

IN THE SUPREME COURT OF IOWA

**Supreme Court No. 18-0817
Kossuth County No. LACV027056**

JOSEPH GOCHE,

Plaintiff-Appellant/Cross-Appellee,

v.

WMG, L.C., An Iowa Limited Liability Company,
Defendant-Appellee/Cross-Appellant

APPEAL FROM THE IOWA DISTRICT COURT
FOR KOSSUTH COUNTY
THE HONORABLE DAVID A. LESTER

**DEFENDANT-APPELLEE/CROSS-APPELLANT'S PROOF
REPLY BRIEF AND
REQUEST FOR ORAL ARGUMENT**

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED BY AWARDING PLAINTIFF ANY ATTORNEY FEES ON HIS INDEMNITY CLAIM.

Cases

GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc., 691 N.W.2d 730, 733 (Iowa 2005)

Lemartec Engineering & Construction v. Advance Conveying, 940 N.W.2d 775, 779 (Iowa 2020)

Schaffer v. Frank Moyer Constr., Inc., 628 N.W.2d 11, 23 (Iowa 2001)

Van Sloun v. Agan Bros., Inc., 778 N.W. 2d. 174, 182 (Iowa 2010)

Statutes

Iowa Code § 489.408

Iowa Code § 489.408(1)

Iowa Code § 680.1

Iowa Code § 680.3

Iowa Code § 680.4

Iowa Code § 489.408(1)

II. WHETHER THE DISTRICT COURT ERRED BY MISCALCULATING ITS AWARD AND BY AWARDING PLAINTIFF ATTORNEY FEES THAT WERE NOT CONNECTED TO HIS INDEMNITY CLAIM.

Cases

Gosch v. Jeulfs, 701 N.W.2d 90, 91 (Iowa 2005)

GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc., 691 N.W.2d 730, 733 (Iowa 2005)

Schaffer v. Frank Moyer Constr., Inc., 628 N.W.2d 11, 23 (Iowa 2001)

Rules

Iowa R. Civ. P. 1.904

STATEMENT OF THE CASE

A. Nature of the Case.

The nature of Goche's appeal and WMG's cross-appeal are adequately set out in the parties' opening briefs.

B. Course of Proceedings.

WMG's description of the Course of Proceedings is contained in its opening brief. Any additional information necessary to respond to Goche's Cross – Appellee's Brief will be set out in the Statement of Facts below.

STATEMENT OF FACTS

WMG supplements its Statement of Facts as follows.

Afshar v. Goche, et al.

Goche's Brief does not dispute the following chronology of events:

- Goche's defense began on 10/17/16 when WMG filed a counterclaim against Goche alleging a breach of fiduciary duty. (Goche Brief, p. 19).

- Goche did not serve as manager of WMG after 2/25/17, the date he was removed. (4/9/19 Court of Appeals Opinion; 1/9/20 Decree, p. 2; App.____).
- On 6/14/17, the court in *Afshar* appointed attorney Larry Eide to act as Receiver for WMG, and also “stayed all litigation related to WMG until September 13, 2017.” (10/2/17 Appearance; 11/30/17 *Afshar* Ruling, p. 4; 1/21/20 Tr. 40:21-41:18; App.____).
- The 6/14/17 Order set forth the “**Terms of the Receivership,**” “**POWERS AND DUTIES,**” and an **INJUNCTION**. (6/14/17 Order, p.p. 7-11; App.____). The **INJUNCTION** section governed “equity owners” such as Goche. (6/14/17 Order, p.p. 10-11; App. ____).
- On 9/14/17, the *Afshar* case was ripe for the court to adjudicate the amount of indemnity, if any, that WMG owed Goche. (11/30/17 Ruling; p. 1; 1/21/20 Tr. 42:5-44:10; 46:9-19; App.____).

- On 9/27/17, Receiver Eide reported that he would not be resisting Goche’s Motion for Summary Judgment. (1/21/20 Tr. 42:5-44:10; 93:15-23; App.____).

Further, Goche’s Brief does not dispute his “defense” ended no later than November 30, 2017, the date of the *Afshar* summary judgment. (12/21/17 Goche Reply Brief, p. 6; 1/26/18 Tr. 20:15-25; App.____).

Goche v. WMG

Goche’s Brief does not dispute that on 4/3/17, while *Afshar* was still pending, he filed this lawsuit seeking the same indemnity relief he was still seeking in *Afshar*, including relitigating the *Afshar* rulings. (Petition; 11/22/17 SOF ¶¶ 8-21; App. ____).

On 5/1/17, the Court appointed the Hon. David A. Lester to preside over *Goche v. WMG*. (5/01/17 Order).

Goche’s Brief does not dispute that WMG’s 4/26/17 Answer asserted defenses of “issue preclusion, claim preclusion, res judicata, claim splitting, and/or the law of the case.” (Answer; App. ____).

Goche states that “[f]rom September 2014 until October 20, 2017,” in *Afshar*, he “was defending himself against claims that he

breached his duties as manager of WMG and/or was pursuing his claim for indemnification” (11/22/17 Goche Memorandum of Authorities, p. 3; App. 101).

In *Afshar*, Goche’s claims against WMG contained multiple components. One component was Goche’s claim for indemnity because of breach of fiduciary duty claims asserted by Renee Afshar and Jeanne Goche-Horihan against Goche. (12/29/16 Ruling, p. 2; App. 15). Another component was Goche’s claim for indemnification for “litigation expense resisting WMG’s Petition to Appoint a Receiver.” *Id.* Yet another component was Goche’s claim for indemnity because WMG also asserted a breach of fiduciary duty claim against Goche. (11/22/17 SOF ¶¶ 8-21; 11/30/17 Ruling, p. 3; App. 53-55). The *Afshar* court’s 12/29/16 ruling considered all of Goche’s legal time charges through 10/6/16. (1/21/20 Tr. 50:21–52:1; App.____).

On 11/22/17, Goche asserted that no final orders had been entered in *Afshar*: “[i]f a final order had been issued by Judge Courtney, the principles of *res judicata* would bar further argument by WMG. But there was no final order so Goche must ask this court to

confirm that he is entitled to indemnification as a matter of law." (11/22/17 Memorandum; App. 105).

On 1/22/17, Goche also stated that he "dismissed his claim for indemnification [in *Afshar*] without prejudice . . . so he could continue to fight for indemnification solely in the instant case." (11/22/17 SOF ¶ 21; App.____).

After the 11/30/17 *Afshar* ruling, Goche stated that "[i]f the November 30 ruling is not modified, some, but not all, of Goche's indemnification claims will have been finally resolved. The remaining portion of those claims will be resolved in this proceeding because they were dismissed without prejudice pursuant to Iowa R. Civ. P. 1.943 in the *Afshar* case. If Judge Courtney changes his November 30 ruling in response to Rule 1.904 motion, even more of the indemnification claims may have to be resolved in this case." (12/21/17 Plaintiff's Reply Brief, p.p. 2-3; App. 127-128).

On 12/15/17 and 1/9/18, WMG notified this court that the *Afshar* court rulings were indeed final. (12/15/17 Statement of Facts, ¶ 10, Exhibit G; 1/11/18 Supplement to Summary Judgment Record with 1/9/18 Ruling; App.____).

Court's Fee Calculation

Goche sought “fees and expenses he has incurred in defending himself . . . through November 30, 2017 . . .” (12/21/17 Plaintiff’s Reply Brief, p. 6; App.____). Goche’s Brief does not dispute that the Trial Court’s 5/1/20 order awards Goche fees incurred outside of the 10/17/16 to 11/30/17 time parameters and also for charges resisting the receivership:

[r]eferring to the Kaplan Affidavit (Ex. 40), the district court correctly noted that Goche was seeking \$95,213.10 for his defense of WMG's claims in LACV026869. (May 1, 2020 Order at 5-6. *See also* Trial Ex. 40, ¶ 13 (\$85,325.10 + \$9,888.00 = \$95,213.10).) . . . Implicit in the district court's analysis is that the court awarded Goche fees for **all of the work** in LACV026869 that was identified in the three attorney affidavits.

(Goche Brief, p. 28; emphasis supplied).

The Trial Court’s 5/19/20 Order also confirmed that it awarded Goche fees related to the Receivership: “it is implicit in the court’s Ruling that it rejected the Receiver’s Contention that the fees incurred by Plaintiff in resisting and/or seeking termination of the receivership should not be considered as part of his defense of WMG’s claims . . .” (5/19/20 Order; App.____).

ARGUMENT

I. THE DISTRICT COURT ERRED BY ITS AWARD OF ANY ATTORNEY FEES TO PLAINTIFF.

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

Goche disputes that WMG failed to preserve its argument that Iowa Code § 489.408(1) does not provide for recovery of attorney fees. (WMG Brief, p. 11). Goche is incorrect. Here, because Goche has the burden of proof, it was Goche's responsibility - not WMG's - to show his fees were supported by statute. "In order [for fees to be] taxed the case must come clearly within the terms of the statute or agreement." *Van Sloun v. Agan Bros., Inc.*, 778 N.W. 2d. 174, 182 (Iowa 2010).

Similarly, the District Court's ruling held:

Joseph's attorneys neither cite, or has the Court found, any Iowa appellate court case where a fees on fees claim of the type alleged by Joseph in the present case has been addressed;

(5/1/20 Ruling, p. 9; App.____);

as well as:

there is presently no Iowa appellate authority interpreting Iowa Code § 489.408(1) as providing indemnification to the former member and manager of the limited liability

company to recover attorney fees and expenses incurred in litigating an indemnification claim.

(5/1/20 Ruling, p. 10; App.____).

Although the court correctly relied on Iowa Code § 489.408(1) to deny Goche’s “fees on fees” claim, it erred by awarding (1) non-defense fees concerned with resisting the WMG receivership, and (2) other fees incurred outside of the defense time window. It is incorrect to state WMG raised this argument for the first time on appeal when the District Court itself made the issue part of its holding. Further, WMG, when resisting summary judgment, argued that the “language of the statute [Iowa Code § 489.408(1)] and the comments to the draft of the Uniform Act all support denial of Goche’s indemnification claim” because “this subsection does not expressly require a limited liability company to provide advances to cover expenses.” (12/15/17 Brief, p.p. 5-6; App.____).

B. The District Court Erred by Awarding Any Attorney Fees To Plaintiff On His Indemnification Claim.

Because Goche’s lawsuit involves improper claim splitting, the District Court erred in awarding any attorney fees. "Claim preclusion is ‘based on the principal that the party may not split or try his claim

piecemeal A party must litigate all matters growing out of his claim at one time and not in separate actions." *Lemartec Engineering & Construction v. Advance Conveying*, 940 N.W.2d 775, 779 (Iowa 2020). (Other citations omitted). On 4/3/17, while *Afshar* was still pending, Goche initiated this lawsuit and then continued parallel litigations for several months until - depending on what date you use - 11/30/17, when the *Afshar* court granted summary judgment, or on 10/10/17, when Goche dismissed all his claims. Goche, by his forum shopping and pursuing parallel litigations, has improperly split his claims, piecemealing them between *Afshar* and this case.

What Goche has done is similar to that of a personal injury plaintiff who would have three components to his claim, for example, medical expenses, lost earnings, and pain and suffering. A plaintiff would not be permitted to resolve the first two components in one lawsuit and then split off the last component by dismissing it and then still pursue it in a second lawsuit. This is exactly what Goche has done here. Goche, in *Afshar*, resolved the *Afshar* and *Horihan* components of Goche's indemnity claim against WMG which ended with a final order and eventually was even paid. The *Afshar* court also considered

another Goche indemnity component, namely: “[w]hether Joseph must be indemnified for expenses related to appointment of a receiver,” which the court held were “inarguably invalid.” (12/29/17 Ruling p.p. 4-5; App.____.)

Goche then split off his last claim against WMG by dismissing it and then pursuing it in a second lawsuit. Goche also asked this court to revisit the *Afshar* rulings denying him receivership expenses. This is equivalent of a personal injury plaintiff recovering payment of a hospital bill in a personal injury lawsuit while also seeking payment of the radiology bill, but then dismissing the claim related to the radiology bill and then pursuing the radiology bill in a second lawsuit. Claim splitting and claim preclusion prohibit this.

Even more incongruous is that Goche’s claim splitting has resulted in Judge Lester evaluating the receivership proceedings of Receiver Larry Eide, whose appointment, authority, and activities are all still being supervised by the *Afshar* Court. Because of a breakdown in the WMG management, on 6/14/17, pursuant to Iowa Code § 680.1, the *Afshar* court appointed Larry Eide to act as receiver for WMG and defend the various litigations filed by Goche. The 6/14/17 *Afshar* order

sets forth the “**Terms of the Receivership,**” “**POWERS AND DUTIES**” and an **INJUNCTION**. *Afshar* contemplates that all receivership disputes are to be handled in *Afshar*. (6/14/17 Order, p.p. 7-11; App.____). All of Mr. Eide’s receivership activities are “[s]ubject to the control of the court . . .” Iowa Code § 680.4. WMG has not violated any of the terms of the receivership. The receivership proceedings should be evaluated only in *Afhsar*, by Judge Courtney. Goche’s claim splitting has not only resulted in Judge Lester failing to give comity to Judge Courtney’s ruling, it has result in an award that is contrary to the 6/14/17 Receivership order.

The Trial Court erred by awarding fees for Goche’s efforts attempting to terminate the *Afshar* Receivership. Had Receiver Eide walked off the job or been terminated as Goche sought, the court would have been left with a legally prostrate and basically pro se defendant. Even worse, no one would have been left to help WMG successfully appeal and reverse the Trial Court’s incorrect ruling on breach of deed reformation claim, or to successfully defend WMG on a claim brought by NCJC, Goche’s company. (1/19/20 Decree; *Goche v. WMG, L.C.*; *No. 18-783; NCJC, Inc. v. WMG L.C. 19-01241*).

Issue preclusion prevents a party from relitigating in a subsequent action issues raised and resolved in previous action. *Lemartec Engineering & Construction v. Advance Conveying*, 940 N.W.2d 775, 779 (Iowa 2020). The Trial Court erred by awarding Goche fees that pertain to *Afshar* receivership activities. These fees are totally unrelated to defense costs. (5/19/20 Order; App.____). The *Afshar* court rejected these fees holding:

Joseph has the burden to prove his litigation expenses were related to his indemnification claim or fiduciary duty claims against him. The court could not possibly have been more explicit that Joe is not presently entitled to indemnity for litigation expenses to WMGs receivership claim. Joseph protests that his indemnity was related to the receivership because there was a chance that the Court could find a receiver may decide Joseph's fees instead of the court. The Court disagrees. Fees related to receivership are too tangential to Joseph's indemnity claim.

(12/29/16 Ruling, p. 17; App.____).

Goche now wants to resurrect his claims for fees connected with the Receivership even though he already submitted them to the *Afshar* court and that case concluded with a final order.

The WMG Receivership has never pursued breach of fiduciary duty claim against Goche. After the *Afshar* court appointed Mr. Eide

as Receiver for WMG, it also ordered all proceedings stayed until 9/13/17, when Goche filed a Motion for Summary Judgment. Fourteen (14) days later, on 9/27/17, Mr. Eide notified the court he would not resist Goche's summary judgment.

The Receivership, rather than pursuing claims against Goche, not only dropped WMG's breach of fiduciary duty claim, it even paid Goche the \$51,455.27 *Afshar* award. (Tr. 32:4-14; 116:13-117:22; App.____). Goche's remaining indemnity component was ready to be resolved in *Afshar* had he simply submitted it there. (1/21/20 Tr. 10:15-23; 42:11-44:10; 74: 6-11; App.____). Pursuant to Iowa Code § 680.3 Receiver Eide is a court officer charged with "obey[ing] the orders of the court." *Id.* The WMG Receivership has done nothing to merit an award of fees to Goche and it was error for this court to evaluate the *Afshar* Receivership proceedings or the actions of the Receiver. A party applying for attorney's fees must show "that the services were reasonably necessary and the charges were reasonable in amount." *GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc.*, 691 N.W.2d 730, 733 (Iowa 2005), quoting from *Schaffer v. Frank Moyer Constr., Inc.*, 628 N.W.2d 11, 23 (Iowa 2001).

Any fees that Goche incurred resisting the Receivership are not related to defending any breach of fiduciary duty claim and are unreasonable. Claim preclusion and issue preclusion both prohibit resubmission of any fees related to the receivership.

In summary, Goche's indemnity claims are barred under the doctrines of claim preclusion, issue preclusion, and claim splitting. The Trial Court erred in awarding any attorney fees to Goche. The Trial Court also erred in awarding any attorney fees to Goche related to *Afshar* receivership activities. This court should reverse the District Court's award of fees and enter an order directing the District Court to dismiss this lawsuit at Plaintiff's costs.

C. Alternatively, Plaintiff Should Not Recover Fees Incurred in this Case Because Iowa Code § 489.408 Does Not Expressly Provide for Recovery of Attorney Fees and the WMG Operating Agreement Does Not Provide for Indemnity.

Had Goche simply submitted his remaining indemnity claim in *Afshar* rather than engaging in forum shopping and claim splitting, it would not be necessary to revisit the Trial Court's analysis of Iowa Code § 489.408. The District Court correctly interpreted Iowa Code § 489.408(1) to deny Goche's "fees on fees" claim, but erred by not

applying the same reasoning across the board to deny all of Goche's claim. Iowa Code § 489.408, does not expressly provide for recovery of attorney fees. *Van Sloun v. Agan Bros., Inc.*, 778 N.W. 2d. 174, 182 (Iowa 2010).

Further, the Trial Court held "operation of WMG is controlled and governed by its operating agreement." (1/9/20 Decree, p. 2; App. ____). The WMG Operating Agreement provides that "Managers shall be indemnified by the Company to the extent provided in the Company's Articles of Organization," but here the Articles do not provide for any indemnification. (Operating Agreement, Sec. 5.6; Articles; App. ____). The Court erred in applying Iowa Code § 489.408 to rule that indemnification applied.

This court should reverse the District Court's award of fees and enter an order directing the District Court to dismiss this lawsuit at Plaintiff's costs.

II. THE DISTRICT COURT ERRED BY MISCALCULATING ITS AWARD AND BY INCORRECTLY AWARDING PLAINTIFF ATTORNEY FEES THAT WERE UNRELATED TO HIS INDEMNITY CLAIM.

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

Goche urges that WMG failed to preserve error because it agreed to admission of Kaplan’s Affidavit, Exhibit 40. Goche is incorrect. Kaplan’s Affidavit incorporates Exhibit 39 and Exhibit 41 – which Goche admits covers “fees for all of the work in LACV026869.” (Goche Brief, p. 28). Although the “substantial evidence” test normally applies, the reviewing court is not bound by the Trial Court’s application of legal principles. *Gosch v. Jeulfs*, 701 N.W.2d 90, 91 (Iowa 2005). Here, the Trial Court misapplied legal principles by clearly awarding non-defense fees to Goche. Exhibits 39 and 41 itemize fees for work that undisputedly occurred outside of 10/17/16 to 11/30/17 time window and/or relate to receivership proceedings. For example:

- Part G, of Exhibit 39 includes 26 entries totaling \$16,769.00 between 4/14/16 to 9/22/16, and 37 entries

totaling \$22,939.00 between 12/1/17 to 6/29/18) – a total of 63 entries for \$39,708.00;

- Part B of Exhibit 41 includes 18 entries from 4/15/16 to 10/4/16 totaling \$1,875.00 and 18 entries from 12/20/17 to 8/20/18 totaling \$1,900.00 – a total of 36 entries for \$3,775.00;
- Part D of Exhibit 40 shows 11 entries from 7/13/18 to 4/8/19 totaling \$3,616.00.

B. The Trial Court Erred By Miscalculating Its Award and By Awarding Plaintiff Attorney Fees That Were Unrelated To His Indemnity Claim.

The 5/1/20 ruling awards Goche “attorney fees and expense incurred to defend himself against claims brought by WMG . . .” (Ruling, p. 2; App.____). Goche’s claim starts on 10/17/16 when “WMG alleged a claim against Joseph” and ended 11/30/17. (Ruling, p. 3; 12/21/17 Reply Brief, p. 6; 1/26/18 Tr. 20:15-22; App.____). However, fees incurred before and after the defense window or in connection with Receivership proceedings have nothing to do with

“defense.” The District Court abused its discretion and erred by awarding Goche fees that have nothing to do with defense.

A party applying for attorney’s fees must show “that the services were reasonably necessary and the charges were reasonable in amount.” *GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc.*, 691 N.W.2d 730, 733 (Iowa 2005), quoting from *Schaffer v. Frank Moyer Constr., Inc.*, 628 N.W.2d 11, 23 (Iowa 2001). None of Goche’s fees incurred resisting the receivership were “reasonable” or “necessary” to defend WMG’s breach of fiduciary duty claim. None of Goche’s fees incurred before 10/17/16 or after 11/30/17 were “reasonable” or “necessary” to defend WMG’s breach of fiduciary duty claim. The court erred.

C. The Trial Court's Award Is Inconsistent with Its Holding and The Court Erred By Overruling Defendant's 1.904 Motion To Enlarge And By Its Failure To Clarify and Recalculate Its Award.

Regardless of whether the 5/1/20 ruling contains a scrivener’s error or miscalculation; the Trial Court does not explain its math. Further, the Court’s 5/19/20 Order confirms that its award incorrectly includes fees Goche incurred resisting the Receivership. (5/19/20

Ruling; App.____). WMG's 1.904 Motion simply redacts those time entries occurring before 10/17/16 and after 12/1/17, totals up the remaining entries, and then multiplies those entries by the approved hourly rate, to arrive at \$27,627.00, rather than the \$68,831.10 awarded by the court. (1.904 Motion; App.____). WMG's math is correct. The Trial Court's math is incorrect. The Trial Court erred by failing to explain its calculation.

Actual Hours for Defense Time Period

The hours spent by Goche's attorneys during the defense time window of 10/17/16 to 11/30/17, total:

- Norm Baer: 66.45 hours;
- Shannon Finn (SLF- paralegal): 9.35 hours;
- Phillip Kaplan: 3.3 hours; and
- Wesley Graham: 23.2 hours.

(Redacted Ex. G and D attached to 1.904 Motion; App.____).

By multiplying the Court's approved hourly rates by the hours spent between 10/17/16 and 11/30/17 defending WMG's claims in *Afshar*, the corrected total is \$27,627.00, and is broken down as follows:

- Norm Baer: 66.45 hours x \$300.00 = \$19,935.00;
- Shannon Finn (SLF-paralegal): 9.35 hours x \$100.00 = \$935.00;
- Phillip Kaplan: 3.3 hours x \$290.00 = \$957.00; and
- Wesley Graham: 23.2 hours x \$250.00 = \$5,800.00.

(Redacted Ex. G and D attached to 1.904 Motion; App.____).

Goche's Reply Brief does not respond to WMG's argument that Judge Courtney was a in a better position than Judge Lester to evaluate and value Goche's fees in *Afshar*. WMG respectfully urges that it was error and/or an abuse of discretion for the Trial Court to give little or no deference to Judge Courtney's hourly rate findings and holdings.

Court officers, like Receiver Eide, should be viewed by busy courts as a resource. Here, Receiver Eide performed all the heavy lifting by channeling all the time records for Goche's lawyers through Judge Courtney's matrix. For this Trial Court to give no comity to Judge Courtney's analysis, or that of his Court appointed Receiver's extensive analytical efforts, not only support the doctrine of claim preclusion but also, that the court erred in its calculation.

WMG urges the Court to further revise and reduce any award for

fees to \$23,633.50 pursuant to Judge Courtney's calculus, as set forth in WMG's opening brief.

In summary, the court erred by declining to enlarge, clarify, revise and correct its ruling:

- A. to conform its award to the calculus of the hours and hourly rates stated above by reducing the award to \$27,627.00; and/or
- B. to further revise the Court's award by conforming to the calculus of the hours and hourly rate rates to those determined by Judge Courtney's and reducing the award to \$23,633.50.

CONCLUSION

The Trial Court correctly held that Goche was not entitled to recover attorney fees for pursuit of his indemnity claim in the present case. Further the Trial Court erred by awarding Goche any attorney fees because *Afshar* precludes any further indemnity claims by Goche. Further, the Trial Court erred by incorrectly awarding Goche attorney fees on matters that were not related to his indemnity claim. Further, the Trial Court erred by incorrectly awarding any attorney fees to Goche on his indemnity claim because defendant WMG was not required to indemnify Plaintiff.

The Court should:

- sustain the Trial Court's decision denying Goche any award for recovery of attorney fees to pursue his indemnification claim in the present case;
- reverse the Trial Court's order awarding Goche any attorney fees for his indemnity claim;
- reverse the Trial Court's decision awarding attorney fees to Goche on his indemnity claim and direct the Trial Court to reduce its award to \$27,627.00 or \$23,633.50; and
- for such other relief as the court deems just and equitable.

REQUEST FOR ORAL ARGUMENT

Appellee/Cross-Appellant WMG respectfully requests to be heard in oral argument on this matter.

ATTORNEY'S COST CERTIFICATE

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

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

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

this Brief contains 4,768 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

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

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

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