

NO. A11-1539

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State of Minnesota  
**In Court of Appeals**

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George E. Effrem, et al.,

*Appellants,*

v.

Paul C. Effrem,

*Defendant,*

Saliterman & Siefferman, P.C., interested observer,

*Respondent.*

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**RESPONDENT'S BRIEF AND APPENDIX**

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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).

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## STATEMENT OF LEGAL ISSUES

I. Whether the District Court clearly erred by including reasonable costs incurred in collecting attorneys' fees in a statutory attorney's lien under Minn. Stat. § 481.13.

*Where as here, an hourly retainer agreement provides for recovery of collection costs, the District Court has the discretion to include these costs in the value of an attorney's lien under Minn. Stat. § 481.13.*

Apposite Authorities:

*Duray v. St. Paul Federal Bank for Savings*, No. C1-93-1366, 1994 WL 25398 (Minn. Ct. App. Feb. 1, 1994)

*Foster & Associates v. Paulson*, 699 N.W.2d 1 (Minn. Ct. App. 2005)

*Paul v. Brown*, No. A08-0515, 2009 WL 22288 (Minn. Ct. App. Jan 6, 2009)

*Matter of M. Arnold Lyons Family Trust*, No. A08-1134, 2009 WL 1311912 (Minn. Ct. App. May 12, 2009)

*1010 Metrodome Square, LLC v. U.S. Bank National Association*, Nos. MC-05-016539, 27-CV-07-233, 2007 WL 6336440 (Minn. Dist. Ct. Nov. 30, 2007)

II. Whether the District Court clearly erred in its calculation of the value of the statutory attorney's lien under Minn. Stat. § 481.13.

*The District Court conducted and reconsidered its own review of the reasonable amounts of Respondent's statutory attorney's lien. The Court conservatively calculated the value of the lien after voluntary reductions by Respondents.*

Apposite Authorities:

Minn. R. Civ. App. P. 104.01, Subd. 1

## STATEMENT OF THE CASE AND FACTUAL BACKGROUND

This case began in June of 2008, when Timothy Effrem and George Effrem (hereinafter collectively referred to as the “Petitioners”) retained Saliterman & Siefferman, P.C. law firm (hereinafter the “Respondent”) under a retainer agreement (the “Retainer Agreement”), which provided the following scope of representation:

Research and review of facts and law; help client develop strategy; and commence litigation on behalf of clients for relief against Paul Effrem and others incident to wrongful/unlawful conduct in handling estate of Chris G. Effrem and related matters and relief at law and equity. (Please see Petitioners’ A.1)

The Retainer Agreement further provided:

In the event of any dispute or need to enforce this agreement, it is agreed that Minnesota law shall govern and that the District Court for Hennepin County, Minnesota shall have jurisdiction of the parties and of the controversy, and the client shall pay all costs of collection, including reasonable attorney's fees if the law firm prevails in such action. (Please see *Id.*)

Throughout the representation, Respondent communicated with Petitioners to ensure that they were well-informed about their representation, including the cost. Petitioners never objected to any work performed by Respondent, and in fact regularly praised Respondent’s services. In November of 2008, Petitioners retained their current attorneys and thereafter refused to pay their legal bills.

On December 17, 2008, to secure payment, Respondent filed two Notices of Attorney’s Liens, the second of which was released (Please see Petitioners’ A.2 and A.7). On November 30, 2009 the Court held a hearing on Respondent’s Motion to Enforce Attorney’s Lien. On February 23, 2010, the Court appointed Special Master Myron S.

Greenberg (the “Special Master”) to make recommendations to the Court regarding the amount of Respondent’s attorney’s lien (the “Lien”)(Please see Petitioners’ ADD.86). In May of 2010, the Special Master issued a recommendation regarding the Lien (Please see Petitioners’ ADD.67).

In June of 2010, Respondent requested that the District Court review the Special Master’s recommendation and Petitioners requested that the Special Master’s recommendation be adopted. On September 7, 2010 the District Court issued the “Second Order” (Please see Petitioners’ ADD.65). After conducting a *de novo* review of the Special Master’s recommendation, the District Court denied Petitioners’ motion and ordered that (1) Respondent would be awarded a lien under Minn. Stat. § 481.13, and (2) the lien would attach to Petitioners’ settlement proceeds in the amount of \$61,500.00. (Please see Petitioners’ ADD. 67-68; 73). This amount was determined based on the terms of the Retainer Agreement, and included Respondents’ reasonable collection costs to date (Please see Petitioners’ ADD. 71-72).

In October of 2010, Petitioners requested permission to bring a motion to reconsider the Second Order (Please see Petitioners’ ADD.51). The Court allowed Petitioners to bring a motion and Petitioners argued that the Lien did not attach to the settlement proceeds because other firms contributed substantial legal work to the fiduciary duty claims that they argued resulted in this settlement. Petitioners further argued that Respondent’s legal fees were unreasonable.

On April 1, 2011 the District Court ruled on Petitioners’ Motion to Reconsider the Court’s Second Order (Please see Petitioners’ ADD. 60) (the “Third Order”). The Court

held that Respondent established an attorney's lien under Minn. Stat. § 481.13, which attached to the settlement proceeds (Please see Petitioners' ADD. 53). The Court concluded that Respondent had incurred \$9,655.20 in reasonable collection costs (Please see Petitioners' ADD. 58-59). Therefore, the total amount of Respondent's Lien should be \$46,708.98 (Please see Petitioners' ADD. 59). The Court *specifically rejected* Petitioners' argument that collection costs are not "compensation" under the meaning of the statute (Please see *Id.*), and Petitioners did not appeal this Third Order.

On April 12, 2011 the Court amended the Third Order (the "Fourth Order"), and bolstered its rejection of Petitioners' argument that collection costs and fees should not be included in the value of the Lien (Please see Petitioners' ADD. 42). The Court noted that Petitioners did not cite any authority for their argument; however, they did cite case law in which collection costs were included in attorney's liens (Please see *Id.*). The Fourth Order also emphasized that the Retainer Agreement provided for collection costs (Please see Petitioners' ADD. 43). In the Fourth Order, the Court also rejected Petitioners' claim to bar recovery of deficiency by Defendants. Petitioners did not appeal this Fourth Order.

In May of 2011, Respondent moved under Rule 119 to include additional attorney's fees through the date of the Fourth Order. On June 27, 2011 the Court issued its fifth order on Respondent's Motion for Attorney's Fees and Determining the Amount of [Respondent's] Statutory Attorney's Lien, in which Respondents sought to include its additional collection costs totaling \$52,306.67 (the "Fifth Order") (Please see Petitioners' ADD. 11). The Court held that Respondent was entitled to additional collection costs under the attorney's lien statute (Please see Petitioners' ADD. 11-13). The Fifth Order

contained a six-factor reasonableness analysis that the Court applied to the costs and fees sought by Respondent, which reflected Respondent's own voluntary reductions in the invoices, Court-ordered reductions from previous proceedings, and the Court's own calculations of interest on costs (Please see Petitioners' ADD. 14-15). The Court found that, all things considered, the amount of the Lien was \$83,771.43, which attached to the settlement proceeds.

In opposition to Respondent's Rule 119 Motion Petitioners did not re-assert any of their statutory construction arguments raised prior to the Third and Fourth Orders. Petitioners made only a public policy argument against inclusion of costs, which the Court rejected (Please see Petitioners' ADD. 16).

Petitioners now appeal the fifth order based on these statutory construction arguments that were rejected in the Third and Fourth Orders (which were not appealed) and on the basis of their public policy argument.

Petitioners have presented a distorted potpourri of case law, including some cases that have been overturned, others that conclusively support Respondent, and others that lack even the most remote applicability to the points of law for which they are cited. Respondent maintains that it is entitled merely to its reasonable attorney's fees and reasonable collection costs provided under the retainer agreement, as repeatedly and consistently decided and reconsidered by the District Court.

## LEGAL ARGUMENT

This Court should uphold the District Court's June 27, 2011 Fifth Order for judgment because it was not clearly erroneous. Petitioner has presented two arguments, neither of which support a finding of clear error in the District Court ruling. First, Petitioners argue that the statute should be interpreted to exclude collection costs on the grounds that the costs are not "compensation" within the meaning of the attorney's lien statute (Please see Petitioners' Brief at Page 12). Further, they argue that these are not "summary proceedings" because they have taken too long (due to Petitioners' own unsuccessful attempts to challenge the Lien), and that public policy ought to restrict Recovery of the collection costs (Please see Petitioners' Brief at Page 13-15). Second, Petitioners argue that the amount of the Lien should be reduced because the amount of the attorney fees that were the subject of collection costs were reduced (Please see Petitioners' Brief at Page 18-19).

Petitioners have provided no authority for these arguments, save for a batch of decontextualized dicta, including from cases that have been superseded. When considered in context, these cases either barely relate to the instant matter, or support upholding the Fifth Order. The Court should affirm the rulings of the lower court, which has consistently held in favor of permitting Respondent's recovery of its billed time including collection costs.

**I. This Court should review the Fifth Order under the “clearly erroneous” standard. De novo review is inappropriate in this case.**

“The existence and amount of an attorney lien are questions of fact. Findings of fact shall not be set aside unless clearly erroneous.” *Duray v. St. Paul Federal Bank for Savings*, No. C1-93-1366, 1994 WL 25398 at \*1 (Minn. Ct. App. Feb. 1, 1994) (internal quotations omitted) (affirming a District Court’s determination that a party properly established an attorney’s lien by bringing a proceeding).

Petitioners have argued for *de novo* review (Please see Petitioners’ Brief at Page 10). Petitioners cited the correct cases for the standard of review of § 481.13 liens, but they have extrapolated an oversimplified version of the rule and its distinctions. Actually, those cases state that the determination of a reasonable value of an attorney’s lien is a question of fact which should be upheld unless clearly erroneous. See *Foster & Associates v. Paulson*, 699 N.W.2d 1, 4 (Minn. Ct. App. 2005); *In re L-tryptophan Cases*, 518 N.W.2d 616, 619 (Minn. Ct. App. 1994).

These cases applied a *de novo* standard of review to legal issues outside of the value of an attorney’s lien. In *L-tryptophan*, this Court reviewed *de novo* the legal question of how to calculate the value of an attorney’s lien if the legal fees were incurred under a contingency fee agreement, where the client later withdrew from the agreement. *Id.* at 619. No such determination is required in a case such as the one at hand where the only issue relative to the value of the lien is the reasonableness of the fees charged.

In *Foster*, the Court was asked to consider the scope of lien enforcement proceedings under § 481.13 and whether that scope may include counterclaims of

professional malpractice and breach of fiduciary duty in calculating the value of attorney liens, which it answered in the negative after *de novo* review. *Foster*, 699 N.W.2d at 8. Again, the issues raised in *Foster* are not present in the case at hand. The sole issue before the Court was the value of the Lien, which is determined based upon the hourly retainer agreement, *Id.* and in this case, the Retainer Agreement provided for reasonable collection costs.

The present case is much more closely akin to *Duray*, *Foster*, and *Paul* than it is to the pure legal questions of methodology addressed in *L-tryptophan*. The only questions before this Court are whether the District Court was wrong to include collection costs in the Lien, and whether it should have awarded a smaller sum of collection costs, given that it had previously reduced the legal fees awarded in the third order. These are factual judgments that do not involve the kinds of legal methodology debates seen in *L-tryptophan*. Put another way, it is unclear what discretion, if any, the District Courts would have if Petitioners' argument is true. The lower courts would seem to have no discretion whatsoever to decide which classes of fees are recoverable, and instead their discretion would be relegated simply to the mathematical computation of figures, the inclusion and exclusion of which are determined by fixed rules coming from the Court of Appeals. To preserve any degree of discretion, which is well-supported by case law, the Fifth Order should be affirmed.

In the very first sentence of the "Argument" section in their appellate brief, Petitioners cite *Boline v. Doty*, 345 N.W.2d 285 (Minn. Ct. App. 1984) for the broad proposition that application of the statute is reviewed *de novo* (Please see Petitioners'

Brief at Page 10). The case is improperly cited for this point of law. First, at no point does the Court in *Boline* define its standard of review as *de novo*, nor does it ever have any discussion of the various standards of review.

Second, the primary holding of *Boline* was overturned on grounds related to the value/legal standard distinction that determines the standard of review. *Paul v. Brown*, 2009 WL 22288 at FN 2 (“The primary holding in *Boline* was superseded by Minn. Stat. § 481.13, subd. 1(c), which eradicated the distinction between establishment and enforcement of an attorney’s lien. But the case remains authority for the proposition that a client must be given adequate opportunity to contest the facts regarding attorney fees.”).

Third, if anything, the reasoning in *Boline* supports upholding the Fifth Order. Essentially, the Court held that attorney’s lien enforcement actions (as distinguished from establishment actions, a distinction that was later eliminated) required a separate equitable proceeding if it is to afford minimal due process to parties. *Boline*, 345 N.W.2d at 289. The Court then went on to remand the case on the basis that it was not fairly litigated, but emphasizing the fair amount of discretion in choosing enforcement actions committed to the trial court in equitable proceedings. *Id.* at 290 (“In the equitable action, the method of enforcement is determined by the court. The court must determine which property is subject to the lien and how the lien is to be enforced. For example, a court could order a sale of certain property and put a mortgage on other property.”). This case instructed lower courts in identifying the type of proceeding they are considering, so that they can determine whether it was fairly litigated for res judicata and collateral estoppel purposes. *Id.* at 289. Far from supporting Petitioners’ blanket assertion that the present

case must be reviewed *de novo*, *Boline* paints a very different picture of the history of § 481.13 – one that gives trial courts latitude in determining the enforcement of an attorney’s lien. Petitioners’ misciting of *Boline* is evident in other portions of their brief, as explained in Section “II” below.<sup>1</sup>

This case is merely one where the District Court used its discretion to enforce the retainer agreement, which specifically provides for collection costs and attorney fees. There is no latent statutory interpretation issue with which this Court needs to concern itself. This decision to include those sums should not be reversed absent a finding that the District Court was clearly erroneous, and Petitioners have not supported any argument that error existed.

**II. The District Court did not err when in it included in the lien all sums that were covered by the Retainer Agreement.**

**A. As a general rule, the district court has the discretion to include a law firm’s collection costs in an attorney’s lien under Minn. Stat. § 481.13.**

“When there is an agreement between an attorney and a client that sets the attorney’s compensation, the amount of the attorney’s lien for legal services must be determined by reference to that agreement.” *Matter of M. Arnold Lyons Family Trust*, No. A08-1134, 2009 WL 1311912 (Minn. Ct. App. May 12, 2009) (internal citations omitted) (holding ultimately that collection costs were not recoverable, but only because

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<sup>1</sup> It is ironic that Petitioners have spent so much time indicting Respondent’s professional ethics and compliance with the Rules of Professional Conduct (Cite to Page 16), when they choose to engage this style of appellate argument. Petitioners rely heavily on *Boline*, both for standard of review arguments that are not even mentioned in the *Boline* opinion and for contrived arguments about statutory interpretation. But the relevant points of law explaining the history and construction § 481.13 have been superseded.

the retainer agreement did not provide for the specific percentage of attorney's fees and not because those fees are not allowed under the statute). See also, *1010 Metrodome Square, LLC v. U.S. Bank National Association*, Nos. MC-05-016539, 27-CV-07-233, 2007 WL 6336440 (Minn. Dist. Ct. Nov. 30, 2007) (explicitly including collection costs in a statutory attorney's lien).

The District Court cited both of these cases in the Fifth Order, and Petitioners' attempts to distinguish them fall short. Petitioners argue that *M. Arnold Lyons* is distinguished because the Court was interpreting language in a retainer agreement that provided for payment of "one third of any amount recovered." However, this is a distinction without a difference because the threshold issue was the weight given to retainer agreements in determining the amount of the attorney lien, which it concluded is controlling. Furthermore, a contractual interpretation is not necessary in this case, only a factual determination of what collection costs are reasonable. Therefore, under *M. Arnold Lyons*, the Retainer Agreement between Petitioners and Respondent, which explicitly provides for the payment of all collection costs, is controlling and the court did not err in issuing the Fifth Order.

Petitioners argue that *1010 Metrodome Square* is procedurally distinguished because it was a default judgment that, like the one at hand, did not involve a challenge to statutory construction that the Court considers in reaching its Judgment. However, the case still stands for the proposition that District Courts are able to exercise their discretion to include or exclude collection costs under § 481.13. Regardless of the

standard of review that this Court employs, affirming the Fifth Order is consistent with case law.

**B. Petitioners' statutory construction argument that collection costs are not compensation under Section 481.13 is contrary to law and is untimely.**

In its brief, Petitioners have manufactured a statutory construction issue without citing any authorities. Petitioners have argued that § 481.13 does not permit the recovery of collection costs associated with pursuing the attorney's lien action because it only expressly authorizes inclusion of "compensation" for "services," and collection costs are not compensation. This argument is contrary to the established law and is untimely. Petitioners also make an argument that can best be summarized as follows: Section 481.13 provides for recovery only in "summary proceedings," and these are not summary proceedings because they have taken too long, so compensation cannot include collection costs (Please see Petitioners' Brief at Pages 15-16).

These arguments seriously misconstrue § 481.13 jurisprudence. First, the inclusion of collection costs need not be expressly authorized by statute if they are permitted by a retainer agreement. *Barr/Nelson v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983).

Second, Respondents' argument that the underlying proceeding cannot be a "summary proceeding" similarly fails. The courts have never suggested that the general tendency of summary proceedings to be shorter in duration means that they are meant to exclude from consideration time expended on collection matters incidental to lien actions. Respondent's action to collect fees owed to it under its Retainer Agreement does not

spontaneously cease to be a “summary proceeding” simply because Petitioners brought an unsuccessful motion to reconsider, which was the real reason why these proceedings have drawn out so long in the first place. More importantly, this entire discussion is totally irrelevant, because the distinction has been eliminated from the statute, and what constitutes a “summary proceeding” is material only insofar as it means that a separate, equitable action is no longer required. *L-tryptophan*, 518 N.W.2d at 622.

Rather than citing legal authorities for their interpretation of “compensation,” Petitioners cite cases interpreting unrelated, ambiguous statutory language, such as a portion of an anti-SLAPP statute containing the phrase “genuinely aimed at...”, *Freeman v. Swift*, 776 N.W.2d 485 (Minn. Ct. App. 2009), to justify using a dictionary definition of “compensation” that they claim should exclude collection costs (Please see Petitioners’ Brief at Page 13). They also cite *St. Cloud Nat’l Bank & Trust Co. v. Brutger*, 488 N.W.2d 852 (Minn. Ct. App. 1992), which only gives a general definition of “compensation” for the purposes of explaining procedural distinctions between charging liens and retaining liens. This distinction no longer exists. Minn. Stat. § 481.13; *St. Cloud Nat’l Bank & Trust Co. v. Brutger*, 488 N.W.2d 852, 855 (Minn. Ct. App. 1992), review denied (Minn. Nov. 17, 1992). Petitioners’ argument is simply too attenuated to justify overturning case law from this Court allowing collection costs explicitly provided in the retainer agreement to be included in the Lien.

Finally, regardless of whether this attenuated argument could be persuasive, Petitioners did not raise this statutory interpretation argument before the District Court in its papers that the Court considered in issuing the Fifth Order. This Court has already

determined that only the Fifth Order dated June 27, 2011 is properly the subject of this appeal and the time to appeal the four previous orders expired before Petitioners filed their appeal. Accordingly, it cannot be considered as part of Petitioners' appeal of this order.

The Court of Appeals will not review an issue raised generally before the District Court, but argued under a new theory on appeal. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. Ct. App. 1997). Issues on appeal are only reviewable to the extent that they were addressed on the record in the underlying proceeding. *Wessin v. Archives Corp.*, 581 N.W.2d 380, 383 (Minn. Ct. App. 1998).

As summarized above, the District Court has issued five orders in this case. Petitioners appealed the Fifth Order, by which point the time to appeal all other orders had expired. Petitioners only raised their statutory construction arguments (interpreting the word "compensation") in the third and fourth orders. Petitioners' arguments before the Court in the Fifth Order contained only the following arguments: (1) The Court should exercise its discretion to deny the collection costs (Please see Petitioners' Memorandum of Law in Opposition to Respondents' Motion for Additional Attorney Fees, a.k.a. the fifth order, at Page 4); (2) Respondent's claims under a retainer agreement are mutually exclusive with claims under the attorney's lien statute, which does not expressly authorize the costs (Please see *Id.* at Pages 4-5); (3) The Court should reduce the amount of the collection costs because Petitioners reduced the size of the Lien (Please see *Id.* at Page 6); and (4) The Court should exclude the collection costs because Respondent did not prevail on all of its claims (Please see *Id.* at Page 8-9). The statutory

construction arguments were only raised in Petitioners' motion to reconsider, which was decided in the Third and Fourth Orders, which Petitioners did not appeal.

In other words, Petitioners have improperly tried to revive issues and legal arguments from earlier motions that were not before the District Court in deciding the Fifth Order from which this appeal arises. This legal theory was not before the District Court when it issued the Fifth Order. The only issues on appeal Court that were actually raised before the District Court in the fifth order were the public policy arguments, and therefore, the other arguments raised on appeal are not properly before this Court and should be disregarded.

**C. The public policy favoring lien enforcement supports upholding the Court's Fifth Order.**

Lastly, Petitioners make a public policy argument, which is as follows: Including collection costs in the Lien violates public policy because it unfairly rewards attorneys who bill excessively by allowing them to recover collection costs incurred in litigating challenges to unreasonable legal fees (Please see Petitioners' Brief at Pages 16-18).<sup>2</sup> Petitioners do not cite any authorities in this portion of their brief, and instead choose to mischaracterize the procedural history of the case. They dismiss all of Respondent's charges as unreasonable. Petitioners ignore that in the Second, Third, and Fifth Orders, the District Court reduced the amount of the Lien by excluding any costs that were excessive or duplicative. Every step of the way, the District Court conducted

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<sup>2</sup> This is clearly not the case here, where Respondent offered to discuss settlement with Petitioners at the very beginning of this dispute, and throughout the Court's issuing of the Fifth Order.

independent determinations of the reasonableness of the fees, based on six factors. It may be convenient for Petitioners to characterize all of Respondent's bills as unreasonable, but this would be a misleading recitation of the facts, as spelled out in great detail in all of the orders.

In sum, Petitioners have not made a persuasive argument in support of reversing the Fifth Order. The cases they cite are inapplicable, and Petitioners should not be permitted to twist isolated pieces of dicta to fiat into existence statutory construction issues that are not there. This Court has already ruled on the inclusion of reasonable costs and fees provided for in retainer agreements, and Petitioners have failed to justify eliminating discretion on behalf of the District Court to enforce retainer agreements.

**III. The District Court's inclusion of collection costs in the Lien was not clearly erroneous, notwithstanding the Court's reduction of underlying legal fees.**

Petitioners have submitted a second issue on appeal:

In the alternative, the Saliterman Firm's Lien amount for collection costs should be reduced because the Effrems have substantially limited the Saliterman Firm's claimed Lien. (Please see Petitioners' Brief at Page 18)

This argument is defective on at least three levels. First, it proves that the correct standard of review in this case is "clearly erroneous," because this argument is not even disguised as a statutory construction challenge – it is flatly a disagreement with the amount of the Lien, which is never reviewed de novo (please see Section "I," *supra*). Second, it ignores the fact that the Court conducted its own, independent reasonableness analysis of the collection costs it would include in the Lien, separate from the

determination of reasonable fees calculated in earlier orders. Respondent is seeking to recover only its reasonable fees: those which initially attached to the settlement agreement, in addition to those which it incurred in its collection matter.

Third, the cases cited by Petitioners support Respondent. It is true that those cases reduced attorney's fees in mechanic's lien actions, but it did so on the basis that excessive attorney's fees will discourage parties from pursuing their valid lien claims. *Bloomington Elec. Co. v. Freeman's, Inc.*, 394 N.W.2d 605, 608 (Minn. Ct. App. 1986) ("While the trial court is granted broad discretion in determining the amount of attorney's fees, the award must be made with caution to avoid discouraging valid claims."); *Asp v. O'Brien*, 277 N.W.2d 382, 385 (Minn. 1979) ("Such awards, however, should be made with caution so that property owners are not discouraged from challenging defective workmanship on the part of lien holders by excessive awards of attorney's fees."). In other words, the policy behind these cases is to encourage people to pursue their valid liens. When the claimant is the attorney, it makes no sense to reduce the amount of the attorney's fees.

This argument is no more persuasive than any of Petitioners' baseless and confusing statutory construction arguments. This Court should affirm the Fifth Order because the District Court was not clearly erroneous in deciding that the amounts covered by the retainer agreement are reasonable.

### CONCLUSION

This Court should affirm the Fifth Order of the District Court because the Fifth Order was not clearly erroneous or an abuse of discretion. *De novo* review is improper in

for calculating the value of legal services, but rather the factual issue of the amount of the Lien itself, which is squarely within the District Court's discretion. Additionally, the law applying § 481.13 clearly states that those amounts may be properly included in the amount of the Lien, because they were explicitly provided in the retainer agreement. Petitioners' attempts to invent statutory construction and public policy issues defy common sense, and are based on a misreading of the law. To wit, other than the public policy arguments, Petitioners' arguments are not properly before this Court, and should be rejected on procedural grounds. For the foregoing reasons, the decision of the District Court should be affirmed.

Respectfully Submitted,

Dated: January 4, 2012

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