A26-0131

State of Minnesota
In Court of Appeals

CLAIMS, INC.

RESPONDENT,

VS.

LIONEL NJITOR, YVONNE NJITOR

APPELLANTS.

BRIEF OF APPELLANTS LIONEL NJITOR AND YVONNE NJITOR

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INTRODUCTION

This case involves an out-of-state public adjuster taking advantage of Minnesota homeowners whose home had suffered a total loss. After a catastrophic fire at their home the Appellants, Lionel and Yvonne Njitor, filed a claim with their insurance company, Allstate. Within days of the fire Allstate determined that the Njitors' home was a total loss, and issued a written estimate of almost twice the policy limit. The Njitors understood that they would be paid the policy limit for the damage to their home, and then moved on to make their personal property claim. The Njitors soon learned that the personal property claim required significant work, and contacted Respondent, Claims, Inc., a Michigan based public adjuster licensed in Minnesota, to help with the personal property claim. Over a series of conversations, the Njitors explained to respondent that Allstate considered their home a total loss, they were going to be paid the policy limit, and they needed help with their personal property claim. During these conversations, respondent represented that it could get additional money for the Njitors dwelling claim, for solar panels and remodeling loan, which Allstate had not paid for, namely because the policy limit had been reached. Respondent required the Njitors to sign a public adjusting contract and further stated that it would only seek a fee under the dwelling coverage if it recovered additional funds for the solar panels and remodeling loan. Relying on the respondents' representations about its fee for the dwelling coverage, the Njitors signed the contract. Respondent's representations turned out to be untrue. It recovered no additional funds for the dwelling, yet when Allstate issued the payment for the dwelling policy limit, respondent demanded 10% of the entire policy limit, despite not being involved in the claim when Allstate made the total loss determination, and despite not recovering any additional funds under the dwelling coverage. Wen the Njitors rightfully refused to pay respondent from the dwelling payment, respondent unlawfully refused to endorse a check to the Njitors to release over $600,000 so they could rebuild their home. The respondents withheld the Njitors' money and coerced them to sign a Promise to Pay. With no other options to receive the money to rebuild their home, the Njitors signed the Promise to Pay under duress. The district court below granted respondent's motion for summary judgment and denied the Njitors' motion for summary judgment. This appeal seeks to correct a series of errors by the district court that are inconsistent with Minnesota law and the plain language of the parties' contract concerning this fire loss.

LEGAL ISSUES PRESENTED

1. **Whether the respondent's fee for the building and debris removal coverages under the public adjusting contract was supported by adequate consideration when Njitors' insurance company deemed the Njitors' home a total loss before respondent was involved in the claim.**

   A. How the issue was raised below.

   Whether the total loss determination by the Njitors' insurance company can support respondent's claim that there was adequate consideration for their fee as is specifically relates to the building coverage of the claim was raised in the Njitors' motion for summary judgment. Docs. 22 and 23.

B. The rulings below.

Notwithstanding that under Minnesota's valued policy statute, Minn. Stat. §65A.08, requires an insurance company to pay the policy limit in the event of a total loss, the district court concluded that payment of the respondent's fee for the building coverage was supported by adequate consideration, even though public adjusting contract was entered into after the insurance company determined the home a total loss. Doc. 43 at 6-10; Add. 7-11.

C. How the issue was preserved for appeal.

The district court issued is order granting respondent's motion for summary judgment on November 24, 2025. Doc. 43; Add.1-16. Final judgment was entered on November 25, 2025. Docs. 43 and 44; Add.1-16. On January 21, 2026, the Njitors timely filed a notice of appeal seeking review of this issue. Doc. 46.

D. Apposite authorities.

Minn. Stat. §65A.08

Anderson v. Kammeier, 262 N.W.2d 366, 371 (Minn. 1977)

Potsdamer v. Kruse, 57 Minnn. 193 (Minn. 1894)

2. Whether the respondent fraudulently induced the Njitors into signing the public adjusting contract.

A. How the issue was raised below.

The Njitors raised the fraudulent inducement affirmative defense in its answer, Doc. 6, and argued in their summary judgment motion that Respondent made fraudulent misrepresentations regarding its fee for the building coverage, namely, that respondent would only be paid if it recovered money above and beyond that which had already been promised by the insurance company (i.e. the policy limit), Doc. 22 and 23. The Njitors reasonably relied on this representation when they signed the public adjusting contract, and suffered damages when respondent then sought a fee on the total loss value of the building, even though the Njitors' insurance company had made the total loss determination before signing the contract with the respondent.

B. The rulings below.

The district court denied the Njitors' summary judgment related to fraudulent inducement even though the district court observed that "the question of reasonable reliance is for the trier of fact" and further observed that there was, indeed, a material issue of fact, writing "although a factfinder could find the Plaintiff made knowingly false statements with the intent to induce [the Njitors] to relay on the misrepresentation in signing the contract, they cannot show that their reliance on any of [respondent's] purported representations was justifiable." Doc. 43 at 12; Add.13 (citation omitted).

C. How the issue was preserved for appeal.

The district court issued is order granting respondent's motion for summary judgment on November 24, 2025. Doc. 43; Add.1-16. Final judgment was entered on November 25, 2025. Docs. 43 and 44; Add.1-16. On January 21, 2026, the Njitors timely filed a notice of appeal seeking review of this issue. Doc. 46.

D. Apposite authorities.

Johnson Bldg. Co. v. River Bluff Dev. Co., 374 N.W.2d 187 (Minn. App. 1985)

Parkos Const. Co. v. Anchor Distrib., Inc., (unpublished) No. A07-0700, 2008 WL 2246044 (Minn. Ct. App. June 3, 2008)

3. Whether respondent is entitled to a 10% of the reimbursement the Njitors received for the replacement cost value for their personal property and their additional living expenses.

A. How the issue was raised below.

The Njitors argued in their motion for summary judgment that the respondent was not entitled to a fee on reimbursement for withheld depreciation on the personal property or for the incurred costs for additional living expenses. Docs. 22 and 23.

B. The rulings below.

The district court concluded that even though the insurance policy defines payment of the withheld depreciation as a reimbursement and that the payments for the additional living expenses are paid when incurred, that respondent was entitled to a fee on these payments even though the payment was a reimbursement either for money the Njitors spent of their own or for a debt incurred for the additional living expenses. Doc. 43 at 14; Add.15.

C. How the issue was preserved for appeal.

The district court issued is order granting respondent's motion for summary judgment on November 24, 2025. Doc. 43; Add.1-16. Final judgment was entered on November 25, 2025. Docs. 43 and 44; Add.1-16. On January 21, 2026, the Njitors timely filed a notice of appeal seeking review of this issue. Doc. 46.

D. Apposite authorities.

Travertine Corp. v. Lexington-Silverwood, 683 N.W.2d 267 (Minn. 2004).

4. Whether the Njitors signed the Promise to Pay under duress when respondent refused to endorse a check to release hundreds of thousands of dollars belonging to the Njitors unless they signed a Promise to Pay.

A. How the issue was raised below.

The Njitors raised the affirmative defense of duress in its answer. Doc. 6, affirmative defense 8. The Njitors argued that the respondents made unlawful threats when they refused to endorse the check for the structure payment, withholding over $600,000 to which respondent had no right, and which the Njitors needed to rebuild their home, unless the Njitors signed the Promise to Pay.

B. The rulings below.

The district court incorrectly concluded that when the respondent withheld over $600,000 that belonged to the Njitors and which respondent had absolutely not claim, unless the Njitors signed the Promise to Pay, that this was not economic duress. Doc. 43 at 10-11; Add.11-12.

C. How the issue was preserved for appeal.

The district court issued is order granting respondent's motion for summary judgment on November 24, 2025. Doc. 43; Add.1-16. Final judgment was entered on November 25, 2025. Docs. 43 and 44; Add.1-16. On January 21, 2026, the Njitors timely filed a notice of appeal seeking review of this issue. Doc. 46.

D. Apposite authorities.

Hoskin v. Krsnak, 25 N.W.2d 398 (Minn. 2025)

Wise v. Midtown Motors, 231 Minn. 46, 42 N.W.2d 404, (1950)

5. Whether the Promise to Pay was supported by adequate consideration.

A. How the issue was raised below.

The Njitors argued in their summary judgment motion that the Promise to Pay was not valid because 1) it was based on the public adjusting contract which lacked consideration for respondent's fee for the building coverage; and 2) even if the public adjusting contract was valid, the Promise to Pay was based on past consideration and therefore the consideration was invalid. Docs. 22 and 23.

B. The rulings below.

The district court incorrectly concluded that the Promise to Pay was supported by adequate consideration. Doc. 43 at 10; Add.11.

C. How the issue was preserved for appeal.

The district court issued is order granting respondent's motion for summary judgment on November 24, 2025. Doc. 43; Add.1-16. Final judgment was entered on November 25, 2025. Docs. 43 and 44; Add.1-16. On January 21, 2026, the Njitors timely filed a notice of appeal seeking review of this issue. Doc. 46.

D. Apposite authorities.

Cityscapes Dev., LLC v. Scheffler, 866 N.W.2d 66 (Minn. App. 2015)

STATEMENT OF THE CASE

On July 28, 2024, the Njitors' home suffered a fire, destroying their home and the contents within it. Affidavit of Lionel Njitor at Doc. 24 at ¶3; Add.17 . The Njitors had their home insured through Allstate with a policy limit of $647,432.[1] *See* Declarations page Doc. 25 Ex. 1, at 2 of 4. Within days of the fire an adjuster from Allstate visited the home and told Lionel Njitor that the home was a total loss. Doc. 24 at ¶¶7,8; Add.17. On or about August 6, 2024, Allstate followed up this verbal commitment in writing, with a $1,145,677.15 estimate of the damage to the Njitors home.[2] Doc. 26 at Ex. 2; Add.26. The Njitors received no other estimates from Allstate for their home. Doc. 32 at ¶11; Add.23. In October 2024, Allstate paid the Njitors the policy limit for the loss to their home. Doc. 24 at ¶12; ; Add.18; Doc. 26 at Ex. 3. Allstate also confirmed it was solely its decision to consider the Njitors' home a total loss. See email from Allstate representative, Adam Peterson, to Lionel Njitor; Doc. 24 at ¶13; Add.18; Doc. 26 at Ex. 4.

With the home portion of the claim handled, the Njitors turned their attention to their personal property claim. The Njitors tried to inventory their personal property, but found the task difficult and overwhelming. Doc. 24 at ¶14; Add.18. They needed help to inventory and price the personal property for their claim. Doc. 24 at ¶16; Add.18. On or

[1] In the event of a total loss, however, the policy provides "If the loss to the covered property and the cost of debris removal are more than the Limit of Liability shown on the Policy Declarations for the covered property, we will pay up to an additional 5% of that limit for debris removal." Doc. 25 at Ex. 1 at 13 of 22.
[2] The documents in this claim refer to the Njitors' home as structure and dwelling. To be clear, any reference to structure, dwelling, or home refers to the Njitors' home and the dwelling coverage for it. The phrase "other structures" is a specific term in the policy and is separate from the coverage for the Njitors' home.

about August 11, 2024, Lionel Njitor contacted Claims, Inc., an out-of-state public adjuster licensed in Minnesota, to assist with the personal property claim.

Mr. Njitor had several phone calls with Claims, Inc.'s president, Craig Trombley. Doc. 24 at ¶18; Add.18. Mr. Njitor told Mr. Trombley he and his wife, Yvonne Njitor, needed respondent's help with the personal property claim. Doc. 24 at ¶20; Add.18. Mr. Trombley asked Mr. Njitor about the dwelling claim. Mr. Njitor told Mr. Trombley that Allstate was paying the policy limit for the dwelling, but it would not pay for two items: 1) solar panels he recently installed on the home, and 2) a for remodeling loan. Doc. 24 at ¶¶21-24; Add.18-19 Mr. Trombley guaranteed Mr. Njitor that respondent would make Allstate pay more on the dwelling part of the loss. Doc. 24 at ¶25; Add.19. He told Mr. Njitor that respondent could get additional funds for those two building items, but he needed the Njitors to sign a public adjusting contract with his company, Claims, Inc., and that respondent would take a fee on any additional money respondent recovered for the solar panels and remodeling loan. Doc. 24 at ¶25; Add.19. The contingency fee on these items was 10%. Doc. 24 at ¶26; Add.19.

Respondent presented the Njitors with a contract where respondent "promised to assist in the preparation, presentation and adjusting of insurance claim" identifying 12 potential coverages for the Njitors' loss. Doc. 24 at Ex. 5; Add.31. In exchange, the Njitors would pay respondent 10% "of amounts paid in settlement of the loss."[3] *Id.* Since

[3] "In settlement of loss" is defined as "all payments made by Insurer(s) in full or partial resolution of the claims, including payments made by agreement, court judgment, mediation, arbitration, appraisal, and other forms of dispute resolution." Doc. 26, Ex. 2.

Allstate had already told Mr. Njitor that his home was a total loss, and confirmed this in its August 6, 2025, estimate, Mr. Njitor signed the contract relying on Mr. Trombley's representation that the 10% fee for the dwelling coverage only applied to the additional building items Mr. Trombley would seek payment for: the solar panels, and the remodeling loan. Doc. 24 at ¶30; Add.19.

Respondent did not recover additional funds for the solar panels and remodeling loan. In fact, respondent never prepared an estimate for the damage to the Njitors' home. Doc. 24 at ¶¶31 and 32; Add.20. On or about September 23, 2024, respondent, on behalf of the Njitors, submitted four proofs of loss to Allstate. Doc. 24 at ¶33; Add.20. One proof of loss was for "Dwelling, Debris Removal & Trees, Shrubs, Plants and Lawns." Doc. 24 at ¶34, ; Add.20; Doc. 26, Ex. 6; Add.33-34. Notably, the value of the loss to the dwelling on the proof of loss was the same as the value of Allstate's estimate to repair the damage to the Njitors' home. Doc. 24 at ¶36; Add.20; compare Doc. 26 at Ex. 2; Add.26 and Doc. 26 at Ex. 6; Add.33-34.

On October 10, 2025, Allstate issued a check for the dwelling, other structures and debris removal totaling $713,794.20. [4] Doc. 24 at ¶12; Add.18; Doc. 26 at Ex. 3. The check reflected the value Allstate had placed the Njitors' dwelling claim in its August 6, 2024, estimate, which was consistent with Allstate's conclusion that the Njitors' home

[4] Page 13 of 22, of the Allstate policy provides for an additional five percent of the policy limit if the loss to the home plus the debris removal is greater than the policy limit. Doc. 25 at Ex. 1. Since the Njitors' home was deemed a total loss, it was simply a function of the policy that the debris removal was paid.

was a total loss. [5] Doc. 26 at Ex.26 2; Add.. Respondent was listed on this check along with the Njitors and the Njitors' mortgage company. Doc. 24 at ¶37; Add.20; Doc. 26 at Ex. 3. Respondent refused to endorse the check unless the Njitors signed another agreement promising to pay respondent 10% of the entire dwelling insurance payment, $71,379.42 (the "Promise to Pay"). Doc. 24 at ¶38; Add.20 Doc. 26 at Ex. 8; Add.35. The Njitors did not believe respondent was entitled to any payment from the dwelling insurance proceeds because: 1) respondent did not fulfill its promise to recover additional money from Allstate for the solar panels and remodeling loan; and 2) Allstate had committed to paying the policy limit before respondent was involved in the Njitors' claim. Doc. 24 at ¶39; Add.20. Nonetheless, the Njitors signed the Promise to Pay because if they did not sign it, they would be unable to access over $600,000 of their insurance proceeds, funds to which Claims, Inc. had no interest, to replace their home. Doc. 24 at ¶40; Add.21.

Respondent continued to refuse to endorse other checks until the Njitors paid $71,379.42. Doc. 24 at ¶41; Add.21. Ultimately, the parties reached an agreement to hold the dispute amount in escrow pending resolution of this lawsuit. Doc. 24 at ¶ 43; Add.21. Respondent endorsed the checks for the personal property, and the Njitors paid respondent its fee for the actual cash value ("ACV") of the personal property claim. Doc. 24 at ¶45; Add.21.

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[5] This check included payment for three coverages: $33,990.20 for the debris removal, $647,432 for the policy limit for the dwelling, and $32,372 for the policy limit for other structures. Doc. 26 at Ex. 3.

Respondent sued the Njitors seeking 10% of the Njitors' dwelling claim, 10% of the replacement cost value ("RCV") of the personal property claim, and 10% of the reimbursement for what the Njitors paid for their additional living expense ("ALE"). Doc. 3 at ¶¶17, 18, and 22.

The parties made cross-motions for summary judgment regarding respondent's alleged outstanding fee for the dwelling payment. The district court denied the Njitors' motion for summary judgment and granted the respondent's motion for summary judgment. Doc. 43; Add.1-16. Final judgment was entered on November 25, 2025. Doc. 43; ; Add.1-16. The Njitors timely filed their notice of appeal. Doc. 46.

ARGUMENT

The contractual transactions between the parties are rife with legal errors which the district court failed to recognize. The district court's order requires reversal. This case involves review of the district court's summary judgment order involving contract and statutory interpretation. The standard of review is de novo. *Auto–Owners Ins. Co. v. Second Chance Invs., LLC*, 827 N.W.2d 766, 770 (Minn. 2013) (questions of statutory interpretation are reviewed de novo); *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004) ("[c]ontract interpretation is a question of law we review de novo."). For the following reasons, the district court's order must be reversed.

1. There is no consideration to support respondent's position that it is entitled to a fee under the public adjusting contract for the Njitors' dwelling or debris removal claim when Allstate determined the Njitors' home was a total loss before the respondent was involved in the claim.

This case involves the interaction of Minnesota's valued policy statute, Minn. Stat. §65A.08(a), and case law surrounding consideration. When Allstate deemed the Njitors' home a total loss, Allstate was then obligated under Minnesota law and its policy to pay the policy limit plus a 5% increase for debris removal. Because the policy limit was reached for the dwelling coverage two things occur: 1) the Njitors cannot give up control of the dwelling claim because they had reached their recovery limit; and 2) as a practical matter, despite its promise to the Njitor otherwise, respondent could not undertake an obligation to recover additional funds in excess of the dwelling policy limit, plus debris removal. Thus, there was no consideration for the respondent's fee under the public adjusting contract for the dwelling and debris removal, and the district court committed reversible error concluding there was. This Court should reverse the district court's conclusion regarding the contract and enter judgment in favor of the Njitors.

A. Under the Minnesota valued policy statute and basic contract principles the dwelling portion of the public adjusting contract was not supported by valid consideration.

Minnesota is a value policy state that means in the event of a total loss the insurance company must pay the insured the policy limit for the dwelling. Minn. Stat. §65A.08(a) provides:

> In the absence of any change increasing the risk, without the consent of the insurer, of which the burden of proof shall be upon it, and in the absence of intentional fraud on the part of the insured, **the insurer shall pay the whole amount mentioned in the policy or renewal upon which it**

> **receives a premium, in case of total loss**, and in case of partial loss, the full amount thereof.

Id. (emphasis added); *Auto–Owners Ins. Co.*, 827 N.W.2d at 770 ("in determining whether the insurer is required to pay the limit of insurance, the key inquiry is whether a total loss has occurred as opposed to whether the amount of loss or damage meets a certain threshold"); Minnesota standard fire insurance policy, Minn. Stat. §65A.01 subd. 5 ("No provision shall be attached to or included in such policy limiting the amount to be paid in case of total loss on buildings by fire, lightning or other hazard to less than the amount of insurance on the same."). Allstate was bound by, and followed, Minnesota law when it determined the Njitors' home a total loss and subsequently paid the policy limit for the dwelling loss. Doc. 25 at Ex. 1 at 14-15 of 22, Section 5(c)(3). The policy limit Allstate paid to the Njitors was a function of Minnesota law and Allstate's policy.

Consistent with the total loss determination, Allstate paid five percent of the policy limit for debris removal. In its letter stating, "Information as of September 26, 2024," Allstate repeated its determination that the Njitors' home was a total loss and confirmed that the debris removal was five percent of the building coverage policy limit. Doc. 21 at Ex. 3; Doc. 25 at Ex. 1 13 of 22. Thus, once the home was considered a total loss the debris removal payment followed. Like the building coverage, there is no consideration for the debris removal under the contract. Respondent provided no services and added no value to the claim to entitle it to a fee for the debris removal for the dwelling because the Njitors' home was a total loss.

Under Minnesota law, to form a valid contract there must be offer, acceptance and consideration. Consideration:

> requires that a contractual promise be the product of a bargain. However, in this usage, 'bargain' does not mean an exchange of things of equivalent, or any, value. It means a negotiation resulting in the voluntary assumption of an obligation by one party upon condition of an act or forbearance by the other.

Cederstrand v. Lutheran Bhd., 263 Minn. 520, 531, 117 N.W.2d 213, 220 (1962). Here, respondent did not voluntarily assume any responsibility to adjust the dwelling or debris removal coverages; i.e. respondent neither needed to nor actually prepared, presented, and adjusted the Njitors' dwelling and debris removal claims. Likewise, the Njitors did not agree to pay respondent for services related to the dwelling and debris removal because Allstate considered the house a total loss and paid the policy limits. *See* email from Allstate stating it, on its own, determined the house a total loss, Doc. 26 at Ex. 4; Allstate policy, Doc. 25 at Ex. 1 at 15 of 22; Minnesota's valued policy statute, Minn. Stat. §65A.08(a); and the Minnesota standard fire insurance policy, Minn. Stat. §65A.01 subd. 5, *Auto–Owners Ins. Co.*, 827 N.W.2d at 770.

Concerning the dwelling and debris removal claims, there was no consideration in the public adjusting contract because the Allstate agreed to pay the policy limit for the dwelling before respondent was involved with the claim. Put another way, Allstate's total loss determination obviated any consideration for the respondent's fee for the dwelling (or the 5% debris removal increase) because respondent did not voluntarily assume any obligation. Despite its oral promises to the Njitors to obtain additional funds for the dwelling, the policy limit had already been reached. Indeed, the evidence shows Allstate committed to paying the policy limit for the building and debris removal coverages:

- Allstate verbally committed to paying the policy limit shortly after the fire. Doc. 24 at ¶8; Add..

- Allstate confirmed in writing that it would pay the policy limit with its August 6, 2024, estimate. Doc. 21 at Ex. 9.

- The Njitors received no other estimates from Allstate except for the total loss estimate. See of the Second Lionel Njitor Affidavit Doc. 32 at ¶2; Add.23.

- Allstate repeated that it was paying the policy limit it a letter with the heading "Information as of September 26, 2024," Doc. 21 at Ex. 3.

- Allstate paid the policy limit for the building and debris removal in a check issued October 2, 2024. *Id.* at Ex. 4.

- Allstate's adjuster confirmed Allstate made the decision to deem the Njitors' home a total loss. Doc. 26 at Ex. 4.

That Allstate issued the payment for the dwelling policy limit after the parties signed the public adjusting contract does not entitle respondent to a fee for the dwelling or debris removal. The district court committed reversible error when it determined that respondent's fee for the dwelling coverage under the public adjusting contract was supported by consideration.

B. The public adjusting contract was a severable contract, and the dwelling and debris removal portions of the public adjusting contract lacked consideration.

The district court further erred by addressing consideration for the public adjusting contract as a whole, and not addressing decades of Minnesota case law about separate consideration for the different items in a contract. For over one hundred twenty years, Minnesota courts have viewed contracts as severable. *Potsdamer v. Kruse.*, 57 Minnn. 193, 196 (Minn. 1894) Here, that means there is separate consideration for each different coverage item in the public adjusting contract, and not one, singular overarching consideration for the entire contract. When the contract is analyzed under the lens of decades of Minnesota case law about consideration, the only conclusion to be drawn is that there was no consideration respondent's fee for building and debris removal coverages and the district court's order should be reversed.

Potsdamer is analogous to this case. In *Potsdamer*, the Court concluded that one purchase order for several styles of neckties was a severable contract because each necktie style had a different price. Put another way, consideration was separate for each one of several necktie styles even though they were in one purchase order. In concluding that the contract was severable the Supreme Court quoted favorably to the following:

> "If the part to be performed by one party consists of several distinct items, and the price to be paid by the other is apportioned to each item to be performed, or left to be implied by law, such contract will generally be held to be severable."

Id. (citations omitted). Several decades later, in *Anderson v. Kammeier*, 262 N.W.2d 366, 371 (Minn. 1977), the Supreme Court addressed consideration in a severable service contract: [6]

> "A contract under which the whole performance is divided into two sets of partial performances, each part of each set being the agreed exchange for a corresponding part of the set of performances to be rendered by the other promisor, is called a divisible contract. Or, as expressed in the cases:

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[6] The Court in *Anderson* uses the term "divisible" instead of severable, but the concept is the same for purposes of this argument. *E.g. Potsdamer*, 57 Minn. at 196 "we think the contract was severable and divisible, at least as to the several different styles of goods."

> 'A contract is divisible where by its terms, 1, performance of each party is divided into two or more parts, and, 2, the number of parts due from each party is the same, and, 3, the performance of each part by one party is the agreed exchange for a corresponding part by the other party.'

Id.(citation omitted). In *Anderson,* the Supreme Court concluded that a management consultation agreement was severable because "the performance of each party specifically was divided into several parts, and the consideration was apportioned accordingly." *Anderson*, 262 N.W.2d at 371.

Under the guidance of *Potsdamer and Anderson*, the respondent's public adjusting contract is severable. Section two, Scope of Contract, refers to the insurance claim, under which 12 coverages may apply. Doc. 26 at Ex. 5; Add.31. Section three, Payment, provides that respondent is to be paid "10% of amounts paid in settlement of the loss by Insurer(s) *related to coverage(s)* authorized under the Scope of Contract." Doc. 26 at Ex. 5; Add.31 (emphasis added). The plain language of the contract specifically refers to paying 10% for each of the applicable coverages.

This case is analogous to the tie purchase order dispute in *Potsdamer*. Here, the insurance claim is analogous to the purchase order. The 12 separate coverages are analogous to the different necktie styles. Thus, even though the insurance claim is one singular item it has 12 distinct, separate coverages which each requires its own consideration. Respondent's contract is severable and divisible and should be treated as such. *Potsdamer*, 57 Minn. at 196.

i. The language of the contract and respondent's use of it shows the contract is severable.

Respondent's use of the word "may" in Section 2 of the contract supports the Njitors' position that the public adjusting contract is severable. Doc. 26 at Ex. 5; Add.31 ("the following types of coverages that *may* apply…") By using a permissive "may" the contract envisions a situation where respondent is paid on some coverages even if other coverages do not apply or an insured is not paid. For example, under the Njitors' public adjusting contract one of the 12 coverages is "Loss of Use." Doc. 26 at Ex. 5; Add.31 Some insurance policies have Loss of Use provisions, but the Njitors insurance policy does not. See generally Doc. 26 at Ex. 5; Add.31-32. As a result respondent has no right to payment for Loss of Use even though respondent marked that box on the contract. Doc. 26 at Ex. 5; Add.31. Severing the building coverage and debris removal for lack of consideration is no different than severing the fee for the non-existent Loss of Use coverage.

Because the contract is severable there is no consideration for respondent's fee for the Njitors' dwelling or debris removal claims. The promise respondent made was to "assist in the preparation, presentation and adjusting of insurance claim with Insurer(s) under the following types of coverage that *may* apply…building…" Doc. 26 at Ex. 5; Add.31 (emphasis added). Using the permissive "may" is important because it does not require that the dwelling portion of the Njitors' claim must be part of the "preparation, presentation and adjusting" performed by respondent. *Waymouth Farms, Inc. v. Olam Americas, Inc.*, (unpublished) No. A08-1915, 2009 WL 1853186, at *2 (Minn. Ct. App.

June 30, 2009) ("'May' is traditionally permissive."); *Travertine Corp.*, 683 N.W.2d at 272 ("the term 'shall' reflects a mandatory imposition.). Indeed, had respondent intended for the building coverage to apply, it would have used "shall" instead of "may." The dwelling and debris removal coverages did not apply when the parties signed the public adjusting contract because the home was a total loss, Allstate's estimate was almost twice the value of the home, and Allstate had committed to paying the policy limit for the home and debris removal. Thus, there was no additional insurance proceeds to be recovered on the dwelling.

ii. Respondent did not prepare, present or adjust the dwelling and associated debris removal claim.

Respondent only earned a fee on each separate coverage item that it prepared, presented, and adjusted. The total loss determination removed any need to prepare, present, and adjust the Njitors dwelling and debris removal claims, and respondent's actions reflect that.

Respondent did not prepare the Njitors' dwelling claim. The respondent did not prepare a building estimate; there was no need because Allstate had determined the dwelling was a total loss before the Njitors signed the contract with respondent,. Minn. Stat. §65A.08(a); *Auto–Owners Ins. Co.*, 827 N.W.2d at 770; Doc. 24 at ¶¶ 8 and 9; Add.17-18.

Respondent did not adjust the Njitors' dwelling claim. "Adjustment" in the insurance context means:

> The ascertainment of the cause and the extent of an insured's loss and the amount of indemnity that the insured is entitled to receive under an

> insurance policy after (1) proper allowances and deductions have been made and (2) the indemnity portion for which each underwriter is liable has been established.

ADJUSTMENT, Black's Law Dictionary (12th ed. 2024); *Travertine Corp.*, 683 N.W.2d at 271 ("[w]here there is a written instrument, the intent of the parties is determined from the plain language of the instrument itself.") Respondent did not determine the extent or amount of the Njitors' dwelling loss. Allstate did. Respondent simply copied Allstate's dwelling loss valuation on to a proof of loss and sent it to Allstate. Respondent performed no adjusting. *Stanley Trucking Co. v. Nat'l Indem. Co.*, 271 Minn. 311, 314, 136 N.W.2d 101, 104 (1965) ("where the claim for recovery is based on an unexecuted premise to pay which has no supporting consideration whatever except the compromise and settlement of a wholly fictitious claim, the court will not help the wrongdoer.") The district court erred because it rewarded respondent a windfall, allowing respondent to collect a fee when it became involved in a claim after the insurance company deemed the Njitors' home a total loss, but before it paid the dwelling and debris removal policy limits. Respondent is not entitled to a fee on a total loss when the public adjuster performs no adjusting and simply repeats the insurance company's total loss valuation.

Respondent did not present the Njitors' dwelling claim. Respondent simply copied Allstate's valuation for the dwelling loss onto a proof of loss. Compare Doc. 26 at Exs. 2 and 6; Add. 25-30 and 33-34. Respondent presented no claim, let alone a new valuation of the claim, to Allstate. Regarding the proofs of loss, respondent's actions further show the contract is severable because it submitted multiple proofs of loss, under different coverage categories, showing it treated the Njitors' claim as severable. Doc. 26 at Ex. 2; Add.25-30.

To receive its fee respondent promised to: prepare, present, *and* adjust the Njitors claim. Respondent had to do all three actions. The evidence shows, however, that respondent did not prepare, present, and adjust any portion of the Njitors' dwelling and debris removal claim because Allstate's total loss determination already obligated Allstate to pay the Njitors policy limit for the dwelling and debris removal coverages. Despite Respondent's promises to obtain additional money under the dwelling coverage, it could not add additional value.

For these reasons, the district court erred when it concluded that there was consideration for respondent's fee for the dwelling and debris removal coverages.

C. Parol evidence should be used to interpret the fee terms of the public adjusting contract.

Parol evidence is admissible if 1) a contract was obtained by fraud, 2) the contract is ambiguous, or 3) to establish a condition precedent, *Craigmile v. Sorenson*, 239 Minn. 383, 395, 58 N.W.2d 865, 871 (Minn. 1953) ("[t]he court properly admitted oral evidence under this rule, both to show the existence of a condition precedent and the absence thereof."); *Nord v. Herreid*, 305 N.W.2d 337, 339-40 (Minn. 1981) [t]he parol evidence rule has no application to documents that are ambiguous"); *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 193 (Minn. App. 1985) ("[t]he parol evidence rule is inapplicable to exclude evidence of fraudulent oral representations by one party which induce another to enter into a written contract.") Each of these three exceptions apply to this case to show respondent is not entitled to a fee for the building or the associated debris removal.[7] Parol evidence is addressed in two area of the district court's order: first, in the discussion about the terms of the contract without analyzing the Njitors' fraudulent – inducement argument (Doc. 43 at 7-8; Add.8-9); and 2) in the fraudulent inducement section (*Id.* at 11-13; Add.12-14).[8]

i. Parol evidence is admissible to demonstrate a condition precedent.

Verbal conversations between the parties regarding Allstate's total loss determination and what respondent agreed to take its fee from, are admissible to show there was a condition precedent to respondent being paid a fee on the building and debris removal coverages. The conversations between Mr. Njitor and Mr. Trombley show that respondent was not entitled to payment for the dwelling coverage unless it satisfied a condition precedent: recover more funds on the building specifically for the solar panels and remodeling loan. Doc. 24 at 25; Add.19. Respondent tried to recover the additional funds for the solar panel, but not the remodeling loan; it listed the solar panels as an additional item on the proof of loss for the dwelling. Doc. 26 at Ex. 6; Add.33-34. Respondent, however, did not recover any additional funds; it did not satisfy the

[7] In its discussion about the contract, the district court observed that the public adjusting contract has an integration clause. Including an integration clause, however, does not preclude parol evidence when fraud is alleged. *Johnson Bldg. Co.*, 374 N.W.2d at 193 (The fact that the purchase agreement contained a 'full integration' clause does not alter our conclusion that the trial court properly admitted parol evidence. A 'full integration"' clause does not prevent proof of fraudulent representations by a party to the contract. 3 A. Corbin, Contracts § 578, at 405 (1960).")

[8] Parol evidence as it relates to the fraudulent induce claim will be argued later in this brief.

condition precedent; and it is not entitled to a fee for any part of the building or debris removal claims. The parties' conversations are admissible to show there was a condition precedent before respondent could recover a fee from the building coverage. Respondent did not fulfill the condition precedent, so it is not entitled to a fee.

ii. The district court erred in concluding that the contract was unambiguous and refused to admit parol evidence.

Both parties argue that the public adjusting contract is clear and unambiguous. Their interpretations, however, lead to different results. The Njitors continue to assert that the contract is unambiguous and under the plain language respondent is entitled to no fee for the building or debris removal coverages because the contract is permissive providing "the following types of coverage that *may* apply…" Doc. 26 at Ex. 5; Add. 31. When the contract was entered into the parties understood that not every coverage may apply (e.g. Loss of Use). *Lamb Plumbing & Heating Co. v. Kraus-Anderson of Minneapolis, Inc.*, 296 N.W.2d 859, 862 (Minn. 1980) ("A contract is ambiguous if it is susceptible to more than one interpretation based on its language alone."); *Material Movers, Inc. v. Hill*, 316 N.W.2d 13, 17 (Minn. 1982) ("where a written agreement is ambiguous or incomplete, evidence of oral agreements tending to establish the intent of the parties is admissible.") Respondent, on the other hand, interpreted the public adjusting contract fee section be mandatory. Respondent's interpretation, and the interpretation the district court ultimately adopted, ignores the plain language of contract and reads the permissive "may apply" as mandatory "shall apply." Despite the district court's order, the Njitors maintain that the respondent's interpretation of its public adjusting contract is unreasonable.

The district court erred when it did not conclude the public adjusting contract was ambiguous when it was presented with two interpretations of the public adjusting contract: the Njitors which followed the plain language of the policy and respondent's interpretation which did not. The district court concluded that respondent's interpretation was the proper one, but did not comment on the former.[9] *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018) ("[i]f the district court determines that a contract is ambiguous, it may admit parol, or extrinsic, evidence of the parties' intent."); *Tamarack Vill. Shopping Ctr. v. Galyan's Trading Co.*, (unpublished) No. A05-449, 2006 WL 224180, at *4 (Minn. Ct. App. Jan. 31, 2006) "courts must construe contracts so that all contract provisions have meaning.")

Respondent drafted the public adjusting contract. Accordingly, any ambiguities in the contract must be interpreted against respondent as the drafter:

> where a contract is open to two interpretations, the one more favorable to the party who did not draft the instrument should be adopted in the absence of a clear showing that a contrary meaning was intended by the parties at the time of its execution…Since plaintiffs drafted the mimeographed form contract in question, defendants should receive the benefit of this rule.

Wick v. Murphy, 237 Minn. 447, 453, 54 N.W.2d 805, 809 (1952) (footnote omitted). Here, parol evidence regarding the conversation about respondent's fee for the building coverage and debris removal should be admitted to interpret whether a fee on the building

[9] The district court also appears to have improperly considered an untimely affidavit filed with respondent's reply. Doc. 35. The Njitors objected to this late submission in their reply. Doc. 36 at 2 n2.

and debris removal coverages was: 1) mandatory or permissive; 2) based on the already allowed policy limit or on any additional funds recovered for the building coverage.[10]

The district court erred when it refused to consider Mr. Njitors' statement to respondent that Allstate deemed the home a total loss, and would pay the policy limit; and that respondent replied that it would only seek a fee on any funds it could recover for the solar panels and remodeling loan. Doc. 43 at 7-8 and 11-13; Add.8-9 and 12-14.

2. Respondent fraudulently induced the Njitors into signing the public adjusting contract.

The district court erred when it concluded that respondent did not fraudulently induce the Njitors into signing the public adjusting contract. Under Minnesota law, a claim for fraudulent misrepresentation has five elements:

> (1) there was a false representation by a party of a past or existing material fact susceptible of knowledge;
> (2) made with knowledge of the falsity of the representation or made as of the party's own knowledge without knowing whether it was true or false;
> (3) with the intention to induce another to act in reliance thereon;
> (4) that the representation caused the other party to act in reliance thereon; and
> (5) that the party suffer pecuniary damage as a result of the reliance.

Parkos Const. Co. v. Anchor Distrib., Inc., (unpublished) No. A07-0700, 2008 WL 2246044, at *2 (Minn. Ct. App. June 3, 2008); Doc. 6; Answer, affirmative defense 11.

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[10] This Court only reaches this ambiguity analysis if it concludes there was sufficient consideration under the contract concerning respondent's fee for the building and debris removal. If there was no consideration, then respondent is not entitled to a fee, regardless of this analysis.

Here, respondent made fraudulent statements to the Njitors about how respondent would be paid. The Njitors contacted respondent to assist with their personal property claim. Doc. 24 at ¶17; Add.18. While discussing respondent's services Lionel Njitor told respondent that Allstate had agreed to pay the dwelling policy limit. Doc. 24 at ¶¶21 and 22; Add.18-19. Respondent promised to get more money for the Njitors for their solar panels and the home remodeling loan. Doc. 24 ¶25; Add.19. Respondent told Mr. Njitor it would be paid a fee only for the additional dwelling funds, if it could recover additional funds for the solar panels and remodeling loan. Doc. 24 ¶25; Add.19.

The district court properly admitted parol evidence regarding the Njitors' fraudulent inducement affirmative defense, but erred in concluding there was no fraudulent inducement.[11] Doc. 43 at 11-13; Add.12-14. The district court focused its analysis on whether the Njitors' reliance was reasonable. *Johnson Bldg. Co.*, 374 N.W.2d at 193 ("When a promise is not in plain contradiction of a contract or, if contradictory, when it is accompanied by misrepresentations of other material facts in addition to the contradictory intent, the question of reasonable reliance is for the trier of fact.")

The district courts erred in its analysis of the parol evidence for the Njitors' fraudulent inducement defense. The district court concluded that the parol evidence and the terms of the contract were "entirely contradictory" and that the respondent could not demonstrate reasonable reliance. Doc. 43 at 12; Add.13. The district court is incorrect. Respondent's oral statements were not in plain contradiction of the contract because solar

[11] An additional discussion about parol evidence follows this section as it relates to interpreting the public adjusting contract.

panels and home remodeling loan are considered building coverage, thus "the question of reasonable reliance is for the trier of fact" and should not have been decided at summary judgment.[12] This is further shown by the district court's acknowledgement that there was an issue of fact writing, "although a factfinder could find that Plaintiff knowingly made false statement with the intent to induce defendants to rely on the misrepresentations in signing the contract," the district court then continued that there was no material fact issue concerning reasonable reliance. Doc. 43 at 12; Add.13. The district court erred the Njitors reasonably relied on respondent's statements concerning its fee because the Njitors had never had a fire loss. Doc. 24 at ¶16; Add.18 ("We had never had a house fire and needed to file a claim for our belongings.") Thus, the Njitors relied on respondent, as their public adjuster, to provide true and accurate information concerning what additional funds could be recovered.

As to the other elements, when respondent promised to recover funds for the solar panels and remodeling loan and that it would only to be paid its fee if it recovered those funds, respondent made a false representation of a past or existing material fact, susceptible of knowledge and respondent knew the statement was false. Doc. 43 at 12;

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[12] Assuming the district court's conclusion was correct, and the respondent's representations regarding its fee for the building and debris removal coverages directly contradicted the, contract because it had promised that it would only seek a fee on the solar panels and loan related to the building, and it was accompanied by misrepresentations regarding what the "building" section meant, then there would still a material issue of fact about whether the Njitors' reliance on respondent's oral misrepresentations was reasonable. *Johnson Bldg. Co.*, 374 N.W.2d at 193. Thus, the district court erred when it concluded there was no material issue of fact as to whether the Njitors' reliance was reasonable.

Add.13. This element is satisfied because Allstate considered the home a total loss; and it was required under Minnesota law and the insurance policy to pay the policy limit to the Njitors. There were no additional funds available under the dwelling coverage.

As to the second and third elements, respondent promised to obtain the additional funds to induce the Njitors to sign the contract with the “building” box selected. Doc. 24, at 27; Add.19; Doc. 26, Ex. 5; Add.31. At best, the respondent promised to obtain additional funds for the solar panels and loan without knowing whether it could recover the funds because it did not understand Minnesota’s valued policy statute. At worst, and what is displayed in this lawsuit, is that respondent made these false representations to induce the Njitors to sign the public adjusting contract with the building box checked, even though the home was a total loss, and then the respondent would claim its fee on the total value of the home. Either way, the second and third elements are satisfied because the Njitors relied on respondent’s promise about the amount respondent would seek on the dwelling part when it signed the contract with respondent. Doc. 24 at ¶28; Add.19.

The fourth element is also satisfied. Respondent did not get any additional funds for the solar panels or remodeling loan. Doc. 24 at ¶31; Add.20. However, as soon as Allstate paid the policy limit for the dwelling part respondent demanded 10% of the dwelling policy limit and debris removal. Doc. 24 at ¶38; Add.20. The fourth element is satisfied: the Njitors suffered pecuniary harm, in the form of this lawsuit, seeking $71,379.32 for a fee not contemplated by the contract, the Njitors, or the statements by respondent when the parties signed the public adjusting contract.

The district court committed reversible error when it concluded that the Njitors were not fraudulently induced into signing the public adjusting contract.[13] This Court should reverse and enter judgment in favor the Njitors concerning the district court's finding on fraudulent inducement, or at the very least reverse and remand to the district court because there is an issue of fact concerning fraud.

3. The contract between the Njitors and respondent did not provide for respondent to recover a fee on reimbursements or incurred costs.

The district court erred when it concluded that the contract between the Njitors and Respondent did not provide for the Respondent to recover a fee on reimbursements, like withheld depreciation on personal property, and incurred costs, like ALE.

A. Respondent is not entitled to a fee on reimbursed withheld depreciation for the personal property.

According to the public adjusting contract, respondent is entitled to a fee from "amounts paid in settlement of the loss." Doc. 26 at Ex. 5; Add.31. The phrase "In settlement of loss" is defined as "all payments made by Insurer(s) in full or partial resolution of the claims, including payments made by agreement, court judgment, mediation, arbitration, appraisal, and other forms of dispute resolution." Doc. 26 at Ex. 5; Add.31. Payments of withheld depreciation do not fall under this definition because the Njitors must spend their own money before the insurance company will release the

[13] Because the contract is severable the Court can conclude that the dwelling and debris removal provisions were fraudulently entered into and void those items. *Przyblyski v. Pellowski*, 141 Minn. 193, 197 169 N.W. 707, 709 (1918) (transaction regarding land and purchase of livestock was severable such that plaintiff could rescind one contract and ratify the other).

money. This is a reimbursement. *Travertine Corp.*, 683 N.W.2d at 271 ("[w]here there is a written instrument, the intent of the parties is determined from the plain language of the instrument itself.")

In fact the Njitors' insurance policy refers to it as a reimbursement as well. Under the personal property coverage section, the Njitors cannot recover the full RCV of their personal property until they replace the personal property:

> Under **Personal Property Protection-Coverage C, we** *will make additional payment to reimburse* ***you*** *for cost in excess of actual cash value if* ***you*** *repair, rebuild or replace damaged, destroyed or stolen covered personal property* or wall-to-wall carpeting withing 180 days of the actual cash value payment.
>
> Personal Property Reimbursement payment will not exceed the smallest of the following amounts:
> 1) the amount actually and necessarily spent to repair or replace the property with similar property of like kind and quality;
> 2) the cost of repair or restoration; or
> 3) the Limit of Liability shown on the Policy Declarations for **Personal Property Protection-Coverage C**, or any special limit of liability described in the policy, regardless of the number of items or personal property involved in the loss.
>
> Personal Property Reimbursement will be limited to the difference between any actual cash value payment made for the covered loss to personal property and the smallest of 1), 2) or 3) above.

Doc. 25 at Ex. 1 at 15 of 22 (bold in original; italics added). The insurance policy states that the difference between the ACV and the RCV is a "reimbursement." The plain meaning of reimbursement is "[t]he act or an instance of paying back a sum of money." REIMBURSEMENT, Black's Law Dictionary (12th ed. 2024). Using the word "reimbursement" only makes sense because the Njitors must spend their own money to replace or repair their personal property. Respondent's contract does not provide for it to obtain 10% of any money reimbursed to the Njitors for money the Njitors spent in pursuit of their claim.

In this lawsuit, respondent sought its fee based off RCV amount even if the insurance company did not reimburse the Njitors. This raises the question that if respondent thought it was entitled to a fee on the RCV, then 1) why what was that not included in the public adjusting contract, and 2) why was respondent's fee based off the ACV in the respondent's personal property claim? Doc. 21 at Ex. 6-1. The answer is the respondent never intended for its fee to be on the RCV amounts. The respondent did not send a "replacement cost invoice" for the personal property until after the Njitors rightly refused to pay the fee for the building. Doc. 21 at Ex. 7-1. Respondent knew the personal property RCV because the RCV must first be calculated to reach the ACV.[14] The respondent never contemplated being reimbursed on the withheld depreciation and asserted it as a penalty in this lawsuit because the Njitors asserted their rights under the contract and refused to pay a fee to respondent for the dwelling and debris removal.

The Njitors have already paid the respondent for adjusting the personal property loss. Doc. 24 at ¶45; Add.21. That respondent seeks a further fee on funds reimbursed to the Njitors after they paid their own money to replace their belongings is improper under the contract. Thus, the district court's order should be reversed and judgment entered in favor of the Njitors because the respondent's is not entitled to a fee on the withheld depreciation for the personal property.

[14] The ACV is RCV less depreciation.

B. Additional living expenses are only paid when incurred, respondent is not entitled to a fee on these costs.

The reasoning of the reimbursement for withheld depreciation parallels the Njitors' ALE claim. Respondent knew, or should have known, almost the entire value of the Njitors' ALE claim. The Njitors had found their own temporary housing, but then respondent found different temporary housing and told the Njitors to breach the lease on the temporary home the Njitors had found. Doc. 24 at ¶¶50-53; Add.21-22. So, like the withheld depreciation, respondent could have calculated the amount it was owed on the ALE coverage, and demanded a fee, but it did not.

Respondent is not entitled to a fee simply because they found a different home for the Njitors and encouraged them to break the lease on the property Mr. Njitor had found. Doc. 24 at ¶¶50-53; Add.21-11. ALE is a monthly cost paid directly from Allstate to a third party housing vendor. Doc. 24 at ¶48; Add.21. The money was never paid to the Njitors. Doc. at ¶49; Add. 21. Because the ALE is paid directly to a third-party, the Njitors have no control over the funds and cannot assign any portion of it to respondent. Thus, there has been no settlement of this part of the claim.

Moreover, respondent never adjusted the ALE part of the claim. In the "Partial Sworn Statement in Proof of Loss – Additional Living Expense," the value for the ALE is "open and continuing." Doc. 26 at Ex. 7. Under respondent's contract, respondent has satisfied its obligations because it had not "adjusted" any portion of the ALE claim. The proof of loss, at best, repeated a fact Allstate already knew: it must pay the Njitors' ALE. The respondent have no right to a fee for the Njitors' ALE claim.

The district court erred not only by awarding a fee for the ALE incurred cost, but it also calculated Respondent's fee incorrectly. The district court's order granting respondent fees on the ALE coverage should be reversed and judgment entered in favor of the Njitors.

4. The district court erred when it concluded the Njitors did not sign the Promise to Pay under duress.

The respondent coerced the Njitors into signing the Promise to Pay. Duress is not limited to physical threats. It also includes unlawful threats or withholding property. Respondent's actions here: withholding over $600,000 to extort its fee is duress under Minnesota law. Accordingly, the district court erred when it concluded that the Njitors did not sign the Promise to Pay under duress and the order should be reversed.

The Supreme Court in *Wise v. Midtown Motors*, 231 Minn. 46, 51–52, 42 N.W.2d 404, 407 (1950), explained duress as follows:

> We take it to be undisputed that duress is coercion by means of physical force *or unlawful threats which destroys the victim's free will and compels him to comply with some demand of the party exerting the coercion*. The standards of resisting power of the victim are personal and subjective rather than objective—that is, the existence of duress is to be determined by whether the coercion was of such a character as to overcome the free will of the victim rather than that of a person of ordinary courage and firmness… The test is not the nature of the threats, but rather the state of mind induced thereby in the victim, or, as said in the [*Joannin v. Ogilvie,* 49 Minn. 564, 52 N.W. 217, 16 L.R.A. 376, 32 Am.St.Rep. 581 (Minn. 1892)] case, … 'whether or not the party really had a choice,—whether 'he had his freedom of exercising his will.'' Thus, the question here is whether [a party's] free will was overcome by coercion.

Id. (emphasis added; citations and footnote omitted). The Minnesota Supreme Court recognizes that "unlawful" has at least four definitions, and under the facts of this case, respondent's actions satisfy each definition. The Minnesota Supreme Court recently wrote that economic duress can be an unlawful threat:

> We have never defined the term "unlawful threat." Instead, we have conducted fact-specific analyses to determine whether the circumstances surrounding the execution of a given agreement were coercive enough to overcome the complainant's free will. *See* [*Wise*, 42 N.W.2d at 408–09] (holding that certain economic threats against the plaintiff established duress); *Snyder v. Samuelson*, 140 Minn. 57, 167 N.W. 287, 288 (1918) (same); *Bond* [*v. Charlson*, 374 N.W.2d 423, 428 (Minn. 1985)] (holding that certain economic threats against the plaintiff were insufficient to establish duress). In doing so, we have considered the circumstances as a whole and from the perspective of the complainant. Accordingly, we have never held that "economic duress" cannot constitute an "unlawful threat."

Hoskin v. Krsnak, 25 N.W.2d 398, 410 (Minn. 2025);[15] for the other three definitions see *State v. Beganovic*, 991 N.W.2d 638, 643 (Minn. 2023) ("Unlawful is defined as "[n]ot authorized by law ... [c]riminally punishable ... [i]nvolving moral turpitude." *Unlawful, Black's Law Dictionary* (11th ed. 2019)").

Here, respondent made unlawful threats to coerce the Njitors to sign the Promise to Pay. This is true whether unlawful is defined as not authorized by law, criminally punishable, moral turpitude, or economic duress. When respondent refused to endorse the Njitors' insurance check and release hundreds of thousands of dollars to which respondent had no right, respondent made an unlawful threat not authorized by law and

[15] At the time the summary judgment motions were argued, the Supreme Court had not decided *Hoskins*. The Supreme Court issued its opinion in *Hoskins* before the district court issued its order in this case. The parties provided letters addressing the Supreme Court's opinion in *Hoskin*. *See* Docs. 38 and 39.

criminally punishable: theft.[16] Respondent showed indifference to the Njitors' right to over $600,000, and respondent only intended to restore the $600,000 to the Njitors if they signed the Promise to Pay.

Respondent's action are also involved moral turpitude. Allstate determined that the Njitors' home was a total loss, which entitled the Njitors to the policy limits under Minnesota common law, Minnesota Statutes, and the policy. Respondent, by function of the policy and the law, could add no additional value to the Njitors' building or debris removal claims. Moreover, if respondent reasonably believed it was entitled to a fee for the building and debris removal because of the public adjusting contract, the Promise to Pay was unnecessary. Thus, respondent had no lawful, let alone moral, basis to demand the Njitors sign the Promise to Pay before releasing over half a million dollars of the Njitors' money.

Last, respondent's actions are economic duress. The Njitors had suffered a catastrophic fire, which destroyed their home and belongings. Allstate had agreed to pay the policy limit for their home, plus an additional 5% of the policy limit for debris

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[16] Theft is defined in Minn. Stat. §609.52 subd. 2(a)(5)(i) and (iii) as:

> Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3:…(5) intentionally commits any of the acts listed in this subdivision but with intent to exercise temporary control only and:
>
> (i) The control exercised manifests an indifference to the rights of owners or the restoration of the property to the owners; or…
>
> (ii) the actor intends to restore the property only on condition that the owner pay a reward or buy back or make other compensation.

removal. Allstate's promise to pay, memorialized in its written estimate, occurred before the parties signed the public adjusting contract. The respondent used economic duress to have the Njitors sign the Promise to Pay when it withheld hundreds of thousands of dollars in insurance proceeds which the Njitors needed to rebuild their home.

The respondent's actions left the Njitors with no alternative, but to sign the Promise to Pay. The Njitors needed the insurance proceeds to rebuild their destroyed home. As a public adjuster, respondent knew, or should have known, the Njitors needed the insurance claim money to replace their home. So, when the respondent refused to release $600,000, respondent's coercion overcame the Njitors' free will and compelled them sign the Promise to Pay. If the Njitors did not sign it, they would not have received the significant funds to rebuild their home, for months or possibly years, while the parties litigated the matter, delaying important time for the Njitors to rebuild not only their home, but their life. The district court erred in concluding that the Njitors were not coerced into signing the Promise to Pay. This Court should reverse and enter judgment in favor the Njitors concerning the district court's finding on economic duress for the Promise to Pay, or at the very least reverse and remand to the district court because there is an issue of fact concerning duress.

5. The Promise to Pay was not supported by consideration.

Notwithstanding that the Njitors signed the Promise to Pay under duress, the Promise to Pay also lacked consideration. In fact, the Promise to Pay is more problematic than the public adjusting contract and the district court erred when it concluded the Promise to Pay was supported by adequate consideration. At its most basic level, because there was no consideration for respondent to receive a fee on the dwelling or debris removal payments under the public adjusting contract there can be no consideration for the Promise to Pay. Put another way, the Promise to Pay cannot fix the lack of consideration in the public adjusting agreement for the reasons explained *supra*. Even assuming the public adjusting contract had valid consideration to support the fee for dwelling and debris removal coverages, the Promise to Pay still lacks consideration because it is "based solely on past consideration, which "cannot support a promise to pay." *Cityscapes Dev., LLC v. Scheffler*, 866 N.W.2d 66, 71 (Minn. App. 2015) (citation omitted). The district court erred when it concluded that the Promise to Pay was supported by consideration.

The plain language of the Promise to Pay unequivocally states it is based on past consideration, "[w]e agree to pay Claims, Inc., a partial fee of $71,379.42….for adjusting services for the dwelling, other structures and debris removal portions of our claim for their adjusting services." Doc. 24 at Ex. 8; Add.35; *Travertine Corp.*, 683 N.W.2d at 271. The Promise to Pay is dated October 15, 2024, two months after the contract and Allstate's initial estimate, Doc. 24 at 2 and 8; Add.25-30 and 35, and over 10 days after Allstate issued the dwelling payment. Doc. 24 at Ex. 3. The language in the Promise to Pay creates no new obligations not already in the public adjusting contract, which stated that "[i]nsured(s) agrees to pay and assigns to Adjuster 10% (ten) not to exceed 10% of the amounts paid in settlement of the loss by Insurer(s)…" Doc. 24 at Ex. 5; Add.31. Thus, the Promise to Pay is not supported by valid consideration and is not enforceable.

That respondent demanded that the Njitors sign the Promise to Pay raises the question: if respondent thought its public adjusting contract was enforceable, then why was the Promise to Pay necessary? The answer is that respondent knew the public adjusting contract did not support its claim for a fee on the dwelling or debris removal of the Njitors' claim, so it tried to shore up that deficiency with the Promise to Pay.

Thus, Respondent is not entitled to a fee for the dwelling or debris removal coverages under either the public adjusting contract or the Promise to Pay. The district court erred when it concluded that the Promise to Pay was enforceable. This Court should reverse and enter judgment in favor the Njitors concerning the district court's conclusion that the Promise to Pay was enforceable.

CONCLUSION

When respondent's actions are viewed in their entirety, common sense dictates that respondent is not entitled to a fee for the building, debris removal, withheld depreciation on the personal property, or ALE coverages. Respondent misled the Njitors into signing a contract which had no valid consideration. Respondent tried to shore up its invalid contract by unlawfully threating to withhold over $600,000 of the Njitors' money and coerced them into signing an invalid Promise to Pay. Respondent's actions should not be condoned by this Court.

The district court committed reversible error when it denied the Njitors' motion summary judgment and granted respondent's motion for summary judgment. The Njitors respectfully request that the judgment of the district court be reversed.

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