

---

**STATE OF MINNESOTA  
IN SUPREME COURT**

**CASE NO. A09-607**

---

**UNITED PRAIRIE BANK – MOUNTAIN LAKE,  
RESPONDENT,  
vs.  
HAUGEN NUTRITION & EQUIPMENT, LLC,  
LELAND HAUGEN AND ILENE HAUGEN,  
APPELLANTS.**

---

**RESPONDENT'S SUPPLEMENTAL BRIEF AND SUPPLEMENTAL APPENDIX**

---

**MACK & DABY, P.A.**  
John E. Mack (#65973)  
P.O. Box 302  
New London, MN 56273  
(320) 354-2045

**ATTORNEYS FOR APPELLANTS  
HAUGEN NUTRITION &  
EQUIPMENT, LLC, LELAND  
HAUGEN AND ILENE HAUGEN**

**BRIGGS AND MORGAN, P.A.**  
Samuel L. Hanson (#41051)  
Charles B. Rogers (#130588)  
Jason R. Asmus (#319405)  
2200 IDS Center  
Minneapolis, MN 55402  
(612) 977-8400

**ATTORNEYS FOR RESPONDENT  
UNITED PRAIRIE BANK –  
MOUNTAIN LAKE**

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

	<u>Page(s)</u>
TABLE OF AUTHORITIES .....	iii
SUMMARY OF PROCEDURAL POSTURE .....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	3
I. THE CONSTITUTIONAL RIGHT TO A JURY TRIAL IN MINNESOTA.....	3
II. THE DETERMINATION OF AN AWARD OF REASONABLE ATTORNEYS' FEES IS EQUITABLE IN NATURE.....	4
A. While the determination of a party's contractual entitlement to an award of attorneys' fees may be legal in nature, the determination of the amount of reasonable attorneys' fees to be awarded is solely an equitable matter for the court.....	4
B. Because there was no genuine issue of material fact regarding UPB's entitlement to an award of attorneys' fees under the Loan Documents, it was for the trial court to determine the amount of reasonable attorneys' fees to be awarded.....	7
1. The Haugens concede that there is no dispute that UPB had a contractual right to attorneys' fees.....	7
2. The Haugens' argument about "mixed questions of law and equity" is irrelevant .....	10
C. This Court has already determined that the amount of reasonable attorneys' fees is an equitable matter for the court and not a jury .....	11
1. This Court's <i>Campbell</i> and <i>Schutz</i> decisions confirm that the determination of the amount of reasonable attorneys' fees is equitable.....	11
2. The <i>Jones</i> case is inapplicable.....	13
3. The <i>Griswold</i> decision confirms that the determination of the amount of reasonable attorneys' fees does not implicate a jury trial right .....	14
D. The United States Supreme Court <i>Knudson</i> decision does not alter the equitable nature of the determination of the amount of reasonable attorneys' fees awarded under a contract .....	16

**TABLE OF CONTENTS**

	<b><u>Page(s)</u></b>
III. THE PRACTICAL ABILITIES AND LIMITATIONS OF JURIES SUPPORT COURT-DETERMINED AWARDS OF REASONABLE ATTORNEYS' FEES.....	18
A. The determination of the "reasonableness" of attorneys' fees is outside of the jury's experience and expertise but well within the court's experience and expertise .....	19
B. Minn. R. Gen. Prac. 119 recognizes the practical abilities and limitations of juries .....	21
CONCLUSION.....	23
CERTIFICATE OF COMPLIANCE.....	25

**TABLE OF AUTHORITIES**

**CASES**

*A.G. Becker-Kipnis & Co. v. Letterman Commodities, Inc.*,  
553 F. Supp. 118 (N.D. Ill. 1982) .....6

*Abraham v. County of Hennepin*,  
639 N.W.2d 342 (Minn. 2002).....3

*Alton M. Johnson Co. v. MAI*,  
463 N.W.2d 277 (Minn. 1990).....19-20

*Bougalis v. Bougalis*,  
No. A09-491, 2010 WL 431471 (Minn. Ct. App. Feb. 9, 2010) (RSA1-5).....8

*Campbell v. Worman*,  
58 Minn. 561, 60 N.W. 668 (1894).....11-14

*Cheek v. McGowan Elec. Supply Co.*,  
511 So. 2d 977 (Fla. 1987).....6

*Glamann v. St. Paul Fire & Marine Ins. Co.*,  
424 N.W.2d 924 (Wis. 1988).....6

*Goedhard v. Folstad*,  
156 Minn. 453, 195 N.W. 281 (1923).....14

*Great-West Life & Annuity Ins. Co. v. Knudson*,  
534 U.S. 204 (2002) .....1, 16-17

*Griswold v. Taylor*,  
8 Minn. 342, 1863 WL 1389 (1863) .....1, 14-16

*Hudson v. Abercrombie*,  
374 S.E.2d 83 (Ga. 1988).....6

*Ideal Elec. Sec. Co. v. Int'l Fidelity Ins. Co.*,  
129 F.3d 143 (D.C. Cir. 1997) .....6

*In re Conservatorship of Anderson*,  
No. A06-2138, 2007 WL 4563945 (Minn. Ct. App. Dec. 31, 2007) (RSA6-10).....20

*Jones v. Radatz*,  
27 Minn. 240, 6 N.W. 800 (1880).....1, 13-14

<i>Kolupar v. Wilde Pontiac Cadillac, Inc.</i> , 683 N.W.2d 58 (Wis. 2004) .....	6
<i>Kudon v. f.m.e. Corp.</i> , 547 A.2d 976 (D.C. 1998).....	6, 20
<i>Landgraf v. Ellsworth</i> , 267 Minn. 323, 126 N.W.2d 766 (1964).....	3
<i>McGuire v. Russell Miller, Inc.</i> , 1 F.3d 1306 (2d Cir. 1993).....	<i>Passim</i>
<i>Mid-Continent Cas. Co. v. Giuliano</i> , 166 So. 2d 443 (Fla. 1964).....	6
<i>Milner v. Farmers Ins. Exch.</i> , 748 N.W.2d 608 (Minn. 2008).....	20
<i>Missala Marine Servs., Inc. v. Odom</i> , 861 So. 2d 290 (Miss. 2003) .....	6
<i>Morse/Diesel, Inc. v. Trinity Indus., Inc.</i> , 875 F. Supp. 165 (S.D.N.Y. 1994).....	5
<i>Murphy v. Stowe Club Highlands</i> , 761 A.2d 688 (Vt. 2000) .....	5-6, 18, 20
<i>New Amsterdam Cas. Co. v. Lundquist</i> , 293 Minn. 274, 198 N.W.2d 543 (1972).....	1, 9
<i>Raymond Farmers Elevator Co. v. Am. Surety Co. of N.Y.</i> , 207 Minn. 117, 290 N.W. 231 (1940).....	1, 18
<i>Redshaw Credit Corp v. Diamond</i> , 686 F. Supp. 674 (E.D. Tenn. 1988) .....	6
<i>Rentrop v. Spectranetics Corp.</i> , 514 F. Supp. 2d 497 (S.D.N.Y. 2007).....	5
<i>Resolution Trust Corp. v. Marshall</i> , 939 F.2d 274 (5th Cir. 1991).....	6
<i>Ross v. Bernhard</i> , 396 U.S. 531 (1970) .....	4, 19

*Schutz v. Interstate Contracting Co.*,  
196 Minn. 426, 265 N.W. 296 (1936).....11-14

*Shuette v. Beazer Homes Holding Co.*,  
124 P.3d 530 (Nev. 2005) .....6

*State ex rel. Pillsbury v. Honeywell, Inc.*,  
291 Minn. 322, 191 N.W.2d 406 (1971).....8

*State v. Pearson*,  
633 N.W.2d 81 (Minn. Ct. App. 2001) .....21

*The Scotts Co. v. Central Garden & Pet Co.*,  
256 F. Supp. 2d 734 (S.D. Ohio 2003).....6

*United Prairie Bank – Mountain Lake v. Haugen Nutrition & Equip., LLC*,  
782 N.W.2d 263 (Minn. Ct. App. 2010) ..... 1, 15

**STATUTES AND RULES**

Minn. R. Civ. P. 38.01 .....3

Minn. R. Civ. P. 42.02 ..... 11

Minn. R. Gen. Prac. 119 .....21-23

## SUMMARY OF PROCEDURAL POSTURE

The district court below entered summary judgment prior to trial determining, among other things, that Appellants Haugen Nutrition & Equipment, LLC, Leland Haugen and Ilene Haugen (collectively, "Haugens") had breached their obligations under certain promissory notes, security agreements, guarantees, mortgage and contract for deed (collectively, "Loan Documents") with Respondent United Prairie Bank – Mountain Lake ("UPB"). Because no genuine issue of material fact existed regarding UPB's entitlement to an award of attorneys' fees under the Loan Documents, the district court struck the Haugens' jury trial demand. The district court then issued a January 26, 2009 order and judgment, determining, among other things, that UPB was entitled to recover reasonable attorneys' fees in the amount of \$286,711.58.

In its May 11, 2010 decision, the Court of Appeals affirmed the district court's judgment. *See United Prairie Bank – Mountain Lake v. Haugen Nutrition & Equip., LLC*, 782 N.W.2d 263, 274 (Minn. Ct. App. 2010). This Court granted review on June 29, 2010. Oral argument was heard on November 3, 2010. On September 29, 2011, this Court ordered the parties to file supplemental briefs regarding the impact on the pending appeal, if any, of the following five cases: (1) *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002); (2) *Griswold v. Taylor*, 8 Minn. 342, 1863 WL 1389 (1863); (3) *Jones v. Radatz*, 27 Minn. 240, 6 N.W. 800 (1880); (4) *New Amsterdam Cas. Co. v. Lundquist*, 293 Minn. 274, 198 N.W.2d 543 (1972); and (5) *Raymond Farmers Elevator Co. v. Am. Surety Co. of N.Y.*, 207 Minn. 117, 290 N.W. 231 (1940). UPB submits this supplemental brief in accordance with the Court's order.

## SUMMARY OF ARGUMENT

The Haugens argue that the rule of law articulated in the cases cited in this Court's order for supplemental briefing, as well as the cases they cite in their supplemental brief, "indicate" that a constitutional right to a jury trial exists for the question of (a) whether a party has a right to an award of attorneys' fees under a contract and (b) after such a contractual right is determined, the amount of reasonable attorneys' fees to be awarded under such contract.

Contrary to the Haugens' arguments, the rule of law applicable to this case is quite clear and is distinctly different than that advocated by the Haugens. The well-established rule in Minnesota jurisprudence, as well as courts around the country, is that the question of whether a party has a contractual right to attorneys' fees is a legal issue, triable by jury, but the question of the amount of reasonable attorneys' fees to be awarded to a party under a contract is equitable, and triable by the court without a jury. The five cases referred to this Court's order for supplemental briefing either confirm this rule of law or are irrelevant to its application to the facts of this case.

The application of this rule of law to this case requires that the Court of Appeals' decision be affirmed because (a) the Haugens admit that UPB has the contractual right under the Loan Documents to an award of attorneys' fees and, accordingly, there is no genuine issue of material fact to warrant submission of that question to a jury and (b) the question of the amount of reasonable attorneys' fees to be awarded to UPB, as the only factual issue to be tried, is equitable and was properly decided by the district court without a jury.

## ARGUMENT

### **I. THE CONSTITUTIONAL RIGHT TO A JURY TRIAL IN MINNESOTA**

Consistent with Rule 38.01 of the Minnesota Rules of Civil Procedure, this Court has recognized "the right to trial by jury as it existed in the Territory of Minnesota when our constitution was adopted in 1857." *Abraham v. County of Hennepin*, 639 N.W.2d 342, 348 (Minn. 2002). Given that "[t]he constitution is not frozen in time in 1857, incapable of application to the law as it evolves," to determine whether a jury-trial right exists, this Court examines "[t]he nature and character of the controversy, as determined from all the pleadings and by the relief sought, [to] determine[] whether the cause of action is one at law today, and thus carries an attendant constitutional right to jury trial." *Id.* at 349 (citing *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2001); *Tyroll v. Private Label Chems., Inc.*, 505 N.W.2d 54, 57 (Minn. 1993); *Morton Brick & Tile Co. v. Sodergren*, 130 Minn. 252, 255, 153 N.W. 527, 528 (1915); *Westerlund v. Peterson*, 157 Minn. 379, 383, 197 N.W. 110, 111 (1923)).

Because the United States and Minnesota Constitutions provide the same jury-trial right, federal interpretations of the Seventh Amendment constitute persuasive precedent. *See Landgraf v. Ellsworth*, 267 Minn. 323, 327, 126 N.W.2d 766, 769 (1964) ("[D]etermination of the right to a jury trial under the facts of this case would be much the same under either the Federal or state constitution"). To determine whether a party is entitled to a jury trial, federal courts examine the "nature of the issue to be tried rather than the character of the overall action" by considering (1) how the issue was customarily treated prior to the merger of the courts of law and equity, (2) the remedy sought, and (3)

the practical abilities and limitations of juries. *See Ross v. Bernhard*, 396 U.S. 531, 538 and n.10 (1970).

## II. THE DETERMINATION OF AN AWARD OF REASONABLE ATTORNEYS' FEES IS EQUITABLE IN NATURE

- A. While the determination of a party's contractual entitlement to an award of attorneys' fees may be legal in nature, the determination of the amount of reasonable attorneys' fees to be awarded is solely an equitable matter for the court

The Second Circuit in *McGuire v. Russell Miller, Inc.*, 1 F.3d 1306 (2d Cir. 1993) concluded that a party does not have a constitutional right to a jury trial for the determination of the amount of reasonable attorneys' fees to be awarded under a contract. The Second Circuit's analysis is particularly instructive here.

The court first noted that whether the constitution provides for a jury-trial right depends on whether the action to recover fees is "legal" or "equitable." *Id.* at 1314. To answer this question, the court contrasted the determination of whether a party has a right, contractual or otherwise, to an award of attorneys' fees – a legal determination – with the determination of the amount of reasonable attorney's fees to be awarded – an equitable determination. *Id.* The court explained that a request for attorneys' fees under a contract is a claim for a "contractual 'legal right,'" and a party has the right to have a jury decide whether attorneys' fees should be awarded under the contract. *Id.* at 1315. The court held that the subsequent determination of the amount of reasonable attorneys' fees, however, is "not an action to enforce 'legal rights' pursuant to a contract" but rather is an action that is "equitable in nature." *Id.* at 1315. The court also noted that the "[United States] Supreme Court has held that a judgment is 'final' even though the court has yet to

determine attorneys' fees" which supports the treatment of a contractual award of attorneys' fees as merely "a post-judgment matter collateral to a decision on the merits." *Id.* (citing *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 202-03 (1988)).

The *McGuire* court appropriately recognized a legal-equitable dichotomy whereby the issue of whether a party is contractually entitled to an attorneys' fee award is a legal matter potentially for a jury (unless, as discussed below, that determination is made on summary judgment) and the issue of the amount of reasonable attorneys' fees to be awarded is an equitable matter for the court. A number of courts have adopted and applied the *McGuire* analysis to conclude that the determination of the amount of reasonable attorneys' fees awarded under a contract is an equitable matter for the court and does not trigger the right to a jury trial. *See, e.g., Rentrop v. Spectranetics Corp.*, 514 F. Supp. 2d 497, 506 (S.D.N.Y. 2007); *Morse/Diesel, Inc. v. Trinity Indus., Inc.*, 875 F. Supp. 165, 178-79 (S.D.N.Y. 1994); *Murphy v. Stowe Club Highlands*, 761 A.2d 688, 701 (Vt. 2000).

UPB is aware of no case, either pre- or post-merger of the courts of law and equity, which holds that the determination of the amount of reasonable attorneys' fees awarded pursuant to a contract implicates the constitutional right to a jury trial. In fact, the case law around the country is precisely to the contrary. Each of the state and federal courts to specifically address the issue has determined that no jury trial right exists for the determination of a contractual award of attorneys' fees.<sup>1</sup> No legal basis is articulated in

---

<sup>1</sup> *See, e.g., Ideal Elec. Sec. Co. v. Int'l Fidelity Ins. Co.*, 129 F.3d 143, 150 (D.C. Cir. 1997) ("[O]nce a contractual entitlement to attorney's fees has been ascertained, the

any of the five cases identified in this Court's order for supplemental briefing, or any of the cases cited by Haugens, to justify a reversal of or divergence from this prior precedent.

---

determination of a reasonable fee award is for the trial court in light of the relevant circumstances"); *McGuire*, 1 F.3d at 1315 (same); *Resolution Trust Corp. v. Marshall*, 939 F.2d 274, 279 (5th Cir. 1991) ("Since there is no common law right to recover attorneys fees, the Seventh Amendment does not guarantee a trial by jury to determine the amount of reasonable attorneys fees"); *The Scotts Co. v. Central Garden & Pet Co.*, 256 F. Supp. 2d 734, 748 (S.D. Ohio 2003) ("Attorneys fees and costs are matters traditionally reserved for court determination"); *Kudon v. f.m.e. Corp.*, 547 A.2d 976, 978 (D.C. 1998) (concluding that where claim for attorneys' fees arises under private contract provision, award of fees is more in nature of equitable rather than legal remedy and, thus, such a claim does not embody a right to jury trial under the Seventh Amendment); *A.G. Becker-Kipnis & Co. v. Letterman Commodities, Inc.*, 553 F. Supp. 118, 123 (N.D. Ill. 1982) (concluding that attorneys' fees and costs "have traditionally been viewed as a determination to be made by the court rather than by a jury"); *Redshaw Credit Corp v. Diamond*, 686 F. Supp. 674, 676 (E.D. Tenn. 1988) ("Attorney fees and costs have been traditionally viewed as a determination to be made by the courts"); *Hudson v. Abercrombie*, 374 S.E.2d 83, 85 (Ga. 1988) (concluding that because attorneys' fees were not allowable at common law, there is no right to a jury trial on the issue of attorneys' fees under the Georgia Constitution); *Cheek v. McGowan Elec. Supply Co.*, 511 So. 2d 977, 979 (Fla. 1987) (rejecting contention that the Florida Constitution establishes the right to a jury trial for determination of reasonable attorneys' fees); *Mid-Continent Cas. Co. v. Giuliano*, 166 So. 2d 443 (Fla. 1964) (determining that the Florida Constitution does not provide a right to a jury trial to determine a reasonable award of attorneys' fees because no such right existed under the common law); *Missala Marine Servs., Inc. v. Odom*, 861 So. 2d 290, 296 (Miss. 2003) (rejecting argument that Mississippi's Constitution provides right to a jury trial for determination of award of attorneys' fees); *Shuette v. Beazer Homes Holding Co.*, 124 P.3d 530, 548 (Nev. 2005) (finding calculation of attorneys' fees to be equitable in nature and therefore reserved to the court); *Murphy*, 761 A.2d at 701 (holding that neither the United States nor Vermont Constitution provides a right to a jury trial in equitable matters and that "the determination of the amount of attorneys' fees involves equitable accounting"); *Kolupar v. Wilde Pontiac Cadillac, Inc.*, 683 N.W.2d 58, 65 (Wis. 2004) (holding that the reasonableness of requested attorneys' fees is for the trial court to decide); *Glamann v. St. Paul Fire & Marine Ins. Co.*, 424 N.W.2d 924 (Wis. 1988) (holding that well-settled Wisconsin law directs trial courts, not the jury, to ascertain the amount of an attorney fee award).

**B. Because there was no genuine issue of material fact regarding UPB's entitlement to an award of attorneys' fees under the Loan Documents, it was for the trial court to determine the amount of reasonable attorneys' fees to be awarded**

**1. The Haugens concede that there is no dispute that UPB had a contractual right to attorneys' fees**

The Haugens concede that there is no dispute that UPB was entitled to an award of attorneys' fees under the Loan Documents. Indeed, the Haugens admit in their supplemental brief that "[n]o one is disputing the right to the respondent [UPB] to reasonable attorneys' fees under the note and mortgage here." App. Supp. Br. at 9. This admission conclusively establishes that there are no genuine issues of material fact regarding whether UPB has the right to an award of attorneys' fees under the Loan Documents.

Regardless of this admission, it is undisputed that UPB had a contractual right to recover its attorneys' fees. Each of the Loan Documents clearly and unambiguously permits UPB to request and receive an award of its attorneys' fees in this case:

- Under the Note, UPB is entitled to recover "all costs of collection, replevin [an action for the recovery of property wrongfully taken or detained], or any other or similar type of cost" as well as "attorney's fees plus court costs (except where prohibited by law)." Exs. 3, 6, 9.
- Under the Mortgage, UPB is entitled to recover (a) "all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage," (b) "all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property" and (c) "all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses." Ex. 4 § 17.

- Under the Security Agreements, UPB is entitled to recover its "expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law." Exs. 5, 8, 10.
- Under the Guarantees, UPB is entitled to recover, "all attorneys' fees, collection costs and enforcement expenses" and "all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings." Exs. 82, 161 ¶¶ 4-5.

The Haugens confirmed that they were bound by the Loan Documents, which incorporate their contracting intent. *See* Tr. 201, 204, 208, 213-14, 216, 218. The Haugens' attorney also confirmed that the parties' rights and obligations were outlined in the written agreements. *Id.* at 481-82, 485-89. And the Haugens did not contest their breaches of the Loan Documents or UPB's contractual entitlement to an award of attorneys' fees, which resulted in the trial court entering summary judgment for UPB and determining that the Haugens had breached the Loan Documents as a matter of law. *See* Orders, dated August 28 and September 2, 2008. The Haugens did not appeal the trial court's summary judgment determination.

Even though an issue may be a legal matter, and subject to a jury trial right, there is no right to a jury trial unless there is a genuine issue of material fact to be determined by the jury. *See State ex rel. Pillsbury v. Honeywell, Inc.*, 291 Minn. 322, 333, 191 N.W.2d 406, 413 (1971) ("No constitutional or statutory right to a jury trial exists where there is no issue of fact"); *Bougalis v. Bougalis*, No. A09-491, 2010 WL 431471, at \*4 (Minn. Ct. App. Feb. 9, 2010) (RSA1-5) (same).

The *New Amsterdam* case, which was identified in this Court's order for supplemental briefing, is consistent with this rule of law. There, an indemnitee failed to communicate certain information to the indemnitors which may have been material to their obligations under a surety agreement, including the indemnitee's receipt of a third-party settlement offer. See *New Amsterdam*, 293 Minn. at 281, 198 N.W.2d at 548. This Court held that "[a]n action based on an indemnity agreement is for the recovery of money based upon the promise to pay and is therefore triable by a jury." *Id.* at 287, 198 N.W.2d at 551. The Court further concluded that "[i]n the instant case there remain factual questions for a jury to consider." *Id.* at 288, 198 N.W.2d at 551. But, contrary to the Haugens' suggestion (App. Supp. Br. at 12-14), none of the issues remanded for jury trial pertained to the amount of reasonable attorneys' fees awarded under a contract.<sup>2</sup>

In contrast to the situation in *New Amsterdam*, there is no genuine issue of material fact in this case with respect to the question at law – namely, UPB's contractual entitlement to an award of attorneys' fees. Therefore, there was nothing for the district court below to submit to the jury.

---

<sup>2</sup> The jury was instructed, on retrial, to consider: (i) "any reasonable inferences which could be drawn from the meeting of the parties on July 18, 1960...to support the contention of Barker that New Amsterdam agreed not to proceed against him to obtain indemnity," (ii) "what offset, if any, should be allowed defendants by reason of New Amsterdam's failure to notify Barker of the cancellation of the contract for deed on the real estate," (iii) "if there was a breach of good faith on the part of New Amsterdam in failing to advise Barker of information it had in its possession," and (iv) "the relationship of the parties, the availability of information to each, and what reliance, if any, defendant Lyle Barker was entitled to place on New Amsterdam." *New Amsterdam*, 293 Minn. at 288-89, 198 N.W.2d at 551-52.

**2. The Haugens' argument about "mixed questions of law and equity" is irrelevant**

The Haugens argue that they had a right to a jury trial on "mixed questions of law and equity" because UPB's claims under the Loan Documents included foreclosure remedies. *See* App. Supp. Br. at 3-7, 14-16. The Haugens' argument is incorrect and irrelevant.

First, contrary to the Haugens' repeated references to the underlying lawsuit as a "foreclosure case" (App. Supp. Br. at 1-2, 7 and 14-16), the January 26, 2009 trial court judgment that is the subject of the pending appeal was not a foreclosure judgment. *See* A-1-21.<sup>3</sup> Because the Haugens' breach of the Loan Documents had been decided as a matter of law on summary judgment, the January 26, 2009 judgment determined the amount of reasonable attorneys' fees awarded to UPB. *Id.* The district court properly determined UPB's contractual right to request an award of attorneys' fees without a jury because no genuine issue of material fact existed. This left only the question of the amount of reasonable attorneys' fee to be awarded, which is not a "mixed question of law and equity" but rather is "purely" a question of equity.

Second, even if the January 26, 2009 judgment under review had involved foreclosure, all of the cases cited by the Haugens in support of their "mixed question of law and equity argument" merely hold that a foreclosure proceeding may be bifurcated so

---

<sup>3</sup> UPB obtained its judgment of foreclosure on March 30, 2009 (*see* RA26-31), conducted a judicially-confirmed sheriff's sale of the subject real property on May 14, 2009 (*see* RA39-52) and, following the expiration of the 12-month redemption period without any appeal, became fee owner of the real property on May 14, 2010. *See* Resp. Br. at 21-24.

that damages claims are tried to a jury and foreclosure claims are tried to the court. *See* App. Supp. Br. at 6-7 and 14-15 (citing cases). Significantly, none of the cases even addressed the issue of the extent to which a contractual award of attorneys' fees triggers the right to a jury trial. And the Haugens did not request a Minn. R. Civ. P. 42.02 bifurcation before the district court below, thereby waiving any such argument on appeal.

C. **This Court has already determined that the amount of reasonable attorneys' fees is an equitable matter for the court and not a jury**

1. **This Court's *Campbell* and *Schutz* decisions confirm that the determination of the amount of reasonable attorneys' fees is equitable**

Two decisions by this Court confirm that the amount of reasonable attorneys' fees awarded under a contract is to be fixed by the court, and not the jury. In *Campbell v. Worman*, 58 Minn. 561, 60 N.W. 668 (1894), this Court determined that an attorneys' fees stipulation was valid and enforceable, but the fees were limited to the reasonable value of the services performed:

This court holds that [stipulations in instruments for the payment of money for attorneys' fees] are not in themselves void; that they are valid as agreements to indemnify the payees for such liabilities as they may be necessarily and reasonably compelled to incur for attorneys' fees in case they are compelled, on default of the makers, to collect by suit. **But we have held that the stipulated attorneys' fees are no part of the original debt; that the right to them does not accrue until the payee incurs the liability, and then only to the extent of the reasonable value of the attorneys' services actually performed or to be performed, which must be proved.** *Pinney v. Jorgenson*, 27 Minn. 26, 6 N. W. 376; *Harvester Co. v. Clark*, 30 Minn. 308, 15 N. W. 252. . . The full amount for which the maker is liable on such stipulations is not really due when suit is brought, for the services of the attorney are not then fully performed.

*Id.* at 564-65, 60 N.W. at 668-69 (emphasis added). Critically, this Court held that a contractual award of attorneys' fees was a determination to be made by the court:

**[W]e hold that a recovery on such stipulations can only be had upon application to the court, and upon proof of the reasonableness and value of the attorneys' fees; and thereupon the court may fix the amount to be allowed at such sum, not exceeding the amount stipulated, as it shall deem reasonable and just, and the amount so fixed may be included in the judgment, the same as any other disbursement in the action.** We think that this rule is not only correct on principle, but is also the only one that will prevent injustice and unconscionable extortion. In the present case there is neither allegation nor proof of the value of the attorneys' services. Neither was there any application to the court to fix the amount, but the stipulation was declared on as if it was an absolute agreement to pay \$310 in case suit was brought, without regard to the extent or value of the attorneys' services. Judgment modified by deducting therefrom \$310 as of the date of its rendition.

*Id.* at 565, 60 N.W. at 669 (emphasis added).

In *Schutz v. Interstate Contracting Co.*, 196 Minn. 426, 265 N.W. 296 (1936), the applicable contractor's bonding statute provided for an award of "reasonable attorney's fees . . . 'in any case where such action [on the bond] is successfully maintained.'" *Id.* at 426-27, 265 N.W. at 296. Although this Court determined that the plaintiff was not entitled to an award of attorneys' fees under the statute, its reasoning is instructive. This Court stated:

**The attorney's fees are not a part of the cause of action, but something the court is authorized to award after it has been determined that plaintiff is entitled to recover on his cause of action.** *First State Bank of Grand Rapids v. Utman*, 136 Minn. 103, 161 N.W. 398. We have cases of promissory notes wherein the maker has promised to pay attorney's fee 'if sued,' or if 'suit be instituted,' or if suit is brought. In all of which the beginning of an action on the note fixes liability for attorney's fee. *Pinney v. Jorgenson*, 27 Minn. 26, 6 N.W. 376; *Jones v. Radatz*, 27 Minn. 240, 6 N.W. 800; *Johnston Harvester Co. v. Clark*, 30 Minn. 308, 15 N.W. 252; *Campbell v. Worman*, 58 Minn. 561, 60 N.W. 668. In allowing attorney's

fees to mechanics lien claimants the court said the awarding thereof was "to be exercised at the trial." *Schmoll v. Lucht*, 106 Minn. 188, 118 N.W. 555, 556. The implication is that no attorney's fees could be allowed where the claim was paid before trial. Here the claim, with interest plus all taxable costs, was paid and accepted before trial; therefore there could be no trial and no judgment upon the cause of action, and no attorney's fees, except as included in the \$10 statutory costs paid.

*Id.* (emphasis added). Importantly, this Court again noted that the amount of the attorneys' fees award was a matter for the court (not a jury) to determine "after it has been determined that plaintiff is entitled to recover on his cause of action." *Id.*

This Court's decisions in *Campbell* and *Schutz* demonstrate that the determination of the amount of reasonable attorneys' fees to be awarded under a contract is not a "legal" matter for which the right to a jury trial arises. Rather, it is solely a matter in equity for determination by the court, not a jury.

## **2. The *Jones* case is inapplicable**

The Haugens contend that "*Jones* [*v. Radatz*, 27 Minn. 240, 6 N.W. 800 (1880)] at least provides some indication of a general acceptance that attorneys' fee cases were triable to a jury about the time the Minnesota Constitution was adopted." App. Supp. Br. at 12. It does no such thing.

In *Jones*, 27 Minn. at 241, 6 N.W. at 800, the plaintiff brought suit as the holder of an instrument which provided for repayment of \$135 at 12% interest, plus "reasonable attorney's fees, if suit be instituted for the collection of this note." The sole question addressed by this Court was whether the attorneys' fee provision rendered the instrument non-negotiable, meaning that the holder of the note was subject to all defenses that could be asserted by the maker against the original payee. *Id.* This Court answered the

question in the affirmative because the attorneys' fee provision made payment terms "uncertain." *Id.* at 242, 6 N.W. at 800-01.

Importantly, no part of the case addressed the constitutional right to a jury trial. Nor did this Court determine, or even examine, whether an award of reasonable attorneys' fees under a contract was a claim at law or in equity. Regardless, the *Jones* holding was implicitly abrogated by the enactment of the Negotiable Instruments Act and, later, the Uniform Commercial Code. *See Goedhard v. Folstad*, 156 Minn. 453, 458, 195 N.W. 281, 284 (1923) ("The notes provide for a reasonable attorney's fee if placed, after maturity, in the hands of an attorney for collection, or collected through probate proceedings. The former rule in this state that such a provision rendered the note nonnegotiable was abrogated by section 2 of the Negotiable Instruments Act").

Finally, as set forth above, this Court's *Campbell* and *Schutz* decisions (which postdate *Jones*) confirm that the amount of reasonable attorneys' fees is a matter to be determined by the court and not a jury. Thus, the *Jones* holding has no application to the issue before this Court.

**3. The *Griswold* decision confirms that the determination of the amount of reasonable attorneys' fees does not implicate a jury trial right**

In *Griswold v. Taylor*, 8 Minn. 342, 1863 WL 1389, at \*1 (1863), the plaintiff and defendant stipulated in the subject mortgage that attorneys' fees in the amount of \$50 would be awarded if the mortgage was foreclosed. Following a foreclosure by advertisement, the mortgagor attacked the attorneys' fees stipulation on the grounds that it

was a penalty and otherwise violated public policy. *Id.* at \*2. This Court, however, concluded that the attorneys' fees stipulation did not violate any law:

[S]uch a stipulation was contained in this mortgage, which was to pay fifty dollars for attorneys' fees in case of foreclosure, was clearly not in conflict with any provision of statute in force in this State, nor with any principle of law that we are aware of, that is, standing alone, and unaided by other circumstances....

*Id.* This court further concluded that it was reasonable for mortgagees to require mortgagors to provide reimbursement for attorneys' fees in the event of a breach and subsequent foreclosure:

[I]t is not unreasonable to suppose that mortgagees in many cases are compelled to pay their attorneys much larger fees for foreclosing mortgages than the amount they recover from the mortgagor or obtain from the land pledged; what valid objection then can be urged against the insertion in the mortgage of a stipulation which will save the mortgagee harmless in the event of a forced collection? We confess our inability to discover any.

*Id.* (emphasis added)

Because this Court upheld the contractual attorneys' fees stipulation in a mortgage that was foreclosed by advertisement, no jury trial (or any trial, for that matter) was involved. If an award of attorneys' fees under a contract implicated the right to a jury trial, then this stipulation would have been struck down.

Finally, the Haugens continue to misrepresent the amount of the attorneys' fees awarded to UPB by the district court, despite being previously chastised for such misconduct (*see United Prairie Bank v. Haugen Nutrition & Equipment, LLC*, 782

N.W.2d 263, 271 n.5 (Minn. Ct. App. 2010)).<sup>4</sup> Such misrepresentations, of course, do not provide any justification for concluding that a constitutional right to a jury trial exists.

**D. The United States Supreme Court *Knudson* decision does not alter the equitable nature of the determination of the amount of reasonable attorneys' fees awarded under a contract**

In *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002), the United States Supreme Court affirmed summary judgment for a car accident victim, holding that the medical insurer's claim for reimbursement from a third-party settlement was barred because ERISA § 502(a)(3) only provides for "equitable relief," and "judicially decreed reimbursement for payments made to a beneficiary of an insurance plan by a third party is not equitable relief." *Id.* at 209.

The Court rejected the insurer's blanket characterization that its claim was an equitable one for restitution. *Id.* at 212-15. The Court defined actions for legal restitution as those in which the plaintiff "sought to obtain a judgment imposing a merely personal liability upon the defendant to pay a sum of money" whereas equitable restitution seeks money or property identified as belonging to the plaintiff, which can

---

<sup>4</sup> The Haugens cite dicta in *Griswold* to attack UPB and its attorneys as being "rapacious." App. Supp. Br. at 10. From there, the Haugens and their attorney again misrepresent that "[m]ore than \$400,000 in attorneys' fees were added to the judgment of foreclosure." *Id.* This is demonstrably false. As UPB has previously advised this Court, and as the Haugens well know, the amount of attorneys' fees awarded to UPB was \$286,711.58. *See* RA17-25. Furthermore, UPB has yet to seek or recover any attorneys' fees incurred after July 2008 (*id.*) despite its clear authorization under the Loan Documents to do so. *See* Exs. 3-6, 8-10, 82 and 161. UPB has not sought the attorneys' fees it has incurred in: (1) post-trial briefing; (2) subsequent proceedings to foreclose its equitable mortgage; (3) sheriff's sale proceedings, (4) unlawful detainer proceedings, and (5) two separate appeals.

clearly be traced to particular funds or property in the defendant's possession. *Id.* at 213 (citations and quotations omitted). Based on this distinction, the Court determined that the insurer's restitution claim under ERISA was legal in nature, and therefore barred by statute. *Id.* at 215.

The *Knudson* holding does not dictate treatment of UPB's request for, and award of, attorneys' fees under the Loan Documents as a legal issue for which the constitutional right to a jury trial arises. First, even if UPB's request for attorneys' fees is viewed as a "legal" claim for restitution, the "legal" aspect extends only to the contractual right to request an award of attorneys' fees. As the Second Circuit has held, there is a distinct and material difference between (i) the legal determination of whether a party is entitled to an award of attorneys' fees under a contract and (ii) the equitable determination of the amount of reasonable attorneys' fees to be awarded. *See McGuire*, 1 F.3d at 1314. After the Haugens did not contest UPB's contractual right to attorneys' fees under the Loan Documents, the district court entered summary judgment against the Haugens for their admitted breaches of the Loan Documents. There was, therefore, no fact issue for a jury to decide on the "legal" aspect of UPB's "restitution" claim. The only fact issue that remained involved the equitable determination of the amount of reasonable attorneys' fees to be awarded, which was appropriately made by the district court without a jury.

Second, UPB's request for a contractual award of attorneys' fees need not be viewed solely as a claim for restitution. UPB's request, and especially the question of the amount of reasonable attorneys' fees to be awarded, can also be appropriately viewed as one for an "equitable accounting," for which a jury trial is unavailable. *See, e.g.,*

*Raymond Farmers Elevator*, 207 Minn. at 119, 290 N.W. at 233; *Murphy*, 761 A.2d at 701 (holding that "the determination of the amount of attorneys' fees involves equitable accounting" and, therefore, no constitutional jury trial right exists). In *Raymond Farmers Elevator*, 207 Minn. at 118, 290 N.W. at 232-33, another of the cases for which this Court requested supplemental briefing, the plaintiff sought an accounting from an employee and a money judgment based on that accounting. This Court affirmed the dismissal of the jury as to the claims against the employee, concluding that because "an accounting is sought and a money judgment based thereon [and] [s]uch an action being of equitable cognizance, [the employee] did not have a right to a jury trial." *Id.* (citing *ShIPLEY v. Belduc*, 93 Minn. 414, 101 N.W. 952 (1904)).

Like the plaintiff in *Raymond Farmers Elevator*, UPB sought an equitable accounting of its attorneys' fees for inclusion in its judgment against the Haugens. And because the determination of the amount of reasonable attorneys' fees to be awarded to UPB as a result of this equitable accounting is "equitable" rather than "legal" in nature, no jury trial right existed.

### **III. THE PRACTICAL ABILITIES AND LIMITATIONS OF JURIES SUPPORT COURT-DETERMINED AWARDS OF REASONABLE ATTORNEYS' FEES**

None of the cases cited in this Court's September 29, 2011 order undercuts the well-established precedent of the United States Supreme Court and this Court to consider the abilities and limitations of juries when deciding whether an issue should be classified as "legal" or "equitable." Following that precedent here supports the rule of law discussed above — namely, although the question of the right to request an award of

attorneys' fees under a contract may be viewed as "legal," the issue of the amount of reasonable attorneys' fees to be awarded under a contract is purely "equitable" and solely a matter for the court.

A. **The determination of the "reasonableness" of attorneys' fees is outside of the jury's experience and expertise but well within the court's experience and expertise**

The United States Supreme Court in *Ross* held that, in determining whether an issue is "legal" or "equitable" in nature, a court should consider, among other things, "the practical abilities and limitations of juries." *Ross*, 396 U.S. at 538 n.10. In analyzing the practical abilities and limitations of juries, the Second Circuit in *McGuire* highlighted each of the equitable considerations involved in computing a "reasonable" amount of attorneys' fees – considerations the court deemed to be outside of a jury's "practical abilities." *McGuire*, 1 F.3d at 1315. The court stated:

To compute a reasonable amount of attorneys' fees in a particular case requires more than simply a report of the number of hours spent and the hourly rate. The calculation depends on an assessment of whether those statistics are reasonable, based on, among other things, the time and labor reasonably required by the case, the skill demanded by the novelty or complexity of the issues, the burdensomeness of the fees, the incentive effects on future cases, and the fairness to the parties.

*Id.* The court concluded that "[s]uch collateral issues do not present the kind of common-law questions for which the Seventh Amendment preserves a jury trial right." *Id.*

In addition, this Court has held that the determination of "reasonableness" generally is an issue for a court and not a jury. In *Alton M. Johnson Co. v. MAI*, 463 N.W.2d 277 (Minn. 1990), this Court held that an insurer was not entitled to a jury trial to determine the reasonableness of the settlement, which the insured entered into with a

third party. This Court held that "reasonableness is an issue for the court." *Id.* at 279. This Court further noted that the "nature of the evidence does not lend itself well to appraisal by a jury." *Id.* Rather, the evaluation of the type of evidence presented "is best understood and weighed by a trial judge," because "[t]he decisionmaker is being asked to apply its sense of fairness to evaluate a compromise of conflicting interest, a characteristic role for equity." *Id.* The determination of a reasonable award of attorneys' fees likewise requires the decisionmaker to apply its sense of fairness, a characteristic of equity. *See Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 620–21 (Minn. 2008) (Minnesota courts use loadstar method to determine fair award of attorneys' fees); *In re Conservatorship of Anderson*, No. A06-2138, 2007 WL 4563945, at \*4 (Minn. Ct. App. Dec. 31, 2007) (RSA6-10) (court must determine fair and reasonable attorneys' fees award).

There are numerous valid practical considerations for giving courts rather than juries the task of determining the amount of "reasonable" attorneys' fees to be awarded under a contract. First, allowing the jury to "'look behind the curtain of a case' may improperly affect their deliberation on the merits." *Murphy*, 761 A.2d at 701 (quoting *McGuire*, 1 F.3d at 1316). Second, achieving finality in lawsuits would be difficult if a jury was required to examine attorneys' fee requests because successful litigants would be required to empanel (or re-empanel) a jury after final judgment and appeal to determine the appropriate attorneys' fee award. Third, courts are unquestionably "better equipped to make computations based on details about billing practices, including rates and hours charged on a particular case." *McGuire*, 1 F.3d at 1316; *see also Kudon*, 547 A.2d at 979

(relying on, among other things, "(1) the presumed expertise of courts in matters of attorney fees [and] (2) the inordinate waste of time and expense which would be required to educate lay jurors on those matters about which the court is presumed an expert" to conclude that courts and not juries should determine attorneys' fee awards) (quoting *Ayala v. Center Line, Inc.*, 415 N.W.2d 603, 605 (Iowa 1987)). This is certainly the case here, particularly given the numerous claims, issues, motions, appeals and other matters that were hotly contested by the parties over a span of more than three years.

**B. Minn. R. Gen. Prac. 119 recognizes the practical abilities and limitations of juries**

This Court "has inherent authority to create rules of procedure." *See State v. Pearson*, 633 N.W.2d 81, 84 (Minn. Ct. App. 2001) (citing *State v. Willis*, 332 N.W.2d 180, 184 (Minn. 1983)). One set of such "rules of procedure" is the General Rules of Practice for District Courts. It is clear that Rule 119 of the Rules of General Practice was enacted by this Court in 1996 in recognition of the practical abilities and limitations of juries in making determinations on requests for attorneys' fees. Rule 119.01 provides, in relevant part, as follows:

In any action or proceeding in which an attorney seeks the award, or approval, of attorneys' fees in the amount of \$1,000.00 for the action, or more, application for award or approval of fees shall be made by motion. As to probate and trust matters, application of the rule is limited to contested formal court proceedings.

(Emphasis added). No provision within Rule 119 provides that a jury should preside over attorneys' fee requests or determine the amount of reasonable attorneys' fees to be

awarded. And, of course, only a court can determine the outcome of an attorneys' fees "motion."

The Advisory Committee comments to Rule 119 confirm that determinations on the amount of attorneys' fees to be awarded are made by the court:

This rule is intended to establish a standard procedure for supporting requests for attorneys' fees. The committee is aware that motions for attorney fees are either not supported by any factual information or are supported with conclusionary, non-specific information that is not sufficient to permit the court to make an appropriate determination of the appropriate amount of fees. This rule is intended to create a standard procedure only; it neither expands nor limits the entitlement to recovery of attorneys' fees in any case.

Where fees are to be determined under the "lodestar" method widely used in the federal courts and adopted in Minnesota in *Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 542-43 (Minn. 1986), trial courts need to have information to support the reasonableness of the hours claimed to be expended as well as the reasonable hourly rate under the circumstances. This rule is intended to provide a standard set of documentation that allows the majority of fee applications to be considered by **the court** without requiring further information. The rule specifically acknowledges that cases involving complex issues or serious factual dispute over these issues may require additional documentation. The rule allows **the court** to require additional materials in any case where appropriate. This rule is not intended to limit the court's discretion, but is intended to encourage streamlined handling of fee applications and to facilitate filing of appropriate support to permit consideration of the issues.

This rule also authorizes **the court** to review the documentation required by the rule in camera. This is often necessary given the sensitive nature of the required fee information and the need to protect the party entitled to attorneys' fees from having to compromise its attorney's thoughts, mental impressions, or other work product in order to support its fee application. As an alternative to permitting in camera review by the trial judge, the court can permit submission of redacted copies, with privileged material removed from all copies.

Minn. R. Gen. Prac. 119, Advisory Committee Comment (emphasis added). Critically, these comments are devoid of any reference to juries playing any role in the determination of an award of attorneys' fees.

There is no suggestion anywhere within any of the provisions of Rule 119 or the Advisory Committee Comment that juries rather than courts should render determinations regarding the "reasonableness" of fees to be awarded. If a request for, or award of, attorneys' fees under a contract did, in fact, implicate the right to a jury trial, then Rule 119 could not have been enacted.

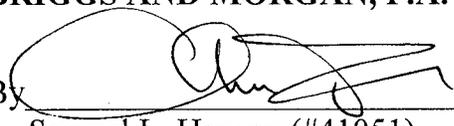
### CONCLUSION

UPB's request for, and award of, reasonable attorneys' fees did not trigger any constitutional right to a jury trial. There was no issue of fact regarding UPB's entitlement to, and Haugens' liability for, an attorneys' fees award under the Loan Documents. The subsequent determination of the amount of reasonable attorneys' fees to be awarded to UPB constituted an equitable determination under all relevant and applicable case law. As such, it was appropriately made by the trial court without a jury.

Therefore, this Court should confirm that the determination of the amount of reasonable attorneys' fees to be awarded under a contract does not raise any right to a jury trial under the Minnesota Constitution. The trial court's judgment and the Court of Appeals' decision should be affirmed.

DATED: October 31, 2011

**BRIGGS AND MORGAN, P.A.**

By 

Samuel L. Hanson (#41051)

Charles B. Rogers (#130588)

Jason R. Asmus (#319405)

2200 IDS Center

Minneapolis, MN 55402-2157

(612) 977-8400

**ATTORNEYS FOR RESPONDENT  
UNITED PRAIRIE BANK – MOUNTAIN  
LAKE**

**CERTIFICATE OF COMPLIANCE**

The undersigned counsel for Respondent certifies that this Supplemental Brief complies with the requirements of Minn. R. App. P. 132.01 in that it is printed in a 13-point, proportionately spaced typeface utilizing Microsoft Word 2003 and contains 24 pages and 7,292 words, excluding the Table of Contents, Table of Authorities, and Appendix.

DATED: October 31, 2011



Charles B. Rogers (#130588)

4304921v3