

NO. A11-997

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State of Minnesota  
**In Court of Appeals**

COREY BAKER AND JAMIE BAKER,  
*Plaintiffs – Appellants,*

v.

BEST BUY STORES, L.P., AND  
CHARTIS WARRANTYGUARD, INC.,  
*Defendants – Respondents.*

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**REPLY BRIEF OF APPELLANTS COREY AND JAMIE BAKER**

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## I. SUMMARY OF THE REPLY ARGUMENT

The Respondents are in lockstep on their primary argument in support of the district court's dismissal of the contract claim; that argument being that the Plan is *not* an insurance contract. They argue that the Plan is properly characterized as a Service Contract, which is governed by Minn. Stat. §59B.02, subd.11. The argument would have some lift but for the fact that Minn. Stat. §59B.02 falls within the "Insurance" title of the Minnesota statutes. Minn. Stat. §59A-79A. Put simply, a Service Contract is a *form* of insurance.

Further, even under their preferred nomenclature, it was error for the district court to dismiss the contract claim because a Service Contract requires the Respondents to provide coverage for "*a specific duration.*" The Respondents refused to do so and thereby breached the contract. This Court should reverse the dismissal of the contract claim and remand for further proceedings.

There is also no daylight between the Respondents' arguments as they relate to the consumer protection claims; at bottom they argue that they never misrepresented the Plan. One problem: for the purposes of the

contract claim they argue that the Plan language permits them *to end coverage prior* to the specified duration; yet, for the purposes of the consumer fraud claims, they argue the Plan *provides coverage throughout* the specified duration. These positions cannot be reconciled. Therefore it was error for the district court to dismiss the consumer protection claims. This Court should reverse and remand for further proceedings.

## II. LEGAL ARGUMENT

### A. *Service Contracts are a Form of Insurance and Therefore the Bakers' Construction of the Plan as One for Insurance is Reasonable.*

The outcome of this case does not turn on whether this Court decides that the Plan is a *general* insurance contract governed by Minn. Stat. §60A.02 or a more *specific* form of insurance—a Service Contract—under Minn. Stat. §59B.02.<sup>1</sup> They are both insurance as evidenced by the

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<sup>1</sup> Indeed, to some degree it does not matter if the Court rejects both parties characterization of the Plan. The Bakers maintain their position that the Plan is reasonably construed through the prism of insurance. Through that prism, their construction of the contract and understanding thereof is a reasonable one. And two reasonable constructions of a contract belong before a jury.

fact that they are codified within the “Insurance” title of the Minnesota Statutes.<sup>2</sup> Minn. Stat. §59A-79A.<sup>3</sup>

What is important is that, like all forms of insurance, they both share the same characteristics: they are contracts wherein (1) one party, based on some level of underwriting, (2) offers to accept specified additional risks for which it would not otherwise be liable; (3) under circumstances where the insurer has no control over or connection to the losses sustained; (5) in exchange for consideration (premium). *See Allen v. Burnet Realty, LLC*, 801 N.W.2d 153, 159 (Minn. 2011); Minn. Stat. §60A.02. In this case, the Respondents have agreed to repair or replace the Bakers’ television in exchange for \$300.00. Further, the Respondents have no control over whether a loss is sustained and the evidence of underwriting is in the fact that the price of the premium is tied to the price of the purchase. So, to the

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<sup>2</sup> “The statutes are divided into several general subject areas, and, in turn, the subject areas are divided into chapters. The subject area and chapter divisions *serve to keep logically related materials together.*” Minnesota Office of the Revisor of Statutes, <https://www.revisor.mn.gov/statutes/mn-statutes-preface-2010.pdf>, Section IV, User’s Guide-Arrangement. (last visited on September 17, 2011)(emphasis added).

<sup>3</sup> The principal distinction between Service Contracts and more general forms of insurance is in how they are regulated and that distinction has no bearing on this case. Minn. Stat. §59B.01(c)(exempting Service Plans from the regulatory scheme for general insurance found in chapters 60A to 79A).

extent that there is a disagreement on this point, it is one of form over substance. The Plan is an insurance contract.

The Respondents, nonetheless, insist on calling the Plan a “Service Contract,” as defined by Minn. Stat. §59B.02, subd.11.<sup>4</sup> So be it; but the definition of a Service Contract *supports* the Bakers’ insurance construction of the Plan. The statute defines a Service Contract as “a contract or agreement for a separately stated consideration for *a specific duration* to perform the repair, replacement, or maintenance of property. . . .” Minn. Stat. §59B.02, subd.11 (emphasis added).

From the beginning, the major premise of the Bakers’ contract claim was that the Respondents refused “to honor the term provision of the Service Plan and instead unilaterally terminated the contract upon an event—specifically the replacement of the defected product.” (AA-7, ¶27). In other words, the Respondents breached the contract because they did not honor the “specific duration” of the Plan. The Bakers’ pleading of their statutory and common law consumer fraud claims are even more direct: the “Defendants have misrepresented that their Service Plan expires at the end of a *specified term* when, under circumstances, it expires prior to the

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<sup>4</sup> (Best Buy’s Br. at 17);(Chartis’s Br. at 15-16).

*specified term.*” (AA-5, ¶¶32,36, and 39). Characterizing the Plan as a Service Contract is consistent with the Bakers’ insurance construction and contradicts the Respondents’ claim that they may end coverage prior to the “specified duration.”

The Respondents acknowledge that the Plan “is a service contract governed by statute, specifically Minn. Stat. §59B,” but refuse to honor to “specific duration” language of that statute *or* the term provision within the Plan. (Best Buy’s Br. at 19). Therefore, it does not matter if this Court concludes that the contract is general insurance or a Service Contract—the Respondents have breached the contract in either case.

In any event, this service-contract-argument is a new one. In the district court, Best Buy argued, and the district court agreed, that the Plan was “not an insurance contract but, really, its more like a [single-use] coupon,” which must be used before the expiration date. (AA-198)(AA-161). From Best Buy’s view, the Bakers’ are “not allowed to go ahead and try to use that coupon every day between now and [the expiration date].” (AA-198).

The fault lies in the major premise of the argument, that being that the Plan does not cover replacement products. Respondents do not cite to a *single provision* of the Plan to support their argument. Because it does not exist. This is a critical omission because the law, as they have identified it, requires that “service contracts must specify the merchandise and services to be provided and, with *equal prominence, any limitations, exceptions, or exclusions.*” Minn. Stat. §59B.05, subd. 5 (emphasis added). Moreover, “[w]hen interpreting insurance policies, we construe language in an exclusionary provision in accordance with the expectations of the insured party. We also construe exclusions strictly against the insurer.” *American Family Ins. Co. v. Walser*, 628 N.W.2d 605, 613 (Minn. 2001)(internal citations omitted). The Plan has an “Exclusions to Coverage” section and replacement products are not listed. (AA-44). Replacement are not expressly excluded, therefore they are covered by the Plan.

This single-use-coupon argument, nonetheless, goes a long way towards explaining why the Bakers’ were reasonable in construing the contract as a contract for insurance. Repair of the product is the primary

benefit under the Plan and replacement is a secondary remedy.<sup>5</sup> A consistent application of the single-use-coupon argument to these specified contract remedies means the consumer is entitled to single replacement *or* a single repair. An inconsistent application of the argument means that the Plan is a “single-use-coupon” when the product is replaced but a multiple-use-coupon when the product is repaired. This makes no sense. The Bakers’ insurance construction, however, can be uniformly applied to both repairs and replacements remedies; the Respondents will repair or replace the consumer’s product as many times as necessary within the specified duration.

Best Buy’s single-use-coupon argument also demonstrates that they misunderstand the real value of the Plan to the consumer. “[C]ourts are to ascertain and give effect to the intent of the parties.” *Johanns v. Minnesota Mobile Storage, Inc.*, 720 N.W.2d 5, 9 (Minn. Ct. App. 2006)(internal citations

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<sup>5</sup> Initially, the Plan “covers the parts and labor costs to repair [the] product.” (AA-34). *If*, however, the Respondents “determine . . . that [the] product *cannot* be repaired, [they] will replace it. . . .” (AA-34). The Bakers allege that Best Buy L.P., on behalf of itself and Chartis WarrantyGuard, Inc., determined that the television could not *or should not* be repaired.” (AA-6)(emphasis added). Failing to decide that the television could not be repaired may be a breach in and of its self.

omitted). The Bakers purchased *peace of mind* that, barring a disqualifying act, they would have a working television in their home for at least the next four years. They enjoy that peace of mind without regard for an actual loss, and in fact, would have preferred that their new television worked for more than two years.

So, refusing to cover the Bakers' replacement television—which was of the of same “quality” that caused them to make an insurance claim in the first place deprives them of the peace of mind that insurance provides. They are back at square one; they have an expensive product that they cannot afford to replace without insurance. The Respondents' solution: buy *another* plan.<sup>6</sup>

This Court must decide if the Plan should be construed through the prism of insurance law or as a single-use-coupon. If it is more like insurance, then the Bakers were entitled to four years of coverage *or* a return of their premium for the period of time in which the Respondents

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<sup>6</sup> Another reason why the coupon analogy does not work is that a coupon with an expiration date is an inducement designed to get a consumer to take an action, namely make a purchase within a limited time. The Plan, however, does not induce the Bakers to do *anything* to bring about a claim; in fact it does not cover claims that result from intentional or even negligent acts. (AA-34).

refused to continue coverage—the Respondents gave them neither. The district court made a legal error when it decided that the Bakers essentially purchased a single-use-coupon. This Court should reverse and remand for further proceedings.

*B. The Respondents' Construction of the Plan Does Not Give "Force and Effect" to the Four-Year-Term Provision of the Plan.*

The Respondents have accused the Bakers of building their case on “selective and incomplete contractual language” and offering a “tortured reading of a few,” “random snippets of language from the Plan and consider[ing] them in an intellectual vacuum.”<sup>7</sup> They do so—without blushing—while failing to cite the four-year-term provision of the Plan. Their collective forty-seven pages of briefing, for the most part, ignores the provision.

This they cannot do. The Court must consider the *entire* contract and, if possible, give “force and effect” to all of the contract language. *Younger v. Schafer*, 264 N.W. 794, 796 (Minn. 1936). The term provision is

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<sup>7</sup> (Best Buy's Br. at 9);(Chartis's Br. at 12-13).

just as much a part of the contract as those relied upon by the Respondents. It is unambiguous:

*Your coverage under this Plan is effective beginning on the date you purchased your product or on the date your original product was delivered to you as stated on your purchase receipt and will expire either one (1), two (2), three (3), four (4) or five (5) years from this effective date depending on the length of the Plan purchased and as stated on your purchase receipt.*

(AA-35)(emphasis added).<sup>8</sup>

Chartis, for its part, does *nothing* in its brief to give effect to term provision or explain its import.

Best Buy, oddly enough, seems to be tripping over its own argument when explaining the import of the term provision. On one hand, it argues that the “Plan *does* expire at the end of a specified term,” and on the other, it argues that replacement, which may occur before the specified “trigger[s] the end of the contract.”<sup>9</sup> Yet, somehow, it persists that the “[t]erms of the Plan are simple, clear, and unambiguous.”<sup>10</sup>

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<sup>8</sup> They also fail to cite to the language on the purchase receipt, which is also a part of the contract, which states that the Plan coverage would not expire until December 12, 2012. (AA-34; AA-55).

<sup>9</sup> (Best Buy’s Br. at 22,14 )(emphasis added).

Best Buy goes on to argue that, “appellants’ argument assumes that a contract with an expiration date cannot be satisfied early without there being a conflict in terms—a fundamental misunderstanding of basic contract law.” (Best Buy’s Br. at 12). This is legal shadowboxing.

The Bakers have never made such an argument. To be sure, it is *possible* for a contract with an expiration date to be properly terminated prior to that expiration date. But the contract must say so. The drafters of the contract in the *Boat Dealers’ Alliance, Inc., v. Outboard Marine Corp.*, a decision cited by the Respondents, demonstrates how to create an early termination provision. 182 F.3d 619 (8th Cir. 1999). In that case, there was an express term-provision, similar to the one within the Plan, which stated: “This Agreement shall be in full force and effect for an initial period of not less than five (5) years from [a specified date].” *Id.* at 621. The very next provision of that contract, however, expressly provided for a termination prior to that date: “*Either party may terminate without cause if, not less than ninety (90) days prior to the [specified date]. . . .*” *Id.*

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<sup>10</sup> (Best Buy’s Br. at 21).

Indeed, anyone who has watched a commercial that advertises warranties for new cars knows how easy it is to plainly state an early termination provision; the vehicle is covered for three years or 36,000 miles, whichever occurs sooner. The Bakers would have no claim, if the Plan stated, “your coverage will expire at the expiration of four, or if we replace your product, whichever occurs sooner.” So contrary to Best Buy’s argument, the Bakers make no assumptions concerning early termination provisions except that they must be written into the contract. The Plan does not include such a provision.

Without an express early termination provision to rely on, the Respondents attempt to wrench the effects of an early termination provision from the Coverage Section or Limitation of Liability Section. First, drafting an early termination provision into those provisions is far cry from a Service Contract that is written in “clear, understandable language that is easy to read.” Minn. Stat. §59B.05, subd.1.<sup>11</sup> It is not only unreasonable to draft an early termination provision into coverage or

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<sup>11</sup> In another great battle of form over substance, Best Buy dedicates a page of its brief to explaining why Minn. Stat. §59B.05, subd.1., applies to this Service contract as opposed to Minn. Stat. §325G.32. (Best Buy’s Br. at 18-9). It is not worth the fight; both statutes required that the Respondents write the contract in a clear and coherent manner.

limitation of liability sections, it is also unreasonable to expect the consumer to look to those provisions to understand when the termination occurs.

It is no surprise that the Respondents largely ignore the four-year-term provision because their entire argument hangs on just *two phrases* within the Plan: “fulfilled in their entirety” and “satisfied all obligations.” They are adamant that they can *only* be understood to effect a complete discharge of a duty. But whether those phrases effects a total or partial discharge of an obligation requires the Court to context in which that duty is executed.

An everyday example of why those phrases require context: when a parent takes a child into the doctor because the child is sick or injured, that parent has “fulfilled in their entirety” or “satisfied all obligations” a parent would have to provide the medical care for the child. That is, as it relates to *that* injury or sickness, for *that* day. The parent may, or may not, make the trip to emergency room innumerable times until the law gives them a *total* discharge of that obligation when the child reaches the age of majority. So it is with the Plan; when the Respondents replace the

defective product, it has “fulfilled in their entirety” or “satisfied all obligations,” for that claim. They are not fully discharged from their duties until the end of the specified duration.

The Plan itself demonstrates that these words may in some instances indicate a partial discharge of an obligation, as opposed to a total discharge. The Plan states that “[i]n some situations, *product replacements will be fulfilled replacing a defective component* of the product such as a power supply or earbuds if such component were originally included with your product.” (AA-47). The Respondents’ reading of this provision would mean that they coverage terminates for a \$500.00 iPhone when they replace the \$20.00 earbuds. This is an absurd result.

It is perfectly reasonable, however, the Plan as requiring an insurer to pay multiple claims for the duration of the policy. Again, the Plan acknowledges as much within its Limits of Liability section. It states: “*For any single claim, the limits of liability under this Plan is the lesser of the cost of (1) authorized repairs, (2) replacement with a product with similar features, (3) reimbursement for authorized repairs or replacement or (4) the price of*

a comparable product.” (AA-48)(emphasis added).<sup>12</sup> To construe the Plan in a way that replacing the product is a total discharge of the Respondents’ obligations is to erase the words “*For any single claim,*” from the Plan. So, it is apparent that those phrases do not necessarily mean a total discharge of the duty, especially in light of the term provision that states that the coverage will continue until the expiration date.

There is another reason why this Court should reject Respondents’ construction that a single replacement terminates the coverage—it effectively gives the Respondents “sole discretion,” to terminate the Plan (AA-34). The Respondents have the “sole discretion” to decide whether to replace the product; and if replacement equals termination, then Respondents claim to have the power to unilaterally terminate the contract. If the Respondents choose to repair the product, then coverage continues. If they choose to replace the television, then coverage terminates. This is not what the consumer bargained for. The Plan should

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<sup>12</sup> When the Respondents cite to the Limitations of Liability Section, they conveniently leap over the *first sentence*, which supports the Bakers’ reading, in order to cite the second.

not be construed in a way that permits the Respondents to unilaterally terminate the consumer's coverage.

In sum, the Respondents do not offer a sound way to harmonize the four-year-term provision with its argument that the limitation of liability provision satisfies all the obligations under the Plan. To credit the Respondents' contract construction, this Court would have to conclude that the Bakers' coverage under the Plan ends in December of 2012, *but* the Respondents' liability under the Plan ended two years earlier. This construction renders the term provision an empty promise and makes the limitations of liability provision the deciding factor as to when the coverage ends. This is not what the parties intended. This district erred by failing to give full force and effect to the four-year-term provision and therefore this Court should reverse and remand for further proceedings.

*C. The District Court Erred in Dismissing the Bakers' Statutory Consumer Protection Claims that were Based on the Misrepresentations in the Plan.*

The district court dismissed the consumer protection claims that are based on the Plan for one reason, that being that "there is no possibility of proof of misrepresentation." (AA-165). In other words, the Bakers'

consumer protection claim based on the Plan necessarily fails for the same reasons their contract claim failed.

The Bakers' have explained why this was error on pages 23-26 of its opening brief. Essentially, the Bakers argued that even if the Respondents' construction of the Plan was correct, a reasonable jury could find the Respondents' *unqualified* statement regarding the term (i.e., your term will expire in four years) to be misleading, *or* misrepresentative, *or* deceptive. Minn. Stat. §325F.67; Minn. Stat. §325F.67. Liability premised on a statement that is technically correct but yet misleading, *or* misrepresentative, *or* deceptive is a matter of common-law and statutory law. The Supreme Court of Minnesota has held:

“It is settled law, however . . . that a statement containing a halftruth may be as misleading as a statement wholly false and thus that a statement which contains only those matters which are favorable and omits all reference to those which are unfavorable is a much a false representation as if all the facts stated were untrue. . . . Though one may be under no duty to speak as to a matter, if he undertakes to do so . . . he is bound not only to state truly what he tells, but also not to suppress or conceal any facts within his knowledge[,] which materially qualify those stated. If he speaks at all, he must make a full and fair disclosure.”

*Swedeen v. Swedeen*, 134 N.W. 2d 871, 877-878 (Minn. 1965). Likewise, the Minnesota statute plainly state that a Service Contract provider “shall not in its service contracts, literature, or otherwise make, permit, or cause to be made any false or misleading statement or omit any material statement that would be considered misleading if omitted.” Minn. Stat. §59B.07, subd.2. (emphasis added).

There is no express provision—especially one written in a “clear, understandable language that is easy to read”—that tells the consumer that the Plan coverage may terminate prior to the express term. That fact is undoubtedly a material term because the price of the Plan is based on the specified duration of coverage. Therefore the district erred, as a matter of law, in dismissing the consumer protection claims as they relate to the Plan.

Chartis, however, was not as discrete as the district court; it offers a variety of arguments in support of dismissing the consumer protection claims. None of these arguments have any merit.

First, Chartis argues that the Bakers’ failed to allege, “that Respondents made any misrepresentation, let alone one with [the]

necessary intent.” (Chartis’s Br. at 21-22). This statement is counterfactual. The Bakers plainly pleaded that, “Defendants have misrepresented that their Service Plan expires at the end of a specified term when, under certain circumstances, it expires prior to the specified term.” (AA-8, at ¶¶32,36).<sup>13</sup>

Next Chartis argues that the Complaint is “devoid of any allegation that the Complaint was brought for the ‘public benefit’ or how their action benefits the public.” (Chartis’s Br. at 22). First, there is no requirement that the Bakers plead a public benefit. *Wiegand v. Walser Auto. Group.*, 683 N.W. 2d 807,810 (Minn. 2004). Second, this argument supposes that the pleading rules require that the Bakers use some “magic words” in order to invoke a public benefit. It does not.<sup>14</sup> The public benefit can be inferred

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<sup>13</sup> The Bakers’ allege that Best Buy was acting “on behalf itself and Chartis WarrantyGuard, Inc.,” as it relates to the Plan. (AA-6, ¶¶16-19). Under notice pleadings, these pleading were sufficient to inform Chartis that the Bakers intended to base their theory of liability, at least in part, on an agency theory. Chartis, the moving party, offers no facts or evidence to contradict the Bakers’ agency theory and therefore the argument fails. Moreover, the district court never addressed the issue and should be allowed to rule on the issue in the first instance.

<sup>14</sup> “At the same time, hypertechnicality in pleading requirements should be avoided. [W]hat matters is not whether the magic words . . . appears in pleadings, but whether the Court and the parties were aware of the issues

from the facts as pleaded because the Bakers allege that the Respondents are misrepresenting the terms of a consumer contract that is sold throughout the country. Chartis's public-benefit argument has no merit.

The core question on the consumer protection claims based on the Plan language is whether a reasonable jury could find it misleading for the Respondents to tell the Bakers, without qualification, that their "*coverage under th[e] Plan [was] effective [on December 20, 2008] . . . and [would] expire either [on December 20, 2010],*" without disclosing that the Plan could terminate prior to that date. The district court improperly substituted its judgment for that of a jury and therefore this Court should reverse and remand for further proceedings.

*D. The District Court Erred in Dismissing the Bakers' Statutory Consumer Protection Claims that were based on the Misrepresentations in the Advertisements.*

The district court's decision to dismiss the consumer protection claims based on the advertisements is bemusing. All this Court needs to know in order to reverse the dismissal of this claim is that the district court *never saw the advertisements.*

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involved." *New Hampshire Ins. Co. v. Marinemax of Ohio, Inc.* 408 F. Supp. 2d 526, 529 (N.D. Ohio 2006).

Nonetheless, Best Buy argues that, “generalized claims that Best Buy put advertisements before the public that ‘misrepresented, or mislead consumer, that their Service Plan expires at the end of a specified term, when, under certain circumstances, it expires prior to the specified term’ fails as a matter of law.” (Best Buy’s Brief at 22). The district court disagreed; at least in the context of the consumer fraud claims based on the Plan language. In fact, the district court found that the “Bakers have pled with the requisite particularity by referring to the [Plan].” The advertisements claim used the *same allegations, verbatim*, to identify the misrepresentations. (AA-165); (AA-8, at ¶¶32,36). It is illogical for Best Buy to argue, and the district court to conclude, that although those allegations satisfied the heightened notice pleading standard as they relate to Plan, they somehow failed to meet the same standard for the advertisements.

The district court’s real problem with the consumer protection claims based on the advertisements was that “no specific advertisements have been alleged or referenced in the complaint, and not have been presented as exhibits.” (AA-165). First the Bakers had no obligations to

attach any advertisements to the complaint. Second, the Bakers need only identify the misrepresentation in the advertisement—not specific advertisement itself. Moreover, the Bakers have identified the specific offending advertisements—any advertisement that states that the Plan covers a specific duration without disclosing that the Plan may terminate prior to that time. Even the heightened notice pleadings the Court applied should not be read as requiring the Bakers to go about collecting the Respondents’ advertisements for the Plan. In the end, the notice pleadings are still the rule of law.

Chartis, for its part, supports the dismissal of the advertisement claims by mischaracterizing the district court’s rationale for the dismissal. Chartis claims that the “District Court found, Appellants completely failed to allege that CWG or a CWG representative placed a false or misleading advertisement or other publication before the public with the intent to increase consumption.” (Chartis’s Br. at 22-23). A citation to the record supporting this finding would be helpful; but in fairness to Chartis, it could not provide a citation because the district court never made such a finding. The district court dismissed the claim because, from its

(erroneous) view, it found “no specific false statement, oral or written, ha[d] been alleged.” (AA-165). Again, this is of course irreconcilable with the district court’s finding of “requisite particularity,” for the exact same allegations of a specific false statement as they relate to the Plan.

Chartis’s next argument is in support of dismissal is—in a word—absurd. Chartis chastises the Bakers for placing the “burden [on the Respondents] to prove they never issued a false advertisement.” (Chartis’s Br. at 23). The Bakers’ did not place the burden on Respondents—the law does. The moving party has the burden at the motion to dismiss stage. *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3rd Cir. 1991) (holding that the defendant, as the moving party, has the burden in a motion to dismiss). After all, they are the party asking the Court to dismiss the case before any evidence has been offered. Indeed, the law, with few exceptions (e.g., jurisdiction), consistently places the burden on the moving party. Chartis’s position would mean that a defendant can successfully move to dismiss a well-pleaded complaint without a showing that the plaintiff is not entitled to relief. There is no support for that proposition of law.

But Chartis's wrongheaded argument does bring into sharp relief a dispositive question: what evidence did the Respondents present to the district court to support its motion to dismiss the Bakers' well-pleaded consumer protection claim based on false statements made in the advertisements? The answer: none. This Court should therefore reverse the district court's dismissal and remand the case for further proceedings.

### III. CONCLUSION

This Court should reverse the district court's dismissal of the claims and remand them for further proceedings. If this Court does affirm the dismissal, it should, in the interest of justice, permit the Bakers to amend their complaint to cure any pleading deficiencies.

Dated September 28, 2011

Respectfully submitted



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## CERTIFICATE OF COMPLIANCE

I hereby certify that this Reply Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds.1 and 3, for a brief produced with a proportional font. The length of this brief is approximately 4,836 words but no more than 5,000. This brief was prepared using Microsoft Word for Mac, 2011.

DATED: September 28, 2011.



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