

IN THE SUPREME COURT OF IOWA

No. 22-0576

CHARLENE JORGENSEN and MICHAEL JORGENSEN
Plaintiffs-Appellees

vs.

**ADAM B. SMITH, M.D., ADAM B. SMITH, M.D., P.C. and TRI-STATE
SPECIALISTS, LLP**
Defendants-Appellants.

**APPEAL FROM THE WOODBURY COUNTY DISTRICT COURT CASE
NO. LACV192198**

THE HONORABLE JEFFERY L. POULSON
PRESIDING JUDGE

DEFENDANTS-APPELLANTS' FINAL REPLY BRIEF

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

- I. Whether the District Court erred in determining that Iowa Code section 147.140 does not apply to the Jorgensens' negligent hiring, retention, and supervision claim against Tri-State Specialists, LLP.

Iowa Code § 147.140

Struck v. Mercy Health Servs.-Iowa Corp., 973 N.W.2d 533 (Iowa 2022)

Wolfe v. Shenandoah Med. Ctr., 2022 WL 2160449 (Iowa Ct. App. 2022)

ARGUMENT

I. Iowa Code Section 147.140 Applies to Plaintiffs' Negligent Retention Claim.

Iowa Code section 147.140 applies to negligent retention claims. *Struck v. Mercy Health Servs.-Iowa Corp.*, 973 N.W.2d 533, 539, 544 (Iowa 2022); *Wolfe v. Shenandoah Med. Ctr.*, 2022 WL 2160449, at *2–3 (Iowa Ct. App. June 15, 2022) (final publication decision pending). An independent certificate of merit is required on the negligent retention claim, even where a qualifying certificate of merit affidavit has been provided as to the underlying medical malpractice claims. *See Wolfe*, 2022 WL 2160449, at *1–2. The result in *Wolfe* ultimately turned on whether expert testimony is needed to support this type of claim, not on the fact that the claim was not expressly pled. *Id.* at *2 (“[t]he court observed concepts of which a factfinder would have to be knowledgeable for a negligent supervision claim”).

Plaintiffs try mightily to subvert the result compelled by *Struck* and *Wolfe*. Plaintiffs begin by contending that the certificate of merit affidavit requirements do not apply to their negligent retention claim because Tri-State’s supervision of Dr. Smith involved “nonmedical, administrative, [or] ministerial actions.” Pls.’ Br. at 30–31 (citing *Kastler v. Iowa Methodist Hosp.*, 193 N.W.2d 98, 101–02 (Iowa 1971)).

In support of this, Plaintiffs point to the same misinterpreted dictum upon which the district court relied. *See Hall v. Jennie Edmundson Mem’l Hosp.*, 812

N.W.2d 681, 684 (Iowa 2012). *Hall* specifically did not address the proper standard for negligent credentialing claims. *Id.* at 686. “Because we have concluded the district court’s judgment in favor of the defendants should be affirmed, *we find it unnecessary to address the defendants’ argument that the district court should have applied a higher ‘professional’ standard of care.*” *Id.* (emphasis added). Plaintiffs’ reliance on *Hall* for the proposition that expert testimony is not needed for a negligent credentialing claim—such that expert testimony is similarly not needed for Plaintiffs’ negligent retention claim—is, like the reliance of the district court, misplaced.

The necessity of expert testimony in the context of negligent credentialing was recently addressed by this Court. *See Rieder v. Segal*, 959 N.W.2d 423, 431 (Iowa 2021). “The plaintiff in a negligent credentialing claim *must* present expert testimony establishing that the defendant deviated from the applicable standard of care to raise a genuine issue of material fact.” *Id.* (emphasis added) (quoting *Brookins v. Mote*, 292 P.3d 347, 364 (Mont. 2012)). Such expert testimony may be needed for, among other things, establishing the relevance of prior lawsuits to the hospital’s credentialing decision. *See id.* at 430 (“the existence of prior lawsuits *may* be directly relevant to the hospital’s credentialing decision”).

Ironically, Plaintiffs attempt to avoid *Rieder* by arguing that a negligent retention claim is not analogous to a negligent credentialing claim. Pls.’ Br. at 47–

48. “Negligent credentialing is not the same claim as negligent hiring, supervision, or retention claims.” *Id.* at 48. However, when relying on *Hall*, Plaintiffs’ position was that the negligent credentialing claim at issue there was “analogous to the Jorgensens’ claims here.” *Id.* at 32. This inconsistency is emblematic of Plaintiffs’ arguments regarding the application of Iowa Code section 147.140.

The out-of-jurisdiction cases Plaintiffs rely upon are similarly unpersuasive. *Id.* at 33–36. As an example, the statutory definition of “medical malpractice” in North Carolina at the time when the case Plaintiffs cite was decided was limited to claims arising “in the performance of medical, dental, or other health care by a health care provider.” *Est. of Waters v. Jarman*, 547 S.E.2d 142, 144 (N.C. Ct. App. 2001) (quoting N.C. Gen. Stat. § 90–21.11).

Since *Waters*, North Carolina, like many other states, including Iowa, has strengthened protections for health care providers from claims which are unsupported by expert testimony. *See Struck*, 973 N.W.2d at 541–42 (citing 9 Bus. & Com. Litig. Fed. Cts. § 103:31 Tort reform—Certificate of merit (5th ed. 2021)) (noting 28 states which have enacted certificate or affidavit of merit statutes). North Carolina’s legislature clarified the meaning of “medical malpractice” to expressly include claims alleging “negligent credentialing or negligent monitoring and supervision.” N.C. Gen. Stat. § 90–21.11(2)(b).

Iowa’s certificate of merit affidavit requirements apply to claims based upon a health care provider’s “alleged negligence in the practice of that profession or occupation or in patient care.” Iowa Code § 147.140(1)(a). As addressed more fully in Defendants’ Final Brief, the decision to retain Dr. Smith clearly falls within Tri-State’s “occupation.” *See Occupation*, BLACK’S LAW DICTIONARY (11th ed. 2019). Plaintiffs’ own allegations that Tri-State failed to exercise reasonable care in hiring, supervising, employing, and/or retaining Dr. Smith presupposes that part of Tri-State’s usual work or business (i.e., its “occupation”) includes supervising health care professionals such as Dr. Smith. *See App. 16 at ¶ 53.*

Plaintiffs’ negligent retention claim falls within the definition of claims for which the certificate of merit affidavit requirements apply. *See Iowa Code § 147.140(1)(a); Struck*, 973 N.W.2d at 539, 544; *Wolfe*, 2022 WL 2160449, at *2–3. This definition is far broader than the narrow definition of medical malpractice actions at issue in *Waters*. *See Waters*, 547 S.E.2d at 144. Thus, *Waters* is easily distinguishable and unpersuasive.

Plaintiffs cite another out-of-state case for the proposition that medical negligence claims trigger expert affidavit requirements, whereas simple negligence claims do not. Pls.’ Br. at 35–36 (citing *Upson Cnty. Hosp., Inc. v. Head*, 540 S.E.2d 626, 630 (Ga. Ct. App. 2000)). Plaintiffs rely on the recitation of the general rule in *Head* but ignore the court’s application of that rule. *See Head*, 540 S.E.2d at 390–

93. The Plaintiff asserted claims alleging that a hospital negligently trained its employees, resulting in inadequate care and battery. *See id.* at 392. *Head* held that while an expert affidavit would not be required, to the extent the petition alleged battery, an expert affidavit would be required on the negligent training and supervision claims alleging professional negligence with respect to the plaintiff's treatment. *See id.* at 390–93.

Plaintiffs' analysis of *Head* begs the question of whether the negligent retention claim asserted against Tri-State arises from professional negligence or simple negligence, summarily concluding that the claim "concerns administrative, clerical, or routine acts." Pls.' Br. at 36. However, the plain language of Iowa Code section 147.140 provides that its requirements apply to claims based upon a health care provider's "alleged negligence in the practice of that profession or occupation or in patient care." Iowa Code § 147.140(1)(a). The decision to retain physicians involves professional judgment and is part of a health care provider's occupation, meaning this criterion for the certificate of merit affidavit requirements applying to Plaintiffs' negligent retention claim is satisfied. *See id.*; *Struck*, 973 N.W.2d at 539, 544; *Wolfe*, 2022 WL 2160449, at *2–3.

Perhaps recognizing the result compelled by a plain reading of the statute and the decisions in *Struck* and *Wolfe*, Plaintiffs overstate the implications of the certificate of merit affidavit requirements applying to negligent retention claims

against health care providers and the difficulty they and similarly situated plaintiffs would have with compliance. Pls.’ Br. at 36–40. The position that a plaintiff would need to be “clairvoyant” or engage in “soothsaying” to comply with the certificate of merit affidavit requirements for a negligent retention claim ignores the good cause exception which exists within Iowa Code section 147.140. *See* Iowa Code § 147.140(4).

Plaintiffs, without sufficient “employment-related facts” to secure a certificate of merit affidavit within the timeframe contemplated, could readily avail themselves of this relief. *See id.* Plaintiffs in this case failed to do so. Application of the certificate of merit affidavit statute does not amount to the effective bar on negligent retention claims that Plaintiffs allege.

Plaintiffs also argue that finding a qualifying expert to provide a certificate of merit affidavit for their negligent retention claim would prove difficult. *See* Pls.’ Br. at 38. Plaintiffs go on to disprove their own point, noting that “[a] hospital administrator, medical staff director, risk management officer, or even an employment lawyer could all provide expert testimony as to employment claims in a health care setting [sic].” *Id.* at 38. District courts confronted with this question have arrived at a similar conclusion. *See Hanner, et al. v. Smith, et al.*, Woodbury County Case No. LACV191581 (District Court Ruling, Feb. 18, 2022) at 15 (noting that a hospital or a medical clinic administrator would be qualified to provide expert

testimony as to Dr. Smith’s “red flag[s]”). It is plainly the case that finding a qualifying expert is not the burden Plaintiffs allege and Plaintiffs failed to provide *any* expert in this matter.

II. Expert Testimony on the Issues of Breach of the Standard of Care and/or Causation is Necessary for Plaintiffs to Establish a Prima Facie Case.

Plaintiffs’ arguments about why Iowa Code section 147.140 does not apply to their negligent retention claim lacks focus on the text of the statute itself. A certificate of merit affidavit is required for “any action for personal injury or wrongful death against a health care provider based upon the alleged negligence in the practice of that profession or occupation or in patient care, which includes a cause of action for which expert testimony is necessary to establish a prima facie case.” Iowa Code § 147.140(1)(a).

Plaintiffs do not appear to dispute that their claim is for personal injury and that Tri-State is a health care provider. The third requirement is also met, as negligence in retaining health care professionals is part of Tri-State’s “occupation.” *See id.* Thus, the only remaining question with respect to applicability of the certificate of merit affidavit requirements is whether Plaintiffs’ negligent retention claim is “a cause of action for which expert testimony is necessary to establish a prima facie case.” *Id.*

As noted, this Court and the Court of Appeals have recently addressed the requirement for expert testimony and the applicability of the certificate of merit

affidavit requirements to claims of negligent retention of professional staff. *See, e.g., Struck*, 973 N.W.2d at 539, 544; *Wolfe*, 2022 WL 2160449, at *3. *Struck* held that “the district court correctly ruled that Iowa Code section 147.140 applied to *Struck*’s negligent hiring and retention claims against Mercy.” *Struck*, 973 N.W.2d at 544.

The Iowa Court of Appeals, relying on *Struck*, affirmed a district court’s dismissal of another plaintiff’s negligent supervision of professional staff claims against a health care provider. *Wolfe*, 2022 WL 2160449, at *3. A factfinder would need to be knowledgeable of numerous concepts to properly adjudicate negligent retention claims in this context. *See id.* at *2. Such concepts are not within the ordinary knowledge of laypersons and instead require expert testimony. *Id.* at *2–3.

Plaintiffs attempt, as they must, to distinguish their claim from the claims at issue in *Struck* and *Wolfe*. Pls.’ Br. at 41–45, 47. Plaintiffs claim that the outcome in *Struck* was determined solely by the plaintiff in that case failing to file a certificate of merit affidavit as to her underlying professional negligence claims. *Id.* at 42–43.

Defendants acknowledge that there was a failure to file any certificate of merit affidavit in *Struck* and a certificate of merit affidavit was filed as to the direct claims in this case against Dr. Smith. It is no doubt true, as the Court in *Struck* acknowledged, that a certificate of merit affidavit on an underlying claim related to treatment is *necessary* for a claim of negligent supervision to survive. *Struck*, 973 N.W.2d at 544. However, it does not follow that such a certificate of merit affidavit

is *sufficient* and no independent certificate of merit affidavit on the negligent supervision claim is required. The relevant inquiry remains whether the direct negligent retention claim in and of itself requires expert testimony. Iowa Code § 147.140(1)(a).

Wolfe addresses the requirement of an independent certificate of merit affidavit when an underlying certificate of merit affidavit has been offered against the health care professionals alleged to have provided negligent care. *Wolfe*, 2022 WL 2160449, at *2–3. The plaintiffs in *Wolfe* filed certificates of merit against the doctors and nurses against whom they made claims. *Id.* at *1. However, no certificate of merit affidavit was filed with respect to the plaintiffs’ negligent supervision claim against the hospital employing the doctors and nurses. *Id.*

The district court determined that a separate certificate of merit affidavit would be needed to support the claim against the hospital. *Id.* at *2. The district court further held that any such claim must be dismissed with prejudice for the plaintiffs’ failure to substantially comply with the certificate of merit affidavit requirements. *Wolfe*, 2022 WL 2160449, at *2. These findings were undisturbed by the Court of Appeals. *Id.* at *3.

Plaintiffs claim *Wolfe* is distinguishable because the plaintiffs in *Wolfe* never explicitly pled negligent supervision claims in their petition. *See* Pls.’ Br. at 47. However, the analysis of the district court, adopted by the Court of Appeals, turned

on the necessity of expert testimony to support negligent retention claims—not any deficiency in those plaintiffs’ pleadings. *Wolfe*, 2022 WL 2160449, at *2. Due to the multitude of concepts, beyond the knowledge of lay jurors, an independent certificate of merit affidavit was found to be required to support a negligent retention claim. *See id.* The same result is appropriate for Plaintiffs’ negligent supervision claim against Tri-State.

Plaintiffs alternatively argue that, even if a certificate of merit affidavit would ordinarily be required to support a negligent retention claim against a health care provider, such a certificate of merit affidavit is not required here. *See* Pls.’ Br. at 60 (arguing either Iowa Code § 147.140 does not apply *or* an exception to the requirement for expert testimony applied). Plaintiffs claim that Tri-State’s breach of the standard of care was so obvious that expert testimony is not required and that Tri-State’s decision to employ medical professionals like Dr. Smith is “nonmedical, administrative, or ministerial in nature.” *Id.* at 48–57.

Plaintiffs argue that it is within the realm of lay knowledge that Tri-State “allowed” Dr. Smith “to perform malpractice.” *Id.* at 50. This is wholly inconsistent with Iowa law requiring expert testimony to establish the merits and relevance of any prior malpractice claims to claims against health care providers alleging negligent employment. *See Rieder*, 959 N.W.2d at 430.

Plaintiffs' position that Tri-State should have disclosed any and all knowledge it had regarding Dr. Smith, prior to Ms. Jorgensen's June 7, 2018 procedure, is directly at odds with the requirement for expert testimony in the context of informed consent. *Kennis v. Mercy Hosp. Med. Ctr.*, 491 N.W.2d 161, 166 (Iowa 1992) (to show lack of informed consent, the patient must establish various elements which are not so obvious as to be within the comprehension of laypersons, requiring expert testimony). Plaintiffs' claim that laypersons can also determine the causal connection between Tri-State's alleged negligent retention of Dr. Smith and Ms. Jorgensen's alleged injuries is also inconsistent with Iowa law. *Wolfe*, 2022 WL 2160449, at *2 (jury could not determine "if and how the alleged negligent supervision did or did not cause or contributorily cause the injury" without the assistance of expert testimony).

The circumstances which Plaintiffs cite as making Tri-State's breach so obvious that expert testimony is not needed are all circumstances under which expert testimony has been found to be required under Iowa law. *See Rieder*, 959 N.W.2d at 430; *Kennis*, 491 N.W.2d at 166; *Wolfe*, 2022 WL 2160449, at *2. Nevertheless, Plaintiffs still claim that Tri-State retaining Dr. Smith was such an obvious breach of the standard of care that expert testimony is not required and therefore, the certificate of merit affidavit requirements do not apply. Pls.' Br. at 57.

“Ordinarily, evidence of the applicable standard of care—and its breach—must be furnished by an expert.” *Struck*, 973 N.W.2d at 539. The obvious breach exception provides that expert testimony is not needed “where the physician’s lack of care is so obvious as to be within the comprehension of a layperson.” *Oswald v. LeGrand*, 453 N.W.2d 634, 636 (Iowa 1990). For example, “expert testimony would not be required in a malpractice action alleging the surgeon removed the wrong kidney or inadvertently left a clamp inside the patient’s body.” *Struck*, 973 N.W.2d at 539 n.4.

The obvious breach exception, by its nature as an *exception* to the general rule, does not apply in the overwhelming majority of cases. *See Struck*, 973 N.W.2d at 539. The exception does not apply when the relevant questions are “technical” such that their answers are “not so obvious as to be within the comprehension of a layperson.” *Kennis*, 491 N.W.2d at 166–67. The question of whether a health care provider should terminate professional staff involves consideration of all of the following illustrative but not exhaustive criteria:

- the medical industry’s standards for supervision of a medical professional treating a patient with plaintiff’s condition;
- what is and is not acceptable in the supervision of said medical professional;
- an understanding of the patient’s condition and why particular actions are taken or not taken;
- an understanding of how actions and procedures, whether taken or not taken, affect the patient’s condition;

- whether permitting or prohibiting those actions in their supervision constitutes negligence;
- whether defendant’s adherence or deviation from this standard constitutes negligence;
- sufficient comprehension of the situation to determine if and how the alleged negligent supervision did or did not cause or contributorily cause the injury.

Wolfe, 2022 WL 2160449, at *2.

As properly held in *Wolfe*, the question of retaining professional staff is the type of highly technical question which a lay jury could not address without the assistance of expert testimony. *See id.* at *2–3. Thus, the obvious breach exception to the requirement for expert testimony would not apply. *See Kennis*, 491 N.W.2d at 166–67. Plaintiffs’ reliance on out-of-state authority to the contrary can be easily distinguished, as Defendants already did in their Proof Brief. Defs.’ Br. at 28–29.

Plaintiffs also incorrectly claim that expert testimony is not required on the issue of causation in this case. Pls.’ Br. at 57. “[A] layperson would also have to have sufficient comprehension of the situation to determine if and how the alleged negligent supervision did or did not cause or contributorily cause the injury.” *Wolfe*, 2022 WL 2160449, at *2. Though causation need not be addressed in the contents of a certificate of merit affidavit itself, the certificate of merit affidavit requirements are triggered whenever expert testimony will be necessary for a plaintiff to prove causation, as causation is part of the plaintiff’s prima facie case. *Est. of Butterfield*

by *Butterfield v. Chautauqua Guest Home, Inc.*, 2022 WL 3440703, at *2–3 (Iowa Ct. App. 2022) (citing *Schmitt v. Floyd Valley Healthcare*, 2021 WL 3077022, at *2 (Iowa Ct. App. 2021)).

The factual correlation between the prior allegations of malpractice and Plaintiffs’ claim against Tri-State cannot be established without expert testimony. *See Rieder*, 959 N.W.2d at 430. Plaintiffs’ damages are wholly unrelated to the billing allegations, such that the damages fall outside the scope of any negligence by Tri-State in retaining Dr. Smith. *Thompson v. Kaczinski*, 774 N.W.2d 829, 840 (Iowa 2009); *see also DeBower v. Spencer*, 2021 WL 4887976, at *4 (N.D. Iowa 2021) (quoting *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 40 (Iowa 2018)) (discussing “post-*Thompson*” foreseeability standard with respect to negligent hiring and supervision claims).

At the very least, some expert testimony would be required to establish a causal connection between either the malpractice and/or the billing allegations and Plaintiffs’ damages, due to the technical considerations involved in hiring and retaining medical professionals. *See Wolfe*, 2022 WL 2160449, at *2. The contrary position of Plaintiffs and the district court is inconsistent with Iowa law and should be rejected.

Plaintiffs also fail to demonstrate that their negligent retention claim falls within the “nonmedical, administrative, or ministerial acts” exception. The

nonmedical or routine exception to the requirement for expert testimony is narrowly construed. *See Thompson v. Embassy Rehab. & Care Ctr.*, 604 N.W.2d 643, 645–46 (Iowa 2000). The exception most often involves slip and fall cases where the defendant health care provider is not engaged in professional activities. *See Kastler*, 193 N.W.2d at 102; *Landes v. Women’s Christian Ass’n*, 504 N.W.2d 139, 141–42 (Iowa Ct. App. 1993).

The decision to retain a medical professional involves professional judgment, beyond the understanding of lay jurors. *Wolfe*, 2022 WL 2160449, at *2. Such a claim therefore does not fall within the narrow nonmedical, administrative, or ministerial acts exception. *See Thompson*, 604 N.W.2d at 645–46. Consistent with the specialized fact finding necessary to support claims of negligent retention of professional staff against health care providers, *Struck* and *Wolfe* found that expert testimony was required. *See Struck*, 973 N.W.2d at 544; *Wolfe*, 2022 WL 2160449, at *2–3. The inconsistent conclusion by the district court should be reversed.

III. Plaintiffs’ Failure to Substantially Comply with Iowa Code Section 147.140 Results in Mandatory Dismissal with Prejudice of Plaintiffs’ Negligent Retention Claim.

Plaintiffs’ negligent retention claim against a health care provider seeks recovery for personal injury damages and is based upon Tri-State’s alleged negligence in its practice of its profession or occupation. *See Iowa Code* § 147.140(1)(a). Based on the reasons set forth above, expert testimony is also

required for Plaintiffs to establish their prima facie case. *See supra* at § 2. Hence, all the triggering elements are satisfied and the certificate of merit affidavit requirements pursuant to Iowa Code section 147.140 apply.

When the certificate of merit affidavit requirements apply, a plaintiff must “substantially comply” with those requirements. Iowa Code § 147.140(6). A plaintiff’s failure to substantially comply “shall result, upon motion, in dismissal with prejudice.” *Id.* Substantial compliance is to be gauged by looking to the legislative purpose in enacting Iowa Code section 147.140, which is “to enable healthcare providers to quickly dismiss professional negligence claims that are not supported by the requisite expert testimony.” *Struck*, 973 N.W.2d at 541.

Plaintiffs failed completely to comply with the certificate of merit affidavit requirements, much less substantially so. *See* Iowa Code § § 147.140(1)(a), (6). Plaintiffs failed to move the Court for an extension of the deadline to comply with the certificate of merit affidavit requirements within the time frame provided. *See* Iowa Code § 147.140(4). As a result of Plaintiffs’ failure to substantially comply with the requirements and failure to make a timely request for an extension, the district court was without discretion and was required to dismiss Plaintiffs’ negligent retention claim, with prejudice. *See* Iowa Code § 147.140(6). The district court’s erred by failing to do so, in contradiction of the plain dictates of the Iowa Legislature.

CONCLUSION

Iowa Code section 147.140 applies to Plaintiffs' negligent retention claim. It is a claim against Tri-State, a health care provider, alleging that Tri-State negligently engaged in its occupation by failing to terminate Dr. Smith prior to June 7, 2018, and that, as a result, Ms. Jorgenson suffered damages related to personal injuries. *See* Iowa Code § 147.140(1)(a). Expert testimony is required to prove Plaintiffs' claim and no exception the requirement for expert testimony applies. *See Struck*, 973 N.W.2d at 544; *Wolfe*, 2022 WL 2160449, at *2–3. Plaintiffs' negligent retention claim is subject to mandatory dismissal, with prejudice, as a result of Plaintiffs' failure to substantially comply with the certificate of merit affidavit requirements. Iowa Code § 147.140(6).

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CERTIFICATE OF COMPLIANCE

Defendants-Appellants, Adam B. Smith, M.D.; Adam Smith, M.D., P.C.; and Tri-State Specialists, LLP, pursuant to Iowa Rules of Appellate Procedure 6.903(1)(g)(1), hereby certifies that this brief contains 3,884 words of a 14-point proportionally spaced Times New Roman font and it complies with the 7,000-word maximum permitted length of the brief.

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CERTIFICATE OF FILING

I, the undersigned, hereby certify that I will electronically file the attached Defendants-Appellants' Final Reply Brief with the Clerk of the Supreme Court by using the EDMS filing system.

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PROOF OF SERVICE

I, the undersigned, hereby certify that I did serve the attached Defendants-Appellants' Final Reply Brief on all other parties electronically utilizing the EDMS filing system, which will provide notice to counsel for the Appellees.

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ATTORNEY'S COST CERTIFICATE

The undersigned attorney does hereby certify that the actual cost of preparing the foregoing Defendants-Appellants' Final Reply Brief was the sum of \$0.00 exclusive of service tax, postage, and delivery charges.

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