IN THE IOWA SUPREME COURT
NO. 23-1308
(Polk County No. CVCV064749)

JOHN DOSTART and DEENA DOSTART,

Plaintiffs-Appellees,

v.

COLUMBIA INSURANCE GROUP,

Defendant-Appellant.

COLUMBIA INSURANCE GROUP'S APPLICATION FOR FURTHER REVIEW OF IOWA COURT OF APPEALS DECISION FILED OCTOBER 30, 2024

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QUESTIONS PRESENTED FOR REVIEW

1. Is Statutory Consumer Fraud an "Occurrence" Triggering Commercial General Liability Insurance Coverage, or Alternatively an Intentional or Expected Act Excluded From Coverage?

2. Was The Jury's Damages Award for "Property Damage"?

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STATEMENT SUPPORTING FURTHER REVIEW

The Iowa Court of Appeals held that Columbia Insurance Group ("Columbia") may be obligated to indemnify John and Deena Dostart for an Iowa Code Chapter 714H consumer fraud judgment entered in their favor against Columbia insureds and residential construction contractors James Harmeyer and Tyler Custom Homes, Ltd. This is the first time an Iowa court has held that a liability insurer may be required to afford coverage for damages resulting from a violation of Iowa Code Chapter 714H. Therefore, this case warrants further review because it has the potential to significantly impact coverage obligations of liability insurers doing business in Iowa.

Further review is also warranted because of conflicts between Iowa Supreme Court precedent and the Iowa Court of Appeals decision in this case. In two separate respects, the Iowa Court of Appeals decision is in conflict with *Yegge v. Integrity Mut. Ins*., 534 N.W.2d 100 (Iowa 1995). The conflict creates uncertainty as to liability coverage obligations. Addressing this uncertainty will ensure correct and efficient claim resolution, as well as prevent unnecessary litigation between claimants, policyholders and liability insurers.

The first way in which the Iowa Court of Appeals decision conflicts with *Yegge* involves liability insurer obligations, if any, to indemnify fraud judgments. In *Yegge*, the Iowa Supreme Court held that a liability insurer did not have a

coverage obligation for a jury verdict awarding compensatory damages for common law fraud. *Id*. at 103. There was no coverage because common law fraud could not be considered an "occurrence," i.e. an "accident," under the terms of a liability insurance policy. *Id*. In the present case, the Iowa Court of Appeals distinguished *Yegge* on the basis that *Yegge* involved common law fraud, which has different elements of proof than consumer fraud. (Opinion, P. 9). It stands to reason, however, that for the same reasons that liability insurers have no obligation to cover common law fraud, they should have no obligation to cover consumer fraud.

Moreover, regardless of whether or not there could hypothetically ever be liability insurance coverage for a consumer fraud judgment, the jury in this case awarded the Dostarts punitive damages for consumer fraud. (Verdict Form, App. 41). This leaves no question that Mr. Harmeyer's and Tyler Custom Homes, Ltd.'s conduct was either intentional or reckless, and thus not a covered "occurrence," i.e. an "accident." To the extent the Iowa Court of Appeals implicitly held that reckless commission of consumer fraud may qualify as an "occurrence," i.e. "accident" (Opinion, P. 11), its decision conflicts with *T.H.E. Ins. Co. v. Glen*, 944 N.W.2d 655, 664 (Iowa 2020).

The second conflict between *Yegge* and this case involves the question of what damages liability insurers are obligated to cover. In *Yegge*, the Iowa

Supreme Court held that a liability insurer did not have coverage for a jury award of damages for intangible economic losses, as such losses are not "property damage" within the meaning of a commercial general liability policy. *Yegge*, 534 N.W.2d at 102. In the present case, the jury verdict form shows the Dostarts were awarded damages for intangible economic losses. (Verdict Form App. 37-38). As such, pursuant to *Yegge*, Columbia has no coverage for the damages the jury awarded. Yet, the Iowa Court of Appeals held that Columbia must prove the cause of the Dostarts' damages in order to establish, as a matter of law, that it has no obligation to cover them. (Opinion, PP. 12-13).

In summary, consumer fraud is not the type of conduct that a commercial general liability insurance policy covers. But regardless of whether consumer fraud could ever be covered by a liability insurer, the jury's award of punitive damages to the Dostarts for consumer fraud reflects that there was no "occurrence," i.e. "accident," to trigger insurance coverage. Moreover, no matter the cause of intangible economic losses, such losses are not covered under the insuring agreement.

BRIEF IN SUPPORT OF APPLICATION

A. Statutory Consumer Fraud Is Either Not An "Occurrence" That Triggers General Commercial Liability Insurance Coverage, or Alternatively Is An Intentional Or Expected Act Excluded From Coverage.

The starting point for insurance coverage analysis is policy language. The policy at the heart of this case involves named insured Tyler Custom Homes, Ltd.'s Columbia Policy No. CMPIA0000002593 with effective dates of November 1, 2018, through November 1, 2019 (the "Policy"). (Policy, App. 54-208). The Policy includes commercial general liability (CGL) coverage, subject to terms, conditions, exclusions and limitations. (Policy, App. 54-208). The CGL coverage form provides:

> *SECTION I – COVERAGES*
> *COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY*
>
> *1. Insuring Agreement*
>
> *a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies . . . .*
>
> *b. This insurance applies to "bodily injury" and "property damage" only if:*
>
> *(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";*
> *(2) The "bodily injury" or "property damage" occurs during the policy period . . . .*

(Policy, Form CG 00 01 04 13, p. 1 of 16, App. 99).

The dispute between the Dostarts and Columbia centers, in relevant part, on the above coverage requirement of damage caused by an "occurrence." The Policy defines "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." (Policy, Form CG 00 01 04 13, p. 15 of 16, App. 113).

In *Yegge v. Integrity Mut. Ins. Co.*, the Iowa Supreme Court held in the context of a home construction dispute that an insurer of a general contractor had no obligation, pursuant to similar policy language as Columbia, to cover a common law fraud judgment. 534 N.W.2d at 103. The Court held that the conduct of which the Yegges complained, including fraud, was not accidental and thus did not constitute an "occurrence." *See id*.

The district court in the present case, as well as the Iowa Court of Appeals, found *Yegge* distinguishable because consumer fraud under Iowa Code Chapter 714H (the only count as to which Mr. Harmeyer and Tyler Custom Homes, Ltd. were found to bear liability) has different elements of proof than common law fraud. (Opinion, P. 9). The existence of differences, in the absence of a viable explanation on the import of those differences, does not render consumer fraud a covered "occurrence," i.e. an "accident." Moreover, although both the district court and the Iowa Court of Appeals decided that "more facts" are needed in order to determine coverage as a matter of law, the *Yegge* decision states:

> [The insurer] had no duty to undertake an exhaustive investigation of the Yegges' evidence. The suit against [the home builder] was, from beginning to end, a claim of poor performance in constructing a residence. Yegges would convert a routine business liability policy into a performance bond, clearly a risk [the insurer] did not undertake.
>
> *Yegge*, 534 N.W.2d at 103.

Regardless of the fact that *Yegge* addresses a homebuilding scenario involving common law fraud rather than consumer fraud, the principles the case espouses are dispositive in the present case. The bottom line is that CGL insurers simply do not take on the risk of their insureds committing intentional or reckless conduct (non-accidental conduct), nor do they agree to indemnify the same risks that a performance bondholder would.

For purposes of insurance coverage determination, consumer fraud pursuant to Iowa Code Chapter 714H is not significantly different from common law fraud. In comparing common law fraud to consumer fraud, these two types of claims are sufficiently similar that a liability insurer should not be obligated to cover either type of fraud as an "occurrence," i.e. "accident."

Common law fraud requires proof of scienter, meaning knowledge of falsity or reckless disregard for truth. *McGough v. Gabus.*, 526 N.W.2d 328, 331 (Iowa 1995) (listing elements of a common law fraud claim and discussing scienter). A careful analysis of Iowa Code Chapter 714H shows that it essentially requires the functional equivalent of scienter.

Iowa Code 714H contains the Private Right of Action for Consumer Frauds Act, which became effective in 2009. The Act states that:

> a person shall not engage in a practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely upon the unfair practice, deception, [or] fraud . . . .

Iowa Code § 714H.3(1). The Court of Appeals found that this standard "requires not knowledge of falsity but merely negligence."[1] (Opinion, P. 9).

Iowa Code 714H does not encompass conduct that is merely negligent. The statutory standard renders a person liable for what he/she "knows" to be fraud (or misrepresentation, concealment, etc.) with the intent that another person rely upon it. Iowa Code § 714H.3(1). The statutory standard also creates liability where a person "reasonably should know" that he/she is committing fraud (or misrepresentation, concealment, etc.) with the intent that another rely upon it. *Id*. This is a recklessness, rather than negligence, standard of liability. A person is reckless when he/she intentionally performs an act of unreasonable character while knowing or having reason to know of facts that would lead a reasonable person to realize the conduct creates an unreasonable risk of harm. *Leonard ex rel. Meyer v. Behrens*, 601 N.W.2d 76, 80 (Iowa 1999) (describing the standard of recklessness);

[1] The Dostarts did not expressly or clearly make the argument that "merely negligent" conduct could create a private cause of action for consumer fraud. Thus, Columbia Insurance Group had no opportunity to respond to the argument.

RESTATEMENT (SECOND) OF TORTS § 500. With reckless conduct, intent to harm is inferred from the circumstances. *Beeck v. Aquaslide 'N' Dive Corp*., 350 N.W.2d 149, 155 (Iowa 1984) (noting an innocent false statement does not establish intent to defraud, but when recklessly asserted, justifies inferring an intent to defraud).

Consumer fraud liability pursuant to Iowa Code Section 714H requires jurors to consider a defendant's state of mind. *See Albaugh v. Reserve*, 930 N.W.2d 676, 685 (Iowa 2019) (finding evidence that a defendant "knew or should have known" it committed an unfair practice is a required element of a consumer fraud claim). State of mind is not an element of a routine negligence claim; the focus in a negligence claim is not on state of mind, but whether conduct satisfies an objectively reasonable standard of care. *Thompson v. Kaczinski*, 774 N.W.2d 829, 835-36 (Iowa 2009). It is difficult to fathom a situation wherein a jury properly instructed on consumer fraud would find liability of a defendant who is "merely negligent" (objectively unreasonable conduct, but no actual intent to harm or inferred intent to harm). *See Albaugh, 930 N.W.2d at 685*; *Kalashian v. Wausau Homes*, No. 20-CV-1006-CJW-KEM, at *31 (N.D. Iowa Aug. 4, 2021) (unpublished) (finding that there was evidence the defendant acted in reckless disregard of rights and thus also that the "reasonably should have known" standard in the consumer fraud statute was satisfied).

At least two circumstances demonstrate that the statutory standard of liability for consumer fraud does not encompass mere negligence. First, Iowa Code Chapter 714H, the Private Right of Action for Consumer Frauds Act, exists within Iowa Code Title XVI, Criminal Law and Procedure. The Attorney General oversees private consumer fraud actions and is required to receive a copy of documents filed in such actions. Iowa Code § 714H.6; *see also* Iowa Code § 714H.7 (requiring the Attorney General to approve class action consumer fraud civil lawsuits). Therefore, it appears clear that the Act was intended to provide consumers with a private right of action for criminal conduct. In fact, at the time the Act was passed, local media reported that the Attorney General was the driving force behind the legislation, due to insufficient staffing to prosecute all instances of consumer fraud. James Lynch, *House, Senate Pass Private Cause of Action Bill*, THE GAZETTE, Apr. 20, 2009, https://www.thegazette.com/local-government/house-senate-pass-private-cause-of-action-bill-2/.

Second, negligent businesses have a "safe harbor" under Iowa Code Chapter 714A. A defense to a civil suit for consumer fraud is that conduct was "not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error." Iowa Code § 714H.5(7). Therefore, the Act does not appear to be intended to increase liability for

businesses' mere negligence, which would have the potential to hinder advertisement, solicitations, and other practices that further healthy competition.

Even if Iowa's consumer fraud statute creates liability for merely negligent conduct, which it does not, overarching policy considerations exist for the Court not to require liability insurers in Iowa to indemnify judgments for consumer fraud in violation of Iowa Code Chapter 714A. Insuring consumer fraud would have the tendency to encourage fraudulent conduct, due to the lack of direct financial repercussions for Act violators, when the obvious intent of the legislature was to prevent such conduct. Other jurisdictions have held that misconduct associated with consumer transactions is not a covered "occurrence." For instance, *in Thorn v. Am. States Ins. Co*., 266 F. Supp. 2d. 1346, 1352 (M.D. Ala.) (2022), an Alabama Court stated that extending CGL coverage to fraud claims (even if negligent conduct was involved) would be improper because CGL policies are designed for protection from accidental injury and damage. Allowing coverage in these types of situations would "'have the effect of transforming [the insurer] into a 'sort of silent business partner' to the consumer transactions . . . . This would cause an 'enormous' expansion of the scope of the insurer's liability without corresponding compensation.'" *Id*. (quoting *Auto-Owners v. Toole*, 947 F. Supp. 1557, 1564 (M.D. Ala. 1996)); *see also GE Aquarium, Inc. v. Harleysville Mut. Ins. Co.*, 2004 WL 3051074 (Phil. Ct. of Common Pleas, Dec. 27, 2004) (finding

deceptive conduct in violation of a consumer protection statute was not an "occurrence"); *West Am. Ins. Co. v. Midwest Open MRI, Inc*., 2013 WL 1641408 (Il Ct. App., April 16, 2013) (finding violations of a consumer fraud statute did not involve an "occurrence").

The only logical conclusion is that the judgment in the Dostarts' favor cannot be considered a covered "occurrence" under the perpetrator's general liability policy. But courts decide cases based on their own facts. Even if there could hypothetically be some other case involving viable CGL policy coverage for a consumer fraud judgment, which seems unlikely, such a hypothetical scenario is not what we are dealing with here.

Turning to the specifics of the case at hand, on April 7, 2022, a jury returned a verdict in favor of the Dostarts against Mr. Harmeyer and Tyler Custom Homes, Ltd. (Verdict, App. 35-41). The jury found the Dostarts proved consumer fraud (and only consumer fraud), pursuant to Iowa Code Chapter 714H, against both Mr. Harmeyer and Tyler Custom Homes, Ltd. (Verdict, App. 37-38). The marshaling instruction on consumer fraud liability was as follows:

> *To prove their claim of consumer fraud, the Dostarts must prove all of the following propositions:*
>
> 1. *In their dealings with the Dostarts, Defendants Jim Harmeyer and/or Tyler Custom Homes, Ltd., engaged in a practice or act that a reasonable person knew or reasonably should have known was a deception, fraud, false pretense, a false promise, a misrepresentation, or a concealment, suppression or omission of facts.*

2. *That Defendant acted with the intent that the Dostarts rely on the practice or act, in connection with the advertisement or sale of the construction of a personal residence.*

3. *The practice or act caused Actual Damages to the Dostarts.*

If Plaintiffs failed to prove any of these propositions, Plaintiffs are not entitled to damages for this claim. If Plaintiffs have proved all of these propositions, Plaintiffs are entitled to "Actual Damages" in some amount for this claim.

(Jury Instruction No. 24, App. 212).

Section 1 of the marshalling instruction is inconsistent with Iowa Code Chapter 714H (and interpreting case law) insofar as it does not require a finding as to the defendants' state of mind, but rather refers to a "reasonable person." *Albaugh*, 930 N.W.2d at 685. Any argument of reversible error in the instructions, however, would have been an issue for resolution within the underlying case. In order to find liability, the jury was required to find that the defendants acted with the intent that the Dostarts rely on their conduct. This requirement of proof of intent is effectively identical to proof that would be required in any fraud case.

At any rate, leaving no doubt whatsoever that the jury found more than "mere negligence" in the case at hand, the jury awarded exemplary (punitive) damages against both Mr. Harmeyer and Tyler Custom Homes, Ltd. (Verdict, App. 38-39). The jury instruction on exemplary damages was as follows:

The Dostarts seek "Exemplary Damages." To recover Exemplary Damages, the Dostarts must prove by a preponderance of clear, convincing, and

satisfactory evidence that a Defendant's prohibited practice or act constitutes willful and wanton disregard for the rights or safety of another.

If you find the Dostarts have met this burden, you may award Exemplary Damages up to three times the amount of Actual Damages.

(Jury Instruction No. 28, App. 215).

The jury was instructed on the meaning of "willful and wanton":

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk so great as to make it highly probable that harm will follow.

(Jury Instruction No. 29, App. 216).

Consumer fraud was the only count on which defendants were found liable. So when the jury awarded punitive damages, it found consumer fraud to be not merely negligent, but either intentional or reckless in nature. The erroneous Iowa Court of Appeals decision implies that if the conduct was reckless rather than intentional, then Columbia National Insurance Group is obligated to pay the judgment.[2] (Opinion, P. 9) (indicating that punitive damages may be awarded for intentional or reckless conduct, such that "without more facts," the Court cannot determine coverage). It is not accurate to state that Columbia automatically insures against reckless conduct. Again, the Policy insures against "occurrences," which are defined as "accidents." In addition to a provision specifically excluding losses that "result from an act committed by or at the direction of an insured with the

[2] The Dostarts did not make this argument.

intent to cause loss," the Policy also expressly excludes coverage for acts "expected or intended from the standpoint of the insured." (Policy, App. 66, 100) (emphasis added). In other words, the Policy expressly excludes coverage for both intentional and reckless conduct on the part of an insured.

In *T.H.E. Ins. Co. v. Glen*, the Iowa Supreme Court held that where a policy excludes coverage for bodily injury and property damage "expected or intended from the standpoint of the insured," then there is no liability coverage where a factfinder concludes injury was "highly likely or substantially certain" to result from an insured's conduct. 944 N.W.2d 655, 664 (Iowa 2020). Here, the jury specifically found that Mr. Harmeyer and Tyler Custom Homes, Ltd. disregarded a known or obvious risk so great as to make it "highly probable" that harm would follow. (Verdict Form, App. 37; Jury Inst. 28 & 29, App. 29-30). Per *Glen*, even if Mr. Harmeyer's conduct was reckless rather than intentional, Columbia would have no coverage obligation for the loss.

There is also no coverage, under existing case law, for reckless conduct insofar as it is not an "occurrence," i.e. an "accident." A deliberate act, negligently performed, is accidental "if the effect is not the intended or expected result; that is, the result would have been different had the deliberate act been performed correctly." *Nat'l Sur. Corp. v. Westlake Invs.*, LLC, 880 N.W.2d 724, 736 (Iowa 2016). On the other hand, an intentional act is not an accident, i.e. insured

occurrence, if harm was the natural and expected result of an insured's actions, i.e. was highly probable. *See id*. Iowa Code Chapter 714H as applied in this case involved liability where there was certainly an intentional act with the high probability of harm, because the jury had to specifically make this finding in order to render its punitive damages verdict. (Verdict Form, App. 37; Jury Inst. 28 & 29, App. 29-30). Per *Westlake*, the consumer fraud in this case was not based accidental conduct, which is the type of conduct a commercial general liability policy is designed to insure against. 880 N.W.2d at 736 (indicating there is no CGL coverage for expected consequences of intentional acts).

The Court of Appeals decided that more facts are needed about the conduct of Mr. Harmeyer and Tyler Custom Homes, Ltd. in order to determine if Columbia has an obligation to indemnify the judgment entered against them. (Opinion, P. 10). Given that the jury found the defendants engaged in willful and wanton conduct (intentionally committed acts of an unreasonable character in disregard of a known or obvious risk so great as to make highly probable harm will follow), what other facts could possibly be needed? The jury verdict tells us all that we need to know.

In summary, pursuant to existing Iowa Supreme Court case law, the judgment in favor of the Dostarts did not involve property damage caused by an

"occurrence," under Columbia's Policy. Columbia thus has no obligation to indemnify the judgment.

B. The Jury's Award Was Not For "Property Damage."

The Iowa Court of Appeals incorrectly found more facts are needed to determine if the specific damages awarded to the Dostarts are for covered "property damage." (Opinion, PP. 12-13). The starting point for the analysis is Columbia's coverage language:

> *SECTION I – COVERAGES*
> *COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY*
>
> *2. Insuring Agreement*
>
> *We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies . . .*

(Policy, Form CG 00 01 04 13, p. 1 of 16, App. 99).

Everyone agrees the case does not involve "bodily injury." The disputed issue is whether Columbia's insureds are obligated to pay sums because of "property damage." The Policy defines "property damage" as, in relevant part: "Physical injury to tangible property, including all resulting loss of use of that property . . . ." (Policy, Form CG 00 01 04 13, p. 16 of 16, App. 114).

Here is the jury verdict form specifying the damages that were awarded:

Question No. 17: What is the amount of Actual Damages, if any, caused by Tyler Custom Homes' consumer fraud? If you find the Dostarts failed to prove an item of damage, enter 0 for that item.

The reasonable cost of completing the home	$118,808.30
Costs associated with temporary living, moving expenses, and loan extension.	0.00
Total	$118,808.30

Question No. 11: What is the amount of Actual Damages, if any, caused by Harmeyer's consumer fraud? If you find the Dostarts failed to prove an item of damage, enter 0 for that item.

The reasonable cost of completing the home	$0.00
Costs associated with temporary living, moving expenses, and loan extension.	$63,600
Total	$63,600

Again, *Yegge* is dispositive. 534 N.W.2d at 102. In *Yegge*, the jury awarded compensatory damages associated with the cost of finishing the Yegges' uncompleted home, disruption of their lives, impairment of business, increased expenses and diminishment in value. *Id.* at 101. The Court held that nothing the Yegges sought constituted "property damage" as defined within the policy. *Id*. at 102. The policy defined "property damage" the same as the policy in this case: "physical injury to tangible property . . ." *Id*. at fn. 2; (Policy, Form CG 00 01 04 13, p. 16 of 16, App. 114). The Yegges' damages were "intangible economic losses," not "physical injury to tangible property." *Id*. at 102.

Just as in *Yegge*, the jury awarded the Dostarts compensatory damages against Tyler Homes, Ltd. consisting of the cost of completing their unfinished

home. (Verdict, Q. No. 17, App. 38; Judgment, P. 2-3, App. 43-44). The compensatory damages Mr. Harmeyer was ordered to pay encompassed costs associated with temporary living expenses, moving expenses and loan extension. (Verdict, Q. No. 11, App. 37; Judgment, P. 2-3, App. 43-44). As was the case in *Yegge*, those are intangible economic losses. They are not "property damage" that is covered by the policy. *See also Strotman Bldg. Ctr., Inc. v. West Bend Mut. Ins. Co.*, 1999 Iowa App. LEXIS 291, at *2-6 (Iowa Ct. App., Oct. 27, 1999) (finding various expenses associated with improper home construction were not "property damage").

The Iowa Court of Appeals stated that to determine coverage, more facts are needed regarding the cause of the damages that the jury awarded. (Opinion, P. 13). The *Yegge* Court did not perform any type of causation analysis in determining coverage of damages. Moreover, to the best of Columbia's knowledge, there is no case law supporting the Iowa Court of Appeals' opinion that facts establishing cause of damage are relevant to whether the policy language in question provides coverage. Per *Yegge*, due to the damages' inherent nature (intangible economic loss), the damages are not covered, with no further factual analysis necessary.

CONCLUSION

Columbia requests that the Court reverse the decision of the Court of Appeals and hold that Columbia has no coverage obligation to indemnify the

judgment in favor of the Dostarts. Consumer fraud under Iowa Code Chapter 714H—as found by the jury in this case—does not result in "property damage," and does not constitute a covered "occurrence," as a matter of law.

Respectfully Submitted,

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on November 14, 2024, the foregoing Application for Further Review was filed via the appellate e-filing system and served on counsel for the Dostarts, as identified below, via the e-filing system.

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By /s/ *Allison J. Frederick* 11/14/24

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR AN APPLICATION FOR FURTHER REVIEW

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(5) because:

This application has been prepared in a proportionally spaced typeface using Times New Roman in font size 14 and contains 4,222 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(5)(a).

By /s/ *Allison J. Frederick* 11/14/24