defense UPDATE

The Iowa Defense Counsel Association Newsletter Vol. 2 No. 1

LEGISLATIVE UPDATE

Kevin Kelly, the paid lobbyist of the Iowa Defense Counsel, has submitted the following analysis of the 1989 Legislative Session:

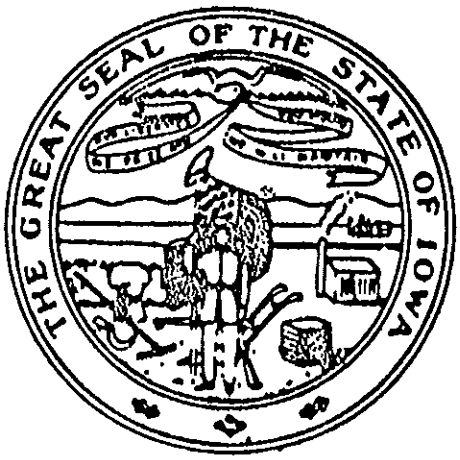
The 1989 legislative session went out of its way to avoid any kind of legislation that may have been close to the topic of tort reform. Any and all bills relating to the area regardless of who introduced them or for what purpose were quickly placed in burial committees. The judiciary committee thus did not have the problem of looking at them or considering whether they should be discussed on the floor of the Legislature. Even the question of malpractice was locked up throughout the course of the session.

The only exception to this general rule was a small piece of legislation proposed by the telephone companies in the closing weeks of session. The bill when introduced was originally sponsored by the leadership in each House and even that bill had trouble moving through the commerce committee. The issue was finally dealt with in a conference committee which is not amendable on the closing day of the session and was of a temporary nature in that the effect of the legislation was sunsetted so as to expire in May, 1990.

The 1989 legislative agenda of the Iowa Defense Counsel was an ambitious project that although well prepared, still fell short of any meaningful results. Because almost all of the projects related to some form of tort reform or another, they suffered the fate of all similarly situated legislation. There were eleven issues in which the Defense Counsel organization had a substantial interest. The following will be a brief outline of the topics and an explanation of their purpose:

The first issue for discussion was an act relating to punitive damages. The bill would create new statutory restrictions regarding the awarding of punitive damages including a requirement that a trial involving a claim for punitive damages be conducted in two separate phases. The first to determine all the issues presented including whether punitive damages may be assessed or not, and the second phase to determine the amount of such punitive damages if they were to be allowed. In determining whether or not the punitive damages can be assessed, the following restrictions would apply: 1) the verdict for such damages must be unanimous, 2) the evidence of wealth is not admissible, and 3) discovery of the financial condition of the defendant is not allowed. Such damages may not be assessed if: 1) no compensatory damages were awarded, 2) nominal damages were awarded, 3) no actual damages were found, 4) the defendant has previously been subjected to punitive damages, 5) criminal sanctions were imposed, 6) civil sanctions were imposed, 7) the acts were taken in good faith, 8) the acts were taken in reliance on advice of counsel, 9) the acts were committed by employees unless authorized, and 10) a tortious breach of contract was involved unless matters of great public interest were involved.

In proving the case for punitive damages, the bill requires the plaintiff to prove by a preponderance of clear, convincing, and satisfactory evidence that the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another. If the recovery is awarded, 95% is paid to the state general fund, while 5% is paid to the plaintiff.



The next issue put forth during the legislative session on behalf of the Defense Counsel Association was a complete elimination of the Collateral Source Rule. The bill provided for the introduction of any evidence that a plaintiff has received compensation other than disability payments for some or all the financial loss that is subject of the action for personal injury.

We also introduced a bill relating to pre-judgment interest. It would provide that the interest on the judgment or decree only accrue from the date of the judgment or decree, rather than under the current law where it either starts from the date of commencement of the action or from the date of judgment, depending on whether or not it is a past

loss or future loss.

Other legislation included proposals to completely and fully abolish joint and several liability rather than have it at the 50% threshhold with which we now work. We also had a bill that would provide the defendant in an action for damages tried under the principles of comparative fault may join another party as a defendant to the action if the party is not already a party to the action and the person is or may be liable to the defendant if the defendant was found liable in the original action.

One of the more complicated pieces of legislation has been what we commonly refer to as the interfacing of the comparative fault law into workers compensation liability. The bill would provide that employers who are covered by any federal or state workers compensation statute would remain immune from actions by their employees under the comparative fault law and would not be liable for contribution. Subrogation rights of the employer or the employer's insurance carrier are extinguished if the released employer's share of the damages under the comparative fault law is greater than the amount of workers compensation paid or payable. If the released employer's share of damages under the comparative fault law is less than the amount of workers compensation paid or payable, the employer's or carrier's subrogation rights are limited to the difference between the compensation and the share of the damages.

Two other bills were introduced which related to the elimination of the right to recover for emotional distress. One would eliminate the right to recover for emotional or mental distress in all cases except those involving actual physical injury from physical contact or the threat of physical contact to the plaintiff. The other one would limit or prohibit the recovery of those types of damages in cases where there was a breach of contract only.

One of the other major legislative concerns during the session was an act introduced in the House that related to wrongful termination. It basically abrogated the common law doctrine of termination at will and set up some very restrictive standards before an employer could terminate anybody in their employment. The Iowa Defense Counsel Association presented testimony in opposition to the passage of that legislation and offered to work with the committee to develop a practice and procedure that was reasonable to all concerned. Because of the very broad and substantial public outcry against the legislation, the committee decided to take no action and left it to die in a sub-committee of the House.

One of the final issues of concern and one of the primary targets and best hopes of the session was legislation designed to reverse the decision found in **Schwennen v. Abell**, 430 N.W. 2d 98, where the Court held that the percentage of fault assigned to the husband should not be used to reduce or bar the wife's loss of consortium recovery. Our proposed legislation would apply the full rules of comparative fault and joint and several liability to cases where there is a claim for loss of services, companionship, society, or consortium. The effect, of course, would be to reverse the Supreme Court decision and put the law where the Legislature intended it to be originally. Despite substantial amount of interest and efforts to move this piece of legislation, the sub-committee never met to discuss it and thus it remained locked up throughout the course of the session.

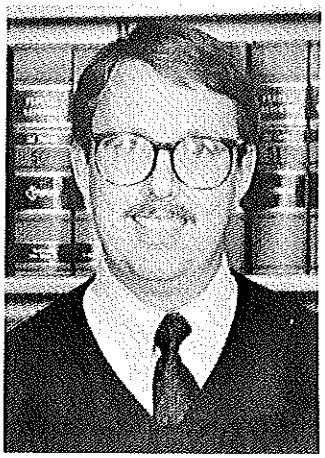
One of the difficulties in passage of legislation that the Iowa Defense Counsel has proposed, has been the fact that all of the bills introduced go to the judiciary committee. The judiciary committee is chaired by lawyers who lean to the plaintiff's viewpoint. It would not be fair to typify them as hard core plaintiff's bar, but their inclinations or sympathies tend to lean more in that direction than towards the defense. This factor in combination with the fact that the labor unions generally are in oppositon to tort reform because they are perceived as not being in the common man's interest has led to a labor-democrat tendency to be very cautious about tort reform. The leadership of the Trial Lawyers Association has been very effective in working with the leadership of labor unions in presenting the picture that a limitation on liability or on tort recovery is, in effect, a restriction on the rights of the worker. For instance, many of the product liability suits represent the union member in the course of employment injured by a machine with an alleged defect, thus the union has a natural tendency to want to protect that cause of action so as to protect their membership.

The current legislative climate is probably best typified as a stalemate or a standoff. Neither the plaintiff's nor defense bar are able at this time to move their proposals or their agenda forward in the legislative process. The legislative process being a political process is, of course, subject to change and the change can occur with little or no notice. Thus, it is important always to keep the pressure on to pass legislative improvements and to be ever watchful to insure nothing adverse comes down the path. The most effective way to make or cause some positive results in the legislative process and break the existing stalemate would be the election of attorneys who are philosophically oriented and experienced in defense law and willing to present the case in the legislative environment. By electing these types of lawyers to the Legislature, we would obtain and present effective spokesmen who could articulate the issues and move the process forward to seek and obtain the goals we have been working on for a number of years.

Your Editors intend for this to be a regular feature of our publication. We have asked District Judge Arthur Gamble of the Fifth Judicial District to author our first article.

FROM THE BENCH

By Judge Arthur E. Gamble



Judge Arthur E. Gamble

Judge Gamble is a resident of West Des Moines, Iowa. He received his bachelor and law degrees from the University of Iowa, the latter in 1978. Following admission to the Bar he practiced with the Des Moines firm of Gamble, Riepe, Webster, Davis & Green until 1983 when, at the age of 30, he was appointed an Iowa District Judge for the Fifth Judicial District by Governor Terry Brandstad. The Editors of DEFENSE UPDATE are honored to have Judge Gamble pen the first "From the Bench" column and on behalf of the members of the Association, extend our heartfelt thanks to Judge Gamble for taking time from his busy schedule for this purpose.

The legal profession is a service profession. In response to demands by the public, Iowa trial lawyers and judges work together to provide litigants top quality dispute resolution without undue expense and delay. The Iowa Bench and Bar has an uncommonly good working relationship. But, we serve the public from different perspectives. Trial lawyers focus on the complex issues of individual cases and the advocacy necessary for the protection of their client's interests. Judges view litigation in a light of a broader responsibility for the fair administration of justice for all citizens of our State.

Litigants are best served by lawyers who understand the dynamics of the litigation process and the inner workings of the judicial branch of government. As former practicing attorneys, judges have an acute awareness of the hardships presented by the every day practice of law. On the other hand, only a few practitioners have ever been judges. For this reason, most trial lawyers have an incomplete understanding of the travail of the judiciary. Advocates need to know what judges do for a living so they can better accommodate the needs of the judge in their trial preparation.

A judgeship is a uniquely solitary position. While trial counsel may share the complexity of their files with colleagues and support staff, trial judges must decide their cases in isolation. To further complicate matters, budget constraints require state court judges to act without the supporting technology and personnel most lawyers take for granted. We share one law clerk with as many as four other judges. We have no paralegals. We have no secretaries. We write many of our orders longhand because our typing is done by the court reporters and court attendants who must fit clerical work in around their other duties. We are maintaining our correcting selectrics. There is no Lexis, no Fax, and some of our telephones still have dials.

Given the deliberative nature of our duties and the inherent lack of supporting resources, time management is of the essence. During any given week, a general jurisdiction trial judge in rural Iowa presides over one or more court service days and one or more trials. Since most rural judges live outside the communities they serve, they may drive an hour or more to arrive at the courthouse in time to sign orders before the morning session begins. Judges handle criminal arraignments, suppression motions, pleas and sentencings. Judges preside over juvenile delinquency and child in need of assistance proceedings. There are marriages, divorces, adoptions and custody fights. On the civil side, judges handle routine motions, discovery, disputes, and pretrials. Nonjury trials, dispositive motions and administrative appeals create a backlog of rulings. Quiet days for study in chambers are few and far between.

Urban courts have more specialized assignments. City judges live closer to the courthouse. They spend more time at their desks and less time in their cars. But the higher volume of cases filed in the urban courts consumes all of that additonal chamber time. At the end of the day, the fits and starts and shifting gears of life on the bench leaves the judge's head spinning whether he or she

lives in the country or the city.

What relevance does any of this have to a defense lawyer in the throes of last-minute trial preparation? After all, the trial attorney has voir dire, opening statement, witnesses and closing argument to worry about. Why worry about the judge? The answer lies in the simple fact that complex civil jury trials come on against the backdrop of the routine daily work of the judge.

Lawyers spend months, if not years, building a case and then work night and day preparing the minute details of the trial. Judges cannot do that. There are too many other matters to attend to. The trial judge may spend only a few hours with the file before jury selection. Sometimes, because of a late switch by a court administrator, the judge may not have time to review the file at all. Effective advocacy requires a complete understanding of the various demands on the judge's time so counsel can prepare to inform the court concerning the controlling aspects of the case in an efficient and useful manner.

Many accomplished trial advocates prepare two separate cases: one for the jury and the other for the judge. Trial attorneys who understand the judge's time constraints can use the resources of their law firm as a substitute for the support the judiciary lacks. This can provide a decided advantage at trial. Remember, if the judge fails to understand the case, counsel may have difficulty getting evidence in, keeping evidence out, or obtaining the right instructions.

The advocate has a duty to help the judge become familiar with the lawsuit in the short time allowed before trial. But, there is a fine line to be drawn between providing the court more information than a judge can reasonably be expected to comprehend in the limited time allowable, and providing the court with insufficient information for adequate judicial trial preparation. Here are a few examples of how counsel can make the judge's life easier by providing the essential information necessary for use by the court, without overdoing it:

1. File a trial brief but keep it short and simple. Include a concise summary of the pleadings and the facts. Address only the most important legal issues and evidentiary problems. Have highlighted copies of controlling appellate decisions available for the court, but don't overwhelm the judge with piles of paper.

2. File a short set of requested jury instructions. Leave out the stocks or refer to them only by number. Defense counsel should submit proposed duty instructions, marshalling instructions and verdict forms. Cite authorities at the foot of every numbered requested instruction. Have unnumbered typed originals without citations available for use by the judge and court reporter.

3. Pre-mark all exhibits. File an exhibit list in a format that can be readily used by the judge and court reporter to keep track of offers, objections and exhibits admitted into evidence. Put copies of all documentary exhibits and photographs in an organized three-ring binder for the judge. If objections are anticipated, include a brief reference to the evidence rule and proper foundation supporting the admissibility of the exhibit.

4. File concise motions in limine regarding anticipated evidentiary problems that might cause argument outside the presence of the jury during the trial. Bring these matters to the attention of the court before the jury arrives. Briefly state the nature of the evidence, the objection and the rules of evidence relied upon for exclusion of the evidence. Again, have authorities available, but use them sparingly.

5. Defense counsel should prepare a written motion for directed verdict. Incorporate the trial brief by reference. Hand it to the judge at the close of plaintiff's case. Make it easy for the judge to follow along through the required elements of plaintiff's case as defendant's motion for directed verdict is dictated into the record.

6. If a witness will testify by deposition, edit the transcript before trial to exclude inadmissible evidence and colloquy between counsel. Bring evidentiary problems to the attention of the court in a timely manner so the judge can make informed rulings without wasting jury time. For video depositions, use video equipment that will allow electronic editing.

For many trial attorneys, all of this is elementary. Many lawyers already use these techniques and others to assist their judges in trial preparation. The judges truly appreciate the help. But from the bench I can see that some trial lawyers involved in the rush of their own trial preparation worry only about the jury and forget the judge. If there can be more coordination between the court and counsel before and during the trial, everyone involved in the process will benefit and our common goal of quality dispute resolution will be more easily achieved.

CASE NOTE SUMMARY

By John Bickel

We have asked John Bickel of Shuttleworth & Ingersoll in Cedar Rapids, Iowa, to give us an insight into three cases which he handled in the Appellate Courts of Iowa. His synopsis of these cases follows:

Krueger v. Iowa Rails to Trails, Inc., 435 N.W. 2d 391 (Iowa App. 1988)

In **Krueger**, the Court of Appeals interpreted an employee exclusion provision in a general liability policy, holding that the Plaintiff was not entitled to coverage.

Plaintiff was seriously injured when he was working for Iowa Rails to Trails (IRTT), a volunteer organization, on the Cedar Valley Nature Trail, which was operated by the Linn County Conservation Board and located on land owned by Linn County. Krueger sued IRTT, Linn County, and the Linn County Conservation Board, pursuant to Iowa Code 87.21, for failure to obtain worker's compensation coverage. The jury awarded 886,000 and assessed 50% fault against Plaintiff, 10% against IRTT, 20% against the board and 20% against the county. The judge entered judgement against IRTT for the entire amount under 87.21 as a penalty for failing to obtain worker's compensation coverage. The judgment was uncollectible against IRTT and Plaintiff sought a declaration from the court against Fremont Indemnity, which was Linn County's insurer.

In the original tort action, there had been a jury finding that Krueger was an employee of Iowa Rails to Trails. In the declaratory judgment action, Krueger attempted to argue that for insurance purposes, he was to be considered a "volunteer" of Linn County, since IRTT was a volunteer organization of Linn County. 435 N.W. 2d at 392. The insurer relied on an employee exclusion. The Court of Appeals affirmed the trial court's granting of summary judgment. Id. at 393-394.

Morrison v. Century Engineering, 434 N.W. 2d 874 (Iowa 1989)

In **Morrison**, the Supreme Court, on petition for further review from a Court of Appeals decision, held that in a worker's compensation case, a claimant did not have the right to have her attorney present when employer's counsel interviewed claimant's treating physician. Id at 874. The Court held that its holding in **Roosevelt Hotel Limited Partnership v. Sweeney,** 394 N.W. 2d 353 (Iowa 1986) did not extend to worker's compensation cases. In **Roosevelt**, the Court had held that a Plaintiff in a personal injury action could not be compelled to waive the physician-patient privilege under 622.10 Code of Iowa so as to allow Defendant's counsel to communicate privately with Plaintiff's treating physician. In **Junge**, the Court distinguished the waiver of privilege provision in section 85.27 as being "much broader" than the waiver in 622.10. The Court stated in **Junge** that "the enlarged waiver is a part of a pattern to foster and encourage a ready access to the information necessary to speedily process workers' compensation claims. Informality is in everyone's interest because in workers' compensation cases, unlike ordinary cases, liability is almost never an issue." Id at 877.

The Supreme Court further held that the industrial commissioner did not abuse his discretion in 1) admitting a letter claimant alleged to have been authored by the employer's counsel and 2) in excluding a report by the treating physician as being untimely. Id. at 877-878. The Supreme Court further affirmed the Industrial Commissioner's ruling that claimant was not entitled to permanent partial disability benefits on the ground that claimant's continuing problems stemmed from a congenital condition. Id. at 878.

Slager vs. HWA Corporation, 435 N.W. 2d 349 (Iowa 1989)

In **Slager**, the Iowa Supreme Court held that comparative fault under Iowa Code Chapter 668 (1987) is not a defense to a dram shop action under Iowa Code section 123.92. The Supreme Court further stated that equitable contribution principles (only Defendant's fault is compared) would apply in dram shop cases, rather than contribution under 668.5 (where Plaintiff and Defendant's fault is compared), rejecting the Court's own statements in **Shreier v. Sonderleiter,** 420 N.W. 2d 821 (Iowa 1988) in which the Iowa Supreme Court implied that dram claims for contribution should be tried under 668.5. **Slager,** 435 NW. 2d 349, 358. The decision was 5-3 with a lengthy dissent. (Justice Carter took no part.)

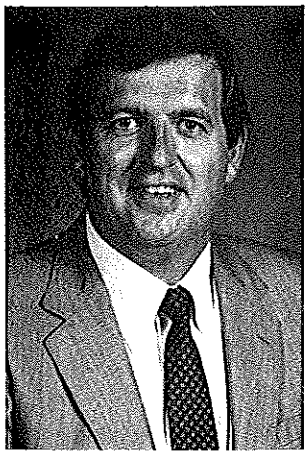
Slager had sued College Street Club under the dram shop statute for serving Ramon de Santiago to or past the point of intoxication. **Id.** at 350. It was alleged in Plaintiff's petition that DeSantiago shot and seriously injured Slager while he was intoxicated, after Slager confronted DeSantiago while DeSantiago was tampering with Slager's motorcycle. **Id.** Defendant College Street Club had sought to compare the fault of Plaintiff, John Slager.

The Supreme Court held that "the legislature did not intend to include dram shop actions within Chapter 668 coverage." **Id.** at 353. **Slager** stated that if 668 applied, the dram shop statute's "use as a meaningful remedy would be seriously impaired" because fault would be allocated to the insolvent intoxicated tortfeasor, reducing Plaintiff's recovery.

The majority also refused to apply modified joint and several liability under 668.4 to dram shop actions because the statute should not be applied in a piecemeal fashion. **Id.** at 357.

Justice McGiverin in his dissent stated that dram liability is strict liability sounding in tort, **Id.** at 359-369, so that it should fall within the definition of fault under 668.1, which includes "strict liability in tort."

MESSAGE FROM THE ASSOCIATION PRESIDENT



Patrick M. Roby, President

From October 26 to October 28, 1989, the Association will hold its 25th Annual Meeting at the University Park Holiday Inn in West Des Moines. I hope that each of you will plan to attend and join us in honoring the founders and past Presidents of the Association.

During the past 25 years, the Association has grown to the point where its membership now consists of approximately 400 trial lawyers and other defense professionals who devote a substantial portion of their practice to the defense of civil litigation.

Throughout its history, the Association's business has primarily been conducted by the officers and directors. As we enter the 1990's, we are committed to increasing the opportunity for members who are not directors to participate in the Association's activities. During the past few months, we have taken several steps in that direction. This newsletter is now published by a Board of Editors who will rotate primary responsibility for its publication. The majority of the members of the Board of Editors are non-directors.

A task force has been established to carefully analyze and evaluate the new "plain language" jury instructions. This ambitious undertaking, which is chaired by Dick Sapp of Des Moines, includes substantial input from many members of the Association.

I know that I speak for the entire Board and the officers when I say that there will be increased opportunities for participation by the membership in the future.

The Association works closely with the Defense Research Institute in a number of areas. I know from having attended several DRI meetings during the past couple of years that the Iowa Defense Counsel Association is very highly regarded and considered to be one of the best state defense organizations in the Country. The credit for that, of course, goes to those who have served on the Board during the past 25 years.

It is one thing for an organization to call itself a "trial lawyer" organization. The criterion for membership in most of those is the ability to pay the initiation and membership fees. The members of the Iowa Defense Counsel Association, on the other hand, are those who are actually out trying cases in our state and federal courts.

If we are to maintain an effective and balanced civil justice system in this state, it is essential that the Iowa Defense Counsel Association continue to grow and to assert itself. We must continue our legislative program, as well as other programs that are in place, and constantly seek new opportunities for your voice to be heard through the Association.

I hope that those of you who have an interest in participating in the Association's activities will make that interest known so you can be included.

I look forward to seeing all of you at our celebration in Des Moines in October.

Iowa Defense Counsel Association

25th

SILVER ANNIVERSARY MEETING

Plans are in progress to make this year's Annual Meeting a most informative and exciting event. Mark your calendars now so you won't miss out!

October 26 - 27 - 28, 1989

University Park Holiday Inn — West Des Moines, Iowa

ARTICLE of INTEREST

Editor Michael W. Ellwanger raises the question "Are defense oriented reforms having the desired effect — §668.11"

During the last several years certain rules and statutes have been passed which were supposedly defense oriented in the wake of the "tort crisis" of the early 1980's. Most of these provisions have yet to be interpreted by the Iowa Supreme Court or the Iowa Court of Appeals. Furthermore, in practice it appears that many of these provisions have failed to provide meaningful assistance to the defense bar.

Section 668.11 is applicable to cases filed on or after July 1, 1986. It provides that in a "professional liability case brought against a licensed professional" the parties shall certify to the court all persons whom they intend to call as expert witnesses, including such expert's qualifications and the purpose for calling the expert. The plaintiff must do this within 180 days of the defendant's answer unless the court, for good cause, extends the time. The defendant must then certify it's expert within 90 days of the plaintiff's certification.

This section enabled defense counsel to bar experts certified after the 180 day period and perhaps follow this up with a motion for summary judgment on the grounds that the case was of a nature that required expert testimony, that the plaintiff was barred from using experts because of the passage of time, and that the case was appropriate for summary judgment. In **Daboll v. Hoden,** 222 N.W. 2d 727 (Iowa 1974), the Supreme Court held that summary judgment was not appropriate even in the absence of plaintiff's expert testimony under the general view that issues of negligence are ordinarily not susceptible of summary adjudication. However, Section 668.11 would seem to imply a legislative intent that if a plaintiff cannot come up with experts within a reasonable period of time, then the case should be disposed of. This argument has been accepted by Judges in the Third Judicial District. See e.g., **Christiansen v. Creswell,** Woodbury County Law No. 95072C (summary judgment granted October 12, 1987, by Judge Richard J. Vipond).

It now appears that most plaintiff's attorneys are aware of Section 668.11 and certifications of experts are most often being filed on a timely basis. The problem with the statute, as far as defense counsel are concerned, is the relatively short period of time in which the defendant must certify its expert and the inability to obtain an extension for "good cause." As noted above, the plaintiff has 180 days to certify an expert. Frequently the plaintiff has been preparing the case for many months prior to filing. Most often the plaintiff has retained experts in order prior to the filing of the suit. Theoretically the plaintiff could certify his experts immediately upon filing of the suit. At that point the defendant would have a very short period of time to attempt to evaluate the case, obtain all the records and locate defense experts. Furthermore, the statute does not give the defendant the right to obtain an extention "for good cause." The good cause extension, according to the terms of Section 668.11, applies only to the plaintiff. In at least one case in the Third Judicial District a Judge has ruled that the defendant has no right to an extension.

In most cases the search for defense experts is an ongoing process which in large part is based upon the development of the facts in the case and the testimony of plaintiff's experts. Depositions of plaintiff's experts frequently do not occur until the passage of a substantial amount of time after the filing of suit. It can be questioned whether the deadlines in Section 668.11 are realistic in the first place. Furthermore, it appears that the inability of defense counsel to obtain an extension of time places an additional hardship on the defendant.

There are several other interpretive problems with this section. Who is a "licensed professional?" The section obviously applies to doctors, architects, engineers and the like. But what about their professional corporations? What about hospitals? What happens if you have a defendant that is a licensed professional and a co-defendant that is not?

Another question relates to the triggering event for the expert deadlines. Do answers to interrogatories by the plaintiff constitute a "certification" that triggers the 90 days for defense counsel to certify experts? Can defense counsel wait for the entire 180 day period to expire and then have an additional 90 days? Obviously, defense counsel would not know until the 180th day whether the plaintiff is going to certify any additional experts.

The above questions and problems cause one to question whether the advantages to defense counsel of Section 668.11 outweigh its disadvantages. Furthermore, there are many interpretive problems with the statute and to date the law has never been interpreted by the Appellate Courts in Iowa. It is requested that you forward any District Court decisions (or unpublished Appellate Court decisions) to Michael W. Ellwanger, 300 Toy National Bank Building, Sioux City, Iowa, 51101, and those results will be reported in the next issue of *Defense Update.*

Subsequent articles dealing with this same topic will discuss Rule 125(a) statements, collateral source payments under Section 668.14, court ordered structured settlements of large verdicts under Section 668.3(7), and allocation of past and future damages under Section 668.3(8). Each of these sections were apparently designed to assist defendants and reduce the amount of judgments. Like Section 668.11, in practice they may not have done so.

NOTES FROM THE EDITORS:

With the start of Volume II, we have revised our editorial staff and established guidelines for our publication. Our plan for 1989 is to have Volume II No. 2 in your hands by October 2, 1989. Volume III will start with a publication to be in your hands on January 2, 1990 and in 1990, we plan to have publications on April 1, July 1, and October 1.

We are indeed excited about the prospects of being able to communicate on a quarterly basis with our members through this vehicle. We invite your comments and criticisms of our efforts. We have spread the work among five co-equal editors so that we will be able to meet our deadlines and responsibilities in a timely fashion. The general format that we are using in this volume, we hope to continue in future volumes, but, of course, we are open to suggestions for improvement of the publication.

Our ultimate goal is to make our publication effective to the point that there is a true communication among defense counsel about matters which are of interest to all of us. We think that we are off to an exciting start with the contributions that have been made by the authors in this volume. We look for future volumes to be even more exciting and filled with ideas and thoughts that can be of help to all of us. We invite your suggestions and comments.

MR. KENNETH L. ALLERS, JR.
Mutual Fire and Automobile
Insurance Co.
P.O. Box 1597
Cedar Rapids, IA 52406, Co-Editor

MR. MICHAEL W. ELLWANGER
Kindig, Beebe, Rawlings, Nieland,
Probasco & Killinger
300 Toy National Bank Building
Sioux City, IA 51101, Co-Editor

MR. JOHN B. GRIER
Cartwright, Druker & Ryden
P.O. Box 496
Marshalltown, IA 50158, Co-Editor

MR. JAMES PUGH
Morain, Burlingame, Pugh,
Juhl & Peyton
5400 University Avenue
West Des Moines, IA 50265,
Co-Editor

MR. ROSS A WALTERS
Herrick, Langdon & Langdon
1800 Financial Center
Seventh and Walnut
Des Moines, IA 50309-3911,
Co-Editor

The Iowa Defense Counsel Association
P.O. Box 496
Marshalltown, Iowa 50158