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IOWA DEFENSE COUNSEL ASSOCIATION

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Iowa Products Liability Law

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INTRODUCTION

From time to time most civil litigators in Iowa will get a products case. The following article is an outline of current substantive Iowa products liability law. Trial strategy concerns aside, sometimes it is helpful to have the blackletter law at your fingertips. It is the hope of the authors that this effort will be of benefit to the IDCA membership. Counsel is advised to do their own, confirming research.

Restatement (Third) of Torts: Products Liability

The Iowa Supreme Court adopted Section 2 of the Restatement (Third) of Torts: Products Liability in *Wright v. Brooke Group*, 652 N.W.2d 159 (Iowa 2002). In **Wright**, the court made four important steps in a design defect case: 1) it "abandoned" Section 402A of the Second Restatement; 2) it held that "unreasonably dangerous" is no longer an element of proof; 3) it adopted the risk-utility test of defect outlined in Section 2(b); and 4) it held that a plaintiff must prove a "reasonable, alternative design."

The Iowa Supreme Court had first adopted a portion of the Third Restatement when it applied Section 10, involving post-sale duty to warn, in *Lovick v. Wil-Rich*, 588 N.W.2d 688 (Iowa 1999). Based on both *Wright* and *Lovick*, it is expected that the supreme court will look to the Third Restatement as persuasive authority when there is no substantive Iowa products liability law governing a particular issue.

Available Defenses

Assumption of Risk

Iowa courts initially recognized two distinct meanings of the term "assumption of risk." The primary meaning is an alternate expression for the simple proposition that the defendant was not negligent, i.e., owed no duty, or did not breach any duty owed. The secondary meaning arises when the injured person acted unreasonably in assuming a particular risk; this definition is the same as the contributory negligence defense. *Nichols v. Westfield Indus., Ltd.*, 380 N.W.2d 392, 399 (Iowa 1985) (citing *Rosenau v. City of Estherville*, 199 N.W.2d 125, 131 (Iowa 1972)). The *Rosenau* court abolished the "secondary meaning" of assumption of risk. It was no longer available as a separate defense in cases where contributory

WHAT'S INSIDE

IDCA President's Letter

James P. Craig
IDCA President

The start of a new legislative session is upon us. The Executive Committee of the Iowa Defense Counsel Association believes the work our lobbyists and members do assisting the state legislature with the development of legislation is one of our most important jobs. For three years, Scott Sundstrom and Brad Epperly of the Nyemaster Goode, P.C. have ably served as IDCA's lobbyists before the legislature. Their work as lobbyists involves promoting our affirmative agenda and providing information to legislators about proposed legislation we believe negatively impacts our courts or disrupts the critical balance of fairness between litigants.

This spring, several issues of concern to the Iowa Defense Counsel Association will be carefully monitored. Those issues include third party funding of litigation for plaintiffs by hedge funds or other entities seeking profits, continued efforts to address the potential liability of insurance agents and insurers created by the Pitts v. Farm Bureau case, resisting efforts to change Iowa's Civil Rights Act to allow plaintiffs the recovery of punitive damages, promoting full funding of our courts, and protecting judicial branch pensions.

There are many ways in which our members can assist the Iowa Defense Counsel Association to positively influence legislation to maintain a fair balance between parties in litigation in our state.

First, if you have a relationship with a particular state legislator, let us know. You never know when that legislator may be at the forefront of proposed legislation important to the IDCA.

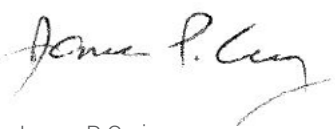
Second, if you know of legislation you perceive will have a negative impact on issues important to the defense bar, contact IDCA Legislative Chair, Steve Doohen, doohen@whitfieldlaw.com. Any information you can provide on the issues surrounding proposed legislation helps IDCA be a more effective advocate for our members.

Third, your willingness to testify before subcommittees on issues about which you are knowledgeable provides invaluable information to our lobbyists and legislators considering specific legislation.

Finally, if you perceive legislation is needed in particular areas of interest to your practice, let us know. We will work to incorporate such matters into our affirmative legislative agenda.

In the meantime, your decisions to assist legislative candidates personally with their campaigns, to maintain a relationship with legislators in the House or in the Senate, or to make donations to legislative campaigns makes you a valuable asset of the IDCA in relation to our legislative efforts. We would appreciate knowing of your involvement in campaigns and with legislators so that you can help us accomplish our goal of maintaining a high quality judicial system in Iowa.

Thank you for your membership.



James P. Craig

By the way, the *Defense Update* is always on the lookout for articles to publish to inform and educate our members. We encourage our membership to write and submit articles. This is a great way to let your fellow defense counsel members know your areas of expertise and practice. Members can contact any of the members of the Board of Editors for details on how to turn an idea for an article or a case note into a published work!

IDCA's Legislative Committee

negligence was an available defense. 199 N.W.2d at 133.

"Primary" assumption of risk was retained as an affirmative defense. Chapman v. Craig, 431 N.W.2d 770, 771 (Iowa 1988). After the enactment of Iowa Code Section 668.1, assumption of risk in its primary meaning is properly classified as a type of fault to be compared with the fault of other parties, and thus is not a complete defense in all cases. Arnold v. City of Cedar Rapids, 443 N.W.2d 332, 333 (Iowa 1989). See also Iowa Uniform Civil Jury Instruction No. 1000.9. The defense of assumption of risk in its primary meaning is still a viable concept. The Iowa Supreme Court has suggested, for purposes of accuracy and clarity, that the issue be framed "in terms of whether a duty is owed." Arnold, 443 N.W.2d at 333.

Assumption of risk is a separate and distinct defense, and defendant is entitled to a jury instruction on it, in a case where liability is premised on strict liability in tort. Coker v. Abell-Howe Co., 491 N.W.2d 143 (Iowa 1992); Burke v. Deere & Co., 6 F.3d 497 (8th Cir. 1993), cert. denied, 510 U.S. 1115 (1994).

Comparative Fault/Contributory Fault
Strict Liability
Comparative fault is a defense to an action premised upon strict liability in tort. Iowa Code § 668.1. A plaintiff's comparative fault should be alleged as an affirmative defense. Iowa Code § 619.17. "[F]ault means one or more acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability." Iowa Code § 668.1(1). Specifically included within this statutory definition of the term "fault" are the following items: (1) breach of warranty; (2) unreasonable assumption of risk not constituting an enforceable express consent; (3) misuse of a product for which the defendant otherwise would be liable; and (4) unreasonable failure to avoid an injury or to mitigate damages.

Negligence
Comparative fault is also a defense to a negligence action. Iowa Code § 668.1. A plaintiff's comparative fault should be alleged as an affirmative defense. Iowa Code § 619.17. If the plaintiff's negligence exceeds that of all defendants combined, the plaintiff is barred from recovery. Iowa Code § 668.3(1).

Seat Belts—Failure to Use
Evidence of failure to wear a seat belt is not considered evidence of comparative fault. Iowa Code § 321.445(4)(b). If a defendant first introduces substantial evidence that failure to wear a seat belt contributed to plaintiff's injuries, the trier of fact may find that the plaintiff's failure to wear the seat belt "contributed to the plaintiff's claimed injury or injuries, and may reduce the amount of plaintiff's recovery by an amount not to exceed five percent of the damages awarded after any reductions for comparative fault." Iowa Code §§ 321.445(4)(b)(1), (2).

Helmets—Failure to Use
Iowa does not have a mandatory helmet statute. In addition, there is no common-law duty to wear a helmet. Meyer v. City of Des Moines, 475 N.W.2d 181 (Iowa 1991) (in a truck-moped accident, defendant could not argue it was negligent for the moped operator to fail to wear a helmet).

Crashworthiness
Iowa adopted the Restatement (Third) of Torts: Products Liaibility, Sections 16 and 17 in Jahn v. Hyundai Motor America, Inc., 773 N.W.2d 550 (Iowa 2009). Jahn overruled Reed v. Chrysler Corp., 494 N.W.2d 224 (Iowa 1992), which had previously held that a tortfeasor's conduct in causing an accident is not relevant or admissible, unless such conduct is a proximate case of the "enhanced injury." In Jahn the Iowa Supreme Court found that the Restatement Third approach in crashworthiness cases has been adopted by a majority of jurisdictions, and was consistent with the comparative fault principles in Chapter 668 of the Iowa Code. The Court also found that the joint and several liability provisions in Section 668.4 applied to parties liable for divisible or indivisible injuries. Enhanced injury has been extended outside of the crashworthiness context. Weyerhauser Co. v. Thermogas Co., 620 N.W.2d 819 (Iowa 2000); Hillrichs v. Avco Corp., 478 N.W.2d 70 (Iowa 1991).

Misuse of Product/Unanticipated or Unintended Use
In Iowa, product misuse is not considered as an affirmative defense. Instead, evidence of product misuse is "treated in connection with the plaintiff's burden of proving an unreasonably dangerous condition and legal cause." Hughes v. Magic Chef, Inc., 288 N.W.2d 542, 546 (Iowa 1980). Irrespective of whether a defendant has pleaded product misuse, the plaintiff bears the burden of proving by a preponderance of the evidence that the use of the product was reasonably foreseeable. If the defendant's evidence of product misuse prevents the plaintiff from proving that the product was used in a reasonably foreseeable fashion, the defendant is entitled to a directed verdict. Id. at 548; but see, Fell v. Kewanee Farm Equip. Co., 457 N.W.2d 911, 916 (Iowa 1990) (where the court noted in dicta that "one might argue that the legislature has made 'misuse' an affirmative defense").

Unforeseeable Use
See "Misuse of Product," supra. This is not an affirmative defense. Rather, plaintiff must prove, as a prima facie element of its case, that the product was used in a reasonably foreseeable manner; or if the product was misused, plaintiff must prove that such misuse was reasonably foreseeable. See Hughes v. Magic Chef, Inc., 288 N.W.2d 542 (Iowa 1980).

Alteration of Product

If a product is altered, the defendant can still be held liable, but only if the plaintiff is able to show that it was foreseeable that the alteration would be made and the change does not unforeseeably render the product unsafe. Hardy v. Britt-Tech Corp., 378 N.W.2d 307, 309 (Iowa Ct. App. 1985); see also Alberg v. Hardin Marine Corp., 387 N.W.2d 779 (Iowa Ct. App. 1987) (citing Aller v. Rodgers Mach. Mfg. Co., 268 N.W.2d 830, 838 (Iowa 1978)). "The determinative question is whether the intervening alteration can be characterized as a substantial change such that it would be the superseding cause of the injuries." Alberg, 387 N.W.2d at 781. The Iowa Supreme Court continues to recognize that strict liability is inappropriate where a product undergoes a "substantial change in condition" before it is received by a consumer. "The rule is that strict liability in tort should not extend to injuries which cannot be traced to the product as it reached the market." Duggan v. Hallmark Pool Mfg. Co., 398 N.W.2d 175, 178 (Iowa 1986) (citations omitted).

The Iowa Supreme Court has not yet decided whether "substantial change in condition of the product" continues to be a viable defense, given that the Restatement (Third) of Torts: Products Liability was adopted in Wright v. Brooke Group, 652 N.W.2d 159 (Iowa 2002). There, the court also said that it has now abandoned Second 402A of the Second Restatement, which was the genesis of this defense. It is respectfully submitted that even under the Third Restatement, this defense still exists, insofar as the opening paragraph of Section 2 requires the defect to be present "at time of sale or distribution."

"Passive alteration," which does not constitute a substantial change in the condition of the product, does not provide the manufacturer with a defense. Fell v. Kewanee Farm Equip. Co., 457N.W.2d 911 (Iowa 1990). An example of a passive alteration is a guard falling off a machine due to a defectively designed means of attachment.

Unavoidably Unsafe Products

The Iowa Supreme Court has recognized, in the context of a products liability action against a pharmaceutical manufacturer, that "certain prescription drugs, such as birth control pills, may cause side effects despite the fact they have been properly manufactured, [and] these drugs are deemed 'unavoidably unsafe products.'" Moore v. Vanderloo, 386 N.W.2d 108, 117 (Iowa 1986). Such products are not held to be defective or unreasonably dangerous "so long as they are accompanied by proper directions for use and adequate warnings as to potential side effects." Id.; Restatement (Second) of Torts § 402A cmt. k. Comment k has not as yet been revisited since the Iowa Supreme Court adopted Section 2 of the Third Restatement in Wright v. Brooke Group, 652 N.W.2d 159 (Iowa 2002). If the court were faced with the issue, it would likely adopt the rules set forth in Section 6 of the Third Restatement, regarding sellers of prescription drugs and medical devices. It is noteworthy that the Reporters of the Third Restatement cite Moore v. Vanderloo in their discussion of the standards set forth in Section 6.

Dangerous or Obviously Unsafe Conditions—Duty to Warn

The Iowa Supreme Court adopted Section 2(c) of the Restatement (Third) of Torts: Products Liability in Wright v. Brooke Group, 652 N.W.2d 159 (Iowa 2002). This was not a major change in the law, since Iowa had previously employed a "negligence" standard in failure to warn cases, as established by Section 388 of the Second Restatement. Where risks are known and obvious, there is no duty to warn. Sandry v. John Deere Co., 452 N.W.2d 616, 619 (Iowa Ct. App. 1989) (citing Nichols v. Westfield Indus., Ltd., 380 N.W.2d 392, 401 (Iowa 1985)). In Iowa, a supplier's duty is to warn of dangers which are not obvious with respect to use of the product in its condition as supplied to the user. A supplier need not give information as to means to ameliorate obvious dangers, even if the supplier is aware of these means and the party to whom the chattel is supplied is not. Nichols, 380 N.W.2d at 401. Where a danger resulting from product use is "sufficiently known to consumers at large" and forms the basis of a suit in strict liability for failure to warn, the action may be dismissed for failure to state a claim for which relief may be granted. Maguire v. Pabst Brewing Co., 387 N.W.2d 565, 570 (Iowa 1986).

The duty to warn requires an adequate warning. The adequacy of a warning depends both upon its content and whether the manufacturer or distributor took reasonable care to inform the user of the possible danger of the product. Rowson v. Kawasaki Heavy Indus., Ltd., 866 F. Supp. 1221 (N.D. Iowa 1994). To prevail on a failure to warn claim in Iowa, plaintiff must prove that the manufacturer was negligent. Nassif v. Nat'l Presto Indus., Inc., 731 F. Supp. 1422 (S.D. Iowa 1990). Failure to warn as a theory of recovery must be submitted under a negligence theory, and not under a theory of strict liability in tort. This rule, set forth in Olson v. Prosoco, Inc., 522 N.W.2d 284 (Iowa 1994), is consistent with the approach of the Third Restatement that there should be a single claim of "failure to warn."

Informed Intermediary

The Iowa Supreme Court's historical adherence to Section 388 of the Second Restatement has been generally interpreted to include, in a proper case, recognition of a "sophisticated user" doctrine that would limit the scope of a duty to warn as to such users. See West v. Broderick & Bascom Rope Co., 197 N.W.2d 202, 210-11 (Iowa 1972); Stoffel v. Thermogas Co., 998 F. Supp. 1021, 1029 (N.D. Iowa 1997). The federal Eighth Circuit Court of Appeals has recognized the defense, but refused to apply it to the facts of a strict liability action against a propane manufacturer who had argued that its retailer was a "learned intermediary," discharging the manufacturer

from liability. See Donahue v. Phillips Petroleum Co., 866 F.2d 1008, 1013 n.9 (8th Cir. 1989). The informed intermediary defense may be limited to cases where a product is obtainable "only through a qualified professional who presumably will explain the dangers of the product" to the ultimate user. Id.

Sealed Containers
There is no Iowa law on the subject of the sealed container defense. But see, Iowa Code § 613.18 (retailer immunity statute). A mere "pass through" seller is entitled to legal immunity from claims based on strict liability in tort or breach of implied warranty of merchantability. Id.

Under Iowa law, a bulk supplier of a product may satisfy its duty to take reasonable steps to ensure that the end user is properly warned by warning the intermediary. Stoffel v. Thermogas Co., 998 F. Supp. 1021 (N.D. Iowa 1997).

Fault of Others
No third-party action for contribution is permitted between a defendant in a products liability case and the plaintiff's employer, since there is no common liability between the manufacturer and employer by reason of the exclusive remedy bar of the worker's compensation law. Speck v. Unit Handling Div. of Litton Sys., Inc., 366 N.W.2d 543 (Iowa 1985). In order for the jury to assess a percentage of fault against an entity, that entity must be made a party to the case. See Iowa Code § 668.3(2). The "empty chair" argument—that some third person, not a party to the action, was the sole cause of the plaintiff's injuries—is permissible notwithstanding the fact that the third person is not a party. See, e.g., Chumbley v. Dreis & Krump Mfg. Co., 521 N.W.2d 192 (Iowa Ct. App. 1993); Sorensen v. Morbark Indus., Inc., 153 F.R.D. 144 (N.D. Iowa 1993), rev'd on other grounds, In re Sorensen, 43 F.3d 674 (8th Cir. 1994). The defense of "sole proximate cause" does not have to be pleaded in order to be entitled to an instruction on it; rather, a general denial that a defendant's acts were a proximate cause of plaintiff's injury will suffice.

The court may not allocate fault to a person, formerly a party to the action, who has been voluntarily dismissed from the action (without prejudice) and was not released from liability. Fell v. Kewanee Farm Equip. Co., 457 N.W.2d 911 (Iowa 1990).

Preemption
There are no Iowa decisions interpreting preemption in the products liability context. Strict liability and negligence claims, based on inadequate labeling or warning, were preempted by the Federal Insecticide, Fungicide, and Rodenticide Act. Reutzel v. Spartan Chem. Co., 903 F. Supp. 1272 (N.D. Iowa 1995).

Compliance with Standards
A trial court may adopt a regulation or statute as a standard of conduct in determining negligence "when the injured party is a member of the class of persons likely to be exposed to the kind of harm the regulation was intended to prevent." Brichacek v. Hiskey, 401 N.W.2d 44, 47 (Iowa 1987); see also Wilson v. Nepstad, 282 N.W.2d 664, 667 (Iowa 1979); Koll v. Manatt's Transp. Co., 253 N.W.2d 265, 270 (Iowa 1977). Evidence of compliance would constitute evidence of the exercise of reasonable care. Evidence of a violation of such a regulation would likewise be construed as evidence of negligence in cases where the plaintiff is a member of the class to be protected by the statute. Koll, 253 N.W.2d at 270; see also Reutzel v. Spartan Chem. Co., 903 F. Supp. 1272 (N.D. Iowa 1995) (strict liability).

Government Contractor Defense
No decisions from Iowa state courts.

State-of-the-Art
In strict products liability actions, if properly pleaded and proved, the state-of-the-art defense precludes the fact finder from assigning a percentage of fault to the defendant. Iowa Code § 668.12. This statutory provision does not diminish the duty "to warn concerning subsequently acquired knowledge of a defect or dangerous condition that would render the product unreasonably dangerous for its foreseeable use or diminish the liability for failure to so warn" after the product leaves the defendant's control. Id. "Feasibility" in the context of the state-of-the-art defense connotes a product design that is practically, as well as technologically, sound at the time of manufacture. Hughes v. Massey-Ferguson, Inc., 522 N.W.2d 294 (Iowa 1994).

In negligence actions, state-of-the-art is a complete defense if proven. See Fell v. Kewanee Farm Equip. Co., 457 N.W.2d 911 (Iowa 1990) (holding state-of-the-art is a complete defense against liability for design defects). The issue of state-of-the-art should be submitted by way of special verdict. Hillrichs v. Avco Corp., 478 N.W.2d 70 (Iowa 1991).

State-of-the-art is not a defense to a failure to warn claim. See Olson v. Prosoco, Inc., 522 N.W.2d 284 (Iowa 1994). The holding of Olson is curiously in conflict with the express language of the Iowa state-of-the-art statute, Iowa Code Section 668.12, which states that it is a defense to an action based on "warning or labeling of a product." The Iowa Supreme Court has never ruled on this inherent conflict.

Privity of Contract
Privity is not a prerequisite for a products liability action in Iowa.

Disclaimers of Liability
In Iowa, it is possible for a disclaimer to limit liability for negligence. It is not against public policy for parties to contract to exempt liability. Manning v. Int'l Harvester Co., 381 N.W.2d 376, 379 (Iowa Ct. App. 1985) (citing Weik v. Ace Rents, Inc., 87 N.W.2d 314, 317 (Iowa 1958)). Where limitation language in a disclaimer is ambiguous, the language will be strictly construed against the party claiming to be insulated from liability. Manning, 381 N.W.2d at 380.

Failure to Mitigate Damages
Unreasonable failure to mitigate damages constitutes fault within the context of Iowa's Comparative Fault Act. Iowa Code § 668.1. Pursuant to Iowa Code Sections 619.7–8, failure to mitigate is an affirmative defense which ordinarily must be pleaded. See Tanberg v. Ackerman Inv. Co., 473 N.W.2d 193 (Iowa 1991). A plaintiff's unreasonable failure to mitigate damages is therefore properly considered by the fact-finder in determining the percentages of fault to be assessed against the parties. Iowa Code § 668.3; Miller v. Eichhorn, 426 N.W.2d 641, 643 (Iowa Ct. App. 1988).

Damage to Property/Product Itself without Bodily Injury or Consequential Injury
Iowa follows the economic loss doctrine, which states that property damage may be recoverable under strict liability so long as there is damage by reason of a sudden, calamitous event which could have resulted in personal injury. See Am. Fire & Cas. Co. v. Ford Motor Co., 588 N.W.2d 437 (Iowa 1999). A federal court in Iowa has held that under Iowa law "a strict liability claim will not arise absent allegations of personal injury or damage to property other than the product itself, with the possible exceptions where (1) the parties are of unequal bargaining position or (2) where the plaintiff seeks recovery in addition to 'loss of the bargain' and concomitant commercial/economic losses that result only from loss of the bargain." Sioux City Cmty. Sch. Dist. v. Int'l Tel. & Tel. Corp., 461 F. Supp. 662, 665 (N.D. Iowa 1978).

Statutes of Limitation
The statute of limitations for personal injury actions is found at Iowa Code Section 614.1. A plaintiff must institute an action founded on injuries to the person, whether based on contract or tort, within two years. Personal injury actions premised on breach of warranty are also subject to a two-year statute of limitations under Section 614.1. Franzen v. Deere & Co., 334 N.W.2d 730, 733 (Iowa 1983); see also Sparks v. Metalcraft, Inc., 408 N.W.2d 347, 351-53 (Iowa 1987).

The limitation period begins, i.e., a cause of action "accrues," when all of the elements of the cause of action are known, or in the exercise of reasonable care should have been known, to the plaintiff. Franzen v. Deere & Co., 377 N.W.2d 660, 662 (Iowa 1985). Once a plaintiff has knowledge of facts supporting an actionable claim, he or she has no more than the applicable period of limitations to discover all the theories of action they may wish to pursue in support of that claim, except in cases of a defendant's fraudulent concealment of facts supporting a cause of action. Sparks, 408 N.W.2d at 352-53.

Under the Iowa Comparative Fault Act, the filing of a petition tolls the statute of limitations for the commencement of an action against all parties who may be assessed any percentage of fault. See Iowa Code § 668.8; but see, Betsworth v. Morey's & Raymond's, 423 N.W.2d 196 (Iowa 1988). This means that a defendant sued before expiration of the statutory limitations period may sue a third-party defendant on a claim for contribution or indemnity, notwithstanding the fact that the statute has run on the plaintiff's claims directly against that third-party defendant. If the third-party defendant is joined in the case, the plaintiff may amend to state a claim directly against the third-party defendant.

For a personal injury product claim based on breach of warranty, the statute begins to run when the product is sold. Thus, a warranty claim may be barred by the statute of limitations set forth in U.C.C. Section 2-725, and the limitation period may run even before the plaintiff is injured. Fell v. Kewanee Farm Equip. Co., 457 N.W.2d 911 (Iowa 1990).

Statutes of Repose
Iowa has a 15-year statute of repose that applies to products liability actions. See Iowa Code § 614.1(2)(A). This statute applies to actions where the accident occurred on or after July 1, 1997. Cases involving an accident occurring before that date are "grandfathered in" and the statute of repose does not apply; those actions are subject to a mere two-year statute of limitations. The statute was upheld as constitutional in Branson v. O.F. Mossberg & Sons, Inc., 221 F.3d 1064 (8th Cir. 2000). It applies to claims by minors, and such claimants are not entitled to any "tolling." See Albrecht v. Gen. Motors Corp., 648 N.W.2d 87 (Iowa 2002).

Iowa Code Section 614.1(11) provides a 15-year limitation period applicable to "improvements to real property." This statutory provision has been applied in the products liability context in a case involving an allegedly defective furnace valve. Krull v. Thermogas Co., 522 N.W.2d 607 (Iowa 1994).

Useful Safe Life
There are no Iowa cases recognizing this defense.

Other Common Law Defenses
None.

Other Statutory Defenses
Iowa Code Section 613.18 limits the liability of defendants who are not manufacturers in certain products liability cases. Non-

manufacturers are immune from suit for strict liability or breach of implied warranty of merchantability in cases which arise "solely from an alleged defect in the original design or manufacture of the product." Iowa Code § 613.18(1)(a). Non-manufacturers are not liable for damages assessed in strict liability cases or in cases involving an alleged breach of the implied warranty of merchantability upon proof that the manufacturer is subject to jurisdiction of the Iowa state courts and has not been judicially declared insolvent. Iowa Code § 613.18(1)(b); see also Erickson v. Wright Welding Supply, Inc., 485 N.W.2d 82 (Iowa 1992); Bingham v. Marshall & Huschart Mach. Co., 485 N.W.2d 78 (Iowa 1992); Hillrichs v. Avco Corp., 478 N.W.2d 70 (Iowa 1991).

A party who is both a retailer and an assembler of a product is not liable for damages based upon strict liability in tort or upon breach of the implied warranty of merchantability arising from a design or manufacturing defect if: (1) the assembly of the product is not causally related to the alleged injury; (2) the manufacturer is subject to the jurisdiction of the Iowa courts; and (3) the manufacturer has not been judicially declared insolvent. Iowa Code § 613.18(2).

Damages and Joint Liability

Compensatory Damages

Purely economic damages, i.e., reduced value of plaintiff's equity, cannot be recovered in a products liability action premised upon negligence or strict liability. Nelson v. Todd's, Ltd., 426 N.W.2d 120, 123 (Iowa 1988); Neb. Innkeepers, Inc. v. Pittsburgh-Des Moines Corp., 345 N.W.2d 124, 126 (Iowa 1984). In Iowa, compensatory damages are available in products liability cases primarily to compensate the plaintiff for physical harm to the plaintiff or plaintiff's property resulting from use of the defective product. Nelson, 426 N.W.2d at 122-23; Cunningham v. Kartridg Pak Co., 332 N.W.2d 881, 885 (Iowa 1983). Iowa follows the economic loss doctrine. See Am. Fire & Cas. Co. v. Ford Motor Co., 588 N.W.2d 437 (Iowa 1999).

There are no statutory limitations on the amount of compensatory damages that can be recovered.

Punitive Damages

Punitive or exemplary damages are recoverable in Iowa pursuant to statute. Iowa Code § 668A.1. When the punitive damage issue is submitted, the jury must answer special interrogatories to determine: (1) whether the plaintiff established by a preponderance of clear, convincing and satisfactory evidence that defendant's conduct which gave rise to the claim constituted "willful and wanton disregard for the rights or safety of another;" and if so, (2) whether defendant's conduct was "directed specifically at the claimant, or at the person from which the claimant's claim is derived." Iowa Code § 668A.1(1). Hillrichs v. Avco Corp., 514 N.W.2d 94 (Iowa 1994), Burke v. Deere & Co., 6 F.3d 497 (8th Cir. 1993), cert. denied, 510 U.S. 1115 (1994).

Punitive damages are assessed only if the answer to the first special interrogatory above is in the affirmative. Iowa Code § 668A.1(2). If the first condition is met, distribution of the punitive damage award depends upon whether the defendant's conduct was aimed directly at the plaintiff in particular, as revealed by the second special interrogatory. If so, the full award is disbursed to the plaintiff. Iowa Code § 668A.1(2)(a). If not, after payment of costs and fees, an amount not to exceed 25 percent of the award is disbursed to the plaintiff, and the remainder is paid into a civil reparations trust fund administered by the state court administrator. Iowa Code § 668A.1(2)(b); see also Tratchel v. Essex Group, Inc., 452 N.W.2d 171, 176-78 (Iowa 1990).

Punitive damages are not proper where the evidence shows a reasonable disagreement over the relative risks and utilities of a manufacturer's conduct in the manufacture and production of a product. Mercer v. Pittway Corp., 616 N.W.2d 602 (Iowa 2000).

Contribution

The right of contribution is equitable in nature, and is preserved under Iowa's Comparative Fault Act. Iowa Code § 668.5. Pursuant to this provision, "a right of contribution exists between or among two or more persons who are liable upon the same indivisible claim for the same injury, death or harm, whether or not judgment has been recovered against all or any of them." Iowa Code § 668.5(1); see also Am. Trust & Sav. Bank v. U.S. Fid. & Guar. Co., 439 N.W.2d 188, 189 (Iowa 1989). Common liability must be established as a condition of contribution. Id. The basis for contribution is each party's equitable share of the obligation, i.e., amounts are premised on the percentage of fault of each party, including the share of the fault of the plaintiff. Iowa Code § 668.5(1).

If percentages of fault of each of the parties to a claim for contribution have been established previously by the court, a party paying more than its percentage share of damages may recover judgment for contribution either upon motion to the court in the original case, or in a separate action. Iowa Code § 668.6(1). If percentages of fault were not previously assessed, contribution may be enforced in a separate action, whether or not judgment had previously been rendered against either the person seeking contribution or the person from whom contribution is sought. Iowa Code § 668.6(2). Contribution is available to a settling party only if the liability of the person against whom contribution is sought has been extinguished, and then only to the extent that the amount paid in settlement was reasonable. Iowa Code § 668.5(2).

If a judgment has been rendered in the original action giving rise to contribution claims, the action for contribution must be commenced within one year after the judgment becomes final. Iowa Code § 668.3. If no judgment was rendered, a party seeking contribution must establish one of two conditions: (1) he must have

discharged the liability of the person from whom contribution is sought by payment to the claimant within the period of the statute of limitations applicable to the claimant's right of action, and must have commenced the action for contribution within one year after the date of that payment; or (2) he must have agreed while the original action was pending to discharge the liability of the person from whom contribution is sought, and within one year after the date of the agreement must have discharged that liability and commenced an action for contribution. Iowa Code § 668.6(3).

If the parties seeking contribution have not paid more than their percentage share of the damages, the contribution action must fail. Am. Trust & Sav. Bank, 439 N.W.2d at 189.

Indemnification

The Iowa Supreme Court has recognized four grounds for an indemnity claim: (1) express contract; (2) vicarious liability; (3) breach of an independent duty of the indemnitor to the indemnitee; and (4) secondary as opposed to primary liability, also referred to as active-passive negligence. Am. Trust & Sav. Bank v. U.S. Fid. & Guar. Co., 439 N.W.2d 188, 190 (Iowa 1989). An action for indemnity is no longer viable if premised on an active-passive negligence theory, as the Iowa Supreme Court has held that such an action "does not fit within our statutory network of comparative fault." Id. Indemnity actions premised upon the remaining three grounds apparently remain viable.

Joint and/or Several Liability

By statute, joint and several liability is inapplicable to defendants who are found to bear less than fifty percent of the total fault assigned to all parties. Iowa Code § 668.4. Thus, where a jury finds by special verdict that no "defendant was responsible for fifty percent of the combined negligence of plaintiffs and defendants, joint and several liability [is] effectively eliminated from [the] case. In that situation, each defendant should be responsible for paying its own percentage share of the damages and ought not receive credit for amounts others have paid in settlement." Kopsas v. Iowa Great Lakes Sanitary Dist. of Dickinson County, 407 N.W.2d 339, 341 (Iowa 1987).

Liability of Bankrupt or Insolvent Manufacturers

The liability or fault of a bankrupt party is not to be considered in the comparative fault allocation. Pepper v. Star Equip., Ltd., 484 N.W.2d 156, 158 (Iowa 1992); Spaur v. Owens-Corning Fiberglas Corp., 510 N.W.2d 854 (Iowa 1994).

In addition, if a product manufacturer is insolvent, then non-manufacturers in the chain of distribution, such as retailers, wholesalers and distributors, may be held vicariously liable for a product defect. See Iowa Code § 613.18.

Successor Liability

The general rule in Iowa is that where one company sells or otherwise transfers all of its assets to another company, the purchasing company is not liable for the debts and liabilities of the transferor. There are four exceptions to the general rule. Successor liability may be incurred if any of the following four circumstances exist: (1) there is an agreement to assume such debts or liabilities; (2) there is a consolidation of the two corporations; (3) the purchasing corporation is a mere continuation of the selling corporation; or (4) the transaction was fraudulent in fact. DeLapp v. Xtraman, Inc., 417 N.W.2d 219, 220 (Iowa 1987). The Iowa Supreme Court has expressly rejected the product line theory of successor liability. Id. at 222-23.

Market Share Liability

The Iowa Supreme Court has rejected the market share theory of multi-party liability in a DES case. Under Iowa law, in order for liability to be imposed on a particular defendant in a products liability case, the plaintiff must prove that the injury-causing product was a product manufactured or supplied by that defendant. Mulcahy v. Eli Lilly & Co., 386 N.W.2d 67, 74-76 (Iowa 1986). The Mulcahy court also considered "enterprise liability" and "alternative liability." While it did not apply either theory in Mulcahy, the court did not foreclose their application in appropriate cases in the future.

Economic Loss Rule

One of the most recent statements of Iowa's version of the economic loss rule is in Am. Fire & Cas. Co. v. Ford Motor Co., 588 N.W.2d 437 (Iowa 1999). "Purely economic injuries without accompanying physical injury to the user or consumer or to the user or consumer's property is not recoverable under strict liability." Nelson v. Todd's, Ltd., 426 N.W.2d 120, 123 (Iowa 1988). There is authority to the contrary, however. See Zeigler v. Fisher-Price, Inc., 302 F. Supp. 2d 999 (N.D. Iowa 2004) (holding that under Iowa law, a fire caused by an allegedly defective toy could support a claim against a toy manufacturer for breach of implied warranty of merchantability, but could not support a design defect claim, where fire did not cause personal injury).

Elements of Plaintiff's Case

Proof in Strict Liability Actions

Pattern Jury Instructions

Strict liability under Section 402A of the Restatement (Second) has not been followed in Iowa since 2002. Instead, Iowa follows the Restatement (Third) of Torts: Products Liability, Section 2. Standard instructions are available which set forth the specific elements of a manufacturing defect (Iowa Uniform Civil Jury Instruction No. 1000.1), design defect (1000.2) or warnings defect (1000.3) in Iowa.

Design Defect
After Wright v. Brooke Group, 652 N.W.2d 159 (Iowa 2002) all design defect cases are governed by the elements set forth in Section 2(b) of the Third Restatement. According to the Iowa Supreme Court, "402A has been abandoned."

The essential elements of a design defect case are:

1) Sale or other distribution by defendant;

2) The product has a design defect;

3) The product is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design, and the omission of the alternative design renders the product not reasonably safe;

4) The design defect was the proximate cause of personal injuries or property damage suffered by the user or consumer; and

5) Damages were suffered by the user or consumer.

Wright v. Brooke Group, 652 N.W.2d 159 (Iowa 2002).
If the alleged design defect involves technical issues beyond the common knowledge and experience of a jury, the plaintiff must present expert testimony to engender a jury issue as to the existence of the design defect. Absent such testimony, a directed verdict for the defendant is proper. James v. Swiss Valley Ag Serv., 449 N.W.2d 886, 890 (Iowa Ct. App. 1989); Wernimont v. Int'l Harvester Corp., 309 N.W.2d 137, 142 (Iowa Ct. App. 1981).

Although it has never so held in a design defect case, the Iowa Supreme Court has recognized that there is no practical distinction between strict liability and negligence. In Hillrichs v. Avco Corp., 478 N.W.2d 70, 76 n.2 (Iowa 1991), an enhanced injury, design defect case was remanded for retrial on a negligence theory only. At trial, plaintiffs typically elect which claim they want to pursue, i.e., strict liability or negligence. Wright v. Brooke Group supports this view, although the Iowa courts have not yet addressed this question.

Manufacturing Defect
Since Wright v. Brooke Group, claims based on alleged manufacturing defects have been governed by Section 2(a) of the Third Restatement. The elements include: 1) sale or other distribution of a product; 2) the product has a manufacturing defect or some material variance with the seller's intended design; 3) the variance occurred even though all possible care was exercised in the preparation and marketing of the product; 4) proximate cause; and 5) damages.

Failure to Warn
Since Wright v. Brooke Group, claims for alleged failure to warn have been governed by Section 2(c) of the Third Restatement. The elements include: 1) sale or distribution of a product; 2) inadequate warnings or instructions when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings; and 3) the omission of instructions or warnings renders the product not reasonably safe. This analysis is consistent with prior Iowa law, which held that failure to warn actions in Iowa were based on negligence only. Olson v. Prosoco, Inc., 522 N.W.2d 284 (Iowa 1994).

Post-Sale Duties
The Iowa Supreme Court followed Section 10 of the Restatement (Third) of Torts: Products Liability in Lovick v. Wil-Rich, 588 N.W.2d 688 (Iowa 1999). In order to establish a post-sale duty to warn, plaintiff must prove:

1) the supplier knows or should reasonably know that the product poses a substantial risk of harm to persons or property;

2) the supplier can identify those to whom a warning should be provided and it may reasonably be assumed those persons are unaware of the risk of harm;

3) a warning can be effectively communicated to and acted on by those to whom a warning might be provided; and

4) the risk of harm is sufficiently great to justify the burden of providing the warning.

Vendor or Distributor
In order for a plaintiff to hold another party strictly liable in tort under Iowa law, the party named as a defendant "must be shown to have been within the distributive chain of a product supplied for use and consumption by others." Miller v. Int'l Harvester Co., 246 N.W.2d 298, 303 (Iowa 1976); see also Duggan v. Hallmark Pool Mfg. Co., 398 N.W.2d 175, 177-78 (Iowa 1986). The same elements that apply in establishing a strict liability claim against a manufacturer are applicable to determine the liability of a retailer of the product. Osborn v. Massey-Ferguson, Inc., 290 N.W.2d 893, 901 (Iowa 1980) (citing Kleve v. Gen. Motors Corp., 210 N.W.2d 568, 571 (Iowa 1973)).

Limitation: The scope of strict liability for non-manufacturers, including retailers, is limited under certain circumstances by Iowa Code Section 613.18. See "Other Statutory Defenses," supra. Strict liability does not apply to a dealer in used goods, when the used goods contain latent defects not arising from design or manufacture which were caused while the goods were in the possession of a previous owner, and which were not discoverable through reasonable and customary inspection. Grimes v. Axtell Ford

Lincoln-Mercury, 403 N.W.2d 781, 785 (Iowa 1987).

Proof in Negligence Actions
Pattern Jury Instructions
General instructions pertaining to negligence actions are available. See Iowa Civil Jury Instructions Nos. 700.1 et seq. Among the pertinent instructions are: Essentials for Recovery (No. 700.1); Ordinary Care and Common Law Negligence Definitions (No. 700.2); Definitions of Cause (No. 700.3); and Scope of Liability (No. 700.3A). In all tort cases, Iowa did away with the former "proximate cause" nomenclature and adopted the Restatement (Third) of Torts: Liability for Physical and Emotional Harm in Thompson v. Kaczinski, 774 N.W.2d 829 (Iowa 2009).

Design Defect
Under Iowa law, a manufacturer is under a duty to exercise reasonable care in designing a product which may reasonably be expected to be dangerous in its normal use if it is negligently designed. The duty of reasonable care exists regardless of whether an inherent danger exists within the product at issue. Henkel v. R&S Bottling Co., 323 N.W.2d 185, 189 (Iowa 1982); West v. Broderick & Bascom Rope Co., 197 N.W.2d 202, 209 (Iowa 1972). The plaintiff must prove that the manufacturer or producer of the product acted unreasonably in designing the product. Henkel, 323 N.W.2d at 189. Whether the care used by a party in manufacturing a product is reasonable is assessed in view of the level of expected danger from use of the product. Cooley v. Quick Supply Co., 221 N.W.2d 763, 771 (Iowa 1974). The plaintiff must therefore establish: (1) the manufacturer's duty to use reasonable care in designing the product; (2) that the manufacturer breached its duty by acting unreasonably in designing the product; (3) that the breach was the proximate cause of the plaintiff's injury; and (4) damages were suffered.

Although it has never so held in a design defect case, the Iowa Supreme Court has recognized that there is no practical distinction between strict liability and negligence. Hillrichs v. Avco Corp., 478 N.W.2d 70, 76 n.2 (Iowa 1991). This is consistent with the opinion of the supreme court in Wright v. Brooke Group, 652 N.W.2d 159 (Iowa 2002). As a practical matter, trial courts in Iowa do not instruct the jury on both strict liability design defect and negligent design for the same criticism of the product. Finally, the standard for design defect under Section 2(b) of the Restatement Third is akin to a negligence or reasonable care standard.

Manufacturing Defect
After Wright v. Brooke Group, this claim is governed exclusively by Section 2(a) of the Restatement Third. It should be noted that this standard is akin to a "strict liability" standard, in that there can be liability for a manufacturing defect, nothwithstanding due care by the manufacturer.

Failure to Warn
After Wright v. Brooke Group, failure to warn claims have been governed by Section 2(c) of the Third Restatement. For the elements, see the discussion under "Failure to Warn" (Strict Liability), supra. In Iowa, failure to warn is a negligence theory only, and is not to be submitted to the jury in the context of strict liability in tort. Olson v. Prosoco, Inc., 522 N.W.2d 284 (Iowa 1994).

Vendor or Distributor
The same principles applicable to other negligence-based actions apply to determine the liability of distributor or vendor. But see, Iowa Code § 613.18.

Evidence
Qualification of Expert Witness
Iowa follows the Frye "general acceptance" standard with respect to the admissibility of expert opinion evidence. In addition, Iowa's rule of evidence on this issue, Rule 5.702, does not contain the amendments made to Rule 702 of the Federal Rules of Evidence in 2000. However, in Leaf v. Goodyear Tire & Rubber Co., 590 N.W.2d 525 (Iowa 1999), the Iowa Supreme Court noted in dicta that in an appropriate case, the Daubert standards for the admissibility of expert opinion evidence under the Iowa counterpart to Rule 702 of the Federal Rules of Evidence might be applied, or might be persuasive in answering the question at issue. However, the Iowa court applies Rule 702 in a rather "liberal" manner, and seems to be intent on giving expert witnesses wide latitude when offering testimony. As a result, in a products case involving technical issues of defect and proximate cause, removal to federal court is preferable because such a move allows the defendant to take advantage of favorable Daubert law in the Eighth Circuit.

Spoliation of Evidence
Iowa law is relatively undeveloped with regard to spoliation of evidence, especially in the products liability context. Nevertheless, the Iowa Supreme Court case has held that in order for a jury to be instructed regarding an "adverse inference" to be taken from an act of spoliation, the destruction of evidence must have been intentional. Hendricks v. Great Plains Supply, 609 N.W.2d 486 (Iowa 2000). As of this time, Iowa does not have any pattern jury instruction with regard to spoliation.

Matters of Pleading and Procedure
Acceptable Methods of Service of Process
Service of process can be made upon "a partnership or an association suable under a common name, or a domestic or foreign corporation, by serving any present or acting or last known officer thereof, or any general or managing agent or person now authorized by appointment or by law to receive service of original notice, or on the general partner of a partnership." Iowa R. Civ. P.

1.305(6). Service is permitted under Iowa's Long Arm Statute as against all corporations, individuals, personal representatives, partnerships and associations with sufficient minimum contacts in Iowa "in every case not contrary to the provisions of the Constitution of the United States." Iowa R. Civ. P. 1.306.

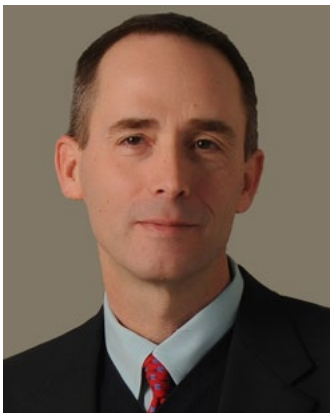
Iowa has a strictly enforced rule that requires that a petition be served within 90 days of filing, unless good cause can be demonstrated for an extension in the time for service. Iowa R. Civ. P. 1.302(5).

Answer Time
Twenty days after the service of the original notice and petition upon the defendant. Iowa R. Civ. P. 1.303.

Particularity with which Affirmative Defenses must be Raised
No applicable rule.

About the Authors
Kevin M. Reynolds and Richard J. Kirschman are members in the Des Moines law firm of Whitfield & Eddy, P.L.C. Both are members of the Iowa Defense Counsel Association Product Liability Committee and DRI. Mr. Reynolds is a current member of the IDCA Board of Directors, is co-chair of the IDCA Commercial Litigation and Products Liability Committee, and is former national Chair of the DRI Product Liability Committee. He serves the IDCA as a member of the editorial board for the IDCA's newsletter Defense Update. Mr. Kirschman is a former Chair of the DRI Iowa Trial Tactics and Techniques subcommittee.


Kevin M. Reynolds


Richard J. Kirschman

Opening on the *Defense Update* Board of Editors

The Board of Editors of the *Defense Update* has an opening on the Board. Board members solicit articles for publication and participate in periodic meetings to decide upon the content of the quarterly *Defense Update*. IDCA members interested in serving on the Board should send an e-mail to Board Chair, Tom Read, read@crawfordsullivan.com.

IDCA Adopts New Membership Structure

At the December 2013 Board of Directors meeting, the Board voted to approve a new membership structure effective January 1, 2014.

All new and first-time members will enjoy the first year of IDCA membership at no cost!

For those admitted to practice for less than five years, you will following this pricing structure:

- 2nd Year in Practice: $70
- 3rd Year in Practice: $110
- 4th Year in Practice: $150

For those admitted to practice for five or more years, membership dues will be $260 your second year of membership.

Student Membership is at no cost.

IDCA also introduced a new membership structure for Claims Professionals. Membership dues are $250 per company for up to the first five claims professionals. A company can add additional claims professionals for $50 per person.

IDCA believes this new structure will encourage more attorneys and claims professionals to engage with each other and further IDCA's mission: To remain the trusted professional voice for the defense of civil litigants.

We encourage you to recommend membership to attorneys and claims professionals in your peer network. Through the benefits listed below, members can build their resume, explore leadership opportunities, and receive quality education specific to their practice areas.

Membership Benefits

- **Advocacy and Representation.** IDCA advocates and lobbies on issues and legislation in the Iowa state legislature. IDCA strives to keep you apprised of new laws, regulations, standards and changes affecting the courts and civil litigants.
- **IDCA Annual Meeting & Seminar.** Our Annual Meeting & Seminar is held the third week of September in Des Moines. We offer an average of 13 hours of Iowa CLE, at least two hours of Ethics, and six Federal CLE hours.
- **CLE Webinars.** IDCA offers four one-hour webinars annually, each focused on a different substantive law area. Webinars allow you access to experts in the profession from the comfort of your own office, and normally provide one hour of Iowa and Federal CLE each.
- ***Defense Update*.** The *Defense Update* is IDCA's quarterly member newsletter which focuses on matters of particular interest to Iowa's defense attorneys and claims professionals. Membership allows access to back-issues of the newsletter. Additionally, the *Defense Update* allows you to author articles in your interest areas, elevating your professional presence among your peers.
- **Jury Verdict Database.** Our jury verdict database is available only to members and is searchable by caption, trial date, case type, injury type, plaintiff's or defendant's attorney, and by judicial district.
- **IDCA Listserv.** Listserv access is available to members only and allows you to quickly ask for help, tips and advice from other members and to provide ongoing communication and networking opportunities.
- **IDCA LinkedIn Group.** IDCA's LinkedIn group allows members another way to connect and ask questions using a professional social media source.
- **Committee Participation.** IDCA has eight standing committees that allow members to personalize their IDCA experience and develop IDCA policy. One key benefit of committee participation is networking with other Iowa attorneys in similar areas of practice as you.
- **Amicus Briefs.** The IDCA frequently submits amicus briefs on matters of great importance to the defense bar which provide opportunities for you to participate in the drafting of briefs on issues of interest to our members and your clients.
- **Online Membership Directory.** Our online directory allows you to connect directly with other members by location or practice areas.
- **Free One-Year Membership to IDCA.** First-time IDCA members enjoy complimentary membership for the first year. Following your first year, membership fees are based on the number of years admitted to practice. Current membership rates are published on the Membership Application.

- **Free One-Year Membership to DRI.** Free One-Year Membership in the Defense Research Institute (DRI) for first time DRI members.

Membership Requirements

Lawyers
Members of the bar actively engaged in the practice of law, have the highest professional standing, and devote a substantial portion of his or her professional time to the representation of persons, governmental entities and/or businesses in the defense of civil claims and litigation.

Claims Professionals
Any person actively engaged in work relating to the handling of civil claims and litigation are eligible for membership.

Students
Law students in good standing working toward admission to the bar are eligible for membership. Law students receive complimentary membership.

Members may join online at www.iowadefensecounsel.org or by contacting IDCA Headquarters, staff@iowadefensecounsel.org, and requesting an application.

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IOWA DEFENSE COUNSEL ASSOCIATION

IDCA CELEBRATES 50 YEARS

1964 – 2014


IOWA
SECRETARY OF STATE
CERTIFICATE OF INCORPORATION

The Iowa Defense Counsel Association was incorporated in 1964 under an old Iowa Nonprofit Corporation Act. Within a year, the organization voluntarily adopted the new Iowa Nonprofit Corporation Act and then reinstated the IDCA Articles of Incorporation in 1965.

"The first Annual Membership Meeting of the Iowa Defense Counsel Association was held at Des Moines, Iowa, on October 1, 1965, at Johnny & Kay's Motor Hotel. Approximately seventy-five (75) members of the Association were in attendance at the meeting. The meeting was called to order at 4:30 p.m. by Edwards S. Seitzinger, President of the Association."

- Membership Meeting Minutes

Founded in 1964, and with the official incorporation date of 1965, so it began, 50 years ago. At the first membership meeting, with just over $2,500 in the bank and 147 members, Frank Davis was elected for President, D.J. Goode for Vice President, Paul Wilson for Secretary, and William J. Hancock for Treasurer.

The period was no stranger to significant events. Martin Luther King Jr. won the Nobel Peace Prize. Lyndon B. Johnson won the election to return as U.S. President. American combat troops were sent to Vietnam. The Civil Rights Act of 1964 was signed, followed later by The Social Security Act, and the Voting Rights Act became law. Locally, Iowa Governor Harold Hughes signed the bill to abolish the death penalty. And The Iowa Civil Rights Act of 1965 was established.

In the midst of a period where headlines were full of stories about war, racism and civil rights, it was in October of 1965 that a group of local defense lawyers met at the first membership meeting of the Iowa Defense Counsel Association. According to its first Articles of Incorporation, "The purposes for which this corporation is organized are to engage in any and all lawful activities of scientific, literary or educational character related to the practice of the profession of law in the State of Iowa."

As its first president, Edward Seitzinger played a key role in the formal organization of the IDCA. Seitzinger ran the first membership meeting on the 1st of October, and the next day President Frank Davis followed suit. Activities during the first few years focused on setting policies, creating programs, and establishing membership roles, and defining the mission of the organization.

By December of 1965, at a meeting of the Board of Governors at the Fort Des Moines Hotel, panel discussions and law school seminars were introduced. Panels would be held at each law school, and to be related to personal injury defense techniques. Education quickly became a key function of the Iowa Defense Counsel Association.

IDCA Schedule of Events

March 27, 2014

IDCA Webinar

12:00pm – 1:00pm

Medicare: Practical Tips for Defending Cases Involving Beneficiaries and Recent Updates.

Speaker: Mary "Re" Knack

Registration on page 17.

September 18 – 19, 2014

50th Annual Meeting & Seminar

West Des Moines Marriot

West Des Moines, IA

Make plans now to join us for our 50th Anniversary celebration!

IOWA DEFENSE COUNSEL ASSOCIATION

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staff@iowadefensecounsel.org
www.iowadefensecounsel.org

IOWA DEFENSE COUNSEL ASSOCIATION WEBINAR

"Medicare: Practical Tips for Defending Cases Involving Beneficiaries and Recent Updates"

Thursday
March 27, 2014
12:00 p.m. – 1:00 p.m.

Presented by Mary "Re" Knack, Williams Kastner, Seattle, Wash.

Attendee Information

Name _____

Firm _____

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About the Webinar: Re Knack will provide high-level updates on Medicare and real, practical Medicare tips—such as how to identify beneficiaries, notify Medicare, request information from Medicare, and close a case.

Re Knack is a member in the Seattle office of Williams Kastner. Among other counsel, Ms. Knack provides guidance and advice to the insurance industry and self-insureds with respect to their obligations under the Medicare Secondary Payer (MSP) Act and Section 111 of the MMSEA. Ms. Knack provides creative and practical solutions to the obstacles and risks MSP poses to clients and insurers. In doing so, she also provides strategies to make sure Medicare's interest is protected while at the same time protecting clients' interests. Ms. Knack frequently presents on handling of cases involving a Medicare beneficiary. Ms. Knack is the Immediate Past Chair of DRI's MSP Task Force and co-author of DRI's Defense Practitioner's Guide to MSP Compliance. Ms. Knack also serves on DRI's Law Institute. Ms. Knack was named to Super Lawyers by *Washington Law & Politics* magazine for 2005, 2010 - 2013.

Participants will access the webinar from their computers for video and audio. **A unique link for the webinar will be distributed to you on March 26, 2014.**

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