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IN THE SUPREME COURT OF IOWA

NO. 18-1092

ANNETT HOLDINGS, INC.

Appellant,

v.

ANTHONY ROLAND,

Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
THE HONORABLE KAREN ROMANO
POLK COUNTY CASE NO. CVCV051326

APPELLEE'S FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES……………………………………………4

STATEMENT OF THE ISSUES………………………………………5

ROUTING STATEMENT……………………………………………6

STATEMENT OF THE CASE…………………………………………7

STATEMENT OF THE FACTS………………………………………..9

ARGUMENT…………………………………………………….....14

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN CERTIFYING THIS MATTER AS A CLASS ACTION……14

A. Preservation Of Error………………………………………..14

B. Standard Of Review…………………………………………14

C. Iowa Law On Class Certification…………………………15

D. The District Court's May 30, 2018 And June 11, 2018 Rulings Should Both Be Upheld………………………………………17

1. The Requirements of Iowa R. Civ. P. 1.261 Have Been Satisfied………………………………………………….17

2. A Class Adjudication Should be Permitted for the Fair and Efficient Adjudication of the Controversy…………………22

3. Roland Will Fairly and Adequately Protect the Interests of the Class………………………………………………..…31

CONCLUSION……………………………………………………..33

REQUEST FOR ORAL SUBMISSION……….……………..………...34

CERTIFICATE OF COSTS…….………………………………………..34

CERTIFICATE OF COMPLIANCE……………………………………35

CERTIFICATE OF SERVICE……………………………………………..36

TABLE OF AUTHORITIES

Cases

Anderson Contracting, Inc. v. DSM Copolymers, Inc., 776 N.W.2d 846 (Iowa 2009) 15, 17

City of Dubuque v. Iowa Trust, 519 N.W.2d 786 (Iowa 1994) 18

Comes v. Microsoft Corp., 696 N.W.2d 318 (Iowa 2005) 15, 16

Cope v. Metro Life Ins. Co., 696 N.E.2d 1001 (Ohio 1998) 23

Freeman v. Grain Processing Corp., 895 N.W.2d 105 (Iowa 2017) .... passim

Hammer v. Branstad, 463 N.W.2d 86 (Iowa 1990) 29

Kragnes v. City of Des Moines, 810 N.W.2d 492 (Iowa 2012) 15

Legg v. West Bank, 873 N.W.2d 756 (Iowa 2016) .... passim

Lucas v. Pioneer, Inc. 256 N.W.2d 167 (Iowa 1977) 15

Luttenegger v. Conseco Fin. Servicing Corp., 671 N.W.2d 425 (Iowa 2003) 23

Mcllravy v. North River Ins. Co., 653 N.W.2d 323 (Iowa 2002) 21

Neal v. Annett Holdings, Inc., 814 N.W.2d 512 (Iowa 2012) 18

Staley v. Barkalow, No. 12-1031, 2013 WL 2368825 (Iowa Ct. App. 2013). 24, 25, 26, 27

Stone v. Pirelli Armstrong Tire Corp., 497 N.W.2d 843 (Iowa 1993) 33

United Fire & Cas. Co. v. Shelly Funeral Home, Inc., 642 N.W.2d 648 (Iowa 2002) 21

Vignaroli v. Blue Cross of Iowa, 360 N.W.2d 741 (Iowa 1985) 17, 22

Vos v. Farm Bureau Life Ins. Co., 667 N.W.2d 36 (Iowa 2003) 15, 17, 23, 30

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011) 19

Statutes

Iowa Code § 85.18 .... passim

Iowa Code § 85.27 .... 11, 12

Other Authorities

7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1778, (1986) 23

Rules

Iowa R. Civ. P. 1.261 .... passim

Iowa R. Civ. P. 1.262 .... 16, 27, 32, 34

Iowa R. Civ. P. 1.263 .... passim

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN CERTIFYING THIS MATTER AS A CLASS ACTION.

Anderson Contracting, Inc. v. DSM Copolymers, Inc., 776 N.W.2d 846 (Iowa 2009)
City of Dubuque v. Iowa Trust, 519 N.W.2d 786 (Iowa 1994)
Comes v. Microsoft Corp., 696 N.W.2d 318 (Iowa 2005)
Cope v. Metro Life Ins. Co., 696 N.E.2d 1001 (Ohio 1998)
Freeman v. Grain Processing Corp., 895 N.W.2d 105 (Iowa 2017)
Hammer v. Branstad, 463 N.W.2d 86 (Iowa 1990)
Kragnes v. City of Des Moines, 810 N.W.2d 492 (Iowa 2012)
Legg v. West Bank, 873 N.W.2d 756 (Iowa 2016)
Lucas v. Pioneer, Inc. 256 N.W.2d 167 (Iowa 1977)
Luttenegger v. Conseco Fin. Servicing Corp., 671 N.W.2d 425 (Iowa 2003)
Mcllravy v. North River Ins. Co., 653 N.W.2d 323 (Iowa 2002)
Neal v. Annett Holdings, Inc., 814 N.W.2d 512 (Iowa 2012)
Staley v. Barkalow, No. 12-1031, 2013 WL 2368825 (Iowa Ct. App. 2013) (unpublished decision)

Stone v. Pirelli Armstrong Tire Corp., 497 N.W.2d 843 (Iowa 1993)
United Fire & Cas. Co. v. Shelly Funeral Home, Inc., 642 N.W.2d 648 (Iowa 2002)
Vignaroli v. Blue Cross of Iowa, 360 N.W.2d 741 (Iowa 1985)
Vos v. Farm Bureau Life Ins. Co., 667 N.W.2d 36 (Iowa 2003)
Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011)
Iowa Code § 85.18
Iowa Code § 85.27
Iowa R. Civ. P. 1.261
Iowa R. Civ. P. 1.262
Iowa R. Civ. P. 1.263
7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1778, (1986)

ROUTING STATEMENT

The appeal of this matter should be transferred to the Iowa Court of Appeals as it involves the application of existing legal principles and issues appropriate for summary disposition. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case: Defendant Annett Holdings, Inc. (hereinafter, "Annett Holdings") appeals the Orders entered by the Honorable Polk County District Court Judge Karen Romano on May 30, 2018 and June 11, 2018 certifying this matter as a class action pursuant to Iowa R. Civ. P. 1.261 *et seq*. (App. p. 388)

Course of Proceedings and Disposition: On November 3, 2017, Plaintiff Anthony Roland (hereinafter, "Roland") filed a Motion to Compel requesting that the District Court enter an Order requiring Annett Holdings to provide responses to Roland's discovery requests. (App. pp. 229-231). On November 16, 2017, Annett Holdings filed its Combined Motion in Resistance to Roland's Motion to Compel, to Limit Discovery Pending Class Certification and Motion to Decertify Class Action. (App. p. 302). Roland filed his Response to Annett Holdings' Resistance to Roland's Motion to Compel and Motion to Decertify Class Action on December 4, 2017. (App. p. 336).

In his Response filed on 12/04/2017, Roland requested that the District Court enter an Order denying Annett Holdings' Combined Motion; certify this matter as a class action; and grant Roland's Motion to Compel. (App. p. 15). On December 14, 2017, Annett Holdings filed its Resistance to Roland's Motion to Certify Class and Reply to Roland's Resistance to Defendant's Motion to Decertify

Class. (App. p. 352). These pending motions came before the District Court for Hearing on April 27, 2018. (App. p. 364).

On May 30, 2018, the District Court entered an Order providing that this matter would be certified as a class action after Roland filed the required documentation set forth in Iowa R. Civ. P. 1.276(1). (App. p. 373). Roland complied with the District Court's 5/30/2018 Order, and submitted his Rule 1.276(1) Filing on June 6, 2018. (App. p. 376). On June 11, 2018, the District Court entered an Order certifying this matter as a class action. (App. p. 385). Annett Holdings filed a timely Notice of Appeal on June 25, 2018. (App. p. 388). On appeal, Annett Holdings challenges the District Court's decision to certify this matter as a class action pursuant to Iowa R. Civ. P. 1.261 *et seq*. (App. p. 388).

STATEMENT OF THE FACTS

Roland was formerly employed by Annett Holdings as an over-the-road truck driver. (App. p. 68). As a condition of his employment with Annett Holdings, Roland was required to sign a contract, "Memorandum of Understanding and Consent" (hereinafter, "MOU"), which mandated that Roland would have to travel to Des Moines, Iowa for light-duty work if he sustained a work-related injury. (App. p. 66). The MOU also provided that Roland would receive medical care in Des Moines, Iowa while participating in Annett Holdings' light-duty work program. (App. p. 66). Pursuant to the MOU, if Roland refused to participate in Annett Holdings' light-duty work program, Annett Holdings would suspend and/or terminate Roland's workers' compensation benefits. (App. p. 66).

Although an injured worker is entitled to receive medical care/treatment within a reasonable distance of their residence, Annett Holdings' MOU required injured workers to travel to Des Moines, Iowa for light-duty work and medical care/treatment regardless of where the injured worker resided. (App. p. 66). On March 4, 2014, Roland sustained a work-related injury while employed by Annett Holdings. (App. p. 68). Pursuant to the MOU, Roland was compelled by Annett Holdings to travel 897 miles from his home in Oxford, Alabama to Des Moines, Iowa to participate in Annett Holdings' light-duty work program. (App. p. 68). In

addition to performing light-duty work, Roland was also receiving medical care for his work-related injury while in Des Moines, Iowa. (App. p. 68).

Due to Roland's dissatisfaction with the medical treatment he was receiving in Des Moines, Iowa, and the fact that Roland was being compelled to travel approximately 1,800 miles round-trip from his home to Des Moines, Iowa for light-duty work and medical care, Roland filed a Petition for Alternate Medical Care with the Workers' Compensation Commissioner's Office. (App. p. 70). On June 18, 2014, Deputy Commissioner Erin Pals issued an Alternate Medical Care Decision granting Roland's Petition for Alternate Medical Care. (App. p. 73).

In her 6/18/2014 Decision, Deputy Commissioner Pals concluded that Annett Holdings' MOU violated Iowa Code § 85.18 by attempting to relieve Annett Holdings of its liability to provide reasonably suited treatment for Roland's work-related injury without undue inconvenience. (App. p. 73). Deputy Commissioner Pals further noted in her Decision that "[t]he agreement appears to be an attempt to either avoid or eliminate both the 'reasonable' and 'undue inconvenience clauses in Iowa Code section 85.27(4)." (App. p. 73).

Following the entry of Deputy Commissioner Pals' Decision, Annett Holdings filed a Petition for Judicial Review with the Polk County District Court. (App. p. 76). On December 12, 2014, Polk County Chief Judge Arthur E. Gamble issued a Ruling affirming Deputy Commissioner Pals' 6/18/2014 Decision. (App.

p. 91). Judge Gamble determined in his 12/12/2014 Ruling that "[t]he Deputy *correctly concluded* the MOU is a contract that *illegally attempted to release the employer of its liability to provide reasonable medical care without undue inconvenience under Section 85.27*. The Deputy's interpretation of Section 85.18 was legally correct." (App. p. 87) (emphasis added).

Annett Holdings subsequently appealed Judge Gamble's 12/12/2014 Ruling to the Iowa Supreme Court, which was then transferred to the Iowa Court of Appeals. (App. p. 93). In its Decision filed on February 10, 2016, the Iowa Court of Appeals noted:

> *Both the district court and the agency concluded the memorandum of understanding violated Iowa Code section 85.18*, which provides, "No contract, rule or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided." The employer is required under section 85.27(4) to provide prompt medical treatment that is "reasonably suited to treat the injury without undue inconvenience to the employee." The agency determined the memorandum of understanding was used to either avoid or eliminate Annett Holdings's obligation under both "reasonable" and "undue inconvenience" clauses in section 85.27(4). The district court agreed with this conclusion and affirmed the agency's decision.

(App. pp. 104-105) (emphasis added). The Iowa Court of Appeals affirmed Judge Gamble's 12/12/2014 Ruling, which was not appealed by Annett Holdings. (App. p. 106).

Notwithstanding the fact that the MOU Annett Holdings had with its employees violated well-established workers' compensation law in Iowa, Annett Holdings refused to abolish these contracts that it required its employees to sign. Even after entry of Deputy Commissioner Pals' 6/18/2014 Decision, Annett Holdings still compelled Roland to travel to Des Moines, Iowa to perform light-duty work and receive medical care for his work-related injury. (App. p. 60). As a result of Annett Holdings' unlawful conduct, Roland filed a civil suit against Annett Holdings on behalf of himself and all other persons similarly situated on February 16, 2016. (App. p. 13). On April 15, 2016, Roland filed an Amended Petition at Law alleging that Annett Holdings deprived Roland, as well as other persons similarly-situated to Roland, of their statutory rights in violation of Iowa Code § 85.18 and acted in bad faith. (App. pp. 60-61). As set forth in his Amended Petition at Law, Roland, as well as all other persons similarly situated to Roland, have suffered the following damages as a result of Annett Holdings' unlawful conduct: (1) deprivation of healing period benefits, permanent partial disability (PPD) benefits, medical benefits, and/or reasonable and necessary medical care; (2) pain and mental distress associated with the deprivation of their statutory rights; (3) harm from loss of time traveling to and from their homes to Des Moines, Iowa; and (4) deprivation of their statutory rights by Annett Holdings in violation of Iowa Code § 85.18. (App. pp. 60-61).

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN CERTIFYING THIS MATTER AS A CLASS ACTION.

A. Preservation of Error

Appellee agrees with Appellant's statement on error preservation.

B. Standard of Review

This Court's "review of the district court's ruling granting or denying certification of a class is limited because the district court enjoys broad discretion in the certification of class action lawsuits." Legg v. West Bank, 873 N.W.2d 756, 758 (Iowa 2016) (quoting Vos v. Farm Bureau Life Ins. Co., 667 N.W.2d 36, 44 (Iowa 2003)). This Court reviews a district court's ruling on class certification for abuse of discretion. Freeman v. Grain Processing Corp., 895 N.W.2d 105, 113 (Iowa 2017) (citing Legg, 873 N.W.2d at 758). This Court reverses a district court's ruling granting class certification "only if [it] find[s] the decision was based upon an abuse of discretion." Legg, 873 N.W.2d at 758 (citing Kragnes v. City of Des Moines, 810 N.W.2d 492, 498 (Iowa 2012)).

"An abuse of discretion is found only when the district court's grounds for certifying a class action are *clearly unreasonable*." Id. (citing Anderson Contracting, Inc. v. DSM Copolymers, Inc., 776 N.W.2d 846, 848 (Iowa 2009)) (emphasis added). "Our class-action rules are remedial in nature and should be *liberally construed to favor the maintenance of class actions*." Comes v. Microsoft

Corp., 696 N.W.2d 318, 320 (Iowa 2005) (citing Lucas v. Pioneer, Inc. 256 N.W.2d 167, 175 (Iowa 1977) (emphasis added). "If the district court 'weighed and considered the factors and came to a reasoned conclusion as to whether a class action should be permitted for a fair adjudication of the controversy,'" this Court *will affirm*. Freeman, 895 N.W.2d 105, 113 (quoting Anderson Contracting, Inc., 776 N.W.2d at 848 (emphasis added).

C. Iowa Law On Class Certification.

Class actions in Iowa are governed by Iowa R. Civ. P. 1.261 – 1.263. Freeman, 895 N.W.2d at 114. Pursuant to Iowa R. Civ. P. 1.262, class certification is appropriate if the District Court finds all of the following: (1) "The requirements of rule 1.261 have been satisfied;" (2) "A class action should be permitted for the fair and efficient adjudication of the controversy;" and (3) "The representative parties fairly and adequately will protect the interests of the class." Id. The requirements of Iowa R. Civ. P. 1.261 are that "[t]he class is so numerous . . . that joinder of all members . . . is impracticable" and "[t]here is a question of law or fact common to the class. Iowa R. Civ. P. 1.261(1) – (2).

"The proponent's burden is light" at the class certification stage. Freeman, 895 N.W.2d at 114. As noted by this Court in Freeman, the goal of the class certification rules is the

> efficient resolution of the claims or liabilities of many individuals in a single action, the elimination of repetitious litigation and possibly

> inconsistent adjudications involving common questions, related events, or requests for similar relief, and the establishment of an effective procedure for those whose economic position is such that it is unrealistic to expect them to seek to vindicate their rights in separate lawsuits.

Id. (citing Comes, 696 N.W.2d at 320). Iowa R. Civ. P. 1.263(1) sets forth thirteen (13) factors the District Court should consider and give appropriate weight to "[i]n determining whether the class action should be permitted for the fair and efficient adjudication of the controversy . . ." The factors set forth in Iowa R. Civ. P. 1.263(1) "center on two broad considerations: 'achieving judicial economy by encouraging class litigation while preserving, as much as possible, the rights of litigants – both those presently in court and those who are only potential litigants.'" Vos, 667 N.W.2d at 45 (quoting Vignaroli v. Blue Cross of Iowa, 360 N.W.2d 741, 744 (Iowa 1985)).

A key rule 1.263(1) factor is whether "common questions of law or fact predominate over any questions affecting only individual members." Freeman, 895 N.W.2d at 115 (quoting Iowa R. Civ. P. 1.263(1)(e)). The District Court has "'considerable discretion' in weighing the factors" set forth in Iowa R. Civ. P. 1.263(1). Anderson Contracting, Inc., 776 N.W.2d at 848 (quoting Vignaroli, 360 N.W.2d at 744). The District Court "decides what weight, if any, to give each of the factors and may weigh one factor more heavily than another." Freeman, 895 N.W.2d at 115 (citing Anderson Contracting, 776 N.W.2d at 848). Moreover,

when deciding whether to certify the class, the District Court is granted "considerable leeway." Id. Finally, in determining whether "the representative parties fairly and adequately will protect the interests of the class," the District Court must find each of the following:

a. The attorney for the representative parties will adequately represent the interests of the class.

b. The representative parties do not have a conflict of interest in the maintenance of the class action.

c. The representative parties have or can acquire adequate financial resources, considering rule 1.276, to ensure that the interests of the class will not be harmed.

Iowa R. Civ. P. 1.263(2).

D. The District Court's May 30, 2018 And June 11, 2018 Rulings Should Both Be Upheld.

1. The Requirements of Iowa R. Civ. P. 1.261 Have Been Satisfied.

The first requirement of Iowa R. Civ. P. 1.261 is that "[t]he class is so numerous . . . that joinder of all members . . . is impracticable." Iowa. R. Civ. P. 1.261(1). This requirement is also known as "numerosity." See Freeman, 895 N.W.2d at 115. Impracticability is presumed when a class has forty (40) or more members. Legg, 873 N.W.2d at 759 (citing City of Dubuque v. Iowa Trust, 519 N.W.2d 786, 792 (Iowa 1994)). "Any doubts regarding joinder impracticability

should be resolved in favor of upholding the class." City of Dubuque, 519 N.W.2d at 792.

During a 10/25/2017 discovery conference between counsel for Roland and Annett Holdings, counsel for Annett Holdings advised that her client was willing to stipulate that the prospective class consists of more than forty (40) over the road drivers who signed the MOU; who had workers' compensation claims; and who were required to travel to Iowa for light-duty work following this Court's decision in Neal v. Annett Holdings, Inc., 814 N.W.2d 512 (Iowa 2012). (App. p. 367; Plaintiff's Motion to Compel, Ex. 6). Based on the foregoing, the District Court concluded that the numerosity requirement set forth in Iowa R. Civ. P. 1.261(1) had been satisfied. (App. p. 367).

The second requirement of Iowa R. Civ. P. 1.261 is that "[t]here is a question of law or fact common to the class." Iowa R. Civ. P. 1.261(2). "[C]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" Freeman, 895 N.W.2d at 116 (quoting Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 349-50 (2011)). "To satisfy the commonality requirement, '*[e]ven a single [common] question' will do*." Id. (quoting Dukes, 564 U.S. at 359) (emphasis added).

In this action, Roland has alleged that he was deprived of his statutory rights under Chapter 85 of the Iowa Code as a result of Annett Holdings' unlawful MOU

which was found to be in violation of Iowa Code § 85.18. (App. pp. 60-61). Roland's deprivation of statutory rights claims has also been brought on behalf of other individuals employed by Annett Holdings who were required to sign the same unlawful MOU. (App. p. 61).

In addition to the deprivation of statutory rights claim, Roland has also brought a claim against Annett Holdings for bad faith. (App. p. 61). Although the Workers' Compensation Commissioner's Office had determined that the MOU was an unlawful contract in violation of Iowa Code § 85.18, Annett Holdings still compelled Roland to travel to Des Moines, Iowa to perform light-duty work and receive medical care for his work-related injury. (App. p. 60). Annett Holdings' reliance upon the MOU in compelling Roland to travel to Des Moines, Iowa would apply to any other individual employed by Annett Holdings who had signed the MOU.

As previously stated, Annett Holdings has stipulated that more than forty (40) over the road drivers have signed the unlawful MOU; that these drivers had workers' compensation claims; and that they were required to travel to Iowa for light-duty work. (App. p. 367; Plaintiff's Motion to Compel, Ex. 6). Given that these drivers each signed the same unlawful contract, and that these drivers were compelled by Annett Holdings to travel to Des Moines for light-duty work, it is

clear that "[t]here is a question of law or fact common to the class." Iowa R. Civ. P. 1.261(2).

In analyzing the commonality requirement of Iowa R. Civ. P. 1.261(2), the District Court stated the following with respect to the deprivation of statutory rights claim set forth in Roland's Amended Petition:

> In this case, [Roland] alleges his statutory rights were violated as the MOU violates Iowa Code section 85.18. The proposed class is the other employees who were required to sign the MOU; had a workers' compensation claim; and were required to travel to Iowa for light-duty work and received medical care. The determination of whether the MOU violated statutory rights is common to all proposed class members. Annett [Holdings] argues that each class member must suffer the same injury to meet the commonality requirement and Annett [Holdings] argues [Roland] cannot show this. The court disagrees. Each class member suffered the same injury under the MOU when required [by Annett Holdings] to come to Iowa for light-duty work and have medical care in Iowa. The nature and amount of damages may differ for each class member, but the central factual basis is the MOU in violation of section 85.18, and thus, [Roland's] theory presents a *common nucleus of operative fact*. See Freeman, 895 N.W.2d at 117.

(App. pp. 367-68) (emphasis added).

With respect to the bad faith claim asserted in Roland's Amended Petition, the District Court noted that the claim was based on Annett Holdings' enforcement of the MOU even after the Agency and Iowa Courts had determined the MOU violated Iowa Code § 85.18. (App. p. 368). To establish a bad faith claim, the plaintiff must show "(1) that the insurer had no reasonable basis for denying benefits under the policy and, (2) the insurer knew, or had reason to know, that its

denial was without basis." Mcllravy v. North River Ins. Co., 653 N.W.2d 323, 329 (Iowa 2002) (quoting United Fire & Cas. Co. v. Shelly Funeral Home, Inc., 642 N.W.2d 648, 657 (Iowa 2002)). The District Court rightly determined that "[e]ach class member would have the same injury, that benefits were denied if the employee did not come to Iowa for light duty and/or medical care was unreasonable and inconvenience by being provided in Iowa hundreds of miles from their homes." (App. p. 368). The District Court recognized that despite the possibility of the nature and amount of damages differing for each class member relating to the bad faith claim, "the central factual basis for the claim is the same." (App. p. 368). Based on the foregoing, the District Court correctly concluded that the commonality requirement of Iowa R. Civ. P. 1.261(2) was satisfied in this matter, and did not abuse its discretion in reaching its conclusion.

2. A Class Action Should be Permitted for the Fair and Efficient Adjudication of the Controversy.

Iowa R. Civ. P. 1.263(1) sets forth thirteen (13) factors the District Court should consider and give appropriate weight to "[i]n determining whether the class action should be permitted for the fair and efficient adjudication of the controversy . . ." A key rule 1.263(1) factor is whether "common questions of law or fact predominate over any questions affecting only individual members." Freeman, 895 N.W.2d at 115 (quoting Iowa R. Civ. P. 1.263(1)(e)). "Individual claims need not

be 'carbon copies of each other' to determine common issues predominate." Id. (quoting Vignaroli, 360 N.W.2d at 745).

> [T]he test for predominance is a pragmatic one, which is in keeping with the basic objectives of the [class action rule]. When common questions represent a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is a clear justification for handling the dispute on a representative rather than an individual basis. *[C]ourts have held that a [class action] can be brought . . . even though there is not a complete identity of facts relating to all class members, as long as a "common nucleus of operative facts" is present.*
>
> The common questions need not be dispositive of the entire action. In other words, "predominate" should not be automatically equated with "determinative" or "significant." *Therefore, when one or more of the central issues in the action are common to the class and can be said to predominate, the [class] action will be considered proper . . .*

Luttenegger v. Conseco Fin. Servicing Corp., 671 N.W.2d 425, 437 (Iowa 2003) (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1778, at 528-33 (1986)) (emphasis added).

"A claim will meet the predominance requirement when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position." Vos, 667 N.W.2d at 45 (quoting Cope v. Metro Life Ins. Co., 696 N.E.2d 1001, 1004 (Ohio 1998)). Issues involving alleged statutory violations "'*are clearly . . . legal question[s]' and are 'classic issue[s]*

that [are] considered common to a class." Comes, at 323 (quoting Luttenegger, 671 N.W.2d at 440) (emphasis added).

As outlined above, the claims alleged in Roland's Amended Petition for bad faith and deprivation of statutory rights arise out of Annett Holdings' use of the unlawful MOU to compel Roland and other over the road drivers to travel to Des Moines, Iowa for light-duty work and medical care. (App. pp. 60-61). The facts and circumstances of this present action are analogous to those in Staley v. Barkalow, No. 12-1031, 2013 WL 2368825 (Iowa Ct. App. 2013) (unpublished decision).

In Staley, a residential tenant – Brooke Staley – filed a petition against Tracy Barkalow, TSB Holdings, LLC, and Big Ten Property Management, LLC (hereinafter collectively, "TSB"). Id. at *1. Staley alleged in her petition that "TSB's standard lease provisions applicable to a large number of tenants violated the Iowa Uniform Residential Landlord and Tenant Act (IURLTA), Iowa Code chapter 652A." Id. The prospective class in Staley argued that class certification would efficiently dispose of numerous claims arising out of the illegal lease provision because the "'basis for recovery is almost identical, differing only in the amount of damages' with the key evidence being the standard lease, *identical for all tenants*, and the leases' *identical violations of Iowa landlord tenant law*." Id. (emphasis added).

TSB argued in its resistance to class certification that "because of the fact-specific nature as to how the allegedly illegal lease provision may have been *enforced* against the individual class members, common questions of law or fact do not predominate over individual issues." Id. at *2 (emphasis in original). TSB further argued that the "tenants failed to show a class action [was] the most appropriate means of adjudication because the IURLTA provide[d] tenants with adequate remedies and easy access to small claims court." Id.

The Court in Staley noted the following with respect to its analysis of whether a class action would provide a fair and efficient adjudication of the tenants' claims:

> The district court ruled a class action would not provide a fair and efficient adjudication of each case and the small claims court would provide a prompt, efficient method "for tenants to obtain a remedy for alleged illegal enforcement of a lease, or for wrongful retention of a damage deposit." The court stated:
>
> > Resolution of these actions often is reliant on photographs and testimony pertaining to the specific residential unit at issue . . . While there may be some class members who have claims that are substantially similar with respect to an allegedly *illegal lease provision being enforced* against said members, there may be other class members who have claimed wrongs that fall within an entirely different section of the lease. (emphasis in original)

> We reiterate Iowa Code section 562A.11(2) encompasses inclusion of prohibited lease terms and enforcement of prohibited provisions is not a prerequisite. Accordingly, any difference in enforcement is not dispositive of this class-certification element. We, therefore, consider whether the interclass conflict of the tenants is so fundamental as to preclude certification, and we conclude it is not. Class certification can efficiently dispose of numerous tenant claims with an identical basis for TSB liability (use/inclusion of prohibited lease terms) and an identical basis for the tenants' recovery of three months' rent and reasonable attorney fees. *The key evidence, applicable to all class members, is the identical TSB standard lease and the leases' alleged identical violations of Iowa landlord tenant law entitling the class to damages* if they prove TSB willfully uses a standard lease containing provisions known by TSB to be prohibited.
>
> If additional individualized damage determinations are necessary, for example, the landlord enforcing an automatic carpet cleaning deduction, those determinations "will arise, if at all, during the claims administration process after a trial of liability and class-wide injury issues." Anderson Contracting, 776 N.W.2d at 851. While some variations in the individual damage claims is likely to occur, sufficient common questions of law or fact regarding TSB's liability predominates over questions affecting only individual class members such that the class should be permitted for the fair and efficient adjudication of this controversy.
>
> . . .
>
> When all relevant factors are considered, we conclude the district court abused its discretion and a class action "should be permitted for the fair and efficient adjudication" of TSB's liability. See Iowa R. Civ. P. 1.262(2)(b).

Id. at *10-11 (emphasis added).

Like the unlawful lease provision in Staley that applied to all class members, Annett Holdings has stipulated that more than forty (40) of its drivers have signed identical copies of the MOU which has been found to be unlawful in violation of Iowa Code § 85.18. See id. at *10 (App. pp. 73, 87, 105-06; Plaintiff's Motion to Compel, Ex. 6). Also, like TSB's alleged identical violations of Iowa landlord tenant law, the prospective class in this matter has each suffered the same deprivation of statutory rights under Chapter 85 of the Iowa Code – i.e., Annett Holdings compelling its drivers to travel to Des Moines, Iowa for light-duty work and medical care. See id. Finally, with respect to Roland's alleged bad faith claim, a common issue that would apply to each class member would be Annett Holdings' reliance upon the MOU to compel its drivers to travel to Des Moines, Iowa when Annett Holdings knew said contract was unlawful.

In determining whether common questions of law or fact predominate over any questions affecting only individual members of the proposed class in this matter, the District Court concluded:

> The claims in the Amended Petition for deprivation of statutory rights and bad faith based upon the MOU alleged to be an unlawful contract in violation of section 85.18 will require proof of a generalized nature which will prove (or disprove) the lawfulness of the MOU contract on a class wide basis. A central issue common to the proposed class is the lawfulness or validity of the MOU as it relates to the light duty work and medical care provided in Iowa. This common question clearly predominates over any questions, such as the amount of damages, affecting only individual members.

(App. p. 370). Contrary to what Annett Holdings argues, the legality of the MOU does not need to be examined on a case-by-case basis. (Annett Holding's Final Brief, p. 24). Rather, the District Court can determine on a class-wide basis that the MOU violated Iowa Code § 85.18 based on the well-established Agency precedent that "[a] 50-mile radius is generally considered a reasonable distance to travel for treatment in workers' compensation cases." (App. p. 72). Since "there exists generalized evidence which proves or disproves an element [of a claim] on a simultaneous, class-wide basis, . . ." the District Court correctly determined that the predominance requirement has been satisfied in this matter, and did not abuse its discretion in reaching its conclusion. See Freeman, 895 N.W.2d at 119.

Annett Holdings argues that ". . . the damages pled would necessarily vary for each class member and require testimony from each purported class member." (Annett Holdings' Final Brief, p. 38). Annett Holdings contends that the damages issue in this matter is further reason to deny class certification. (Annett Holdings' Final Brief, p. 39).

Although some members of this prospective class may have suffered a differing nature and amount of damages, the factual basis for Roland's claims – which would apply to all prospective class members – is based on Annett Holdings' course of conduct and knowledge of its unlawful contract. See Freeman, 895 N.W.2d at 117.

> When defendant's activities present a "common course of conduct" so that the issue of statutory liability is common to the class, *the fact that damages . . . may vary for each party does not require that the class action be terminated*.

Id. (quoting Legg, 873 N.W.2d at 759-60) (emphasis added). It should also be noted that the District Court "may bifurcate the trial into separate phases for liability and damages." Id.; See Hammer v. Branstad, 463 N.W.2d 86, 88 (Iowa 1990). Therefore, the fact that there may be different amounts awarded to class members does not preclude this matter from being certified as a class action. See id.

In addition to finding that the predominance requirement has been satisfied in this matter, the District Court also examined the following factors set forth Iowa R. Civ. P. 1.263(1):

> a. Whether a joint or common interest exists among members of the class.
>
> b. Whether the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual matters of the class that would establish incompatible standards of conduct for a party opposing the class.
>
> c. Whether adjudications with respect to individual members of the class as a practical matter would be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.
>
> . . .

> g. Whether a class action offers the most appropriate means of adjudicating the claims and defenses.

(App. pp. 370-371). The District Court determined that based on the facts of this case, the remaining factors listed in Iowa R. Civ. P. 1.263(1) either did not warrant much weight or were inapplicable. (App. p. 371); See Vos, 667 N.W.2d at 45 (The District Court is not required by Rule 1.263(1) to assign weight to any of the factors listed, nor is the Court required to make written findings to each factor.)

The District Court determined that "[t]here is a joint or common interest among the class to determine whether the MOU violates section 85.18. A determination on that issue will dictate whether the MOU is enforceable as to all those in the class." (App. p. 370); See Iowa R. Civ. P. 1.263(1)(a). Next, the District Court concluded that

> [t]here is no question a risk of inconsistent adjudications is created by separate litigations on the MOU. Different results would make it difficult for Annett [Holdings] to conduct its business with respect to drivers who have workers' compensation claims and are released for light duty work while still receiving medical care.

(App. p. 370); See Iowa R. Civ. P. 1.263(1)(b). The District Court then found that a "determination of the validity of the MOU would necessarily be dispositive of other class members interests, or would substantially impede or impair their ability to protect their interests, depending on the outcome of the determination[,]" which weighs in favor of certifying this matter as a class action. (App. p. 371); See Iowa R. Civ. P. 1.263(1)(c). Finally, the District Court noted that "this case hinges upon

the determination of whether the MOU is legal or is a violation of section 85.18[,]" which supports certifying this matter as a class action as it "offers the most appropriate means of adjudicating the claims and defenses." (App. p. 371); Iowa R. Civ. P. 1.263(1)(g). Based on the foregoing, the District Court appropriately weighed the rule 1.263(1) factors it determined to be applicable based on the facts of this case; correctly concluded that a class action is the most appropriate means for the fair and efficient adjudication of the controversy in this case as required by Iowa R. Civ. P. 1.262(2)(b); and did not abuse its discretion in reaching its conclusion.

3. Roland Will Fairly and Adequately Protect the Interests of the Class.

Although Annett Holdings does not challenge Roland's adequacy as a class representative in its Brief, Roland will address this final class action determination briefly below.

The final issue for the District Court to determine when deciding whether to certify a class action "is whether the class representatives 'fairly and adequately will protect the interests of the class.'" Legg, 873 N.W.2d at 762 (quoting Iowa R. Civ. P. 1.262(2)(c)). The factors for the District Court to consider when making this determination are set forth in Iowa R. Civ. P. 1.263(2):

a. The attorney for the representative parties will adequately represent the interests of the class.

b. The representative parties do not have a conflict of interest in the maintenance of the class action.

c. The representative parties have or can acquire adequate financial resources, considering rule 1.276, to ensure that the interests of the class will not be harmed.

As set forth in the District Court's 5/30/2018 Ruling, Roland was represented by the same counsel in his workers' compensation claim as in the present action. (App. p. 372). Moreover, the District Court noted that Roland's counsel have extensive experience with both workers' compensation claims and bad faith claims. (App. p. 372). Thus, the District Court concluded that Roland's counsel "will adequately represent the interests of the class." (Ruling on Plaintiff's Motion to Compel and Defendant's Combined Motion, p. 9); See Iowa R. Civ. P. 1.263(2)(a).

Furthermore, Roland has a personal interest in litigating this matter as he was "injuriously affected by the actions of [Defendant]." See Legg, 873 N.W.2d at 762 (Finding the District Court had not abused its discretion in determining the class representatives were adequate where the District Court found that the plaintiffs' attorneys were skilled and competent, and that the plaintiffs had suffered damages as a result of West Bank's conduct). The District Court concluded that "[Roland] has the same interest as the other members of the proposed class." (App. p. 372); See Iowa R. Civ. P. 1.263(2)(b). Finally, the District Court determined

that "[Roland] has or can acquire adequate financial resources to ensure that the interest of the class will not be harmed." (App. p. 385); See Iowa R. Civ. P. 1.263(2)(c).

"When a court denies a class certification based on a representative being inadequate, 'there are usually special circumstances or a combination of factors involved.'" Legg, 873 N.W.2d at 762 (quoting Stone v. Pirelli Armstrong Tire Corp., 497 N.W.2d 843, 847 (Iowa 1993)). "Though not an exhaustive list, special circumstances this court has found in the past include when other members of the class lack confidence in the representative and when the representatives lack credibility." Id. (citing Stone, 497 N.W.2d at 847). Annett Holdings has not set forth any argument that Roland would be an inadequate representative of the prospective class in this matter. Thus, the District Court correctly concluded that Roland is an adequate class representative in this matter as required by Iowa R. Civ. P. 1.262(2)(c), and did not abuse its discretion in reaching its conclusion.

CONCLUSION

The District Court did not abuse its discretion in certifying this matter as a class action, and for all of the reasons set forth above, the District Court's Rulings entered on May 30, 2018 and June 11, 2018 should be affirmed.

REQUEST FOR ORAL SUBMISSION

Appellee respectfully requests to be heard in oral argument upon submission of this appeal.

CERTIFICATE OF COSTS

I certify that the cost of printing Appellee's Final Brief was the sum of $0.00.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 6,005 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903.

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) because it has been prepared in proportionately spaced typeface using Microsoft Word 2016 in Times New Roman 14 point.

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CERTIFICATE OF SERVICE

I, Matthew R. Denning, hereby certify that on January 3, 2019, I filed Appellee's Final Brief with the Clerk of the Supreme Court of Iowa electronically through EDMS. A copy of Appellee's Final Brief was served upon counsel for Appellant electronically on January 3, 2019 through EDMS.

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