

IN THE IOWA SUPREME COURT

No. 21-1652

No. 21-1653

IN THE MATTERS OF THE SUBPOENAS
ISSUED TO DETHMERS
MANUFACTURING COMPANY

vs.

DETHMERS
MANUFACTURING COMPANY

Appellant

APPELLEE'S AMENDED BRIEF

**APPEAL FROM THE IOWA DISTRICT
COURT FOR OSCEOLA COUNTY**

HON. NANCY L. WHITTENBURG, PRESIDING

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Statement of Issues Presented for Review

1. **Does the Court have jurisdiction of this case?**

Iowa Const. Art. 5 §4

Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc., 594 N.W.2d 22 (Iowa 1999).

Ia. R. Civ. P. 1.1702

Ia. R. Civ. P. 6.103(1)

2. **Did the District Court apply proper legal standards and abuse its discretion in denying Dethmers Manufacturing Company's motion to quash subpoenas for testimony and documents where the information is clearly relevant and Dethmers is not required to give expert opinion testimony?**

State v. Parker, 747 N.W.2d 196, 203 (Iowa 2008)

Ia. R. Evid. 5.701

Mason v. Robinson, 340 N.W.2d 236 (Iowa 1983)

Ia. R. Civ. P. 1.1701

State ex rel. Miller v. Publishing Clearing House, Inc., 633 N.W.2d 732 (Iowa 2001)

State ex rel. Miller v. National Dietary Research, Inc., 454 N.W.2d 820 (Iowa 1990)

American Broadcasting Companies v. Aeroe, Inc., No. 13-MC-0059, (N.D. Iowa, Sept. 17, 2013)

Local 447 of Int'l Union of Painters & Allied Trades v. Feaker Painting, Inc., 788 N.W.2d 398 (Iowa Ct. App. 2010)

Mediacom Iowa v. Inc. City of Spencer, 682 N.W.2d 62 (Iowa 2004)

Routing Statement

Plaintiff/Appellee disagrees with Dethmers' position. If the issues are novel to Iowa Courts, then the Iowa Supreme Court should hear the case. It is of no consequence that federal decisions exist regarding the issues. State procedural rules should be interpreted by the state court.

I. *Sullivan* Is Inapplicable and Cannot Form the Basis for Transfer to the Court of Appeals

Dethmers claims that Iowa Rule of Civil Procedure 1.1701 is “virtually identical” to Federal Rule of Civil Procedure 45(d)¹ and then argues that since federal decisions interpreting rule 45(d) exist, the present case is not one of first impression in Iowa. *Sullivan v. Chicago & NW. Transp. Co.*, 326 N.W.2d 320, 326 (Iowa 1982) (“Cases interpreting federal rule 26(b)(4)(B) are illustrative because the federal rule employs the same language as our rule 122(d)(2)”). This reasoning is faulty.

As a preliminary matter, Iowa R. Civ. P. 1.1701 and Fed. R. Civ. P. 45(d) are *not* identical. Although a good portion of the language is similar, there are differences. Second, the *Sullivan* case is about a different procedural rule than the one at issue here. Significantly, *Sullivan* states that the federal cases are “illustrative”, not binding on Iowa courts. Therefore, Dethmers’

¹ Dethmers’ Proof Brief, p. 36

position is not availed. Federal decisions interpreting federal procedural rules that are similar to Iowa procedural rules may be instructive for Iowa Courts interpreting Iowa rules, but they are certainly not conclusive. Therefore, such decisions cannot be used to argue that an issue is not one of first impression in Iowa Courts.

II. Dethmers Fails to Follow the Applicable Appellate Rules

Iowa Rule of Appellate Procedure 6.903(2)(d) states: “The routing statement shall indicate whether the case should be retained by the supreme court or transferred to the court of appeals and shall refer to the applicable criteria in rule 6.1101.”

The Iowa Supreme Court shall ordinarily retain the following types of cases: “(a) Cases presenting substantial constitutional questions as to the validity of a statute, ordinance, or court or administrative rule. (b) Cases presenting substantial issues in which there appears to be a conflict between a published decision of the court of appeals or supreme court. (c) Cases presenting substantial issues of first impression. (d) Cases presenting fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court. (e) Cases involving lawyer discipline. (f) Cases presenting substantial questions of enunciating or changing legal principles.” Iowa R. App. P. 6.1101(2).

The Iowa Supreme Court shall ordinarily transfer to the Court of Appeals the following types of cases: (a) Cases presenting the application of existing legal principles. (b) Cases presenting issues that are appropriate for summary disposition. Iowa R. App. P. 6.1101(3).

Here, Dethmers has failed to specifically identify or cite – as it is required to do pursuant to Iowa R. App. P. 6.903(2)(d) – the applicable criteria in Rule 6.1101. Therefore, it has not presented a valid basis for its position that the case should be transferred to the Court of Appeals.

III. Dethmers’ Argument That This Case Does Not Present an Issue of First Impression for Iowa Courts is Incorrect

Although it is unclear, Dethmers seems to be arguing that the issues presented in this case are not issues of first impression in Iowa - Iowa R. App. P. 6.1101(c) - and, therefore, the Supreme Court need not retain the case and instead may transfer it to the Court of Appeals. However, this is incorrect. That there are no Iowa cases interpreting Rule 1.1701 with respect to our issues is *precisely* the reason that the Iowa Supreme Court should retain jurisdiction. It is, in fact, an issue of first impression. It is of no consequence that there are federal decisions based upon federal rules of civil procedure that are substantially similar. Such cases may be “illustrative” due to their interpretation of federal rules that are substantially similar to Iowa rules, but they are certainly not binding or conclusive with respect to how Iowa courts

wish to apply their own rules, irrespective of any shared language that a particular shared rule may have.

In *State v. Paredes*, 775 N.W.2d 554, 561 (Iowa 2009), the Iowa Supreme Court was asked to interpret Iowa Rule of Evidence 5.804(b)(3), which creates an exception to the general prohibition against hearsay statements. It observed that the Iowa rule was “identical in all relevant aspects” to its federal counterpart, Federal Rule of Evidence 804(b)(3). *Id.* It stated that as a result, interpretations of the federal rule are often persuasive authority for interpretation of the state rule, but cautioned that federal case law “is not binding, and we are free to develop our own approach to legal questions under the Iowa rule.” *Id.*

See also, *Estate of Campbell v. Johnson*, 253 N.W.2d 906 (Iowa 1977) (acknowledging that federal decisions are persuasive where Iowa procedural rule regarding summary judgment is patterned after a federal rule, but declining to follow federal case law).

IV. Iowa Case Law Regarding Iowa Rule of Civil Procedure 1.1701

Using the search term “1.1701”, thirty-two (32) results appeared in the Iowa Cases database. Most did not have to do with third-party subpoenas. The few that did are not analogous to our case and leave our issue unanswered. They are as follows.

In *Golden Enterprises, LLC v. Iowa District Court for Polk County*, 884 N.W.2d 225 (Iowa Ct. App. 2016) (unreported), the Iowa Court of Appeals declined to quash third party subpoenas or grant a protective order in a judgment debt/foreclosure case where the bank sought discovery from the debtor's wife, the debtor's accountant and the debtor and his wife's company. The appellate court affirmed the trial court's refusal to quash the subpoena, recognizing "the wide discretion vested in the district court regarding discovery matters." *Id.*

Golden involved non-parties – the wife and the shared company – that "had at least some assets intermingled with those of the debtor". *Id.* Thus, they were intertwined to a degree that Dethmers and Defendant are not. Thus, *Golden* does not settle the question at issue in the present case. In addition, this is an unreported Iowa Court of Appeals case, not the Iowa Supreme Court which must decide all issues of first impression.

In *Powers v. State*, 911 N.W.2d 774, 777 (Iowa 2018), the plaintiff applied for post-conviction relief after he was found guilty of sexual abuse. As part of that process, he attempted to subpoena the Police Chief of the City of Waterloo, Iowa for to produce investigative reports related to its contemporaneous investigation of sexual abuse crimes by local gang members. *Id.* The Iowa Supreme Court reversed the trial court's decision to

quash the subpoenas. *Id.* However, the third-party subpoena issue was not addressed, although the City may have arguably been a “third party”.

Statement of the Case

Plaintiff has no objection to Dethmers Manufacturing Company's statement of the case concerning procedural background.

Statement of the Facts

At approximately 1:00 a.m. on November 22, 2016, Plaintiff, Tanika Adams, was operating an SUV that was pulling a large trailer rented from U-Haul (equipped with a coupler manufactured by Horizon Global Americas, Inc.) on Interstate 10 in St. Martin Parish, Louisiana. (App. Vol. I, 38; App. Vol. II, 26, 29, 30). As Ms. Adams was driving up an overpass, the U-Haul trailer struck a bump in the road and suddenly and without warning detached (decoupled) causing the SUV and trailer to lose control, fishtail, and ultimately jack-knife against the guardrail on the right shoulder. (App. Vol. I, 38. App. Vol. II, 26). When the vehicle came to rest, the U-Haul trailer remained on Interstate 10 partially blocking the right travel lane in the middle of the night. *Id.*

Plaintiff, Tharun Mittapalli (24-year-old computer engineer) and his friends Vineeth Keesara and Pydie Meesala were traveling behind Ms. Adams and pulled over to assist after the U-Haul trailer detached. (App. Vol. I, 38; App. Vol. II, 27). Mittapalli and Keesara (true Good Samaritans) got out of their car and tried to help Ms. Adams (a stranger) move the U-Haul trailer out

of the road. *Id.* Tragically, while Mittapalli and Keesara were assisting Ms. Adams, an 18-wheeler slammed into the U-Haul trailer, Ms. Adams' vehicle, and Mittapalli, Keesara, and Ms. Adams. *Id.*

Keesara was crushed under a car and suffered an agonizing death while his friends were screaming for help. (App. Vol. I, 38). Mittapalli was crushed in wreckage and later transported from the scene by helicopter with life threatening trauma. (App. Vol. I, 38-39). He suffered catastrophic injuries that required numerous surgeries and hospitalization for more than a month, including bilateral femur fractures, closed head injury, lumbar fractures, spinal disc injuries, fractured right fibula, bilateral ankle fractures, massive wounds to both legs, open fractures of the left foot, torn ligaments in right knee, major polytrauma, acute hypovolemic shock, acute blood loss, kidney damage, respiratory failure, lacerated spleen, lacerated liver, lacerated penis, sepsis (blood infection), and severe post-traumatic anxiety and depression. To date, Mittapalli's medical expenses exceed \$1.3 million and he remains under active treatment. (App. Vol. I, 36, 39; App. Vol. II, 32).

Ms. Adams was thrown off the side of the overpass and suffered horrific injuries that required multiple surgeries and hospitalization for numerous weeks, including spinal injuries, fractured left tibia, fractured left femur, fracture of the right clavicle, fracture of the left humerus, lung collapse, liver

failure, multiple fractured ribs, laceration of her liver, lumbar fractures, sacrum fracture, bilateral lung contusions, tachycardia, and laceration of her spleen. Her medical expenses exceed \$236,402.00 and continue to mount. (App. Vol. I, 36, 39).

On August 25, 2017, Mittapalli filed suit against U-Haul and various other entities under multiple theories of liability.² Mittapalli alleged that the relevant U-Haul trailer, hitch, and related equipment were improper, inadequate, and/or unreasonably dangerous.³ Under Louisiana law (La. R.S. 9:2800.53) the party that makes a product, and the party that incorporates a product into another product, are both considered “manufacturers” who may be held liable if a product is unreasonably dangerous. *Id.* Mittapalli later filed amended petitions, which: (1) added Horizon Global Americas Inc., the trailer coupler manufacturer, to the lawsuit, and (2) clarified and/or reinforced his product liability claims regarding the trailer coupler that was unreasonably dangerous due to construction, design and/or warning defect.⁴

² Plaintiff’s Opposition to Combined Motion to Quash, Ex. 5(a) - Mittapalli’s Original Petition for Damages. (App. Vol. I, 91-100).

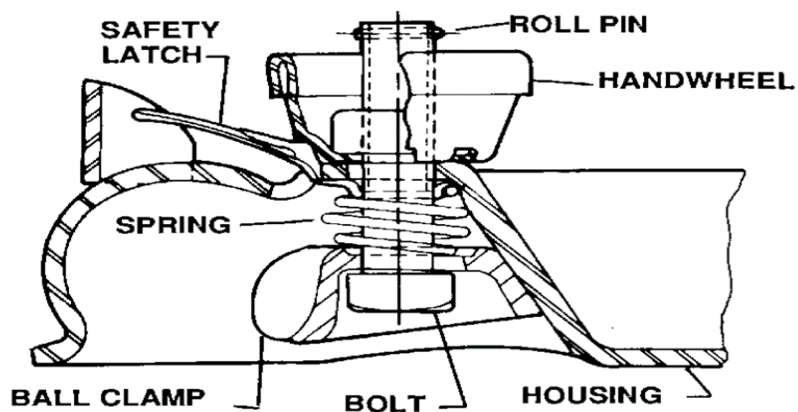
³ Plaintiff’s Opposition to Combined Motion to Quash. Ex. 5(a) - Mittapalli’s Original Petition for Damages, paragraphs XIII(J), XIII(K). (App. Vol. I, 94).

⁴ See Plaintiff’s Opposition to Combined Motion to Quash. Ex. 5(b) - Mittapalli’s Fourth Supplemental and Amending Petition, paragraphs XIII(I-R); XIV (I-R). (App. Vol. I, 105-06).

Plaintiffs maintain that these defects caused the U-Haul and Horizon Global Americas Inc. “Handwheel Coupler” to have a propensity to detach and/or decouple from the hitch ball, which was a cause of the catastrophic incident that is the subject of this litigation. *Id.*; App. Vol. I, 37). For easy reference, below is a photograph of the U-Haul/ Horizon Global Americas Inc. Handwheel Coupler that detached in this case:

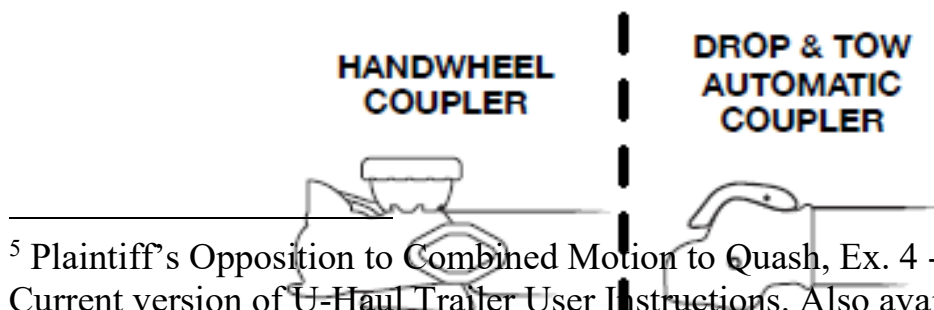


Additionally, the following is a U-Haul diagram of the U-Haul Handwheel Coupler mechanism with identification of its various component parts:



Dethmers is in the trailer coupler business – they design, manufacture, market and sell trailer couplers to the public and various companies, including U-Haul. (App. Vol. I, 32, 33, 37). Specifically, Dethmers designs, manufactures, and sells the “EZ Latch Coupler” which Plaintiffs allege is an alternative design that could have prevented the subject incident. (*Id.*; App. Vol. II, 35-40). The Dethmers “EZ Latch Coupler” is self-latching and/or auto locking and thus reduces the propensity for human error when connecting the trailer to the hitch. *Id.*

At some point after the catastrophic incident, U-Haul began to implement the Dethmers EZ Latch Coupler (which U-Haul deems the “Drop & Tow Automatic Coupler”) into their fleet of tow trailers. (App. Vol. I, 33).⁵ Below is a diagram from U-Haul’s current Trailer User Instructions of the Handwheel Coupler vs. the Drop & Tow Automatic Coupler. *Id.*



⁵ Plaintiff’s Opposition to Combined Motion to Quash, Ex. 4 - Full copy of Current version of U-Haul Trailer User Instructions. Also available for download on U-Haul website – Trailer User Instructions www.uhaul.com/Articles/Tips/122/Trailer-User-Instructions/. (App. Vol. I, 86-89).

Recently (after the Iowa District Court’s rulings in this matter), Plaintiffs settled their claims against the U-Haul entities. However, Plaintiffs maintain their product liability claims against the subject Handwheel Coupler manufacturer, Horizon Global Americas, Inc. (“Horizon Global”), in the primary litigation pending in Louisiana state court. In Louisiana, in order to establish an unreasonably dangerous design, the plaintiff must prove:

(1) **There existed an alternative design for the product that was capable of preventing the claimant's damage;** and

(2) The likelihood that the product's design would cause the claimant's damage **and the gravity of that damage outweighed the burden on the manufacturer of adopting such alternative design** and the adverse effect, if any, of such alternative design on the utility of the product. An adequate warning about a product shall be considered in evaluating the likelihood of damage when the manufacturer has used reasonable care to provide the adequate warning to users and handlers of the product. La. R.S. 9:2800.56 (emphasis added).

Similarly, Iowa law provides “In analyzing whether the risks of the product outweigh its utility, the jury may consider the availability of ‘a safer alternative design.’ In other words, evidence of an alternative design is helpful to a plaintiff in proving that the design in question is unreasonably

dangerous.” *Mercer v. Pittway Corp.*, 616 N.W.2d 602, 620 (Iowa 2000) (internal citations omitted).

Accordingly, on or about April 27, 2021, Mittapalli issued a 1442 Corporate Deposition Notice⁶ and requested a Subpoena for Deposition and Subpoena Duces Tecum to Dethmers seeking production of information and documents related to the existence of an alternative trailer coupler design, the utility of an alternative design, and U-Haul/Horizon Global’s knowledge of same at the time of the crash⁷ (the individual items/topics are listed and discussed in detail in Argument Section 2(c) below). Thereafter, in good faith, Plaintiff contacted Dethmers’ counsel in an attempt reach a compromise and/or narrow the scope of production and discuss entering into a Protective Order to ensure that Dethmers’ responses would be shielded from disclosure outside of this litigation.⁸ In response, Dethmers stated:

“Dethmers is not going to work out any agreement to furnish documents or testimony...That position will not change. If Dethmers produces anything it will have to be by court order.”⁹

⁶ In Louisiana, La. Code of Civil Procedure Article 1442 is the procedural mechanism for parties to take the deposition of an organization, including public or private corporations, partnerships, associations, or governmental agencies.

⁷ Plaintiff’s Opposition to Combined Motion to Quash, Ex 1(a) – Subpoena Duces Tecum, Ex. 1(b) – Deposition Subpoena. (App. Vol. I, 63-76).

⁸ Plaintiff’s Opposition to Combined Motion to Quash, Ex 2(b)– 5/12/21 E-mail correspondence between Mittapalli’s counsel and Dethmers. (App. Vol. I, 79-80).

⁹ *Id.*

As such, Plaintiff was forced to seek relief, which the Iowa District Court granted (twice). All items in Mittapalli's subpoena are clearly relevant, or at the very least, reasonably calculated to the lead to the discovery of evidence relevant to Plaintiffs' claims against U-Haul. **Importantly, Dethmers has been compelled to produce similar documents in a prior trailer detachment case in which they were represented by the same counsel.**

Dethmers' arguments for non-compliance with the subpoenas – (1) that the district court applied the wrong legal standard because Dethmers is being compelled to provide expert testimony, (2) Plaintiff has not made a record of its discovery battles and/or the discovery boundaries of the Louisiana litigation, (3) undue burden or expense, (4) compliance with the subpoena would disclose trade secrets, (5) the District Court failed to apply the “reasonable particularity” test, and (6) the District Court failed to apply the correct legal standard concerning document production – are all either without merit, misleading and/or rely on factually distinguishable jurisprudence, or simply incorrect/unfounded. Dethmers' appeal should be denied.

Argument

1. The Iowa Court's Jurisdiction of this Case

a. Preservation of issues for review

Appellee agrees with appellants statement on the preservation of issues for review

b. Standard of Review

Appellee agrees with appellants statement on the standard of review.

c. Argument

Appellee agrees with appellants argument and does not object to jurisdiction.

2. The District Court applied proper legal standards and did not abuse its discretion in denying Dethmers Manufacturing Company's motion to quash a subpoena for testimony and documents where the information is clearly relevant and Dethmers is not required to give expert opinion testimony.

a. Preservation of issues for review

Plaintiff does not dispute Dethmers' statement on error preservation.

b. Standard of Review

The district court has wide discretion in ruling on a motion to quash. *In re T.O.*, Case No. 17-1926 (Iowa Ct. App., Jan. 24, 2018) (unreported), citing *Morris v. Morris*, 383 N.W.2d 527, 529 (Iowa 1986); *In re A.H.*, 815 N.W.2d 410 (Iowa Ct. App. 2012). A district court's decision on whether to quash a subpoena is for an abuse of discretion. *State v. Cole*, Case No. 07-0832, 2008 WL 4876993, at *2 (Iowa Ct. App. Nov. 13, 2008) (unreported) (citing *Morris*, 383 N.W.2d 527, 529 (Iowa 1986)); *State v. Cashen*, 789 N.W.2d 400, 405 (Iowa 2010), superseded by statute on other grounds by Iowa Code § 622.10; *In re A.H.*, 815 N.W.2d 410 (Iowa Ct. App. 2012).

A district court abuses its discretion by relying on an unsupported fact finding or erroneously applying the law. *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008), quoting *State v. Rodriguez*, 636 N.W.2d 234, 239 (Iowa 2001). In discovery disputes, "(a)n abuse of discretion is rarely found." *Hutchinson v. Smith Laboratories, Inc.*, 392 N.W.2d 139, 141 (Iowa 1986).

c. Plaintiff's discovery is directly relevant to Plaintiff's claims against Horizon Global, or at the very least, reasonably calculated to lead to the discovery of relevant evidence.

One of the primary benefits of the Dethmers design is to prevent detachment/decoupling incidents like what happened in the present case. The

objective of Mittapalli's subpoena to Dethmers is to obtain documents and information regarding the existence of an alternative trailer coupler design at the time of the crash, the utility of an alternative design, and Horizon Global's knowledge of same.

Plaintiff concedes some the items in the subpoena (listed and discussed below) are no longer relevant due to the recent settlement with U-Haul. However, many of the items remain relevant for Plaintiffs claims against Horizon Global.

Item 1) The general scope of Dethmer/Demco's business as it relates to the design, development, and manufacturing of trailer coupling devices.

Item 2) Dethmer/Demco's history of designing, manufacturing, and/or selling hand wheel couplers and/or lever latch couplers.

Item 3) Facts and circumstances surrounding the design, development, and manufacturing of the Demco EZ Latch coupler.

Items 1-3 are relevant as it provides important background information as to how long Dethmers has been designing, developing, and manufacturing trailer coupling devices, and specifically, the EZ Latch coupler. If Dethmers had been designing, developing, and manufacturing the EZ Latch coupler for many years before the crash, this information would be relevant and important for the parties and jury to consider Horizon Global's knowledge of a better alternative design. As such, the information is relevant and discoverable.

Item 4) The utility, function, benefits and/or purpose of the Demco EZ Latch coupler

Item 4 is clearly relevant to Mittapalli's claim as it allows the jury to weigh the utility of the Dethmers/Demco EZ Latch Coupler versus the Handwheel Coupler that was on the trailer at the time of the crash. This is required under Louisiana Product Liability law.

Item 5) All patent applications and/or awards regarding the Demco EZ Latch coupler.

Item 5 is likewise relevant the jury's ability to weigh the existence of an alternative design at the time of the crash and the utility of an alternative design. The patent application and documents would include Dethmers' representations regarding the benefits and utility of the new coupler design. If Dethmers' EZ Latch Coupler had been granted a patent application and other awards before the subject crash, it would show an alternative design was in existence and feasible.

Item 6) All engineering drawings, testing reports, schematics, diagrams, plans, blueprints, electronically stored information, video, or other documents or tangible items that depict, describe, discuss, refer to, or relate to the design, assembly, testing and/or construction of the Demco EZ Latch coupler.

Item 7) All safety and/or instructions manuals, documents, warnings and/or electronic communication (i.e. computer or video links) regarding the Demco EZ Latch coupler including, but not limited to engineering drawings, testing reports, schematics, diagrams, plans, warnings, instructions, blueprints, electronically stored information, video, correspondence, electronic communication, etc.

Items 6-7 are clearly relevant as it allows the parties and their experts to analyze the utility of the Dethmers EZ Latch coupler. Contrary to Dethmers' assertion, Plaintiffs have retained their own experts and do not seek to employ Dethmers' employees as experts. However, in order for Plaintiffs' experts to weigh the utility of Dethmers coupler versus the Horizon Global coupler at the time of the crash, the information and material in items 6-7 are required.

Last, Plaintiff addresses Dethmers' concern of revelation of trade secrets in section G, below. In short, no trade secrets will be revealed to the public as Plaintiff has already offered and agreed to enter into a protective order to protect any potential trade secrets which may disclosed (Plaintiffs have already entered into similar protective orders in this case with U-Haul).

Item 8) All communications, marketing and/or negotiations with U-Haul International, Inc. (hereinafter "U-Haul") and/or other customers regarding the utility, function, benefits, safety, and/or purpose of the Demco EZ latch coupler. – no longer relevant

Item 9) The approximate date and/or time frame that Dethmer/Demco introduced the Demco EZ Latch coupler for sale to the public, including, but not limited to customers such as U-Haul.

Item 10) All communications, marketing and/or negotiations with U-Haul and/or other customers regarding the purchase, sale, use, and/or implementation Demco EZ Latch couplers. – no longer relevant

Item 11) All communications, promotions, and/or marketing with U-Haul and/or any other customers regarding whether the Demco EZ Latch couplers could potentially improve safety and/or reduce liabilities. – no longer relevant

Item 12) The approximate date and/or time frame that Dethmers/Demco first began communications, marketing and/or negotiations with U-Haul regarding the potential purchase, sale, use, and/or implementation of Demco EZ Latch couplers. – no longer relevant

Item 13) All documents and electronic communication between Dethmers/Demco and U-Haul regarding the utility, function, benefits, safety, and/or purpose of the Demco EZ Latch coupler. – no longer relevant

Item 14) Facts and circumstances surrounding U-Haul's purchase, use, and/or implementation of Demco EZ Latch couplers in their fleet of towing equipment. – no longer relevant

Item 15) All documents, contracts, agreements, and/or electronic communication between Dethmers/Demco and U-Haul regarding U-Haul's purchase, use and/or implementation of Demco EZ Latch couplers in their fleet of towing equipment. – no longer relevant

Item 16) Communications, marketing and/or negotiations with U-Haul and/or other customers regarding the replacement and/or retrofitting of hand wheel and/or lever latch couplers with Demco EZ Latch couplers. – no longer relevant

Considering Plaintiff's recent settlement with the U-Haul entities, Plaintiff concedes that Items 8, 10-16 are no longer relevant. Plaintiff submits that Item 9 remains relevant to establish whether an alternative design existed

at the time the Handwheel Coupler left the manufacturer's control. This is required under Louisiana Product Liability law.

Item 17) All documents, contracts, communications and/or agreements regarding the price and/or cost paid by U-Haul for Demco EZ couplers (purchase, retrofit, etc.).

Item 17 is relevant to Plaintiffs claims as it allows the jury to determine if “the gravity of that damage outweighed the burden on the manufacturer of adopting such alternative design” as required by La. R.S. 9:2800.56 of the Louisiana Product Liability Act. The “burden on the manufacturer of adopting such alternative design” is the price/cost of the Dethmers EZ Latch coupler.

Item 18) All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving the Demco EZ Latch Coupler.

Item 19) All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving non-EZ Latch coupler designs such as hand wheel couplers, lever latch couplers, etc.

Item 20) All communications with U-Haul and/or any other customers regarding studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving the Demco EZ Latch coupler versus non-EZ Latch coupler designs such as hand wheel couplers, level latch couplers, etc. – no longer relevant

Plaintiff avers that Item 20 is no longer relevant considering its recent settlement with U-Haul. Items 18 and 19 remain relevant to show both the utility and safety benefits of the Dethmers EZ Latch coupler compared to the “Handwheel coupler” manufactured by Horizon Global.

Importantly, Dethmers has been compelled to produce similar documentation in a prior case involving the detachment and/or decoupling of a commercial rental trailer. In *Bramblett v. Penske Truck Leasing Corp., et al*, discovery revealed the Dethmers participated in studies and statistical analysis regarding trailer detachment and/or decoupling events involving traditional (non EZ Latch) couplers and actively communicated that information with Penske, the trailer rental company that utilized Dethmers' couplers. Civil Action No. 10-CT-276, Commonwealth of Kentucky, Jessamine County Circuit Court.

In fact, Dethmers produced approximately 18,000 pages of documents regarding studies, data, and communications regarding other trailer detachment incidents, and was commended by the Trial Court for their compliance (whereas Penske was heavily sanctioned for willful discovery abuses).¹⁰ These documents include e-mails between Dethmers and Penske

¹⁰ Plaintiff's Opposition to Combined Motion to Quash, Ex 6 – Order granting plaintiff's Motion to Compel, *Bramblett*. (App. Vol. I, 113-15). Unfortunately, Plaintiffs could only locate the unsigned Order and will attempt to supplement with the signed Order. However, counsel for Dethmers should have the signed Order and could attest to its accuracy.

Plaintiff's Opposition to Combined Motion to Quash, Ex 7 – Transcript of Motion Hearing on Plaintiff's Motion to Compel and Motion for Sanctions, pg. 10, lines 5-17; pg. 21, line 17 – pg. 22; line 3, pg. 23, line 7 – pg. 24, line 18; pg. 32, lines 6-13; pg. 61, line 20 – pg. 62, line 6; pg. 62, line 25 – pg. 63, line 8. (App. Vol. I, 120, 123, 125, 133).

as far back as 2007 in which they discuss concerns regarding trailer disconnection events, coupler failures, and potential corrective measures. Interestingly, the e-mails involved Dethmers' employee Kevin Ten Haken, who signed the Affidavit associated with Dethmers' motion in this case.

These e-mails are public record (trial exhibits) and in only represent the "tip of the iceberg" regarding responsive documents. Importantly, in the present case Dethmers is represented by the same law firm as it was in *Bramblett*. This evidence shows that Dethmers has engaged in this sort of analysis in the past.

Clearly the information regarding studies, data, and/or statistical data possessed by Dethmers regarding trailer detachment incidents involving traditional (non EZ Latch) couplers and EZ Latch couplers is relevant to the Plaintiff's claims in the present case. This information is highly probative to the Plaintiff's allegations that the Dethmers EZ latch coupler was a feasible alternative design.

Item 21) Annual sales volume of new and/or replacement/retrofit EZ Latch Couplers from January 1, 2006 to the present.

Item 22) Annual sales volume of new and/or replacement/retrofit EZ Latch Couplers to U-Haul from January 1, 2006 to the present. – no longer relevant

Plaintiff's Opposition to Combined Motion to Quash, Ex 8 – E-mails between Dethmers and Penske regarding trailer disconnections. (App. Vol. I, 138-40).

Items 21 is relevant to establish Horizon Global's knowledge of a potentially better coupler. In Dethmers' Motion to Quash, it claims it "first developed the EZ Latch coupler in approximately 2005".¹¹ If, for example, Dethmers' new EZ Latch coupler had a high number of sales prior to the accident and was well-known item throughout the industry, this would be relevant to establish that Horizon Global's knew or should have known of a potentially better trailer coupler. Plaintiff concedes Item 22 is no longer relevant.

Bottom line – the importance of the information requested in Plaintiff's subpoena to Dethmers cannot be understated. Because of this horrific trailer detachment/decoupling event, one young man is dead, and a young man and woman have suffered life altering injuries. The information sought is directly relevant to the existence of an alternative design at the time of the crash, the utility of an alternative design, and Horizon Global's knowledge of same. As all the information is relevant and material to the parties involved, Dethmers' motion should be denied.

d. The District Court correctly held that Plaintiff is not seeking expert opinions, but instead he is seeking factual testimony and documents

¹¹ Dethmers' Memorandum in Support of Motion to Quash, p. 7. (App. Vol. I, 24).

Dethmers' misquotes the plain language of Iowa's Rules of Evidence in support of its position that it is being forced to give expert testimony. Dethmers' quotes Iowa R. Evid. 5.701 (Opinion testimony by lay witnesses) as follows:

Ia. R. Evid. 5.701 states that witnesses "not testifying as an expert" are limited to testimony that is "***not based*** on scientific, technical, or other specialized knowledge within the scope of rule 5.702" (emphasis added).¹²

In reality, Iowa R. Evid. 5.701 provides:

If a witness is not testifying as an expert, testimony **in the form of an opinion** is limited to one that is:

- a. Rationally based on the witness's perception;
- b. Helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- c. Not based on scientific, technical, or other specialized knowledge within the scope of rule 5.702.

The rule is not that anyone with specialized knowledge can only testify if they are a retained expert. Instead, the rule is that if someone is not testifying as an expert, their opinion testimony must not be based on scientific, technical, or other specialized knowledge. As the trial court ruled in the Motion to Quash and the Motion to Reconsider, Plaintiff is not seeking expert opinion testimony from Dethmers. Instead, Plaintiff seeks documentation and the deposition of a Dethmers corporate representative to determine their unique

¹² Dethmers' Proof Brief, p. 27

knowledge regarding the Dethmers EZ Latch coupler which Plaintiffs believe Dethmers developed, marketed, and sold as a superior, and safer, alternative design to the traditional couplers (such as the Horizon Global Handwheel couplers) that were being used by commercial trailer companies, such as the trailer involved in this accident. Accordingly, Dethmers' argument that it need not comply with the subpoena as it would require its employees to act as unretained experts is without merit and must be denied. The District Court did not abuse its discretion.

Dethmers reliance on *Mason v. Robinson*, 340 N.W.2d 236, 242 (Iowa 1983) is misplaced. *Mason* is distinguishable, not only in that it does not address the issue at hand, but that it does not stand for or support Dethmers' erroneous argument. In *Mason*, a Plaintiff in a medical malpractice case subpoenaed a non-party doctor with whom the defendant doctor had communicated about the surgical procedure at issue in the litigation, not only to answer questions regarding the factual information the defendant doctor had shared with him, but to provide his expert opinion on the medical care received by the decedent in the malpractice action. *Id.* at 238. Here, Plaintiff has retained his own experts and is simply seeking factual information and documents from Dethmers. The District Court was briefed on the *Mason* case (twice) and did not abuse its discretion in ruling its ruling.

e. The Supreme Court need not weigh the discovery battles or the discovery boundaries of the Louisiana litigation

Dethmers argues (for the first time) in its Proof Brief that Plaintiff: (1) needed to make a record in the Iowa court of his discovery battles in the Louisiana litigation, and (2) should disclose all rulings concerning the discovery boundaries of the Louisiana litigation.¹³

First, Dethmers cites zero (0) Iowa law supporting its position. Plaintiff is unaware of any Iowa (or Louisiana) law which requires same.

Additionally, Plaintiff detailed to the District Court his ongoing discovery battles in the Louisiana litigation. Specifically, page 21 of Plaintiff's opposition to Dethmers' Motion to Quash reads:

To date, Plaintiffs have filed three separate Motions to Compel related to discovery from U-Haul, and have opposed two separate Motions to Quash subpoenas filed by U-Haul, affiliated companies, and/or their experts.^{14 15} Plaintiffs have prevailed on all motions. (App. Vol. I, 56).

¹³ Dethmers' Proof Brief, p. 31

¹⁴ Motion to Compel U-Haul Corporate Deposition, 1/5/2021; Motion to Compel Evidence Regarding Other Trailer Detachments, 2/11/2021; Motion to Compel U-Haul Witness Kevin Brown for Deposition, 12/22/2020.

¹⁵ Opposition to Motion to Quash Corporate Deposition of U-Haul expert, Rimkus Consulting Group, 9/7/2018; Opposition to Motion to Quash and/or Motion for Protective Order filed by U-Haul's Claim Management Company, Repwest, concerning Evidence Regarding Other Trailer Detachments, 3/10/2021.

Dethmers submitted as Exhibit A to its Motion to Quash the docket of the Louisiana proceedings. (App. Vol II, 18). The docket is also public record. Dethmers' argument is without merit and should be denied.

Finally, Plaintiff avers that it is unaware of any discovery boundaries in the Louisiana litigation that would be violated by Dethmers' subpoena compliance. Nonetheless, should a discovery boundary potentially be violated (which Plaintiff is not aware of), a party to the Louisiana litigation should affirmatively raise the issue (not a non-party). Dethmers insinuation that Plaintiff is seeking to skirt some discovery limitation in Louisiana is: (1) wrong, (2) inappropriately late, and (3) not appropriate under Iowa law for Dethmers' non-compliance.

f. The District Court considered and correctly ruled there was no undue burden placed on Dethmers'

Incredibly, Dethmers argues that the District Court failed "to discuss or apply the specific terms of Ia. R. Civ. P. 1.1701(4), which deals with 'Protecting a person subject to a subpoena.'"¹⁶ Specifically, Ia. R. Civ. P. 1.1701(4)(a) deals with avoiding undue burden or expense. Dethmers' contention is incorrect. The District Court addressed, at length, the purported

¹⁶ Dethmers' Proof Brief, p. 32.

burden placed on Dethmers in page 4-6 of its Ruling and Order (and ruled the subpoena was not unduly burdensome).

Dethmers' main argument is that the District Court did not apply the standards outlined in the singular, non-binding federal court case it cited: *Am. Broad. Companies, Inc. v. Aereo, Inc.*, No. 13-MC-0059, 2013 WL 5276124 (N.D. Iowa Sept. 17, 2013).

Iowa Rule of Civil Procedure 1.1701 sets forth the circumstances under which a subpoena may be issued to a "person" not a "party". For example, Rule 1.1701(4) directs that "[a] party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on *a person* subject to the subpoena. (emphasis added). The rule refers frequently to "person" rather than "party." This rule on its face does not indicate that there are separate standards for parties and nonparties/third parties.

State ex rel. Miller v. Publishing Clearing House, Inc., 633 N.W.2d 732, 738 (Iowa 2001) dealt with an Iowa state court subpoena. When discussing whether the subpoena was unduly burdensome (and the factors which it weighed), the Supreme Court did not question if the subpoena was directed toward a party vs. a non-party (or indicate that would change its analysis). In determining whether a discovery request is unduly burdensome

or expensive, courts may take into account: (1) the needs of the case; (2) the amount in controversy; (3) limitations on the parties' resources; and (4) the importance of the issues at stake in the litigation. *Id.* All of the factors weigh in favor of compliance.

Regarding the needs of the case and the importance of the issues at stake, this analysis is simple. At issue in this litigation is existence of an alternative design, the utility of an alternative design, and Horizon Global's knowledge of same at the time of the crash. Without the information requested from Dethmers, Plaintiff cannot analyze, much less advance, its product liability claims with respect to the deficient "Handwheel" style coupler manufactured by Horizon Global versus the allegedly safer Dethmers EZ Latch coupler that U-Haul later began incorporating into its fleet of trailers. Given the absolute necessity for the requested information, these factors weigh in favor of compliance.

The amount in controversy also requires production. As outlined above, this was a horrific crash that resulted in the gruesome death of Plaintiff Vineeth Keesara, and life altering injuries to Plaintiffs Tharun Mittapalli and Tanika Adams. Mittapalli's injuries required emergency evacuation via helicopter, extended hospitalization, and numerous surgeries. Past medical expenses alone for Mittapalli currently exceed \$1,300,000 and his injuries

require active and ongoing medical care to this day. Likewise, Ms. Adams suffered catastrophic injuries that required multiple surgeries and hospitalization for over two weeks, including neck pain, back pain, a fracture of the left tibia, fracture of the left femur, fracture of the right clavicle, fracture of the left humerus, lung collapse, liver failure, multiple fractured ribs, laceration of her liver, lumbar fractures, sacrum fracture, bilateral lung contusions, tachycardia, and laceration of her spleen. Her medical expenses exceed \$236,402.00 and continue to mount.

The bottom line is that the importance of the information in the subpoena, and Plaintiffs' need for same, and the substantial damages claimed greatly outweigh any burden of production. As such, Dethmers' appeal should be denied.

Further, the factors listed by Dethmers' as taken from the *American Broadcasting Companies, Inc. v. Aereo, Inc.*, No. 13-MC-0059, 2013 WL 5276124 (N.D. Iowa, Sept. 17, 2013) (unreported) is a federal case, interpreting Fed. R. Civ. P. 45, not an Iowa case, and thus not binding authority. Further, the factors taken from *American Broadcasting Companies, Inc.* are simply those which “**may be considered** in determining whether an undue burden exists”, regardless of whether the subpoena was issued to a party or a nonparty. *Id.* at 7 (emphasis added). Further, the *Precourt* case,

which *American Broadcasting* cites in setting forth these factors, acknowledges that only “some courts” use this test. *Precourt v. Fairbank Reconstruction Corp.*, 280 F.R.D. 462, 467 (D.S.D. 2011).

In the present case, Dethmers thoroughly briefed and argued the issue of undue burden prior to and during the Motion to Quash hearing. The District Court “had an opportunity to review the exhibits and consider the oral argument, together with the filed motions, resistance and reply.”¹⁷ After considering all issues, the Court appropriately ruled that Dethmers failed to make a showing of undue burden.¹⁸ Dethmers’ made the same arguments in its Motion to Reconsider, which was denied.

Dethmers has failed to show that the District Court abused its discretion by relying on unsupported facts or erroneously applying the law. Thus, Dethmers’ appeal should be denied.

g. No Trade Secrets will be released to the public as Plaintiff has already offered to enter into a protective order concerning the information produced. Further, Dethmers has not met its burden of proving the information is not subject to disclosure due to trade secret/confidentiality.

Dethmers’ argument that compliance with the subpoena would cause trade secrets to be revealed to the public is both without merit and misleading.

¹⁷ 7/9/2021 RULING and ORDER OF COURT, p. 1. (App. Vol. II, 157).

¹⁸ 7/9/2021 RULING and ORDER OF COURT, pg. 7. (App. Vol. II, 163).

Specifically, and importantly, Plaintiff has offered to enter into a protective order to protect any trade secrets that may be revealed. However, Dethmers has refused.¹⁹ Accordingly, Dethmers' allegation that trade secrets will be revealed is simply an excuse for non-compliance of the subpoena for this clearly relevant information. Further, whether the information is actually a trade secret or confidential depends on the following factors:

(1) the extent to which the information is known outside of the party's business; (2) the extent to which it is known by those involved in the party's business; (3) the extent of measures taken by the party to guard the secrecy of the information; (4) the value of the information to the party and to the party's competitors; (5) the amount of effort or money expended by the party in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

State ex rel. Miller v. National Dietary Research, Inc., 454 N.W.2d 820, 824 (Iowa 1990), citing *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384389 (Iowa 1983). ***It is the burden of the party who is resisting discovery*** to make a showing to the district court based upon these factors that discovery should be prevented. *Id.* (emphasis added).

¹⁹ Plaintiff's Opposition to Combined Motion to Quash, Ex 2(b) – E-mail correspondence between Mittapalli's counsel and Dethmers, 5/12/21. (App. Vol. I, 79-80). Plaintiff has already entered into a protective order with the U-Haul entities to protect proprietary and confidential information, and is willing to do the same with Dethmers.

Here, Dethmers failed to meet this burden. Only where the information is found, in accordance with these factors, to actually be a trade secret/confidential commercial information, does the burden shift to the party seeking discovery to establish that the disclosure is relevant and necessary to the action (which Plaintiff has already shown). *See, American Broadcasting Companies v. Aeroe, Inc.*, No. 13-MC-0059, *11 (N.D. Iowa, Sept. 17, 2013 (unreported)).

For example, in *Local 447 of Int'l Union of Painters & Allied Trades v. Feaker Painting, Inc.*, 788 N.W.2d 398 (Iowa Ct. App. 2010), the court found that party the claiming trade secret did not make adequate showing to obtain a protective order where it failed to make “a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements”, and did not address the extent to which the information was known in the business, the measures taken to protect the information, the value of the information, the amount of effort or money expended in developing the information, or the ease with which the information could be duplicated or acquired, but instead simply cited the potential adverse economic effect of disclosure), citing *State ex rel. Miller v. National Dietary Research, Inc.*, 454 N.W.2d 820, 824 (Iowa 1990).

Similarly here, Dethmers only made stereotyped and conclusory statements such as, “Revealing such information could cause significant harm to Dethmers by making the information available to its competitors. This is a highly competitive industry with tight margins.”²⁰

Iowa courts have recognized that there is no true privilege against discovery of trade secrets or other confidential information. *Mediacom Iowa v. Inc. City of Spencer*, 682 N.W.2d 62, 66 (Iowa 2004), citing *Roberts v. DeKalb Agricultural Association, Inc.*, 259 Iowa 131, 140, 143 N.W.2d 338, 343 (Iowa 1966). ***Iowa courts have also recognized that a trade secret must and should be disclosed if the disclosure is relevant and necessary to the proper presentation of a party’s case. Id.***, citing *Roberts*, at 143, 343. Even assuming Dethmers made an appropriate showing that the information is confidential and/or a trade secret (which it has not), the documents should still be discoverable because Plaintiffs have a substantial need for them as they are relevant and necessary for the proper presentation of Plaintiffs’ case.

h. The District Court applied the reasonable particularity test

Dethmers argues that the “district court also erred by not applying the test of ‘reasonable particularity.’”²¹ This issue (like all other issues raised by

²⁰ Dethmers’ Memorandum in Support of Motion to Quash, p. 8. (App. Vol. I, 25).

²¹ Dethmers’ Proof Brief, p. 37

Dethmers) was squarely before the District Court in the Motion to Quash and the Motion to Reconsider. After reviewing the briefs and exhibits and considering oral argument, the Court disagreed and overruled Dethmers' Motion to Quash. Particularly, the District Court ruled, "As it relates to the 'reasonable particularity' argument, Dethmers provides no factual or legal issue to persuade the Court to hold otherwise."²² As detailed in section C, above, the items that Plaintiff now seeks testimony and documents are even *more narrow than at the time of the District Court proceedings*. Dethmers has failed to show the District Court abused its discretion by relying on unsupported facts or erroneously applying the law, and accordingly, its appeal should be denied.

i. The District Court applied the correct legal standard in compelling Dethmers to produce the documents outlined in Plaintiff's subpoena (just as it applied the correct legal standard for testimony on the items listed in Plaintiff's subpoena)

Dethmers makes the same arguments for noncompliance with document production as it does for noncompliance with producing a witness – trade secrets, undue burden, entitlement to different standard due to its non-party status. These issues have been briefed above and need not be rehashed.

²² 10/28/21 ORDER ON MOTION TO RECONSIDER, pg. 3. (App. Vol. II, 191).

Simply put, Dethmers has failed to show the District Court abused its discretion by relying on unsupported facts or erroneously applying the law.

Dethmers also argues that some of the topics are unduly burdensome as they are unlimited in time. Dethmers' contention is disappointing. Prior to the Motion to Quash hearing, Plaintiff offered to enter into an appropriate protective order address various concerns raised in Dethmers' Motion to Quash (Ex: time limitations). However, Dethmers has refused, stating "Dethmers is not going to work out any agreement to furnish documents or testimony."²³ Thus, Dethmers is not truly concerned about the time arguments raised in their brief. Instead, their primary concern is noncompliance.

Finally, Dethmers argues that Plaintiff can obtain the same information from Plaintiff's own expert, who previously testified in a similar case against Penske. This argument was previously denied by the District Court and should be denied here. Any documents received by the Plaintiff's expert in the similar (*Bramblett*) case were also subject to a confidential protective order and thus cannot be reproduced in this matter.

²³ Plaintiff's Opposition to Combined Motion to Quash, Ex 2(b) – E-mail correspondence between Mittapalli's counsel and Dethmers, 5/12/21. (App. Vol. I, 79-80). Plaintiff has already entered into a protective order with the U-Haul entities to protect proprietary and confidential information, and is willing to do the same with Dethmers.

Conclusion

Dethmers has failed to show the District Court abused its discretion by relying on unsupported facts or erroneously applying the law. The District Court's judgment should be upheld.

Request for Oral Argument

Appellee requests oral argument.

Respectfully submitted,

/s/ Frederick W. James

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The undersigned hereby certifies that this AMENDED Final Brief is being filed electronically using the EDMS system. Therefore, there is no printing cost.

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I, Frederick James, hereby certify that I served and filed the foregoing Appellee’s AMENDED Final Brief on May 18, 2022, by filing with the EDMS system pursuant to agreement of counsel and permission of this Court. All counsel are of record in the EDMS system and will be served by it.

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