Dedicated to improving our civil justice system

IOWA DEFENSE COUNSEL ASSOCIATION

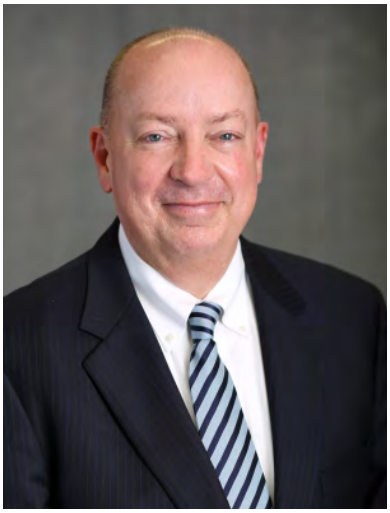
DEFENSE UPDATE

FALL 2019 VOL. XXI, No. 4

Find us on Facebook, Twitter & LinkedIn

IOWA CODE § 613.18: SOME QUESTIONS ANSWERED AND SOME ANSWERS QUESTIONED

Kevin M. Reynolds[1], Clark J. Butler[2], Whitfield & Eddy, PLC, Des Moines, Iowa



Kevin M. Reynolds

Clark J. Butler

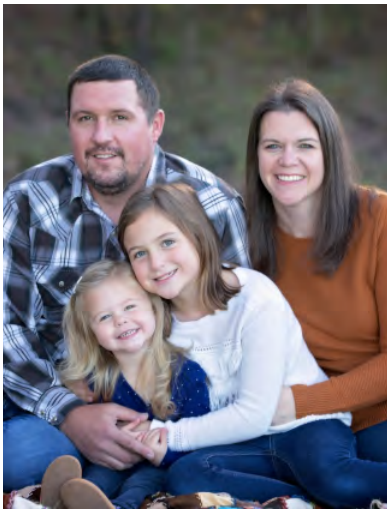
INTRODUCTION

Many parties in the commercial chain of distribution of products are neither designers nor manufacturers yet, under the liberal standards of recovery established by the former Restatement (Second) of Torts, § 402A, they had vicarious liability for any design, manufacturing or warnings defect contained in every product they sold. The now-obsolete "strict liability" label for a defective product embossed itself onto to any seller in the chain of distribution of a product, whether they be a wholesaler, distributor, retailer or other supplier. So long as they were "in the business of" selling products, liability for a product defect automatically attached to the defendant's

Continued on page 6

WHAT'S INSIDE

IDCA President's Letter



Kami Holmes
IDCA President

I became a member of the IDCA in September of 2006 and attended my first Annual Meeting one day after I learned that I passed the bar. As that Annual Meeting was held at the same hotel that I had taken the bar exam months earlier it still gave me an uncomfortable and uneasy feeling being there to say the least, but the members made me feel welcome. I joined the IDCA because I was told to by the partners I was working for at Swisher & Cohrt; there was no choice, but I was told it would be integral to my practice. At that time, I had no idea what being a member would entail or how being a member of this organization would prove to be one of the things I am most proud to be a part of. Now, here I am, 13 (short) years later serving as the fourth in-house counsel and sixth woman to hold the position of President of this great organization. I am very honored and humbled to have the opportunity to serve you in this role and hope that this year will be a year of learning and one of growth.

In trying to figure out what words of wisdom to write, I thought this would be a good opportunity to highlight some of the things the IDCA can do and is doing for you. Unfortunately, I think a lot of our offered benefits go forgotten, or are underutilized, simply because of not knowing, and perhaps, the reason for this is that our benefits are not being adequately showcased. We have also made some changes to better serve our membership that may be unknown to all. So here we go.

ANNUAL MEETINGS!

Our flagship benefit is our Annual Meeting and Seminar. I think this is obvious and well known to most. We had our 55th Annual Meeting a few short months ago and it was quite a success. Approximately 190 members attended the Annual Meeting; currently we are approximately 330 members strong. To have an almost 60 percent participation in our annual meeting is outstanding. We really try to put on an amazing meeting and select presenters that will give our members presentations on current trends and topics. As I was the person in charge of organizing this past year's event, I can tell you that this is no small feat. This year we were able to hear from 10 judges and three doctors, along with a number of other talented speakers, including a presentation on attorney wellness and two hours of ethics, which were both presented in a way that wasn't mind numbing and was actually enjoyable as well as educational.

Beginning January 1, 2021, Iowa attorneys will be required to attend one hour of legal ethics every calendar year for continuing legal education (CLE) requirements, which is a change from the ethics requirement of three hours of legal ethics every two calendar years. In addition, beginning January 1, 2021, Iowa attorneys must attend one hour of CLE on the subject of either attorney wellness or diversity and inclusion every calendar year. I feel that we are already ahead of the curve on providing our members with CLE's that meet these new requirements.

In addition, our annual meeting and seminar is always discounted for members.

GRADUATED FEE STRUCTURES! FREE MEMBERSHIP FOR CLAIMS PROFESSIONALS!

As previously indicated, presently we are 330 members strong, and I hope this number will continue to increase this year. In recent years past, we implemented a graduated fee structure where first time lawyer members enjoy their first year of IDCA membership at no cost; whether a lawyer has been practicing for years, or whether newly minted, they can join for free so long as they have never been a member of our organization before. After the first year, a lawyer in their second year of practice will only pay $70 for their second year of membership. A lawyer in their third year of practice will only pay $110 for their third year of membership. A lawyer in their fourth year of practice will only pay $150 for their fourth year of membership and a lawyer who has practiced five or more years will pay $275 a year for membership.

In addition, we offer FREE membership to claims professionals. This free membership does not apply to lawyers who are handling claims, but any other person actively engaged in work relating to the handling of civil claims and litigation are eligible for this membership. What a great opportunity this is! This partnership should enable us to have frank discussions with each other to help address issues that insurers and their counsel each face.

In addition, this gives us a unique opportunity to foster greater growth and understanding of the industry-counsel relationship including the legal and ethical issues surrounding the same. It also allows for claims professionals to be able to talk with others outside of their own respective companies about issues they are seeing on a daily basis.

In addition to the free membership, claims professionals receive a deeply discounted rate of $100 to attend the Annual Meeting and Seminar.

Please make sure the adjusters and companies you work with know about this awesome benefit.

NETWORKING!

At the Annual Meeting I mentioned that I would pay the $275 membership fee every year just to get to network with all of you fine lawyers, and it's true! Seriously, networking is an invaluable benefit we have in being a part of this organization. Whether it be by volunteering for or attending a skills academy program, attending the annual meeting or discussing an idea on our Listserv or celebrating a win, every time we connect with someone from this organization it gives us an opportunity to go outside of our firm/office confines and talk to someone who knows our profession and what kind of work we handle on a day to day basis. Who better to talk to than someone who really gets it? Not only can you discuss your job with some of the most respected defense attorneys, insurance professionals, and corporate counsel from Iowa and surrounding states, but I would guess that you have also met some of your best friends through this organization.

LISTSERV!

Did you know that we have a Listserv? I would venture to guess that most of you did not know this fact or you did, and you don't care. Hear me out. I admit that it is a rare thing to get an email message through the Listserv, and when I do get a message from the Listserv it is usually someone looking for an expert in a particular field. Although this information would be super helpful to have, unfortunately what happens more often than not is that people will respond directly to the person making the request rather than replying through the Listserv (I am guilty of this too). Clearly, this is not how Listservs are supposed to work.

Here's the thing, the Listserv doesn't need to be used just for asking for help. The Listserv can be used for all sorts of things including making suggestions or submitting ideas to better the IDCA, a sounding board, discussing recent appellate cases, sharing a news article on a particular topic that would be of interest to others, or even sharing a recent case win! While the Listserv idea may be archaic and outdated to some, or may seem too risky to others, this is a very easy way to stay connected to other members of the IDCA. You have access to most of our 330 members by sending one email. The purpose of the Listserv is simply to provide IDCA members an additional opportunity for networking outside of IDCA meetings and other functions so let's start discussing some things with each other and engage!

So how do our members subscribe to the list? Sign in to the IDCA website. Once you are signed in you will see a "members" heading on the far top right. Once you highlight this field Listserv will be one of the options listed underneath. Once you click on Listserv, there will be a subscribe/unsubscribe link. Click on this link and the rest is self-explanatory.

JURY VERDICT DATABASE!

I think this is truly one of the most underutilized benefits we have. Our database includes information such as the caption of the case, the case number, trial date, county, injury, type of case, last demand, last offer, attorneys names, plaintiff and defendant expert names, Plaintiff's age and sex, whether there were any affirmative defenses, results, specials, and a spot for additional comments that you can enter which may be useful for others to know. The database is searchable by any of the fields listed above. So, what's the catch? The catch is that you have to log into the website and enter the jury verdicts that you are getting so that others can have the benefit of utilizing this information. Currently we have approximately 300 verdicts in our database; if we had participation from all of our members in entering this information think of the vast amount of information we would have. You already know about your case, why not take a few extra minutes to enter some information on the IDCA website.

So, how do our members enter information into the database? Once again, you need to sign in to the IDCA website. Once you are signed in you will see that "members" heading on the far top right. Once you highlight this field "enter jury verdicts" will be one of the options listed underneath. Once you click on "enter jury verdicts", you will then click the "+" icon to add a new Jury Verdict into the database and the rest is self-explanatory. It really only takes a few minutes to provide this useful information to your fellow members.

LEGISLATIVE LOBBYIST!

We have an experienced lobbyist who tracks and monitors legislation that affects the civil defense bar and then advocates our position to legislative leaders and explains the importance and effect of new legislation, or what the amendment of

existing laws and regulations would mean to our profession and our clients. Our lobbyist also provides a weekly report when the state legislature is in session to facilitate dissemination of information to our members.

Our lobbyist was integral in getting the bill passed to amend Iowa Code Section 321.445 to provide that a plaintiff can be assigned up to 25 percent fault if the failure to wear a seat belt contributed to the plaintiff's claimed injuries. Prior to the amendment, the potential amount of comparative fault was only five percent.

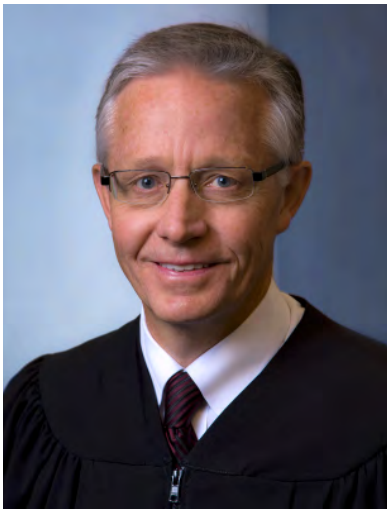
AMICUS BRIEFS!

Yes, we participate in writing and submitting Amicus Briefs. We have participated in submitting a number of briefs within the past few years; many of these briefs were highlighted and discussed at our past Annual Meeting. With that being said, if you have a case that you feel the IDCA would have a strong interest in, please email me directly or any of our Officers and Board members. In addition, there are always ample opportunities for you to write an Amicus Brief when a request for has been made by an IDCA member and the board of directors decides the IDCA should help by submitting a brief.

As evidenced above, membership in the IDCA is one of the best investments you can make in your career; not only does it increase your exposure in the legal defense community but you can build your resume, explore leadership opportunities, and receive education specific to your areas of practice. I would encourage you to not only renew your membership when the time comes, but to also invite others to join with us.

In closing, I'd like to thank you for allowing me to serve as your President. The main goal of our organization has been, and will be always be, to serve our members; I will work very hard to continue this model by supporting, engaging, and promoting our members and their interests in whatever way necessary to accomplish this goal. With this in mind, however, it is hard to maintain the excellence of any organization without people willing to volunteer their time. We are always looking for members to help in various areas of the Association; some of these areas were noted above. If you are interested in volunteering, please email me directly or any of our Officers and Board members. As always, the Board welcomes your comments and suggestions on what we can do to help you. Let's work together to make sure this year is a great one!

Iowa Supreme Court Chief Justice Mark Cady Died Unexpectedly on November 15, 2019, in Des Moines



Chief Justice Cady

Chief Justice Cady was born in Rapid City, South Dakota, and earned his law degree from Drake University in 1978 where he became a member of the Order of Coif. After graduating from law school, he was a judicial law clerk for the Second Judicial District for one year and then practiced with a law firm in Fort Dodge. He also served as an assistant Webster County attorney. He was appointed a district associate judge in 1983 and a district court judge in 1986. He was appointed to the Iowa Court of Appeals in 1994 and was elected chief judge of that court in 1997. He was appointed to the Iowa Supreme Court in 1998 and selected by the court to serve as chief justice in 2011. Over the years he served on numerous boards and task forces, both state and national, related to the court system as well as authoring and coauthoring many law review articles and delivering lectures and remarks at symposiums and seminars throughout the nation. He is the recipient of awards from numerous organizations.

Chief Justice Cady strove to make the Iowa Court system which he loved deeply the best in the country. He really cared for this state and its people. He has been described by his colleagues on the Court as being compassionate, caring, eloquent, a careful decision maker, thoughtful and fair-minded and as a man with an outstanding legal mind and intellectual integrity whose words of wisdom were respected. His dedication, thoughtfulness, courage, honor and fair-mindedness will truly be missed.

Chief Justice Cady is survived by his wife of 37 years, Rebecca, two children, Kelsi Fraser and Spencer Cady, and four grandchildren.

Continued from Page 1

status as a "seller." This "strict products liability for sellers" rule was pro-plaintiff and pro-recovery. All a claimant had to do was sue the party from whom they purchased the defective product; in many cases the seller would then "pass the buck up the line" to the ultimate designer or manufacturer of the product. A plaintiff could also file suit against the local retailer for products liability, destroying diversity of citizenship, thereby making it impossible for an out-of-state products manufacturer or designer to remove the case to federal court under removal jurisdiction. *See* 28 U.S.C. §§ 1332 and 1441 (2018). From products liability defense counsel's point of view, quite often a state court venue inured to claimant's benefit (and to the product manufacturer's detriment) as well.

Vicarious liability for mere pass-through sellers of defective products is no longer the law in Iowa. This has been true pursuant to a modest "tort reform" effort and statutory enactment that took place at the same time the Iowa Comparative Fault Act was adopted back on June 8, 1986. *See* Iowa Code § 613.18 (2019). A federal district court sitting in Iowa has upheld the statute in the face of a constitutional attack. *Johnson v. American Leather Specialties Corp.,* 578 F. Supp. 2d 1154, at 1177-8 (N.D. Iowa 2008) (Iowa Code § 613.18 is not an unconstitutional taking in violation of the Fifth and Fourteenth Amendments of the United States Constitution, nor is it violative of the Inalienable Rights Clause of the Iowa Constitution). The purpose of Iowa Code § 613.18 is to provide products liability immunity to entities that are not assemblers, designers or manufacturers of products, and to ensure that liability extends only to those who design or manufacture a product. *Merfeld v. Dometic Corp.,* 306 F. Supp. 3d 1070 (N.D. Iowa 2018), aff'd 2019 WL 5235291, __F.3d __ (8th Cir. 2019); *see also Hillrichs v. Avco Corp.,* 478 N.W.2d 70, *reh'g denied* (Iowa 1991) (strict liability and implied warranty claims against farm equipment dealer were not warranted; dealer did not sell equipment, but only provided mechanical services to connect power unit purchased from another source). This change was consistent with the adoption of the Iowa Comparative Fault Act, where a proportionate share of liability is placed on the party engaged in the conduct at issue.

The purpose of this article is to more closely examine Section 613.18, and to highlight some of the defenses and arguments available to product sellers who may be in the commercial chain of distribution of a product, yet are not actual product designers, manufacturers, assemblers or providers of product warnings and instructions.

THE STATUTE

Iowa Code Section 613.18 provides as follows:

613.18. Limitation on products liability of nonmanufacturers

1. **A person who is not the assembler, designer, or manufacturer, and who wholesales, retails, distributes, or otherwise sells a product is:**

   a. **Immune from any suit based upon strict liability in tort or breach of implied warranty of merchantability which arises solely from an alleged defect in the original design or manufacture of the product.**

   b. **Not liable for damages based upon strict liability in tort or breach of implied warranty of merchantability for the product upon proof that the manufacturer is subject to the jurisdiction of the courts of this state and has not been judicially declared insolvent.**

2. **A person who is a retailer of a product and who assembles a product, such assembly having no causal relationship to the injury from which the claim arises, is not liable for damages based upon strict liability in tort or breach of implied warranty of merchantability which arises from an alleged defect in the original design or manufacture of the product upon proof that the manufacturer is subject to the jurisdiction of the courts of this state and has not been judicially declared insolvent.**

3. **An action brought pursuant to this section, where the claimant certifies that the manufacturer of the product is not yet identifiable, tolls the statute of limitations against such manufacturer until such time as discovery in the case has identified the manufacturer.**

Section 613.18 was intended to eliminate vicarious liability for product defects for wholesalers, retailers, distributors or other nonmanufacturers of products where the plaintiff has a viable claim against the product designer or manufacturer. If a claimant can obtain jurisdiction over the manufacturer and the manufacturer has not been declared insolvent, then there is no need for a vicarious products liability rule against retailers, wholesalers or distributors. However, the text of the statute and Iowa cases in both state and federal court interpreting it since 1986 do not so limit its application, and in many respects, the protections afforded to defendants are significantly greater than was possibly intended.

TEXTUAL ANALYSIS

a. The title: "products liability" and "nonmanufacturers."

The title to the statute indicates that it applies to "products liability" actions. The cases are in accord. *See, e.g., Des Moines*

Flying Serv., Inc. v. Aerial Services, Inc., 880 N.W.2d 212 (Iowa 2016) (§ 613.18 does not apply to a claim solely for economic loss; case involved a warranty claim for a defective windshield on an airplane, where only replacement of the windshield was involved). By way of its title, the statute also does not apply to manufacturers. Instead, it applies only to "nonmanufacturers" which are further identified in the statute as any entity "[w]ho wholesales, retails, distributes, or otherwise sells a product. . . ." *See, e.g., Stoffel v. Thermogas Co.,* 998 F. Supp. 1021 (N.D. Iowa 1997) (pipeline company that transported propane in bulk to shipper could not be held strictly liable for design defect in odorized propane, even though the pipeline company odorized the propane for the shipper, where the propane was odorized in the manner directed by the shipper).

b. Section 1(a) of the statute provides immunity to nonmanufacturers for design and manufacturing defect claims.

Section 1(a) of the statute does not apply to assemblers, designers or manufacturers of products. Although these terms are not defined in the statute, they have a customary and ordinary meaning in the products liability context. Under the statute, neither designers nor manufacturers are immune from strict liability actions. *Bredberg v. Pepsico, Inc.,* 551 N.W.2d 321, *reh'g denied* (Iowa 1996). It should be noted, however, that *Bredberg* was decided in 1996, well before the Iowa Supreme Court "abandoned" the strict liability label in *Wright v. Brooke Group,* decided in 2002 (discussed *infra*). The purpose of the statute is to ensure that liability extends only to those who have some responsibility for the design or manufacturing defect in the product at issue. *Merfeld*, 306 F. Supp. 3d at 1070; *Vandelune v. 4B Elevator Components Unlimited,* 148 F.3d 943 (8th Cir. 1998), *cert. denied,* 525 U.S. 1018 (motion to amend complaint was correctly denied, since § 613.18 granted immunity to entities who did not manufacture or design the product).

In order for Section 1(a) of the statute to apply, a defendant must be a wholesaler, retailer, distributor or other seller of a product. *See, e.g., Housley v. Orteck Intern., Inc.,* 488 F. Supp. 2d 819 (S.D. Iowa 2007) (wholesaler of tire that exploded while being mounted was immune under the statute from design or manufacturing defect liability). These terms also have common, ordinary meanings in the products liability context. The term "or otherwise sells a product" is more general in nature and is not defined in the statute. Since most jurisdictions do not impose strict liability for a product defect in the sale of a used product, this could refer to a commercial seller of products that is not otherwise immune from strict liability. *See, e.g., Grimes v. Axtell Ford Lincoln-Mercury Co.*, 403 N.W.2d 781 (Iowa 1987) (seller of used vehicle not strictly liable for an unknown, latent defect in an axle that caused an accident).

Subsection (1)(a) provides that the defendant will be "[I]mmune from any suit based upon strict liability in tort or breach of implied warranty of merchantability which arises solely from an alleged defect in the original design or manufacture of the product." *See also Johnson,* 578 F. Supp. 2d at 1154. It is vitally important to note that this section *does not* require any showing of jurisdiction against the manufacturer, or that the manufacturer is not insolvent. This is a common misperception. *Merfeld*, 306 F. Supp. 3d at 1070 (the first subsection of Section 613.18 is not dependent upon proof that the manufacturer is subject to the jurisdiction of the court). Clearly the statute is drafted this way, but why the legislature made a distinction between defective design or manufacture claims, on the one hand, and failure to warn claims on the other, is unknown.

What the term "strict liability" means now, in light of its abandonment in Iowa in 2002, will be further discussed below.

c. Subsection 1(b) of the statute provides immunity to nonmanufacturers for "failure to warn" claims.

Subsection (1)(b), on the other hand, requires a showing that the manufacturer of the product is subject to the court's jurisdiction, and has not been declared insolvent, before any potential non-liability for damages will occur. This section has been interpreted by the Iowa Supreme Court to apply to "failure to warn" claims. *See Bingham v. Marshall & Huschart Mach. Co. Inc.,* 485 N.W.2d 78, 80 (Iowa 1992) ("[P]aragraph 613.18(1)(b) limits strict liability and implied warranty claims *when the claims do not arise solely from an alleged defect in the original design or manufacture of the product*. Examples of suits arising under paragraph 613.18(1)(b) *include suits under strict liability for failure to warn about the dangers of the product*") (emphasis added). Yet, in order for this "non-liability for damages" to apply, the manufacturer must be subject to the jurisdiction of Iowa courts. *See* Iowa Code, at 613.18(1)(b) (2019); *id*. at 80.

Thus, if a wholesaler, retailer, distributor or other seller of a product is sued for failure to warn, then in order to be found "[N]ot liable for damages based on strict liability in tort or breach of implied warranty of merchantability," personal jurisdiction over and solvency of the manufacturer must be shown. Why failure to warn claims are treated differently than manufacturing defect or design defect claims in the statute has never been explained in any of the cases (state or federal) discussing the statute. Perhaps the drafters thought it would be easier (or less of a burden) for a nonmanufacturer to add a warning or instruction, based on its experience with selling the product, and possibly

getting "feedback" from its direct customers, as compared to being responsible for a product's design or manufacture? But this is merely speculation on our part. Another explanation (perhaps more likely) is that in the course of the legislative process, the language was confused and muddled, and the statute's immunities (whether for design defect, manufacturing defect or failure to warn defect) were meant to apply only where the jurisdiction could be gained over the manufacturer, and the manufacturer was solvent. A statute that clearly provided for this would in some ways make more sense than the way § 613.18 is currently drafted. The statute has never been amended since its original enactment in 1986, however, and no Iowa appellate court has indicated that it should be changed or corrected.

d. Why does Subsection (1)(a) use the terms "immune from suit," but Subsection (1)(b) says "not liable for damages?"

Whether the drafters intended to make a meaningful distinction here is unknown. This is another puzzle of this statute, and the authors do not have a definitive answer. From a defendant's standpoint, whether you are "immune from suit" or "not liable for damages," the result is the same: *you are not responsible and have no liability and you don't have to pay any money.* The difference in wording here may be a "distinction without a difference." Justice Andreasen in *Bingham v. Marshall & Huschart Mach. Co. Inc.,* 485 N.W.2d 78, 80 (Iowa 1992) noted this difference in language, and could only muse that ". . . [T]he statute is not a model of clarity." This word choice might have originated with a uniform comparative fault statute that may have been the origins of this statute in the first place, although this is only conjecture on our part.

e. Section 2 and "assemblers."

Section 2 of the statute applies to nonmanufacturers of products who do not design or manufacture the product, but "assemble" a product. For example, assume that Target sells a bicycle. As a part of that retail sale, assume further that Target receives the bike from Taiwan in a box, opens the box, assembles the bike, adjusts the brakes, and the bike is involved in a subsequent accident. If it can be shown that improper assembly was a cause of the accident, then Target is not immune from products liability. It should also be said that pursuant to its language, 613.18 does not apply to claims based on negligence. In the example above, the claim against Target would essentially be for negligent assembly of the bicycle. But if a product defendant does not assemble a product in any way, for example, if the nonmanufacturer is just a pass-through entity, then Section 2 of the statute does not apply.

A principled argument could be made that Section 2 of the statute is unnecessary. If a defendant's conduct is not a cause of an accident, then there is no liability under the "but-for" or cause-in-fact test of causality. This is true whether they are an "assembler" of a product or not. This is hornbook causation law, and has nothing to do with special liability or duty rules governing "assemblers" of products.

Another curious aspect of Section 2 is that it could be read to say that if jurisdiction over the manufacturer (and solvency) *cannot* be shown, then a product retailer who assembled the product would have strict products liability, even though the assembly conduct had nothing to do with the cause of the accident. But this makes no sense under causation law as well. *See, e.g., Thompson v. Kaczinski,* 774 N.W.2d 829, 836 (Iowa 2009) (to prove causation you must prove factual cause (or cause in fact) and scope of liability). If a retailer's assembly conduct did not cause the accident, then there is no liability, period. That is a failure to prove causation. This is true irrespective of whether or not the court has jurisdiction over the manufacturer or the manufacturer is solvent.

In *Stoffel v. Thermogas Co.,* 998 F. Supp. 2d 1021 (N.D. Iowa 1997), a propane shipper was found to be entitled to immunity for defective design and manufacture under 613.18, when it odorized propane that it had shipped in accordance with the instructions of the shipper. Although the court did not do so, *Stoffel* also could have been analyzed under the "assembler" immunity in Section 2 of the statute: although Thermogas "assembled" the propane by odorizing it, that "assembly" conduct did not cause the accident; instead, defective design or manufacture was the cause.

Every now and then you will come across a products case where a plaintiff has made a claim for "defective installation." The term "assembler" may have the same meaning as an "installer" for purposes of how the statute works in a given case, if a nonmanufacturer is involved. *See, e.g., Nationwide Agribusiness Ins. Co. v. SMA Elevator Constr. Inc.*, 816 F. Supp. 2d 631, 645 (N.D. Iowa 2011); and *Weyerhaeuser Co. v. Thermogas Co.,* 620 N.W.2d 819, 824 (Iowa 2000), both discussed infra.

f. Subsection 3 of the statute and how "tolling" of the limitations period operates.

Section 3 allows tolling of the statute of limitations under certain, limited circumstances. *Compare* Iowa Code § 668.8 (2019) (tolling provision under the Iowa Comparative Fault Act; it allows a defendant to bring in a third-party defendant even after the limitations period on the underlying claim has expired; *see also Reese v. Werts Corp.,* 379 N.W.2d 1 (Iowa 1985)). The tolling that is permitted by § 613.18(3) means that the original statute of limitations (for example, two years in a personal injury, products action) is merely suspended pending identification, and not that a new two-year limitations period begins anew when the

manufacturer is identified. *Harrington v. Toshiba Mach. Co., Ltd.,* 562 N.W.2d 190 (Iowa 1997). In *Harrington*, plaintiff was injured by a computer boring machine manufactured by Toshiba. Two days before the two-year limitations period for his personal injury suit was to expire, plaintiff was still uncertain as to who had manufactured the component that caused his injury. *Id*. He certified this fact under Section 613.18(3). *Id*. Although the plaintiff discovered that Toshiba was the manufacturer, plaintiff did not sue Toshiba until May 17, 1995. *Id*. The court held that plaintiff had only two days after February 7, 1994 (the date he discovered the identity of the manufacturer) within which to bring Toshiba into the suit, and since they did not meet that deadline, there was no tolling under Section 613.18(3). *Id*.

4. If a case includes claims for manufacturing defect, design defect and liability for failure to warn, does that mean that jurisdiction over the manufacturer and lack of insolvency has to be shown in order for there to be immunity?

The answer to this question is "no" based on *Bingham*. 485 N.W.2d at 78. Instead, if a product retailer can show that it did not design or manufacture the product, then all products claims based on defective design or manufacture will be dismissed. If the case also includes a claim for failure to warn, then that claim may be dismissed, also, but only if jurisdiction over the manufacturer and solvency can be shown. *Id*.

In *Bingham*, plaintiff stated claims for strict liability, breach of implied warranty and negligence. *Id*. at 79. Plaintiff's claims included a claim for failure to warn. *Id*. Nevertheless, the trial court applied 613.18(1)(a) and dismissed plaintiff's claims for design and manufacturing defect. *Id*. The failure to warn claim was not dismissed, however, since the manufacturer of the table-feed drill at issue was defunct and in bankruptcy. *Id*. The failure to warn claim went to trial. *Id. Bingham's* interpretation of the statute and the way the trial court handled the case under 613.18 was affirmed on appeal. *Id*.

The authors understand that the statute could be read to provide for no immunity if the case involves the three typical claims of defective manufacture, defective design, and failure to warn, but it is critical to note that this is not how the Iowa Supreme Court interpreted the statute in *Bingham*. *Id*.

5. Who has the burden of proof as to the immunity from liability provided for by Section 613.18?

Erickson v. Wright Welding Supply, Inc., 485 N.W.2d 82 (Iowa 1992) discussed whether the immunities provided by Section 613.18 are an affirmative defense that must be plead or proven by defendant, or is an element of plaintiff's case. More importantly from the standpoint of the defense practitioner, *Erickson* determined which party has the burden of proof on this defense. *Id*. Since this is akin to a legal defense, at first blush one might think that the *defendant* would have the burden to plead and prove the facts enabling it to take advantage of 613.18's protections and immunities. Somewhat surprisingly, however, it is just the opposite.

In *Erickson*, there was a fire and explosion at a welding shop. Id. The owner sued a welding supply company and blamed them for the fire. *Id*. The issue was whether Section 613.18 is an affirmative defense that must be plead and proven by defendant. *Id*. A new defendant, Airco, was added to an existing suit, 10 months after the statute of limitations had passed. *Id*. Airco claimed that Section 613.18 applied and provided it with immunity from suit. *Id*. The court considered whether it was an affirmative defense that Airco was required to raise, because Airco had not pled it as a defense. *Id*. at 85. The court concluded it was not an affirmative defense, and that plaintiff was required to prove that defendant was not entitled to immunity under the statute:

> We do not believe the immunity from suit or limitation of liability provided by section 613.18 is an affirmative defense that must be raised in the pleadings and proven by defendant. The plaintiff has the burden of proving the elements of strict liability. Before the adoption of section 613.18, the plaintiff need only show the defendant was a seller. Since the adoption of that statute, a plaintiff must establish the seller is not in the newly defined class of sellers immune from suit or whose liability is precluded by the statute. The plaintiff must prove the elements of its case, including proof that the seller is not immune from suit or is subject to liability.
>
> We thus conclude Iowa Code section 613.18 is not an affirmative defense and need not be raised in responsive pleadings.

Id. at 86.

Thus, in any case where Section 613.18 might be a defense, *plaintiff* has the burden of proof, and *plaintiff* must show, by a preponderance of the evidence, that the immunities granted to defendants under this statute do *not* apply. Plaintiff bears the risk of non-persuasion on this issue. This may be critical in an appropriate case, since if plaintiff fails to meet its burden under the statute, then the defendant is immune from liability.

6. Since "strict liability" was abandoned in Wright v. Brooke Group in 2002, what does the statute mean when it refers to "strict liability in tort?"

One cause of action or theory of recovery for which Section 613.18 will provide legal immunity is a claim based on "strict liability in tort." The term "strict liability" also appears in the Iowa Comparative Fault Act, Iowa Code Section 668. In Section 668.1, "strict liability in tort" is considered "fault" for purposes of the allocation of fault in any case governed by comparative fault. "Strict liability" is also a term used in Iowa Rule of Evidence 5.407, relating to the admissibility of subsequent remedial measures. Such evidence is not inadmissible in a case based on "strict liability in tort." Notwithstanding these references, the "strict liability in tort" label and terminology was abandoned in *Wright v. Brooke Group*, 652 N.W.2d 159 (Iowa 2002). In *Wright*, the Iowa Supreme Court adopted the Restatement (Third) of Torts, Products Liability, and in the course of doing so, abandoned the Restatement (Second) of Products Liability, § 402A and did away with the "strict liability in tort" moniker. *Id*. Since 2002, products liability claims in Iowa were to be referred to as either manufacturing defect, design defect, or failure to warn. *See* Restatement (Third) of Torts, Products Liability, §§ 2(a), 2(b) and 2(c).

In light of *Wright*, Section 2(a) of the Restatement Third sets forth what is, as a practical matter, a "strict liability" test for a manufacturing defect. That section states: "A product . . . contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product. *Wright*, 652 N.W.2d at 159. Thus, the term "strict liability" as used in Section 613.18 should mean that it will insulate a non-manufacturer for liability based on a manufacturing defect theory. This is also consistent with the language in 613.18 that specifically refers to manufacturing defect claims.

The use of the term "strict liability" in Section 613.18 also insulates a non-manufacturer for liability based on a design defect theory. First, as is true with claims for manufacturing defect, Section 613.18 explicitly provides immunity to nonmanufacturers for liability based on defective design. Second, with the Iowa courts' adoption of the Restatement (Third) of Torts, Products Liability, Section 2 in the *Wright* case, a plaintiff is no longer entitled to pursue two different design claims: strict liability design and negligent design. Instead, after *Wright* there is only one design claim, and it is called "design defect." The test for that claim is set forth in Section 2(b) of the Restatement (Third). Third, when Section 613.18 was made a part of the Iowa Code in 1986, product liability cases in Iowa were often described generically as "strict liability" cases. *See, e.g., Bingham,* 485 N.W.2d at 78. In *Bingham*, plaintiff sued the defendant, a non-manufacturer, for strict liability design defect and strict liability manufacturing defect. *Id*. Strict liability in this sense was often used by courts and litigants alike as shorthand for "products liability," and it was used to distinguish such claims from negligence or warranty theories. *Id*. Subsumed within the terms "strict liability" were claims typically based on either manufacturing defect, design defect or failure to warn.

To conclude, the term "strict liability" as used in the statute should be considered a synonym for "products liability," and could mean a claim for manufacturing defect, design defect or warnings defect.

7. Who is a "manufacturer" under the statute?

The last several decades have seen an increase in international trade and commerce, where many products are manufactured overseas and then shipped to the United States. Some of these imported products are branded and labeled with the name of an American company, most likely to take advantage of names that are familiar to U.S. consumers. If a product is made, built or fabricated overseas and later branded with an American company's name, who is the "manufacturer" for purposes of products liability? Is it the overseas entity that makes the product, but is most likely not subject to the jurisdiction of an Iowa court, or is it the company here in the states that puts its name, brand and reputation on the product?

In *Merfeld v. Dometic Corp.,* 306 F. Supp. 3d 1070 (N.D. Iowa 2018), *aff'd* 2019 WL 5235291, __F.3d__ (8th Cir. 2019), a federal district court sitting in Iowa wrestled with the meaning of "manufacturer" within the context of Section 613.18. In this case, a recreational vehicle was parked in a storage warehouse. *Id*. There was a subsequent fire resulting in millions of dollars of property damage, and plaintiffs claimed that the fire originated in a refrigerator that was installed in the RV. *Id*. The refrigerator was manufactured by Dometic AB, a Swedish company, who was not a party to the case. *Id*. However, Dometic Corporation, the RV seller who was a defendant, sent out a recall notice on the refrigerator, where it referred to itself as "the manufacturer." *Id*. At a date sometime after the subject RV was sold, Dometic Corporation (a U.S. company) took over manufacturing operations from Dometic AB. *Id*. at 1078.

In concluding that Dometic Corporation was entitled to the immunities from liability for a non-manufacturer under § 613.18, the court held that the "apparent manufacturer" doctrine in Iowa was no longer good law, given the adoption of Iowa Code Section 613.18. *Id*. The court noted:

> The statute does not create an exception for nonmanufacturing sellers that hold themselves out as manufacturers of a product. As noted above, the Iowa statute does not define "manufacturer." The

> common dictionary definition does not encompass a non-manufacturer that holds itself out as being the manufacturer. Thus, I find that the apparent manufacturer doctrine does not create an exception to § 613.18 and is not viable under Iowa law. As a matter of law, Dometic was not a "manufacturer" of the refrigerator for purposes of the statute.

Id. at 1080-1. As a result, even if a U.S. company has a product manufactured by another country overseas, and puts its name on the product, depending upon the facts of the case, the U.S. company may be insulated from products liability for manufacturing or design defects under § 613.18.

On October 17, 2019, the 8th Circuit Court of Appeals affirmed the grant of summary judgment to the defendant in *Merfeld*. This decision also affirmed the finding that Section 613.18 is an exception to the apparent manufacturer doctrine, which had been followed since 1966 and the *Tice v. Wilmington Chem. Corp.* (discussed infra) case. *See Merfeld v. Dometic Corp.,* 2019 WL 5235291, __F.3d __ (8th Cir. 2019).

8. Who is a "designer" under the statute?

In some cases it is as difficult to discern who is the "designer" of a product, as it is to determine the manufacturer for purposes of the application of Iowa Code Section 613.18. Who is the "designer" of the product? Is it the overseas company that makes it, or is it the U.S. customer that provides detailed specifications for building to the overseas fabricator?Three federal courts sitting in Iowa have provided some enlightening discussions on the subject. *See id*. at 1070; *Allianz Glob. Corp. v. Watts Regulator Co.,* No. 4:14-CV-00253, 2016 WL 4435094 (S.D. Iowa Apr. 7, 2016); and *Nationwide Agribusiness Ins. Co.,* 816 F. Supp. 2d at 631.

In *Merfeld*, the court noted that 613.18 does not define "designer." *Id*. The common dictionary definition of "design" is "to create, fashion, execute, or construct according to plan; devise, contrive." *See, e.g., Nationwide,* 816 F. Supp. 2d at 648 (quoting Merriam Webster's collegiate Dictionary 709 (10th ed. 1995). In *Nationwide*, the court noted that a purchaser who provides a manufacturer with product specifications (such as height, capacity, usage rate, etc.) for the manufacturer to use in designing and constructing the product is not a "designer" within the meaning of Section 613.18. *Id*. The *Nationwide* court explained that such conduct "is simply providing the information any purchaser would provide to get a product designed to meet its requirements, not fabricating the necessary apparatus from raw materials or conceiving or devising the necessary apparatus to fulfill the function." *Id*. In *Merfeld*, the court found that Dometic Corporation was not a designer under the facts of that case, because it did not design the specific aspect of the product (the "boiler tube") that plaintiffs contended was the design defect that caused the fire. 306 F. Supp. 3d at 1070. As a result, Dometic was entitled to the immunities provided for by Section 613.18. *Id*. Thus, even a designer of a product might be entitled to immunity under Section 613.18 if that design conduct is not causally related to the defect in issue. This result also makes sense under a plain-vanilla, but-for causation analysis.

In *Allianz Glob. Corp. v. Watts Regulator Co.*, No. 4:14-CV-00253, 2016 WL 4435094 (S.D. Iowa Apr. 7, 2016), the defendant had provided detailed specifications, including an actual sample product, to the Taiwanese manufacturer of a product, a piping device called a "wye strainer." The product had failed, causing a flood of water and property damage. Presumably, jurisdiction over the manufacturer in Taiwan could not be obtained. The district court denied a motion for summary judgment based on Section 613.18, instead concluding that a genuine issue of material fact existed as to whether the defendant "designed" the product at issue. *Allianz Glob. Corp.,* 2016 WL 4435094, at *5. Interestingly, the defendant's provision of specifications in *Allianz* did not seem to be markedly different than Dometic's provision of specifications in *Merfeld*, although in *Merfeld* there was no causation between the defect asserted (the design of the boiler tube) and the specs that Dometic had provided. In *Merfeld*, the court concluded that the provider of specs was not a designer, but in *Allianz*, the court concluded that a fact issue was created which prevented entry of summary judgment. 306 F. Supp. 3d at 1070.

The *Nationwide* case is a 54-page opinion on a motion for summary judgment. 306 F. Supp. 3d at 1070. It is essentially a dissertation on what is a "product," who is a "manufacturer," and who is a "designer" in a multi-party, property damage case involving products liability, negligence and warranty claims. *Id*. at 637. *Nationwide* involved architects, engineers, designers, general contractors, subcontractors, manufacturers and suppliers of components alleged to be involved in the cause of a grain bin explosion and fire. *Id*. The case has somewhat complicated facts, but for our purposes here, the court provides an extensive discussion of the meaning of "designer" and "manufacturer" under Section 613.18. *Id*. If this is an issue in your case, you will want to study the *Nationwide* opinion.

9. Who is an "assembler" under the statute?

The terms "assembles" and "assembly" as used in the statute are relatively easy to understand if you are confronted with a situation like the "Taiwanese bicycle assembled at Target" example provided earlier. Other scenarios, however, may not be so clear. In *Kolarik v. Cory Intern. Corp.,* 721 N.W.2d 159, 161 (Iowa 2006), plaintiff claimed he had suffered a dental injury after biting into

an olive that contained a pit or pit fragment. The defendants were importers and wholesalers of the olives, which had been imported from Spain. *Id*.

In arguing that the defendants were not entitled to Section 613.18 immunity, the plaintiff in *Kolarik* claimed that they were "assemblers" because they had removed bulk olives from drums and repackaged them into jars. *Id*. at 162. The court held that this was *not* assembly conduct. The court stated:

> We are convinced that the assemblers' exclusion contained in section 613.18(1)(a) is aimed at those situations in which an assembling process has some causal connection to a dangerous condition in the product that gives rise to a strict-liability claim or a product condition that constitutes a breach of an implied warranty of merchantability. *Because the repackaging of the olives by defendants did not contribute to the condition that underlies plaintiffs' product liability claim, defendants are afforded the immunity granted by the statute.*

Id. (emphasis added). Repackaging the olives did not create pits or pit fragments where they did not previously occur, thus, there was no causation and no "assembly" products liability.

The court in *Nationwide*, cited *supra*, noted that a claim for "installation defect" might well be entitled to protection under Section 2 of Iowa Code Section 613.18 since there may be no distinction between "assembly" and "installation" based on the facts of a particular case. 306 F. Supp. 3d at 645. Besides the *Nationwide* case, another case discussing the term "assembly" as used in the statute is *Weyerhaeuser Co. v. Thermogas Co.*, 620 N.W.2d 819, 824 (Iowa 2000) (court noted that the statute does not define the term "assemble," and concludes "[T]he dictionary meanings of 'assemble' and 'assembler' contemplate a person or thing that brings together [two or more] things"). In *Weyerhauser*, the defendant was a seller of a propane tank filled with propane to fuel a forklift. *Id*. The forklift's tank exploded prematurely in a fire and injured plaintiff. *Id*. Based on these facts, the propane tank supplier was found to be an "assembler" of the product and was not entitled to any immunity under Section 613.18(1)(a). *Id*. The propane tank supplier, Thermogas, sold the allegedly defective product, i.e., the tank that exploded, and plaintiffs adduced proof that the "assembly" conduct was a proximate cause of the accident. *Id*.

10. How are negligence claims handled under the statute?

On its face, Section 613.18 does not apply to negligence claims. The statute provides immunity explicitly for claims based on "strict liability" and "breach of implied warranty of merchantability." "Negligence" (as well as express warranty) claims are notably absent from the list of claims potentially covered.

This makes sense. For example, suppose a widget falls off of a retailer's store shelve and is cracked, but it is later sold to an unsuspecting plaintiff. Suppose further that this negligence causes a later injury. The retailer should not be immune from liability simply by reason of their status as a "nonmanufacturer." In this example the retail seller did something affirmative, i.e. engaged in conduct that caused a situation which led to a later injury, and under tort law the retailer should be responsible for that eventuality. *See also* Restatement (Third) of Torts, Liability for Physical and Emotional Harm, § 7 ("An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm."). This is negligence tort liability and the statute does not apply.

Nevertheless, it is important to note that certain products claims are governed by a test that is, in effect, a "negligence" standard. Even so, these claims are justly entitled to immunity based on how Section 613.18 has been interpreted by Iowa courts. For example, a design defect claim in Iowa is governed by what amounts to a negligence standard. *See* Restatement (Third) of Torts, Products Liability, § 2(b). Section 613.18 quite clearly provides immunity for design defect claims, because the statute explicitly protects nonmanufacturers from being sued for design defect.

The same holds true for claims based on failure to warn or instruct, which are covered by 613.18(1)(b). Although a failure to warn claim in Iowa is governed by a negligence standard, if the requirements of 613.18(1)(b) are met, then the nonmanufacturer is insulated from liability based on failure to warn or instruct. *See, e.g., Johnson*, 578 F. Supp. 2d at 1178 (all of plaintiffs' claims dismissed under § 613.18 except for the failure to warn claim and breach of express warranty claim; the product, a dog leash that snapped back and hit plaintiff in eye, was designed and manufactured in China). Iowa cases interpreting Section 613.18(1)(b) have extended its protections to nonmanufacturers regarding claims based on failure to warn, so long as jurisdiction and solvency for the manufacturer is shown. *See Bingham,* 485 N.W.2d at 78.

11. Conclusion

In any products liability case where a nonmanufacturer (retailer, wholesaler or distributor) in the chain of distribution is sued, Iowa Code Section 613.18 may provide case-dispositive immunities to liability. Although a sloppy reading of the statute might lead one to conclude that in order for the immunities to apply it must

be shown that the manufacturer is subject to the jurisdiction of the court and solvent, that is *not* the case for claims based on design or manufacturing defect. Even failure to warn claims against nonmanufacturers can be dismissed under 613.18(1)(b), if jurisdiction and solvency of the manufacturer can be shown. In addition, the burden of proof as to this defense is on the *plaintiff*, and not the defendant. With the advent of § 613.18, the "apparent manufacturer" doctrine in Iowa may no longer be good law. If your defense practice includes the representation of retailers, wholesalers, distributors or other persons in the chain of distribution of products, you should become familiar with Iowa Code Section 613.18 and the many substantive protections against liability that it provides. It is the hope of the authors that this article might provide some assistance in that regard.

---

1 Kevin Reynolds is a long-time member and former President of the IDCA.

2 Clark Butler is a clerk at Whitfield & Eddy and 2L law student at Drake University Law School. He is also a law student member of IDCA.

Marketing 101: What You Need to Know About Proposed Amendments to the Rules on Lawyer Advertising

By Joshua McIntyre, Lane & Waterman LLP, Davenport, IA

Joshua McIntyre

On August 1, 2019, the Iowa Supreme Court announced proposed amendments to the Iowa Rules of Professional Conduct designed to keep the state's rules in line with the ABA Model Rules. Among the substantive changes are proposed amendments to the rules governing lawyer advertising. This article explores the background and substance of the prominent proposals.

A Brief History of Lawyer Advertising. It began with a ban. The American Bar Association adopted its first Canons of Professional Ethics in 1908, adapting them from the Alabama Bar Association's 1887 Code of Ethics and nearly a century of scholarly work in legal ethics.[1] The resultant Canons took a dim view of lawyer advertising, dismissing as "unprofessional" all forms of advertising and procuring business by self-promotion.[2] Instead, the Canons advised, all lawyers should advertise solely through "the most worthy and effective advertisement possible . . . the establishment of a well-merited reputation for professional capacity and fidelity to trust."

Many states adopted the outright ban until 1977, when the U.S. Supreme Court held lawyer advertising is entitled to First Amendment protection as commercial speech.[3] The Court noted the ban originated "as a rule of etiquette and not as a rule of ethics," and the lack of proper advertising could be seen "to reflect the profession's failure to reach out and serve the community."[4] After addressing a host of potential problems, the Court concluded there was no acceptable reason to suppress all advertising. Nevertheless, states could regulate the time, place, and manner of advertising, and should protect the public from advertising that is false, deceptive, or misleading.

The Court viewed in-person solicitation quite differently. In the 1978 case *Ohralik v. Ohio State Bar Association,* the Court explained, "Unlike a public advertisement, which simply provides information and leaves the recipient free to act upon it or not, in-person solicitation may exert pressure and often demands an immediate response, without providing an opportunity for comparison or reflection."[5] Under such circumstances, "it is not unreasonable for the State to presume that in-person solicitation by lawyers more often than not will be injurious to the person solicited."[6] Because solicitation is not visible to State regulation or public scrutiny, the Court concluded an outright, prophylactic ban is constitutionally permissible.

2018 Amendments to the Model Rules. With this background, the Association of Professional Responsibility Lawyers[7] began in 2013 to study lawyer advertising rules, collecting data from 34 jurisdictions.[8] In subsequent reports, the APRL concluded that complaints about lawyer advertising are rare, few states engage in active monitoring, and in many cases, any appropriate discipline could be enforced under other professional rules. In September 2016, the APRL submitted proposed amendments to the ABA Standing Committee on Ethics and Professional Responsibility, which were then evaluated through two years of ABA public forums, working groups, and webinars.

In its May 2018 report, the Standing Committee recognized the rapid development of advertising and client solicitation on the Internet, which connects a "social media savvy" public with lawyers at minimal cost. The Standing Committee concluded, "Trends in the profession, the current needs of clients, new technology, increased competition, and the history and law of lawyer advertising all demonstrate that the current patchwork of complex and burdensome lawyer advertising rules is outdated for the 21st Century. . . . Once amended, the Rules will better serve the bar and the public by expanding opportunities for lawyers to use modern technology to advertise their services, increasing the public's access to accurate information about the availability of legal services, continue the prohibition against the use of false and misleading communications, and protect the public by focusing the resources of regulators on truly harmful conduct."[9] The ABA adopted the amendments in its Model Rules on December 4, 2018.

The Current Iowa Rules. Iowa Rules 32:7.1 through 32:7.5 went into effect on January 1, 2013. They generally follow ABA amendments adopted in August 2012 to expressly recognize the impact of modern technology on the practice of law. The

Rules prohibit false or misleading communications (Rule 7.1), permit truthful advertising (Rule 7.2), regulate lawyer referrals (Rule 7.2), and prohibit in-person solicitation except in limited circumstances (Rule 7.3). The Rules further regulate the descriptions of a lawyer's specialties (Rule 7.4), and the use of firm names and letterheads (Rule 7.5). The modern view of lawyer advertising is expressed in Rule 7.2, Comment 1: "To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele . . . . The interest in expanding public information about legal services ought to prevail over tradition." Comment 3 further provides: "Television, the internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting [these forms] would impede the flow of information about legal services to many sectors of the public."

The Proposed Amendments. The proposed changes to Rules 32:7.1 through 32:7.5 represent an evolution, and not a revolution, of Iowa's views on lawyer advertising. The Rule 7.1 prohibition of false or misleading communications would not change, but new comments would clarify that even truthful statements are impermissibly misleading if they create "a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required." An "unsubstantiated claim" about the lawyer's services may be misleading if presented with such specificity as to lead a reasonable person to conclude the claim can be substantiated.

Proposed Rule 7.2 would no longer regulate only "advertising" but instead all "communications concerning a lawyer's services" in "any media." References to traditional advertising as "organized information campaigns" are removed. These changes recognize the Court's authority to regulate modern, informal methods of communication such as Facebook posts and tweets in the same manner as traditional media or dedicated ads.

Proposed Rule 7.2 would continue to regulate payments related to lawyer referrals. A new exception would permit lawyers to give "nominal gifts as an expression of appreciation" as long as they are no more than a "token item as might be given for holidays." The Comments clarify that permitted gifts are a result of ordinary social hospitality and not any expectation or promise of payment.

Proposed Rule 7.3 would see the most substantive change. The prohibition against solicitation "in person, live telephone, or real time electronic contact" would be changed to "live person-to-person contact," defined as "in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection." Expressly excluded from the definition are "chat rooms, text messages, or other written communications that recipients may easily disregard." This definition adopts the ABA Standing Committee's view that some electronic forms of communication are more like written communication, "which allows the reader to pause before responding and creates less pressure to immediately respond or to respond at all, unlike a direct interpersonal encounter."

Proposed Rule 7.3 would further expand the list of persons who may be contacted without violating the solicitation rule. In addition to lawyers, family, and prior clients, lawyers could properly solicit legal work from any "person who routinely uses for business purposes the type of legal services offered by the lawyer." Important exceptions remain: Rule 7.3(c) would still prohibit any solicitation that involves coercion, duress, or harassment, or if the recipient has asked not to be solicited.

Proposed Rule 7.3 would no longer require lawyers to mark written solicitations as "Advertising Material." The ABA Standing Committee explained the deletion was made in recognition that consumers "have become accustomed to receiving advertising material via many methods of paper and electronic delivery" and that the very nature of permitted solicitations are unlikely to mislead consumers.[10]

The present Rule 7.4 governing communications about a lawyer's specialties would move into Proposed Rule 7.2. Critically, the rule would no longer permit lawyers to advertise specialties certified by any organization "that the attorney can demonstrate is qualified to grant such certification." Instead, the issuing organization must be approved by "an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association" before a lawyer can advertise the specialty. Given this limited scope, the disclaimer that the Supreme Court of Iowa does not certify lawyer specialties would no longer be required.

Finally, present Rule 7.5 would move into the comments of Proposed Rule 7.1. The move recognizes that firm names, letterheads, and professional designations are "communications concerning a lawyer's services" properly regulated under that rule.

Impact. Like many changes in recent years, the proposed amendments do not reflect a change of philosophy but instead seek to apply the rules to our modern reality. As the public becomes more tech-savvy, potential clients are more educated in many ways but more susceptible in others. The proposed

amendments would put lawyers on notice that all methods of communicating about legal services will be regulated. And they remind us that in keeping with our history of professionalism and service, lawyer advertising should in all ways be for the client's benefit.

Public Comment Period. The deadline for submitting comments concerning the proposed amendments is December 30, 2019. More information can be found at iowacourts.gov/iowa-courts/supreme-court/orders/

Joshua McIntyre is a partner of the Davenport firm Lane & Waterman LLP. He practices primarily in the areas of legal malpractice defense, intellectual property, and information technology.

1 Preface to the ABA Model Rules of Professional Conduct.

2 Canon 27, ABA Canons of Professional Ethics (1908).

3 *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

4 *Id.* at 370.

5 436 U.S. 447, 458 (1978).

6 *Id.* at 466.

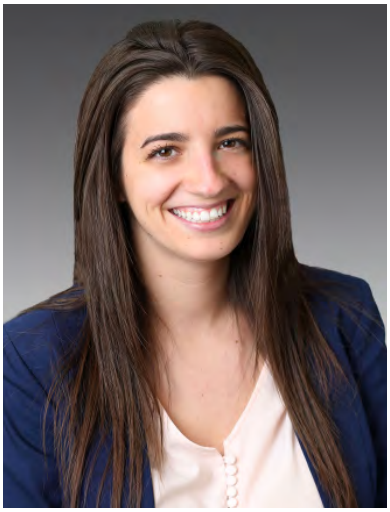
7 The APRL is a nonprofit organization formed in 1990, comprised of more than 450 lawyers, law professors and judges holding an interest in legal ethics. *See* aprl.net/about-aprl/

8 ABA Standing Committee on Ethics and Professional Responsibility, Report to the House of Delegates (May 2018) at 8, available at http://ambar.org/advrulechanges2018

9 *Id.* at 14.

10 Standing Committee Report at 7.

New Lawyer Profile



Jessica Eglseder

In every issue of *Defense Update,* we will highlight a new lawyer. This issue, we get to know Jessica Eglseder of Hopkins & Huebner, P.C., in Des Moines.

Jessica Eglseder joined Hopkins & Huebner, P.C. as an associate attorney in May of 2019. Jessica is a graduate of Drake University Law School and earned her undergraduate from The University of Iowa. Jessica will practice primarily in the liability and insurance defense group at Hopkins & Huebner. Jessica Eglseder is a member of Iowa State Bar Association, Young Lawyer's Division and Polk County Women Attorneys. She can be reached directly at 515-697-4270 or via e-mail at jeglseder@hhlawpc.com.

CASE LAW UDPATE

By Katherine E. Anderegg, Bradshaw Fowler Proctor & Fairgrave, PC, Des Moines, IA

Katie Anderegg

ANDERSON V. ANDERSON TOOLING, INC., 928 N.W.2D 821 (IOWA MAY 31, 2019)

SUMMARY

Dean and Carol Anderson own Anderson Tooling, Inc. (ATI). Dean hired his brother, Jeff, to work as the company's general manager and chief financial officer. He also hired Jeff's wife, Lori, as ATI's bookkeeper. The couples met to discuss the terms of employment, but never completed a formal employment contract. Instead, Dean and Jeff made handwritten notes about the details discussed. Jeff claims his notes represent a valid employment contract because both brothers initialed the document. Dean denies initialing it. In 2011, Jeff requested payments of deferred compensation pursuant to the employment agreement between the brothers. Dean and Carol denied the existence of a written agreement and refused to pay Jeff. Further, while employed at ATI, Jeff formed an independent company named Fabrication & Construction Services Inc. (FabCon) began providing services in competition with ATI. Upon learning of FabCon's competing operations, Dean fired Jeff and Lori from ATI.

Jeff claimed he was terminated due to his request for payment of the deferred compensation. He alleged Dean, Carol and ATI violated the Iowa Wage Payment Collection Law (IWPCL), breach of contract, tortious discharge, and interference with contractual relationships. Dean, Carol, and ATI filed counterclaims against Jeff for conversion, intentional interference with contracts, interference with a prospective business advantage, breach of fiduciary duty, and misappropriation of trade secrets. Dean and Carol claimed Jeff used ATI's customer list and rate information to benefit FabCon. They also claimed Jeff was stealing and mismanaging ATI funds. ATI sued Lori for breaching her fiduciary duty, claiming she diverted funds to FabCon, Jeff, and herself. Additionally, ATI brought a claim against Lori and FabCon for conversion, intentional interference with contracts, interference with prospective business advantage, and conspiracy.

The matters proceeded to a jury trial. On Jeff's claims, the jury concluded ATI did not violate the IWPCL and did not owe Jeff unpaid profit sharing or accrued vacation. The jury found no employment contract existed, thus ATI did not breach or intentionally interfere with Jeff's contract. It concluded Dean and Carol did not act improperly as the company's directors. The jury found that Jeff was an ATI employee and wrongfully discharged for pursuing unpaid wages. On Dean and Carol's claims, the jury found Jeff breached his fiduciary duty and concluded Jeff intentionally and improperly interfered with ATI's prospective business relationships. The portion of the verdict form regarding the participation of Jeff, Lori, and FabCon in a conspiracy to harm ATI provided:

> Q. Did Jeffery Anderson commit any of the wrongs of conversion, interference with a prospective business advantage, breach of fiduciary duty, or misappropriation of trade secrets?
> A. Yes.
>
> Q. Did Lori Anderson and [FabCon] participate in a conspiracy with Jeffery Anderson to appropriate funds and projects belonging to [ATI]
> A. Yes.
>
> Q. Was [ATI] damaged as a result of the conspiracy?
> A. Yes.
>
> Q. State the amount of damages sustained by [ATI] as a result of the conspiracy?
> A. $ 0-duplication.

The jury also concluded Jeff, Lori, and FabCon did not convert ATI's property but found their conduct constituted willful and wanton disregard for the opposing parties' rights. The jury concluded that while Lori and FabCon knew of ATI's prospective relationships, only FabCon intentionally and improperly interfered with those relationships, and that interference did not cause harm.

The parties agreed to a sealed verdict, allowing the jury to be discharged following the verdict and without reporting its finding in court and in the presence of the litigants. When the jury finished its deliberations, the parties' attorneys were emailed

the completed verdict form. They confirmed it did not contain irregularities and agreed the jury should be released.

Following trial, both sides filed post-trial motions. ATI filed a motion to enlarge, amend, or modify the judgment to make Lori and FabCon jointly and severally liable for the judgment owed to them. The district court granted the modification to extend liability for the judgment to Lori and FabCon. The Court of Appeals reversed the district court's order imposing joint and several liability on Lori and FabCon. It reasoned Jeff's conduct did not form the basis of a conspiracy, given the verdict form, and the jury instructions limited the scope of conspiracy. Thus, it determined a conspiracy did not exist for Lori and FabCon to join.

ANALYSIS

The issue faced by the Supreme Court was whether the district court properly modified the judgment to extend liability to Lori and FabCon based on the civil conspiracy findings. Generally, civil conspiracy requires an understanding between two or more parties to harm another; involving some mutual mental action coupled with an intent to commit the act which results in injury. A person becomes liable for the harm caused by another's tortious conduct when they commit, encourage, or assist such conduct. Civil conspiracy is not in itself actionable; rather it is the acts causing injury undertaken in furtherance of the conspiracy which give rise to the action. Accordingly, a claim of civil conspiracy is essentially a method for imposing joint and several liability on all actors who committed a tortious act or any wrongful acts in furtherance thereof. Because civil conspiracy cannot support an independent cause of action, it cannot have its own measure of damages. Instead, damages are assessed based on the harm caused by the underlying tortious activity. Thus, the joint and several liability shared by co-conspirators is only for the damage caused by the underlying tort.

This backdrop illuminates the issue in the present case. The jury found Lori and FabCon participated in a civil conspiracy with Jeff to appropriate funds and projects belonging to ATI. In response to a request to determine the amount of damages sustained as a result of the conspiracy, the jury answered "0-duplication." Yet, this question does not follow the legal framework of civil conspiracy that bases damage amounts on the underlying tort. Because civil conspiracy is merely a means of distributing liability, the conspiracy claim would not result in an independent award of damages, absent some aggravating factor not present in this case.

Nevertheless, the jury award of zero dollars with the addition of "duplication" conformed to Instruction No. 51, stating, "A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage." In other words, any additional finding of damages would be duplicative of the amounts already awarded for the underlying torts that were the basis of the conspiracy. The problem is the instructions and answers created confusion as to which torts were the basis of the conspiracy claim.

A court may only make nonsubstantive changes to a jury verdict. If an error in a verdict can be resolved based upon the jury instructions and without violating the intent of the jury, the change is nonsubstantive. Courts have the power to make a defective verdict conform to the intention of the jury where the intention can be ascertained with certainty. In this case, the jury was aware that its findings regarding Jeff's tortious conduct were the first required element for a conspiracy verdict. It likely knew the damage determinations resulting from this conduct would also apply to the conspiracy portion of the verdict form. Accordingly, the jury refused to award damages under the conspiracy section in order to avoid duplication. The jury consistently found Jeff committed wrongdoing—interfering with ATI's prospective business relationships and breaching his fiduciary duties to ATI. The jury determined Lori and FabCon conspired with Jeff and that ATI was damaged as a result of the conspiracy.

HOLDING

Due to the faulty structure of the verdict form, it initially appeared as if Jeff was the only person liable for the judgment. However, the jury determined that Lori and FabCon participated in a conspiracy with Jeff, and Jeff's conduct was the basis of the conspiracy. Despite these flaws, the Supreme Court ruled the district court did not abuse its discretion in granting the amendment to extend liability to Lori and FabCon because the jury's intent was clear from examination of the record. The court's modification was a permissible non-substantive change because it was based on the instructions given to the jury and effectuates the jury's intent.

WHY THIS IS IMPORTANT IN IOWA

The central issue in this appeal was not addressed and corrected at trial because counsel agreed to a sealed verdict and were not present when the verdict was returned to review it carefully before the court discharged the jury. The Supreme Court does not discourage the use of sealed verdicts, but cautions that they may not always be suitable, especially in complex litigation of this nature. The defects in the verdict forms alleged on appeal could have been addressed at trial and may have been corrected so that an appeal would have been avoided. This observation is not a criticism but an endorsement of the importance of every stage of trial.

HAWKINS V. GRINNELL REGIONAL MEDICAL CENTER, 929 N.W.2D 261 (IOWA JUNE 7, 2019)

SUMMARY

Grinnell Regional Medical Center (GRMC) hired Gregory Hawkins as a lab tech in 1976. In 1985, GRMC promoted Hawkins to lab director. Hawkins held this position until 2015. At that time, David Ness was GRMC's vice president of operations and Hawkins's direct supervisor and Debra Nowachek was GRMC's human resources director.

In 2013, doctors diagnosed Hawkins with stage III breast cancer. Hawkins underwent a left breast surgical mastectomy followed by chemotherapy and radiation. Hawkins took family and medical leave pursuant to GRMC's family and medical leave policy and the Family and Medical Leave Act (FMLA). On March 19, 2014, while still undergoing weekly chemo treatments, Hawkins returned to work part-time and used the remainder of his FMLA leave for partial-day absences through May 17. After he exhausted his FMLA, GRMC granted Hawkins extra leave pursuant to its policy, and Hawkins continued working part-time.

On June 2, Ness, Nowachek, and GRMC's CEO, Todd Linden, met with Hawkins, who stated that his doctor instructed him to remain on a part-time schedule indefinitely. Linden told Hawkins GRMC needed someone in the lab full-time so GRMC would no longer be able to employ Hawkins as lab director, asking Hawkins to resign within ninety days. Shortly after the meeting, Hawkins learned he would finish cancer treatments and be able to return to work full-time by December 2014. Hawkins emailed Ness to share this news, expressing that he wished to keep his job at GRMC and GRMC should not force him to resign.

On June 19, Ness and Linden told Hawkins he had only thirty days left to resign or retire, otherwise GRMC would terminate him. Hawkins refused to do either. Then, GRMC's board of directors' executive committee met and decided to give Hawkins additional recovery time. On July 9, despite the board giving Hawkins extra recovery time, Ness and Nowachek forced Hawkins to take an unwanted leave of absence and appointed an interim lab director. On October 6, Hawkins returned to GRMC full-time as the lab director. Three weeks before his return, on September 16, Hawkins emailed Ness, Nowachek, and Linden to confirm that he could return to work without any retaliation. From December 2014 through May 2015, GRMC reported performance issues with Hawkins's work. On May 13, 2015, Hawkins filed a complaint with the Iowa Civil Rights Commission, alleging age discrimination, disability discrimination, and retaliation. On May 22, Ness emailed the GRMC board to discuss firing Hawkins. Three weeks after Hawkins filed his civil rights complaint, GRMC fired Hawkins.

Hawkins filed his ICRA suit against GRMC, Ness, Nowachek, and Linden in district court on February 4, 2016 claiming GRMC discriminated against him because of his age and disability—i.e., his status as a cancer patient—and retaliated against him for refusing to resign. GRMC contended it did not terminate Hawkins for a discriminatory or retaliatory reason but rather because of his poor job performance.

The jury returned a verdict in Hawkins's favor on all claims against GRMC. GRMC filed a motion for a new trial and remittitur of damages. Hawkins moved for equitable relief and attorney fees. The district court denied GRMC's motion, granted Hawkins's motion, and awarded Hawkins front pay and attorney fees. GRMC appealed.

Although GRMC raised five issues on appeal, the Supreme Court addressed only the evidentiary hearsay challenge because that issue is dispositive. They also addressed the challenge to the same-decision jury instruction because that issue may reoccur on retrial.

ANALYSIS

Hearsay Challenge

At trial, Hawkins introduced an exhibit, which consisted of seventeen cards and notes he received from friends and former coworkers including: general well-wishes, a "Happy Boss's Day" card signed by employees of the lab under Hawkins's supervision, cards expressing happiness and gratitude to have worked alongside Hawkins, notes expressing disdain toward GRMC for its termination of Hawkins, a note stating GRMC had discriminated against Hawkins based on his age, and another note from a former colleague of Hawkins stating, "I wish you the best with this little mess, but I know you are doing the right thing not only for yourself but all of us." Hawkins did not call any of the note authors to testify at trial. GRMC objected to the exhibit's admissibility on the grounds of relevance and hearsay. Over this objection, the trial court admitted it.

Hawkins claims he offered the exhibit to rebut GRMC's evidence that he was incompetent, unresponsive, and an unmotivated manager and that the lab suffered because he failed to supervise employees properly. Thus, the purpose of the notes and cards was to show GRMC's reasons for firing Hawkins were not true. On appeal, the Court found the district court erred in admitting the exhibit because the admission of the hearsay evidence affected a substantial right of GRMC. The Court reversed and remanded for a new trial.

Same Decision Jury Instruction

Although the Court found GRMC's hearsay evidentiary challenge dispositive and reversed and remanded for a new trial on that issue, they also elected to address the district court's refusal to submit GRMC's requested same-decision jury instruction.

In 1973, the U.S. Supreme Court formulated the *McDonnell Douglas* test, requiring that in an employment discrimination case, the employee must show a *prima facie* case of discrimination before the burden shifts to the employer to show a legitimate, nondiscriminatory reason for the employer's action. If the employer shows a legitimate, nondiscriminatory reason for its action, the burden shifts back to the employee to show the reason for the employer's action was pretextual. Then, in 1989, the U.S. Supreme Court adopted the "same-decision" framework in *Price Waterhouse v. Hopkins*. The case established that when a Title VII plaintiff proves that a discriminatory factor played a motivating part in the employer's decision (i.e., there were mixed motives), the employer may avoid liability by presenting evidence that it would have made the same decision in the absence of the discriminatory motive. Two years after *Price Waterhouse*, Congress enacted the Civil Rights Act of 1991, which modified Title VII by codifying the motivating-factor standard and same-decision framework adopted by the Supreme Court in *Price Waterhouse*.

Under the Civil Rights Act of 1991, a complaining party establishes an illegal employment practice when it "demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice." Notably, Congress amended the statute to not only prohibit discrimination in employment "*because of* [an] individual's race, color, religion, sex, or national origin," but also to prohibit employment practices where "race, color, religion, sex, or national origin was a *motivating factor.*"

Iowa Code section 216.6(1)(a), also known as the Iowa Civil Rights Act, forbids discriminatory employment practices based on a protected characteristic, while section 216.11(2) forbids discriminatory and retaliatory employment practices because the employee engaged in a protected activity. The ICRA does not contain language similar to Title VII's that allows an employer the opportunity to demonstrate it would have made the same decision "in the absence of the impermissible motivating factor." The Iowa legislature has amended the ICRA multiple times since 1991 and could have amended the ICRA to reflect the same changes that Congress chose to make, including the provisions incorporating the Supreme Court's interpretation of Title VII as including a same-decision defense, but chose not to do so.

In *DeBoom v. Raining Rose, Inc.,* the Court discussed the burden on a plaintiff who bring claims under the ICRA, stating that a plaintiff need only demonstrate termination occurred under circumstances giving rise to an inference of discrimination and his or her status as a member of a protected class was *a determining factor* in the decision to terminate employment. The Court stated that the term *a determining factor* is better stated as *a motivating factor* because *a determining factor* indicates a higher burden for the plaintiff, which "is not required by either the Iowa Civil Rights Act or case law." Though the Court interpreted the "because of" language in the ICRA as requiring the plaintiff to show protected status as a motivating factor, they have not interpreted the language as alleviating liability from an employer that engages in the prohibited conduct but demonstrates it would have made the same decision in the absence of the impermissible motivating factor.

HOLDING

The Court has mentioned the same-decision defense in dicta only, stating that the employer has a chance to prove the same decision would have been made without the discriminatory motive. But, in none of the cases where this is mentioned in dicta did the Court actually apply the same-decision defense. Although Iowa courts have said it only in dicta, the Supreme Court ruled that under the ICRA, an employer should be entitled to the same-decision affirmative defense because Iowa has adopted the motivating-factor test for causation in ICRA discrimination cases. Therefore, in discrimination and retaliation cases under ICRA, Iowa courts now apply the *Price Waterhouse* motivating-factor standard in instructing the jury and the defendant is entitled to an instruction on the same-decision defense recognized in *Price Waterhouse* if properly pled and proved.

WHY THIS IS IMPORTANT IN IOWA

Under the ICRA, an employer is now entitled to plead the "same-decision" affirmative defense and permitted to submit an instruction to the jury regarding the same in employment discrimination cases. When a plaintiff shows a discriminatory act occurred, the "same-decision" defense allows an employer to avoid liability by proving by a preponderance of the evidence that it would have made the same employment decision even if the protected characteristic had not been taken into account. This case formally abandon's the *McDonnell Douglas* burden-shifting analysis and determining factor standard when instructing the jury in employment discrimination cases.

IDCA Annual Meeting Recap

IDCA held its 55th Annual Meeting & Seminar, September 11–13, at the Embassy Suites Des Moines Downtown. More than 190 attendees heard from experts, networked and met with exhibitors. Planning is underway for the 2020 event, September 16–18, back at the Embassy Suites Des Moines Downtown.

THANK YOU TO OUR SPONSORS

Platinum Sponsors and Sponsors of the Thursday Networking Lunch:

Exponent® Engineering and Scientific Consulting

Defense Program Minnesota Lawyers Mutual Professional Liability Specifically Designed for Defense Firms

Crystal Sponsor and Sponsor of the Last Night's Welcome Reception:

Grinnell Mutual

Gold Sponsor and Sponsor of Thursday's Speaker Ric Gass

dri The Voice of the Defense Bar™

Silver Sponsors

Heidman Law Firm

JS|HELD

S-E-A

Wandling Engineering

Whitfield & Eddy Law

Bronze Sponsors

Ahlers Cooney Attorneys

BNM Betty • Neuman • McMahon PLC Attorneys at Law www.bettylawfirm.com

Harbinger Jury Consultants www.harbingerjury.com

HMW S&M Harrison, Moreland, Webber, Simplot & Maxwell, P.C.

National Healthcare Innovations & Paralegal Support Services

Services

Life Care Planning
Cost Projections
Paralegal Chronologies
Expert Witnessing
Nurse Chronologies
Specials Itemization
Medical Record Retrieval
Medical Record Review

Demand Summaries
Client Intakes
Deposition Summaries
Organization of Records
Scanning and Bate Stamping
Medical Records Retrieval
Specials Itemization/Log
Proofread & Format Documents

NHI PSS

ReMed Casualty Consultants, Inc.

Rimkus Consulting Group, Inc. Forensic Engineers and Consultants www.rimkus.com 800-580-3228

SPMB Simmons Perrine Moyer Bergman PLC

Skogen Engineering Group, Inc.

Woodke & Gibbons, PC

Law Firm Sponsors

Bradshaw Law Firm in Des Moines
Heidman Law Firm
Hopkins & Huebner PC
Nyemaster Goode PC
Peddicord Wharton LLP
Shuttleworth & Ingersoll PLC
Swisher & Cohrt PLC

AND THE AWARD GOES TO...

The IDCA Awards and Annual Business Meeting was an ideal time for attendees to celebrate IDCA's successes and honor members who have worked so hard to help IDCA continually move forward. Congratulations to this year's Award recipients!

Outgoing Board Member Awards

The following Board members were recognized for their years of service on the IDCA Board of Directors.

Diane Reinsch, Lane & Waterman LLP, Davenport, served two terms as District VII Representative.

Lisa Simonetta, EMC Insurance Companies, Des Moines, served two terms as At Large Representative.

President's Award

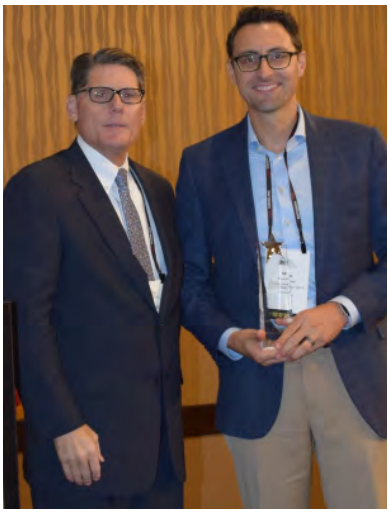
The President's Award is in honor and recognition of superior commitment and service to IDCA. The following members have worked diligently in preparing and filing amicus briefs for IDCA.

Thomas Boes, Bradshaw Fowler Proctor & Fairgrave, PC, Des Moines and Catherine Lucas, formally with Bradshaw Fowler Proctor & Fairgrave, and now General Counsel for the Iowa Department of Public Safety for co-authoring *Hawkins v. Grinnell Regional Medical Center, et. al. and Johnson (Helmers) v. Humboldt County*

Keith Duffy, Nyemaster Goode, PC Des Moines, for authoring *Samuel De Dios v. Indemnity Insurance Company of North America and Broadspire Services, Inc.*

Rising Star Award

The Rising Star Award is bestowed upon IDCA members who have shown outstanding commitment and leadership in the organization and who have been members of the organization for five years or less. Rising Star nominations are from committee chairs and voted on for approval by the Board of Directors.

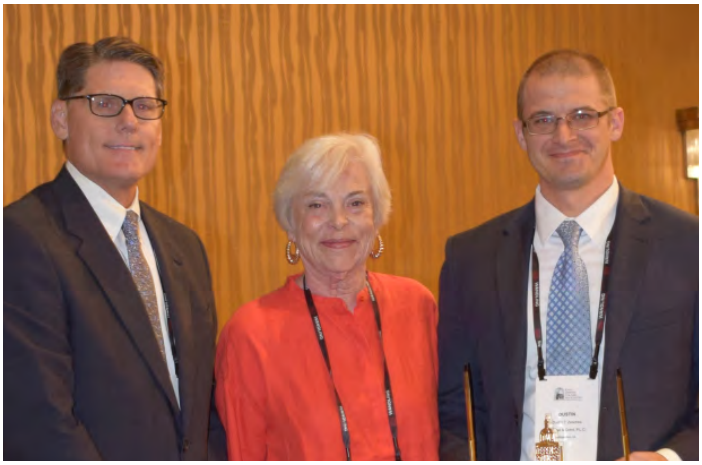


Bryan O'Neill, Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines

Bryan serves as the Young Lawyers Representative on the Board of Directors and led this year's Deposition Bootcamp on October 25 at Grinnell Mutual Reinsurance Company in Grinnell. The IDCA Deposition Bootcamp is designed for attorneys with 2–5 years of experience and who are focused on improving their deposition skills. This one-day program combines instruction from seasoned lawyers with practical small group exercises where participants will learn and apply critical skills to effectively take depositions.

EDDIE Award

In 1988, then president Patrick Roby proposed to the board, in Edward F. Seitzinger's absence, that the IDCA honor Ed as a founder and first president and for his continuous, complete dedication to IDCA for its first 25 years by authorizing the Edward F. Seitzinger Award, which President Roby dubbed "The Eddie Award." Edward Seitzinger was an attorney with Farm Bureau and besides his family and work, IDCA was his life. This award is presented annually to the IDCA member who contributed most to the IDCA during the year. It is considered IDCA's most prestigious award.

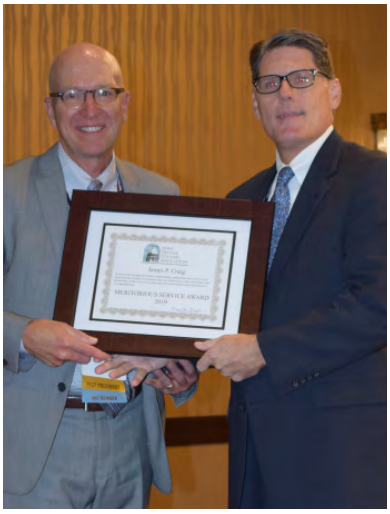


Congratulations Dustin Zeschke at Swisher & Cohrt in Waterloo for serving as IDCA's Treasurer for four years.

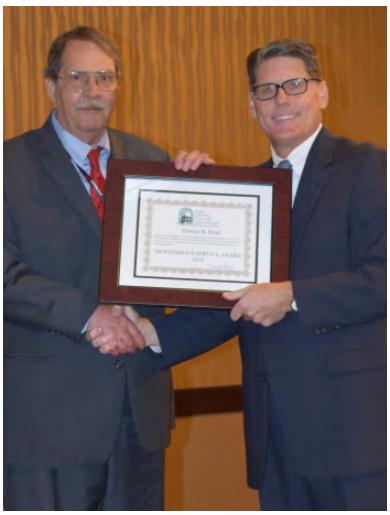
Meritorious Service Awards

The Meritorious Service Award is bestowed upon IDCA members whose longstanding commitment and service to the Iowa Defense Counsel Association has helped to preserve and further the civil trial system in the State of Iowa.

This year, IDCA bestowed this award upon two individuals.



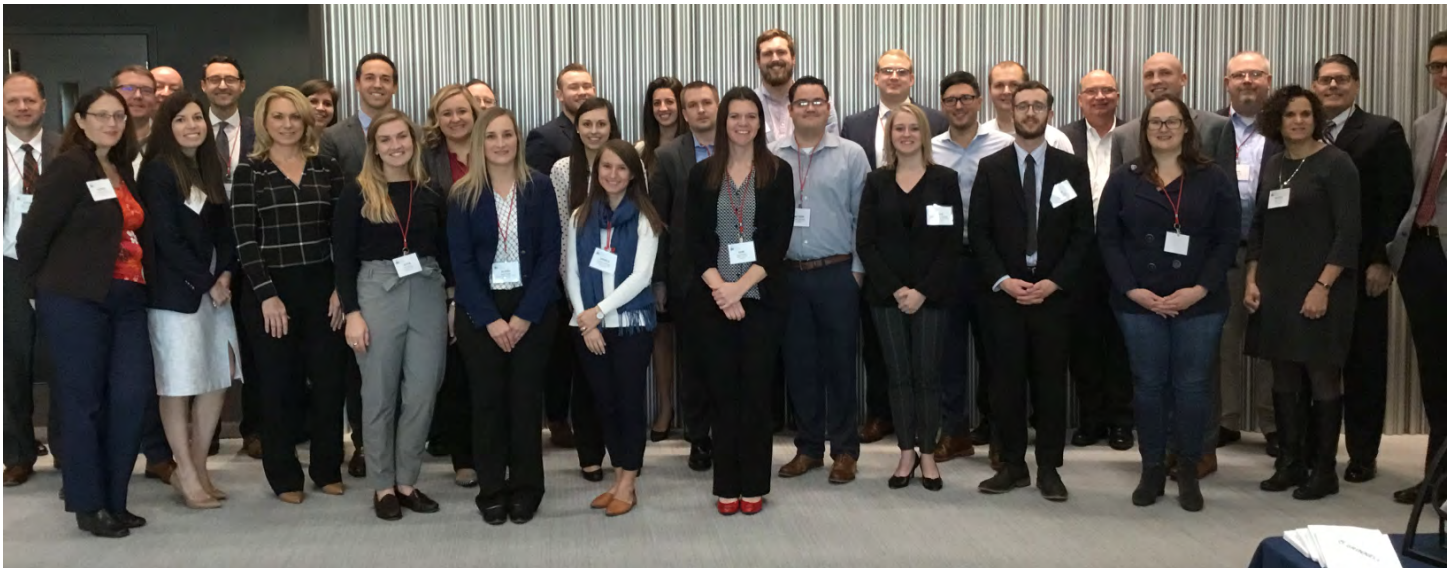
James Craig, Lederer Weston Craig PLC, in Cedar Rapids

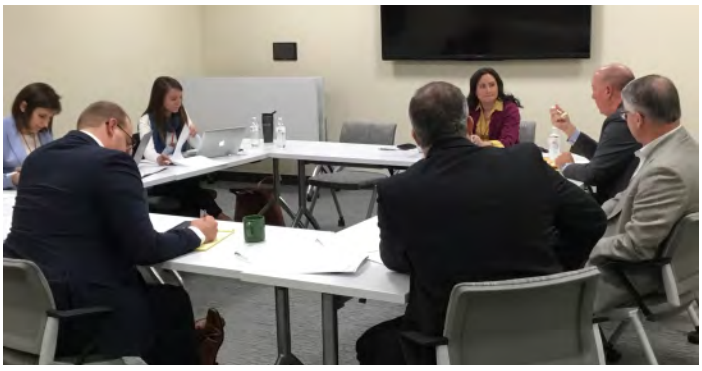


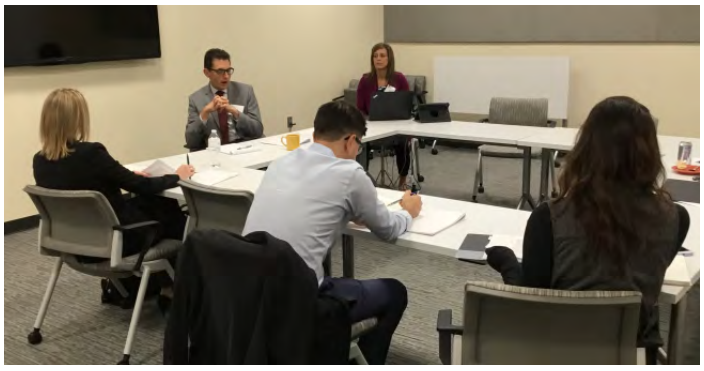
Thomas Read, Elderkin & Pirnie, PLC, in Cedar Rapids

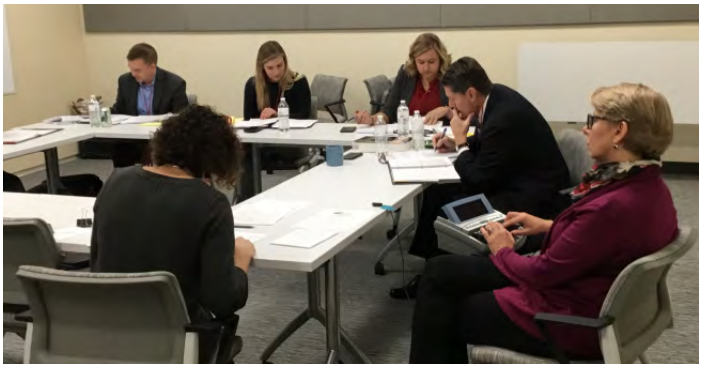
IDCA Deposition Bootcamp a Huge Success

IDCA held its third Deposition Bootcamp on October 25 at Grinnell Mutual Reinsurance Coompany. The valuable CLE combined instruction from seasoned lawyers with practical small group exercises where participants learned to apply critical skills to effectively take depositions. Thank you to the 22 new lawyers who attended, the 18 veteran IDCA members who taught and the six court reporters who added to the experience.









IDCA Annual Meetings

September 17–18, 2020

56TH ANNUAL MEETING & SEMINAR
September 17–18, 2020
Embassy Suites by Hilton, Des Moines Downtown
Des Moines, Iowa

September 16–17, 2021

57TH ANNUAL MEETING & SEMINAR
September 16–17, 2021
Embassy Suites by Hilton, Des Moines Downtown
Des Moines, Iowa