

IN THE SUPREME COURT OF IOWA

Supreme Court No. 24-0509
Floyd County No. EQCV031386

IOWA NORTHERN RAILWAY COMPANY,

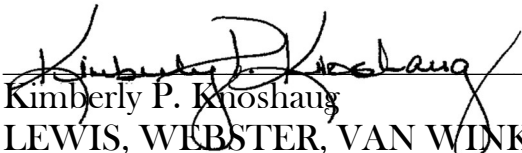
Plaintiff-Appellee vs.

FLOYD COUNTY BOARD OF SUPERVISORS, AND CERRO GORDO
COUNTY BOARD ^{1/} OF SUPERVISORS, Acting as Trustees for
JOINT DRAINAGE DISTRICT NOS. 6 AND 56,

Defendants-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT FOR FLOYD
COUNTY
HONORABLE COLLEEN D. WEILAND

APPELLEE'S BRIEF AND REQUEST FOR ORAL ARGUMENT


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^{1/} The defendant-appellee misspells the word “Board” as “Baord” after the words “Cerro Gordo County,” in its caption. The Iowa Northern’s Brief does not.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

At issue is affirmation of the trial court's correct ruling that the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10501 (b), preempts Iowa Code § 468.109 *et. seq.* Here, a drainage district seeks to jack and bore a 66" steel pipe through a 20-foot-high railroad embankment. Railroad trains run atop the embankment. The proposed pipe boring is also within feet of an existing, functional stone box culvert located at the bottom of the embankment (the "Culvert"). The ICCTA preempts the drainage district's attempt to control transportation by a rail carrier through this drainage project that could structurally compromise railway property and shut down the railroad.

ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals. It is not a case of first impression, but an application of a relatively similar railroad fact dispute ultimately resolved as a matter of law by federal preemption. This applicable legal standard was articulated by the Iowa Supreme Court in Griffioen v. Cedar Rapids & Iowa City Ry. Co., 914 N.W.2d 273 (Iowa 2018), *cert. denied*, 139 S. Ct. 1320 (2019), and applied by the trial court in this case. The trial court's decision is also limited to the specific geographical case facts.

NATURE OF THE CASE

The Floyd County Board of Supervisors and Cerro Gordo Board of Supervisors, Acting as Trustees for Joint Drainage District Nos. 6 and 56 (the “JDD”) appeal an adverse mandamus ruling and writ prohibiting the forced installment of new steel culvert bored through embankment property owned by Iowa Northern Railway Company (the “Railway” or “Iowa Northern”) at Iowa Northern’s cost. In June of 2016 and pursuant to Iowa Code § 468.109, the JDD notified Iowa Northern that the Railway’s Culvert was in disrepair and that it was obligated to construct the new steel culvert at its own cost. On September 17, 2016, Iowa Northern filed suit in Case No. EQCV030873 in the Iowa District Court for Floyd County. This case was ultimately dismissed in December of 2018 without a substantive ruling on the issue of ICCTA preemption.

On May 22, 2019, Iowa Northern brought the current mandamus lawsuit, seeking to block the JDD from proceeding with its drainage project. Cross motions for summary judgment were filed. On January 3, 2020, the trial court granted summary judgment in Iowa Northern’s favor, holding that the ICCTA preempted the JDD’s actions under Iowa Code §§ 468.109 - 468.113. It issued a permanent injunction, later issuing a writ of mandamus consistent with the JDD’s Iowa R. Civ. Pro. 1.904 filings and the parties’ acknowledgement that mandamus controlled claims against drainage districts.

The JDD appealed the trial court’s ruling to the Surface Transportation Board (the “STB”). The STB issued its decision on January 4, 2020. The parties disputed its effect, both contending it was favorable to each of them. On May 14, 2021, the trial court ruled that as the STB did not issue a Declaratory Order, the decision was a remand to the state court to determine preemption under Iowa drainage district law and the specific case facts.

Trial was held on February 28, 2023 through March 2, 2023. On March 13, 2024, a Trial Ruling was issued in favor of Iowa Northern. The Ruling instructed the clerk to issue a permanent writ of mandamus, which was done on March 14, 2024. The JDD timely appealed.

STATEMENT OF THE FACTS

Iowa Northern is a short line, common carrier, Federal Railroad Administration classified Class III railroad, conducting business in interstate commerce. (D0193, T. Scott Bannister Trial Testimony at 13: 1 - 4 (3/1/23)).

^{2/} From 2006 to 2022, Mr. Bannister was vice president, secretary, and general counsel for Iowa Northern. (Bannister, *id.* at 7: 9 - 12 and at 8: 15 - 16)). The Railway’s tracks are geographically in Iowa and it owns approximately 253 track

^{2/} FRA classification is determined by gross revenue. (D0193, T. Scott Bannister Trial Testimony at 12: 4 - 13: 6 (3/1/23)).

miles, including branch lines and offsets. (D0130, Exhibit 1, Iowa Northern System Map; D0193, Bannister at 17: 1 - 10).

The case dispute centers on the Railway's Main Line ^{3/} rail tracks in or near the west side of the city of Nora Springs, Iowa. Iowa Northern's Main Line runs between Manly, Iowa and Cedar Rapids, Iowa, geographically running southeast to northwest, although for ease of reference these directions are referred to as simply north and south. (D0158, Exhibit 28, Deposition Testimony of Kent Rode at 9: 6 - 22 (January 20, 2023)). ^{4/} *See also*, D0193, T. Scott Bannister Trial Testimony at 10: 22 - 11: 11 and 63: 21 - 24).(Explaining, in part, the Main Line runs on a northwest to southeast axis -

^{3/} The Main Line part of Iowa Northern's railroad was originally built by the Burlington, Cedar Rapids, and Northern Railroad ("BCRN"), circa 1870 or 1871. (D0193, T. Scott Bannister Trial Testimony at 9: 8 - 20 (3/1/23)). The BCRN was acquired by the Chicago, Rock Island, and Pacific Railroad Company. (Bannister at 11: 15 - 23). In 1980, this railroad filed for bankruptcy re-organization, ultimately selling off its assets or ceasing operations - again in railway terms, embargoing - at certain track locations. (Bannister at 13: 18 - 14: 6). The railway sat unused for approximately three years. Iowa Northern *Railroad* Company (a group of private investors) acquired the Main Line from the trustee in 1983. (Bannister at 15: 7 - 16: 25)(Emphasis added). In 1994, the Iowa Northern *Railway* Company purchased the railroad's assets and has operated it since. (Bannister at 19 - 5 to 20: 13)(Emphasis added).

^{4/} Mr. Rode is the JDD's expert witness engineer. His deposition testimony was read and admitted as evidence pursuant to Iowa R. Ev. 1.704. (D0125, Exhibit 28, Deposition Testimony of Kent Rode (January 20, 2023)).

or, in railroad terms, north to south)(D0189, Trial Testimony of Peter Schierloh, PE at 110: 1- 9 (February 28, 2023)), testifying that Iowa Northern is a north/south railroad using railroad directions for operations since railroads do not typically run in a straight line).

The railroad tracks are built upon an embankment around 20' high. (Schierloh at 18: 9 - 12 and 128: 12 - 13). The rail tracks cross over a bridge under which West Drive, a street that leads to Nora Springs if traveling east, is located (Schierloh at 16: 9 - 17: 7). In this area, water flows from west (upstream) to east (downstream) toward the Shell Rock River. (D0125, Exhibit 28, Deposition Testimony of Kent Rode at 36: 20 - 37:3 (January 20, 2023)).

Peter Schierloh is Iowa Northern's engineer. He has held this position since 2008. (D0189, Trial Testimony of Peter Schierloh, PE at 96: 16 - 21 (February 28, 2023)). He is familiar with the geographical area, as well as railroad structures in this area. Railroad structures generally include buildings, bridges, culverts, stations, platforms and signal bridges under Federal Railroad Administration Rules ("FRA"). (Schierloh at 98: 25 - 99: 7). The BCRN built the railroad in 1871. (Schierloh at 107: 5 - 21; *see also*, fn. 2). ^{5/} There is no

^{5/} While not case dispositive, the JDD has consistently declared in virtually every written filing submitted throughout this case that the Culvert was built in 1918 to 1920 absent any record support. In fact, it was the JDD itself that was

direct evidence of a railroad bridge spanning West Drive during the late 19th or early 20th centuries, but it was likely present. An existing bridge was rebuilt in 1922 and those plans refer to a pre-existing timber bridge structure. (Schierloh at 111: 7 - 112 - 2).

There is a stone Culvert running through the embankment. The purpose of the Culvert is to pass the natural watercourse runoff through the embankment. (D0189, Trial Testimony of Peter Schierloh, PE at 117: 10 - 12 (February 28, 2023)). The Culvert functions. (Schierloh at 117: 13 - 22). ^{6/} It is six feet by four feet (6' x 4')(Schierloh at 115: 1 - 2), lengthened with concrete extensions in 1944. (Schierloh at 113: 15 - 17); (*See*, D0138, Exhibit 9, Photographs of Culvert Exterior; D0138 to D0141, Photographs of Culvert Interior in 2013 and 2016).

The Culvert is approximately 25' south of the bridge. The top is 15' to 18' from the top of the embankment and its bottom is at ground level. (D0189,

formed and constructed in that time period. (D0161, Exhibit C, Engineering Report dated February 25, 2014 at p. 3).

^{6/} The JDD has abandoned its position that the culvert is not functional, since it presented no evidence at trial that the Culvert does not properly channel water through the embankment. The Railway evidence came directly through its expert engineer, Peter Schierloh. *But see*, the claim in the JDD's Iowa Code § 468.109 Notice (“***The [C]ulvert is in disrepair and is collapsing”***)(D0167, Exhibit I, Notice dated June 22, 2016).

Trial Testimony of Pete Schierloh, PE at 126: 24 - 127: 8 and 128: 14 - 16). The Culvert was built sometime between 1871 and 1900, but likely at the time of the railroad's construction because the Culvert is covered with embankment fill of dirt, clay, rocks, etc., and it is unlikely the embankment was excavated to install the Culvert. (Schierloh at 3 - 25). In the 1870's, the Culvert construction would have consisted of digging down to the bedrock, laying bedding stones to act like a footing, laying stone walls, and constructing a roof. (Schierloh at 114: 4 - 115: 2).

The interior walls would be roughly finished. At the time the Culvert was built, the back of the side walls - meaning the wall area that is not visible and is buried under the "rubble" fill -- would not have been finished. Unlike the interior walls, the exterior side walls would be left as they were when quarried. They would be irregular and jagged. (Schierloh at 121: 8 - 124: 7).

In June of 2011, a landowner, Billy Fett, notified the JDD of tile blowouts. A JDD hearing on his complaint was held on June 14, 2011. The JDD commissioned a preliminary study of the problem. From the very beginning of this dispute, "Discussions included the rail road's requirements to replace a culvert if needed...." (D0189, Trial Testimony of JDD Trustee/Board

of Supervisors Mark Kuhn at 41: 8 - 43: 20 and 62: 9 - 63: 11 (February 28, 2023); D0159, Exhibit B, JDD's Minutes from June 14, 2011). ^{7/}

Remediation options available to the JDD would include either a repair or an improvement. A repair fixes an existing drainage district facility without increasing water flow. An improvement increases water flow rate and improves upstream landowner drainage. (D0158, Exhibit 28, Deposition Testimony of Kent Rode at 36: 20 - 37: 3)(January 20, 2023)). Landowners are responsible for the cost of a repair. A railroad must pay for a new culvert installation, but only if caused by an obstruction of the natural flow of water by the railroad. Specifically in this case, the JDD contends the 1871 embankment constitutes the obstruction. (Rode at 46: 17 - 47: 19).

The JDD admits that it knew in 2011 its own the drainage structures were poorly maintained. (D0189, Trial Testimony of JDD Trustee/Board of Supervisors Mark Kuhn at 65: 15 - 66: 2 (February 28, 2023)). In fact, Mr. Rode inspected Main No. 1 in the fall of 2011, finding that the JDD tile was blown out and functionally ineffective. The open ditch was severely silted with trees and brush growing out of it as well as over portions of the ditch. Over half of the diameter of the JDD pipe from tile outlet that drains into the open ditch

^{7/} Contrary to the JDD's Nature of the Case statement, Mr. Fett did not file a "Petition." (JDD Brief at p. 5).

was blocked by dirt. These deficiencies were openly visible. (D0158, Exhibit 28, Deposition Testimony of Kent Rode at 44: 19 - 46: 16)(January 20, 2023)). Its condition is unsurprising since the last repairs the JDD made to the JDD drainage structures was over 40 years ago, in 1976, when a section of Main No.1 tile was removed and a new 18-inch drainage line was installed. (D0161, Exhibit C, Engineering Report dated February 25, 2014 at p. 3).

For three years, from 2011 to 2014, the JDD did nothing to follow up with the status of the preliminary report or to make any repairs to its own drainage structures it already knew were not properly functioning. (Id., 66: 25 - 67: 19). There is no exemption under Iowa law for the JDD to fail to keep its own drainage district facilities in good repair pending a study. (D0125, Exhibit 28, Deposition Testimony of Kent Rode at 41: 7 - 42: 7 (January 20, 2023)).

In 2013, Mr. Rode became the JDD's engineer, taking over for the engineer assigned to complete the preliminary report in 2011. (D0158, Exhibit 28, Deposition Testimony of Kent Rode at 9: 6 - 22 (January 20, 2023)). Mr. Rode submitted a written engineering report on February 25, 2014. (D0161, Exhibit C, Engineering Report dated February 25, 2014). Mr. Rode's report contained three options, excerpted as follows:

Option # 1: This option includes cleaning the existing lower ditch of Main No. 1 to restore its original slope and capacity and replacing the Main No.

1 pipe with an 18” ... tile... from the current outlet location to the downstream side of West Drive. * * *

(Exhibit C at pp. 8 - 9).

Option # 2: This option includes a new open ditch construction to replace the entire drain tile in Main No. 1 between South Hooker Avenue and West Drive. * * * A new railroad culvert at a deeper elevation would be needed * * *

The railroad would have the responsibility for the cost of this new railroad culvert under procedures established by the Iowa code.

(Exhibit C at p. 9).

Option # 3: This option contains a new open ditch constructed to replace the drain tile in Main No. 1 between the railroad culvert and West Drive, as requested by the landowner. ^{8/}

(Exhibit C at p. 9). Option # 1 and # 2 constituted a repair. Option # 2 was an improvement at the Railway’s cost. (D0158, Exhibit 28, Deposition Testimony of Kent Rode at 53: 19 - 54 - 4) (January 20, 2023)).

In his report, Mr. Rode recommended Option # 1, a repair. “3. Adopt Option No. 1 for construction, modified as deemed appropriate, to satisfy the desires of the District.” (D0161, Exhibit C, Engineering Report dated February 25, 2014 at p. 15). He opined that the capacity of Main No. 1 was adequate in its original state due to natural watershed surface relief. At no time did he state

^{8/} At the June 14, 2011 hearing, Mr. Fett commented that he sought an open ditch on his land to reduce costs. (D0159, Exhibit B, JDD’s Minutes from June 14, 2011).

that Option # 1 was not viable in light of current capacity standards or that runoff coefficient needed to be improved. (Id. at 54: 10 - 22). The report, including his recommendation, was based on his training, education, and experience as a professional engineer and is accurate. (Id. at 10: 8 - 11: 7).

The JDD knew that the district landowners would bear the cost of a repair as proposed by Option # 1 (D0193, Kent Rode Trial Testimony at 11: 10 - 21 (March 1, 2023)). Despite Mr. Rode's recommendation, while initially discussing the three options during the April, 2014 meeting, the JDD's attorney stated, **"Jim Hudson - if we jack and bore through the railroad, we'll assess the railroad for the entire cost. We will assess them a special benefit. If they don't pay their property will go up for tax sale! The other part of the Code says that railroads shall repair bridges and culverts. It does not say 'drain tile.' We are going to quit messing with them under this section. So it will be a special drainage assessment. The classification committee will put it on them. Jim thinks this will work well. This has not been tested yet!"** (Emphasis in original)(D0132, Exhibit 3, JDD's Minutes and attachments from April 8, 2014).

The current plan channels subsurface water from surrounding land into the 66" steel culvert, (D0193, Kent Rode Trial Testimony at 15: 6 - 19 (March 1, 2023)), going beyond funneling the natural watercourse through the existing

embankment, currently handled adequately by the Culvert. The proposed 66” steel culvert will be bored below the existing ground surface. (Rode at 14: 5 - 6).

According to all of the JDD’s pre-trial evidence, Option # 2 was chosen because the landowners wanted an improvement (Option # 2), instead of a repair (Options # 1 or # 3). (D0189, Trial Testimony of JDD Trustee/Board of Supervisors Mark Kuhn at 92: 5 - 11 (February 28, 2023); (D0158, Exhibit 28, Deposition Testimony of Kent Rode at 54: 23 - 55 - 7) (January 20, 2023)). The JDD Minutes reflect no landowner demand for greater drainage capacity. Ultimately, the original complainant, Mr. Fett, even filed a written objection to Option # 2. (D0133, Exhibit 4, JDD Meeting Minutes and Attachments of June 24, 2014). *See also*, JDD Brief at p. 11, now only stating “At the June 24, 2024 hearing, the Joint Boards with public input unanimously selected Option # 2,” instead of claiming a landowner demand for increased drainage capacity. Addressing the JDD’s posturing, the trial court factually found that, “The minutes of an April 8, 2014, public meeting reflect far more concern with transferring the obligation for cost assessment than for mitigation of flooding.” (Ruling, p. 2).

The Railway generally operates four to six trains per day traversing the Nora Springs tracks. (D0193, T. Scott Bannister Trial Testimony at 9: 8 - 20

and 25: 14 - 19 (3/1/23)). In addition, the Canadian Pacific (the “CP”), a large FRA Class I railroad, interchanges at Iowa Northern’s trackage through Nora Springs for two or three trains daily as alternative routes for its railway operations in Minnesota and Wisconsin. (Bannister at 23: 25 - 12 and 27: 2 - 28: 7). Iowa Northern trains transport its customer commodities such as corn and beans (consisting of 45 to 50 percent of its train cars), ethanol, oil, sodium methyrate, distiller grains, turbines, John Deere tractors, and frozen foods. (Bannister at 20: 25 - 22: 6). The CP transports, “Everything. Literally.” (Bannister at 28: 8 - 9). Iowa Northern’s trains may carry between 50 to 100 cars and the CP 75 cars and, at times, up to 110 cars. (Bannister at 28: 10 - 20).

The Iowa Northern refused and continues to refuse to construct Option # 2 because the current written engineering plan is unsafe. The proposed jack and bore of the 66” steel pipe could collide with the active box Culvert.^{9/} The Culvert isn’t pinned with reinforced steel and the dimensions of the jagged back wall buried in fill are unknown. (D0189, Trial Testimony of Peter Schierloh,

^{9/} The Railway did not have the current plans, including the requirement for a 66” pipe installation, in June of 2016 when they were notified that they were required to construct the proposed project. (D0191, Kent Rode Trial Testimony at 19: 24 - 20: 25 (March 2, 2023; D0169, Exhibit K, Project Manual and Plans dated August 23, 2016 at p. 2 [This Exhibit does not have page numbers but its date is on the second page]. The JDD did not approve these plans until August 23, 2016. (D0171, Exhibit L, JDD Minutes dated August 23, 2016).

PE at 138: 3 - 141: 22 (February 28, 2023)). If struck, the Culvert could be seriously compromised.

The Railway never agreed to the project despite discussions between the parties' engineers concerning the project. The Trial Ruling factually establishes that, "Most of the [plan] modifications were due to the JDD addressing Iowa Northern's concerns and trying to bring the plan to one that Iowa Northern would accept. But the result, unfortunately, is that the plans remain a moving target. Even at trial, the JDD proposed moving the pipe further from the existing Culvert." (D0128, Trial Ruling at p. 2).

Mr. Rode actually agrees with Mr. Schierloh's Culvert damage or possible destruction opinions. The current plans have a distance of one foot between the south, exterior (buried) edge of the Culvert and the proposed north edge of the 66" pipe, assuming that the Culvert's interior edge is two feet thick. If this estimate is incorrect, the Culvert could be hit, damaging it or causing it to collapse. (D0158, Exhibit 28, Deposition Testimony of Kent Rode at 65: 19 - 55 - 68: 2 (January 20, 2023)). Mr. Rode concedes that there are "unknowns," such as possible irregularities with the Culvert walls that could be hit during excavation. (D0193, Rode Trial Testimony at 5: 24 - 6:4 (March 2, 2023); (D0158, Exhibit 28, Deposition Testimony of Kent Rode at 78: 4 - 22 (January 20, 2023)).

The JDD's jack and bore expert, Scott Dullard, also agrees with Mr. Schierloh. Mr. Dullard informed Mr. Rode that he needed to stay a couple of feet away from the south Culvert edge. He also agrees the Culvert should not be hit. (D0193, Scott Dullard Trial Testimony at 137: 2 - 12(March 2, 2023)). As far as Mr. Dullard's testimony that using a jack and bore to install the pipe is typical and customary, it is not, given the specifics of the present situation.

Monitoring for track movement of a quarter of an inch is not an acceptable safety standard as it could indicate a void under the tracks such as the movement of a stone in the box Culvert with fill draining from it. (D0189, Trial Testimony of Peter Schierloh, PE at 161: 6 - 162: 3 (February 28, 2023)). Mr. Rode similarly concedes that a quarter-of-an-inch track movement could not only indicate that the project could be terminated, but that such movement could damage the railroad. (D0158, Exhibit 28, Deposition Testimony of Kent Rode at 78: 4 - 22 (January 20, 2023)).

A geotechnical survey was conducted because of the unknown location of the Culvert's back interior wall. The JDD hired Chosen Valley Testing at the "insistence" of the Railway's engineer, Mr. Schierloh. (JDD Brief at pp. 16 - 17). On behalf of Chosen Valley, Matt Reisdorfer, P.E. performed the survey to try to locate the Culvert's south edge buried within the fill. Bores, however,

were made at Mr. Rode's direction. (D0193, Matt Reisdorfer Trial Testimony at 88: 17 - 20 (March 2, 2023)).

Prior to geological testing, Mr. Schierloh informed the JDD of requested boring locations he sought, specifically three borings on the north end of the proposed pipe location (near the south edge of the existing Culvert). One boring was to be made at the centerline of the track and one each 10' off of the center line. Mr. Reisdorfer was aware where Mr. Schierloh asked for boring locations. (Reisdorfer, 98 : 25 - 99: 19; D0151, Exhibit 22, Email from Knoshaug to Goodwin [re: Schierloh boring locations]). Two of the three borings were drilled per Mr. Schierloh's instructions. Mr. Rode, however, directed that the third boring be offset [specifically, B - 1] toward the existing Culvert. (D0193, Matt Reisdorfer Trial Testimony at 100: 10 - 101: 12 (March 2, 2023)). Unsurprisingly, this boring encountered the Culvert but the result was a non-test for the presence of the interior Culvert edge at the actual location of the planned north edge of Culvert, as Mr. Schierloh requested. (Reisdorfer at 101: 13 - 20 and at 150: 22 - 151: 20).

During trial, the JDD first alerted Iowa Northern of Mr. Rode's new intent to revise the engineering plans, moving the 66" steel pipe four feet to the south of its originally proposed location away from the interior Culvert wall. The first time Mr. Schierloh heard of it was during the JDD's opening

statements, leaving him “speechless.” Without plans, he has no opinions; however, abrupt railroad construction changes are not safe. (D0189, Trial Testimony of Peter Schierloh, PE at 130: 15 - 131: 21(February 28, 2023)). The pipe movement proposal was never disclosed in pre-trial discovery, even though Mr. Rode was deposed in January of 2023 and he testified that he came up with this idea in April of 2022. (D0193, Rode Trial Testimony, 24: 1 - 15 (March 2, 2023). ^{10/} As of today, there are no “improvement” engineering plans and the JDD would need to approve any plan changes. (D0193, Rode, 25: 21 - 25).

Iowa Northern will not run trains across the Nora Springs track if and when the new steel culvert is installed. Any excavating error could be dangerous to the community of Nora Springs, railroad employees, prohibit shippers from moving goods, and create a backup funnel for Iowa Northern’s train traffic, the CP’s trains, and disrupt the flow of trains shipping goods through Iowa. (D0193, T Scott Bannister Trial Testimony at 46: 6 - 48: 6 (3/1/23)). The Railway believes that the installation of a 66” steel pipe is inherently unsafe. (Bannister

^{10/} The JDD claims Mr. Rode decided to move the pipe after the “geothermal” survey. (JDD Brief at p. 18). First, a geotechnical survey was conducted; second, any temporal relation to the survey is contradicted by Mr. Rode’s own testimony as to the timing of his proposal.

at 52: 16 - 25). Neither the JDD or its expert can guarantee the project's safety, (Bannister at 53: 12 - 54 : 22). The JDD has no right, ability, or authority to instruct Iowa Northern on how to conduct its railroad operations. (Bannister at 53: 12 - 14).

Catastrophic accidents can and do occur. In 2017, a tanker car derailment occurred in Plainfield, Illinois using the exact same steel pipe culvert installation procedure proposed by the JDD: jack and bore. Toxins were released due to the derailment and damages were approximately \$10 million to \$12 million dollars. (D0193, T Scott Bannister Trial Testimony at 49: 6 - 52:15 (3/1/23)); Exhibit 26, Photographs from Plainfield Culvert Installation Accident).^{11/}

^{11/} Mr. Dullard's commentary about the Plainfield accident did not appreciate its magnitude or the priority of railroad safety:

By Mr. Goodwin:

Q Does it show incompetence? Inexperience? What does this show?

A Yes. All of the above. I mean, I think they even call the guy that. It's his second bore. I kind of jokingly as I was talking to Roger, our foreman, about it, I said, they could have hired the U.S. Air Force to bomb the railroad and at least saved them the first 18 days of labor and ended up with the same result. They quite literally could not have done anything more wrong [sic:] in this installation.

(D0193, Trial Testimony of Scott Dullard at 124: 17 - 125: 1).

Iowa Northern has used the jack and bore method of installation six times in the past, including situation involving fiberoptic cable the size of a finger up to a 24” sanitary storm water sewer in a two-foot embankment. (D0193, Trial Testimony of T. Scott Bannister at 58: 12 - 19). It also has jack and bore operating procedures but they are not applicable to a 66” pipe. (Bannister at 57: 13 - 58:5 and 68: 11 - 24). As Mr. Bannister succinctly testified:

A. Mr. Goodwin, I believe my testimony was that a jack and bore of a five-and-a-half-foot steel pipe through a 20-foot fill embankment with stones adjacent to the area or in the area where the jack and bore is proposed to be installed is inherently unsafe at that location under those circumstances.

(Id. at 58: 6 - 11). And in direct contraction of the JDD’s assertion that Mr. Bannister, “...testified that he relies on Murphy’s Law that something may go wrong...” (JDD Brief, p. 7), he actually said:

A. I would - - I would put it differently. I would - - I would say that this [the Plainfield derailment] reflects a lack of safety procedures on the part of the contractor around an operating railroad and that the contractor was clearly - - I hate to use that word - - negligent in carrying out the construction, not

having sufficient safety around the site, having unqualified people running a heavy piece of equipment.

And to this date, sitting in the courtroom today, I don't have any sense that there's any assurance that - - I don't understand that there's a contractor hired for this project, so I don't - - I can't even speculate as to whether the contractor that might actually do this project is any more competent or had any better employees that when Michaels [the jack and bore contractor in Plainfield] apparently had in 2017. That's an example of Murphy's law."

(Id. at 79: 2 - 15). ^{12/}

There is currently no jack and bore project subcontractor. The original subcontractor who successfully bid the jack and bore project portion in 2016 is no longer in business. (D0191, Rode Trial Testimony at 26: 3 - 6 (March 2, 2023)). As for the JDD engineering plans, the focus is not on railroad safety.

^{12/} The JDD's Brief at p. 21 also excerpts Mr. Bannister's testimony stating he testified [that], "...bad things can happen." The transcript actually reads, "...However, I am, like any employee of the railroad anywhere, absolutely imbued with a need for safety. One of our branding approaches is safety is job one. When that isn't primarily and foremost in anybody's mind, bad things can happen..."

(D0193, Trial Testimony of T. Scott Bannister at 46: 16 - 20 (March 3, 2023)).

For example, it lacks any detail as to how the steel pipe will be installed through the embankment. There is an overall disregard for safety, both to the railroad and the general public. (D0189, Trial Testimony of Peter Schieloh, PE at 159: 23 161: 5 (February 28, 2023)).

ARGUMENT

A. Preservation of Error. Iowa Northern agrees with the JDD's statements of error preservation.

B. Scope and Standard of Review. Iowa Northern agrees with the JDD's statement of the scope and standard of review, although its case citation is unintelligible and not in Blue Book form as required by Iowa R. App. Pro. 6.904 (2) a.(1).

C. THE DISTRICT COURT CORRECTLY RULED THAT THE ICCTA PREEMPTS IOWA CODE SECTION §§ 483.109 - 483.113 BECAUSE THE JDD'S ENGINEERING PLANS INTERFERE WITH TRANSPORTATION BY RAILROAD CARRIERS.

The Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10501(b), confers "exclusive" jurisdiction on the Federal Surface Transportation Board (the 'Board') over "transportation by rail carriers". This preemption provision negates all state and federal remedies "with respect to rail transportation" Id. "Transportation" includes "property, facility, instrumentality, or equipment of any kind related to the movement of

passengers or property, or both, by rail". 49 U.S.C. § 10102(9). It also has exclusive jurisdiction over "construction" or "operation" of rail tracks or "facilities." In addition, claims that touch upon what is termed "economic regulation" in the ICCTA, which the courts, "take to refer to regulation of the relationship . . . [between] that of [rail] shippers and carriers[,]” are preempted. Fayus Enters. v. BNSF Ry. Co., 602 F.3d 444, 451 (D.C. Cir. 2010). Culverts relate to railroad management and transportation. Jones Creek Investors, LLC v. Columbia County, 98 F. Supp. 3d 1279 (S.D. Ga. 2015)(Culvert rebuilding causing flooding inextricably linked to railroad transportation); Waubay Lake Farmers, Ass'n v. BNSF Ry. Co., 2014 U.S. Dist. LEXIS 120160, * 16 (S.D. 2014)(Requiring railroad to re-construct a culvert “in a sufficient capacity to carry off surface waters,” implicates construction and operations of a railroad.”)

The preemption portion of the ICCTA states in relevant part:

(b) The jurisdiction of the [STB] over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

Id.

Express preemption is absolute. Any law that denies a railroad the ability to conduct some of its operations or proceed with activities authorized by the STB is preempted, as are laws and regulations relating to railroad construction, operation, rail line abandonment, mergers, line acquisitions, other forms of consolidation, as well as railroad rates and service. CSX Transp., Inc., STB Fin. Docket No. 34662, 2005 STB LEXIS 675, 2005 WL 1024490, (S.T.B. May 3, 2005). "Accordingly, when deciding whether a state law or cause of action is categorically [expressly] preempted, the 'analysis is addressed not to the reasonableness of the particular state or local action, but rather to the act or regulation itself." 2005 STB LEXIS 675 at * 3. Thus if there is express preemption, this constitutes "per se unreasonable interference with interstate commerce." Id.; Adrian v. Blissfield R-R. Co. v. Blissfield, 550 F.3d 533 at 540 (6th Cir. 2008)(Adopting this STB conclusion); Franks Investment Co v. Union Pacific R. Co., 593 F.3d 404, 410 (5th Cir. 2010)(En Banc)("To the extent remedies are provided under laws that have the effect of regulating rail transportation, they are preempted."); Any remedies, "with respect to rail

transportation are exclusive and preempt the remedies provided under Federal or State Law." 49 U.S.C. 10501(b). Note also the following holding from Kansas City Southern Railway Company v. Kaw Valley Drainage District, 223 U.S. 75, 79 (1914), "The decisions also show that a state cannot avoid the operation of this rule [prohibiting interference with interstate commerce] by simply invoking the convenient apologetics of the police power. It repeatedly has been said or implied that a direct interference with commerce among the states could not be justified in this way. The state can do nothing which will directly burden or impede the interstate traffic of the company, or impair the usefulness of its facilities for such traffic." (Citations omitted).

Iowa Code Chapter 468 governs establishment of drainage districts as well as repairs and improvements to existing drainage structures. A repair differs from an improvement. An improvement, "[Is]...a project intended to expand, enlarge, or otherwise increase the capacity of any existing ditch, drain, or other facility above that for which it was designed." Iowa Code § 468.126(4)(a) (2016). Whether a project is a repair or an improvement is a fact question, since there are substantive and procedural differences in the proceedings. Hicks v. Franklin County Auditor, 514 N.W.2d 431, 437 (Iowa 1994)(Holding the project at issue was a repair, not an improvement).

When an improvement crosses a railroad right-of-way, “[T]he county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice in writing stating the nature of the improvement to be constructed, the place where it will cross the right of way of such company, and the full requirements for its complete construction across such right of way as shown by the plans, specifications, plat, and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications...to build and construct or rebuild and reconstruct the necessary culvert... so as not to obstruct, impede, or interfere with the free flow of the water therein.” Iowa Code § 468.109 (2016).

Thus begins the first of the JDD’s many statutory non-compliances throughout its multi-year dealings with Iowa Northern. The June, 2016 Notice served upon Iowa Northern failed to provide the current engineering plans or specifications as they were not extant on the date of service. The current plans are dated August 23, 2016, the very same date the JDD approved them. In addition, the Notice was factually untrue. The Culvert was not collapsing and in need of repair. This is proven as the JDD does not dispute and never argued at trial that the Culvert was not functioning as intended, specifically to drain

surface water through the embankment as it had done since the railroad's 1871 construction.

By statute, the improvement must be necessary. Iowa Code §§ 468.110 and 468.111 impose upon the railroad a duty of construction, at the railroad's cost, for a bridge or culvert, but only if the location of the improvement is located at the place of the natural waterway or the place provided by the railroad for the flow of water. If the railroad does not construct the culvert or bridge within the time frame specified by the notice, the construction shall be done under the direction of the drainage engineer. The railroad is responsible for these costs of the construction. Iowa Code § 468.112 (2016). In summary:

“As the court reads the statutory provisions, Iowa Code § 468.109 authorizes the board to notify a railroad company of necessary improvements for the drainage district that cross railroad rights-of-way, and to direct the railroad company to build such improvements. Iowa Code § 468.110 imposes upon railroads an affirmative duty to construct such improvements, and additionally, to build or rebuild the necessary culverts or bridges to carry the railroad's roadbed over the improvement. If the railroad company refuses to fulfill its duty, the board may, under Iowa Code § 468.112, cause the work to be done, and then seek to recover the costs of the construction of the entire improvement, including

the culvert or bridge, from the railroad in an action in Iowa district court. However, both Iowa Code § 468.111 and § 468.113 make it clear that the railroad company shall ultimately bear the full costs only of building or rebuilding the bridge or culvert necessary to carry its roadbed over the improvement.

Chicago & N. W. Transp. Co. v. Webster County Bd. of Supervisors, 880 F. Supp. 1290, 1296 (N.D. Iowa 1995).

Option No. 2 is not necessary to maintain the otherwise natural flow of water through Iowa Northern's embankment because the Culvert does so and, therefore, the Railway is not obstructing such water. The JDD posits that the embankment is the obstruction. This is inaccurate. The embankment has served its purpose for around 150 years, as has the stone Culvert. The stone Culvert works. This means the natural course of the waterway is flowing through the stone Culvert, as it always has done.

Equally important is the fact that Option # 2 is actually a groundwater drainage improvement project, functionally replacing the existing drainage tile draining certain non-railroad lands by artificially channeling the flow of this groundwater, as well as surface water, via an open ditch through the new 66" steel culvert pipe. The drainage ditch as described in Option # 2 is below grade,

or lower than the existing natural waterway. This is *artificial* groundwater drainage. It is not *natural* groundwater drainage.

It is also apparent that the JDD endeavors to cost shift the entire drainage improvement to the Railway since 2014. This is evidenced by comments recorded by the JDD's own attorney, Mr. Hudson, about doing so in the JDD's Minutes and attachments from April 8, 2014, the JDD's knowledge of financial responsibilities openly discussed since 2011, its rejection of Mr. Rode's recommendation for a repair under Option # 1, payment for which would fall on the landowners, the JDD's reversal of the reason for selecting Option # 2 since the record is devoid of support for such claim that this was done at landowner request, and its continued failure to meet its statutory duty to keep the drainage structures in good repair since 1976 and - when the opportunity presented itself - to foist the financial burden of doing so on to Iowa Northern.

^{13/}

As for other drainage district case law upon which the JDD relies, Iowa Northern does not particularly disagree with the JDD's block citations, containing underlines and merely quoting excerpts from certain Iowa drainage

^{13/} The trial court did not rule on these issues that, while presented as evidence and argued, did not need to be reached given its preemption decision for Iowa Northern. These facts are nevertheless true and supported by the record.

district case law. Not only is it unpersuasive, but it is not actually instructive, since it contains absolutely no argument as how it applies, controls, or is otherwise relevant to appellate consideration. *See*, JDD Brief at pp. 25 to 29.

The Railway does, however, disagree with the facially illogical conclusion that somehow preemption in this specific case will nullify Iowa Code §§ 468.109 - 468.113 and certain case law. The JDD again submits zero legal analysis, however, supporting its position. In any event, preemption is limited to the unusual and unsafe conditions presented by the topography and the existing plans under the specific facts of this case. Or, more accurately, plans that have now been created and actually approved by the JDD since it issued its §468.109 Notice to the Railway in June of 2016, never properly statutorily served.

Putting aside issues of drainage district law, the Iowa Supreme Court in Griffioen v. Cedar Rapids & Iowa City Ry. Co., 914 N.W.2d 273 (Iowa 2018), *cert. denied*, 139 S. Ct. 1320 (2019), held that ICCTA preemption is express. In addition to whether ICCTA imposed express (or “per se” or “categorical”) or implied (“as applied”) preemption negating state law laws or causes of action.

¹⁴ / Procedurally, the case was originally filed as a class action in state court,

¹⁴/ “Categorical” preemption means express preemption, while “as applied” preemption refers to implied preemption. Franks Investment Co v. Union

removed to the Northern District of Iowa, which held express preemption warranted dismissal of the plaintiffs' claims, and then appealed to the 8th Circuit.

^{15/} The 8th Circuit reversed the federal district court due to lack of complete diversity, and was ultimately remanded back to state court. Griffioen, 914 N.W.2d 273 at 279.

In Griffioen, the plaintiffs owned property in Cedar Rapids. Id. at 278. The four defendants, three railroads and an energy company, owned railroad bridges crossing the Cedar River. During the 2008 floods, the defendants parked railcars filled with rocks on their bridges to weigh the bridges down,

Pacific R. Co., 593 F.3d 404, 410 - 411 (5th Cir. 2010)(En Banc). The Franks test derives from an STB decision, CSX Transp., Inc., STB Fin. Docket No. 34662, 2005 STB LEXIS 675, 2005 WL 1024490, (S.T.B. May 3, 2005), which divided preemption into two categories: "categorical" (or "facial") preemption and "as applied" preemption. The Iowa Supreme Court in refers to this as the Franks' test, citing Franks Investment Company v. Union Pacific Railroad Company, 593 F.3d 404, 413 (5th Cir. 2010)(En Banc)(Holding that there are two types of preemption under the ICCTA: express and implied. "For a state court action to be expressly preempted under the ICCTA, it must seek to regulate the operations of rail transportation." But laws that only incidentally impact rail transportation are not preempted and a lawsuit based upon closure of a private rail track used by plaintiffs to reach their properties was permissible).

^{15/} As noted in Accent Media, Inc. v. Kershaw, Cutter & Ratinoff, LLP., 2024 WL042398 at *4 (N.D. Iowa 2024)(Unpub. Op.), "The flood lawsuit bounced around various courts for nearly six years. It was commenced in the Iowa District Court for Linn County on June 7, 2013. Doc. 33 at 9, ¶ 24)(Citing Griffioen v. Cedar Rapids & Iowa City RY. Co., 914 N.W.2d 273, 279 (Iowa 2018)."

trying to keep them from being washed out in the flooding. Two of the four bridges collapsed shortly after parking the loaded railcars on them. The two collapsed bridges clogged the Cedar River; the two remaining bridges acted as a dam to drain river water into low lying areas. Id. at 278 - 279. The plaintiffs sustained property losses and sought six billion dollars, punitive, and treble money damages for state common and statutory law flood tort claims, premising liability upon the railroads' operational decisions. Id. at 279.

The Iowa Supreme Court affirmed the state district court's grant of judgment *on the pleadings* (emphasis added) and its conclusion that:

The bridges at issue with respect to Plaintiffs' claims are . . . inextricably intertwined with the railroad Defendants' tracks, which affects rail transportation. Plaintiffs, having made complaints about how the railroad Defendants loaded and positioned their rail cars; as to where and when they parked their rail cars; and as to the design, construction and maintenance of the bridges, have stated claims that go directly to rail transport regulation. . . . Plaintiffs are complaining about actions taken by the railroad Defendants that are an essential part of the railroads' operations, and that would result in Plaintiffs managing or governing the operations of the railroads. . . . Plaintiffs' state law claims are expressly preempted by federal law because the claims fall within the scope of the ICCTA preemption clause.

Id. at 279. The ICCTA expressly preempts state remedies. Griffioen, id. “The foregoing provision reflects a clear indication of Congress's preemptive intent with respect to the matters set forth therein. It expressly provides for preemption of state remedies. It also grants the STB exclusive jurisdiction,

using language that is even more powerful than that found in other jurisdictional provisions that the Supreme Court has held support complete preemption.” Griffioen, *supra* at id.

The Iowa Supreme Court also held that the ICCTA is an express preemption statute, containing broad preemptive language, impacting state regulations or claims (either statutory or common law based) that pertain to matters of “the construction, operation or abandonment of rail lines” or “facilities.” This includes remedies related to these activities. Griffioen, id. at 280. “First, the ICCTA can preempt traditional common-law damage causes of action, as well as state statutes that would regulate railroad transportation” and “Second, the ICCTA appears to protect railroads from tort damage liability to property owners under state law when the railroads are taking action to preserve their own transportation facilities.” Id. at 284 - 285.

In response, the Griffioen plaintiffs contended that express preemption is applicable only to state laws or claims that “directly” regulate rail transportation, but allows claims that only “incidentally” do so. The Iowa Supreme Court, however, found that the plain language of the preemption clause of the ICCTA statute broadly covered all areas of railroad transportation services and operations (including but not limited to design, construction and maintenance of the line and facilities associated with the rail line) and

specifically did not adopt Franks. It did find that even if it utilized Franks, the plaintiffs' claims would still fail to survive preemption. "Contrary to the plaintiffs, we believe that the Franks test supports preemption here. The test focuses on whether the legal requirement at issue relates to rail transportation, as opposed to something else with only incidental effects on rail transportation. Thus, laws, ordinances, and common-law damage actions challenging where and when railroads placed their railcars on their transportation lines or how they constructed those lines are generally preempted." Griffioen, 914 N.W.2d at 286.

Under Iowa law, the ICCTA federal preemption test is whether the Iowa Code §§ 468.109 - 468.113 seeks to regulate -- manage or govern -- Iowa Northern "with respect to [its] rail transportation" or "transportation by rail carriers" and/or manage or govern Iowa Northern's "construction" or "operation" of its "facilities" at this specific Nora Springs, Iowa location. Here, the trial court properly applied an express preemption test to determine if the JDD could proceed although, as in Griffioen, Judge Weiland found that while the as-applied analysis could be used, ultimately holding that "For purposes of the court's decision in this case, though, it may not hold particular significance because the court determines that Iowa Northern successfully establishes preemption even in an as-applied analysis." Trial Ruling, p. 4.

1. There is No Presumption Against Preemption.

Neither the Griffioen case, 914 N.W.2d 273, the Trial Ruling, or any other ICCTA or STB case support a legal argument that there is a presumption against preemption. In fact, the block quotation in the JDD's Brief at pp. 29 - 30 doesn't even have a legal citation. Iowa Northern's counsel could not locate the case or cases quoted to provide a briefing response.

2. The STB Decision in Tubbs Does Not Hold that There is No Preemption in Railroad Drainage Cases.

This is a specious argument. In Griffioen v. Cedar Rapids & Iowa City Ry. Co., 914 N.W.2d 273 (Iowa 2018), *cert. denied*, 139 S. Ct. 1320 (2019), the Iowa Supreme Court cited Tubbs v. Surface Transportation Board, 812 F.2d 1141 (8th Cir. 2015) as utilizing an as-applied, not express, ICCTA analysis. Griffioen at 914 N.W.2d 273 at 279, *citing*, Tubbs, 812 F.3d 1141 at 1144. It favorably cited Tubbs in the context of ruling that "second guessing" a railroad's decisions to keep their lines operational is expressly preempted.

Furthermore, the JDD's claim that the underlying STB ruling in Tubbs, STB Fin. Docket No. 35792, 2014 WL 5508253 (S.T.B. October 29, 2014), prohibits drainage claims is false. The Tubbs litigants claimed drainage damages derived from FRA regulatory violated that had been drafted under the Federal Railroad Safety Administration Act, 49 U.S. C. § 20101, *et. seq.* The

STB simply found that ICCTA preemption did not apply to these federal statutory drainage claims, not that all ICCTA drainage disputes were preempted. 2014 WL 5508253, * 7. As previously asserted, courts have and do recognize ICCTA preemption drainage disputes. *See, Jones Creek Investors, LLC v. Columbia County*, 98 F. Supp. 3d 1279 (S.D. Ga. 2015) and *Waubay Lake Farmers, Ass'n v. BNSF Ry. Co.*, 2014 U.S. Dist. LEXIS 120160 (S.D. 2014)

3. Option # 2 Unreasonably Interferes with Railroad Transportation.

The JDD appears to argue that preemption under the ICCTA is as-applied, not express. As Iowa Northern as previously stated, the trial court has ruled that under either express or implied preemption, Option # 2 interferes with railroad transportation. The JDD's position although incorrect is, accordingly, legally moot. From a factual perspective, its arguments are belied by contrary record evidence and rather misleading as to the JDD's witnesses' actual trial testimony, while at the same time blatantly ignoring witness testimony and exhibits supporting the Railway's evidence.

Both of the parties agree that the south edge of the Culvert is buried in fill in the state it was in when quarried. The edges are jagged, irregular, and there is no ability to measure the precise location of where they end; indeed, the end at one part of the exterior wall may not be the same as part of it only a

few feet away. Mr. Dullard stated the jack and bore should be a few feet away from the Culvert. At the present, the right (north) end of the jack and bore pipe is only one foot from the Culvert edge, assuming a two-foot wall. Mr. Rode interfered with the geotechnical survey that Mr. Schierloh's boring requests was intended to try to locate. Moving the boring toward the Culvert interior makes no sense because the location of the interior is known; it is the exterior wall that is uncharted.

Both of the parties further agree that the Culvert could be damaged or destroyed during the jack and bore process. As an aside, Iowa Northern does not contend that it never uses a jack and bore for pipes. It has in the past and even has specifications for doing so. They simply do not apply to a 66" pipe. The JDD's core argument is that Scott Dullard has successfully jack and bored approximately 6,500 times ^{16/}, but this is no guarantee of victory in this specific location. Undoubtedly, the Plainfield, Illinois project leaders did not contemplate a catastrophic accident. Mr. Rode testified that if the Culvert is encountered the project could even be abandoned. One of the most telling interference facts is Mr. Rode's hail-Mary trial testimony about moving the pipe

^{16/} Indeed, this is stated a total of seven repetitious times. JDD Brief at pp. 7, 9, 23, 36, 41, 44, and 46.

further away from the south side of the Culvert. Indeed, this last-minute evidence violates the basic tenants of discovery.

The overall fact consideration is that the Iowa Northern will not run its trains if the jack and bore steel culvert installation proceeds. Even if the tracks are monitored for movement of one-fourth of an inch, this is too late. JDD false assurances aside, there can never be any safety surety.

The JDD cannot dictate how the Railway operates its rail facilities or demand that it install a culvert that controls Iowa Northern's decisions under these particular facts. The JDD's will interfere with the free movement of interstate commerce and railroad operations, preempting Iowa Code §§ 468.109 to 468.111 in this lawsuit.

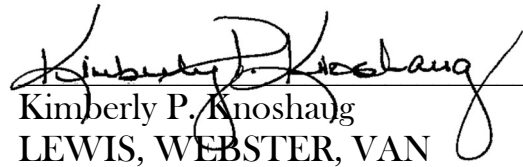
CONCLUSION

In conclusion, Iowa Northern Railway Company requests that this Court affirm the Trial Ruling of the district court.

REQUEST FOR ORAL ARGUMENT

The plaintiff-appellee, Iowa Northern Railway Company, requests oral argument of this appeal.

Respectfully submitted,



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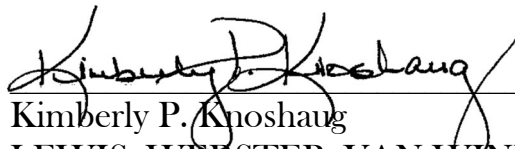
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Kimberly P. Knoshaug

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I, Kimberly P. Knoshaug, hereby certify that I electronically filed the foregoing document with Clerk of the Supreme Court of Iowa using the Iowa Judicial System Electronic Document Management System, which will send notification of such filing to the counsel below on the 12th day of July, 2024.

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^{17/} The JDD's Certificate of Service indicates it was served on attorneys from the DeKoter, Thole, Dawson, Rockman & Krikke, P.L.C. law firm in Sibley, Iowa. It was, however, received counsel for Iowa Northern.