IN THE SUPREME COURT OF IOWA

No. 18-1092

ANNETT HOLDINGS, INC.

Appellant,

versus

ANTHONY ROLAND,

Appellee.

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

APPELLANT'S APPLICATION FOR FURTHER REVIEW

Court of Appeals Decision filed July 24, 2019

SMITH MILLS SCHROCK
BLADES MONTHEI, P.C.

/s/ Sasha L. Monthei
Sasha L. Monthei AT0005506
118 3rd Ave SE, Suite 200
Cedar Rapids, IA 52406-0036
Telephone: (319) 286-1743
Fax: (319) 286-1748
Email: smonthei@smithmillslaw.com
ATTORNEY FOR APPELLANT

QUESTIONS PRESENTED FOR FURTHER REVIEW

1. Whether the Court of Appeals abused its discretion by refusing to undergo a proper analysis of the nature of the theories of liability asserted in this case and by relying on the conclusory allegations in Roland's petition not supported by any factual assertions in concluding the District Court did not err in certifying the class in this case.

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STATEMENT SUPPORTING FURTHER REVIEW

Roland's petition asserts legal theories of (1) violation of statutory rights under Iowa Code 85.18 and (2) bad faith delay or denial of the payment of benefits under Iowa's Workers' Compensation Act. The commonality requirement and predominance factor necessitate looking at the elements of the various legal theories raised and the proof necessary to establish those elements on behalf of the purported class. Both the Court of Appeals and the District Court abused their discretion by refusing to analyze the nature of the claims and evidence necessary to establish the validity of the individual claims based on the legal theories asserted. As a result of refusing to perform the proper inquiry, the Court of Appeals applied too lenient of a standard of review, amounting to no standard at all. Performing the proper analysis, the conclusion that the District Court abused its discretion in concluding the commonality requirement and predominance factor were met in this case is unavoidable. The Court of Appeals decision must be reversed and the District Court's order certifying the class must be overruled.

BRIEF IN SUPPORT OF APPLICATION FOR FURTHER REVIEW

I. THE COURT OF APPEALS ERRED IN REFUSING TO MAKE AN APPROPRIATE INQUIRY INTO THE NATURE OF THE THEORIES OF LIABILITY ASSERTED BY ROLAND.

The existence of the common question of law or fact requires more than just a showing that the complaint alleges a common question of law or fact on behalf of the purported class. Because as the Supreme Court said in *Dukes*, every carefully crafted petition "'literally raises common questions.'". *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 339, 131 S.Ct. 2451, 2551, 180 L.Ed.2d 374 (2011) (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 131-32 (2009)). To satisfy the commonality requirement, the plaintiff must demonstrate class members "'have suffered the same injury'". *Id.* at 349-350, 131 S.Ct. at 2551 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157, 102 S.Ct. 2364, 2370, 72 L.Ed.2d 740 (1982)). Is not sufficient that the class members have all suffered a violation of the same law. *Id.* at 350, 131 S.Ct. at 2551. The plaintiff must prove that the claims alleged in the lawsuit all have a common contention that is capable of class wide resolution such that the determination of the contention "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.*

While Annett Holdings agrees it is not appropriate to consider the merits of the individual claims asserted at the class certification stage, it is necessary to

consider the nature of the legal theories raised including the evidence that would be required a trial to establish the claims alleged in deciding whether the commonality requirement can be met. *Haddock v. Nationwide Fin. Servicing, Inc*. 288 F.R.D. 272, 280 (S.D.N.Y. 2012) (noting deciding whether the purported class share common questions of law or fact begins with looking at the elements of the underlying causes of action.); *Blades v. Monsanto Co.,* 400 F.3d 562, 575 (8th Cir.2005) (stating that "in ruling on class certification, a court may be required to resolve disputes concerning the factual setting of the case" and resolve "expert disputes concerning the import of evidence"); *Unger v. Amedisys, Inc.,* 401 F.3d 316, 319 (5th Cir.2005) (requiring a careful certification inquiry including findings); *Szabo v. Bridgeport Machs., Inc.,* 249 F.3d 672, 676 (7th Cir.2001) (requiring a judge to make whatever legal and factual inquiries are necessary to determine if class certification is appropriate); *Love v. Turlington,* 733 F.2d 1562, 1564 (11th Cir.1984) (stating that while the court may not reach the merits of a claim, it also should not artificially limit its review of the class certification requirements in deference to that principle). The Court of Appeals abused its discretion by limiting its review to the allegations alleged in Roland's petition without consideration of the elements of the specific legal theories raised. *See Bankruptcy Estate of Vangilder v. MidwestOne Bank*, 2012 WL 4513863 (Iowa App. 2012) (noting because the claim asserted is based on

breach of contract, the court looks to contract law to determine whether there is a common question of law or fact that predominates).

In *Vangilder,* in deciding whether a common issue predominated to support class certification, the Court of Appeals acknowledged a cardinal principle of contract law is the parties' intention at the time they executed the contract controls. *Id.* at *3. As such, in *Vangilder* this Court acknowledged that the district court would be required to inquire as to every class member's intent at the time they executed the contract. This Court further noted that the complaint asserted the terms of the contract were breached because the purported class members did not understand the method of interest calculation, a fact individual to each member which would require investigation and proof as to each of member's specific situation. As such, the court found because the claims would require individual proof to establish a claim, a common question of law or fact did not predominate and the district court abused its discretion in certifying the class. *Id.* at *5.

Turning to the case at bar, reviewing the law applicable to Roland's claims demonstrates whether considering Roland's claim of a violation of statutory rights or bad faith, the **type of evidence** necessary to establish prima facie liability and resulting damage requires an individualized investigation and determination, such that even if we could identify a common question, resolution of that question cannot be established on a class wide basis with generalized evidence. *See Thompson v.*

Merck & Co., 2004 WL 62710, *2 (E.D. Pa. 2004) (holding damages plead and defendant's right to submit evidence of its defenses as to each individual claim including applicability of res judicata, settlement and statute of limitations would result in multiple, separately tried lawsuits, which is inconsistent with the class action model). That is to say, proof of Roland's claim will not support the claims of the class; each class member will be required to submit individual proof *because of the nature of the claims alleged.* This analysis is different than examining whether the purported members are able to actually establish prima facie liability and damages. The point is, given Roland's claims (deprivation of workers' compensation benefits and bad faith delay or denial of the payment of workers' compensation benefits) cannot be proven by generalized evidence on behalf of the class, commonality does not exist. That is the crux of the commonality prerequisite (as well as the predominance factor) which led the court in *Bankruptcy Estate of Vangilder* to conclude the district court abused its discretion in certifying the case as a class action. *See Halverson v. Auto-Owners Ins. Co.,* 718 F.3d 773 (8th Cir. 2013) (reversing class certification where proof of claims would require individualized evidence).

A. The Common Contentions in Roland's Complaint Do Not Satisfy the Commonality Requirement.

Had the Court of Appeals (and District Court) undergone the proper analysis, it would have been obvious that Roland failed to meet his burden of establishing commonality. Instead, looking solely at the allegations in Roland's complaint, the District Court found the commonality prerequisite was met because a determination of whether the MOU violated statutory rights was common to all proposed class members. The Court of Appeals found no abuse of discretion, finding Roland identified a legal grievance shared by the members of the prospective class – Annett Holdings use of the MOU to deny benefits to injured workers in violation of Iowa Code Section 85.18. The Court of Appeal further concluded this common contention is capable of class-wide resolution.

The Court of Appeals refused Annett Holdings request to evaluate the nature of the asserted legal theories to determine whether significant common issues actually existed considering Roland's conclusory accusations in his complaint that have no factual support. The Court of Appeals refused to evaluate the claims, finding to do so would require the court to inquire into the merits of each individual claim, noting it was premature at the certification stage to assess whether the alleged injuries to each purported member did in fact occur. Under its limited analysis, the Court of Appeals found Roland's complaint alleges circumstances, such as signing the MOU and suffering work-related injuries, experienced by all members of the class, which created a common grievance, and for this reason, concluded the district

court did not abuse its discretion in finding a common question of law or fact among the members of the purported class. Without more, these two allegations do not even assert a legal grievance. Importantly, this saga all began with Roland's petition for alternative medical care. In the Alternative Medical Care Decision, the deputy commissioner specifically stated "[a]ny issue regarding the offer of light duty work in Des Moines is not relevant to the issue at hand and is not properly before the agency in an alternative medical care proceeding" and concluded the MOU violated Iowa Code Section 85.18 because Annett Holdings used it to avoid its liability to provide reasonable medical are required by Iowa Code Section 85.27. (APP. 67). On appeal from that case, the Court of Appeals upheld the grant of alternative medical care and concluded that as applied, the district court did not err in affirming the deputy commissioner's determination that the MOU violated Iowa Code Section 85.18, finding Annett Holdings' use of the MOU to relieve it from providing reasonable medical care not unduly inconvenient to Roland by bringing him to Iowa for light duty and resulting in a transfer, interference with and receipt of inferior medical care to that prescribed by his authorized treating physician was contrary to its liability under Iowa Code Section 85.27. (APP. 73). In contrast, an employee's signing of the MOU and suffering a work injury, without more, does not assert any wrongdoing by Annett Holdings. Practically speaking, the "legality" of the MOU only comes into play if an injured worker who has signed the MOU (1) accepts a

modified duty work offer in Iowa and (2) is not allowed to receive medical care reasonably necessary to treat the injury that is not unduly inconvenient.

The Court of Appeals erred in affirming the district court's conclusion that Roland satisfied his burden to establish the commonality requirement because it failed to undergo the proper analysis. *See Madison v. Chalmette Refining, L.L.C.*, 637 F.3d 551 (5th Cir. 2011) (holding district court abused its discretion in certifying class action in failing to undergo rigorous analysis to determine whether common question of law or fact shared by the class predominated over individualized issues). Had a proper analysis of the theories of liability asserted by Roland establish no commonality exists among the purported class members. The Court of Appeals and District Court decisions should be reversed and the case remanded with directions to decertify the class.

1. Roland's Contention that Annett Holdings Used the MOU to Deny Benefits to Injured Workers In Violation of Section 85.18 is Merely Conclusory and Completely Lacks Any Factual Basis.

Iowa Rule of Civil Procedure 1.261's commonality requirement is a prerequisite to class certification. The plaintiff has the burden of establishing that the purported class meets the prerequisites. If the plaintiff fails to prove any one of the prerequisites, class certification is not appropriate. *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786, 791 (Iowa 1994).

Roland's first cause of action asserts a deprivation of statutory rights in violation of Iowa Code Section 85.18, which provides, in part, no contract shall operate to relieve an employer of its obligations under chapter 85. Iowa Code Section 85.18. Chapter 85 is Iowa's Workers' Compensation Act. Assuming a private cause of action even exists under Section 85.18, this theory of liability requires proof that the MOU operated to relieve Annett Holdings of its obligations under Chapter 85. The MOU on its face does not operate to relieve Annett Holdings from any obligation it has under Chapter 85. Therefore, establishing the purported class all signed the MOU and subsequently suffering a work injury does not create a common grievance as found by the Court of Appeals. Instead, whether the MOU operated to relieve Annett Holdings from its obligations under Chapter 85 to Roland and the purported class requires evidence of how Annett Holdings enforced the MOU.

As it relates to Roland's deprivation of statutory rights in violation of Section 85.18, the commonality requirement cannot be established without evidence of a uniform practice or standardized conduct on behalf of Annett Holdings that affected all purported class members. Without evidence of a uniform practice or standardize conduct, this claim requires an individualized assessment for each purported class member. As such, it does not embrace common issues of fact and law affecting the

Roland and the class because it depends on the varying fact patterns underlying each individual claim. *City of Dubuque*, 591 N.W.2d at 792.

Roland's complaint does not allege facts tending to show how Annett Holdings enforced the MOU in handling the purported members' workers' compensation claims. Further, Roland's complaint does not allege facts tending to show Annett Holdings denied benefits to the purported class members through enforcement of the MOU. Without any factual support in the record, Roland's claim that Annett Holdings used the MOU to deny workers' compensation benefits to the purported class members in violation of Section 85.18 is woefully inadequate. A proponent's burden in establishing the class action requirements is light **except where the facts underlying the class are merely speculative.** *City of Dubuque*, 519 N.W.2d at 791.

Roland asserted no factual basis that could support his conclusion that the purported class members were denied benefits by Annett Holdings' enforcement of the MOU in violation of Section 85.18. There is a complete lack of any factual assertion in the complaint tending to show Annett Holdings had a standardized practice of enforcing the MOU that affected all purported class members in violation of Section 85.18. The statutory deprivation of rights theory of liability rests on individual facts that must be developed for each individual claim.

This case is different from cases in which commonality was found to exist. *See Comes v. Microsoft Corp.*, 696 N.W.2d 318 (Iowa 2005) (defendant's alleged conduct affected all class members in the same way at the same time); *Martin v. Amana Refrigeration, Inc.*, 435 N.W.2d 364 (Iowa 1989) (whether particular model, design and type of furnace was defective and breached warranty asserts common issues, citing other cases certifying class based on similar claims); *Kragnes v. City of Des Moines*, 820 N.W.2d 492 (Iowa 2012) (city assessment of franchise fees to residents involved course of conduct affecting all members); *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d 741 (Iowa 1985) (purported class reliance on severance pay policy that defendant uniformly failed to comply with raised common issues) In fact, this Court has acknowledged by their very nature, some claims involve questions common to members that by their nature predominate over individual questions. *Luttenegger v. Conseco Fin. Servicing Corp.*, 671 N.W.2d 425, 437 (Iowa 2003) (citations omitted) (noting antitrust and securities fraud cases where defendant's conduct present a common course of conduct generally involve issues of liability common to the class); *Legg v. West Bank*, 873 N.W.2d 756 (Iowa 2016) (holding members share common issues of liability with regarding to claims alleging high low sequencing).

Neither Roland, the District Court nor the Court of Appeals identified a single case finding class certification appropriate that involved similar legal theories to

those alleged in this case. On the other hand, Annett Holdings cited several cases with comparable legal theories that determined certification was not appropriate. *See e.g. Kaser v. Swann*, 141 F.R.D. 337, 341 (M.D. Fla. 1991) ("To show the existence of a fiduciary relationship the members of the class would have to prove that an exchange of trust and confidence occurred between each plaintiff and the [defendant]. This would require testimony from every [plaintiff] and, as such makes this case unsuited for class certification.") (cited in *Vos v. Farm Bureau Life Ins. Co.*, 667 N.W.2d 36 (Iowa 2003)); *Semenko v. Wendy's Int'l Inc.,* 2013 WL 1568407 (W.D. Pa. 2013) (finding class certification not proper on defendant's motion where plaintiff could not satisfy the requirements of Rule 23 in a case alleging ADA discrimination for denial of employment and failure to accommodate because of the individualized and different nature of each purported class member's claim); *Manning v. Boston Medical Ctr. Corp.*, 2012 WL 1355673,* 3 (D. Mass. 2012) (granting defendant's motion to strike class allegations where court found that plaintiff's allegations, even if all reasonable inferences were drawn in their favor, are not sufficient to show that it was possible that there were similarly situated persons entitled to relief pursuant to statute or that common issues of fact predominated under rule 23 in FLSA case that would require highly particularized inquiries including the dates of meal breaks and training, job-related activities performed prior

to shifts, whether activities constituted compensable work, whether any compensation was paid and how it was calculated).

The District Court's finding of common questions of law and fact sufficient to satisfy the commonality requirement is untenable and unreasonable. The Court of Appeals abused its discretion by failing to undergo the appropriate analysis on review. Both decisions should be reversed and the case remanded for entry of any order decertifying the purported class.

B. Individual Factual and Legal Issues Predominate Over Any Common Issues.

The predominance factor in Rule 1.263(1)(e) asks whether "common questions of law or fact predominate over any questions affecting only individual members." I.R.C.P. 1.263(1)(e). Predominance of commonality asks whether the class members have common issues that predominate over individual issues. *Anderson Contracting, Inc. v. DSM Copolymers, Inc.,* 776 N.W.2d 846, 848 (Iowa 2009). The question of whether common or individual issues predominate has been characterized as "fairly complex." *Vignaroli*, 360 N.W.2d at 744. Predominance "necessitates a 'close look' at 'the difficulties likely to be encountered in the management of a class action.'" *Vos,* 667 N.W.2d at 46 (quoting *Rothwell v. Chubb Life Ins. Co. of Am.*, 191 F.R.D. 25, 28–29 (D. N.H. 1998)). The predominance inquiry is "qualitative rather than quantitative"; merely "a common question does

not end the inquiry." *Ebert v. General Mills*, 823 F.3d 472, 478 (8th Cir. 2016) (quoted in *Freeman v. Grain Processing Corporation*, 895 N.W.2d 105 (Iowa 2017)).

The predominance inquiry requires an analysis of whether a prima facie showing of liability can be proven by common evidence or whether this showing varies from member to member. *Arvitt v. Relistar Life Ins. Co.*, 615 F.3d 1023, 1029 (8th Cir. 2010). The nature of the evidence that will suffice to resolve a question determines whether the question is common or individual. *Seabron v. American Family Mut. Ins. Co.*, 2013 WL 3713652 (D.C. Col. 2013) (citing *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 136-40 (2d Cir. 2001)). If, to make a prima facie showing on a given question, the members of the proposed class will need to present evidence that varies from member to member, then it is an individual question. *Id.* If the same evidence will suffice for each member to make a prima facie showing, then it becomes a common question. *Id.* On the predominant issue, it may be necessary for the court to probe behind the pleadings before deciding whether the requirements have been met. The probing needed is not a determination of the individual merit of each reported class members claim, but rather, a review of how a trial on the merits would be conducted if the class were certified is all that is necessary.

1. The Nature of the Theories of Liability Asserted Require Individualized Inquiries.

Both theories of liability asserted in Roland's petition arise out of Annett Holdings enforcement of the MOU. Roland has not shown Annett Holdings' enforcement of the MOU is the same for all purported class members. Consider Roland's allegations regarding how Annett Holdings enforced the MOU in his individual circumstances. He alleges Annett Holdings avoided its obligation to provide him with reasonable medical care that was not unduly inconvenient to him by compelling him to accept light duty work in Iowa to avoid a suspension of benefits while his physical therapy was ongoing and only offering him physical therapy in Des Moines for the weeks he was in Des Moines. Roland contends the only reasonable and convenient physical therapy Annett Holdings could offer was in Alabama. Assuming for sake of argument this is true, how does evidence of Roland's experience with Annett Holdings' enforcement of the MOU establish Annett Holdings similarly enforced the MOU when dealing with each member of the purported class? It does not. Roland offered absolutely no explanation how he could establish Annett Holdings enforced the MOU similarly across the class in violation of their rights under Chapter 85. Roland's conclusory allegation that Annett Holdings enforced the MOU to deprive statutory rights of the purported class members is purely fluff, unsupported by any factual assertions.

The underlying decision in *Roland* determined that *as applied to Roland*, the manner in which Annett Holdings enforced the MOU violated Iowa Code 85.18 by attempting to relieve itself from providing reasonable medical care not unduly inconvenient to Roland. It was found that requiring Roland to relocate to Iowa for light duty resulted in a transfer and interference with the medical care prescribed by the authorized treating physician and the physical therapy Roland received in Iowa was inferior to the physical therapy he was receiving in Alabama. In reaching that conclusion, the court necessarily considered evidence related to Roland's injuries, the treatment prescribed by the authorized treating physician, the impact traveling to Iowa had on Roland's use of a prescribed medical device, a comparison between the effectiveness of the physical therapy Roland was receiving in Alabama and the physical therapy he received in Des Moines, and testimony from Roland that his medical improvement lagged while he was participating in physical therapy in Des Moines. A similar inquiry would need to be made on behalf of each purported member. There is no common factual or legal questions that can resolve any significant issue with generalized evidence.

By virtue of the nature of the claims in this case, proof of any significant issue cannot be established without presentation of individualized evidence on behalf of every single purported class member. Where the theories of liability asserted in the case cannot be established with generalized evidence by the representative on behalf

of the entire class, courts routinely find class certification is not appropriate. *See Babineau v. Federal Exp. Corp.*, 576 F.3d 1183 (11th Cir. 2009) (finding predominance requirement not satisfied in suit by hourly employees alleging breach of employment contracts by failing to pay "gap periods" where no common proof of uncompensated time existed and court would have to conduct individualized inquiries into each individual claim); *Klay v. Humana, Inc.*, 384 F.3d 1341 (11th Cir. 2004) (holding district court abused its discretion in certifying doctors' breach of contract claim against HMOs where individualized issues of fact would predominate despite claims based on contract law that were common to the whole class); *In re FedEx Ground Package System, Inc. Employment Practices Litigation*, 662 F.Supp.2d 1069 (N.D. Ind. 2009) (finding certification precluded in case brought by current and former drivers seeking recovery of wages for fines illegally deducted from their wages because liability could not be resolved systematically but depended on the company's application of its policy of assessing fines to individual drivers and the driver's conduct in each instance).

2. Individualized Questions to Establish Violations of Statutory Rights Predominate Over Any Common Questions.

The Court of Appeals erred in concluding the main issue is the MOU and its conflict with chapter 85, and even if individual members present evidence specific to their own circumstances, the legality of the MOU can be established with

generalized evidence and predominates over individualized issues. That is false. The MOU is not illegal on its face. Requiring employees to temporarily relocate to Des Moines, Iowa for modified duty is not illegal. As a condition of employment, all employees are required to consent to temporarily relocate to Des Moines, Iowa for modified duty work in the event of a work injury. Iowa Code Section 85.33(3) specifically allows Annett Holdings to bring injured workers to Des Moines for modified duty work. Iowa Code Section 85.33(3) (2017). The MOU's requirement that an employee temporarily relocate to Iowa for modified duty work in the event of a work injury does not violate injured worker rights under Chapter 85. Further, the MOU does not dictate what medical care will be authorized by Annett Holdings to treat injured workers' injuries.

3. Individualized Questions to Establish The Bad Faith Theory of Liability Predominate Over Common Issues.

For the bad faith cause of action, the Court of Appeals specifically acknowledged each purported class members' proof of Annett Holdings enforcement of the memorandum of understanding to their individual circumstances "may" vary. Notwithstanding, the Court of Appeals found common questions predominate over individual ones, reasoning all of that evidence funnels into establishing the common bad faith elements that Annett Holdings was using the

MOU to deny workers' compensation benefits without a reasonable basis. The Court's logic is flawed and ignores the determining fact that individualized proof from each purported class member would be required to establish liability.

In the case of *Thompson v. Merck & Co., Inc.*, 2004 WL 62710, *2 (E.D. Pa. 2004), the plaintiff filed suit against his employer Merck, alleging racial discrimination on his behalf as well as hundreds of similarly situated employees. The court pointed out the defendant would have defenses unique to each individual claim of discrimination, including applicability of the statute of limitations, res judicata, signed settlement agreements and other legitimate, non-discriminatory reasons for its actions. *Id.* at *3. Under these circumstances, the court found the action would degenerate in practice into multiple lawsuits separately tried, which is inconsistent with the class action model. *Id*. The court further explained the plaintiff's request for compensatory and punitive damages on behalf of each class member would ***necessarily require individualized proof of injury.*** *Id*. at *4 (emphasis added). For example, the claims for mental anguish and pain and suffering would necessarily require a determination of whether and how each class member was personally affected by the alleged discriminatory conduct. *Id.* The court explained these types of damages, awarded on intangible injuries and interests, are uniquely dependent on the subjective and intangible differences of each class member's individual circumstances. *Id.* In support of its explanation, the *Thompson*

Court cited the following comment from the Fifth Circuit's decision in *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 415 (5th Cir. 1998), a case involving claims of discrimination:

> "the plaintiff's claims for compensatory and punitive damages must therefore focus almost entirely on facts and issues specific to individuals rather than the case as a whole: what kind of discrimination was each plaintiff subjected to, how did it affect each plaintiff emotionally and physically, at work and at home, what medical treatment did each plaintiff receive and at what expense…."

Id. The *Thompson* court concluded **as a matter of law**, the plaintiff's claims could not satisfy the prerequisites for class certification under Rule 23. *Id.* (emphasis added).

4. Discovery Is Not Necessary to Appreciate That Individualized Questions Predominate over Common Issues.

The Court of Appeals distinguished the *Vos v. Farm Bureau Life Ins. Co.*, 667 N.W.2d 36 (Iowa 2003) cited by Annett Holdings because the parties in *Vos* had engaged in discovery for two years before the court concluded that the plaintiff's theories of liability were not capable of a centralized presentation. Noting no discovery has been conducted in this case, the Court of Appeals indicated if after discovery, it is revealed that the class claims required more individualized proof then it first appears, the District Court may de-certify the class if appropriate. The Court of Appeals already acknowledged each member's proof of Annett Holdings' enforcement of the MOU may vary. That is a fact because the theories of liability

alleged in this case alone require individualized proof from each individual class member. It would be preposterous to require Annett Holdings to engage in time-consuming, costly discovery where information exchanged in discovery cannot avoid the inescapable conclusion that the claims of the purported class require a substantial amount of individualized proof on all material issues.

Courts routinely deny class certification without allowing discovery where the nature of the claims and requested damages alone automatically renders the matters unsuitable for class certification. *See Pilgrim v. Universal Health Card, LLC,* 660 F.3d 943, 949 (6th Cir. 2011) (concluding class certification was not appropriate in lawsuit alleging deceptive advertising where law of the place of injury would control and involve consideration of multiple states laws on consumer protection); *Thornton v. State Farm Mut. Auto Ins. Co., Inc.,* 2006 WL 3359482, *4 (N.D. Ohio 2006) (denying class certification in case alleging defendant failed to obtain a salvage title to vehicles, noting each claim would require an individualized valuation and assessment of the reduction in value caused by a salvaged title); *Mantolete v. Bolger*, 767 F.2d 1416, 1424–25 (9th Cir.1985) (affirming refusal to certify case filed under the Rehabilitation Act of 1973 as a class action where inquiry into the individual's medical and work history as well as an inquiry into other factors bearing on the person's fitness for a given position would be necessary); *Lumpkin v. E. I. Du Pont de Nemours & Co.*, 161 F.R.D. 480, 481 (M.D. Ga. 1995) (holding record failed to

show any basis for certification of a class action where generalized proof would not be acceptable for individual discrimination claims).

PROOF OF SERVICE

The undersigned certifies that on the 13TH day of August, 2019, she served the Appellant's Application for Rehearing on counsel for the Appellee electronically using the EDMS. Per Rule 16.317(1)(a), this constitutes service of the document for the purposes of the Iowa Court Rules.

/s/ Sasha L. Monthei

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because it contains 5,248 words, excluding the parts of the brief exempted.

2. This brief complies with the typeface requirement of Iowa Rule of Appellate Procedure 6.903(1)(e) because it has been prepared in proportionately spaced typeface using Microsoft Word 2010 in Times New Roman 14 point type.

/s/ Sasha L. Monthei

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The undersigned certifies the cost of this brief (amount actually paid for printing or duplicating paper copies of briefs) was $0.00.

/s/ Sasha L. Monthei