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State of Minnesota  
**In Court of Appeals**

First National Bank,

*Respondent,*

vs.

Profit Pork, LLC,

*Respondent,*

Deere & Company,

*Respondent,*

Schwartz Farms,

*Respondent,*

New Vision Coop,

*Respondent,*

Ag Partners, LLC,

*Respondent,*

Alan J. Ruesch,

*Respondent,*

Frank Riley,

*Respondent,*

Land O'Lakes Purina Feed LLC,

*Respondent,*

Cooperative Elevator Association,

*Respondent,*

Slater Bros.,

*Respondent,*

Gary Slater,

*Respondent,*

Kent Slater,

*Respondent,*

*[caption continues on following page]*

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**APPELLANT'S BRIEF, ADDENDUM AND APPENDIX**

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Alan Ahlers,	<i>Respondent,</i>
Chris Kremer,	<i>Respondent,</i>
Green Prairie Coop.,	<i>Respondent,</i>
Wilmont-Adrian Cooperative,	<i>Appellant,</i>
Brett Evers,	<i>Respondent,</i>
Brett Evers, et al.,	<i>Respondents,</i>
Alan Ahlers,	<i>Respondent,</i>
John Doe, et al.,	<i>Respondents.</i>

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**APPELLANT'S BRIEF, ADDENDUM 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).

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE ISSUES PRESENTED.....	1
STANDARD OF REVIEW.....	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS.....	6
ARGUMENT.....	10
I.    BASED UPON THE SERVICES PROVIDED BY APPELLANT TO PROFIT PORK, LLC AND THE PLAIN LANGUAGE AND STATUTORY CONSTRUCTION OF MINN. STAT. § 514.966, APPELLANT HAS A VALID “FEEDER’S LIEN” IN THE LIVESTOCK OF PROFIT PORK, LLC AND THE PROCEEDS THEREOF.....	10
A.    Legal Standard for Statutory Interpretation. ....	10
B.    The District Court Erred by Adding Terms to the Plain Language of Minn. Stat. § 514.966, subd. 4(a) to Support the Contention that Appellant’s Sole Recourse Under Minn. Stat. § 514.966 is a Livestock Production Input Lien. ....	11
C.    The District Court Erred by Incorrectly Interpreting the Statutory Construction of Minn. Stat. § 514.966, and as a Result, Improperly Concluded that Appellant’s Sole Recourse Under Minn. Stat. § 514.966 is a Livestock Production Input Lien. ....	14
II.    BECAUSE THE DISTRICT COURT ERRED IN HOLDING THAT APPELLANT’S SOLE RECOURSE UNDER MINN. STAT. § 514.966 IS A LIVESTOCK PRODUCTION INPUT LIEN, THE DISTRICT COURT ERRED IN HOLDING THE APPELLANT: 1) LACKS A VALID CLAIM FOR CONVERSION AGAINST RESPONDENT FIRST NATIONAL BANK; AND 2) FAILED TO PROVIDE EVIDENCE OF ACTUAL DAMAGES TO SUSTAIN A CLAIM OF COMMERCIALLY UNREASONABLE SALE AGAINST RESPONDENT FIRST NATIONAL BANK....	19
A.    Legal Standard for Conversion. ....	19
B.    Because the District Court Erred in Holding Appellant’s Sole Recourse Under Minn. Stat. § 514.966 is a Livestock Production Input	

Lien, the District Court Erred in Determining Appellant Lacks a Valid Claim for Conversion Against Respondent First National Bank as a Matter of Law .....	20
C.    Legal Standard for Commercially Reasonable Disposition. ....	21
D.    Because the District Court Erred in Holding Appellant’s Sole Recourse Under Minn. Stat. § 514.966 is a Livestock Production Input Lien, the District Court Erred in Determining Appellant Failed to Provide Evidence of Actual Damages to Sustain a Claim of Commercially Unreasonable Sale Against Respondent First National Bank. ....	22
CONCLUSION .....	23
CERTIFICATE OF COMPLIANCE.....	25
INDEX TO ADDENDUM.....	26
INDEX TO APPENDIX.....	27

## TABLE OF AUTHORITIES

CASES	<u>Page</u>
<i>Am. Family Ins. Group v. Schroedl</i> , 616 N.W.2d 273, 277 (Minn. 2000).....	10
<i>Benigini v. County of St. Louis</i> , 585 N.W.2d 51,54 (Minn. 1998).....	2
<i>Bloomquist vs. First National Bank of Elk River</i> , 378 N.W.2d 81 (Minn. App. 1986).....	20
<i>Carlson v. Sala Architects, Inc.</i> , 732 N.W.2d 324, 327 (Minn. App. 2007).....	2
<i>Chemlease Worldwide, Inc. v. Brace, Inc.</i> , 338 N.W.2d 428, 437 (Minn. 1983).....	21
<i>Dain Boswerth, Inc. v. Goetze</i> , 374 N.W.2d 467, 471 (Minn. App. 1985).....	20
<i>Dairy Farm Leasing Co. v. Haas Livestock Selling Agency</i> , 458 N.W.2d 417, 419 (Minn. App. 1990).....	20
<i>DHL, Inc. v. Russ</i> , 566 N.W. 2d 60, 71 (Minn. 1997).....	19
<i>Fabio v. Bellomo</i> , 504 N.W.2d 758, 761 (Minn. 1993).....	2
<i>First Minnesota Bank v. Overby Development, Inc.</i> , 783 N.W. 2d 405, 412 (Minn. App. 2010).....	10
<i>Karlstad State Bank v. Fritsche</i> 374 N.W.2d 177 (Minn. App. 1985).....	1, 21
<i>Larson v. Archer-Daniels-Midland Co.</i> , 32 N.W.2d 649, 650 (Minn. 1948).....	19
<i>Larson v. State</i> , 790 N.W.2d 700, 703 (Minn. 2010).....	10
<i>Mankato Citizens Telephone Co. v. Commissioner of Taxation</i> , 275 Minn. 107, 111, 145 N.W.2d 313, 316 (1966).....	2, 10

<i>Olson v. Moorhead Country Club</i> , 568 N.W.2d 871 (Minn. App. 1997).....	1, 19
<i>O'Malley v. Ulland Bros.</i> , 549 N.W. 2d 889, 892 (Minn. 1996).....	2
<i>Premier Bank v. Becker Development, LLC</i> , 785 N.W.2d 753, 759 (Minn. 2010).....	10
<i>State v. Mauer</i> , 741 N.W.2d 107, 111 (Minn. 2007).....	10
<i>State ex rel. Bergin v. Fitzsimmons</i> , 226 Minn. 557, 560, 33 N.W.2d 854, 856 (1948).....	10
<i>Thomas B. Olson &amp; Associates, P.A. v. Leffert, Jay &amp; Polglaze, P.A.</i> , 756 N.W.2d 907, 920 (Minn. App. 2008).....	20
<i>Tracy State Bank v. Tracy – Garvin Co-op</i> , 573 N.W. 2d 393, 395 (Minn. App. 1998).....	2, 10
<i>Zappa v. Fahey</i> , 310 Minn. 555, 556, 245 N.W.2d 258, 259-60 (1976).....	2

**STATUTES**

Minn. Stat. § 156.001 (2010).....	15
Minn. Stat. § 156.10 (2010) .....	15, 16
Minn. Stat. § 336.9-610(b).....	21
Minn. Stat. § 336.9-611(c)(3)(A).....	21
Minn. Stat. § 514.965 (2010).....	1, 11, 12, 15, 16, 17
Minn. Stat. § 514.966 (2010).....	1, 4, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23
Minn. Stat. § 565.23.....	3
Minn. Stat. § 645.08 (1)(2010).....	10
Minn. Stat. § 645.17 (2010).....	10

**STATEMENT OF THE ISSUES PRESENTED**

**WHETHER THE DISTRICT COURT ERRED IN ITS INTEPRETATION OF MINN. STAT. § 514.966, SPECIFICALLY IN REGARD TO APPELLANT'S CLAIM OF LIEN PRIORITY IN THE LIVESTOCK OF PROFIT PORK, LLC AND THE PROCEEDS THEREOF.**

The District Court improperly determined Appellant's sole recourse under Minn. Stat. § 514.966 is a livestock production input lien for the unpaid retail cost of livestock production inputs furnished to Profit Pork, LLC.

*Apposite Authority:*

Minn. Stat. § 514.965 (2010).

Minn. Stat. § 514.966 (2010).

**WHETHER, BASED ON ITS INTEPRETATION OF MINN. STAT. § 514.966, THE DISTRICT COURT ERRED IN HOLDING THE APPELLANT: 1) LACKS A VALID CLAIM FOR CONVERSION AGAINST RESPONDENT FIRST NATIONAL BANK; AND 2) FAILED TO PROVIDE EVIDENCE OF ACTUAL DAMAGES TO SUSTAIN A CLAIM OF COMERCIAALLY UNREASONABLE SALE AGAINST RESPONDENT FIRST NATIONAL BANK.**

The District Court improperly determined that because Appellant's sole recourse under Minn. Stat. 514.966 is a production input lien, and since Respondent First National Bank held a secured interest in higher priority to Appellant's, Appellant lacked a valid claim for conversion and failed to provide evidence of actual damages to support a claim for commercially unreasonable sale.

*Apposite Authority:*

*Olson v. Moorhead Country Club*, 568 N.W.2d 871 (Minn. App.1997).

*Karlstad State Bank v. Fritsche*, 374 N.W.2d 177 (Minn. App.1985).

Minn. Stat. § 514.966 (2010).

## STANDARD OF REVIEW

This case involves a grant of summary judgment against Appellant Wilmont-Adrian Cooperative in favor of Respondent First National Bank.

On an appeal from the grant of summary judgment, the appellate court must consider two questions: (1) whether there are any genuine issues of material fact; and (2) whether the district court erred in its application of the law. *Carlson v. Sala Architects, Inc.*, 732 N.W.2d 324, 327 (Minn. App. 2007) (citations omitted). A material fact is a fact that will affect the outcome of a case. *Zappa v. Fahey*, 310 Minn. 555, 556, 245 N.W.2d 258, 259-60 (1976). The appellate court shall view the evidence “in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Upon appeal, the appellate court shall not defer to the district court’s interpretation of the law, which shall be reviewed *de novo*. *Benigini v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998). Application of a statute to the undisputed facts of a case involves a question of law, and as such, the appellate court is not bound by the district court’s determination. *O’Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). In interpreting a statute, the appellate court is “prohibited from adding words to a statute, and cannot supply what the legislature either purposefully omitted or inadvertently overlooked.” *Tracy State Bank v. Tracy – Garvin Co-op*, 573 N.W.2d 393, 395 (Minn. App. 1998) (citation omitted). The reviewing court shall not assume a legislative intent in plain contradiction to the express language used by the legislature. *Mankato Citizens Telephone Co. v. Commissioner of Taxation*, 275 Minn. 107, 111, 145 N.W.2d 313, 316 (1966).

## STATEMENT OF THE CASE

First National Bank (hereinafter “Respondent FNB”) as a secured creditor initiated a replevin action in Murray County Court File No. 51-CV-10-145 on June 23, 2010 by serving a Summons and Complaint on debtor Profit Pork, LLC (hereinafter “Profit Pork”) and some of the other parties claiming an interest in the assets of Profit Pork. A.A.1 through A.A.12.<sup>1</sup> On the same date, and upon some of the other parties, Respondent FNB served a Notice of Motion and Motion moving the Court for an Order to seize certain property of Profit Pork, described as livestock, pursuant to Minn. Stat. § 565.23. A.A.13. Respondent FNB filed the above documents with the Murray County District Court on June 25, 2010.

The Honorable David E. Christensen, Judge of District Court, Fifth Judicial District, issued an Order dated June 28, 2010 ordering Profit Pork to deliver the livestock in question to Respondent FNB. A.A.17 through A.A. 22. The Court ordered that Respondent FNB could foreclose its security interest in the livestock and could sell, lease or otherwise dispose of the livestock in accordance with Article 9 of Minn. Stat. Ch. 336. A.A.19. The Court found that such disposition could take place at any time after June 28, 2010. *Id.* Upon sale, the Court ordered Respondent FNB to pay from the proceeds any outstanding barn rent and any protective advances made by Respondent FNB to secure feed, and subsequently deposit the remaining funds in escrow pending the resolution of Court File No. 51-CV-10-145. A.A.20.

Wilmont-Adrian Cooperative (hereinafter “Appellant”) filed an Answer and Counterclaim with the Murray County District Court on July 14, 2010, in part asserting that Appellant’s lien in the livestock of Profit Pork was prior and superior to the interest of all parties involved in the action. A.A. 23 through A.A. 32. Appellant additionally sought relief under counterclaims against Respondent FNB for conversion, commercially unreasonable sale and unjust enrichment. *Id.*

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<sup>1</sup> “A.A.” refers to Appellant’s Appendix.

The Court issued an Order dismissing the claims of Schwartz Farms without prejudice on October 10, 2010. The Court issued an Order pursuant to a stipulation agreement dismissing the claims of Fairmont Veterinary Clinic with prejudice on January 31, 2011. The Court issued an Order pursuant to a stipulation agreement dismissing the claims of Cooperative Elevator Association with prejudice on February 7, 2011. Said entities are consequently not parties to the instant appeal.

Both Appellant and Respondent FNB moved for summary judgment. Said motions were based on competing interpretations regarding the language and construction of Minn. Stat. § 514.966. After hearing, the Court issued an Order for Partial Judgment and accompanying Memorandum on March 29, 2011 granting the following relief in pertinent part:

1. [First National Bank's] motion for partial summary judgment be, and the same is, GRANTED.
2. [Wilmont-Adrian Cooperative's] motion for summary judgment be, and the same is, DENIED.
3. [First National Bank] is entitled to all but \$192,447.72 of the funds held in escrow . . . [and] [First National Bank] shall hold \$192,447.72 in escrow pending resolution of New Vision Cooperative's priority dispute.

A-1 through A-2.<sup>2</sup> The Court concluded that Appellant was a supplier of production inputs to Profit Pork, and that its sole recourse under Minn. Stat. § 514.966 is a production input lien for the unpaid retail cost of the productions inputs it furnished. A-15.

The effect of this holding was that Appellant, although a secured creditor of Profit Pork upon the undisputed facts, holds a security interest in the livestock of Profit Pork inferior to that of Respondent FNB. A-17. The Court held that Respondent FNB's mortgage lien is superior to that of all competing interests in Profit Pork's livestock

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<sup>2</sup> "A-" refers to Appellant's Addendum.

inventory aside from Respondent New Vision Coop's alleged interest in the livestock. A-23.

The Court's Order additionally addressed Appellant's counterclaims against Respondent FNB for commercial unreasonableness of sale, conversion and unjust enrichment. A-16 through A-22. The Court held Appellant has standing to contest the commercial reasonability of the sale of the livestock by Respondent FNB, and additionally found that Respondent FNB failed to make a prima facie showing of commercial reasonableness. A-18 through A-20. However, the Court held that Appellant's claim failed as a matter of law because Appellant failed to provide proof of actual damages sustained. A-21. In point of fact, this failure was a direct result of the determination by the Court on the issue of lien priority. *Id.* The lien priority issue was similarly the downfall of Appellant's claim for conversion because Appellant was unable to prove an exercise of control contrary the Appellant's right in the livestock absent a priority interest superior to that held by Respondent FNB in the same. A-22.

The Court issued an Amended Order and Judgment on August 3, 2011, ordering the following:

1. That the order issued on March 29, 2011 shall be amended to state that final judgment shall enter on any and all claims of [Wilmington-Adrian Cooperative] pursuant to Minn. R. Civ. P. 54.02.
2. That no just reason for delay exists which would preclude an entry of final judgment on any and all claims of [Wilmington-Adrian].

A-24 through A-25.

The Murray County Court Administrator entered judgment on August 3, 2011. This appeal followed.

## STATEMENT OF FACTS

The facts of the case are not in dispute:

1. Wilmont-Adrian Cooperative (“Appellant”) is a Minnesota agricultural cooperative engaged in many facets of agricultural business, including contracting with livestock owners and producers for the feeding of livestock.
2. First National Bank (“Respondent FNB”) is a financial institution with an office based in Fulda, MN.
3. Profit Pork, LLC (“Profit Pork”) is a now defunct Minnesota business previously engaged in the raising and selling of hogs. A-3.
4. On or about January 6, 2006, Respondent FNB filed a UCC financing statement and a statutory lien notice on Profit Pork’s livestock. *Id.*
5. On or about May 14, 2008, Respondent FNB loaned Profit Pork \$2,000,000.00 on a promissory note for Profit Pork’s hog operation in exchange for an agricultural security agreement granting Respondent FNB a security interest in all farm products, including livestock, belonging to Profit Pork. *Id.*
6. From approximately August 31, 2008, through June 15, 2010, Appellant contracted with Profit Pork to provide feed related services for Profit Pork’s hogs. A.A. 33.
7. Over that period of time, the process by which Appellant provided feed to Profit Pork’s livestock was as follows: 1) Profit Pork personnel contacted Appellant to request a certain level of ration based on the age of the pig and Profit Pork’s particular needs; 2) Appellant rolled and cracked the grain to an industry micron size; 3) Appellant

mixed the grain with a variety of different materials based on Profit Pork's particular request, including but not limited to corn, soybean meal, minerals, and antibiotics; 4) Appellant delivered the mixed feed to one or more of the livestock production facilities that contained hogs owned by Profit Pork; and 5) Appellant deposited the feed into the bulk storage tanks located at the livestock production facilities that contained hogs owned by Profit Pork. A-13. *See also* A.A. 35 through A.A. 36.

8. Appellant contracted for nutritionist services for Profit Pork, employed a record keeping system that tracked the swine performance records of Profit Pork's livestock, and provided a stage feeding program for the livestock to adjust feeding parameters as the livestock increased in size. A-14. *See also* A.A. 36.

9. Appellant provided all services to Profit Pork at the request of Profit Pork. A.A. 33.

10. As early as the spring of 2008, Respondent FNB reported that higher feed costs were beginning to squeeze Profit Pork's profit margin, and stated that Profit Pork was having difficulty breaking even on the hog operation. A.A. 63.

11. As far back as September, 2009, Respondent FNB knew that Appellant was billing Profit Pork upwards of \$90,000.00 a month for services rendered. A.A. 64.

12. On May 5, 2010, Respondent FNB employees met with Russ Crawford, former general manager of Appellant, who informed Respondent FNB that Profit Pork was indebted to Appellant in an amount upwards of \$500,000.00 for services provided. A.A. 62.

13. As of June 15, 2010, Profit Pork owed a balance of \$587,496.21 to Appellant for services provided. A-4. *See also* A.A. 34.

14. On June 21, 2010, Appellant filed a UCC financing statement and a statutory lien notice on all livestock belonging to Profit Pork. A.A. 40 through A.A. 44.

15. On June 22, 2010, counsel for Appellant sent notice via certified mail to Mr. Todd Lee of Respondent FNB – Fulda of Appellant's priority agricultural lien in the livestock of Profit Pork. A.A. 59.

16. On or about June 23 through June 29, 2010, Respondent FNB privately received or solicited the following five (5) bids on the Profit Pork livestock in the following amounts: 1) Lynch Livestock bid \$597,960.00 for a total of 6644 head of livestock; 2) Mark Slater bid \$45,000.00 for a total of 1100 head of livestock; 3) Southeast Marketing, Ltd. bid \$457,000.00 for 6630 head of livestock; 4) New Horizon Farms bid \$601,345.25 for 7447 head of livestock; and 5) The Parks Company offered two bids: 1) a complete liquidation of all of Profit Pork's livestock for \$485,996.00; and 2) a total of \$578,361.75 for a combination of 1324 head of cull pigs and 6519 head of finishing pigs. A.A. 45 through A.A. 58.

17. On June 28, 2010, the District Court of Murray County ordered the sale of Profit Pork's livestock by Respondent FNB, and ordered Respondent FNB to place the proceeds in escrow. A.A. 20.

18. Prior to June 29, 2010, Respondent FNB did not: 1) publicly advertise the sale of the livestock; 2) solicit more than five bids for the sale of the livestock; 3) conduct any substantial market research to determine a fair price for the livestock; 4) have the

livestock appraised by a professional; or 5) allow the livestock to attain full market weight prior to disposition. A-20.

19. On June 29, 2010, Respondent FNB accepted the bids from Lynch Livestock and Mark Slater, resulting in a total sales price of \$656,960.00 for 7808 head of Profit Pork's hogs. A.A. 55.

20. Prior to the sale of the livestock above-mentioned, Respondent FNB representatives attended farmer-lender mediation sessions with other creditors of Profit Pork, including Alan Henning, representative of Appellant. A.A. 60.

21. Respondent FNB was encouraged by several attendees at one such farmer-lender mediation session not to sell the Profit Pork livestock prior to full market weight in order to generate a reasonable price for the livestock upon sale. A.A. 60 through A.A. 61.

22. On June 29, 2010, Respondent FNB made payments amounting to \$89,349.90 out of the proceeds of the sale to various barnowners and feed suppliers. A.A. 56 through A.A. 58.

23. On October 25, 2010, counsel for Respondent FNB provided Appellant with a hog liquidation summary outlining the proceeds from the sale of Profit Pork's livestock. *Id.*

24. As of the current date, Appellant has received \$0.00 of the proceeds from the sale of Profit Pork's livestock. A.A. 34.

## ARGUMENT

### **I. BASED UPON THE SERVICES PROVIDED BY APPELLANT TO PROFIT PORK, LLC AND THE PLAIN LANGUAGE AND STATUTORY CONSTRUCTION OF MINN. STAT. § 514.966, APPELLANT HAS A VALID “FEEDER’S LIEN” IN THE LIVESTOCK OF PROFIT PORK, LLC AND THE PROCEEDS THEREOF.**

#### **A. Legal Standard for Statutory Interpretation**

The fundamental aim of statutory interpretation is to ascertain and give effect to the intention of the legislature. *State ex rel. Bergin v. Fitzsimmons*, 226 Minn. 557, 560, 33 N.W.2d 854, 856 (1948). The legislature intends the entire section to be effective and certain. Minn. Stat. § 645.17 (2010). In an effort to decipher legislative intent, the Court is free to consider the legislative history of the act, the subject matter as a whole, the purpose of the legislation, and the objects to be secured thereby. *Fitzsimmons*, 33 N.W.2d at 856.

Statutory words and phrases must be construed according to the rules of grammar and common usage. Minn. Stat. §645.08 (1) (2010). When interpreting a statute, the Court shall first examine whether the statute’s language, on its face, is clear or ambiguous. *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If a statute is unambiguous, the Court must apply the statute’s plain meaning. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010).

A statute is ambiguous if its language is subject to more than one reasonable interpretation. *State v. Mauer*, 741 N.W.2d 107,111 (Minn. 2007). If the language of a statute is found to be unclear or ambiguous, the Court may go beyond the specific language of the statute to determine the intent of the legislature. *Premier Bank v. Becker Development, LLC*, 785 N.W.2d 753, 759 (Minn. 2010). When interpreting statutes, the Court shall presume that the legislature does not intend absurd results. *First Minnesota Bank v. Overby Development, Inc.*, 783 N.W.2d 405, 412 (Minn. App. 2010).

Upon review, this Court cannot assume a legislative intent in plain contradiction to words used by the legislature. *Mankato Citizens Telephone Co. v. Commissioner of*

*Taxation*, 275 Minn. 107, 111, 145 N.W.2d 313, 316 (1966). Likewise, this Court is “prohibited from adding words to a statute, and cannot supply what the legislature either purposefully omitted or inadvertently overlooked.” *Tracy State Bank v. Tracy – Garvin Co-op*, 573 N.W.2d 393, 395 (Minn. App. 1998) (citation omitted).

**B. The District Court Erred by Adding Terms to the Plain Language of Minn. Stat. § 514.966, subd. 4(a) to Support the Contention that Appellant’s Sole Recourse Under Minn. Stat. § 514.966 is a Livestock Production Input Lien.**

Minnesota Statutes § 514.966, subd. 4(a) (2010) provides that a person or business entity has a feeder’s lien in livestock if the person or entity:

- (1) stores, cares for, or contributes to the feeding, keeping, pasturing, or other care of the livestock, including medical or surgical treatment and shoeing; and
- (2) does so in the ordinary course of business, at the request of the owner or the legal possessor of the livestock.

The statute states that a feeder’s lien becomes effective at the moment when the services or contributions are provided to the obligor. *Id.*, subd. 4(c). A feeder’s lien is by definition a lien upon the livestock for the price or value of the storage, care, or contribution, and for legal charges against the same paid by the person to any other person. *Id.*, subd. 4(b).

A perfected feeder’s lien has priority over all competing security interests and all agricultural liens with the exception of a perfected veterinarian’s lien. *Id.*, subd. 7(c). In order to gain priority under the statute, a feeder’s lien must be perfected on or before 60 days after the last date that feeding services are furnished to the obligor. *Id.* at subd. 6(e).

Minn. Stat. § 514.966, subd. 3(a) (2010) provides that a supplier furnishing livestock production inputs in the ordinary course of business has a livestock production input lien for the unpaid retail cost of the livestock production input. A livestock production input lien becomes effective when the agricultural production inputs are furnished by the supplier to the purchaser. *Id.* Livestock production inputs are defined as

feed and labor used in raising livestock. Minn. Stat. § 514.965, subd. 8 (2010). “Feed” is defined as commercial feeds, feed ingredients, mineral feeds, drugs, animal health products, or customer-formula feeds used for feeding livestock. *Id.*, subd. 6.

On the facts submitted to the district court, it is undisputed that Appellant contributed to the feeding of Profit Pork’s livestock for nearly two years. From August 31, 2008 through June 15, 2010, Appellant fed the livestock belonging to Profit Pork at Profit Pork’s request. Additionally, Appellant filed a UCC Financing Statement and Statutory Lien Notice on June 21, 2010, well within the 60 day period required by law.

As the district court was informed, Appellant was involved at every point in the feeding process: from procuring the raw feed materials, to the processing of the feed, to the delivery of the feed to livestock production facilities that contained the livestock owned by Profit Pork, to the deposit of the feed into the bulk storage tanks at those facilities. Furthermore, Appellant contracted to provide nutritionist services to Profit Pork, employed a record keeping system that tracked the swine performance records of Profit Pork, and provided a stage feeding program for Profit Pork’s livestock to adjust feeding parameters as the livestock increased in size. There is no dispute that these services were provided in the ordinary course of business.

In the Memorandum accompanying the Order granting partial summary judgment to Respondent FNB, the district court determined that the distinction between a “feeder” and a “livestock production input” provider is one of character, not form. A-12. The district court reasoned that “[a] ‘supplier’ of production inputs is indirectly involved in the raising of the livestock, while a ‘feeder’ actually raises the livestock.” *Id.* According to the district court, the heart of the issue was not “. . . whether Wilmont furnished ‘feed’ or ‘feeder services’ to Profit Pork, but instead, whether Wilmont did more than just furnish ‘feed’ and ‘feeder services’ to Profit Pork.” *Id.*

The district court improperly added the following statutory requirement for a valid feeder’s lien beyond the plain language of Minn. Stat. § 514.966, subd. 4 (2010): only one who “raises” livestock or assumes “everyday” responsibility for the livestock is entitled to a feeder’s lien. This additional requirement is implicit to the district court’s

observation that Appellant failed to allege “. . . that it undertook direct responsibility for the **day-to-day tasks of storing, caring for, or feeding the livestock**” in its analysis.<sup>3</sup> A-15 (emphasis added). In the district court’s opinion, subdivision 4 “covers a person or entity (‘supplier’) that, in the ordinary course of business, stores, cares for, or contributes to the **everyday tasks of keeping, feeding, pasturing, or caring for livestock.**” A-12 (emphasis added). A cursory glance of Minn. Stat. § 514.966, subd. 4 (2010) illustrates that a requirement of involvement in “everyday tasks” is nowhere to be found. The district court simply added the requirement to achieve the result desired.

The legislature identified several different actions which give rise to a feeder’s lien: 1) keeping; 2) feeding; 3) pasturing; or 4) other care including medical or surgical treatment and shoeing. Minn. Stat. §514.966 subd. 4(a) (2010). The statute is disjunctive in its construction, in that any one of these actions alone may constitute grounds for a feeder’s lien to attach.

A party may keep but not feed, or feed but not pasture, or shoe but not keep the livestock of another, and still find safe harbor in the statute’s protections. Pasturing and/or shoeing an animal have little relation to “raising” an animal, yet the district court’s interpretation of the statute would leave individuals performing such services in the proverbial lurch in terms of lien priority. Similarly, those providing “medical or surgical treatment” to animals could undoubtedly do so without having any hand in the “everyday tasks” attendant to raising livestock. The district court effectively nullified a good bulk of the feeder’s lien statute as a result of its reasoning by ignoring the statute’s plain language and disjunctive construction. It was undoubtedly improper for the district court to add words to the statute to support its conclusion.

If the legislature intended the statute to protect only those individuals responsible for the day-to-day care (i.e. the “raising”) of the livestock, inclusion of the term “raising” would have easily sufficed. There certainly would have been no reason for disjunctive construction if only those exhibiting a sole distinguishing requirement were entitled to a

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<sup>3</sup> The district court alternatively employed the term “caretaker/feeder” to articulate the relationship necessary to establish a feeder’s lien. (See A-8)

feeder's lien. Because the express language of the statute includes no requirement of "raising" the livestock or responsibility for the "day-to-day care" of the same, the district court's addition of such requirements was improper.<sup>4</sup> Accordingly, the decision of the district court must be reversed.

**C. The District Court Erred by Incorrectly Interpreting the Statutory Construction of Minn. Stat. § 514.966, and as a Result, Improperly Concluded that Appellant's Sole Recourse Under Minn. Stat. § 514.966 is a Livestock Production Input Lien.**

The district court determined that if Appellant is entitled to a feeder's lien based on the breadth of Appellant's services provided to Profit Pork, the livestock production input lien would be "rendered superfluous and ineffective." A-8. To avoid such a result, the district court chose to interpret the livestock production input lien as a restraint on the breadth of the term "contributes" Minn. Stat. § 514.966, subd. 4 (2010). A-9.

The district court pointed out that the legislature expressed a clear preference – by way of priority – for the contributions of a "caretaker/feeder" to those of a livestock production input supplier, and concluded the preference would be subverted if Appellant's efforts resulted in a valid feeder's lien in the livestock of Profit Pork. A-10. That conclusion is not supported by the statutory construction of Minn. Stat. § 514.966. As noted above, several actions can result in the establishment of a valid feeder's lien. In terms of analyzing the overall construction and intention of the statute, the most helpful is the act of providing for the "medical or surgical treatment" of the livestock at issue.

Under Minn. Stat. § 514.966, subd. 1 (2010), a licensed veterinarian performing emergency veterinary services for animals at the request of the owner or person in possession of the animals has a lien on the animals for the value of the services provided.

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<sup>4</sup> Interestingly, the district court fails to articulate what "raising" the livestock would encompass, but the natural interpretation would require the "raisor" to care for the animal from birth to market in all pertinent respects, which would leave many potential lienholders recourse as few barn owners "raise" livestock from birth to market.

“Emergency veterinary services” are defined to include

surgical procedures, administering vaccines, antisera, and antibiotics, and other veterinary medicines, treatments, and services performed primarily to protect human health, prevent the spread of animal diseases, or preserve the health of the animal or animals treated.

Minn. Stat. § 514.965, subd. 4 (2010). A perfected veterinarian’s lien has priority over all competing security interests and all agricultural liens, including a valid and perfected feeder’s lien. Minn. Stat. 514.966, subd. 8(a) (2010).

Under Minnesota law, it is a gross misdemeanor for any person to practice veterinary medicine without having first secured a veterinary license or temporary permit. Minn. Stat. § 156.10 (2010). The term “veterinary medicine” includes veterinary surgery, obstetrics, pathology, radiology, dentistry, ophthalmology, cardiology, dermatology, laboratory animal medicine, and all other branches or specialties of veterinary medicine. Minn. Stat. § 156.001, subd. 11 (2010).

The inclusion of both a specific statutory provision for a veterinarian’s lien and the inclusion of the “medical or surgical treatment” language for a feeder’s lien supports the interpretation that a single entity can achieve different levels of lien priority under Minn. Stat. § 514.966 based on the essence of services provided in any given instance. The services provided by a given entity should be examined on a case-by-case basis to determine priority, because the construction of Minn. Stat. § 514.966 apportions lien priority based on risk and responsibility assumed in regard to services rendered. Such an interpretation of the statute’s construction is the only interpretation that grants force and effect to the entirety of the statute’s language.

The district court did not adopt Appellant’s veterinary analogy at summary judgment. Specifically, the district court held “. . . a licensed veterinarian’s only recourse [under Minn. Stat. § 514.966] is a veterinarian’s lien under subdivision 1.” A-10 through A-11. The district court additionally opined that the statute “clearly expresses a penchant for licensed veterinarians.” A-10. Contrary to the district court’s reasoning, the inclusion

of veterinary services-based recourse in two separate subdivisions of Minn. Stat. § 514.966 sheds significant light on the overarching intention of the statute and provides significant support for Appellant's position on appeal.

On a plain reading of Minn. Stat. § 514.966, it is illogical to contend a veterinarian has a single path of recourse in the form of a veterinarian's lien. The inclusion of the "medical or surgical treatment" language in the feeder's lien statute can by definition and law apply only to licensed veterinarians. In fact, the practice of "medical or surgical treatment" upon livestock by a person other than a licensed veterinarian would be a violation of the law punishable by significant criminal sanction. *See* Minn. Stat. § 156.10 (2010). Surely the intention of the legislature was not to inspire criminal activity or to lessen the practical standards applied to veterinary medicine. The district court apparently ignored or overlooked this conundrum.

Because the actions of a licensed veterinarian can result in different levels of priority under Minn. Stat. § 514.966, the determination as to the appropriate level of priority must be based on the nature of the services provided in total. The only cognizable difference between actions giving rise to a veterinarian's lien, or in the alternative a feeder's lien based on providing "surgical or medical treatment," is the designation of "emergency" veterinary services.

Under the definition provided for such services in Minn. Stat. § 514.965, "emergency" services are those necessary to protect public health, prevent the spread of disease, or protect the health of the animals at issue. All such situations imply that time is of the essence, which is to say a given veterinarian will have less time to negotiate and/or secure payment for the services before they need to be rendered. Because a veterinarian is placed at increased risk based on the nature of services provided, a veterinarian is granted increased protection in the form of a veterinarian's lien. A veterinarian not engaged in "emergency" veterinary services would find herself in a lesser position of priority, based on the fact that less risk is inherent by the nature of the services provided, and would file a feeder's lien.

In essence, the legislature realized that in some instances emergency veterinary services must be provided lest livestock lose the entirety of their value or public safety be placed at risk. The legislature likely understood that veterinarians called on to perform “emergency” services would be placed at greater risk to collect for services provided. Therefore, veterinarians performing emergency veterinary services were given lien priority over veterinarians providing more pedestrian veterinary services, explaining the inclusion of the “medical or surgical treatment” language in Minn. Stat. § 514.966, subd. 4.

A similar “risk vs. reward” analysis applies when differentiating between entities entitled to a feeder’s lien as opposed to a livestock production input lien. Appellant contracted for nutritionist services for Profit Pork, employed a record keeping system that tracked the swine performance records of Profit Pork’s, and provided a stage feeding program for the livestock to adjust feeding parameters as the livestock increased in size.<sup>5</sup> These services went above and beyond providing feed, and have no direct relation to labor involved with producing feed for livestock. Rather, the services bear far more relation to “caring for” or “raising” the livestock at issue, as Appellant was directly responsible for the health and growth of the livestock based on the nature of services provided. The services certainly entail a higher level of responsibility towards the livestock than simply dumping feed in bins. Furthermore, the district court correctly identified that Minn. Stat. § 514.966 does not provide for the “partitionment” of costs, and instead solely provides recovery for the “unpaid retail cost of the livestock production input.” Minn. Stat. § 514.966, subd. 3(a) (2010); *See also* A-14. The district court failed to indicate how the above services provided by Appellant were possessed of any “retail cost,” as the services were not directly labor tied to the production or delivery of feed. The district court itself noted that the services “. . . may set Wilmont apart from other feed suppliers . . . .,” but failed to “pigeonhole” Appellant as a feeder. A-15. Rather than grant Appellant a feeder’s lien based on the construction and plain language

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<sup>5</sup> The district court referred to Appellant’s claimed services as averments (albeit supported by sworn affidavit), but necessarily had to consider the facts in the light most favorable to Appellant when granting summary judgment for Respondent FNB.

of the statute, the district court chose to draw an arbitrary bright line based on language it created, and inserted said bright line into the statute.

The district court placed great emphasis on two points to determine Appellant was not a “feeder” for purposes of lien priority: 1) Appellant did not separately itemize the services provided to Profit Pork on monthly billing invoices; and 2) Appellant is primarily in the business of supplying feed. A-14 through A-15. The former is simply a matter of bookkeeping, explained via affidavit at summary judgment, and is not dispositive on the issue of services actually provided. *See* A.A. 37 through A.A. 38. The latter fails in light of the overall construction of Minn. Stat. § 514.966 as explained below.

Simply because an entity identifies itself as a supplier of livestock production inputs in some cases does not mean the entity is barred from entitlement to a feeder’s lien based on specific services provided to a specific client. This is analogous to the fact that a veterinarian may sometimes provide “emergency” services or, alternatively, the more pedestrian “medical or surgical treatment.” If the legislature intended such a reading of the statute, there would be no reason to include: 1) separate subdivisions pertaining to actions performed by licensed veterinarians; and 2) separate subdivisions pertaining to actions performed by those responsible for contributing to the feeding of livestock. As in the veterinarian analysis, the greater financial risk an entity is placed at as a result of the nature of the services provided, and the greater the responsibility assumed, the greater the protection by way of lien priority.

Because the district court failed to consider the overall construction and intent of Minn. Stat. § 514.966, the district court improperly determined that, as a matter of law, Appellant’s sole recourse under the statute is a livestock production input lien. Because the totality of the services provided by Appellant to Profit Pork went above and beyond providing livestock production inputs, and resulted in increased commitment and financial risk for Appellant, Appellant is entitled to the enhanced priority position of a feeder’s lien pursuant to the plain language and construction of Minn. Stat. § 519.966. Because no material facts are at issue, the decision of the district court must be reversed

and summary judgment must be awarded to Appellant on the issue of lien priority in the proceeds from the sale of Profit Pork's livestock.

**II. BECAUSE THE DISTRICT COURT ERRED IN HOLDING THAT APPELLANT'S SOLE RECOURSE UNDER MINN. STAT. § 514.966 IS A LIVESTOCK PRODUCTION INPUT LIEN, THE DISTRICT COURT ERRED IN HOLDING THE APPELLANT: 1) LACKS A VALID CLAIM FOR CONVERSION AGAINST RESPONDENT FIRST NATIONAL BANK; AND 2) FAILED TO PROVIDE EVIDENCE OF ACTUAL DAMAGES TO SUSTAIN A CLAIM OF COMMERCIALY UNREASONABLE SALE AGAINST RESPONDENT FIRST NATIONAL BANK.**

**A. Legal Standard for Conversion**

Conversion occurs where one willfully interferes with the personal property of another without lawful justification, depriving the lawful possessor of use and possession. *DHL, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn.1997). The elements of conversion are satisfied where (1) a party holds a property interest; and (2) another deprives that party of the interest. *Olson v. Moorhead Country Club*, 568 N.W.2d 871, 872 (Minn.App.1997).

Conversion has been defined as "an act of willful interference with a chattel, done without lawful justification, by which a person entitled thereto is deprived of use and possession." *Larson v. Archer-Daniels-Midland Co.*, 32 N.W.2d 649, 650 (Minn.1948). In order to constitute conversion, the "willful interference" must be some exercise of the right of complete ownership and dominion over the chattel, to the total exclusion of the rights of the owner. *Bloomquist v. First National Bank of Elk River*, 378 N.W.2d 81 (Minn.App.1986). A lien holder may hold an individual or entity liable for conversion if the individual or entity interferes with the property that is the subject of the lien. *Thomas B. Olson & Associates, P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 920 (Minn.App.2008).

Good faith is not a defense to conversion. *Dain Boswerth, Inc. v. Goetze*, 374 N.W.2d 467, 471 (Minn.App.1985). The innocent misapplication or deprivation of funds

or property owned by others is no less a conversion in the eyes of the law simply because it was done innocently or in ignorance. *Id.*

The measure of damages in a case of conversion is the market value of the property at the time of the conversion plus the interest accrued from that time. *Dairy Farm Leasing Co. v. Haas Livestock Selling Agency*, 458 N.W.2d 417, 419 (Minn.App.1990).

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**B. Because the District Court Erred in Holding Appellant's Sole Recourse Under Minn. Stat. § 514.966 is a Livestock Production Input Lien, the District Court Erred in Determining Appellant Lacks a Valid Claim for Conversion Against Respondent First National Bank as a Matter of Law.**

The district court held that Appellant failed to provide any evidence that Respondent FNB exercised control over the livestock of Profit Pork in a manner contrary to Appellant's rights in the same. A-22. Therefore, the district court held that Appellant's conversion claim failed as a matter of law. *Id.* The decision was entirely based on the determination by the district court on the issue of lien priority. Because the district court held that Respondent FNB's security interest in the livestock was superior to any security interest Appellant claim, Appellant was unable to plead the elements essential to a claim of conversion. *Id.*

The district court erred in determining the issue of lien priority. The district court added language to Minn. Stat. § 514.966 to achieve the result desired, and failed to properly interpret the construction of the statute. Therefore, the district court improperly held that Appellant lacks a valid claim for conversion against Respondent FNB. The district court's decision must be reversed, and summary judgment must be entered in favor of Appellant on its conversion claim.

### C. Legal Standard for Commercially Reasonable Disposition

Minn. Stat. §336.9-610(b) states that every aspect of a disposition of collateral, including the time, method, manner, place, and other terms must be commercially reasonable. Minnesota law demands that reasonable authenticated notice be sent by the secured party that disposes of the collateral to any person or entity from which the secured party has received, before the notification date, an authenticated notification of an interest in the collateral if the collateral is other than consumer goods. Minn. Stat. §336.9-611(c)(3)(A) (2010).

The burden of proof is on the secured party responsible for the disposition of the collateral to show the commercial reasonableness of the sale. *Chemlease Worldwide, Inc. v. Brace, Inc.*, 338 N.W.2d 428, 437 (Minn.1983). Once a prima facie showing of commercial reasonableness is made by the secured party, the burden of persuasion shifts to the party contesting the sale to show specific evidence of commercial unreasonableness and to establish the amount of loss incurred. *Karlstad State Bank v. Fritsche*, 374 N.W.2d 177, 181 (Minn.App.1985). The issue of whether a sale is commercially reasonable is a question of fact. *Id.*

To determine whether a secured party disposed of the collateral in a commercially reasonable manner, the Court may consider a number of factors, including but not limited to: 1) the sale price of the collateral; 2) the amount of advertising dedicated to the sale; and 3) the condition of collateral livestock at the time of the sale. *Karlstad State Bank*, 374 N.W.2d at 181-82.

**D. Because the District Court Erred in Holding Appellant's Sole Recourse Under Minn. Stat. § 514.966 is a Livestock Production Input Lien, the District Court Erred in Determining Appellant Failed to Provide Evidence of Actual Damages to Sustain a Claim of Commercially Unreasonable Sale Against Respondent First National Bank.**

At summary judgment Appellant argued Respondent FNB failed to present sufficient evidence to establish prima facie that the sale of the livestock was commercially reasonable. The district court agreed. The district court noted that Respondent FNB failed to provide a single piece of evidence to support its assertion that the manner in which it performed the sale and the price obtained were commercially reasonable. A-20. Respondent FNB failed to provide any evidence of custom, and additionally failed to provide: 1) any evidence the livestock was appraised prior to the sale; 2) any evidence as to the manner in which Respondent FNB advertised the sale or solicited bids; and 3) any evidence as to the market price of similar hogs in the area at the time of sale. *Id.* Based on the above failings, the district court held Respondent FNB failed to make a prima facie showing of commercial reasonableness as required by law. *Id.*

Despite this holding, the district court determined that Appellant failed to allege facts demonstrating Appellant sustained actual damages. A-21. The district court reasoned that because Profit Pork was indebted to Respondent FNB in the amount of \$1,206,618.86 at the time of sale, Appellant could only recover damages if the fair market value of the livestock exceeded \$1,206,618.86. *Id.* Like Appellant's claim for conversion, this decision was based on the issue of lien priority. *Id.* Because Appellant failed to establish priority over Respondent FNB in regard to the livestock proceeds generated through the sale, and because Appellant failed to provide evidence that the fair market value of the livestock was greater than \$1,206,618.86, Appellant failed to allege facts demonstrating Appellant sustained actual damages when the sale was conducted in a commercially unreasonable manner. *Id.*

The district court erred in determining the issue of lien priority. The district court added language to Minn. Stat. § 514.966 to achieve the result desired, and failed to properly interpret the construction of the statute. Therefore, the district court improperly held that Appellant failed to establish priority over Respondent FNB in regard to the livestock proceeds generated through Respondent FNB's commercially unreasonable sale. Because Appellant has a security interest in the livestock superior to Respondent FNB under a correct reading of Minn. Stat. § 514.966, dismissal of Appellant's claim for commercially unreasonable sale must be reversed, and summary judgment should issue accordingly on the claim in favor of Appellant.

### CONCLUSION

Appellant has a valid and perfected priority feeder's lien in the livestock of Profit Pork under the plain language of Minn. Stat. 514.966, subd. 4(a) (2010). The district court improperly added additional language not present in the express language of the statute. In doing so, the district court improperly created an additional categorical requirement for a feeder's lien: namely, that a person or entity must "raise" livestock to be entitled to a feeder's lien. Furthermore, the district court ignored the overall construction of Minn. Stat. § 514.966 which grants lien priority based on the nature of services provided in light of risk and responsibility assumed. This interpretation gives force and effect to the entirety of the statute's language, and does so without the assistance of additionally imparted language.

Because the district court improperly added language to Minn. Stat. § 514.966, subd. 4(a), and because Appellant is entitled to a feeder's lien under the plain language of the statute, the decision of the district court must be reversed and summary judgment on the issue of lien priority must be entered for Appellant.

Based on Appellant's priority position, the district court's determination on the issue of Appellant's counterclaims against Respondent FNB for conversion and

commercially unreasonable sale must be reversed and summary judgment for Appellant must be entered on those claims.

Dated: January 11, 2012

**BERENS, RODENBERG & O'CONNOR  
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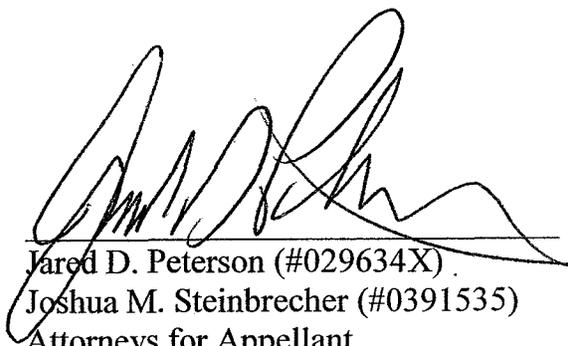
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume limitations of Minn. R. App. Pro. 132.01, subs. 1 and 3, contains 7,125 words and was prepared using Microsoft Office Word 2007.

Dated this 11th day of January, 2012.

A handwritten signature in black ink, appearing to read "Jared D. Peterson", is written over a horizontal line. The signature is fluid and cursive.

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