

IN THE SUPREME COURT OF MISSOURI

Supreme Court No. SC84792

VINCE KARPIERZ, Reg. No. 1013181, and JAMES L. McMULLIN

Appellants

vs.

STATE OF MISSOURI, ex rel., JEREMIAH W. NIXON,
Attorney General, State of Missouri

Respondent

On Appeal from the Circuit Court of Cole County, Missouri

The Honorable Thomas J. Brown, III

APPELLANTS' BRIEF

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JURISDICTIONAL STATEMENT

This is a civil action in which Vince Karpierz and James L. McMullin challenged the constitutionality of § 217.837.4 R.S.Mo. (2000), on the grounds that the State of Missouri's utilization of that statutory provision to usurp McMullin's attorneys' fees earned in obtaining a civil judgment in favor of Karpierz constitutes an unconstitutional taking of property without just compensation, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, § 26 of the Missouri Constitution. The trial court rejected Karpierz's and McMullin's constitutional challenge to § 217.837.4 R.S.Mo. (2000), and entered a final judgment in favor of the State of Missouri. In this appeal, Karpierz and McMullin appeal from the trial court's final judgment denying their constitutional challenge to § 217.837.4 R.S.Mo. (2000). Because this appeal involves a challenge to the constitutional validity of § 217.837.4 R.S.Mo. (2000), this Court has exclusive appellate jurisdiction over this appeal, pursuant to Article V, § 3 of the Missouri Constitution.

STATEMENT OF FACTS

On December 17, 1998, Vincent Karpierz was sentenced to a prison term under the jurisdiction of the State of Missouri Department of Corrections. (L.F. 2). Karpierz had been convicted in the Circuit Court for Clay County, Missouri of one count of possession of a controlled substance. (L.F. 14). Karpierz's prison term lasted for a time period of nearly three years. (L.F. 16). Karpierz was released from prison on December 6, 2001. (L.F. 16). The State of Missouri incurred costs in the amount of \$36,854.45 for the care of Karpierz during his prison term. (L.F. 7).

While Karpierz was in prison, he retained Kansas City attorney James McMullin to represent him in a civil lawsuit against the Kansas City Missouri Police Department ("KCPD"). (L.F. 30). McMullin agreed to represent Karpierz in that lawsuit on a contingent fee basis. (L.F. 30). McMullin and Karpierz entered into a written contingent fee agreement on December 17, 1998, pursuant to which McMullin's attorney's fees would be based on fifty percent of the recovery obtained by McMullin for Karpierz, by way of judgment or settlement. (S.S.L.F. 45).

McMullin filed a civil lawsuit on behalf of Karpierz against the KCPD in February, 1999. (L.F. 129). After discovery had been conducted, each party moved for judgment as a matter of law based on the undisputed facts in the record.

(L.F. 129). Clay County Circuit Judge David Russell determined that the KCPD defendants were entitled to judgment as a matter of law, based on his finding that no violation of the applicable provisions of Missouri's Criminal Activity Forfeiture Act ("CAFA") had occurred. (L.F. 129).

McMullin then appealed to the Missouri Court of Appeals on behalf of Karpierz. (L.F. 129). After full briefing by the parties, the Court of Appeals reversed Judge Russell's judgment, holding that the KCPD did seize Karpierz's money, and that the requirements of CAFA did apply. (L.F. 129-30). *Karpierz v. Easley*, 31 S.W.3d 505, 511 (Mo.App. W.D. 2000). The Court of Appeals further held that the KCPD had violated CAFA by failing to obtain a lawful transfer order from the Clay County Circuit Court prior to transferring Karpierz's money to the Drug Enforcement Administration. (L.F. 129-30). 31 S.W.3d at 510.

Because the trial court had not considered Karpierz's argument that he was entitled to recover his money from the KCPD under his claim for money had and received, the Court of Appeals remanded the case to the Clay County Circuit Court for a determination of that question. (L.F. 130). *Id.* at 510-11. On remand, Judge Russell determined that Karpierz was entitled to judgment as a matter of law on his claim for money had and received, and entered a money judgment in favor of Karpierz. (L.F. 130).

The KCPD then appealed to the Court of Appeals. In this second appeal, the Court of Appeals affirmed the trial court's judgment, holding that the trial court correctly entered judgment for Karpierz on his claim for money had and received. (L.F. 33-38, 130). *Karpierz v. Easley*, 68 S.W.3d 565, 570 (Mo.App. W.D. 2002). The KCPD's subsequent applications for transfer to the Supreme Court of Missouri were denied. (L.F. 130).

During the course of the two trial proceedings in the Clay County Circuit Court, and the two appeals, McMullin had invested more than 250 hours of time in obtaining the judgment in favor of Karpierz. (L.F. 131).

Soon after the Missouri Court of Appeals had filed its opinion affirming the judgment against the KCPD in the second appeal, the State of Missouri filed a petition for incarceration reimbursement against Karpierz in the Circuit Court of Cole County, Missouri. (L.F. 5-27). The primary purpose for this petition was the State's attempt to attach the judgment proceeds which had been obtained by McMullin on behalf of Karpierz. (L.F. 7). The Circuit Court of Cole County thereafter appointed a receiver for the assets of Karpierz, pending the resolution of the petition for incarceration reimbursement. (L.F. 28-29).

On April 25, 2002, counsel for the KCPD forwarded to Mr. Rodney Kueffer, the appointed receiver in the State's action, a check in the amount of \$46,470.04,

representing the full amount of the judgment in favor of Karpierz, plus statutory interest (“the KCPD judgment proceeds”). (L.F. 45).

Pursuant to the written contingent fee agreement between McMullin and Karpierz, Karpierz’ net share of the KCPD judgment proceeds is \$22,498.50. That amount is arrived at by subtracting \$1,473, representing McMullin’s out-of-pocket expenses, from the KCPD judgment proceeds, and dividing the net recovery figure by two. The remainder of the judgment proceeds belong to McMullin, including the litigation expense reimbursements of \$1,473.00, as well as McMullin’s attorney’s fees in the amount of \$22,498.50. (L.F. 123).

Attorney McMullin was allowed to intervene in the State’s lawsuit seeking recovery of Karpierz’s incarceration costs. (L.F. 42). Neither Karpierz nor McMullin contested the State’s right to attach that portion of the judgment proceeds representing Karpierz’s interest in the KCPD judgment proceeds, i.e. \$22,498.50. (L.F. 120). Karpierz and McMullin, however, argued that the portion of the KCPD judgment proceeds representing McMullin’s attorney’s fees and expense reimbursements were not subject to attachment by the State of Missouri. (L.F. 120). The State of Missouri, however, insisted that it was entitled as a matter of law to attach all of the KCPD judgment proceeds, pursuant to § 217.837.4 R.S.Mo. (2000). (L.F. 104). The State argued that McMullin’s attorney’s fee interest in the KCPD judgment proceeds is essentially an attorney’s fee lien, and

that, pursuant to § 217.837.4 R.S.Mo. (2000), the State's right to recover the costs of incarceration takes priority over McMullin's attorney's fee lien. (L.F. 104-06). McMullin and Karpierz argued that any such application of § 217.837.4 R.S.Mo. (2000) is unconstitutional for a variety of reasons, including the fact that it would constitute an unconstitutional taking of private property without just compensation. (L.F. 124-26, 151).

The parties filed cross-motions for summary judgment. The trial court ruled that the State of Missouri was not prohibited from attaching a portion of McMullin's attorney's fees to satisfy its request for incarceration reimbursement, and rejected McMullin's and Karpierz's challenge to the constitutionality of § 217.837.4 R.S.Mo. (2000). (L.F. 155-60). The trial court also rejected McMullin's argument that he was entitled to all of his attorney's fees pursuant to the common fund doctrine. (L.F. 160). The State of Missouri was therefore allowed to obtain a judgment against Karpierz for the full amount of the incarceration costs, which included the attachment of approximately \$14,355.93 of McMullin's attorney's fees earned in the *Karpierz v. KCPD* litigation. (L.F. 160). Karpierz and McMullin appeal from that final judgment. (L.F. 164).

POINTS RELIED ON

I. THE TRIAL COURT ERRED IN GRANTING THE STATE OF MISSOURI'S MOTION FOR SUMMARY JUDGMENT, AND ENTERING A JUDGMENT THAT INCLUDED REIMBURSEMENT TO THE STATE FROM THE PORTION OF THE KCPD JUDGMENT PROCEEDS WHICH IS THE PROPERTY OF ATTORNEY JAMES L. MCMULLIN, BECAUSE MCMULLIN HAS A PROPERTY INTEREST IN THE KCPD JUDGMENT PROCEEDS, AND THE STATE'S RELIANCE ON § 217.837.4 R.S.MO. (2000) IS UNCONSTITUTIONAL IN THAT IT PERMITS A TAKING OF MCMULLIN'S PROPERTY WITHOUT JUST COMPENSATION, IN VIOLATION OF ART. I, § 26 OF THE MISSOURI CONSTITUTION, AND THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

State ex. rel. Nixon v. Jewell, 70 S.W.3d 465, 467 (Mo. App. ED 2002).

United States Trust Co. of New York v. New Jersey, 431 U.S. 1 (1977).

§ 217.837.4 R.S.Mo. (2000).

II. THE TRIAL COURT ERRED IN GRANTING THE STATE OF MISSOURI'S MOTION FOR SUMMARY JUDGMENT, AND ENTERING A JUDGMENT THAT INCLUDED REIMBURSEMENT

TO THE STATE FROM THE PORTION OF THE KCPD JUDGMENT PROCEEDS WHICH REPRESENTED MCMULLIN'S ATTORNEY'S FEES, BECAUSE MCMULLIN WAS ENTITLED TO HIS ATTORNEY'S FEES UNDER THE COMMON FUND DOCTRINE, IN THAT KARPIERZ'S ACTION AGAINST THE KCPD CREATED A COMMON FUND FROM WHICH THE STATE OF MISSOURI BENEFITED WITHOUT COMPENSATING MCMULLIN FOR HIS EFFORTS.

Jesser v. Mayfair Hotel, Inc., 360 S.W.2d 652 (Mo.banc 1962).

McMullin v. Klein, 468 S.W.2d 657 (Mo. App. 1971).

SUMMARY OF ARGUMENT

As a result of the efforts of attorney James L. McMullin, a judgment was obtained in favor of Vincent Karpierz against the KCPD Defendants in the total amount of \$46,470.04 (“the KCPD judgment proceeds”). The State of Missouri filed suit against Karpierz, seeking to attach the KCPD judgment proceeds to satisfy the State’s claim against Karpierz for incarceration cost reimbursement. Karpierz did not contest the fact that Karpierz’s share of the judgment proceeds - \$22,498.50 – could be attached by the State to satisfy its claim for reimbursement costs. Both Karpierz and his attorney, James L. McMullin, did contest the State’s right to attach McMullin’s share of the judgment proceeds, which totaled \$23,971.50. Karpierz and McMullin argued that the State’s utilization of § 217.837 R.S.Mo. (2000) to usurp McMullin’s share of the KCPD judgment proceeds constitutes an unlawful taking of McMullin’s property, in violation of both the Missouri “takings” clause, Art. I, § 26 of the Missouri Constitution, and the Fifth Amendment to the United States Constitution.

McMullin clearly had a property interest in the KCPD judgment proceeds, pursuant to the express terms of his written contingent fee agreement with Karpierz. McMullin received no other attorney’s fees in connection with his representation of Karpierz, other than his share of the KCPD judgment proceeds. Had it not been for McMullin’s extraordinary efforts, the State of Missouri would

never have obtained any incarceration cost reimbursement from Karpierz. The judgment in favor of the State of Missouri, to the extent it permitted the State to attach and supercede McMullin's attorney's fee property interest in the KCPD judgment proceeds, should be reversed, and § 217.837.4 R.S.Mo. (2000) should be declared unconstitutional, because it permits the State to accomplish an unlawful taking of private property without just compensation, in violation of Art. I, § 26 of the Missouri Constitution, and the corresponding provisions of the federal Constitution.

In the alternative, McMullin's right to recover the attorney's fees which he earned in *Karpierz v. KCPD* should be protected pursuant to the common fund doctrine.

ARGUMENT

POINT I

**THE TRIAL COURT ERRED IN GRANTING THE STATE OF
MISSOURI'S MOTION FOR SUMMARY JUDGMENT, AND
ENTERING A JUDGMENT THAT INCLUDED REIMBURSEMENT
TO THE STATE FROM THE PORTION OF THE KCPD
JUDGMENT PROCEEDS WHICH IS THE PROPERTY OF
ATTORNEY JAMES L. MCMULLIN, BECAUSE MCMULLIN HAS
A PROPERTY INTEREST IN THE KCPD JUDGMENT PROCEEDS,**

**AND THE STATE’S RELIANCE ON § 217.837.4 R.S.MO. (2000) IS
UNCONSTITUTIONAL IN THAT IT PERMITS A TAKING OF
MCMULLIN’S PROPERTY WITHOUT JUST COMPENSATION, IN
VIOLATION OF ART. I, § 26 OF THE MISSOURI CONSTITUTION,
AND THE FIFTH AMENDMENT OF THE UNITED STATES
CONSTITUTION.**

A. Standard of Review.

The question of whether § 217.837.4 R.S.Mo. (2000) is unconstitutional because it violates Art. I, § 26 of the Missouri Constitution and the Fifth Amendment to the United States Constitution is a question of law which this Court reviews *de novo*. *City of Cabool v. Missouri State Bd. of Mediation*, 689 S.W.2d 51, 54 (Mo. 1985). Moreover, a review of summary judgment by an appellate court is essentially *de novo*. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. 1993).

**B. The State’s Action in Usurping McMullin’s Property Rights is an
Unconstitutional Taking of McMullin’s Property Without Just
Compensation.**

§ 217.837.4 R.S.Mo. (2000) provides as follows:

The state's right to recover the cost of incarceration pursuant to an order issued pursuant to the provisions of section 217.835 shall have priority over

all other liens, debts, or other encumbrances against real property or any other assets which are part of a prisoner's estate.

The State of Missouri relied upon this statutory provision in requesting the trial court to reimburse the State of Missouri from a portion of the KCPD judgment proceeds, which included McMullin's property interest in those judgment proceeds. (L.F. 104).

The State's usurping of McMullin's attorney's fees, pursuant to § 217.837.4 R.S.Mo. (2000) is a taking under the police powers of the State of Missouri. In *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 19 (1977), the Supreme Court of the United States stated that contract rights are a form of property, and as such may be taken for a public purpose provided that just compensation is paid.

McMullin's rights to his legal fees arise under a contractual agreement between McMullin and Karpierz to provide legal services to Karpierz. (S.S.L.F. 45). Once McMullin was successful in obtaining a judgment on behalf of Karpierz against the KCPD Defendants, McMullin then had a vested contractual right in a percentage of the judgment that was obtained solely as a result of McMullin's efforts. The State of Missouri's actions in seizing McMullin's property without compensation constitutes a taking of McMullin's property interests that were clearly established by his agreement with Karpierz, and his efforts in devoting

more than 250 hours to a difficult case which ultimately was successful. (L.F. 131).

Missouri appellate courts have identified three factors that are weighed to determine if a taking has occurred under Art. I, § 26 of the Missouri Constitution: (1) the economic impact of the regulation; (2) the extent to which the regulation has interfered with the distinct investment-backed expectations of the property owners; and (3) the character of the government action. *State ex. rel. Nixon v. Jewell*, 70 S.W.3d 465, 467 (Mo. App. ED 2002). All three of these factors compel the conclusion that the State of Missouri's actions in this case constitute a taking of McMullin's property without just compensation. First, the economic impact of the state action is substantial. McMullin's financial interest in the contract between McMullin and Karpierz would be substantially extinguished if the State of Missouri's actions were to be upheld. Second, McMullin's legitimate investment-backed expectations have been compromised by the action of the State of Missouri in usurping his attorney's fees without just compensation. McMullin is certainly reasonable in expecting that his success in performing legal services though two trial proceedings and two appeals is sufficient to justify remuneration for his efforts, pursuant to an express written contingency fee agreement. Third, the character of the State of Missouri's action to seek reimbursement for the costs

of incarcerating Karpierz is clearly an exercise of the State of Missouri's police powers.

Because the State of Missouri is exercising its police powers under the Missouri Incarceration Reimbursement Act, § 217.825 R.S.Mo. (2000), *et. seq.*, and because the actions in the case at bar constitute a substantial interference in McMullin's contract rights, this Court should find that the State of Missouri's actions are an unconstitutional taking of McMullin's property rights without just compensation, and that the provisions of § 217.837.4 R.S.Mo. (2000) are unconstitutional, both on the face of that statutory provision, and as applied to the facts of this case.

State ex. rel. Nixon v. Jewell, supra, clearly supports our argument that § 217.837.4 R.S.Mo. (2000) is unconstitutional to the extent that it permits the State of Missouri to usurp McMullin's interest in the KCPD judgment proceeds without just compensation. Indeed, *Jewell* is factually similar to this case. In *Jewell*, the State of Missouri filed an action to judicially dissolve a nonprofit corporation that owned a cemetery, and to transfer ownership of the cemetery to St. Louis County. The Circuit Court of St. Louis County ruled that the cemetery had been abandoned, and transferred ownership of the cemetery to St. Louis County, free and clear of any and all liens. The lien holder then appealed to the Missouri Court of Appeals. The Court of Appeals held that the county's acquisition of the cemetery free and

clear of the lien constituted an uncompensated taking of the lien holder's property, and therefore was unconstitutional. The Court of Appeals specifically held:

By acquiring the Cemetery, Saint Louis County believes that it will be asserting its police powers in order to restore the Cemetery thereby, promoting the public welfare because cemeteries provide permanent memorials of land dedicated to the dead. *See Close v. Glenwood Cemetery*, 107 U.S. 466, 474, 2 S.Ct. 267, 27 L.Ed. 408 (1883). Saint Louis County asserts that the lien should be extinguished so as not to impair Saint Louis County's ability to restore the Cemetery. There was no example presented, nor could we discern one, in which the lien would inhibit Saint Louis County's ability to restore the Cemetery. [footnote omitted]

Under the circumstances of the present case, acquiring the Cemetery free and clear of the lien constitutes a taking. Extinguishment of the lien by the trial court completely denies Jewell all economic benefit of his lien. As an investor in the Cemetery, Jewell loaned money to USDAVA for the express purpose of its maintenance. It is not in the interest of the State to discourage individuals from investing in maintaining areas of land which are memorials to the dead. Hence, the trial court's transfer of the Cemetery to Saint Louis

County free and clear of the lien was in error. *Jewell, supra*, 70 S.W.3d at 467-68.

The State of Missouri's partial extinguishment of McMullin's lien is unconstitutional for the same reasons that were stated in *Jewell*. The State of Missouri's attachment of the KCPD judgment proceeds free and clear of McMullin's attorney's fee lien constitutes a taking of McMullin's property without just compensation, and therefore violates Art. I, § 26 of the Missouri Constitution, as well as the corresponding provisions of the federal Constitution. The judgment in favor of the State should therefore be reversed, and § 217.837.4 R.S.Mo. (2000) should be declared unconstitutional. The case should be remanded to the Cole County Circuit Court with directions that the judgment in favor of the State be limited to Karpierz's share of the KCPD judgment proceeds, and that McMullin's share of the KCPD judgment proceeds is not subject to attachment by the State.

POINT II

**THE TRIAL COURT ERRED IN GRANTING THE STATE OF
MISSOURI'S MOTION FOR SUMMARY JUDGMENT, AND
ENTERING A JUDGMENT THAT INCLUDED REIMBURSEMENT
TO THE STATE FROM THE PORTION OF THE KCPD
JUDGMENT PROCEEDS WHICH REPRESENTED MCMULLIN'S
ATTORNEY'S FEES, BECAUSE MCMULLIN WAS ENTITLED TO**

**HIS ATTORNEY’S FEES UNDER THE COMMON FUND
DOCTRINE, IN THAT KARPIERZ’S ACTION AGAINST THE
KCPD CREATED A COMMON FUND FROM WHICH THE STATE
OF MISSOURI BENEFITTED WITHOUT COMPENSATING
MCMULLIN FOR HIS EFFORTS.**

A. Standard of Review.

Appellants are appealing the grant of summary judgment to the State in this matter. A review of summary judgment by an appellate court is essentially a *de novo* review. *ITT Commercial Finance Corp.*, *supra*, 854 S.W.2d at 376.

**B. McMullin is Entitled to his Attorney’s Fees from the KCPD
Judgment Proceeds Pursuant to the Common Fund Doctrine.**

The trial court also erred in rejecting McMullin’s argument that he was entitled to all his attorney’s fees from the KCPD judgment proceeds under the common fund doctrine. The common fund doctrine is the principle that if a plaintiff creates, discovers, increases, or preserves a fund to which others also have a claim, then the plaintiff is entitled to recover from the fund his litigation costs and attorney’s fees. (L.F. 95). The trial court erred in granting summary judgment on Karpierz’s and McMullin’s affirmative defense because the common fund doctrine applies in this case, and requires that the attorney’s fees incurred by

Karpierz in obtaining the KCPD judgment proceeds be reimbursed from the KCPD judgment proceeds, prior to any distribution to the State of Missouri.

The Missouri Supreme Court has approved, along with courts in virtually every jurisdiction, the common fund doctrine. See *Jesser v. Mayfair Hotel, Inc.*, 360 S.W.2d 652, 662 (Mo.banc 1962). In *Jesser*, the Court affirmed the trial court's order which required non-litigants to contribute their proportionate share of counsel fees where a litigant successfully created a fund in which the non-litigants were entitled to a share. *Id.* at 662. Other Missouri courts have recognized that "when one goes into court and takes the risk of litigation upon himself" and brings about the creation of a fund in which others are entitled to share, those making claims against that fund should not be permitted to share in the fruits of the litigation without contributing their proportionate part of attorney's fees. *McMullin v. Klein*, 468 S.W.2d 657, 660 (Mo. App. 1971). Typically, a deduction is made from the common fund to allocate for attorney's fees. *Id.*

The KCPD judgment proceeds constitute a common fund from which McMullin is entitled to recover his attorney's fees. The common fund in this case was created by Karpierz's litigation against the KCPD. Karpierz hired McMullin to bring this case on his behalf against the KCPD, and agreed to pay him based on the recovery which Karpierz obtained, if any, from the KCPD defendants. (L.F. 85). McMullin was thereby entitled to his attorney's fee when Karpierz

successfully obtained a money judgment against the KCPD defendants. Both Karpierz and the State had a claim against the KCPD judgment proceeds, which places the State in the role of a non-litigant beneficiary. While only two beneficiaries exist to the KCPD judgment proceeds, the common fund doctrine only requires that an identifiable non-litigant beneficiary exists to reap the benefits of the creation of the common fund. *McMullin, supra*, 468 S.W.2d at 660.

The State's usurping of McMullin's right to attorney's fees permits the State to reap the benefits of the fund created by Karpierz by obtaining a judgment in Clay County Circuit Court without paying their proportionate share of McMullin's fee earned in this litigation. After McMullin successfully prosecuted Karpierz's case and obtained a \$46,470 judgment for Karpierz, the State then had a means to recover a portion of Karpierz's incarceration costs. Since a fund exists in this case in the form of the KCPD judgment proceeds, and the State was an identifiable beneficiary of the fund, there is no question that the State is a beneficiary of the efforts of McMullin in obtaining the KCPD judgment proceeds for Karpierz. The common fund doctrine requires the State to compensate McMullin his full amount of attorney's fees.

CONCLUSION

For the reasons stated above, the judgment in favor of the State of Missouri should be reversed to the extent that it permitted attachment of any part of

McMullin's interest in the KCPD judgment proceeds. The case should be remanded to the Circuit Court of Cole County, with directions to enter a modified judgment which fully protects McMullin's attorney's fee lien in the KCPD judgment proceeds, and which directs the Circuit Court of Cole County to enter judgment in accordance with Karpierz's and McMullin's cross-motion for partial summary judgment in the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of Appellant's Brief were sent via U.S. Mail, first class, postage pre-paid, this 24th day of January, 2003 to:

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CERTIFICATE PURSUANT TO RULE 84.06(c)

George A. Barton, attorney for Appellants in this matter, hereby certifies that:

1. This Certificate contains the information required by Rule 55.03.
2. As shown below, Respondent's Brief complies with the limitations contained in Rule 84.06(b).
3. Respondent's brief contains 4,521 words and 486 lines of double-spaced type, as calculated by word-processing software.
4. Pursuant to Rule 84.06, a double-sided, high-density, IBM-PC compatible, 1.44 MB, 3½ inch size diskette has been scanned for viruses and is certified as being virus-free and is being filed herewith containing a copy of the foregoing brief in Microsoft Word format.

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