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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 26-0636
POLK COUNTY CASE NO. LACL155664

AMY WISCO
Plaintiff/Appellee
v.
BMW OF NORTH AMERICA, LLC
Defendant/Appellant

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY
THE HONORABLE HEATHER LAUBER, JUDGE

APPELLEE BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. **BMW'S ARGUMENT IS A DISAGREEMENT WITH HOW CHAPTER 322G IS WRITTEN, NOT A STATEMENT OF REVERSIBLE ERROR AND ITS DISPUTE WITH THE JURY INSTRUCTIONS ARE NOT SUPPORTED BY THE RECORD.**

II. **SUBSTANTIAL EVIDENCE SUPPORTS THE JURY'S FINDING THAT THE 2023 BMW X3 WAS NOT A REASONABLY EQUIVALENT REPLACEMENT VEHICLE.**

III. **THE DISTRICT COURT CORRECTLY DENIED BMW'S MOTION TO WITHDRAW THE JURY DEMAND.**

ROUTING STATEMENT

This case involves the application of existing legal principles. Contrary to BMW of North America, LLC's, ("BMW") routing statement, this case does not present an issue of first impression warranting the Iowa Supreme Court's limited resources. Accordingly, it should be transferred to the Court of Appeals. Iowa R. App. P. 6.1101(3)(a)(2024).

STATEMENT OF THE CASE

Nature of the Case

The case is an appeal from a jury verdict in favor of Amy Wisco ("Ms. Wisco") which found that BMW had not complied with an earlier arbitration award in favor of Ms. Wisco. Among other things, BMW argued to the jury that it had complied with the award by providing a "reasonably equivalent" replacement vehicle to Ms. Wisco in June 2023 or, alternatively, in January 2025. After hearing testimony from witnesses from both parties and receiving evidence relating to the features of the differing vehicles, the jury rendered a determination as to whether BMW complied with the arbitration award by concluding that BMW had not provided a "reasonably equivalent" vehicle to Ms. Wisco in June 2023 but did so in January 2025.

Prior Proceedings and Disposition

On May 12, 2023, Ms. Wisco filed her Petition to Affirm and Enforce Arbitration Under Iowa Lemon Law after BMW failed to timely comply with the arbitration award by not tendering a replacement vehicle, amongst other complaints. [D0001, Petition, 05/12/2023]. On June 2023, BMW filed its Answer and Affirmative Defenses, requesting a jury trial, asserting that it had complied with the arbitration award by proffering a vehicle that met the

standards for a replacement vehicle under the Iowa Lemon Law. [D0009, Defendant's Answer to Plaintiff's Complaint, ¶48, 06/30/2023].

Shortly before the originally scheduled trial, on July 1, 2025, BMW filed its Motion to Withdraw Jury Demand where it put forth the argument that the sole legal issue in this case, whether the vehicles BMW offered to Ms. Wisco were "reasonably equivalent", was a legal issue, and thus, a bench trial was warranted. [D0078, Motion to Withdraw Jury Demand, ¶5, 07/01/2025]. On August 1, 2025, the district court denied BMW's Motion to Withdraw Jury Demand, finding the issue of "reasonable equivalence" to be a question of fact. [D0101, Order Denying Motion to Strike Jury Demand, 08/01/2025].

Trial commenced on August 4, 2025, and proceeded over the course of three days. The jury was charged with determining a single question of fact; specifically, whether one of two vehicles proffered by BMW was "reasonably equivalent" to Ms. Wisco's 2021 BMW X3.[1] On August 7, 2025, the jury returned its verdict, finding that BMW first offered Ms. Wisco a "reasonably equivalent" replacement vehicle on January 6, 2025. [D0150, Civil Verdict Form, 08/08/2025].

[1] As will be detailed below, the record reflects that there were two deliveries of a replacement vehicle by BMW; one in 2023, the other in 2025.

On August 22, 2025, Ms. Wisco filed her Post Trial Motion for Entry of Judgment Against BMW, addressing the remaining legal questions for the district court. [D0147, Motion for Entry of Judgment Against Defendant, 08/22/2025]. On October 24, 2025, BMW filed a Motion on Remaining Issues Post Jury Verdict, wherein it renewed its Motions for a directed verdict/judgment notwithstanding the verdict, mistrial, and withdrawal of the jury demand. [D0156, Motion on Remaining Issues Post Jury Verdict, p. 11, 10/24/2025].

Following full briefing and a hearing on post-trial issues on November 12, 2025, the district court entered its Findings of Fact and Ruling of Law on Post-Trial Matters on March 12, 2026, denying each of BMW's motions and entering judgment for Ms. Wisco in the amount of $115,716.04, plus attorney fees. [D0162, Findings of Fact and Ruling of Law on Post-Trial Matters, 03/12/2026].[2] BMW filed its Notice of Appeal on April 9, 2026. [D0169, Notice of Appeal, 04/09/2026].

STATEMENT OF FACTS

On November 10, 2020, Ms. Wisco purchased a 2021 BMW X3 from one of BMW's authorized dealerships. [D0179, Tr. Vol I, p. 30:6-12, 05/29/2026].

[2] As of this filing, the Application for Attorney Fees remains pending.

Ms. Wisco originally owned and drove a Nissan Murano which was destroyed in the 2020 derecho. [D0179 at p. 20:2-5]. The Nissan Murano included a number of features important to Ms. Wisco, including the adjustable seats (lumber and bolster support) and upgraded sound system. [D0179 at p. 20:10-16]. Ms. Wisco could not locate a replacement Murano and began what she described as "an exhaustive search for a vehicle that was as similar as [they] could get to that that would include all the same features." [D0179 at p. 20:23; 21:2].

That search led Ms. Wisco to BMW, where she decided to acquire a 2021 BMW X3 which included numerous "upgraded" features, including lumber seat adjustments that Ms. Wisco needed in order to safely operate. [D0179 at p. 22:7-14]. Ms. Wisco testified that the lumbar and bolster support was important to her due to nerve damage resulting from giving birth, that can cause her leg to go numb while driving. [D0179 at p. 29:4-23]. Having this function in both the driver's and passenger's seats were important so that she did not have to take multiple breaks while in the car. [D0179 at p. 29:24; 30:2].

After purchasing the 2021 BMW X3 in late November of 2020, problems with the vehicle began almost immediately. [D0179 at p. 30:13; 31:15]. These problems included connection issues with issues with the passenger safety restraint, issues with the driver's seat belt restraint, and other issues. [*Id.*]. Ms.

Wisco took the 2021 BMW X3 to Lithia in Des Moines to resolve the issues, but Lithia was unable to fix the issues after repeated efforts. [D0179 at p. 32:6-13]. As a result, Ms. Wisco filed a complaint through the Better Business Bureau Auto Line Program ("BBB") on November 10, 2022. [D0179 at p. 32:14-21]. On February 13, 2023, the parties participated in a BBB arbitration hearing. [D0121, Exhibit 6, 08/08/2026]. On March 17, 2023, arbitrator James Raymond, issued a decision that awarded Ms. Wisco a replacement vehicle pursuant to the terms of Iowa's Lemon Law. [*Id.*]. Ms. Wisco accepted the Arbitrator's award on April 6, 2023. [D0179 at p. 36:16-22; 37:1-20]. Ms. Wisco then did not hear from BMW again until the middle of May, 2023. [D0179 at p. 38:3-14].

Due to BMW failing to provide timely substitute transportation or a replacement vehicle as required by Iowa's Lemon Law, Ms. Wisco next sought recourse by filing her Petition to Enforce Arbitration Ruling. [D0179 at p. 39:3-9]. BMW filed its answer and demanded a jury trial. [D0009, Answer, 06/30/2023].

During negotiations with Ms. Wisco's counsel to resolve the matter, in 2023, BMW unilaterally[3] had delivered a vehicle to Lithia Des Moines for Ms.

[3] The build documentation for this particular vehicle shows it was already in production before BMW and Ms. Wisco's counsel discussed a replacement

Wisco to be her "reasonably equivalent" replacement vehicle. [D0179 at p. 42:18-23]. Upon inspection of the vehicle, Ms. Wisco noticed that the car was missing key features that she previously selected and paid for with the 2021 BMW X3. Missing from the vehicle were: the panoramic moonroof, dual-zone climate control, cornering lights, all weather floor mats, auto dimming rearview mirror, bolster and lumbar support, auto-dimming interior and exterior mirrors, automatic climate control, LED fog lights, Apple CarPlay compatibility, speed limit information, park distance alerts – all of which were upgrades paid for by Ms. Wisco with the 2021 BMW X3. [D0179 at p. 44:14-24; 55:25; 69:3].

BMW's own technical service engineer, Jason Miller, walked the jury at trial through a feature-by-feature comparison of the 2021 BMW X3, 2023 BMW X3 and 2025 BMW X3. [D0177, Tr. Vol II, p. 7:24; 35:19, 05/29/2026]. BMW's witness, Steve Andreacchi, who was in charge of resolving Ms. Wisco's claim, testified that he negotiated with Ms. Wisco's previous attorney about what features the replacement vehicle needed to include. [D0177 at p. 62:9; 68:7].

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vehicle. The build sheet reflects an inquiry date of May 12, 2023, [D0120, Exhibit 4, 08/08/2025; D0177, at p. 47], and the corresponding Vehicle Inquiry Report reflects a date of May 4, 2023, [D0141, Exhibit 26, 08/08/2025; D0177 at p. 48] — both before the May 25, 2023 email in which Ms. Wisco's previous attorney identified potential features which would need to be addressed in the replacement vehicle. [D0124, Exhibit 9, p. 5, 08/08/2025]. The vehicle BMW ultimately delivered was therefore not built or configured in response to that request.

This was done via email on May 25, 2023, where Ms. Wisco's previous attorney highlighted potential features which would need to include: among other features, heads up display, lumbar support, remote start, the shadowline package and full factory warranty. [D0124, Exhibit 9, p. 5, 08/08/2025].

In January of 2025, BMW tendered a second vehicle to Ms. Wisco, a 2025 BMW X3, located in Davenport, Iowa. [D0179 at 47:3-6]. Rather than driving to Davenport to inspect the vehicle, Ms. Wisco used the build sheet provided by BMW to study its features. [D0179 at p. 47:12-18]. Based on that comparison, Ms. Wisco testified that the 2025 BMW X3 did have a number of similar features that were on the 2021 BMW X3, including lumbar support, heated front seats, live cockpit pro navigational program software, ambient lightning, and park distance control. [D0179 at p. 48:20; 49:6; 55:25-69:3]. However, the 2025 BMW X3 was still missing multiple features which were present on the 2021 BMW X3. [*Id*.]. Since the 2025 BMW X3 did not have these features which Ms. Wisco paid for in her 2021 BMW X3, she declined the vehicle. [D0179 at p. 49:7-23].

On July 1, 2025, shortly before trial was set to begin, and more than two years after BMW had demanded a jury trial in its Answer, BMW did an abrupt pivot and moved to withdraw its own jury demand and argued that the central issue of "reasonable equivalence" was a legal question for the court rather than

a jury. [D0078, Motion to Withdraw Jury demand, ¶6, 07/01/2025]. On August 1, 2025, the district court denied BMW's motion, holding that whether the replacement vehicles were "appropriate as defined by Iowa Code 322G presented 'a fact question' that was 'still proper for the jury', citing *Cato v. American Suzuki Motor Corp*., 622 N.W.2d 486 (Iowa 2001)." [D0101, Order Denying Motion to Strike Jury Demand, 08/01/2025].

Trial began on August 4, 2025, and concluded on August 7, 2025, more than two years after Ms. Wisco filed suit and more than four years after Ms. Wisco purchased her 2021 BMW X3. The jury was asked whether BMW provided a "reasonably equivalent" replacement vehicle as ordered by the arbitration award and if so, on what date. [D0150, Civil Verdict Form, 08/08/2025]. On August 8, 2025, the jury found that the 2023 BMW X3 was not "reasonably equivalent" but found the 2025 BMW X3 to be a "reasonably equivalent" replacement vehicle. [D0150, Civil Verdict Form, 08/08/2025].

During trial, counsel for both parties agreed that the issues of the amount of pecuniary value, per diem charges, collateral charges, whether Ms. Wisco was ever given a substitute vehicle, court costs, and attorney fees, would be decided by the Court after the jury's verdict was returned. [D0180, Tr. Vol III, p. 22:11-21, 05/29/2026].

Following briefing by the parties, on March 12, 2026, the Court entered its Findings of Fact and Ruling of Law on Post-Trial Matters, more than five years after Ms. Wisco first purchased her 2021 BMW X3 and almost three years after filing her petition. [D0162, Findings of Fact and Ruling of Law on Post-Trial Matters, 03/12/2026].

Additional facts will be discussed below.

ARGUMENT

Three well-established principles frame every argument advanced by BMW which follows. First, this Court construes a statute by searching for the legislative intent shown by what the legislature said, not by what a party believes the Legislature should have said. Iowa R. App. P. 6.904(3)(m). Indeed, this proposition is so well established, a party need not cite authority in support of the proposition. Iowa R. App. P. 6.904(3). As set out below, BMW's arguments repeatedly ask this Court to read into Iowa Code Chapter 322G (and, therefore, Jury Instruction No. 12) words the Legislature and the district court did not use, rather than apply the text that was actually adopted by the Legislature. Second, the jury's findings of fact are binding on this Court if supported by substantial evidence. Iowa R. App. P. 6.904(3)(a). The jury heard the witnesses, weighed their credibility, and returned its verdict. That verdict is not for an appellate court to re-weigh so long as substantial evidence

supports it. Third, even where the facts are not sharply disputed, if reasonable minds could draw different inferences from them, a jury question is created. Iowa R. App. P. 6.904(3)(p). Here, Ms. Wisco and BMW disagreed, based on the same trial record, about whether either of the vehicles BMW offered were "reasonably equivalent" to the original 2021 BMW X3. That very disagreement confirms a jury question existed, and the jury's resolution of it is precisely the kind of factual determination the second principle above makes binding on an appellate court.

I. BMW'S ARGUMENT IS A DISAGREEMENT WITH HOW CHAPTER 322G IS WRITTEN, NOT A STATEMENT OF REVERSIBLE ERROR AND ITS DISPUTE WITH THE JURY INSTRUCTIONS ARE NOT SUPPORTED BY THE RECORD.

a. Error Preservation.

"Issues must ordinarily be both raised and decided by the District Court before we will decide them on appeal". *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (internal citation omitted). Here, the issue of jury instructions were argued and ruled upon at trial. [D0180 at p. 3:4-58:4]. Accordingly, error has been preserved on the issue of the jury instruction. However, the argument that a new non-jury trial should be granted, as discussed more fully below, is new and was not preserved for appellate review.

b. Scope and Standard of Review.

This Court reviews jury instructions for corrections of legal error. *Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 891 (Iowa 2015). "It is error for a court to refuse to give a requested instruction where it correctly states the law, has application to the case, and is not stated elsewhere in the instructions." *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1, 5 (Iowa 2009) (cleaned up). But a "court has the responsibility to submit only those instructions that have support in the record." *Field v. Palmer*, 592 N.W.2d 347, 352 (Iowa 1999). And "[w]hen we weigh the sufficiency of the evidence to support an instruction; we construe the evidence in a light most favorable to the party seeking submission." *Sleeth v. Louvar*, 659 N.W.2d 210, 215 (Iowa 2003) (cleaned up). Instructional error "does not merit reversal unless it results in prejudice", such as if it mislead the jury or materially misstates the law. *DeBoom*, 722 N.W.2d at 5 (cleaned up).

c. The District Court Properly Exercised Its Discretion to Craft Jury Instruction No. 12 Based on Its Own Reasoned Interpretation of the Statute.

Before addressing why the specific instruction BMW attacks did not create the veto power BMW imagines, it is worth recalling what Iowa law actually requires of a jury instruction. A trial court must "give instructions that fairly state the law as applied to the facts of the case." *State v. Marin*, 788 N.W.2d 833, 838 (Iowa 2010). A trial court has "rather broad discretion in the language

that may be chosen to convey a particular idea to the jury." *Stringer v. State*, 522 N.W.2d 797, 800 (Iowa 1994). Nothing in Iowa law requires the district court to adopt BMW's preferred wording, or Ms. Wisco's, so long as the instruction actually given, correctly stated the law that applied to the facts of this case. *Le v. Vaknin*, 722 N.W.2d 412, 414 (Iowa 2006).

This is precisely what the district court exercised here. Faced with a statute that, by BMW's assertion is imprecisely worded, the district court did not simply adopt one side's proposed language wholesale. Make no mistake, Ms. Wisco argues that, even if the statute could be more precisely worded, its command is clear. The district court explained, on the record, why some instruction on the "reasonable equivalent" standard was unavoidable, stating: "[a]nytime the jury makes a fact determination, the jury is always given some type of legal instruction on how to determine issues that they have to decide. That's how a jury resolves a fact question. We can't just give a case to the jury without giving them any guidance, so we are going to have to come up with some guidance on what 'reasonable equivalent' means." [D0180 at p. 29:17-25]. When Ms. Wisco's counsel pointed out that BMW's proposed instructions gave the jury "no guidance" at all on how to determine whether a replacement vehicle qualified, the district court agreed and explained that "the jury has to have some parameters with which to decide what reasonably equivalent is,"

and that those parameters would "have to be based on something in the law." [D0180 at p. 26:7-14]. This reflects that the district court did exactly what Iowa law commands the trial judge to do: read the statute, decide what it requires, and translate that requirement into workable guidance for the jury. Crafting Instruction No. 12 was the ordinary, necessary work of instructing a jury on a statute. At the end of the day, BMW does not argue that the instruction misstated the law, instead it just wants to complain about the statute.

d. BMW's Complaint That the Statute Is Poorly Drafted Is Not a Cognizable Appellate Issue.

Strip away the rhetoric, and BMW's first argument is not that the district court erred. It is that the Iowa Legislature, in BMW's view, wrote Iowa Code §322G.4(2)(a) poorly. BMW says the phrase "acceptable to the consumer" is "defective and prejudicial," that it "negates other sections of the same statue", and asks this Court to rewrite the statute to insert the word "or". [Appellant's Brief, pg. 15, 19-20]. This was a complaint made by BMW multiple times during trial. [D0180 at p. 7:5-21; 61:8-9; p. 86:18-87:2; 89:2-16]. However, that complaint is not an appellate argument cognizable under Iowa law. Appellate courts review rulings of the district court for legal or procedural error; they do not sit as a second legislature to redraft statues a losing party finds inconvenient. Whatever BMW's opinion of the statute's craftmanship, that

opinion is not a basis for reversal. That request belongs with the General Assembly, not the courts.

e. BMW's Real, Unstated Argument that the Jury Instructions Were Wrong, Fails Because the Instructions Did Not Invite the Jury to Find Veto Power.

What BMW is actually upset about, though it never squarely says so, is that it believes the jury instructions given were wrong. Specifically, that the instruction let the jury believe Ms. Wisco possessed veto power when it came to accepting a "reasonably equivalent" vehicle. BMW's contention is patently erroneous, and the record proves it.

The question for a jury instruction error claim is whether the instructions given were "a correct statement of the applicable law based on the evidence presented", not whether a different, better-worded instruction could have been written. *Le v. Vaknin*, 722 N.W.2d 412, 414 (Iowa 2006). Even where an instruction is erroneous, Iowa law does not reverse for errors sake, but "unless it results in prejudice to the complaining party." *Koenig v. Koenig*, 766 N.W.2d 635, 637 (Iowa 2009). A review of the record shows that there was no prejudice to BMW.

The trial record forecloses BMW's premise on its merits. Throughout trial, BMW's counsel repeatedly urged the district court that the analysis of whether the replacement vehicle's acceptability to Ms. Wisco, as any part of the

jury's analysis, would improperly give her "veto power" to reject whatever BMW proffered. [D0180 at p. 2:2-7]. BMW made the identical argument at the instruction conference. Objecting to proposed instruction No. 12, BMW's counsel argued that the "acceptable to the consumer" language as anything more than a limited exception would "give them veto power over everything," insisting the statutory language would "give them veto power over everything" and insisting the statutory language was "intended by the legislature to allow the consumer to accept something less than reasonably equivalent or identical," not to let her reject a vehicle BMW considered adequate. [D0180 at p. 108:1-8]. The district court considered and rejected this argument on the record. [D0180, at p. 109:23-110:1]. The district court likewise rejected BMW's related argument for a directed verdict premised on the same veto power theory and expressly found "there is nothing about this statute that would give any consumer, including the plaintiffs, absolutely veto power over whether or not a vehicle was reasonably equivalent." [D0180 at p. 95:1-4].

The instruction the jury received was quite the opposite of a consumer veto. Jury Instruction No. 12 read as follows:

> Under Iowa law, when a customer is entitled to a replacement vehicle, the vehicle must be either identical or reasonably equivalent to the original vehicle. Here, the parties agree that BMW of North America did not offer an identical replacement

> vehicle to the plaintiff. Instead, BMW of North America contends that it offered a reasonably equivalent replacement.
> With respect to the phrase, "reasonably equivalent", you may, but are not required, to consider any of the following:
> 1. Whether the replacement vehicle was acceptable to the plaintiff.
> 2. Whether the replacement vehicle was as the original vehicle would have been without the nonconformity at the time of the original acquisition.
> 3. Whether the included the significant features of the original vehicle at the time of the plaintiff's purchase.
> This is not an exhaustive list of factors to consider when determining whether the 2023 or the 2025 BMW X3s were reasonably equivalent to the plaintiff's 2021 BMW X3.

[D0146, Jury Instructions and Statement of the Case, p. 13, 08/08/2025].

The instruction advised the jury of the Iowa Lemon Law's requirement that a replacement vehicle "must be either identical or reasonably equivalent to the original vehicle", and then offered a permissive, non-exhaustive list of factors that the jury "may but are not required to, consider" in reaching that determination. [D0146, Jury Instructions and Statement of the Case, p. 13, 08/08/2025]. In closing argument, counsel for Ms. Wisco likewise told the jury that the list was "not an exhaustive list of factors to consider" but, at no time, did counsel argue that the consumer had "veto" power. [D0180 at p.135:22-44]. Acceptability to Ms. Wisco was listed among at three permissive factors for the

jury to consider. Nothing in the instruction told the jury that consumer non-acceptance alone disqualified a vehicle. [*Id*.].

BMW argues that the "poor wording of the statute to prejudice and sway the jury into believing that … because Mrs. Wisco did not accept the 2023 BMW X3, that her acceptance, or lack thereof, was a major factor to consider in whether the vehicle was 'reasonably equivalent.'" [Appellant Brief, pg. 20]. The jury's own verdict removes any doubt that the jury was prejudiced into thinking Ms. Wisco's lack of acceptance was a major factor, let alone a dispositive factor, in considering whether the vehicles offered were "reasonably equivalent." The jury found that a "reasonably equivalent" vehicle was not offered by BMW until 2025. [D0150, Civil Verdict Form, 08/08/2025]. The jury's finding is only possible if the instructions did ***not*** invite the jury to treat Ms. Wisco's non-acceptance as dispositive, because Ms. Wisco did not accept the 2025 vehicle either. [D0179 at p. 49:7-23]. Had the instructions actually given the consumer the "ultimate veto power" BMW describes, the jury could have never found in BMW's favor on the 2025 vehicle she rejected. With BMW's line of thinking, the jury would have had no choice but to conclude neither vehicle was "reasonably equivalent" to the original 2021 X3. The jury instead treated the two vehicles differently, based on their different features and the testimony of the witnesses, which is possible because the instructions stated the objective criteria that

Iowa Code §322G.2(19) permits, not the subjective one BMW falsely attributes to them. In short, the record actually belies the concerns expressed by BMW of consumer "veto power", as this jury found that the 2025 BMW was the "reasonably equivalent" of Ms. Wisco's original BMW despite her objection.

Even if BMW could show that the instruction was somehow imperfectly worded, which it cannot, Iowa law requires prejudice before that imperfection matters, and the verdict is direct proof that none occurred. Although a later model, the jury found the 2025 vehicle was the reasonably equivalent vehicle.

f. Even If This Court Found Error, a New Trial Would Not Be Warranted.

BMW asks, in the alternative, that if this Court adopts BMW's interpretation of Chapter 322G, the Court remand for a new non-jury trial. [Appellant's Brief, p. 30]. Whatever label BMW gives it, that request is a request for a new trial, and new trials in Iowa are governed exclusively by Iowa Rule of Civil Procedure 1.1004. BMW never made that request to the district court, not at trial, and not in its post-trial briefing. Having litigated this case to verdict and then declined to move for a new trial on any ground, BMW cannot use this appeal to obtain relief it never asked the district court to grant. "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."

Meier v. Senecaut, 641 N.W.2d 532, 537 (Iowa 2002). BMW's alternative request is unpreserved and should be rejected on that basis alone.

Even setting preservation aside, BMW's request does not fit within Iowa Rule of Civil Procedure 1.1004. A new trial may be granted only on one of nine enumerated grounds: (1) irregularity preventing a fair trial; (2) jury or prevailing-party misconduct; (3) accident or surprise; (4) excessive or inadequate damages influenced by passion or prejudice; (5) error in fixing the amount of recovery in a contract or property action; (6) a verdict not sustained by sufficient evidence or contrary to law; (7) newly discovered material evidence; (8) errors of law occurring in the proceedings, or mistakes of fact by the court; or (9) any ground stated in Rule 1.1003. Iowa R. Civ. P. 1.1004(1)–(9). The only provision that could conceivably reach a claim that the jury was instructed on an incorrect view of the statute is subsection 6, that the verdict was not sustained by sufficient evidence or is contrary to law. BMW never made that argument, and as argued above, there is no error to invoke: Jury Instruction No. 12 correctly stated the "reasonably equivalent" standard on a plain reading of section 322G.2(19). An argument that this Court should adopt a different reading of the statute than the one the district court applied is not a claim that the verdict is not sustained by sufficient evidence or contrary to law, it is a request that this Court rewrite settled law in BMW's favor and then hand BMW

a second trial to take advantage of it. Rule 1.1004 does not permit such a maneuver.

BMW wanted a jury trial; it obtained a jury trial. No basis has been set forth for a new trial. BMW spent two years pursuing this case, took it to trial, presented its own witnesses and its own theory of "reasonably equivalent", and lost on a verdict the jury was correctly instructed to reach. It never asked the district court for a new trial. As shown above, the instructions given were a correct statement of the law and worked no prejudice to BMW. *Le v. Vaknin*, 722 N.W.2d 412, 414 (Iowa 2006); *Koenig v. Koenig*, 766 N.W.2d 635, 637 (Iowa 2009). BMW's request that this Court order a do-over of a trial it demanded, litigated for two years, and lost is precisely the kind of second bite at the apple which not allowed by the new trial rule.

II. SUBSTANTIAL EVIDENCE SUPPORTS THE JURY'S FINDING THAT THE 2023 BMW X3 WAS NOT A REASONABLY EQUIVALENT REPLACEMENT VEHICLE.

a. Error Preservation.

"Issues must ordinarily be both raised and decided by the District Court before we will decide them on appeal". *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (internal citation omitted). The issue of whether the 2023 BMW X3 was a "reasonably equivalent" replacement vehicle was argued at length at trial and decided by the jury. [D0179, Tr. Vol. I, 05/29/2026; D0177, Tr. Vol II,

05/29/2026; D0180, Tr. Vol. III, 05/29/2026; D0150, Civil Verdict Form, 08/08/2025]. Accordingly, error has been preserved.

b. Scope and Standard of Review.

The Court reviews district court rulings as to whether the jury's verdict was sustained by sufficient evidence for corrections of errors at law. Under this standard of review, the district court's findings "carry the force of a special verdict and are binding if supported by substantial evidence." *Van Sloun v. Agans Bros., Inc.*, 778 N.W.2d 174, 179 (Iowa 2010) (internal citations omitted).

c. Evidence Presented at Trial Supports a Finding that the 2023 BMW X3 Was Not Reasonably Equivalent.

BMW frames its second argument as a question of statutory interpretation subject to correction of errors review, but that is not in substance what BMW is asking the Court to do. BMW is not arguing that the district court misstated the legal meaning of "reasonably equivalent," BMW is arguing that the jury was incorrect in finding that the 2023 BMW X3 was not "reasonably equivalent" and the district court should have granted a directed verdict or judgment notwithstanding the verdict in favor of BMW [Appellant's Brief, pg. 21-25]. This Court reviews the facts "in the light most favorable to the verdict." *Mormann v. City of Manchester*, 27 N.W.3d 820, 825 (Iowa 2025). The question this Court is faced with is "whether the verdicts can be reconciled in

any reasonable manner consistent with the evidence and its fair inferences, and in light of the instructions of the court." *Hoffman v. Nat'l Med. Enters., Inc*., 442 N.W.2d 123, 126 (Iowa 1989) (internal citations omitted). Only where the verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside. *Id*. at 12.

BMW's own witnesses supplied the comparison, feature by feature, across all three vehicles: the 2021 BMW X3 (Ms. Wisco originally purchased vehicle), the 2023 BMW X3 (first offered as a replacement), and the 2025 BMW X3 (the jury ultimately found this vehicle to be the reasonably equivalent vehicle).

This case did not turn on any single feature. Ms. Wisco's 2021 BMW X3 was a bundle of specific upgrades she selected and paid for, among them the driver and passenger lumbar and bolster support, the upgraded sound system, and the panoramic moonroof, in addition to the other features described above. Jury Instruction No. 12 accordingly instructed the jury to weigh whether the replacement vehicles included "the significant features of the original vehicle at the time of the plaintiff's purchase", among the other permissive factors. [D0146, Jury Instructions and Statement of the Case, p. 13, 08/08/2025].

Jason Miller, BMW's technical service engineer of thirteen years, walked the jury through a line-by-line comparison of the three vehicles' build sheets

and window stickers. [D0177 at p. 5-6; 7:5-6]. On direct examination, Mr. Miller explained that nearly all of them were not real differences at all, but name changes, standard equipment labeled as optional, or features that were never available on either the 2021 or the 2023 vehicle. [D0177 at p. 7:20-21:22]. But on cross-examination, Mr. Miller conceded that the 2023 BMW X3 genuinely lacked multiple features that the 2021 BMW X3 had. [D0177 at p. 40:13-41:5].

Ms. Wisco testified about why several of these features mattered to her, including that the lumbar and bolster support were necessary due to nerve damage she had that can cause her leg to go numb while driving. [D0179 at p. 29:4-23]. While Ms. Wisco is the primary driver of the 2021 BMW X3, when the family travels together, Mr. Wisco drives the 2021 BMW X3 which leaves Ms. Wisco as the passenger. [D0179 at p. 101:16-18; D0180 at p. 66:8-19].

The jury heard both witnesses testify, feature by feature, about all three vehicles, and it was for the jury to decide whose account to credit. A jury "is free to accept or reject any testimony[.]" *Crow v. Simpson*, 871 N.W.2d 98, 105 (Iowa 2015). The jury "is at liberty or disbelieve the testimony of witnesses as it chooses" and "[t]he very function of the jury is to sort out the evidence presented and place credibility where it belongs." *State v. Blair*, 347 N.W.2d 416, 420 (Iowa 1984). The district court's instructions told the jury to do exactly that: "[i]n determining the facts, you may have to decide what testimony

you believe," and the jury "may believe all, part or none of any witnesses' testimony." [D0146, Jury Instructions and Statement of the Case, p. 4, 08/08/2025]. That is exactly what this jury did. It heard Ms. Wisco's testimony that the 2023 BMW X3 was missing a number of features that were provided with the 2021 BMW X3, some of which she considered essential, Mr. Miller's testimony attempting to minimize the differences between the original and proposed replacement, and Mr. Miller's own concessions as to the differences between the vehicles, and it found Ms. Wisco's account of the 2023 BMW X3 more credible than BMW's. The jury was equally entitled to weigh that same competing testimony differently as to the 2025 BMW X3 and find that BMW had, with that particular vehicle, offered a "reasonably equivalent" to Ms. Wisco's original purchase. Crediting Ms. Wisco's testimony as to one vehicle and BMW's position as to the other is not inconsistent, it is precisely what jury is charged to do – weigh the evidence, assess the credibility of the witnesses, and reach a decision.

Weighing that evidence, the jury found (a) the 2023 BMW X3 was not "reasonably equivalent" and (b) the 2025 BMW X3 was "reasonably equivalent." Neither the verdict form nor Iowa law required the jury to explain which piece of evidence compelled this result. Certainly, BMW did not request further interrogatories from the jury. [D0180 at p. 3:4-65:9]. The verdict form

asked only whether BMW provided a reasonably equivalent vehicle, and if so, on what date. [D0150, Civil Verdict Form, 08/08/2025]. The jury was not asked and did not need to identify a single dispositive fact. BMW did not urge that further interrogatories be submitted to the jury to clarify which distinctions they relied upon in making their findings.

The Court's only task is to ask whether the verdict can be reconciled in any reasonable manner consistent with the evidence and in light of the instructions of the district court. *Hoffman*, 442 N.W.2d at 126. It plainly does. BMW does not, and cannot, dispute that Mr. Miller's comparison testimony, Ms. Wisco's testimony about her needs and the parties' own exhibits were before the jury. BMW's real quarrel is with how the jury weighed the evidence. There is no basis to substitute this Court's judgment for the jury's. BMW wanted a jury trial. It had a jury trial, and the jury found in BMW's favor on the 2025 vehicle.

III. THE DISTRICT COURT CORRECTLY DENIED BMW'S MOTION TO WITHDRAW THE JURY DEMAND.

a. Error Preservation.

"Issues must ordinarily be both raised and decided by the District Court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (internal citation omitted). Here, the issue of BMW's Motion to

Withdraw Jury Demand was fully brief, argued at the final pretrial conference on July 23, 2025, and ruled on by the district court. [D0078, Motion to Withdraw Jury Demand, 07/01/2025; D0079, Resistance to Motion to Withdraw Jury Demand, 07/07/2025; D0101, Order Denying Motion to Strike Jury Demand, 08/01/2025]. The motion was later renewed by BMW on October 24, 2025 and ruled on by the district court. [D0156, Motion on Remaining Issues Post Jury Verdict, 10/24/2025; D0162, Findings of Fact and Ruling of Law on Post-Trial Matters, 03/12/2026]. Accordingly, error has been preserved.

b. Scope and Standard of Review.

BMW asks this Court to review the denial of its Motion to Withdraw Jury Demand de novo, on the theory that a petition to affirm and enforce a Lemon Law arbitration award is in equity. [Appellant's Brief, p. 26-27; D0133, Exhibit 31, 08/05/2026]. It is not. Ms. Wisco's petition sought money damages under a statutory enforcement mechanism: the pecuniary value of the arbitration award, attorney fees, costs, and other statutory per diem damages. Iowa Code §322G.8(7). [D0001, Petition, ¶48, 03/12/2023]. These are remedies at law, not equitable relief.

BMW's reliance on *Weltzin v. Nail*, 618 N.W.2d 293 (Iowa 2000), is misplaced. *Weltzin* addressed a shareholder derivative claim for restitution, a distinctly equitable cause of action historically tried without a jury. *Id*. at 300.

The case mentions nothing about a Lemon Law enforcement action seeking statutory monetary damages. "Generally, an action on contract is treated as one at law" *Van Sloun v. Agans Bros., Inc.*, 778 N.W.2d 174, 178 (Iowa 2010) (internal citations omitted).

"Where the basic rights of the parties derive from the nonperformance of a contract, where the remedy is monetary and where the damages are "full and certain, remedies are usually provided by actions at law[.]" *Id.* at 179 (internal citations omitted). In this case, Ms. Wisco's claims stem from BMW's nonperformance of the BBB decision, and the primary remedy is monetary. Additionally, the damages are full and certain, as outlined in the arbitration agreement and Chapter 322G's prescription of categories of relief a prevailing consumer may recover by fixed statutory formula. Said another way, what remained for the district court to determine after the verdict was not the character of the remedy, but its arithmetic which could only be calculated once the jury resolved that antecedent fact question. That the final amount could only be calculated once the jury resolved that antecedent fact question does not transform a legal claim into an equitable one, it simply reflects the ordinary sequence of a lemon-law case: liability first, computation second. Because this is an action at law, the standard of review is errors at law. *Id*. Under this

standard of review, the district court's findings "carry the force of a special verdict and are binding if supported by substantial evidence." *Id*.

c. The District Court was Correct to Deny BMW's Motion To Withdraw Jury Demand.

Ms. Wisco reiterates and incorporates by reference each argument made while resisting BMW's Motion to Withdraw Jury Demand, including those made her Resistance to BMW's Motion to Withdraw Jury Demand, arguments made at the pre-trial hearing, arguments made at trial, and post-trial briefing. [D0176, Final Pretrial Conference, p. 5:1-10:3; 16:1-28:13, 05/29/2026; D0079, Resistance to Motion to Withdraw Jury Demand, 07/07/2026; D0178, Posttrial Motions, p. 28:7-13, 05/29/2026; D0149, Plaintiff's Reply to Defendant's Response to Plaintiff's Post Trial Motion for Entry of Judgment, p. 2, 09/08/2025]. BMW demanded a jury trial on June 30, 2023, when it filed its Answer. [D0009, Answer, p. 8, 06/30/2023]. It was not until thirty days before trial that BMW then attempted to withdraw their demand. Iowa Rule of Civil Procedure 1.902(1) requires the consent of all parties before a jury demand may be withdrawn. Ms. Wisco never consented to, and expressly resisted withdrawal of, the jury demand. [D0079, Resistance to Motion to Withdraw Jury Demand, 07/07/2025].

BMW identified no authority for the proposition that a district court may unilaterally strip away a jury trial that a party itself demanded, that had been the operative premise for two years of litigation, and that the opposing party wishes to preserve. Allowing a defendant to demand a jury trial, litigate on that basis for two years, and then discard it unilaterally once trial approached would invite exactly the kind of forum manipulation Iowa Rule of Civil Procedure 1.902(1) is designed to prevent by requiring the consent of all parties before a jury demand can be withdrawn.

Additionally, the district court was correct when it denied BMW's Motion to Strike Jury Demand, citing that the "issues surrounding whether the replacement vehicles offered by [BMW] … is a question of fact. And, although, this may be a complicated fact question, it is still proper for a jury." [D0101, Order Denying Motion to Stike Jury Demand, 08/01/2025]. The district court was correct when it did so again in its March 12, 2026 ruling. Iowa R. App. P. 6.904(3)(a). [D0162, Findings of Fact and Ruling of Law on Post-Trial Matters, 03/12/2026].

Cases brought in equity generally have no right to a jury trial. *Weltzin*, 618 N.W.2d at 296. A case in equity is defined as "a civil suit stating an equitable claim and asking for an exclusively equitable remedy." *Black's Law Dictionary (11th ed. 2019).* An equitable remedy is defined as "a nonmonetary one, such as

an injunction or specific performance, obtained when available legal remedies, usu[ally] monetary damages, cannot adequately redress the injury." *Black's Law Dictionary (11th ed. 2019)*. Nor does BMW's belated characterization of "reasonable equivalence" as a legal question transform this case into a bench trial. Even setting aside that BMW itself demanded this jury, it was BMW's own affirmative defense, "[t]hat BMW has proffered a suitable replacement vehicle which plaintiffs have refused to accept", that placed that fact question before the jury in the first place. [D0009, Answer, ¶2, 06/30/2023]. Having pled reasonable equivalence as its defense and demanded a jury to decide it, BMW cannot claim the question should have never gone to a jury at all.

Iowa law confirms that the district court got this right: whether a replacement vehicle is a reasonable equivalent is a question of fact for the jury, not a legal question for the court. *Cato v. American Suzuki Motor Corp*., 622 N.W.2d 486 (Iowa 2001). The district court expressly relied on that authority in holding that reasonable equivalence, though "a complicated fact question" was "still proper for a jury." [D0101, Order Denying Motion to Strike Jury Demand, 08/01/2025].

For all these reasons, the district court did not err in denying BMW's eleventh-hour motion to withdraw the jury demand it made.[4]

CONCLUSION

BMW does not challenge on appeal the amount of pecuniary damages, the per diem damages, the substitute transportation damages, the collateral charges, or the offset for use. With the March 12, 2026, judgment, Ms. Wisco was on her way to finally being made whole for a defective vehicle BMW had been obligated to replace since 2023. BMW's appeal delays that result further. As of today, Ms. Wisco is still driving the 2021 BMW X3, the same vehicle whose safety restraint warnings, airbag problems, and tire-pressure malfunctions triggered this dispute, which Ms. Wisco described as "anxiety provoking, which an arbitrator concluded must be replaced by BMW under Iowa's Lemon Law, and one which is undoubtedly a "lemon." [D0179 at p. 81:2-9]. From the earliest missed thirty-day compliance with the BBB deadline in 2023, through one continuance of trial and one attempt to continue trial, an eleventh-hour attempt to strip away BMW's own jury demand and now this appeal, the pattern in this case has been consistent: delay.

[4] As discussed in the preceding arguments, BMW has cited no authority which would entitle it to a new trial (had the issue been preserved) before the district court without a jury.

This appeal is BMW's renewed complaint that it does not like Iowa's Lemon Law statute the General Assembly enacted, presented across three overlapping arguments. BMW demanded a jury, litigated on that basis for two years, lost as to one of the two vehicles it offered, and now asks this Court to rewrite the statue, reweigh the evidence, and retroactively strip Ms. Wisco of the jury trial BMW itself demanded. None of the three arguments show reversible error. The jury instructions did not grant Ms. Wisco veto power, and the jury's own verdict proves it. Substantial evidence, including the loss of multiple features which were paid for and present on the 2021 BMW X3 and which were missing on the 2023 BMW X3, were all considered when the jury found that 2023 BMW X3 was not a reasonable equivalent. The district court correctly refused to let BMW unilaterally discard, on the eve of trial, the jury it demanded two years earlier. There is nothing left for this Court to do but affirm the district court's ruling.

REQUEST FOR ORAL ARGUMENT

Amy Wisco respectfully requests that she be heard at oral argument if this matter is set for oral argument.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appellees Brief was served by electronic filing and electronic delivery via the EDMS system on September 8, 2026, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.315(1)(b).

By: */s/ Taylor J. Mikel*
Taylor J. Mikel

CERTIFICATE OF FILING

The undersigned hereby certifies that the foregoing Appellee's Brief was filed with the Iowa Supreme Court by electronically filing the same on September 8, 2026, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.302(1).

By: */s/ Taylor J. Mikel*
Taylor J. Mikel

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1) because this brief has been prepared in a proportionally spaced typeface using Cambria in 14 pt. and contains 7,563 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(2).

/s/ Taylor J. Mikel — September 8, 2026

Signature — Date