IN THE SUPREME COURT OF IOWA
No. 23-0603

HUS HARI BULJIC, *Individually and as Administrator of the Estate of* SEDIKA BULJIC; HONARIO GARCIA, *Individually and as Administrator of the Estate of* REBERIANO LENO GARCIA; ARTURO DE JESUS HERNANDEZ & MIGUEL ANGEL HERNANDEZ, *as Co-Administrators of the Estate of* JOSE AYALA; *and* OSCAR FERNANDEZ, *Individually and as Administrator of the Estate of* ISIDRO FERNANDEZ,

APPELLANTS,

v.

TYSON FOODS, INC.; TYSON FRESH MEATS, INC.; JOHN H. TYSON; NOEL W. WHITE; DEAN BANKS; STEPHEN R. STOUFFER; TOM BROWER; TOM HART; CODY BRUSTKERN; JOHN CASEY; BRET TAPKEN; JAMES HOOK; DOUG WHITE; MARY JONES; *and* DEBRA ADAMS,

APPELLEES.

Appeal from the Iowa District Court for Black Hawk County
The Honorable John J. Sullivan
District Court Nos. LACV140521 & LACV140822

FINAL BRIEF OF APPELLEES
TOM HART, CODY BRUSTKERN, JOHN CASEY, BRET TAPKEN, & JAMES HOOK

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STATEMENT OF THE ISSUES[1]

I. Whether the District Court correctly dismissed Plaintiffs' operative Petitions for lack of subject matter jurisdiction over the workplace injury claims stated therein pursuant to the Legislature's mandate that jurisdiction over those claims is solely with the Iowa Division of Workers' Compensation?

Referenced Authorities

Bailey v. Batchelder, 576 N.W.2d 334 (Iowa 1998)

Benskin, Inc. v. W. Bank, 952 N.W.2d 292 (Iowa 2020)

Brill v. Lansky, 449 N.W.2d 367 (Iowa 1989)

Cincinnati Ins. Cos. v. Kirk, 801 N.W.2d 856 (Iowa Ct. App. 2011)

Cutler v. Klass, Whicher & Mishne, 473 N.W.2d 178 (Iowa 1991)

Doyle v. Dugan, 229 Iowa 724, 295 N.W. 128 (1940)

Dudley v. Ellis, 486 N.W.2d 281 (Iowa 1992)

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[1] In the interest of case efficiency and judicial economy, Appellees Messrs. Hart, Brustkern, Casey, Tapken, and Hook join and incorporate by reference and in full the separate Appellee Brief of their co-Defendant-Appellees filed contemporaneously herewith. They submit this brief to supplement the arguments presented on the single issue of subject matter jurisdiction under Iowa Code § 85.20(2). They join in full the other Defendants' arguments regarding that issue, as well as all arguments concerning (1) the application of Iowa's COVID-19 Back-to-Business Immunity Act and (2) the District Court's proper denial of Plaintiffs' futile request to amend their Petitions. In the interest of avoiding repetition, those arguments are not addressed in this Brief but are incorporated by reference.

Henrich v. Lorenz, 448 N.W.2d 327 (Iowa 1989)

Iowa Code § 85.20

Iowa R. App. P. 6.907

Iowa R. Civ. P. 1.421(1)(a)

Judge v. Clark, No. 05-1219, (Iowa Ct. App. 2006)

Klinge v. Bentien, 725 N.W.2d 13 (Iowa 2006)

Lukken v. Fleischer, 962 N.W.2d 71 (Iowa 2021)

McGill v. Fish, 790 N.W.2d 113 (Iowa 2010)

Meyer v. Behrens, 601 N.W.2d 76 (Iowa 1999)

Nelson v. Winnebago Indus., Inc., 619 N.W.2d 385 (Iowa 2000)

Simmons v. Acromark, Inc., No. 00-1625 (Iowa Ct. App. 2002)

Suckow v. NEOWA FS, Inc., 445 N.W.2d 776 (Iowa 1989)

Tallman v. Hanssen, 427 N.W.2d 868 (Iowa 1988)

Thompson v. Bohlken, 312 N.W.2d 501 (Iowa 1981)

Tigges v. City of Ames, 356 N.W.2d 503 (Iowa 1984)

U.S. Bank v. Barbour, 770 N.W.2d 350 (Iowa 2009)

Unertl v. Bezanson, 414 N.W.2d 321 (Iowa 1987)

Walker v. Mlakar, 489 N.W.2d 401 (Iowa 1992)

Walles v. Int'l Bhd. of Elec. Workers, 252 N.W.2d 701 (Iowa 1977)

Woodruff Constr. Co. v. Mains, 406 N.W.2d 787 (Iowa 1987)

Zdroik v. Iowa S. Ry. Co., No. 20-0233 (Iowa Ct. App. 2021)

ROUTING STATEMENT

This appeal concerns the "application of existing legal principles" and therefore should be adjudicated by the Court of Appeals. *See* Iowa R. App. P. 6.1101(3)(a). The case principally concerns the application of Iowa Code § 85.20, which is the subject of substantial existing precedent. *See*, *e.g.*, *McCoy v. Thomas L. Cardella & Assocs.*, 992 N.W.2d 223 (Iowa 2023); *Lukken v. Fleischer*, 962 N.W.2d 71 (Iowa 2021); *Terry v. Dorothy*, 950 N.W.2d 246 (Iowa 2020); *McGill v. Fish*, 790 N.W.2d 113 (Iowa 2010); *Nelson v. Winnebago Indus., Inc.*, 619 N.W.2d 385 (Iowa 2000); *Walker v. Mlakar*, 489 N.W.2d 401 (Iowa 1992); *Henrich v. Lorenz*, 448 N.W.2d 327 (Iowa 1989); *Thompson v. Bohlken*, 312 N.W.2d 501 (Iowa 1981). The law controlling the questions presented is deep, and Appellants present no question "of enunciating or changing legal principals" that necessitate a ruling by the Supreme Court. *Cf.* Iowa R. App. P. 6.1101(2)(f). Appellants' proposed basis for retention—*i.e.*, that the case will "allow the Iowa Supreme Court to reaffirm the legal principle followed in Iowa"—is not sufficient. *Compare* Appellants Br. at 18; *with* Iowa R. App. P. 6.1101(2)(f). No

such "reaffirmation" is required or beneficial to the substantial extant case law.

Appellants' alternative proposed basis for retention—*i.e.*, the bare assertion that the case involves "fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court"—is not borne out by the actual claims in the case, which are in substance workplace injury claims.

The appeal should be transferred to the Court of Appeals.

STATEMENT OF THE CASE

This appeal concerns two personal injury cases filed in the Iowa District Court for Black Hawk County, in which the Plaintiffs allege that their relatives contracted COVID-19 in their place of work and later died from complications associated with the disease. *See* Buljic Pet. ¶¶ 3, 6, 9; Fernandez Pet. ¶ 3.[2] All Plaintiffs concede that their claims "arise out of [their relatives'] employment with Tyson Foods." *See* Buljic Pet. ¶¶ 4, 7, 10; Fernandez Pet. ¶ 4.

As set forth in the provisions of the Iowa Workers' Compensation Act ("IWCA"), Iowa Code ch. 85, therefore, the entirety of the Plaintiffs' claims are exclusively within the jurisdiction of the Iowa Division of Workers' Compensation ("DWC"). Nevertheless, the Plaintiffs initiated these suits against their relatives' employer in the Iowa District Court, which lacks jurisdiction to hear the claims.

Additionally, the Plaintiffs have named thirteen Tyson employees as Defendants *in their individual capacities* for alleged

[2] The operative Petitions in the *Buljic* and *Fernandez* cases are the Second Amended Petitions, herein cited respectively as "Buljic Pet." and "Fernandez Pet."

conduct that was exclusively within the scope of their employment. Among those thirteen individually named Defendants are five former supervisors at Tyson's Waterloo, Iowa facility: Tom Hart, Cody Brustkern, John Casey, Bret Tapken, and James Hook, collectively referenced herein as the Supervisory Defendants.[3] According to the Petitions, "[a]t all relevant times, the Supervisory Defendants were within the course and scope of their employment." Buljic Pet. ¶ 265; Fernandez Pet. ¶ 267.

All Defendants jointly moved to dismiss the Petitions for lack of subject matter jurisdiction and failure to state a claim. Following fulsome briefing and oral submissions from the parties, the District Court correctly ruled that it lacked subject matter jurisdiction over the Petitions and dismissed both cases. *See* Ruling at 4.[4] The

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[3] The Second Amended Petitions added Mary Jones as an additional "Supervisory Defendant." Ms. Jones is represented by separate counsel in this appeal and is therefore excluded from the term "Supervisory Defendants" for purposes of this Brief.

[4] On January 20, 2023, the District Court filed identical orders in both the *Buljic* and *Fernandez* cases, which included the captions for both cases and dismissed both suits based on the same analyses and conclusions. This joint Ruling on Motion to Dismiss is cited herein as "Ruling."

District Court thereafter correctly denied the Plaintiffs' Rule 1.904 Motion to Reconsider its dismissal order. This appeal followed.

STATEMENT OF FACTS

In the interest of judicial economy, the Supervisory Defendants hereby adopt and herein incorporate by reference and in full the Statement of Facts contained in the Appellees' Brief of the other Defendants. *See* Tyson Appellee Br. at 10, *et seq*.

The Supervisory Defendants additionally highlight that the Petitions identify the key times at issue to be "March and April 2020," *i.e.*, the earliest days of the COVID-19 pandemic. According to the Petition, the Waterloo facility during that time remained in operation but in addition, *inter alia*: restricted visitor access to the facility (*Buljic* Pet. ¶ 100); instructed workers with positive COVID-19 test results to quarantine at home for fourteen days (*id.* ¶ 122); posted signs encouraging the use of face coverings the day following the very first such recommendation issued from the Centers for Disease Control (*id.* ¶¶ 126, 128); two days later, and amidst a market shortage of medical-grade face masks, provided cloth face coverings for employee use (*id.* ¶ 130); installed temperature check stations to scan all employees entering the facility (*id.* ¶ 132); and

then acquired, distributed, and mandated the use of company-issued medical-style face coverings (¶ 165).

Beyond these supplements, the Supervisory Defendants join and rest upon the Statement of Facts in their co-Defendants' Appellee Brief.

ARGUMENT

I. The District Court Correctly Concluded It Lacked Subject Matter Jurisdiction Over the Plaintiffs' Claims Against the Supervisory Defendants

The District Court correctly concluded that the Legislature has vested *exclusive* jurisdiction over the Plaintiffs' claims in the DWC. Because the District Court did not have subject matter jurisdiction over the claims, it correctly dismissed the Petitions.

Again in the interest of maximizing the Court's efficiency in considering the case, the Supervisory Defendants hereby adopt and herein incorporate by reference and in full Section II of the Argument in the other Defendants' brief. *See* Tyson Appellee Br., Analysis § II. Those arguments cleanly dispose of the appeal and demonstrate why the District Court should be affirmed. The Supervisory Defendants supplement them as follows.

Error Preservation

The Supervisory Defendants do not dispute that the Plaintiffs preserved the issue of subject matter jurisdiction under Iowa Code § 85.20 for appeal.

Standard of Review

In the case at bar, the District Court specifically "determined that it does not have subject matter jurisdiction in these matters" and dismissed the Petitions on that basis. *See* Ruling at 4. The court had "inherent power to determine whether it has jurisdiction over the subject matter of the proceedings before it." *Tigges v. City of Ames*, 356 N.W.2d 503, 512 (Iowa 1984). "[R]eview of rulings on subject matter jurisdiction is for correction of errors at law." *Klinge v. Bentien*, 725 N.W.2d 13, 15 (Iowa 2006); *see* Iowa R. App. P. 6.907.

Likewise, the District Court's ruling on the Defendants' Motion to Dismiss is reviewed "for corrections of error at law." Iowa R. App. P. 6.907; *see Suckow v. NEOWA FS, Inc.*, 445 N.W.2d 776, 777 (Iowa 1989). This Court will "accept as true the facts alleged in the petition"; however, it need not accept a bare allegation that subject matter jurisdiction exists and is not limited to the four corners of the operative pleading when considering subject matter jurisdiction. *See McGill v. Fish*, 790 N.W.2d 113, 116 & n.2 (Iowa 2010).

The Plaintiffs intentionally conflate these legal standards with the standards to be applied to claims that a pleading fails to "state a claim upon which any relief may be granted" under Iowa R. Civ. P. 1.421(1)(f). The Plaintiffs claim that *all* motions to dismiss are "disfavored," "premature," and "virtually emasculated" by Iowa's notice pleading standard. *See* Appellants' Br. at 36. This is incorrect.

None of the cases cited by the Plaintiffs support the application of these principles to a dismissal predicated upon *subject matter jurisdiction*. *See id.*; *cf. Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 298–99 (Iowa 2020) (analyzing order dismissing case for failure to state a claim and as time barred); *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353–54 (Iowa 2009) (analyzing notice pleading standard as it applies to a claim that a pleading "fails to state a claim upon which any relief may be granted"); *Unertl v. Bezanson*, 414 N.W.2d 321, 324 (Iowa 1987) (affirming dismissal for failure to state a claim). Though the cited cases do not concern subject matter jurisdiction bar, the Plaintiffs nevertheless cite to

them in the hopes of obtaining a generalized benefit from Iowa's notice-pleading standard.

The Plaintiffs go so far as to misrepresent the holdings of the cited cases. They assert that this Court in *Unertl* ruled that "Iowa's liberal notice-pleading standard has 'virtually emasculated' *dismissal motions*." Appellants' Br. at 36 (emphasis added). But the *Unertl* Court was more explicit, holding that Iowa's "philosophy of pleading has virtually emasculated the motion to dismiss *for failure to state a claim*." *Unertl*, 414 N.W.2d at 324 (emphasis added). "For such a motion [*i.e.*, a motion to dismiss for failure to state a claim] to be sustained, it must be concluded that no state of facts is conceivable under which the plaintiff might show a right of recovery." *Id.* Likewise, the progenitor case of the now oft-quoted directive to "exercise . . . professional patience" regarding motions to dismiss concerned motions seeking dismissal for the failure to state a claim. *See Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 181–83 (Iowa 1991).

The Plaintiffs in this case are not entitled to the application of the lower notice-pleading standard when it comes to question of

the District Court's subject matter jurisdiction. Iowa courts are not to demur as to their own authority to hear a dispute; nor will they defer their determination on subject matter jurisdiction until a more convenient procedural moment for the Plaintiffs. To the contrary, courts *must* dismiss a case when a jurisdictional defect is uncovered.

> It makes no difference how the question [of subject matter jurisdiction] comes to [the court's] attention. Once raised, the question must be disposed of, no matter in what manner of form or stage presented. The court on its own motion will examine grounds of its jurisdiction before proceeding further.

Tigges, 356 N.W.2d at 510 (quoting *Walles v. Int'l Bhd. of Elec. Workers*, 252 N.W.2d 701, 710 (Iowa 1977)).

> The [IWCA's] exclusivity means the district court has no subject matter jurisdiction over a workers' compensation case. Once a court discovers it does not have subject matter jurisdiction, *it has no choice but to dismiss the case*, no matter where in the stage of the proceedings this jurisdictional defect comes to light.

Bailey v. Batchelder, 576 N.W.2d 334, 338 (Iowa 1998) (emphasis added). *See also Suckow*, 445 N.W.2d at 780 ("[Due to Iowa Code § 85.20,] the district court did not have jurisdiction to decide the

case. The district court, therefore, correctly sustained the employer's motion to dismiss.").

No principle of Iowa law—notice-pleading standard or otherwise—disfavors a motion to dismiss for lack of subject matter jurisdiction under Iowa R. Civ. P. 1.421(1)(a). Rather, "[w]hen the court's power to proceed is at issue, the court has the power and *duty* to determine whether it has jurisdiction of the matter presented." *Lansky by Brill v. Lansky*, 449 N.W.2d 367, 368 (Iowa 1989) (emphasis added). It will "take charge of the proceedings affirmatively, regardless of the vehicle used," apply scrutiny (as opposed to presumptions) to "determine the true facts," and "decide the issue promptly." *Id.*

Therefore, the Plaintiffs are not entitled to their claimed presumptions or the benefits of any purported or self-created ambiguities contained in the Petitions.

Analysis

It is well established that Iowa Code § 85.20 constrains the subject matter jurisdiction of the courts. *See Tigges*, 356 N.W.2d at 509–12. The exclusive administrative jurisdiction provided in Iowa

Code § 85.20 divests the courts of jurisdiction over all workplace injury claims against coemployees except in the rare instance when a plaintiff can demonstrate that a coemployee defendant acted with "gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another." Iowa Code § 85.20(2).

The Plaintiffs in this case have neither pleaded nor demonstrated the prerequisite gross negligence and wanton neglect; therefore, the District Court properly determined it lacked subject matter jurisdiction over the claims.

A. *The IWCA's Gross-Negligence Exception Standard Is Intended to Be a Substantial Barrier for Plaintiffs.*

The Iowa Legislature's judgment in enacting the IWCA was that the gross-negligence exception to exclusive DWC jurisdiction should be exceedingly narrow. "[T]he scope of coemployee gross negligence claims authorized by the legislature under section 85.20 is '*severely restricted*, particularly by adding the requirement of wantonness in defining gross negligence.'" *Henrich v. Lorenz*, 448 N.W.2d 327, 332 (Iowa 1989) (emphasis added) (quoting *Woodruff Constr. Co. v. Mains,* 406 N.W.2d 787, 789 (Iowa 1987)). Therefore, the applicable standard is an even higher threshold than the

already substantial "gross negligence" standard. *See Nelson*, 619 N.W.2d at 390; *Dudley v. Ellis*, 486 N.W.2d 281, 283 (Iowa 1992).

"[T]here are three elements necessary to establish 'gross negligence amounting to such lack of care as to amount to wanton neglect' under section 85.20: (1) knowledge of the peril to be apprehended; (2) knowledge that injury is a probable, as opposed to a possible, result of the danger; and (3) a conscious failure to avoid the peril." *Thompson v. Bohlken*, 312 N.W.2d 501, 505 (Iowa 1981). "Furthermore, a coemployee may be deemed 'grossly negligent' under section 85.20 *only* when the employee intentionally does an act of a highly unreasonable character." *Walker v. Mlakar*, 489 N.W.2d 401, 406 (Iowa 1992) (emphasis added).

Iowa law acknowledges that the standard demanded by this statute cannot truly be satisfied by "negligence" at all; it in fact requires what the common law considers *recklessness*. *See Lukken v. Fleischer*, 962 N.W.2d 71, 81 (Iowa 2021) (citing *Leonard ex rel. Meyer v. Behrens*, 601 N.W.2d 76, 80 (Iowa 1999)). It requires a "combination of attitudes: a realization of *imminent* danger, coupled with a reckless disregard or lack of concern for the probable

consequences of the act." *Thompson*, 312 N.W.2d at 505 (emphasis added). And it requires an affirmative "willingness" to "injure another." *Id.*

Lastly, all of these elements must be established "separately to each defendant"; gross-negligence claims under section 85.20(2) cannot be established against a group or through a collated patchwork of individual elements alleged against separate individual Supervisors. *Simmons v. Acromark, Inc.*, No. 00-1625, 2002 WL 663581, at *2 (Iowa Ct. App. Apr. 24, 2002); *accord Henrich v. Lorenz*, 448 N.W.2d 327, 333 (Iowa 1989).

Under these legal principles, neither the Petitions, the Plaintiffs' motions papers below, the Plaintiffs' appellate papers before this Court, nor the underlying facts of the case would support a ruling that the District Court held jurisdiction over the workplace injury claims asserted against the Supervisory Defendants.

B. *Plaintiffs Have Failed to Satisfy the Requirements of the Gross-Negligence Jurisdictional Exception, and the DWC Therefore Retains Exclusive Jurisdiction.*

According to Iowa law as recounted above, the Plaintiffs in these cases have failed to plead, much less show, that *any* of the

Supervisory Defendants—or any *other* Individual Defendant—engaged in conduct that constitutes "gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another." Iowa Code § 85.20(2).

Even after multiple substantial amendments, the operative Petitions still fail to allege any particular facts of *any kind* as against Supervisory Defendants Brustkern and Tapken. Other than to identify them as named Defendants, the Petitions do not invoke their names at all. *See, e.g.*, Buljic Pet. ¶¶ 32–35.

The very few allegations that concern the other Supervisory Defendants fare no better. The Plaintiffs can point to no allegations and no factual support to show that any of the Supervisory Defendants had actual knowledge of the "peril to be apprehended"—*i.e.*, death due to idiosyncratic complications from COVID-19.[5] *See Thompson*, 312 N.W.2d at 505. They point to no

[5] The Plaintiffs wrongly suggest that the elements of a section 85.20(2) gross-negligence claim only require a generalized common knowledge of "the danger of an uncontrolled COVID-19 outbreak" to be satisfied. Appellants' Br. at 43. This claim appears to be based on the Plaintiffs' misreading of and overreliance on two unreported Court of Appeals cases, which, they claim, stand for the proposition that the peril to be apprehended "should be broadly defined." *Id.* at

allegations or factual support for the proposition that the Supervisory Defendants knew or even believed that the employees' unfortunate deaths were not just possible, but *probable*. *Id.* And they point to no allegations or factual support for the proposition that the Supervisory Defendants consciously and intentionally failed to avoid a known and probable death. *Id.*

Indeed, the opposite is true: the Plaintiffs *admit* that the Waterloo facility engaged in COVID-19 mitigation efforts; they merely claim that those efforts were—in their view—insufficient.

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37. The cases suggest no such thing. *Cf. Est. of Zdroik ex rel. Zdroik v. Iowa S. Ry. Co.*, No. 20-0233, 2021 WL 4593177, at *3 (Iowa Ct. App. Oct. 6, 2021); *Judge v. Clark*, No. 05-1219, 2006 WL 3313794, at *7 (Iowa Ct. App. Nov. 16, 2006). In *Judge*, the Court of Appeals considered whether the risk to be apprehended was the presence of a high explosive charge either "next to [the plaintiff's] body" when it detonated *or* in a confined space within his vicinity. 2006 WL 3313794, at *7. Either way, the peril was concrete, proximate, discrete, and particularized: *i.e.*, the plaintiff was positioned dangerously near an *explosive charge*. *Id.* In *Zdroik*, the court nominally accepted the plaintiff's characterization of "the peril" in dicta and "for purposes of summary judgment" only because the Court granted summary judgment against the plaintiff due to the failure to show knowledge of *probability* of the harm, rendering the scope of the "the peril" moot. 2021 WL 4593177, at *3 n.2. In sum, the Plaintiffs here provide no support for their claim that the "peril to be apprehended" should be interpreted so broadly as to —in this case, death from complications related to a COVID-19 illness.

See Buljic Pet. ¶¶ 100, 122, 126, 128, 130, 132, 165. These admissions mean that the Plaintiffs cannot satisfy the third element of a section 85.20(2) gross-negligence claim *per se*.

In light of these circumstances, the District Court rightly concluded that the Plaintiffs failed to present "sufficient facts as to each individual defendant that rise to the level of gross negligence amounting to wanton neglect that would remove these matters from the jurisdiction of the Iowa Division of Workers' Compensation." Ruling at 4. The District Court correctly dismissed the cases for lack of subject matter jurisdiction, and this Court should affirm.

C. *Plaintiffs' "Fraudulent Misrepresentation" Claims Are Not Exempt from the DWC's Exclusive Jurisdiction.*

Within Plaintiffs' pleaded gross negligence claims, they tucked additional language insinuating separate claims for fraudulent misrepresentation; however, they have not pleaded separate counts for such claims. *See* Buljic Pet. ¶¶ 274–81; Fernandez Pet. ¶¶ 276–83. Regardless, any purported fraud claims are also within the exclusive jurisdiction of the DWC. Plaintiffs' attempt at an artful pleading "cannot avoid the exclusivity of

workers' compensation if *the gist of the claim is for bodily injury*." *Nelson*, 619 N.W.2d at 389. It is plainly the case here that the "gist of the claim is for bodily injury." *Id.*

In a reported 2011 case, the Court of Appeals surveyed over 80 years of case law and set out several principles that demonstrate why Plaintiffs' fraud claim must fail. *See Cincinnati Ins. Companies v. Kirk*, 801 N.W.2d 856 (Iowa Ct. App. 2011).

First, a fraud claim cannot proceed in parallel court proceedings while a workers' compensation claim under the IWCA would already provide an "adequate remedy." *Id.* at 859–61 (citing *Tallman v. Hanssen*, 427 N.W.2d 868, 871 (Iowa 1988)). In this case, the purported fraud claims would only permit Plaintiffs to seek the remedy that is already available to them in the proper proceedings before the DWC.

Second, any separate fraud claim must be "extrinsic and collateral" to the workers' compensation matter; only when the "fraudulent conduct occur[ed] independent of and subsequent to the work injury" will the district court have subject matter jurisdiction.

Id. at 861–63 (citing *Doyle v. Dugan*, 229 Iowa 724, 295 N.W. 128, 131 (1940)).

In this case, the purported fraudulent misrepresentation claims are coextensive with the workplace injury claims that are the gist of the actions. Plaintiffs' available remedies under the IWCA as provided by the Legislature are adequate and remain available. Furthermore, the purported fraudulent conduct was not extrinsic to, collateral to, independent of, or subsequent to the workplace injury; rather, it was alleged to be part of the very workplace injury itself.

There was no basis for the District Court to assert subject matter jurisdiction over the Plaintiffs' purported fraudulent misrepresentation claims, and the court properly dismissed the Petitions as a result. It's Ruling should be affirmed in full.

CONCLUSION

The District Court's analysis of Iowa Code § 85.20(2) and the applicable case law produced the correct result: Plaintiffs' Petitions are outside the court's subject matter jurisdiction. The Legislature has vested exclusive jurisdiction of these cases in their entirety in the DWC. As a result, the District Court correctly dismissed the Petitions. This Court should affirm.

ORAL ARGUMENT

Because this case turns on well-established principles of law and calls only for the blanket affirmance of the District Court's Ruling, the Supervisory Defendants propose that oral argument is not required. However, if the Court orders oral argument on the action, the Supervisory Defendants request to be heard.

Dated: October 4, 2023

Respectfully Submitted,

/s/ David Yoshimura

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook and contains 3,609 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: October 4, 2023

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 4, 2023, she caused to be filed this **Final Brief of Appellees Tom Hart, Cody Brustkern, John Casey, Bret Tapken, & James Hook** with the Clerk of the Iowa Supreme Court via EDMS, which shall provide notice of and access to such filing to all counsel of record.

/s/ Paulette Ohnemus