

Item # 11  
Date: 9/22/25

**Kerin Wright**

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**From:** Melissa Johnson <MJohnson@midwestins.com>  
**Sent:** Wednesday, July 2, 2025 2:17 PM  
**To:** Kerin Wright  
**Cc:** Jordan Cook; Erin Mousel; June Nicholson; Elke Withers  
**Subject:** RE: Upton, tree damage 2025.pdf  
**Attachments:** Upton, tree damage 2025.pdf

Warning: Unusual sender <mjohnson@midwestins.com>

You don't usually receive emails from this address.  
Make sure you trust this sender before taking any actions.

Hello Kerin,

When these requests come in front of the Council, I would like you to provide them with this statement from me each time.

Council Members,

While we empathize with the resident's unfortunate loss, I respectfully urge the council not to take action that would supersede the City's governmental immunity and voluntarily reimburse this claim out of a sense of moral obligation alone.

Doing so sets a precedent that may have far-reaching implications. Governmental immunity exists to protect municipalities from liability in situations where the law does not impose responsibility. If the City begins making exceptions based solely on perceived fairness, it undermines the purpose of this legal protection and significantly complicates your ability to consistently deny similar future claims, even when those claims are clearly not covered by insurance and not legally the City's responsibility.

This would not only expose the City to increased financial risk but also blur the line between legal liability and moral sympathy, opening the door to arbitrary decision-making and unequal treatment of residents.

I urge the Council to remain consistent with legal standards and uphold the immunities afforded to the City by law. While compassion is important, it should not override sound legal judgment or established policy.

Thank you for your consideration.

Melissa Johnson  
President, Midwest Insurance Corporation

MJ

Melissa Johnson  
President



Federated Mutual Insurance Company  
PO Box 486  
Owatonna, MN 55060-0486  
Phone: (800) 533-0472  
Fax: (866) 636-8660  
Email: [pcclaims@fedins.com](mailto:pcclaims@fedins.com)

08/22/2025

Kim Upton  
935 T Ave  
Nevada, IA 50201

Claim Number: 860009-1  
Named Insured: Con-Struct Incorporated  
Date of Loss: 03/05/2025

Dear Mr. Upton:

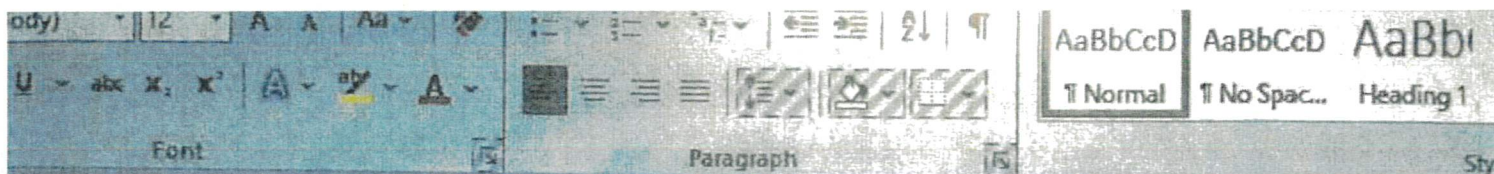
We have completed our investigation into the above claim in regard to your Property damage from a blown over tree from the 3/5 storm. Our investigation showed that Con-Struct Incorporated is not legally liable for the damages being claimed, as this was an Act of God, and the windstorm is the cause of the damages, not the work from my insured.

The policy which Con-Struct Incorporated is insured under with Federated Mutual is a General Liability Policy with effective dates of 12/01/2024 – 12/01/2025. Our policy only provides coverage for damages for which our insured is legally liable. Because our insured is not liable in this case; we must respectfully decline payment for your damages.

We recommend turning a claim in with your homeowner's insurance carrier if you have the appropriate coverage. Please feel free to contact me if you have any questions.

Sincerely,

Jason Williamson  
Claims Representative  
952-820-2315



Sirs:

I have a problem I would like to tell.

Last year 2024 there was a street replacement project o H ave. I own a property at 916 H ave. The street was removed in order to be replaced, there was a very big pine tree in the right of way that had a huge tap root that went north out under the street that was deemed necessary to be removed in order to proceed. The contractor took it upon themselves to cut the tap root. As far as I know Joe Mosel was not informed, it was just done.

Now in March of 2025 we have a wind storm that blew from the north and the tree fell south on to the house. I contacted the city and I had the tree removed off of the roof, repaired the roof, and replaced the gutter.

I am being told that the city is not responsible for right-of-way trees. This I understand.

This situation I see as a very different case. The cause of this tree going down was caused by the actions taken of removing this huge tap-root and nothing else, This tree had to be some 60-70 years old, stood some 60-70 feet tall, had no problems at all until this huge tap-root was cut.

So, I think this is a very different situation and is not my responsibility to foot the bill.

Kim Upton

Accessibility: Good to go



Search



## JCs Seamless Gutters

239 Maple Ave  
Nevada, Iowa 50201  
712-297-0801



# Invoice

Submitted on 03/18/2025

**Invoice for**

Kim Upton

916 H Ave

Nevada, Iowa

koupton53@yahoo.com

**Payable to**

JC's Seamless Gutters

**Project**

repair of tree

| Description        | Qty | Unit price | Total price |
|--------------------|-----|------------|-------------|
| 5" Seamless Gutter | 47  | \$9.50     | \$399.50    |
| Left Cap           | 1   | \$1.75     | \$1.75      |
| Right Cap          | 1   | \$1.75     | \$1.75      |
| Outlet             | 1   | \$3.00     | \$3.00      |
| Hangers/screws     | 24  | \$1.75     | \$42.00     |

Notes:

Subtotal

\$448.00

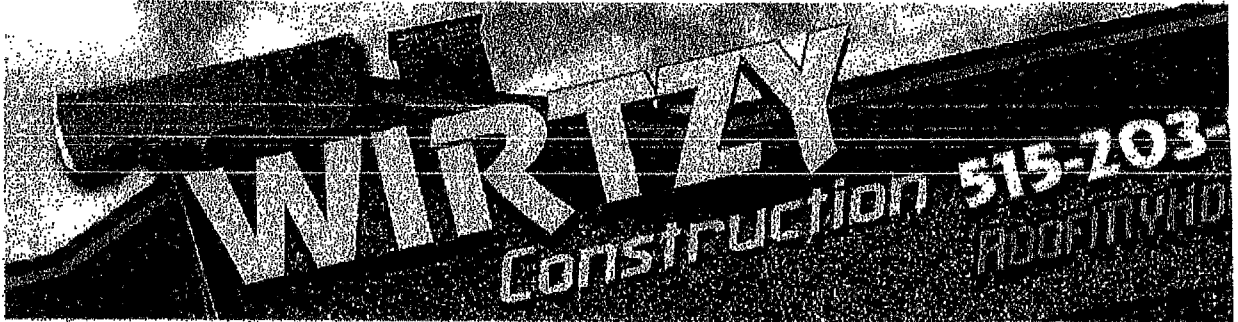
**\$448.00**

JOSH WIRTZ

Kim Upton 916 H Ave ... • Open message

Kim Upton 916 H Ave Roof Repair Invoic...

File 1 of 3



**BILL TO :**

KIM UPTON-UPTON RENTALS  
916 H AVE RENTAL  
NEVADA, IA

**Inv**

**DATE**

3/6/2025

**TERMS**

| ITEM   | DESCRIPTION                                   | QTY | RATE  |
|--------|-----------------------------------------------|-----|-------|
| REPAIR | REPAIR ROOF: REPLACE DAMAGED SHINGLES ON ROOF | 1   | 425.0 |

# Robb's Tree & Stump Service

Invoice Issued : 3/9/25

3811 Wilson Ave.  
Story City, Iowa 50248  
(515) 520-7175

Kim Upton  
935 T Ave.  
Nevada, Iowa 50201

BALANCE DUE

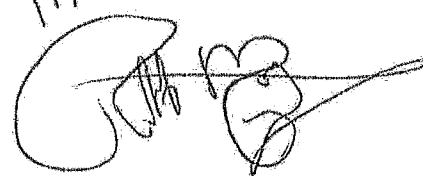
Upon Receipt

**\$1800.00**

| Item Description                          | Quantity | Unit Price | Total     |
|-------------------------------------------|----------|------------|-----------|
| Storm Damage, Remove Pine tree off house. |          |            | \$1800.00 |

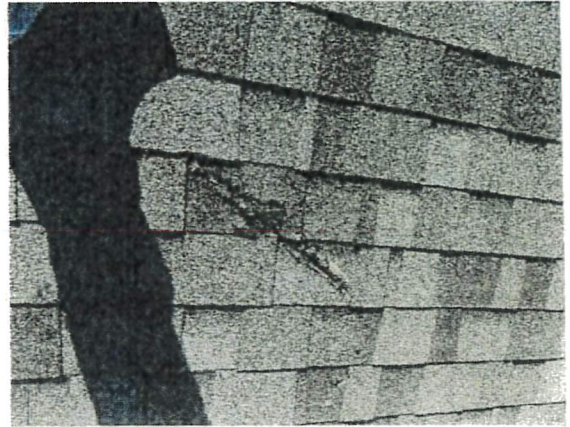
Subtotal \$0.00

Tax - 0% \$0.00

Thank You,  


NOTE: If this invoice is not paid within <sup>15</sup>~~30~~ days of the issued date above then we will mark up 20 % of the balance due and reissue the invoice. If there are any issues or questions please contact us at phone number above or 515-520-1577.





**Kerin Wright**

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**From:** Bernie Gachette <bgachette@icapiowa.com>  
**Sent:** Monday, June 30, 2025 9:55 AM  
**To:** Kerin Wright  
**Cc:** mjohnson@midwestins.com  
**Subject:** Claim #040555-000427-GD-01 Claimant: UPTON, KIM

**Warning: Unusual sender** <bgachette@icapiowa.com>

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Good morning,

We have concluded our handling of the above referenced matter and have issued our denial to the claimant. At this time, we will be closing our file. Please let me know if you have any questions or concerns.

Thank you,

**Bernie Gachette** | Claims Adjuster

(T) 515-440-8405

12951 University Ave. Ste: 120, Clive, IA 50325

[bgachette@icapiowa.com](mailto:bgachette@icapiowa.com) | [www.icapiowa.com](http://www.icapiowa.com)