacy Clause confers a private right of action so that Medicaid providers can sue for an injunction requiring compliance with §30(A) of the Medicaid Act?

Holding: Reversed. No. The Supremacy Clause does not confer a private right of action, and Medicaid providers cannot sue for an injunction requiring compliance with §30(A).

Reasoning: The Supremacy Clause instructs court to give federal law priority when state and federal law clash. But it is not the source of any federal right and does not create a cause of action. Respondents' suit cannot proceed in equity. The power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations. Here, the express provision of a single remedy for a State's failure to comply with Medicaid's requirements and the sheer complexity associated with enforcing §30(A) combined to establish Congress's intent to foreclose equitable relief.

Omnicare, Inc., et al. v. Laborers District Council Construction Industry Pension Fund, et al., No. 13-435, Decided March 24, 2015

Facts: The Securities Act of 1933 requires that a company wishing to issue securities must first file a registration statement containing specific information about the issuing company and the securities offered. *See* 15 U.S.C. §§77g, 77aa. The registration may also include other representations of fact or opinion. To protect investors and promote compliance with these disclosure requirements, §11 of the Act creates two ways to hold issuers liable for a registration statement's contents: A purchase of securities may sue an issuer if the registration statement either contains an untrue statement of a material fact or omits to state a material fact . . . necessary to make the statements therein not misleading. In either case, the buyer need not prove that the issuer acting with any intent to deceive or defraud. Omnicare filed a registration statement in connection with a public offering of common stock. The registration statement contained two statements expressing the company's opinion that it was in compliance with federal and state laws. After the Federal Government filed suit against Omnicare for allegedly receiving kickbacks from pharmaceutical manufacturers, respondents, pension funds that purchase Omnicare stock, sued Omnicare under §11. They claimed that Ominicare's legal-compliance statements constituted "untrue statement[s] of . . . material fact" and that Omnicare "omitted to state [material] facts necessary" to make those statements not misleading. The District Court granted Omnicare's motion to dismiss for failure to state a claim because the Funds had not alleged that Ominicare's officers knew they were violating the law. The Sixth Circuit reversed. Acknowledging that the statements at issue expressed opinions, the court held that no showing of subjective disbelief was required.

Issue: Whether a statement of opinion can constitute an untrue statement of fact simply because the stated opinion ultimately proves incorrect?

Holding: Vacated and remanded. No. A statement of opinion does not constitute an "untrue statement of fact" simply because the stated opinion ultimately proves incorrect.

Reasoning: A statement of fact expresses certainty about a thing, whereas a statement of opinion conveys only an uncertain view as to that thing. Section 11 incorporates that distinction by imposing liability only for untrue statements of fact. But opinion statements are not wholly immune from liability under §11's first clause. Every such statement explicitly affirms one fact: that the speaker actually holds the state belief. Therefore a statement of opinion qualifies as an "untrue statement of fact" if that fact is untrue – *i.e.*, if the opinion expressed was not sincerely held. Opinion statements can also give rise to false-statement lability under §11 if they contain embedded statements of untrue facts. Also if a registration statement omits material facts about the issuer's inquiry into, or knowledge concerning, a statement of opinion and if those facts conflict with what a reasonable investor, reading the statement fairly and in context, would take from the statement itself, then §11's omissions clause creates liability. Whether a statement is misleading is an objective inquiry that depends on a reasonable investor's perspective. Here a reasonable

investor may understand an opinion statement to convey facts about the speaker's basis for holding that view. An opinion statement, however, is not misleading simply because the issuer knows, but fails to disclose, some fact cutting the other way.

***B&B Hardware, Inc. v. Hargis Industries, Inc., d/b/a Sealtite Building Fasteners, et al.*,** No. 13-352, Decided March 24, 2015

Facts: Hargis Industries tried to register its trademark for Sealtite with the U.S. Patent and Trademark Officer. B&B Hardware opposed registration, claiming that Sealtite is too similar to B&B's own Sealtight trademark. The Trademark Trial and Appeal Board (TTAB) concluded that Sealtite should not be registered because of the likelihood of confusion. Hargis did not seek judicial review of that decision. Later, in an infringement suit before the District Court, B&B argued that Hargis was precluded form contesting the likelihood of confusion because of the TTAB's decision. The District Court disagreed. The Eight Circuit affirmed, holding that preclusion was unwarranted because the TTAB and the court used different factors to evaluate likelihood of confusion.

Issue: Whether issue preclusion applies when TTAB uses different factors to evaluate elements of a claim?

Holding: Reversed and Remanded. Yes. So long as the other ordinary elements of issue preclusion are met when the usage adjudicated by TTAB are materially the same as those before a district court, issue preclusion should apply.

Reasoning: An agency decision can ground issue preclusion. Contrary to the Eighth Circuit's conclusion, the same likelihood of confusion standards applies to both registration and infringement. The factors that the TTAB and the Eighth Circuit use to assess the likelihood of confusion are not fundamentally different and the operative language of each statute is essentially the same. While TTAB and a district court do not always consider the same usages does not mean that the TTAB applies a different standard to the usage it does consider.

***North Carolina State Board of Dental Examiners v. Federal Trade Commission*,** No. 13-534, Decided February 25, 2015.

Facts: North Carolina's Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry." The Act does not specify that teeth whitening is "the practice of dentistry." But after dentists complained to the Board about nondentists charging lower prices for whitening than dentists did, the Board issued 47 official cease-and-desist letters to nondentist teeth whitening service providers. The FTC filed an administrative complaint, alleging that the Board's concerted action to exclude nondentists from the market for teeth whitening constituted an anticompetitive and unfair method of competition under the Federal Trade Commission Act. An ALJ denied the Board's motion to dismiss on the ground of state-action immunity. The FTC sustained that ruling, reasoning that even if the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board must be actively supervised by the State to claim immunity, which it was not. The ALJ determined that the Board had unreasonably restrained trade in violation of antitrust laws and the FTC sustained the ALJ. The Fourth Circuit affirmed the FTC.

Issue: Whether the Board of Dental Examiners can invoke state-action antitrust immunity?

Holding: Affirmed. No. Because a controlling number of the Board's decision makers are active market participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State. Here that requirement is not met.

Reasoning: Federal antitrust law is a central safeguard for the Nation's free market structure. However, requiring States to conform to the mandates of the Sherman Act at the expense of other values a State may deem fundamental would impose an impermissible burden on the States' power to regulate. Therefore, the Court interpreted the antitrust laws to confer immunity on the anticipative conduct of States actin in their sovereign capacity. A nonsovereign actor controlled by active market participants (such as the Board) enjoys immunity only if the challenged restraint is clearly articulated and affirmatively expressed as state policy and the policy is actively supervised by the State. Here, the Board did not receive active supervision of its anticompetitive conduct. An entity cannot invoke immunity unless its actions are an exercise of the State's sovereign power. The state must accept political accountability for the anticompetitive conduct it permits and controls. There are instances in which an actor can be excused from the active supervision requirement. Municipalities, which are electorally accountable, have general regulatory powers and have no private price-fixing agenda, are subject exclusively to the clear articulation requirement.

M&G Polymers USA, LLC, et al. v. Tackett et al., No 13-1010, Decided January 26, 2015.

Facts: M&G Polymers (MG) purchased Point Pleasant Polyester Plant in 2000 and entered into a collective-bargaining agreement and related Pension, Insurance, and Service Award Agreement (P & I agreement) with respondent union. The P & I agreement also provided that certain retirees and their spouses and dependents would "receive a full Company contribution towards the cost of [health care] benefits" and that the benefits would be provided for the duration of the agreement. Upon expiration of the agreements, MG required retirees to contribute to the cost of their health care benefits. Respondent retirees sued MG and related entities, alleging that P & I agreement created a vested right of lifetime contribution-free health care benefits. The district court dismissed the complaint for failure to state a claim. The Sixth Circuit reversed based on the reasoning in *International Union, United Auto, Aerospace, & Agricultural Implement Workers of Am. V. Yard-Man, Inc.*, 716 F. 2d 1476. On remand the district court ruled in favor of the retirees and the Sixth Circuit affirmed.

Issue: Whether the contract/agreement entered into required MG to continue to pay for all costs associated with retirees health care benefits?

Holding: The Sixth Circuit's decision rested on principles that are incompatible with ordinary principles of contract law.

Reasoning:
ERISA governs pension and welfare benefits plans, including those established by collective-bargaining agreements. ERISA establishes minimum funding and vesting standards for pension plans, but exempts welfare benefit plans – which provide the type of benefits at issue here – from those rules.
This Court interprets collective-bargaining agreements, including those establishing ERISA plans, according to the ordinary principles of contract law, at least when those principles are not inconsistent with federal labor policy. When a collective-bargaining agreement is unambiguous, its meaning must be ascertained in accordance with its plaining expressed intent.

Hana Financial, Inc. v. Hana Bank et al., No. 13-1211, Decided January 21, 2015:

Facts: Petitioner, Hana Financial, Inc., and respondent Hana Bank both provide financial services to individuals in the United States. When Hana Financial sued Hana Bank for trademark infringement, Hana Bank invoked in defense the tacking doctrine, under which lower courts have provided that a trademark user may make certain modifications to its mark over time while, in limited circumstances, retaining its priority position. Petitioner's claim was tried before a jury, and the District Court adopted in substantial part the jury instruction on tacking proposed by petitioner. The jury returned a verdict in respondent's favor. Affirming, the Ninth Circuit explained that the tacking inquiry was an exceptionally limited and highly fact-sensitive matter reserved for juries, not judges.

Issue: Who is to make the determination when trademarks can be tacked, the judge or the jury?

Holding: Whether two trademarks may be tacked for purposes of determining priority is a question for the jury.

Reasoning: Lower courts have held that two marks may be tacked when they are considered to be "legal equivalents," *i.e.*, they "create the same, continuing commercial impression." And "consumer impression" must be viewed in the eyes of the consumer. Therefore the jury must provide this fact-intensive answer.

Jesinoski et ux. v. Countrywide Home Loans, Inc., et al., No. 13-684, Decided January 13, 2015.

Facts: Exactly three years after borrowing money from respondent Countrywide Home Loans, Inc., to refinance their home mortgage, petitioners Larry and Cheryle Jesinoski sent Countrywide and respondent Bank of America Home Loans, which had acquired Countrywide, a letter purporting to rescind the transaction. Bank of America replied, refusing to acknowledge the rescission's validity. One year and one day later, the Jesinoskis filed suit in federal court, seeking a declaration of rescission and damages. The District Court entered judgment on the pleadings for respondents, concluding that a borrower can exercise the Truth in Lending Act's right to rescind a loan, see 15 U. S. C. §1635(a), (f), only by filing a lawsuit within three years of the date the loan was consummated. The Jesinoskis' complaint, filed four years and one day after the loan's consummation, was ineffective. The Eighth Circuit affirmed.

Issue: Whether under the Trust in Lending Act, a petitioner must file a suit to rescind a loan within three years after the loan consummated?

Holding: Reverse and Remand: A borrower exercising his right to rescind under the Act need only provide written notice to his lender within the 3 year period, not file suit within that period.

Reasoning:

Section 1635(a)'s unequivocal terms – a borrower "shall have the right to rescind . . . *by notifying the creditor* . . . *of his intention to do so*" (emphasis added) – leaves no doubt that the rescission is effected when the borrower notifies the creditor of his intention to rescind.

State of Kansas v. State of Nebraska, 135 S.Ct 1042 (2015):

Facts: Congress approved the Republican River Compact, an agreement between Kansas, Nebraska, and Colorado to apportion the "virgin water originating in" the Republican River Basis.

Kansas filed an action and the state negotiated a settlement agreement. The settlement identified the Accounting Procedures, a technical appendix, as a tool by which the States would measure stream flow depletion, and thus consumption, due to groundwater pumping. Kansas petitioned this Court for monetary and injunctive relief, claiming that Nebraska had substantially exceeded its water allocation. Nebraska responded that the Accounting Procedures improperly charged the State for using imported water and requested that the Accounting Procedures be modified accordingly. The Court appointed a Special Master. His report concludes that Nebraska knowingly failed to comply with the Compact, recommends that Nebraska disgorge a portion of its gains in addition to paying damages for Kansas's loss, and recommends denying Kansas's request for an injunction. In addition, the report recommends reforming the Accounting Procedures. The parties have filed exceptions.

Issue: Whether to adopt the Special Master's Report.

Holding: Exceptions to Special Master's Report overruled and Master's recommendations adopted.

Reasoning:

Where the States have negotiated a Compact, the Court is confined to declaring rights under and enforcing its terms. But within those bounds, the Court may invoke equitable principles to devise fair solutions to compact violations.

Nebraska knowingly failed to comply with its Settlement obligations and disgorgement is the appropriate remedy for Nebraska's breach. Disgorgement is appropriate where one State has recklessly gambled with another State's rights to a scarce natural resource. This Court has said that awarding actual damages in a compact case may be inadequate to deter the upstream State from ignoring its obligations where it is advantageous to do so.

The ordinary rule is that States must be held to the bargain they struck. But there are two special considerations that warrant conforming the Accounting Procedures to the Compact and Settlement. First, the remedy is necessary to prevent serious inaccuracies from distorting the States' intended apportionment of interstate waters. Doing so is consistent with past instances where this Court opted to modify a technical agreement to correct material errors in the way it operates and thus align it with the compacting States' intended apportionment. Secondly, this remedy is required to avert an outright breach of the Compact – and so a violation of federal law.