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IOWA DEFENSE COUNSEL ASSOCIATION

DEFENSE UPDATE

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Hiding the Medicine Ball
Protecting the Defendant's Right to an Unrestricted Patient's Waiver

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Patient's waivers, and the records they allow a defendant to acquire, are perhaps the most valuable tool in any good defense attorney's toolkit. An unrestricted patient's waiver allows the defendant to obtain the records necessary to paint a complete picture of the plaintiff's medical history and lifestyle for both the client, and the jury. Traditionally, plaintiffs have voluntarily provided unrestricted waivers to defense counsel with the understanding that waiver of the physician-patient privilege is what is required for an individual who chooses to file a personal injury action. However, in recent years, there has been resistance by some plaintiffs' attorneys to defense counsels' requests for unrestricted patient's waivers. For example, plaintiffs

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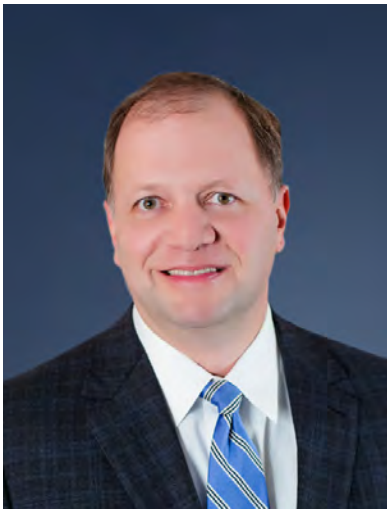

Steve Doohen
IDCA President

Greetings everyone.

While 2020 has certainly been a tumultuous year, our defense organization remains vibrant and healthy. Nearly half of our members registered for and attended our 56th Annual Seminar on September 17-18. For the first time in our history, the Seminar was held in a "virtual" format. While it was a shame we could not be together in person, the success of the meeting, in an entirely new format, is a testament to the commitment and dedication of our members. Thanks for helping us pull it off!

Many thanks as well to the wonderful sponsors of our Annual Seminar. Many of these vendors and organizations have been sponsoring our Seminar programming for years. Quite simply, the event could not continue without their generous support. Please thank them when you see them.

Thanks as well to everyone who dedicated their time and energy to presenting at the Seminar. The speakers were terrific - both timely and informative. I know the papers and outlines that became part of the program materials will be excellent reference sources in my briefcase for years to come.

The next time you run into Heather Tamminga and Kristen Dearden, please let them know how much you appreciate their hard "behind the scenes" work in putting the Annual Seminar together. When the event runs smoothly, they certainly deserve the lion's share of the credit. With all their great ideas and persistence, they definitely make it easy on the program chair. Our organization is in great hands with their dedicated management assistance.

Finally, and most importantly, many thanks to our outgoing President, Kami Holmes. Kami is a great asset to this organization. It never ceased to amaze me how much energy she devoted to her efforts during her term as President. She was the driving force behind a number of fresh ideas that breathed new life into the very structure of our organization. She has initiated a long-term strategic plan that was sorely needed in order to keep us focused on the future. She has revamped our website, beefed up our efforts to share important information, and committed a great deal of effort to growing our membership. Her efforts will no doubt be a very difficult act to follow.

I have some ideas about how to continue forward with Kami's terrific initiatives as we march toward, and into, 2021. I cannot do it without all of you, our great members. If you have ideas, want to get involved, think the Board needs to know something, or simply want to chat, I would welcome your communication. Feel free to email me at doohen@whitfieldlaw.com with any thoughts.

All my best -
Steve Doohen

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oftentimes seek to limit discovery of medical records to a specific, arbitrary timeframe, such as five years prior to the injury-causing incident. Other times, plaintiffs attempt to impose bounds on the type of records that are discoverable, or seek to shift plaintiff's burden of proving their records are privileged to the defendant. This article will address the history of the physician-patient privilege and the patient-litigant exception and offer guidance on how to combat, and prevail, against some of the most common arguments made by plaintiffs attempting to limit discovery of their complete medical history.

HISTORY OF THE PHYSICIAN-PATIENT PRIVILEGE AND PATIENT-LITIGANT EXCEPTION

Iowa Code 622.10 both creates, and waives, the physician-patient privilege for purposes of a civil personal injury action. The statute, first passed in 1851, establishes the physician-patient privilege, which protects from discovery a patient's confidential communications to his or her physician or other health care provider. *Chung v. Legacy Corp.*, 548 N.W.2d 147, 148-49 (Iowa 1996). The privilege reflects the legislature's goal of ensuring a patient can communicate openly and honestly with his or her provider, and thus obtain proper treatment, without fear the patient's statements will be reproduced. *Id*.

The legislature also recognized that, in certain circumstances, a waiver of the privilege is necessary. One such circumstance, known as the patient-litigant exception, arises when the patient files a civil action which places his or her physical or mental condition at issue. In this situation, the patient-litigant must "execute a legally sufficient patient's waiver" allowing the opposing party to obtain his medical records. Iowa Code 622.10(3). The purpose of the physician-patient privilege is not impaired by the patient-litigant exception "because a patient knows his statements will remain confidential unless he affirmatively and voluntarily chooses to reveal them by raising his condition as an element or factor of any claim or defense the patient makes." *Chung*, 548 N.W.2d at 151. The Iowa Supreme Court has repeatedly held the objective of Iowa Code Section 622.10(3) is to prevent a plaintiff from using physician-patient privilege to suppress evidence when the plaintiff intends to waive the physician-patient privilege by presenting evidence of his or her own medical condition at trial. *See e.g. In re Marriage of Hutchinson*, 588 N.W.2d 442, 447 (Iowa 1999). Thus, Iowa Code 622.10 recognizes a balance between a statutory privilege providing patients with privacy and the waiver of that privilege based on the defendant's need to present a full and fair defense to the plaintiff's claims.

Despite the apparent clarity of Iowa Code 622.10, plaintiffs often attempt to limit their waiver of the physician-patient privilege to prevent the defendant from obtaining their complete medical history. As explained below, each of these attempted restrictions is unsupported by both Iowa statutory and common law.

THE PLAINTIFF'S ARGUMENTS (AND WHY THEY'RE WRONG)

A. LIMITATION OF THE WAIVER TO AN ARBITRARY TIME PERIOD

The Plaintiff's Argument: Plaintiff's attorney provides a patient's waiver limiting the release of the plaintiff's records to a specific time period, typically five to ten years before the date of loss. The plaintiff argues that any records generated prior to their chosen time frame are too remote to be relevant to the plaintiff's present complaints and are, therefore, not discoverable.

The Law: Iowa Code 622.10 does not limit the patient-litigant waiver to any particular time frame, and there is no other Iowa statute which purports to do so. Thus, any time-limitation argued for by plaintiffs must rely solely upon the argument that the records the plaintiff seeks to protect are not relevant to the plaintiff's present claims. This argument is contrary to holdings of both the Iowa Supreme Court and the Iowa Court of Appeals, which establish that a plaintiff's complete medical history is relevant and admissible at a personal injury trial. *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 158 (Iowa 2004); *Baetke v. IMT Ins. Co.*, 2005 WL 1750408 at *2 (Iowa App. 2005).

In *Pexa v. Auto Owners*, the Iowa Supreme Court was asked to determine whether the trial court committed error when it permitted the defendant to introduce evidence of the plaintiff's prostate cancer diagnosis and treatment in a lawsuit arising out of a vehicle accident in which the plaintiff sustained a pelvic fracture. *Id*. The Court held that the trial court had correctly admitted the evidence, noting that the plaintiff's medical history was "clearly relevant to the plaintiff's damage claims." *Id*. The Court explained that a primary component of a claim for pain and suffering is the plaintiff's loss of enjoyment of life. *Id*. "Evidence concerning other medical conditions that have and will impact [the plaintiff's] physical and mental well-being and his ability to enjoy life" is "clearly relevant" to assessing what impact the plaintiff's *present* injuries have on the plaintiff's life. *Id.* For example, if a plaintiff claims he or she is no longer able to play basketball because of a low back injury, it is relevant that the plaintiff was diagnosed with a heart condition 15 years prior to the accident which prevented plaintiff from engaging in strenuous physical activity. Under *Pexa*, any condition that may have impacted the plaintiff's quality of life at any time prior to the accident is "clearly relevant" to the plaintiff's past, present, and future pain and suffering.

The Iowa Court of Appeals reinforced and expanded the *Pexa* decision in *Baetke v. IMT Ins. Co.*, when it held that it was reversible error for the district court to exclude evidence of the plaintiff's "complete medical history" at trial. 2005 WL 1750408 at *2 (Iowa App. 2005). In that case, the defendant sought to admit evidence regarding the plaintiff's history of depression, sleep apnea, a hysterectomy, and unrelated injuries sustained in a motor vehicle accident eight years prior to the accident underlying the lawsuit. *Id*. The trial court excluded the evidence, stating it was irrelevant to the plaintiff's present complaints. *Id.* The Court of Appeals reversed and remanded for a new trial. *Id*. The Court, citing *Pexa*, held that a jury is entitled to consider "[the plaintiff's] complete medical history." *Id.* The defendant's "substantial rights [were] adversely affected by the trial court's evidentiary ruling excluding [the plaintiff's] complete medical history." *Id*. "As a result, the jury was given an incomplete view of the factors that may have affected [the plaintiff's] enjoyment of life." *Id.*

The holdings in *Pexa* and *Baetke* establish that a plaintiff's "complete medical history" is "clearly relevant" and admissible at trial. If a plaintiff's "complete medical history" is *admissible*, it follows that the complete medical history is *discoverable*.

The Rules of Civil Procedure provide that defendants are entitled to discover any information "which is relevant to the subject matter of the lawsuit." Iowa R. Civ. P. 1.503(1). This includes any information "reasonably calculated to lead to the discovery of admissible evidence." Id. The scope of discovery is inherently broader than the scope of admissible evidence. Iowa R. Civ. P. 1.503(1). Because the *Pexa* and *Baetke* decisions articulate that a plaintiff's "complete medical history" is admissible, defendants must be entitled to discovery of the records containing the plaintiff's "complete medical history."

B. LIMITATION OF THE WAIVER TO SELECT PROVIDERS

The Plaintiff's Argument: Plaintiff's attorney may try to limit the type of records that can be discovered by, for example, preventing discovery of optometry records from a plaintiff claiming an injury to his low back. Plaintiffs argue that certain records, such as records from their OBGYN, are innately private and not discoverable unless the plaintiff claims an injury which would be treated by the specialist.

The Law: Any attempt to limit the type of records which are discoverable clearly contradicts the appellate courts' decisions in *Pexa* and *Baetke*. Both cases address the relevance of conditions entirely unrelated to the plaintiff's present complaints and both cases clearly state that the records are relevant and admissible. For example, the *Pexa* court admitted records of cancer treatment in a case premised on pelvic facture. *Pexa*, 686 N.W.2d at 158. The *Baetke* court held records regarding a hysterectomy were relevant to the plaintiff's claim for damages relating to a hand injury. 2005 WL 1750408 at *1. The key is that the records are relevant to the plaintiff's quality of life and thus, *any* medical condition is relevant, regardless of how dissimilar it is to the plaintiff's present complaints.

C. FIVE-YEAR LIMITATION—INITIAL DISCLOSURE RULE

The Plaintiff's Argument: Plaintiff's attorney will serve a patient's waiver with plaintiff's Initial Disclosures which limits production of records to the five years prior to the date of loss. When asked for an unrestricted waiver, the plaintiff will decline, citing Iowa's Initial Disclosure rule, Iowa Rule of Civil Procedure 1.500(b), for the incorrect proposition that defendants are only entitled to five years of medical records. Rule 1.500(b) requires a plaintiff making a claim for personal injuries to identify his medical providers for the five years prior to the date of injury and produce "legally sufficient written waivers allowing the opposing party to obtain those records." Plaintiffs argue that, by setting forth a five-year Initial Disclosure requirement, the Court intended to limit discovery of prior medical records to just five years.

The Law: There is no evidence the Court intended to limit a defendant's discovery when it adopted Rule 1.500(b). The purpose of the rule, as articulated by the Court at the time of its enactment, was to have parties "exchange basic information that is typically provided later in discovery anyway and . . . lead[] to more cost-effective and efficient litigation." *See* Iowa Supreme Court Order, August 28, 2014. Thus, Rule 1.500 was intended to serve as a starting point for discovery—a springboard which would allow defendants to obtain basic information regarding the plaintiff's claims without having to wait for responses to their discovery requests, which oftentimes take several months to receive. Rule 1.500 does not in any way limit the extent of discovery or purport to prohibit discovery of information beyond this five-year period pursuant to a proper discovery request.

It should be noted that the Court of Appeals in *Baetke* specifically stated that records from eight years prior to the accident were admissible (and therefore, obviously discoverable). 2005 WL 1750408 at *2. While the *Baetke* decision was rendered prior to Iowa's implementation of the Initial Disclosure rule, the holding remains good law and there has been no indication from the Court that the decision is in any way affected by the adoption of Rule 1.500.

D. SHIFTING THE BURDEN–IMPOSING PREREQUISITES TO THE PROVISION OF A WAIVER

The Plaintiff's Argument: Plaintiff's attorney will deny a request for an unrestricted waiver claiming the defendant has failed to show the records sought are likely to have information relevant to the plaintiff's present complaints. Plaintiffs argue that the provision of an unrestricted waiver allows the defendant to engage in an unlimited fishing expedition, whereby the defendant will obtain every record he or she can find with hopes of discovering a single entry containing complaints similar to those the plaintiff now has.

In an effort to prevent this "unlimited fishing expedition," the plaintiff will seek to impose a hurdle which the defendant must clear before the plaintiff will provide a waiver for additional records. For example, the plaintiff may require the defendant to produce evidence that a particular set of records contains complaints similar to those now being asserted, *before* the plaintiff will agree to execute a waiver for those records.

The Law: For the vast majority of cases, there is no Iowa case or other legal authority which allows a plaintiff to impose a prerequisite on the defendant's ability to obtain medical records. The narrow exception to this rule, established in *Fagen v. Grand View University*, applies *only* to a defendant's request to obtain the plaintiff's mental health records and merely requires a defendant seeking mental health records to show he has a reasonable basis to believe the records sought contain relevant information. 861 N.W.2d 825 (Iowa 2015). Unfortunately, plaintiffs frequently attempt to misconstrue the Court's holding in *Fagen* to apply to *all* of the plaintiff's medical records. This is an unfair reading of *Fagen* that is directly contrary to much of the Court's language throughout the decision.

In *Fagen*, the defendant sought access to the plaintiff's fourth grade mental health records, and the Court analyzed the narrow issue of whether a tortfeasor is entitled to a patient's waiver to obtain a plaintiff's "mental health records when he or she alleges in the petition a claim for mental disability or mental distress." Id. at 829. The *Fagen* Court answers this question by implementing a "nexus" framework which requires defendants seeking *mental health records* to show a nexus between the records and the plaintiff's claim. *Id*. The Court emphasizes that "in situations involving records that are *not* mental health records, the party *asserting* the privilege has the burden of showing a privilege exists and applies." *Id*. at 833 (emphasis added). Thus, the Court reinforces the notion that a defendant has full access to a plaintiff's non-mental health records unless the plaintiff can show the automatic waiver contained in Iowa Code 622.10 does not apply.

As for mental health records, the defendant need only make a showing that he has a reasonable basis to believe the records sought are likely to contain information relevant to the plaintiff's claims. *Id*. at 834. For example, facts indicating the mental health records discuss the plaintiff's mental pain and suffering is sufficient. *Id*. at 835. Likewise, allegations of a mental injury greater than simple "garden-variety" pain and suffering, such as mental disability, PTSD, or intentional infliction of emotional distress, are generally sufficient to require waiver of the physician -patient privilege for mental health records. *See Stender v. Blessum*, 897 N.W.2d 491, 515 (Iowa 2017).

CONCLUSION

While unrestricted patient's waivers are freely given in the majority of cases, more and more plaintiffs' attorneys have begun to attempt to impose limitations on the defendant's discovery of the plaintiff's medical history. Defense attorneys must not acquiesce in a plaintiff's attempts to narrow the defendant's discovery by agreeing to limited waivers or by serving requests for waivers that are restricted. A failure by the defense bar to fight for the continued use of unrestricted waivers will allow restricted waivers, which are presently the exception, to become the norm.

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House File 518–Three Years Later

Jean Dickson, Betty, Neuman & McMahon, PLC, Davenport, Iowa

Jean Dickson

As a direct result of the 2016 election, the Republican-controlled Iowa legislature passed a number of sweeping legislative changes which have been considered "pro-business." This included "House File 518." House File 518 amended key aspects of Iowa Code Chapter 85 and 86, dealing with workers' compensation and likely was intended to reduce the costs of workers' compensation.

The Iowa House of Representatives introduced House File 518 on March 3, 2017, and passed this bill (55-38) on March 16, 2017. The Iowa Senate passed House File 518 without Amendments (29-21) on March 27, 2017. The Iowa House of Representatives sent House File 518 to the Governor for his signature on March 29, 2017. Governor Branstad signed and approved House File 518 on March 30, 2017. The Amended Act took effect on July 1, 2017.

KEY COMPONENTS OF HOUSE FILE 518

The legislation was comprehensive, and included many substantive changes to workers' compensation law. Substantive changes included, but were not limited to, the following:

INTOXICATION–IOWA CODE SECTION 85.16

- If the employer shows that the employee tests positive for any drugs or alcohol at the time of the accident or shortly thereafter, it is presumed that the employee was intoxicated at the time of the injury and that the intoxication was a substantial factor in causing the injury. The burden of proof shifts to the employee to show that the employee was not intoxicated at the time of the injury or that the intoxication was not a substantial factor in causing the injury.

TEMPORARY BENEFITS–IOWA CODE SECTION 85.33

- An offer of temporary work to the employee is required to be "in writing, including details of lodging, meals, and transportation, and shall communicate to the employee that if the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing and that during the period of the refusal the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable."
- "If the employee refuses the offer of temporary work on the grounds that the work is not suitable, the employee shall communicate the refusal, along with the reason for the refusal, to the employer in writing at the time the offer of work is refused."
- "Failure to communicate the reason for the refusal in this manner precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer."

PERMANENT PARTIAL DISABILITY–IOWA CODE SECTION 85.34

- Compensation for permanent partial disability begins when it is medically indicated that the employee is at maximum medical improvement and that the extent of loss or percentage of permanent impairment can be determined by use of the AMA Guides to Permanent Impairment.
- The loss of a shoulder is now a scheduled member injury. Therefore, compensation for the loss of a shoulder will no longer be determined by the loss of the employee's earning capacity. The loss of a shoulder is based on 400 weeks.
- The loss of the employee's earning capacity "shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury."
- "If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings that the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity."
- If an employee "returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury . . . and is terminated from employment by that employer, the award or agreement

for settlement for benefits . . . shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability."

PERMANENT TOTAL DISABILITY–IOWA CODE SECTION 85.34

- Any amount of benefits the employee receives (temporary partial, temporary total, or permanent partial) for an injury (need not be the same injury) that produced permanent disability (need not be permanent total disability) will be deducted from the total amount of compensation that is payable for permanent total disability.

CREDIT–IOWA CODE SECTION 85.34

- The employer is entitled to a credit for "any future weekly benefits due to an injury to the employee" if the employee is paid weekly compensation in the form of temporary partial, temporary total, or healing benefits. (The former law only allowed the credit to offset permanent partial disability benefits.)

- If the employee is paid any weekly benefits by the employer in excess of what is required by the Act, the employer will be credited against liability for any future weekly benefits (temporary or permanent benefits) for any current or future in jury to the same employer. (The former law only allowed the credit for a subsequent injury.)

EXAMINATION OF INJURED EMPLOYEES–IOWA CODE SECTION 85.39

- The refusal of an employee to submit to the employer's examination shall forfeit, rather than suspend, the employee's right to any compensation during the period of refusal.

- "A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted."

COMMUTATION–IOWA CODE SECTION 85.45

- "Future payments of compensation may be commuted to a present worth lump sum payment only upon application of a party to the commissioner and upon written consent of all parties to the proposed commutation or partial commutation. . . ."

INTEREST–IOWA CODE SECTION 535.3

- The Amended Act does away with the ten percent interest provision to any accrued, unpaid benefits as it applies to Iowa Code section 85.30. Interest pursuant to Iowa Code section 85.30 begins to accrue on the date that compensation is due "at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent."

AGENCY CASE LAW POST HOUSE FILE 518

Insofar as it has now been over three years since the passage of House File 518, the application of several key components of these amendments have worked their way through the commissioner. Nothing has made its way to the supreme court yet, so these applications and challenges both remain a "work in progress." That said, the rulings thus far do give an indication of how the agency thus far has interpreted some of the key points of this legislation.

APPLICATION OF IOWA CODE SECTION 85.34(2)(N):

Two arbitration decisions were recently reversed by Commissioner Cortese on the issue of the definition of the shoulder. Again, section 85.34(2)(n) added the shoulder to the list of scheduled members. Before July 1, 2017, the shoulder had been a part of the body and therefore was compensated under an industrial disability (loss of earning capacity) analysis. Section 85.34(2)(n) provided as follows: "For the loss of a shoulder, weekly compensation is paid based on four hundred weeks.

Notwithstanding the language of section 85.34(2)(n), the deputy in *Chavez v. MS Technologies and Westfield Insurance Company*, File No. 50666270 (Arb. Dec. Feb. 8, 2020), held that the injury was to the body as a whole because the injury involved structural anatomy proximal to the glenohumeral joint. Claimant's IME physician, Dr. Bansal stated that the shoulder injury was "proximal to the glenohumeral joint" by offering an illustration and explaining that the Claimant had torn multiple rotator cuff tendons. Those tendons attached to the scapula and as such were "all proximal to the glenohumeral joint." Claimant argued that the shoulder was limited to the ball and socket joint between the arm (humerus) and the trunk (scapula) which was medically called the glenohumeral joint. Because the injury was proximal (nearer to the center of the body) to the glenohumeral joint, the deputy concluded Claimant sustained an injury to her body as a whole.

Likewise, the deputy in *Deng v. Farmland Foods, Inc., and Safety National Casualty Company*, File No. 5061883 (Arb. Dec. February 25, 2020), held that injuries to the infraspinatus muscle and

labrum were not limited to a scheduled member claim. The deputy's reasoning was the same as in *Chavez*. That is, the deputy determined that because the infraspinatus was proximal to the glenohumeral joint, the injury extended beyond the left shoulder.

The defendants in both cases appealed. In appeal decisions filed on September 29 and 30, 2020, the commissioner reversed both holdings and concluded that the injuries were nonetheless limited to the shoulder and to the schedule. *Deng v.Farmland Foods, Inc., and Safety Nat'l Cas. Co.*, File No. 5061883 (App. Dec. Sept. 29, 2020); *Chavez v. MS Technologies and Westfield Insurance Company*, File No. 50666270 (App. Dec. Sept. 30, 2020). In *Deng*, the commissioner noted the injury involved a joint which was specifically identified as a scheduled member. He found the glenohumeral joint and muscles that make up the rotator cuff, including the infraspinatus, were within the definition of the shoulder. Commissioner Cortese noted that the parties had agreed that the glenohumeral joint (the "ball or socket itself") had fallen within the parameters of the shoulder under section 85.34(2)(n). Commissioner Cortese also agreed that muscles which made up the rotator cuff would be included within the definition of shoulder and thus a scheduled member claim. "Simply put, the functionality of the shoulder is dependent on these surrounding anatomical parts." *Deng v. Farmland Foods, Inc., and Safety Nat'l Cas. Co.*, File No. 5061883 (App. Dec. Sept. 29, 2020).

Likewise, in *Chavez*, defendants argued that the injury was in the purview of the express intent of the legislature and should be compensated based on the schedule. Commissioner Cortese discussed not only the rotator cuff anatomy but also the acromion and labrum in the contact of a subacromial decompression. The commissioner agreed that all of the anatomy discussed was within the confines of a shoulder scheduled member. As with *Deng*, the commissioner overruled the arbitration decision and held the injury was properly compensated as a scheduled member.

As of the writing of this article, the time for further appeal (judicial review) had not expired but further review is anticipated. In both appeals, amicus curie briefs were filed by ABI (Iowa Association of Business and Industry) as well as the Iowa Association for Justice ("Core Group"). As well, still pending on appeal is *Smidt v. JKB Restaurants, L.C., and Accident Fund National Insurance Company*, File no. 5067766 (Arb. Dec. May 6, 2020). In *Smidt*, the deputy found rotator cuff tendons and corresponding muscles attach and originate proximal to the glenohumeral joint. He found claimant proved a body as a whole injury.

That said, the recent appeal decisions in *Deng* and *Chavez* provide clarity as to not only the definition but also the scope of a shoulder injury. Both inevitably protect the interests of employers and insurance carriers as it pertains to shoulder injuries in the workplace.

Also, in an earlier decision, *Reiter v. Remsen Utilities and EMC Insurance*, File no. 5059413 (Arb. Dec. October 25, 2018), the deputy applied the upper extremity rating to the 400 week schedule.

APPLICATION OF IOWA CODE SECTION 85.34(2)(v):

This revision to chapter 85 narrowed entitlement to industrial disability. Prior to the passage of House File 518, industrial disability was generally defined as a loss of earning capacity, and not earnings. However, section 85.34(2)(v) as amended provided that an injured employee's recovery was limited to the functional rating if the employee had returned to work or was offered work for which the employee received or would receive the same or greater earnings than the employee received at the time of the injury.

In *Martinez v. Pavlick and National Interstate Insurance*, File No. 5063900 (App. Dec. July 30, 2020), Claimant was earning the same or greater earnings than what he was receiving at the time of the injury, but for a different employer. He had voluntarily resigned from the defendant-employer prior to the time of hearing. As a result, Claimant's loss of earning capacity was minimal. However, Claimant had secured a generous functional impairment rating and at hearing was awarded 100 weeks of permanency based on his functional rating.

On appeal, the Claimant argued section 85.34(2)(v) triggered his entitlement to the functional rating and avoided any industrial disability analysis. As his entitlement to industrial disability was arguable, Defendants argued section 85.34(2)(v) did not apply because Claimant no longer worked for the employer at the time of trial and that Claimant's entitlement was based on traditional industrial disability analysis. That the parties took positions contrary to what they might in a "normal" case was noted by the commissioner in his appeal decision. That is, normally the injured worker would argue for industrial disability and the defendants would argue for recovery to be limited by the functional rating.

Regardless, however, the commissioner concluded that the legislature had "intended to address only the scenario in which a claimant initially returns to work with the defendant-employer or is offered work by the defendant-employer at the same or greater earnings but is later terminated by the defendant-employer." Commissioner Cortese was unwilling to apply this portion of section 85.34(2)(v) in a situation when a claimant voluntarily left his employment and sought work elsewhere. He held the earlier, voluntary separation removed claimant from

the functional impairment analysis and triggered entitlement to industrial disability.

As of the writing of this article, the appeal decision has been further appealed by way of further review. In his decision, Commissioner Cortese did acknowledge that a "normal case" might offer different arguments (e.g., an injured worker leaving a job to secure employment with lower wages) but declined to address any other "anticipated or hypothetical arguments." Case law prior to July 1, 2017, has held that a loss of earning capacity due to voluntary choice or lack of motivation is not compensable. *Copeland v. Boones Book and Bible Store*, File 1059319 (App. November 6, 1997). The decision in *Martinez* has unclear implications for a defendant-employer's liability in a case where the injured worker had sought employment elsewhere at the time of trial.

Also, in *Draper v. Menard, Inc., and XL Insurance America, Inc.*, File no. 5061657 (Arb. Dec. 2019), the deputy applied section 85.34(2)(u) where Claimant had accepted the offer to return to work and corresponding wage increase. However, Claimant was terminated for reasons in no way related to the work injury. In light of *Martinez*, however, it is unknown how this case would be determined on appeal.

APPLICATION OF IOWA CODE SECTION 85.34(2)(x):

Section 85.34(2)(x) clarified that a determination of functional disability "shall" be determined solely by the AMA Guides, and that agency not utilize lay testimony and agency expertise would not be used. In *Streif v. John Deere Dubuque Works*, File No. 5068621 (Arb. Dec. Dec. 2019), the evidence included two different functional impairment ratings. The treating surgeon, Dr. Kruse found Claimant had a 100 percent loss to the distal phalanx of the thumb, which converted to a 20 percent loss to the hand. The IME physician, Dr. Taylor, opined Claimant had a 21 percent loss to the hand.

The deputy concluded the opinions of Dr. Taylor were "more convincing." In making that conclusion, the deputy considered testimony of the Claimant and his co-worker regarding Claimant's problems with gripping, fatigue and loss of strength in the left hand. Therefore, the deputy did consider lay testimony in determining which functional rating to accept. That said, he did also state as follows:

> Assuming, for argument's sake, the new statute under *Iowa Code section 85.34(2)(x)* completely prohibits using any evidence, other than the ratings, in determining a percentage of permanent impairment, it is still found the rating of Dr. Taylor is more convincing that that of Dr. Kruse.

Although the deputy crafted his reasoning to comport with the dictates of section 85.34(2)(x), the decision did provide for a way that lay testimony might still be considered in determining functional impairment.

APPLICATION OF IOWA CODE SECTION 85.34(7):

In *Wilkie v. Kelly Services and Indemnity Insurance Company of N.A.*, File No. 5-64366 (App. Dec. September 2, 2020), Commissioner Cortese agreed that Claimant's award of permanent total disability benefits was not subject to apportionment under section 85.34(7). The commissioner recognized that before the 2017 amendments were adopted, permanent total disability benefits were not subject to apportionment. Likewise, when the legislature adopted House File 518, the amendments did "not clearly direct an expanded application to awards of permanent total disability." This decision was not further appealed.

APPLICATION OF IOWA CODE SECTION 535.3:

In *Gamble v. AG Leader Technology and The Charter Oak Fire Insurance Company*, File No 5054686 (App. Dec. April 24, 2018), Commissioner Cortese clarified how the revised interest rate would apply. Prior to House File 518, the interest rate had been ten percent. The amendment to section 535.3 provided that the interest rate would be based on "the one-year treasury constant maturity published by the federal reserve in the most H15 report settled as of the date of injury, plus two percent." The commissioner ordered that interest be paid at the rate of ten percent for benefits payable and not paid when due which accrued before July 1, 2017. Interest on past due weekly compensation accruing on or after July 1, 2017, would be payable at the rate based on the treasury rate plus two percent.

OTHER LEGISLATION, POST HOUSE FILE 518–IOWA CODE SECTION 85.61(7)(c)

Although not part of House File 518, the legislature also passed legislation in response to the supreme court's holding in *Bluml v. Dee Jays, Inc.*, 920 N.W.2d 82 (Iowa 2018), a case involving an idiopathic fall onto a level floor. The court held the issue of arising out of was a factual issue to be determined by the agency and refused to find that the injury was not compensable as a matter of law. In *Bluml*, the injured worker (with preexisting epilepsy) had experienced a seizure (not caused by his employment) and fell straight down onto a hard floor. He argued the hardness of the floor was a risk associated with his employment. After winning at the agency and district court level, the supreme court remanded for further proceedings. The case later settled without a remand order being entered.

In any event, the legislature responded with adding section 85.61(7)(c) to the definition of of "personal injury arising out of and in the course of the employment." Section 85.61(7)(c) provided as follows:

> Personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable under this chapter.

Under this amendment, the claim in *Bluml* would not have been compensable as a matter of law.

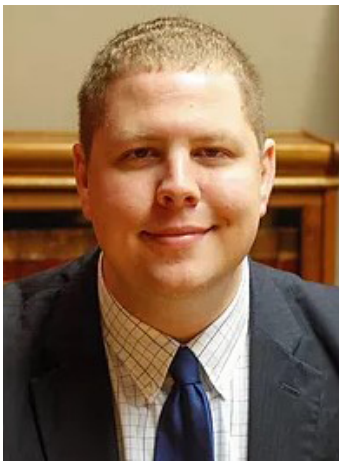
WHAT'S NEXT?

It has now been three years since this comprehensive legislation took effect. The agency has since seen several retirements among its deputies. At the supreme court level and since July 2017, the governor has appointed four new justices which have been appointed due to retirements as well as the untimely death of Justice Cady. The author expects that the aforementioned decisions dealing with the shoulder and industrial disability will likely make their way to the supreme court. If not, the deputies will continue to rule consistent with the prior appeal decisions of the commissioner, and eventually one of those rulings will make their way to the supreme court.

Interpreting the statutes in light of the history of House File 518 does serve contrary interests. Iowa Workers' Compensation law is based on statute not common law. On the one hand, that House File 518 was passed in light of concerns raised by employers and insurance companies is undisputed. The goal of statutory interpretation is to "determine and effectuate the legislature's intent." *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 769 Iowa 2016) (citing *United Fire & Cas. Co. v. St. Paul Fire Marine Ins. Co.*, 677 N.W.2d 755, 759 (Iowa 2004)). However, on the other hand, workers' compensation statutes are interpreted liberally in favor of the injured worker. *Denison Mun. Util. v. Iowa Workers' Comp. Comm'r*, 857 N.W.2d 230, 237 (Iowa 2014). As a result, the more substantive the changes are which arise from House File 518 and has the legislature changes its political make up, we can expect to see a more comprehensive analysis from the courts as well as even additional legislative changes in the years to come.

Case Law Update

Luke Jenson[1]



Luke Jenson

Several cases decided recently by the Iowa Court of Appeals are noteworthy for Iowa litigators and readers of the *Defense Update*. And with the continued concerned about the public health crisis of Covid-19 in the background, one of those cases dealing with liability for exposure (or potential exposure) of a medical issue was particularly notable.

In ***Becerra-Shaffer, et al. v. Central Iowa Hospital Corporation*, No. 19-0273 (Iowa Ct. App., Sept. 23, 2020)**, the appellate court applied an "actual exposure rule" in affirming a lower court's grant of summary judgment and held that claims for emotional distress would not be entitled to relief if too remote, speculative, and unreasonable as a matter of law.

What led to the lawsuit was a pharmacy technician who, at some point during his one-and-a-half-month employment with the hospital, had tampered with vials of Fentanyl in the hospital pharmacy and injected some of the drug into himself and then replaced the vials for future hospital use.

The hospital investigated the matter and determined that for various reasons, the employee's actions had not actually exposed patients to a medical threat, such as diluted medication or diseases such as Hepatitis B and C or HIV.

Still, a group of patients brought forth a lawsuit alleging that the hospital was negligent and caused them increased pain and suffering, increased lab and blood testing, increased anxiety for fear of contracting a disease, and emotional distress. Appealing the lower court's grant of summary judgment that ruled against them, the patients again emphasized their harm, arguing they had a reasonable fear of contracting a disease they continued to feel up until they learned they had not been exposed, and that the extra blood testing to confirm this was the physical harm that buttressed the claim of emotional distress or, alternatively, even if no physical harm had occurred, the medical professional-patient relationship could still be used as a basis for recovery of emotional distress damages.

The appeals court discussed a Missouri case dealing with similar legal standards in the context of a potential exposure to AIDS. In that case, the Missouri appellate court said that *actual* exposure was necessary to recover for a claim of infliction of emotional distress where a person feared contracting the syndrome and supported its holding with the following reasons: (1) it was important fear not be premised on public misconceptions about AIDS; (2) an actual exposure rule preserved an objective component in emotional distress cases that ensured stability, consistency, and predictability in the court system regarding the claims; (3) it better compensated people who actually were infected; and (4) the standard better prevented against frivolous litigation.

The Iowa Court of Appeals adopted the standard: "We conclude the actual exposure rule should be applied in Iowa for the reasons set out by the Missouri Court of Appeals." The actual exposure rule is applicable in many factual settings. In the midst of a global pandemic, in which government health departments and state and municipal leaders have implemented numerous safety measures to curb the spread of exposure, one immediately considers scenarios of how the rule would be applied in situations where potential exposure to Covid-19 caused self-quarantining and accompanying fears of having contracted the virus. In addition to the legal protections to actual exposure implemented over the summer by the Iowa legislature, the Iowa Court of Appeals sets forth an additional defense by precluding claims that can only show potential exposure caused emotional distress.

WHY IT MATTERS

By endorsing and applying the actual exposure rule, the Iowa Court of Appeals has provided an important benchmark for cases involving communicable diseases and infections, barring claims where exposure to those was never actualized, notwithstanding any alleged emotional distress that came from the potential exposure.

Going from a pronouncement of a broad standard and a category of claims to looking at the gritty details of a trial, on the same day it issued its decision in *Becerra-Shaffer*, the Iowa Court of Appeals examined a situation in a personal injury case involving a go-kart crash where the trial judge had sustained a motion in limine that prevented a defendant from introducing evidence of comparative fault but also allowed a comparative fault instruction for the jury's consideration. The rationale for allowing the instruction

was that there had been evidence introduced *by the plaintiff* and an argument made *by the plaintiff* bringing up the comparative fault doctrine that opened the door to a comparison. With the instruction (and evidence) before them, the jury found the plaintiff 51% at fault.

On appeal–***Ransdell v. Huckleberry Entertainment, LLC*, No. 19-0545 (Iowa Ct. App., Sept. 23, 2020)**–the plaintiff argued that the court's decision to allow the instruction was a reversal of its own order and led to irregularity, unfair surprise, and prejudice.

A majority of the appellate court disagreed. In her opinion, Judge Greer emphasized that "When a district court does not make an unequivocal ruling in limine regarding the admissibility of evidence and instead signals that issues might be addressed related to the evidence when a party actually wants to present the evidence at trial, the party must object to the evidence to preserve error." (Citation omitted). And here, the district court had actually, in the appellate court's view, given fair warning to the plaintiff, saying in its pretrial order that "issues of negligence will overlap at times with comparative fault and those issues will be addressed during trial." If that overlap occurs (either because the issue was introduced by the plaintiff or hypothetically, it was not objected to by the plaintiff *had it been introduced by the defendant*), the district court is not entirely bound by its own earlier decision to exclude evidence of comparative fault.

The plaintiff also argued on appeal that in addition to its earlier ruling, the trial judge should not have allowed a comparative fault instruction because there was insufficient evidence to support such a defense from the defendant. Again, the appellate court disagreed, relying heavily on a cell-phone recording of the incident that had also been introduced into evidence by the plaintiff. After viewing that video, Judge Greer wrote:

> a jury could have found, as it did, that [the plaintiff] created the situation she found herself in. From the evidence, the jury could find that [the plaintiff] did not have her foot on the brake but instead kept her foot on top of the vehicle as she drove the track. The jury could also find that the accident sequence began when [the plaintiff] tapped the back of the vehicle that was in front of her.

In addition to the video, testimony from the plaintiff herself and an expert the plaintiff had hired also went to supporting a comparative fault standard, said the appellate court.

The decision might not be breaking any new ground, but it is instructive to the practicing trial attorney. You can read key elements of the preparation, lead-up, and crucial moments during (and after) a trial through these pages and see how, like a game of chess, one or two 'moves' can quickly spiral into a checkmate. As Judge Greer put it, "[T]rials often involve shifting strategies directed by evidence offered in real time." A chess analogy seems particularly appropriate given language in the dissent from Judge Tabor, who argues that it was unfair that the trial court had "changed the rules toward the end of the game," and that the plaintiff had "play[ed] by the rules set at the start . . . [and] adopted a strategy based on the court's grant of her motion in limine."

WHY IT MATTERS

Keep *Ransdell* in mind for its examination of the doctrine of comparative fault and when the doctrine's applicability is allowed at the trial court level because testimony at trial has opened the door to its use in cases where the trial court previously ruled it inadmissible as a defense.

Also instructive for purposes of trial practice and evidentiary matters is the appellate court's decision in ***Holmes v. Pomeroy*, No. 19-1162 (Iowa Ct. App., Sept. 23, 2020)**, particularly with respect to alleged cell-phone use or texting in a motor vehicle accident case that ended with a defense verdict.

In his appeal, the plaintiff took issue with several rulings made by the trial judge related to evidence presented at trial. First, after the investigating officer to the accident testified that she had heard someone at the scene "mention[ ] that somebody else maybe had thought [the defendant] was texting," the plaintiff attempted to summarize that in a PowerPoint slide at closing like this: "[a] witness said [defendant] was texting while driving." The trial court prohibited the use of the slide, which the appellate court found was not an abuse of discretion–the trial court had prevented a misstatement of the evidence by the preclusion of the slide.

Second, a passerby attended to the plaintiff at the scene, and testified she heard the plaintiff say either, "It was my fault" or "This was my fault." The plaintiff objected that this statement was a legal conclusion, but the trial court permitted the testimony as an admission by party-opponent. Again, the appellate court stated there was no abuse of discretion in the trial court's ruling.

Finally, the trial court had instructed the jury to limit the purposes for which to "use evidence that, on certain occasions after the accident, [the defendant] used her cell phone while driving." The plaintiff had argued that the defendant's actions amounted to a habit, evidence permissible under Iowa R. Evid. 5.406. The plaintiff had actually found twenty examples of the defendant using her phone in a car between May 2015–Feb. 2018 (the accident subject to this lawsuit occurred on June 8, 2015). But, those examples could not distinguish between whether the defendant

was driving or just riding as a passenger, and even in the worst case scenario where the defendant had been driving each of those times, twenty examples "still would not be 'numerous enough' to show [the defendant] has a *habit* of using her phone every time—or even most times—she drives a moving car." (Citing *Barrick v. Smith*, 80 N.W.2d 326 (Iowa 1957)). Again, no abuse of discretion was found by the appellate court.

WHY IT MATTERS

For defense counsel dealing with motor vehicle accidents and potential cell phone usage evidence that may have contributed to the accident, *Holmes v. Pomeroy* is worth reading for its application of various evidentiary issues, including hearsay, admissions by party-opponents, and the habitual use doctrine.

1 Associate Attorney at Swisher & Cohrt, PLC in Waterloo. B.A.: University of Northern Iowa (2010). J.D.: University of Iowa (2013). Co-chairperson of IDCA's New Lawyers Committee (2020-2021).

New Lawyer Profile

In every issue of *Defense Update*, we will highlight a new lawyer. This issue, we get to know Blake R. Hanson at Bradshaw, Fowler, Proctor & Fairgrave, P.C., in Des Moines.

Blake R. Hanson

Blake R. Hanson is an Associate at Bradshaw, Fowler, Proctor & Fairgrave, P.C. in Des Moines, where he focuses on all stages of civil litigation, with an emphasis on insurance defense litigation. Blake is originally from the Sioux City, Iowa area, and graduated from Iowa State University with a bachelor's degree in Political Science in 2012 before earning his law degree from Drake University Law School in 2015. After graduating from law school, Blake was in private practice where he was part of the legal team that brought civil litigation following the largest lottery rigging in U.S. history resulting in a nationwide multi-million-dollar class action settlement and a landmark lawsuit brought by a former Hot Lotto winner. The events that unfolded were the subject of a program titled "*The Notorious Lottery Heist*" and a book "*The $80 Billion Gamble*."

Blake currently serves on the Litigation Section Council of the Iowa State Bar Association and is also a member of the Polk County Bar Association and C. Edwin Moore Inn of Court. He is currently Chair of the Transportation Safety Committee for the City of Des Moines and serves as a legal representative for Drake University Head Start, along with serving on the Honors Program Alumni Board for Iowa State University. He was formerly on the Board of Directors for Everybody Wins! Iowa, a youth literacy non-profit and the Des Moines Young Professionals Connection. Recently, Blake presented at the IDCA Annual Seminar as a panel member for the presentation, *"New Attorneys Flip the Script: Reverse Panel on Developing Great Lawyers."* Blake and his fiancé, Isabelle, currently live in Des Moines' East Village and enjoy trying new restaurants, spending time with friends and rooting for the Cyclones!

Lights. Camera. Action. IDCA's Virtual Conference

The IDCA transformed the 56th Annual Meeting & Seminar to a virtual event, live-streamed September 17–18. While speakers presented live from a production studio, 141 members tuned into the event via YouTube and engaged with speakers—and other members—through the live chat feed.

Although event delivery was different, the quality of programs remained unparalleled! IDCA offered 11.5 hours of CLE, which included 2.0 hours of Ethics and access to 3.5 hours of on-demand CLE.

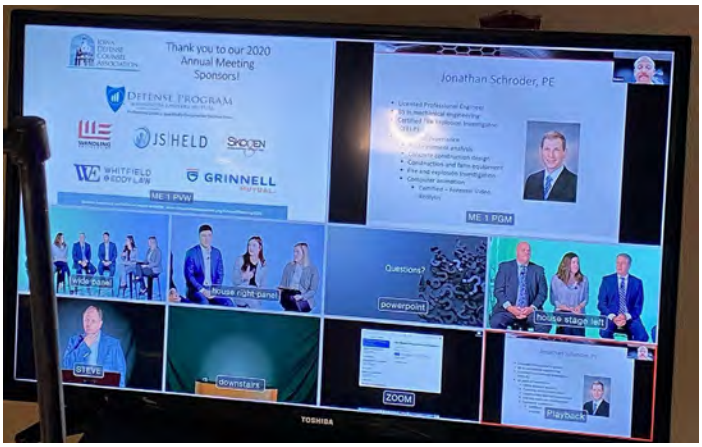
Here are a few behind-the-scenes photos from the production studio.

The production crew of four works to ensure camera switches between speakers in lower and upper studios and sponsored commercial playbacks happen with ease.

Annual Meeting chair, Steve Doohen, was always at the ready to introduce the next speaker.

Frank Severino, Chief Deputy Clerk of Court, U.S. District Court, Southern District of Iowa, discussed trends, best practices and tips for successfully litigating cases in federal court.

This six-person panel gets mic'd up and new lawyers are ready to "flip the script" and ask seasoned lawyers candid questions.



A quick view of all the cameras required for production.

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IDCA AWARDS

During the virtual State of the Association Address, president Kami Holmes celebrated IDCA's successes and honored members who worked hard to continually move IDCA forward. Congratulations to this year's award recipients!

OUTGOING BOARD MEMBER AWARD

IOWA DEFENSE COUNSEL ASSOCIATION

CONGRATULATIONS

NEW LAWYERS REPRESENTATIVE
2017 - 2020

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

PRESIDENT'S AWARD

The President's Award is in honor and recognition of superior commitment and service to IDCA.

IOWA DEFENSE COUNSEL ASSOCIATION

CONGRATULATIONS

PRESIDENT'S AWARD
2020

James Bryan
Anderson & Associates
West Des Moines, IA

Bryan volunteered to lead an IDCA COVID-19 task force and keep track of litigation filed in the State of Iowa and nationally and keep IDCA apprised of outcomes.

IOWA DEFENSE COUNSEL ASSOCIATION

CONGRATULATIONS

PRESIDENT'S AWARD
2020

Sean O'Brien
Bradshaw Fowler Proctor & Fairgrave PC
Des Moines, IA

O'Brien, also a member of the COVID-19 task force, led the develop of IDCA's webinar, Business Interruption Insurance for COVID-19 Claims. This webinar covered business interruption insurance issues related to workers compensation, general liability, commercial property, pending legislation and Constitutional arguments and pending litigation.

RISING STAR AWARDS

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.

IOWA DEFENSE COUNSEL ASSOCIATION

CONGRATULATIONS

RISING STAR AWARD
2020

Kristymarie Shipley
Shuttlework & Ingersoll, PC
Cedar Rapids, IA

Shipley continues to be a gracious speaker at IDCA events and continues to offer her expertise by stepping in to fill last-minute speaker roles.

IOWA DEFENSE COUNSEL ASSOCIATION

CONGRATULATIONS

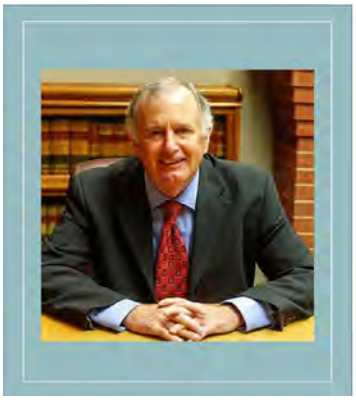
RISING STAR AWARD
2020

Luke Jenson
Swisher & Cohrt, PLC
Waterloo, IA

Jenson led monthly New Lawyers Committee calls since October 2019 and ensured all new members were welcomed to the association.

MERITORIOUS SERVICE AWARD

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



IOWA DEFENSE COUNSEL ASSOCIATION

CONGRATULATIONS

MERITORIOUS SERVICE AWARD
2020

David L. Riley
Swisher & Cohrt, PLC
Waterloo, IA

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.

IOWA DEFENSE COUNSEL ASSOCIATION

CONGRATULATIONS

EDDIE AWARD
2020

Michael J. Moreland
Harrison, Moreland, Webber, Simplot & Maxwell, PC
Ottumwa, IA

IDCA BOARD INSTALLATION

Congratulations to the 2020–2021 Board of Directors!

IOWA DEFENSE COUNSEL ASSOCIATION

CONGRATULATIONS

PRESIDENT
2020 - 2021

Stephen Doohen
Whitfield & Eddy PLC
Des Moines, IA

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2020 - 2023

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Stravers Law Firm
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Woodke & Gibbons
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Betty Neuman & McMahon PLC
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Miller, Pearson, Gloe, Burns,
Beatty & Parrish, PLC
Decorah, IA

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Lane & Waterman LLP
Davenport, IA

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Nyemaster Goode, P.C.
Des Moines, IA

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Aspelmeier Fisch Power
Engberg & Helling P.L.C.
Burlington IA

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2018 - 2021

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Nyemaster Goode, P.C.
Des Moines, IA

IOWA DEFENSE COUNSEL ASSOCIATION

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2020 - 2023

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Lane & Waterman LLP
Davenport, IA

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CONGRATULATIONS

IMMEDIATE PAST PRESIDENT
2020 - 2021

Kami L. Holmes
Grinnell Mutual Reinsurance Company
Grinnell, IA

IOWA DEFENSE COUNSEL ASSOCIATION

CONGRATULATIONS

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2019 - 2022

Luke Jenson
Swisher & Cohrt, PLC
Waterloo, IA

IOWA DEFENSE COUNSEL ASSOCIATION

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NEW LAWYERS REPRESENTATIVE
2020 - 2023

Courtney Wilson
Hopkins & Huebner, PLC
Davenport, IA

IOWA DEFENSE COUNSEL ASSOCIATION

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DRI REPRESENTATIVE
2019 - 2022

Kevin M. Reynolds
Whitfield & Eddy, PLC
Des Moines, IA

IDCA Annual Meetings

September 16–17, 2021

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

September 15–16, 2022

58TH ANNUAL MEETING & SEMINAR
September 15–16, 2022
Embassy Suites by Hilton, Des Moines Downtown
Des Moines, Iowa

Past President Kevin Reynolds Inducted to American College of Trial Lawyers

Kevin Reynolds

Whitfield & Eddy attorney Kevin Reynolds was inducted as a Fellow of the American College of Trial Lawyers (ACTL) on September 25, 2020.

ACTL Fellowship is extended only by invitation, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Membership may not exceed more than one percent of the total lawyer population of any state of province.

Reynolds is a member attorney representing clients in litigation matters including products liability for almost 40 years. He is rated AV Preeminent by Martindale-Hubbell, selected for inclusion in Chambers USA, and received the Defense Research Institute Exceptional Performance Citation. He is an IDCA past president and alumni of University of Iowa College of Law.