2023 IOWA DEFENSE COUNSEL ASSOCIATION 59TH ANNUAL MEETING & SEMINAR

Case Law Update #1: Torts/Negligence

Zack Martin, Heidman Law Firm, PLLC

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- ***Kirlin v. Monaster*, 984 N.W.2d 412 (Iowa 2023)**
    - **Factual Background:** In the spring of 2019, Jahn Kirlin sought medical treatment for persistent pain in his head and neck. Dr. Christian Jones, of the Methodist Physicians Clinic–Council Bluffs, recommended Jahn take medications to manage his pain over the short-term and suggested an MRI could be necessary if his symptoms did not improve. Jahn's symptoms did not improve, and when he returned to receive further treatment, he was placed in Dr. Barclay Monaster's care. Dr. Monaster did not order an MRI, however, recommending instead that Jahn continue managing his pain as before. Jahn experienced a stroke soon after that visit.
    - **Procedural Background:** On September 11, 2020, Jahn and his wife Sara filed a petition against Dr. Jones, Dr. Monaster, and Methodist Physicians Clinic alleging negligence and seeking compensation for Jahn's injuries and Sara's loss of consortium. The Kirlins timely filed a section 147.140 certificate of merit affidavit on October 2, signed by Dr. David Segal, a board-certified neurosurgeon. The Defendants challenged the certificate on the basis that Dr. Monaster is a family physician and Dr. Segal was not board-certified in family medicine or a substantially similar field. Before the district court could issue a ruling on those motions, however, the Kirlins voluntarily dismissed their petition without prejudice under Iowa Rule of Civil Procedure 1.943.

      The Kirlins refiled their petition on April 14, 2021, and provided a new certificate of merit signed by Dr. Brian Smith—board-certified in family medicine. The

Defendants moved to dismiss the second case on the basis that the certificate of merit signed by Dr. Segal from the first case was deficient. The district court denied the Defendants' motions to dismiss because, at the pleadings stage, it could not consider facts outside the Kirlins' petition, including Dr. Segal's certificate of merit from the first case. The Defendants then filed answers and moved for summary judgment on the same bases as alleged in their motions to dismiss, again relying on their challenge to Dr. Segal's certificate of merit. The Defendants claimed the deficient certificate of merit affidavit the Kirlins filed in the first case entitled them to dismissal of the second case.

The district court granted the Defendants' motion for summary judgment. The district court determined that it could consider the issue of statutory compliance from the first case despite Plaintiffs' Rule 1.943 dismissal because the harsh consequence of dismissal under Iowa Code section 147.140(6) can be characterized as a sanction. Because the certificate of merit affidavit in the first case did not substantially comply with the statutory requirements, the Defendants were entitled to dismissal with prejudice as to the claims against Dr. Monaster.

- **Issue:** Did the district court properly grant the Defendants' motion for summary judgment in the Plaintiffs' second lawsuit based on the deficient certificate of merit affidavit Plaintiffs filed in their first lawsuit?
- **Holding:** The Supreme Court reversed the district court's order granting summary judgment and remanded for further proceedings.
- **Analysis:** The Supreme Court determined that the district court lost jurisdiction to review whether the Plaintiffs' first certificate of merit affidavit substantially complied with the requirements upon the Plaintiffs' filing their voluntary dismissal. The certificate of merit affidavit requirements ceased operating, as it lacked a case over which to govern, and the Defendants' motions seeking to enforce that statute

became moot. When the Kirlins then refiled their suit, section 147.140 applied anew, and the Kirlins could not have relied on a certificate of merit from a previously filed and dismissed case to satisfy the statute any more than the Defendants could rely on such a certificate to defeat the refiled petition. The district court erred as a matter of law when it granted summary judgment based only on the certificate of merit affidavit signed and provided in the first case which was voluntarily dismissed.

- ***Ronnfeldt v. Shelby Cnty. Chris A. Myrtue Mem'l Hosp.*, 984 N.W.2d 418 (Iowa 2023)**
  - **Factual Background:** In May 2016, Ronnfeldt underwent a hernia repair surgery at Myrtue Medical Center in Shelby County. A CT scan revealed a significant enlargement of her uterus which, according to the notes in the medical records, warranted follow-up discussions and investigation. But Ronnfeldt was never informed of the results of the scan or referred for further treatment. Four years later, Ronnfeldt returned to Myrtue Medical Center complaining of abdominal pain. Another CT scan revealed the mass had significantly increased in size and was now a tumor. After surgery to remove the tumor, Ronnfeldt was diagnosed with stage IV uterine cancer.
  - **Procedural Background:** Ronnfeldt sued Myrtue Medical Center alleging medical negligence. Myrtue filed its answer on July 1, 2021, giving Ronnfeldt sixty days to file a certificate of merit affidavit. On October 27—118 days after Myrtue's answer—Ronnfeldt had yet to file such a certificate, so Myrtue moved to dismiss her petition with prejudice.

    The same day, Ronnfeldt voluntarily dismissed her petition. The district court entered an order noting that a review of the file revealed the voluntary dismissal, that the clerk of court had closed the file, and that Myrtue's motion to dismiss was now moot. Myrtue moved the court to reconsider, arguing that dismissal with

prejudice was mandatory under section 147.140, and Ronnfeldt could not avoid that statutory mandate by filing a rule 1.943 voluntary dismissal. The court agreed that it retained jurisdiction to consider Myrtue's motion to dismiss, which it then granted, dismissing Ronnfeldt's claims with prejudice. Ronnfeldt appealed, arguing her voluntary dismissal terminated the case in the district court.

- **Issue:** Did the district court err in granting the Defendant's motion to reconsider Plaintiff's voluntary dismissal and dismissing with prejudice Ronnfeldt's claim pursuant to Iowa Code section 147.140?
- **Holding:** The district court lacked jurisdiction to rule on Myrtue's motion to dismiss under section 147.140 after Ronnfeldt voluntarily dismissed the case. Its order on that motion was therefore reversed.
- **Analysis:** Dismissal under rule 1.943 is self-executing. Once the plaintiff voluntarily dismisses her case under rule 1.943, the district court lacks jurisdiction to adjudicate the merits of the case, including the section 147.140 motion to dismiss. Nothing in section 147.140 suggests it survives an otherwise proper dismissal to support Myrtue's claim to a vested right to a ruling on its motion to dismiss.

  The use of the word "shall" in subsection (6) of section 147.140 did not change the Court's analysis. The Court noted that it had rejected similar arguments when holding that Rule 1.943 dismissals moot pending dispositive motions pursuant to Iowa's summary judgment rule, Iowa Code section 668.11, and the Iowa Municipal Tort Claims Act ("IMTCA"). The court noted that while a rule 1.943 dismissal is self-executing, a motion to dismiss pursuant to section 147.140 requires a court to determine whether the plaintiff substantially complied with the statutory requirements. Section 147.140, unlike actions for sanctions for which courts retain

jurisdiction even after voluntary dismissal, does not subject plaintiffs or entitle defendants to consequences that are collateral to the underlying lawsuit.

Allowing a plaintiff to dismiss an action without prejudice does not undermine the purpose of section 147.140. Even if a plaintiff dismisses and then refiles a malpractice action when she fails to timely provide a certificate of merit, she still has just sixty days after the defendant's answer in the refiled case to comply. The defendant is largely protected from the expense and burden of litigation even if the initial case is dismissed and refiled because the plaintiff is precluded from conducting any discovery prior to serving the certificate of merit affidavit.

- ***Matter of Dethmers Mfg. Co.*, 985 N.W.2d 806 (Iowa 2023)**
    - **Factual Background:** Plaintiff in a Louisiana products liability suit used Iowa's interstate discovery procedures to serve subpoenas on Dethmers Manufacturing Company, an Iowa firm. At issue in the Louisiana case was an allegedly defective coupler on a U-Haul trailer—the piece which attaches to a vehicle's hitch ball. Under Louisiana law, the Plaintiff's claim requires proof that: (i) at the time the product left its manufacturer's control, there existed an alternative design for the product that was capable of preventing the claimant's damage; and (ii) at the time the product left its manufacturer's control, the likelihood that the product's design would cause the claimant's damage and the gravity of that damage outweighed the burden on the manufacturer of adopting such alternative design and the adverse effect, if any, of such alternative design on the utility of the product.

      Although Dethmers did not manufacture the coupler involved in the collision, Plaintiff alleged that Dethmers manufactured the Dethmers EZ Latch Coupler which U-Haul began implementing after the Plaintiff's accident. Plaintiff alleged that the EZ Latch Coupler was a reasonable alternate design that would have prevented his accident.

- **Procedural Background:** Plaintiff filed a Motion for Issuance of a Foreign Subpoena Duces Tecum and a Motion for Issuance of a Subpoena for Deposition in Iowa district court. The subpoena for documents required Dethmers to produce every document that has anything to do with its trailer-coupling business. The subpoena for sworn testimony requested a deposition about every facet of Dethmers' business. Dethmers moved to quash the subpoenas. The district court declined, and Dethmers appealed.
- **Issue:** Did Plaintiff's foreign subpoenas present an undue burden such that the district court should have quashed the subpoenas?
- **Holding:** Plaintiff's subpoenas were overly burdensome on their face and should have been quashed. The Supreme Court reversed and remand to the district court for entry of an order quashing the subpoenas.
- **Analysis:** To determine whether a subpoena presents an undue burden, such that a trial court would be required to quash or modify it, a court should weigh the following factors: (1) relevance of the information requested; (2) need of party for documents; (3) breadth of document request; (4) time period covered by request; (5) particularity with which the party describes the requested documents; and (6) burden imposed. Concern for the unwanted burden of a subpoena thrust upon a nonparty is a factor entitled to special weight. Factors for determining whether a subpoena presents an undue burden, such that a trial court would be required to quash or modify it, are not required to carry equal weight in every case; one or two factors could be determinative depending on the case. To avoid a subpoena being modified or entirely quashed, the requesting party must show that the requested document or information contained therein: (1) is relevant to a litigated issue; (2) is needed by the requesting party; and (3) could not have been obtained through other means.

Attorneys and parties must frontload their efforts with respect to a subpoena in order to avoid imposing undue burden or expense on a person subject to the subpoena, such that a trial court would be required to quash or modify the subpoena. It is not enough to say that although a subpoena was obviously too broad when it was served, its onerous demands were just a starting point for a future negotiation that would likely lead the issuing attorneys to settle for less. To the extent practicable, a subpoena must be reasonably tailored before it is served to avoid having the subpoena quashed or modified.

The Plaintiff's subpoenas for documents and deposition testimony imposed on Dethmers an undue burden and were subject to being quashed. The record did not show whether the requesting party had obtained or could have obtained the same documents and information from other sources. Dethmers had no direct interest in suit and the subpoenas nevertheless commanded it to provide 22 categories of documents and testimony, many of which were extraordinarily broad. The subpoenas also required Dethmers to produce every document that had anything to do with its trailer-coupling business, and then provide sworn testimony about every facet of that business. While, as a general rule, modification of a subpoena is preferred over outright quashing, the Supreme Court concluded that quashing was an appropriate remedy where reforming the subpoenas to fit the Plaintiff's actual needs was not discernable from the record.

- ***Est. of Butterfield by Butterfield v. Chautauqua Guest Home, Inc.*, 987 N.W.2d 834 (Iowa 2023)**
    - **Factual Background:** Robertta Butterfield resided at Chautauqua, starting in October 26, 2017. Between having left hip fracture surgery on May 27, 2018 and her death on May 18, 2019, Ms. Butterfield spent a significant amount of time in bed. Plaintiff developed bed blisters. By January 10, 2019, a blister had developed

on Butterfield's left buttock. It measured about 0.8 centimeters by 1 centimeter. By February 28, the blister had grown to about 2.8 centimeters by 3 centimeters by 1.8 centimeters. By April 3, the blister was 7.5 centimeters by 2 centimeters by 4 centimeters. Sometime between February and April, the blister became infected and started to emit a foul odor.

- **Procedural Background:** On April 20, 2020, Butterfield's estate filed suit, alleging medical malpractice against Chautauqua. Chautauqua answered on May 21, 2020. Plaintiff did not serve a certificate of merit affidavit on Chautauqua within 60 days of its Answer or at any point thereafter. On July 16, 2021, Chautauqua filed a motion to dismiss with prejudice pursuant to Iowa Code section 147.140. The district court granted Chautauqua's motion to dismiss. Plaintiff's appeal was transferred to the Court of Appeals, which affirmed the district court's dismissal. The Supreme Court granted the Plaintiff's request for further review.
- **Issue:** Is a certificate of merit affidavit required in medical malpractice cases where expert testimony is not needed on standard of care or breach and is only needed on causation?
- **Holding:** In a 5-2 decision, the Supreme Court remanded to the district court for determination of which of Plaintiff's claims required expert testimony to establish standard of care and breach. For claims where expert testimony is only required on the issue of causation, the majority held that a certificate of merit is not required.
- **Analysis:** The Supreme Court began by addressing principles of statutory interpretation. The Court noted that the first step is determining whether the statute is ambiguous. The Court found that ambiguity exists in the context of the certificate of merit statute. The statute provides that the certificate of merit requirement is triggered whenever expert testimony is required to establish a plaintiff's "prima facie case." The contents of the certificate of merit need not address causation and

must address only "the issue of standard of care and an alleged breach of the standard of care."

The ambiguity, according to the majority, was in the difference between cases where the certificate of merit affidavit requirements are triggered—those where expert testimony is needed to establish a prima facie case (i.e., standard of care, breach, and causation)—and the contents of a certificate of merit, which must only address standard of care and breach. To resolve the ambiguity, the Court turned to legislative history. The Court noted that prior versions of Iowa Code section 147.140 had included the requirement that the contents of the certificate of merit address standard of care, breach, and causation.

From the removal of the word "causation," the Court inferred that the legislature did not intend the certificate of merit requirement to reach the issue of causation. The Court rejected the defendant's position that the plain language of section 147.140 requires a certificate of merit where expert testimony is needed solely on causation, despite causation certainly being an element of a plaintiff's "prima facie case." The majority concluded that "it makes no sense to require a party to hire an expert just to fill out a certificate of merit when no expert is necessary for" standard of care and breach. The Court remanded to the district court for determination of whether expert testimony is necessary to establish standard of care and breach.

Justice May, joined by Justice McDermott, filed an opinion concurring in part and dissenting in part. The dissent would have found that Iowa Code section 147.140 is unambiguous and applies whenever expert testimony is needed to establish a prima facie case (i.e., standard of care, breach, and causation). The "ambiguity" found by the majority was instead an "asymmetry" between the statute's trigger conditions—a certificate is required whenever expert testimony is needed to establish a prima facie case—and the statute's content requirements—the

elements of a prima facie case the certificate needs to address. Justice May noted that removal of the causation language from section 147.140 was from the content requirements, and the "prima facie case" triggering language was left undisturbed during the drafting process.

- ***Barnes v. CDM Rentals, LLC*, 989 N.W.2d 657 (Iowa 2023)**
    - **Factual Background:** In 2003, a neighborhood of condominiums was developed in Des Moines, Iowa. The condominiums were governed by a homeowners' association ("HOA") declaration. CDM purchased one of the condominiums located in the development. CDM rented the Plaintiffs, Shelley and Cameron Barnes.

      A rain gutter ran along the roof above the driveway shared between the Plaintiffs' and the adjoining condominium. Because it was placed in this manner, the downspout let out directly onto the middle of the shared driveway rather than letting out onto grass or bare ground on the side of the unit. During the winter in early 2019, water from the building's roof drained out the downspout onto the shared driveway. Cold temperatures caused the water to freeze. On February 19, 2019, Ms. Barnes slipped and fell on the resulting ice.
    - **Procedural Background:** On January 8, 2021, the Plaintiffs filed a negligence lawsuit against CDM. Their petition alleged Ms. Barnes suffered severe and permanent injuries, incurred medical costs, and experienced pain and loss of body function. The petition also alleged Cameron was deprived of spousal companionship. The HOA was not named as a defendant. CDM answered, denying liability. It claimed it could not be liable as a matter of law because it does not own the property where the injury allegedly occurred.

      On April 19, 2021, CDM filed a motion for summary judgment. CDM argued that it lacked control over common areas because the HOA expressly reserved the

responsibilities of maintenance, repairs, and replacements for the HOA and prohibited unit owners from maintenance of common areas. The district court, pursuant to Iowa's Uniform Residential Landlord and Tenant Act (URLTA) and common law requiring control over common areas as a prerequisite for liability, granted CDM's motion.

Plaintiffs filed a timely appeal, which was transferred to the Court of Appeals. The Court of Appeals affirmed, finding that: (i) CDM had no common law duty to keep the driveway clear because it had no control over the driveway; (ii) CDM owed no contractual duty to keep the driveway clear because the lease did not require it to clear the driveway of ice or snow; and (iii) CDM owed no statutory duty under the URLTA to keep the driveway clear. The Supreme Court granted the Plaintiffs' application for further review.

- **Issue:** Could a condominium owner be subject to premises liability for a common driveway over which it had no control and for which it was forbidden from conducting maintenance and repairs pursuant to the governing HOA?
- **Holding:** The Supreme Court affirmed the district court's finding that under common law and the URLTA, CDM had no duty to maintain the common driveway. The Supreme Court vacated the Court of Appeals decision to the extent it addressed any contractual duty to maintain the common driveway, as that issue was never decided by the trial court.
- **Analysis:** The HOA prohibited CDM from maintaining, repairing, or replacing the driveway or the downspout. The Court determined that fact strongly suggests CDM lacked control over the driveway. Plaintiffs did not adduce enough evidence or present sufficient arguments to overcome this fact. At common law, liability is premised on control. CDM's lack of control of the driveway and downspout under the HOA was therefore dispositive of any common law liability claims. The

Supreme Court concluded that under the URLTA, landlords are similarly required to maintain common areas only to the extent the landlord has control over those areas.

- ***Sutton v. Council Bluffs Water Works*, 990 N.W.2d 795 (Iowa 2023)**
  - **Factual Background:** Plaintiffs' home was near an intersection where an underground water main broke in November 2020, sending water flowing to the surface. Plaintiffs alerted Council Bluffs Water Works ("CBWW") of the problem and, over the next eight weeks, crews inspected and repaired breaks to the pipe on five different occasions. The escaping water soon became standing water.
  - **Procedural Background:** The Plaintiffs filed suit, alleging CBWW was liable under both a strict liability and negligence theory. Plaintiffs alleged that CBWW's acts or omissions resulted in damage to their home. CBWW moved to dismiss the strict liability claim, arguing that such claims are not permitted under the Iowa Municipal Tort Claims Act ("IMTCA"). The district court denied the motion. CBWW applied for interlocutory review and the Supreme Court granted the application and retained the case.
  - **Issue:** Does the IMTCA allows a claim for strict liability—liability that does not depend on negligence or intent to do harm—against a municipality for damage caused by an underground water main break?
  - **Holding:** The IMTCA did not bar the Plaintiffs' strict liability claim for damages against CBWW.
  - **Analysis:** The Supreme Court began by addressing CBWW's argument that the IMTCA eliminated the right to pursue all claims against municipalities not authorized therein and the IMTCA does not authorize strict liability claims. The Supreme Court rejected CBWW's position that "tort" as defined by the IMTCA does not include claims for strict liability. While strict liability was not one of the causes

of action specified in the IMTCA's definition of "tort," the Court found that the list was offered only as an illustration. The Court further disagreed with CBWW's interpretation that "tort" is limited to fault-related causes of action and not those alleging strict liability.

The Supreme Court also rejected the argument that imposing strict liability would be inconsistent with the exemptions from liability provided in the IMTCA. The section granting immunity to municipalities for tort claims based on claims of failure to upgrade public improvements or facilities is not limited to negligence claims, and bars claims based on strict liability for an alleged failure to upgrade existing public facilities when a new-and-improved design standard emerges. However, CBWW had the burden of proving this immunity applied, immunity which amounts to a "state-of-the-art defense." Nothing in the IMTCA suggests a blanket refusal to recognize strict liability claims on the facts presented in Plaintiffs' petition.

- ***McCoy v. Thomas L. Cardella & Assocs.*, 992 N.W.2d 223 (Iowa 2023)**
    - **Factual Background:** In January 2017, Ms. McCoy accepted a job at Cardella, a call center in Ottumwa, Iowa. Mark Grego was the on-site director of the call center. Samantha Teague was the recruiter. John Thompson was hired to supervise for McCoy's sales team.

      According to McCoy, after her first few weeks of work, Thompson began sitting next to her in her cubicle, touching her inappropriately and making sexually charged comments. On at least one occasion, Thompson walked up behind McCoy and kissed the top of her head, apparently in full view of Grego's office. On another occasion, Thompson brought McCoy a teddy bear and flowers and left them in her cubicle. On several occasions, Thompson reached around McCoy, apparently to give her a "side hug," and brushed his arm across her breasts. McCoy claims that Thompson "laughed it off" when she told him that his behavior

made her uncomfortable. McCoy testified that she would tell Thompson "no" whenever he touched her or made sexual comments. According to Bonnie Sullivan, another sales representative, it was common knowledge that Thompson was obsessed with McCoy. In all, this unwanted contact allegedly occurred on at least twenty occasions over the three months McCoy worked at Cardella.

McCoy first reported Thompson's conduct to Teague in early March 2017. Despite McCoy's report, Thompson remained her supervisor, and the conduct continued. McCoy again reported Thompson's inappropriate touching and sexual comments to Teague toward the end of April. This time she took Sullivan with her. McCoy also reported inappropriate comments allegedly made to her by Mitch Turner, another team leader. Teague had McCoy tell her story to Grego. The only solution offered by Teague and Greco was to switch McCoy to Turner's team. McCoy made it clear that she could not continue working at Cardella if no other solution were offered. McCoy quit working at Cardella on April 25, 2017. Teague and Grego denied that McCoy ever reported inappropriate behavior by either Thompson or Turner and contended that McCoy quit after she was a "no call no show" for three consecutive days.

- **Procedural Background:** On May 8, 2019, McCoy filed suit against Cardella, asserting a single claim of negligent hiring, supervision, and retention of Thompson and Turner. Cardella moved to dismiss McCoy's petition, arguing that her claim was really a sexual harassment hostile-work-environment claim and was preempted by the Iowa Civil Rights Act ("ICRA"). Cardella argued that McCoy had missed the 300-day window, under the ICRA, for filing an ICRA charge with the Iowa Civil Rights Commission. In resistance to the motion to dismiss, McCoy argued that her claim was premised on Cardella's failure to protect her from conduct amounting to assault and battery and not necessarily hostile-work-

environment discrimination. The district court denied the motion to dismiss, concluding that McCoy's petition gave Cardella fair notice that her negligence claim was premised on Thompson's and Turner's assaultive behavior.

On January 6, 2020, Cardella filed a motion for summary judgment, reprising its ICRA preemption argument and adding a new argument that McCoy's claim for negligent hiring, supervision, and retention premised on a workplace assault and battery is separately barred by the exclusivity provision of the Iowa Workers Compensation Act ("IWCA"). McCoy did not file a timely workers' compensation claim with her employer. Cardella argued she could not circumvent that process through the common law claim. A different district court judge denied Cardella's motion for summary judgment.

McCoy's case against Cardella went to trial on February 8, 2022. The jury found that Turner did not commit assault, Thompson committed both assault and battery, and that Cardella was negligent in hiring, supervising, or retaining both Thompson and Turner. The jury awarded McCoy $400,000 for past and future emotional distress damages. Cardella reasserted its ICRA and IWCA preemption arguments by motion for directed verdict before the case was submitted to the jury and by motion for judgment notwithstanding the verdict and for a new trial. The district court declined to revisit those issues and denied Cardella's motions. Cardella appealed and the Supreme Court retained the case.

- **Issue:** Was McCoy's claim against Cardella preempted by the exclusivity provision in the IWCA?
- **Holding:** As tried, McCoy's claim of negligent supervision for failure to protect her from Thompson's assault and battery in the workplace, resulting in emotional distress injuries, was barred by the exclusivity provision of the Iowa Workers' Compensation Act. The district court's order denying judgment notwithstanding the

verdict was reversed, and the case was remanded for entry of judgment for the defendant.

- **Analysis:** Negligent supervision claims are only actionable when the conduct that the proper supervision would have avoided is actionable against the employee. When an employee is injured by the tortious acts of another employee at work, the exclusivity provision of the IWCA precludes the injured employee from bringing a common law tort action against the employer for the resulting injuries, even when the co-employee's conduct is intentional. The exclusivity provision applies to claims for negligent supervision or retention by the employer.

  The IWCA applied to McCoy's claim because there was a causal connection between the employment and the injury and the injury and the employment coincide as to time, place, and circumstances. McCoy's injuries occurred at her workplace and were perpetrated by her supervisor throughout the workday. McCoy sought recovery of mental health injuries caused by her employer's failure to protect her from injuries caused by assault and battery in the workplace. These injuries qualified as physical injuries under the IWCA. As a result, McCoy's common law negligent supervision claim was barred by the exclusivity provision in the IWCA.