

**SUPREME COURT
STATE OF NEW MEXICO**

No. S-1-SC-37231

SUSAN L. SIEBERT,
Plaintiff-Appellee,

VS.

**REBECCA C. OKUN, M.D., AND
WOMEN'S SPECIALISTS OF NEW MEXICO, LTD.,**
Defendants-Appellants.

**DEFENDANTS-APPELLANTS' RESPONSE TO MOTION TO DISMISS OR, IN
THE ALTERNATIVE, STRIKE NOTICE OF APPEAL
REGARDING AN AWARD OF COSTS**

Plaintiff-appellee Susan Siebert's motion to strike or dismiss Defendants-appellants' appeal of the district court's order awarding costs should be denied because the appeal raises issues that should be reserved and remanded to the court of appeals.

1. Defendants appealed the district court's order awarding Plaintiff over \$85,000 in costs without a hearing (8 RP 1864-66), and the court of appeals consolidated that appeal with Defendants' appeal of the district court's order holding the New Mexico Medical Malpractice

Act's ("MMA") damages cap unconstitutional before certifying the appeal to this Court under Rule 12-606 NMRA. As the court of appeals recognized in its Order of Certification, Defendants' appeal of the district court's decision to invalidate the MMA raises significant questions of law that are of substantial public interest because the ruling impacts the affordability and availability of healthcare in New Mexico, as well as the solvency of the Patient's Compensation Fund. *See* Order of Certification to the New Mexico Supreme Court (Aug. 30, 2018).

2. Because Defendants do not wish to distract the Court from the critical constitutional issues raised by their appeal of the district court's order invalidating the MMA, they have requested that the Court reserve issues relating to the costs appeal for remand to the court of appeals. *See* Brief in Chief at 16. Defendants' appeal regarding the constitutionality of the MMA raises significant legal issues that are of state-wide public importance, while their appeal of the district court's order awarding costs only impacts the parties before the Court. As a result, Defendants' request that the Court reserve the cost issues for remand to the court of appeals is reasonable and should be granted.

For the foregoing reasons, Siebert's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing response was electronically filed in the Court's Odyssey filing system, which caused all counsel of record to be electronically served, on this 26th day of April, 2019.

/s/ Dana S. Hardy