defense UPDATE

The Iowa Defense Counsel Association Newsletter Spring 2010 Vol. XIV, No. 2

CLARIFYING IOWA LAW ON CRASHWORTHINESS AND ENHANCED INJURY

—the Iowa Supreme Court Adopts Sections 16 and 17 of the *Restatement (Third) of Products Liability*

by Richard J. Sapp, John T. Clendenin, Matthew R. Eslick[1]

Richard J. Sapp

John T. Clendenin

Matthew R. Eslick

I. Introduction.

On October 9, 2009, the Iowa Supreme Court issued its opinion in *Jahn v. Hyundai Motor Co.*,[2] an action sent to the Court on certified questions concerning the important issue of whether and how to allocate fault and apportion liability among potential joint tortfeasors in a product liability case involving "enhanced injury," or "crashworthiness" claims against a product manufacturer. In its opinion, the Court adopted sections 16 and 17 of the *Restatement (Third) of Torts: Products Liability* ("Restatement (Third)"), which define the requirements of proof for crashworthiness/enhanced injury claims, and, most significantly, specifically provide that the comparative fault of plaintiffs, co-defendants, and released parties is admissible and should be compared to the fault of a product manufacturer in such cases. In doing so, the Court overruled its prior decision in *Reed v. Chrysler Corp.*,[3] a decision representing the minority view nationwide that such comparative fault is not relevant or admissible in an enhanced injury case. This article summarizes the certified questions resolved in *Jahn* and how the decision will affect future enhanced injury product liability litigation under Iowa law.

II. Facts Underlying Jahn Litigation.

Plaintiffs Glen Jahn and his family ("Jahn") alleged that a front driver-side airbag in a 1998 Hyundai Elantra operated by Jahn failed to deploy in an intersection collision with another vehicle operated by a driver named Grace Burke. The parties agreed that Burke failed to stop at a stop sign and collided with Jahn's vehicle. After reaching a settlement with Burke for injuries sustained in the collision, Jahn filed suit against Hyundai Motor

Continued on page 2

WHAT'S INSIDE

1 The authors are attorneys with Nyemaster, Goode, West, Hansell & O'Brien, P.C., and were counsel of record to Hyundai in Jahn v. Hyundai Motor Co. All are members of the Iowa Defense Counsel Association.

2 *Jahn v. Hyundai Motor Co.*, 773 N.W.2d 550 (Iowa 2009).

3 *Reed v. Chrysler Corp.*, 494 N.W.2d 224 (Iowa 1992).

CLARIFYING IOWA LAW ON CRASHWORTHINESS AND ENHANCED INJURY ...

CONTINUED FROM PAGE 1

Company ("Hyundai"), alleging the airbag installed in his vehicle was defective. Jahn admitted that Burke was at fault in operating her vehicle, and further admitted that Burke's fault was a proximate cause of at least some of Jahn's injuries. Despite this admission, however, Jahn maintained that Burke's fault could not be compared by the jury on his claims against Hyundai.

Based on this legal dispute, Hyundai petitioned the federal court to certify questions of law concerning whether Iowa law required the consideration of the fault of a released party where the incident leading to the plaintiff's injuries was proximately caused by the negligence of the released party.

III. The Certified Questions.

The United States District Court for the Southern District of Iowa[4] certified two questions to the Supreme Court of Iowa:

1. Will the Iowa Supreme Court adopt sections 16 and 17 of the *Restatement (Third) of Torts: Products Liability* governing liability for enhanced injury, specifically, including rules of joint and several liability and comparative fault of joint tortfeasors under sections 16(d) and 17, and defining burdens of proof under sections 16(b) and 16(c)?
2. Under the Iowa Comparative Fault Act, may the fault of a released party whose negligence was a proximate cause of the underlying accident and of the plaintiff's injuries be compared by the jury on plaintiff's enhanced injury claim against the product defendant?

The Supreme Court of Iowa answered both questions in the affirmative.[5]

IV. Development of Enhanced Injury Claims.

A. Early Development.

Early cases held that a product manufacturer could not be liable for injuries caused by defective products where the negligence of another party caused the underlying accident.[6] Courts adopting this view held that while manufacturers would generally be liable for injuries resulting from the intended use of their products, automobile collisions were not an intended use.[7]

The United States Court of Appeals for the Eighth Circuit was the first court to deviate from this principle.[8] In *Larsen v. General Motors Corp.*, the Eighth Circuit held that there was no reason to limit a plaintiff's recovery to only those situations where the alleged defect was the "causative factor" of the accident, since both the accident and the resulting injury were foreseeable.[9] Consequently, the *Larsen* court observed that manufacturers should comply with a reasonable duty of care when designing products.[10] To the *Larsen* court, product manufacturers must either design products compliant with the state of the art or risk liability when an injury resulted from a product failure.[11] The United States Court of Appeals for the Fourth Circuit modified *Larsen* to impose liability only when a manufacturer failed to design a vehicle to avoid an unreasonable risk of harm in the event of a collision.[12]

B. Problems Involving the Burden of Proof.

Under an enhanced injury theory, a product manufacturer is not liable for injuries arising from the initial collision if a product defect did not cause the initial collision. However, upon proof of a product defect, the manufacturer may be held liable for injuries in excess of those caused by the initial collision—hence the term "enhanced injury." In this context, two lines of cases have developed nationally regarding the burden of proof each party bears to prevail on an enhanced injury claim.

The first line of cases, following *Huddell v. Levin*,[13] generally holds that the plaintiff has the burden of demonstrating the enhanced injury was solely caused by a product defect.[14] To that end, a plaintiff must prove the existence of a safer, practicable, alternative design; the extent of the injuries the plaintiff would have sustained had the manufacturer used the alternative design; and the enhanced injuries attributable to the defective design.[15]

The second line of cases, following *Fox v. Ford Motor Co.*[16] and *Mitchell v. Volkswagenwerk A.G.*,[17] holds that if the finder of fact is unable to separate injuries caused by the initial collision from those caused by the product defect, the manufacturer is liable for the entire injury.[18] The *Fox-Mitchell* approach generates the opposite result as *Huddell* where an indivisible injury is present.

4 Chief United States Magistrate Judge Thomas J. Shields, presiding by unanimous consent.
5 *Jahn*, 773 N.W.2d at 552.
6 *E.g.*, *Evans v. Gen. Motors Corp.*, 359 F.2d 822 (7th Cir. 1966), overruled by *Huff v. White Motor Corp.*, 565 F.2d 104, 110 (7th Cir. 1977).
7 *Id.* at 825.
8 *Larsen v. Gen. Motors Corp.*, 391 F.2d 495 (8th Cir. 1968).
9 *Id.* at 502.
10 *Id.*
11 *Id.* at 503.
12 *See Dreisonstok v. Volkswagenwerk, A.G.*, 489 F.2d 1066, 1070 & n.11 (4th Cir. 1974).
13 *Huddell v. Levin*, 537 F.2d 726 (3d Cir. 1976).
14 *Id.* at 737-38.
15 *Id.*; *see also Caiazzo v. Volkswagenwerk, A.G.*, 647 F.2d 241, 250 (2d Cir. 1981).
16 *Fox v. Ford Motor Co.*, 575 F.2d 774, 787 (10th Cir. 1978).
17 *Mitchell v. Volkswagenwerk, A.G.*, 669 F.2d 1199 (8th Cir. 1982).
18 *Fox*, 575 F.2d at 787; *Mitchell*, 669 F.2d at 1206.

Continued on page 3

CLARIFYING IOWA LAW ON CRASHWORTHINESS AND ENHANCED INJURY ...

CONTINUED FROM PAGE 2

C. Problems Involving Allocation of Fault.

Courts have often struggled with issues of comparative fault in enhanced injury cases. The majority view is that the law of concurrent causation dictates that principles of comparative fault apply to all parties whose conduct contributed to a plaintiff's harm.[19] The majority view imposes a duty upon consumers to use products with ordinary care, and recognizes that it is unfair to impose the costs of negligent operator conduct upon manufacturers.

The minority view holds that comparative fault principles either do not apply or are limited in application where enhanced injuries are alleged.[20] The minority view emphasizes that fault apportionment occurs by holding a manufacturer liable only for the increased injury resulting from the alleged defect and not from injuries resulting from the crash itself.[21] The minority view fails to reconcile itself, however, against many state comparative fault acts, including Iowa Code Chapter 668, which expressly require juries to compare the fault of all parties (including released parties) in analyzing product liability actions. Until the *Jahn* decision, Iowa was among the jurisdictions following the minority view.[22] It was this incongruity in the law of comparative fault and joint and several liability that Hyundai sought to remedy through the *Jahn* certified questions.

D. Restatement (Third) Sections 16 and 17.

In 1998 the American Law Institute considered the proper approach to burdens of proof and fault allocation in enhanced injury litigation when it promulgated sections 16 and 17 of the Restatement (Third). Hyundai asked the *Jahn* Court to adopt these sections of the Restatement (Third) as the law in Iowa concerning the evaluation of burdens of proof and comparative fault in crashworthiness/enhanced injury claims.

Section 16 of the Restatement (Third) speaks, in part, to the burdens of proof of each party:

> (a) When a product is defective at the time of commercial sale or other distribution and the defect is a substantial factor in increasing the plaintiff's harm beyond that which would have resulted from other causes, the product seller is subject to liability for the increased harm.
>
> (b) If proof supports a determination of the harm that would have resulted from other causes in the absence of the product defect, the product seller's liability is limited to the increased harm attributable solely to the product defect.
>
> (c) If proof does not support a determination under Subsection (b) of the harm that would have resulted in the absence of the product defect, the product seller is liable for all of the plaintiff's harm attributable to the defect and other causes.
>
> (d) A seller of a defective product that is held liable for part of the harm suffered by the plaintiff under Subsection (b), or all of the harm suffered by plaintiff under Subsection (c), is jointly and severally liable or severally liable with other parties who bear legal responsibility for causing the harm, determined by the applicable rules of joint and several liability.

Restatement (Third) § 16. Section 16(c) follows the *Fox-Mitchell* approach to causation.[23] However, section 16(c) does not shift the burden of proof to the defendant; instead, section 16(c) provides that if the plaintiff has established that the defect increased the harm beyond that which the plaintiff would have sustained had the product not been defective, and if neither party can apportion the harm sustained by the defect alone, then the defendant is liable for all of the harm sustained by the plaintiff.[24]

Section 17 speaks to the application of comparative fault principles, and provides as follows:

> (a) A plaintiff's recovery of damages for harm caused by a product defect may be reduced if the conduct of the plaintiff combines with the product defect to cause the harm and the plaintiff's conduct fails to conform to generally applicable rules establishing appropriate standards of care.
>
> (b) The manner and extent of the reduction under Subsection (a) and the apportionment of plaintiff's recovery among multiple defendants are governed by generally applicable rules apportioning responsibility.

Id. § 17, at 256. Section 17(b) requires the application of "generally applicable rules apportioning responsibility," and the commentary following section 17 indicates that most courts apply comparative fault principles to reduce the recovery of a plaintiff.[25]

E. The Development of Enhanced Injury Claims in Iowa Prior to *Jahn*.

Before *Jahn*, the general rule in Iowa held that a defendant was responsible for all harm sustained by a plaintiff in an enhanced injury case. For example, in *Meek v. Long*, the Court held that

19 *See Jahn*, 773 N.W.2d at 554 (collecting cases).
20 *Id.* at 555 (collecting cases).
21 *E.g.*, *Jiminez v. Chrysler Corp.*, 74 F. Supp. 2d 548, 566 (D.S.C. 1999), rev'd in part *sub nom*, *Jiminez v. DaimlerChrysler Corp.*, 269 F.3d 439 (4th Cir. 2001).
22 *Reed v. Chrysler Corp.*, 494 N.W.2d 224 (Iowa 1992).
23 Restatement (Third) § 16 cmt. *d* reporter's note.
24 *Id.*
25 *Id.* § 17, cmt. *a* reporter's note.

Continued on page 4

CLARIFYING IOWA LAW ON CRASHWORTHINESS AND ENHANCED INJURY ...

CONTINUED FROM PAGE 3

if a plaintiff was injured from two distinct accidents but suffered an indivisible harm, a defendant should not benefit from the plaintiff's inability to prove which injuries resulted from which accident.[26] The *Meek* rule was eventually extended to hold multiple defendants jointly and severally liable for injuries which could not be attributed solely to the other.[27]

Prior to *Jahn*, the Supreme Court of Iowa had, in successive decisions, developed conflicting rules concerning the propriety of a jury's consideration of a plaintiff's comparative fault in enhanced injury cases. In *Hillrichs v. Avco Corp.*,[28] an enhanced injury case where a plaintiff brought an action against the manufacturer and an implement dealer after his hand became entangled in a corn picker, the Court ruled that a plaintiff's fault in causing an initial injury must be considered to be a proximate cause of any enhanced injury as well.[29] Just one year later, however, in *Reed v. Chrysler Corp.*[30] the Court ruled that a driver's intoxication could not be compared when assessing injuries sustained by an automobile's passenger following a rollover accident because there was no evidence that the driver's intoxication contributed to the passenger's enhanced injury.[31] The Court held that the driver's fault was "quite beside the point" because enhanced injury cases "presuppose[d] the occurrence of accidents" and did "not pretend that the design defect had anything to do with causing the accident."[32] The *Reed* decision represented the minority national view that comparative fault principles do not apply in enhanced injury cases. *Reed* also legitimized the legal fiction that a product defect was always the sole proximate cause of a plaintiff's enhanced injuries arising from an underlying accident solely caused by a different party.

Justice James Carter, writing for himself and three others dissenting in *Reed*, argued that the plaintiff's negligence was a proximate cause of both the initial and enhanced injuries sustained by the passenger.[33] As a result, Justice Carter wrote, traditional rules of proximate cause and fault allocation should apply.[34] It followed that the fault of the plaintiff or any other person proximately causing the plaintiff's injury should be compared.[35] This is essentially the rule set forth in Restatement (Third) section 17(b).

F. *Jahn's* Adoption of *Fox-Mitchell* to Resolve Causation Questions.

In *Jahn* the Supreme Court of Iowa expressly adopted the *Fox-Mitchell* approach to causation.[36] This approach holds that if a defendant manufacturer is able to distinguish which of the plaintiff's injuries were sustained as a result of the product defect, the product manufacturer is liable for only those injuries. It is important to note, however, that this portion of the *Jahn* decision does not shift the burden of proof on enhanced injury to the defendant.[37] Rather, this pronouncement is consistent with sections 16(b) and (c) of the Restatement (Third), and is not a substantial departure from the state of Iowa law as it existed prior to the *Jahn* decision.

G. *Jahn's* Application of the Iowa Comparative Fault Act to Enhanced Injury Claims.

The *Jahn* Court next turned to the conflict between the holding of *Reed* and the Iowa Comparative Fault Act.[38] The Court observed that *Reed* stood for the proposition that the Iowa Comparative Fault Act simply did not apply in enhanced injury cases.[39] However, this conclusion conflicted with the general rule under Iowa law that tortfeasors are responsible for the natural and foreseeable consequences of their actions.[40] Observing that the tortious conduct of third parties is natural and foreseeable in the context of medical negligence occurring after the plaintiff is injured, the Court found it "hard to see how a different approach should apply in a case involving a product defect in an automobile."[41] Consequently, the *Jahn* Court held, the Iowa Comparative Fault Act requires the comparison of fault of all parties, including plaintiffs and released parties, in crashworthiness/enhanced injury litigation.[42] In addition, the Court held the Iowa Comparative Fault Act requires that joint and several liability principles apply to those parties liable for both divisible and indivisible injuries.[43] *Reed* was expressly overruled.

V. Impact on Iowa Law.

By overruling *Reed*, the *Jahn* Court correctly recognized that comparing the fault of *all* parties (including released parties) proximately causing an underlying harm is appropriate in crashworthiness/enhanced injury cases. The *Jahn* Court further

26 *Meek v. Long*, 142 N.W.2d 385, 388-89 (Iowa 1966).
27 *See Treanor v. B.P.E. Leasing, Inc.*, 158 N.W.2d 4 (Iowa 1968).
28 *Hilrichs v. Avco Corp.*, 478 N.W.2d 70, 71-72 (Iowa 1991).
29 *Id.* at 76.
30 *Reed*, 494 N.W.2d at 224.
31 *Id.* at 230.
32 *Id.*
33 *Id.* at 231 (Carter, J., dissenting).
34 *Id.*
35 *Id.*
36 *Jahn*, 773 N.W.2d at 559.
37 Restatement (Third) § 17, cmt. *a* reporter's note.
38 Iowa Code Chapter 668.
39 *Jahn*, 773 N.W.2d at 559.
40 *Id.* at 559-60 (citing *Virden v. Betts & Beer Constr. Co.*, 656 N.W.2d 805, 808 (Iowa 2003)).
41 *Id.* at 560 (citations omitted).
42 *Id.*
43 *Id.*

Continued on page 5

CLARIFYING IOWA LAW ON CRASHWORTHINESS AND ENHANCED INJURY ...

CONTINUED FROM PAGE 4

placed the burden of proving an enhanced injury upon the plaintiff. Upon proof of an enhanced injury, the principles of comparative fault and joint and several liability found in the Iowa Comparative Fault Act must be utilized by the jury to apportion fault among the available parties.

One obvious collateral impact of *Jahn* is that Iowa Civil Jury Instruction 1000.5 is now outdated. Instruction 1000.5 requires a plaintiff in an enhanced injury case to prove, among other things, "[t]he extent of the enhanced injuries."[44] *Jahn* requires only that a plaintiff prove the existence of an enhanced injury, and has eliminated the requirement that the plaintiff prove what additional injury was caused by the alleged defect. In addition, Instruction 1000.5 does not specifically require the comparison of the fault of all parties contributing to an underlying harm in accordance with the Iowa Comparative Fault Act. Instruction 1000.5 will now need to be revised to bring it into compliance with *Jahn*.

Defense counsel involved in crashworthiness/enhanced injury litigation under Iowa law should review the *Jahn* decision carefully in crafting new jury instructions on these critical issues. ■

44 Iowa Civ. Jury Instruction 1000.5(9)

IDCA WELCOMES NEW MEMBERS

Thomas Joensen
Bradshaw Law Firm
801 Grand Avenue, Suite 3700, Des Moines, IA 50309
Phone: (515) 243-4191
Email: joensen.thomas@bradshawlaw.com

Ryan G. Koopmans
Nyemaster, Goode, West, Hansell & O'Brien, P.C.
700 Walnuet Street, Suite 1600, Des Moines, IA 50309
Phone: (515) 283-3173
Email: rkoopmans@nyemaster.com

Jodie Clark McDougal
Davis Brown Law Firm
215 10th Street, Suite 1300, Des Moines, IA 50309
Phone: (515) 288-2500
Email: jodiemcdougal@davisbrownlaw.com

IDCA SCHEDULE OF EVENTS

September 14, 2010
IDCA Board Meeting & Dinner
3:45 p.m. Executive Committee
4:00 p.m. – 8:00 p.m. Full Board Meeting/Dinner
West Des Moines Marriott, 1250 Jordan Creek Pkwy.,
West Des Moines, IA

September 15–16, 2010
46th Annual Meeting & Seminar
8:00 a.m. – 5:00 p.m. both days
West Des Moines Marriott, 1250 Jordan Creek Pkwy.,
West Des Moines, IA

April 1, 2011
IDCA Spring Seminar
8:00 a.m. – 5:00 p.m.
Coralville Marriott Hotel and Conference Center,
Coralville, IA

IOWA DEFENSE COUNSEL ASSOCIATION

MESSAGE FROM THE PRESIDENT

James A. Pugh

WE DID IT!!!!! We were able to defeat efforts to effectuate Senate passage of HF758 in the recently adjourned legislative session. House File 758 was an attempt to amend Iowa Code §633.336 to include in the computation of Wrongful Death Damages, a sum for the "decedent's loss of enjoyment of life."

When the session started, prospects did not look good with respect to blocking the bill's passage. It had passed the House the previous year and needed only to pass the Senate, which was controlled by the Democrats, 32 to 18. On several occasions, the bill was noted on the daily calendar for floor debate and vote. It never made it there. The Democratic caucus repeatedly came up short with respect to the votes needed for passage (reportedly by just one vote).

Make no mistake, this bill was a payoff to the Plaintiffs' Bar for their significant donations made to the Democratic coffers. There was no meaningful constituency pushing this bill other than the Trial Lawyers themselves. Nevertheless, Democratic leadership, including the governor, brought pressure to bear on all Democratic Senators to get this bill passed.

In the face of these overwhelming odds, the Iowa Defense Counsel Association, in concert with a number of other disparate groups and organizations, such as the Iowa Insurance Institute and the Farm Bureau Federation, began a substantial campaign to get the true facts out to a number of Democratic Senators deemed to be independent on this issue. Michael Thrall prepared an excellent outline of the issues involved which was used not only by IDCA members but also by other opposition groups. Bob Kreamer did an outstanding job of keeping our membership informed as to those Senators needing additional persuasion. And finally, our members came through with meaningful contacts to those Senators which had been identified. In the end, the system actually worked. Reason and logic won out over money. A bad bill was defeated.

I want to take this opportunity to thank and congratulate all of you who put time and effort into this endeavor. I also want to identify and recognize those Democratic Senators, listed below, who did the right thing. Please take time to contact these individuals and thank them for voting in this matter.

Rick Olive – Story City
Tom Rielly – Oskaloosa
Swati Dandekar – Cedar Rapids
Wally Horn – Cedar Rapids
Matt McCoy – Des Moines
Rob Hogg – Cedar Rapids
Roger Steward - Preston

IOWA SUPREME COURT ADOPTS RESTATEMENT (THIRD) RULES ON DUTY AND CAUSATION, MAKES SUMMARY JUDGMENT MORE OF A LONG SHOT:

A NOTE ON *THOMPSON V. KACZINSKI*, 774 N.W.2d 829 (IOWA 2009).

by Amanda Wachuta, Ahlers & Cooney, P.C., Des Moines, IA

Amanda Wachuta

Thompson v. Kaczinski was a personal injury action brought by a motorist who crashed his car on a rural road when swerving to miss a trampoline tarp that had blown into the road from the defendants' adjacent property. The district court granted summary judgment to the defendants, holding the defendants did not owe a duty to the plaintiff because the risk of their trampoline tarp blowing onto the road was not foreseeable, and that their failure to secure the tarp was not a proximate cause of the plaintiff's damages. The court of appeals affirmed the district court. On further review, the Iowa Supreme Court vacated the court of appeals' decision, reversed the trial court, and remanded the case for trial.

What does this decision mean? Let's start with the basics. Everyone knows to prevail on a negligence claim, a plaintiff must prove four elements: (1) duty, (2) breach, (3) causation, and (4) damages. Causation, in turn, has always been said to have two sub-elements: (a) factual causation (aka "cause in fact," "but-for" causation), and (2) proximate causation (aka "legal cause").

The first sub-element of causation, factual causation, is fairly straightforward and remains intact following the *Thompson* case. The issue is simply this: would the plaintiff's injury have happened but for the defendant's conduct? If a negligence action has been filed, the answer to this question is likely a pretty easy "yes." However, if the plaintiff would have been injured whether or not the defendant acted the way he did, then there is no actual causation, and the plaintiff does not have a meritorious negligence claim against the defendant.

The second sub-element of causation, on the other hand—proximate cause—is what the Iowa Supreme Court's decision in *Thompson* changed. Our pre-*Thompson* jury instructions required the plaintiff to prove the defendant's conduct was a "substantial factor" in bringing about the plaintiff's injury. Iowa case law had previously instructed that whether an act was a substantial factor was determined by looking at the "proximity and forseeablility of the harm flowing from the actor's conduct." *Virden v. Betts & Beer Constr. Co.*, 656 N.W.2d 805, 808 (Iowa 2003). The Iowa Supreme Court had explained:

> "If upon looking back from the injury, the connection between the negligence and the injury appears unnatural, unreasonable, and improbable in the light of common experience, such negligence would be a remote rather than a proximate cause. If, however, by a fair consideration of the facts based upon common human experience and logic, there is nothing particularly unnatural or unreasonable in connecting the injury with the negligence, a jury question would be created."

Clinkscales v. Nelson Secs., Inc., 697 N.W.2d 836, 843 (Iowa 2005).

In *Thompson*, the Iowa Supreme Court was persuaded by the drafters of the American Law Institute's *Restatement (Third) of Torts: Liability for Physical and Emotional Harm* that the framework just described was too confusing. In an attempt to simplify the second sub-element of causation, the Iowa Supreme Court did away with the label "proximate cause" completely and replaced the "substantial factor" inquiry with the *Restatement's* "scope of liability" inquiry.

The new rule is simply stated: "An actor's liability is limited to those harms that result from the risks that made the actor's conduct tortious." *Restatement (Third)* § 29, adopted in *Thompson*, 774 N.W.2d at 839. Most of the time, it will probably also be easily applied. For example, getting into a car accident is within the risks that come from driving negligently, having someone slip and fall is within the risks that come from a grocer leaving a broken jar of peanut butter on the aisle floor. On the other hand, when a plaintiff is injured in a way *not* to be expected from the defendant's conduct—in the peanut butter example, for instance, a customer having an allergic reaction—the defendant may be absolved from liability under the *Thompson*/*Restatement* scope-of-liability principle.

The *Thompson* court acknowledged that both concepts—proximate cause and scope-of-liability—hinge in large part on foreseeability. Both concepts: " 'exclude liability for harms that were sufficiently unforeseeable at the time of the actor's tortious conduct that they were not among the risks—potential harms—that made the actor negligent.' " *Thompson*, 774 N.W.2d at 839 (quoting *Restatement* § 29, cmt. *j*). However, under the new scope-of-liability principle,

> the jury should be told that, in deciding whether the plaintiff's harm is within the scope of liability, it should go back to the reasons for finding the defendant engaged in negligent or other tortious conduct. If the harms risked by that tortious conduct include the general sort of harm suffered by the plaintiff, the defendant is subject to liability for the plaintiff's harm.

Restatement § 29, cmt. *d*. Thus, if the jury finds the grocer was negligent—i.e., breached his duty to exercise reasonable care—to answer the scope-of-liability issue, the jurors should be asking

Continued on page 8

IOWA SUPREME COURT ADOPTS RESTATEMENT (THIRD) RULES ON DUTY AND CAUSATION, MAKES SUMMARY JUDGMENT MORE OF A LONG SHOT ... *CONTINUED FROM PAGE 7*

themselves, "All right, *why* did we find that leaving a broken jar of peanut butter on the floor was not reasonable?" Most likely, the answer will be, "because someone could slip and fall on it" and not, "because someone with a severe peanut allergy could come in and suffer a reaction." Therefore, the grocer is liable to the plaintiff in the slip-and-fall case but not to the plaintiff in the allergic-reaction case, because only the harm suffered by the former resulted from the risks that made the grocer's conduct tortious (negligent).

Of course, the issue is for the jury to decide in most cases. The *Thompson* court noted that a trial court can only grant summary judgment on the scope-of-liability issue when the injury suffered by the plaintiff is not among the harms "the jury *could* find as the basis for determining the defendant" was negligent. *Thompson*, 774 N.W.2d at 838 (quoting *Restatement* § 29, cmt. *d*). In other words, the plaintiff's injury must have come about in a pretty off-the-wall way in order for defendants to win summary judgment on the scope-of-liability issue. The facts of *Thompson* itself provide a good illustration. The plaintiff was injured when his car crashed after swerving to miss a trampoline tarp that had blown onto the road in a strong gust of wind from property abutting the road. The Iowa Supreme Court concluded the jury could find that this was a harm within the risks of not securing your trampoline parts in September in Iowa when you live thirty-eight feet from a roadway.

Proximate cause is not the only thing the court tinkered with in *Thompson*. Easily the most common basis for defendants to move for summary judgment on in negligence cases has been the duty prong. This is because "[t]he question of the proper scope of legal duty is a question of law to be determined by the court." *Sweeney v. City of Bettendorf*, 762 N.W.2d 873, 880 (Iowa 2009). While duty is still a question of law for the court, *Thompson* emphasized that the question should not even be posed in most cases, explaining:

> "An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm." Thus, in most cases involving physical harm, courts "need not concern themselves with the existence or content of this ordinary duty," but instead may proceed directly to the elements of liability set forth in section 6 [i.e., breach, factual causation, scope of liability]. The general duty of reasonable care will apply in most cases, and thus courts "can rely directly on § 6 and need not refer to duty on a case-by-case basis."

Thompson, 774 N.W.2d at 834-35 (quoting *Restatement* §§ 6, 7).

The *Thompson* court, again following the *Restatement (Third)*, stated that district courts should not be making fact-specific duty holdings such as, for example, "there is no duty for a landowner to tie down his trampoline parts because the risk of harm to passersby is not foreseeable," or "grocers do not owe a duty to peanut-allergic customers to promptly clean up peanut butter spills because an allergic reaction due to spilled peanut butter is not foreseeable."

Rather, "[t]he assessment of the foreseeability of a risk is allocated to the fact finder, to be considered when the jury decides if the defendant failed to exercise reasonable care." In other words, the "default" is that everyone has a duty to act reasonably under the circumstances. The focus should be on whether what the defendant did or did not do *constitutes* reasonable conduct under the circumstances (i.e., whether the defendant breached the duty)—and that question is to be answered by the jury, not the court. *Thompson*, 774 N.W.2d at 835. Thus, the roadside property owner in *Thompson* had a duty to act reasonably under the circumstances. Whether their failure to secure their trampoline pieces was a breach of that duty was a question for the jury to consider.

It is easy to see, therefore, how winning summary judgment in a negligence case will be even more difficult than it was before. The *Thompson* decision has all but eliminated defendants' one foothold. *See Robinson v. Poured Walls of Iowa, Inc.*, 553 N.W.2d 873, 875 (Iowa 1996) ("Although claims of negligence are seldom capable of summary adjudication, the threshold determination of whether the defendant owes the plaintiff a duty of care is always a legal question for the court."). The duty window is just slightly ajar. The *Thompson* court noted that "in exceptional cases, the general duty to exercise reasonable care can be displaced or modified." *Thompson*, 774 N.W.2d at 835. "An exceptional case is one in which 'an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases." *Id.* Justice Cady's special concurrence provides an example of when that might happen. He posited that had the property in the road been a curbside waste or recycling container, public-policy considerations might intervene to limit the scope of landowners' duty to clear windblown property from the roadway. That is, the public policy favoring curbside recycling militates against a duty for landowners to tie their containers down or vigilantly keep watch over them in windy weather. Of course, the response to that argument is that the jury would not likely find a landowner's failure to clear a windblown recycling container from the street on pick-up day constituted a breach of the duty to act reasonably under the circumstances.

We will have to wait and see how further case law develops the division of labor between judges and juries. It is clear, however, from the *Thompson* decision, that the current Iowa Supreme Court favors letting the fact-finder make many calls previously weighed in on by the trial court judge. Additionally, it is clear that the current Iowa Civil Jury Instructions on proximate cause will need to redrafted. ■

DAUBERT REVISITED: THE GATEKEEPER ROLE OF THE IOWA DISTRICT COURT FOR THE ADMISSIBILITY OF EXPERT TESTIMONY AFTER *RANES V. ADAMS LABORATORIES, INC.*

by Thomas D. Waterman, Lane & Waterman LLP, Davenport, IA

Thomas D. Waterman

In *Ranes v. Adams Laboratories, Inc.*, 778 N.W.2d 677 (Iowa 2010), the Iowa Supreme Court for the first time in over a decade revisited in depth the use of federal *Daubert* standards on the admissibility of expert testimony. The *Ranes* Court affirmed the district court's evidentiary ruling excluding the causation opinion of plaintiff's toxicologist in a pharmaceutical product liability personal injury action (called a "toxic tort case" in the decision), and affirmed the resulting summary judgment for defendants. The 20-page decision is authored by Justice Cady, with no dissenters (Justice Wiggins took no part). Significantly, the decision encourages trial courts to apply *Daubert* to screen expert testimony in cases involving complex "scientific" evidence, but discourages use of *Daubert* for technical "nonscientific" expert testimony. *Id*. at 686.

Ranes by no means is the end of the longstanding debate over use of *Daubert*. To the contrary, *Ranes* probably will generate more evidentiary disputes as courts and litigants struggle to draw lines between "scientific" testimony appropriate for *Daubert* analysis and "technical" or other "nonscientific" expert testimony arguably excused from a *Daubert* analysis by *dicta* in *Ranes*. As discussed below, the *Ranes* Court failed to acknowledge its own precedent explicitly recognizing the difficulty of such line drawing. A similar debate had raged in the federal courts until the U.S. Supreme Court, in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), held *Daubert* applies to all expert testimony, whether scientific, technical or other specialized knowledge. The *Ranes* court missed the opportunity to adopt *Kumho Tire* and thereby simplify and clarify the gatekeeper role of Iowa district courts.

Cedar Rapids attorney Patrick Roby once began a CLE presentation by stating, "I hate experts, as a species." We know what he meant. Experts are a growth industry. Hired guns are available to serve as paid advocates on virtually any subject that gets litigated, and some professional witnesses stray outside their areas of expertise.

Justice Cady aptly observed:

> Although it is the province of the jury to evaluate the credibility of expert witnesses, trial courts have a well-recognized role as guardians of the integrity of expert evidence offered at trial. *See, e.g.* 31A Am.Jur.2d *Expert Opinion Evidence* § 47 at 73 (2002) ("The qualifications of an expert witness must be carefully scrutinized by the court to guard against a pseudolearned person or charlatan who may give erroneous testimony or opinions without a solid foundation.") [Quoted citation and other citations omitted].

Ranes, 778 N.W.2d at 686.

In *Ranes,* the male plaintiff claimed he suffered a stroke from using a cold medicine, "Aquatab C" containing PPA (phenylpropanolamine) which he asserted gave him an intense headache and numbness in his left arm within 35 minutes of ingesting a tablet. *Id*. at 682. A recent study linked PPA and weight loss products to a low risk of stroke in women, but not men. *Id*. Mr. Ranes subsequently reported a wide variety of symptoms he attributed to PPA: "convulsions, urinary incontinence, unsteady walk, vision and hearing problems, back and chest pain, diarrhea, altered taste and smell, muscle spasms, arm pain and weakness, tremors, numbness, and even the sight of worms crawling out of his hands." *Id.* at 682-83. A battery of treating physicians rejected plaintiff's theory that his problems were from PPA. *Id*. at 683-84. Multiple MRIs and CT scans showed no abnormalities. *Id*. at 683. Ranes nevertheless sued his doctor, as well as the pharmacists, pharmacies and the drug company that manufactured Aquatab C. *Id.* at 684. Ranes' causation theory was supported by a lone expert, Dr. Mark Thoman, who had never treated or examined him. *Id*. Dr. Thoman is not a neurologist, and never authored reports or articles on the effects of PPA. *Id.* He is a toxicologist who practiced primarily as a pediatrician. *Id.* He agreed his diagnosis of Ranes was not supported by any imaging tests or other medical tests. *Id.*

The trial court, applying *Daubert*, found Dr. Thoman unqualified to testify and that his differential diagnosis methodology was unreliable. *Id*. Because expert testimony was required, his exclusion resulted in summary judgment. *Id*. The Supreme Court reviewed the evidentiary ruling excluding Dr. Thoman's testimony for abuse of discretion. *Id.* at 685. Significantly, the *Ranes* Court held that plaintiff must prove both general causation and specific causation in toxic tort cases of this kind. *Id.* at 688. "General causation is a showing that the drug or chemical is capable of causing the type of harm from which the plaintiff suffers. [Citation omitted] Specific causation is evidence that the drug or chemical in fact caused the harm from which the plaintiff suffers." *Id.* The Supreme Court, following a thorough, case-specific analysis, affirmed the district court's exclusion of Dr. Thoman's diagnosis, and affirmed the resulting summary judgment. *Id.* at 697.

The *Ranes* Court reviewed Iowa precedent on the liberal admissibility of expert testimony. *Id.* at 685. The *Ranes* Court

Continued on page 10

DAUBERT REVISITED: THE GATEKEEPER ROLE OF THE IOWA DISTRICT COURT FOR THE ADMISSIBILITY OF EXPERT TESTIMONY AFTER *RANES V. ADAMS LABORATORIES, INC.*

... *CONTINUED FROM PAGE 9*

observed, "in all circumstances involving expert testimony, the proponent of the evidence has the burden of demonstrating to the court as a preliminary question of law the witness's qualifications and the reliability of the witness's opinion." *Id.* at 686 (citations omitted). The Court noted the use of *Daubert* factors to "help assess reliability of expert evidence by evaluating the scientific validity of the reasoning and methodology as applied to the facts of the case." *Id*. citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593-94 (1993). The *Daubert* factors are:

> (1) whether the theory or technique is scientific knowledge that can and has been tested, (2) whether the theory or technique has been subjected to peer review or publication, (3) the known or potential rate of error, or (4) whether it is generally accepted within the relevant scientific community.

Ranes, 778 N.W.2d at 686 (quoting *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 533 (Iowa 1999)). The *Leaf* Court had stopped short of requiring use of *Daubert* in 1999, but encouraged its use by district courts, "particularly in complex cases." 590 N.W.2d at 533.

Now, eleven years after its last major analysis of *Daubert* in *Leaf,* the Iowa Supreme Court in *Ranes* bolsters its encouragement for using *Daubert* factors to determine the admissibility of complex scientific expert testimony:

> We emphasize that the ad hoc *Hall* test remains our general approach to evaluating reliability, but the rapid advancements in science and medicine have presented particularly unique challenges for courts seeking to ensure the integrity of scientific evidence used by juries. This judicial role has become increasingly difficult and complex, yet important, as the access to and availability of sources of information and opinions continue to expand. ***Thus we encourage a more expansive judicial gatekeeping function in difficult scientific cases.*** (Emphasis added).

778 N.W.2d at 686.

The *Ranes* Court went on to discuss the complexity of the medical issues in that case and stated, "Thus, the district court's application of relevant *Daubert* considerations…was appropriate under Iowa law as an exercise of the court's gatekeeping function." *Id.* at 687. The footnote accompanying that sentence added, "we determine *Daubert* principles should apply in this case…." *Id.* at footnote [1]

1 The *Ranes* Court approved "using relevant authority which applies and interprets Federal Rule of Evidence 702" in its *Daubert* analysis. 778 N.W.2d at 687 n.1.

The debate going forward probably will be about whether use of *Daubert* is required, merely permitted, or prohibited in a particular case. The order excluding Dr. Thoman's causation opinion was reviewed for abuse of discretion, and was affirmed as within the trial court's discretion. It is unclear if Iowa trial courts *must* follow *Daubert* in any case involving complex or cutting edge scientific evidence. A clearer case for *requiring* use of *Daubert* would be an appellate decision reversing a trial court for failing to apply it. Parties seeking to admit expert testimony can argue *Ranes* simply held the trial court on that record acted within its broad discretion to apply *Daubert,* which does not necessarily mean it would have been an abuse of discretion to *allow* Dr. Thoman to testify without applying the *Daubert* factors. Indeed, the *Ranes* Court ended its lengthy analysis by stating, "We conclude the district court did not abuse its discretion[.]" *Id*. at 697.

Iowa state trial courts after *Ranes* are more likely to apply *Daubert* in deciding whether to admit expert testimony on complex scientific issues. But *Ranes* retreats from *Daubert* in "nonscientific" technical cases or "general medical issues:"

> [A]pplication of *Daubert* considerations is not appropriate in cases involving "technical or other specialized knowledge" because such nonscientific evidence is not as complex. As a result, the foundational showing of reliability for nonscientific evidence is correspondingly lower. For example, we have previously noted the inapplicability of *Daubert* to "general medical issues."

778 N.W.2d at 686 (quoted citations omitted). This discussion is *dicta* because *Ranes* adjudicated the admissibility of expert testimony on a complex scientific issue.

Plaintiffs' counsel might attempt to argue this language in *Ranes* precludes use of *Daubert* in product liability cases because expert engineering testimony on product design is "technical" and nonscientific. It is easy to foresee evidentiary battles over whether particular expert testimony is "scientific" or "technical." Use of *Daubert* should not depend on how the expert testimony is labeled. The *Ranes* Court should have noted its own admonition in *Leaf* of the difficulty in distinguishing between scientific and technical testimony, and should have followed *Kumho Tire* by approving the use of *Daubert* for all categories of expert testimony, whether scientific, technical or other specialized knowledge.

Leaf was decided one day after *Kumho Tire* (March 23 and March 24, 1999, respectively). Both decisions address the difficulties of judicial line drawing between "scientific" knowledge and "technical or other specialized knowledge." The *Kumho Tire*

Continued on page 11

DAUBERT REVISITED: THE GATEKEEPER ROLE OF THE IOWA DISTRICT COURT FOR THE ADMISSIBILITY OF EXPERT TESTIMONY AFTER *RANES V. ADAMS LABORATORIES, INC.*

... *CONTINUED FROM PAGE 10*

Court aptly observed at 526 U.S. 148:

> Finally, it would prove difficult, if not impossible, for judges to administer evidentiary rules under which a gatekeeping obligation depended upon a distinction between "scientific" knowledge and "technical" or "other specialized" knowledge. There is no clear line that divides the one from the others. Disciplines such as engineering rest upon scientific knowledge. Pure scientific theory itself may depend for its development upon observation and properly engineered machinery. And conceptual efforts to distinguish the two are unlikely to produce clear legal lines capable of application in particular cases.

Similarly, the *Leaf* Court stated at 590 N.W.2d at 532:

> One problem in limiting *Daubert* to "scientific," but not "technical" evidence, as we did in *Mensink*, is that it is not always clear how the evidence should be classified. In some cases, the evidence may have characteristics of both technical and scientific evidence. As we said in *State v. Hall*, "distinguishing 'scientific' evidence from other areas of expert testimony is a difficult determination in many cases." 297 N.W.2d at 85 (citing *McCormick's Handbook of the Law of Evidence* § 203, at 490 (2d ed. 1972)).

Moreover, the *Kumho Tire* Court noted that Fed. R. Evid. 702 "makes no relevant distinction between 'scientific' knowledge and 'technical' or 'other specialized' knowledge." 526 U.S. at 147. The same is true for Iowa R. Evid. 5.702. The *Kumho Tire* Court further observed at 526 U.S. 148:

> Neither is the evidentiary rationale that underlay the court's basic *Daubert* "gatekeeping" determination limited to "scientific" knowledge. *Daubert* pointed out that Federal Rules 702 and 703 grant expert witnesses testimonial latitude unavailable to other witnesses on the "assumption that the expert's opinion will have a reliable basis in the knowledge and experience of his discipline." *Id*., at 592 (pointing out that experts may testify to opinions, including those that are not based on firsthand knowledge or observation). The Rules grant that latitude to all experts, not just to "scientific" ones.

The *Leaf* Court recognized that the appropriate focus should be on the ***complexity*** of the expert testimony, rather than its characterization as scientific or technical. *See* 590 N.W.2d at 533. This author suggests that despite the *dicta* in *Ranes*, application of *Daubert* should depend on the complexity of the expert testimony, and the "fit" of the *Daubert* factors, rather than on whether the testimony is labeled "scientific" or "technical."

By way of example, consider *Sampson v. Cincinnati Inc.*, Dubuque County No. LACV055122. Plaintiff, while using a multi-purpose industrial press brake to bend metal, lowered the ram onto his hand, suffering a crushing injury. He brought a design defect claim against the manufacturer, supported by the testimony of mechanical engineer Jerry Hall. Hall opined that the press brake was defective when sold without a mandatory light curtain guard. Industry standards and OSHA regulations placed responsibility on the employer for selecting one of nine methods of guarding the point of operation. Although Hall has testified in a wide variety of cases, this was his first case involving a press brake or light curtain. He performed no testing and gave no consideration to any new hazards created by requiring light curtains. He did not consider the cost. He did not consider how requiring light curtains would limit the usefulness of press brakes. He did not know the rate of error for mandatory light curtains. He could not identify a single manufacturer selling press brakes with mandatory light curtains, and acknowledged that the governing standard placed responsibility for guarding on the employer, not the manufacturer. The district court granted Cincinnati's *Daubert* motion to exclude Hall's light curtain opinion, resulting in summary judgment against plaintiff. *Id.* September 22, 2009 Order (Ackley, J.). Plaintiff did not appeal.

The Order excluding Hall's testimony was consistent with decisions in other jurisdictions applying *Daubert* in press brake guarding cases. There often is a well developed body of law applying *Daubert* to expert testimony on specific products and recurring design defect issues. This case law, while not binding, can be instructive.[1] The *dicta* in *Ranes* should not discourage use of *Daubert* factors in cases involving technical expert testimony. The *Ranes* Court reiterated that it generally favors an *ad hoc* approach to evaluating reliability of expert testimony. 778 N.W.2d at 685-86. District courts exercising their broad discretion therefore should be free to apply *Daubert ad hoc* in cases involving technical testimony.

Time will tell whether more expert testimony will be excluded in Iowa state courts after *Ranes*. Federal courts probably will remain better gatekeepers for the exclusion of questionable expert testimony. Counsel should continue to argue *Daubert* factors when addressing the admissibility of expert testimony in Iowa state courts. And counsel should consider the admissibility of expert testimony in determining whether to remove to federal court cases filed in Iowa district courts. ■

CASE NOTE
CONVERSE V. HONOHAN, ET AL IN THE COURT OF APPEALS OF IOWA
NO. 9-10601/09-0923

by Bruce Walker, Pledan Tucker Mullen Walker Tucker Gelman, LLP, Iowa City, IA

Bruce Walker

On February 24, 2010, the Iowa Court of Appeals affirmed Judge Kristen Hibbs' ruling sustaining defendants' motion for summary judgment in a legal malpractice claim.

The facts, as presented, appear to have been mostly undisputed.

In April of 2002, Jacqueline Duncan executed a will leaving $50,000 to a church and $50,000 to a hospital, and left the remainder of her estate to a granddaughter and the plaintiff in equal shares. This will was prepared by Defendant Honohan.

On March 3, 2003, defendant received a telephone call from the plaintiff in which he was advised that the decedent was hospitalized and not doing well. Later, plaintiff's wife asked defendant to prepare a power of attorney and a codicil creating a spend thrift trust for plaintiff. Defendant prepared the power of attorney naming the decedent's sister, plaintiff's mother, as Attorney In Fact. On April 2, 2003, plaintiff asked defendant to change the power of attorney to name him as attorney in fact. Defendant also prepared a new will for decedent creating a spend thrift trust for the benefit of plaintiff. Plaintiff informed defendant that the decedent wanted the charitable requests rescinded, however, this assertion was later denied by the plaintiff. Defendant did prepare a new power of attorney and will with the changes his notes reflected were requested by plaintiff.

Decedent refused to sign the will on April 3, 2003, when requested to do so by defendant in the presence of plaintiff and other family members.

On April 9, 2003, defendant met with the decedent alone and she refused to sign the new will again.

Decedent died on April 25, 2003. Her original will was probated without contest.

Plaintiff sued defendant for malpractice for failure to have decedent execute the will with the spend thrift trust to protect plaintiff's inheritance from his creditors. Later, the petition was amended to include intentional interference with an inheritance which was dismissed by the district court on motion. This ruling was not appealed by plaintiff. Apparently, the inheritance was distributed to plaintiff's trustee in bankruptcy and then on to his creditors.

The district court held there was no evidence that the decedent ever wanted a spend thrift trust in her will.

After discussing the general rules on Summary Judgment and attorney responsibility, the court of appeals found, based on *Holsapple v. McGrath*, 575 N.W.2d 518, 521 (Iowa 1998) and *Ruden v. Jen*k, 543 N.W.2d 605, 610 (Iowa 1996), that an attorney can be liable only to clients and third parties who are direct and intended beneficiaries of the lawyer's services.

The court of appeals, citing *Schreiner v. Scoville*, 410 N.W.2d 679, 682 (Iowa 1987), found that the decedent's testamentary intent must be found in what was expressed in decedent's uncontested, probated and, therefore, valid will. Nothing in the decedent's will indicated that she wanted to protect plaintiff's interest in her estate from his creditors. In addition, the court of appeals found that there was no evidence decedent ever instructed defendant to establish a spend thrift trust despite plaintiff and his wife's claims to the contrary.

The court of appeals relied on the fact that decedent twice refused to sign the will with the spend thrift trust provision citing *Shivvers v. Hertz Farm Management Inc*., 595 N.W.2d 476, 479 (Iowa 1999). That decision held that if the client's wishes conflict with the third party's wishes, the intent to benefit required for a third party beneficiary relationship cannot arise.

The court of appeals finally held that an attorney who follows the client's expressed wishes should not be liable to a third party in a claim for malpractice even if the beneficiary claims the decedent's intent was to benefit him.

This case has been appealed to the Iowa Supreme Court. Please follow the result if you are interested in this area of law.

IDCA SPRING SEMINAR A SUCCESS

The IDCA Spring Seminar was held April 9, 2010, at the Coralville Marriott Hotel and Conference Center in Coralville, Iowa. The focus of this year's seminar was *Current Developments in Employment Law*. Specific topics included:

- New developments under the Family and Medical Leave Act
- Current developments in Federal Employment Litigation
- The Employee Free Choice Act
- Fair Labor Standards Act: Compliance and Litigation
- Where will Employment Discrimination Cases be Litigated: How Gross DeBoom and ADAAA Influence the Choice of State and Federal Court
- New Employment Claims under State and Federal Law
- Practical Considerations for the Expansion of Individual's Rights Based on Sexual Orientation and Gender Identity
- Social Media in the Workplace
- ADAAA Employment Changes

If you wish to purchase the IDCA Spring Seminar CD, which contains an outline of the programs above, contact IDCA Headquarters at staff@iowadefensecounsel.org or (515) 244-2847. CDs are $75.00.

IDCA thanks the speakers and Program Chair Gregory Barntsen for making this year's seminar a success.

IOWA DEFENSE COUNSEL ASSOCIATION