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Utilizing the Forensic Chiropractic Examiner in Bodily Injury Litigation

By Scott D. Misek, DC, DABFP, DABCC, CDE I, CHCQM, FAIHQ



Dr. Scott D. Misek

Dr. Misek will present on this topic during the IDCA Annual Meeting & Seminar, Thursday, September 12, 2:15–3:00 p.m. See program information inside this issue or online, www.IowaDefenseCounsel.org/AnnualMeeting2019

As a defense attorney, you have no doubt faced challenges in finding experts to investigate and understand the complexities of chiropractic management in the treatment of bodily injury cases. In fact, many who work in the med-legal arena have to deal with complex challenges brought forth in bodily injury claims which include whether there has been a misrepresentation of injuries claimed. All too often, the causation of an injury as it pertains to a motor vehicle accident or work-related activity is often the primary need for investigation. Further questions may arise that involve standard of care issues and never ending care plans. These situations may arise as a result of potential monetary gain by the physician or the alleged injured person or as a result of incompetent case management skills. Still, there can be confusion over medicolegal concepts and chiropractic terminology that affect the outcome of a case.

Continued on page 4

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IDCA President's Letter



Michael Moreland
IDCA President

YOUR IDCA

I am writing to you for the last time as president of IDCA. It has been an honor and extreme pleasure serving on the Board the past 10 years. I have enjoyed every minute working with the talented defense attorneys across Iowa (Nebraska and Illinois) and have seen first-hand how dedicated our members are in addressing issues affecting the defense bar. You make the difference by your participation in our organization. Thanks to all of you for keeping IDCA strong and purposeful.

HATS OFF

I want to thank Jim Craig and Bruce Walker for encouraging me to serve on the Board of Directors. Jim and Bruce put in countless hours serving on the IDCA Board and I am most impressed that both of them are still involved in defense counsel issues and, more importantly, their efforts to maintain the integrity and respect for our court system.

Lisa Simonetta and Frank Harty. One of the most time-consuming tasks recently undertaken by the Board has been our participation in amicus curiae briefs before the Iowa Supreme Court. Lisa and Frank were instrumental in first sharpening the IDCA rules and requirements for an amicus brief and then finding suitable authors (and financial contributors) to weigh in on important legal issues affecting the administration of justice. IDCA now has a dedicated budget line item for helping to finance the costs for amicus briefs, so please let the Board know about ground breaking appeals suitable for the Iowa Supreme Court consideration.

Heather Tamminga and Brad Epperly. Although our Executive Director and Chief Lobbyist are compensated for their work,

Heather and Brad have gone over and above their obligation providing vital services to our organization. Heather is our go-to person to keep you informed and the communication to our members has increased significantly in the past five years. Brad has spent numerous hours at the Capitol and attending outside meetings to advance our affirmative agenda (principally to fully fund our courts) and worked diligently to defeat many of the legislative bills that violate our Iowa Constitution separation of powers.

YOU

While the benefits of being a member are many—*Defense Update*, webinars, jury verdicts, list serve for information from other members and government relations—our Annual Meeting & Seminar stands alone as the premier defense attorneys event in the country. Kami Holmes, our next IDCA president, has put together a star-studded cast of speakers to discuss timely defense issues that is well worth the price of admission. Kami has lined up John Browning from Dallas, Texas, to discuss the ethical concerns with lawyers' use of social media entitled *Taking the Heat for Tweet*. A panel will share their first-hand experiences on *Reptile Revisited and Reversed* to discuss the latest tactics used in trials and how our courts have addressed the reptile theories. Brian Yung, John Gray and our newest Iowa Court of Appeals Judge Sharon Soorholtz Greer will talk about the use of the reverse reptile which may be helpful in your cases. There are many other topics and speakers you will not want to miss, including *Power Hour* with six judges, *Attacking Damages* from J. Ric Gass from Milwaukee, Wisc., and Judge Mark Bennett's presentation on *Helping to Save Jury Trials through Jury Trial Innovations*. If you have not attended our Annual Meeting & Seminar in recent years, you definitely will not want to miss the 55th IDCA Annual Meeting & Seminar held September 12–13, 2019, at the Embassy Suites in Des Moines. And don't forget, the opportunity for attending musical and social events and the great chance to network with expert witnesses, exhibitors and sponsors as well as other defense attorneys practicing our work day to day just like you.

TIME	WEDNESDAY, SEPTEMBER 11
5:00–7:00 p.m.	IDCA Welcoming Reception featuring music from The Torts (open to all Annual Meeting attendees and sponsors)
7:00 p.m.	IDCA Hospitality Suite Open

TIME	THURSDAY, SEPTEMBER 12
7:00 a.m.–5:00 p.m.	Registration and Exhibits Open
7:00–8:00 a.m.	<i>Defense Update</i> Board of Editors Breakfast
7:50–8:00 a.m.	Welcome and Opening Remarks
8:00–8:45 a.m.	Leadership and Perseverance Through Adversity
8:45–9:30 a.m.	Everything You Need to Know About State Constitutional Tort Claims
9:30–10:30 a.m.	Taking the Heat for Tweet: Ethical Concerns with Lawyers' Use of Social Media
10:30–10:45 a.m.	Networking Break with Exhibitors
10:45–11:30 a.m.	Beyond the Numbers: How to Use an Expert in Alcohol & Drug Cases
11:30 a.m.–12:15 p.m.	Let's Talk About Your Health
12:15–1:15 p.m.	IDCA Awards and Annual Business Meeting & Networking Lunch
1:15–2:15 p.m.	Power Hour: Discussing the Health and Wellness of the Judicial System
2:15–3:00 p.m.	Utilizing the Forensic Chiropractor in Bodily Injury Litigation
3:00–3:15 p.m.	Networking Break with Exhibitors
3:15–4:00 p.m.	Helping to Save Jury Trials Through Jury Trial Innovations

4:00–4:45 p.m.	Reptile Revisited and Reversed
4:45–5:00 p.m.	Case Law Updates: Torts/Negligence
5:30–7:30 p.m.	Thursday Night Reception at The Iowa Taproom featuring the Cody Hicks Band
After Evening Events	IDCA Hospitality Suite Open
TIME	FRIDAY, SEPTEMBER 13
7:00 a.m.–1:15 p.m.	Registration and Exhibits Open
8:00–8:15 a.m.	Case Law Updates: Contracts/Commercial
8:15–9:15 a.m.	Voir Dire: The Good, Bad and the Ugly as Seen from the Bench
9:15–10:45 a.m.	Bringing it Together for Trial, Attacking Damages
10:45–11:00 a.m.	Networking Break with Exhibitors
11:00 a.m.–12:00 p.m.	The Ethical Conundrums of Marketing and Managing
12:00–12:15 p.m.	Case Law Updates: Developments in Employment Law and Civil Procedure
12:15–1:15 p.m.	Web 3.0 Beyond Facebook: Current Trends in Social Media Investigations

I hope to see you September 12–13!

Michael J. Moreland
IDCA President

Continued from Page 1

Many individuals who have been involved in a motor vehicle accident or have work-related back injuries seek care within the "Medical Model", with treatment including rest, anti-inflammatories, muscle relaxants and physical therapy. However, as a result of an increasing push away from pain pills and opiates and toward non-invasive approaches to treatment, other individuals seek out chiropractic care as the portal of entry in their treatment. Still, others choose chiropractic care as a result of their lack of progress within the medical model. When people treat within the "Chiropractic Model", many attorneys, judges, and insurers often have questions concerning chiropractic evaluation, examination and case management. This is because many of them do not understand the function that chiropractic care performs in the management of musculoskeletal problems in the bodily injury arena. With chiropractic intervention increasing, it is imperative to educate everyone involved in chiropractic examination and case management.

In response to the med-legal community's search for qualified experts in chiropractic medicine, a new breed of expert has stepped up to meet the challenge. This innovative expert is the certified forensic chiropractic examiner. By definition, forensic chiropractic is a science and methodology that deals with the relation and application of chiropractic and scientific facts to legal problems. Through their extensive training, a forensic chiropractic examiner possesses specialized knowledge to assist the trier of fact with issues such as diagnosis, prognosis, causation, impairment and disability. Forensic chiropractic examiners seek only the truth by conducting thorough examinations, evaluation and inquiries, and report their findings in an unbiased and objective manner that any legal nurse consultant, attorney, judge or juror should understand.

As a result of the issues raised in the *Daubert* case (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786, 1993), the Supreme Court held that the trial court is the so-called "gatekeeper" under Rule 702. According to Rule 702, "If scientific, technical, or other specialized knowledge will assist the trier of fact (judge/gatekeeper) to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, expertise, training, or education, may testify thereto in the form of an opinion or otherwise." The expert "must ensure that any and all scientific testimony or evidence is not only relevant, but reliable," and that there must be "grounding in the methods and procedures." The knowledge "must be derived by the scientific method" to establish reliability, and the knowledge must be relevant to the facts of the case. Thus, as a result of Rule 702, the chiropractic expert must be qualified by their knowledge, skill, expertise, training and education to offer testimony about their opinions. (4, 5)

The skill set of a forensic chiropractic examiner includes performing independent medical examinations, document and diagnostic review, evaluation for work functional capacities, impairment ratings, scientific peer review of literature, analysis of standards of care and investigation of fraudulent billing activities. The primary work of the forensic chiropractic examiner includes assisting the trier of fact before a case enters the court. The expert opinion of the forensic chiropractor is based on scientific or document investigation, not circumstantial evidence or the unreliable testimony of witnesses (junk science). It is imperative that the chiropractic examiner have a concrete understanding of clinical skills to perform a thorough orthopedic and neurological examination, while integrating medically accepted references and algorithms (6-10). With this knowledge and skill level, the chiropractic forensic examiner can contribute to procedural processes by using science in the search for facts in federal, civil and regulatory matters.

Today, board certified chiropractic forensic examiners have completed extensive training and are certified by the American Board of Forensic Professionals (ABFP) which is the certifying board of the College on Forensic Sciences (CFS). The ABFP is the only national chiropractic organization which operates and administers board certification (300+ hours for diplomate) and re-certification for forensics, impairment rating, and Department of Transportation (DOT) programs. The ABFP is a member of the National Organization for Competency Assurance (NOCA) and is National Commission of Credentialing Agencies (NCCA) compliant. The College on Forensic Sciences is a not-for-profit organization, which established educational and training parameters for the practice of forensics. Finally, the College on Forensic Sciences is a subsidiary of the Council on Chiropractic Orthopedics (CCO) of the American Chiropractic Association (ACA).

There are a variety of reasons today's insurance defense should consider using the expertise of a chiropractic forensic examiner in bodily injury claims. The first and most paramount reason would be to resolve conflict within the case. This may take on several different facets of the claim such as defining diagnoses, rendering opinions on appropriateness of care and clinical issues, assessing causation and evaluating prognosis. Further, if you are unfamiliar with chiropractic claims, a forensic chiropractor can determine if the subjective complaints are supported by the objective findings. Lastly, the forensic chiropractor can be used to offer recommendations surrounding maximum medical improvement, permanency and functional work capacity.

So the next time you encounter a bodily injury that has utilized chiropractic care as its primary source of case management,

consider the services of a chiropractic forensic examiner. You'll be glad you did.

In addition to his 30-years in private practice, Dr. Misek provides litigation support in the form of medical records review, Independent Medical Examinations and courtroom testimony. Dr. Misek holds a Diplomate status from the American Board of Forensic Professionals and the American Board of Chiropractic Consultants. Dr. Misek has lectured to State chiropractic associations, the Council on Forensic Sciences and numerous insurance companies about clinical documentation, quality measures, chiropractic coding and billing as well as risk management, fraud and abuse issues. Lastly, Dr. Misek serves as a special academy instructor for the National Insurance Crime Bureau and is currently studying to become a Certified Fraud Examiner (CFE).

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The Use and Misuse of Drug Testing Results

By Ted W. Simon, PhD, DABT



Ted W. Simon

Ted Simon will present on this topic during the IDCA Annual Meeting & Seminar, Thursday, September 12, 10:45 - 11:30 a.m. See program information inside this issue or online, www.IowaDefenseCounsel.org/AnnualMeeting2019

By 2022, the global market for drug screening products is expected to be worth almost \$8.3B.¹ The Drug & Alcohol Testing Industry Association (DATIA) with headquarters

on G Street in Washington, DC are the lobbyists for the industry. Drug testing and analysis labs serve law enforcement, numerous private employers, and child protective services.

TWO-PHASE TESTING: SCREENING AND CONFIRMATION

Testing for any drug in a biological matrix—urine, blood, hair, saliva, or meconium—occurs in two phases. The first is a screening test, most often conducted with an immunoassay with a result of either “positive” or negative.” This type of assay uses an antibody generated to bind to the drug or drug metabolite. These antibodies are not specific and a number of substances may cross-react.

Screening products such as the eScreen from Alere Toxicology are intended for forensic testing only and receive clearance as a medical device under FDA 510(k) premarket notification. The screening cutoff between positive and negative for assays of this type is generally determined by choosing a cutoff value that maximizes both the number of true positive and true negatives in a set of test samples. In use, samples that test positive are generally sent for confirmation analysis by mass spectroscopy methods.

The choice of a screening cutoff is critical and despite government recommendations, several large labs, use very low cutoffs that increase the rate of all positive screening results—both true and false. The documentation for the Quantisal oral fluid collection device from Alere Toxicology notes that oral fluid testing gives higher positive rates than urine testing; no mention is made of what proportion of these represents false positives.²

URINE DRUG SCREENS FOR CANNABIS

The legal cannabis market is predicted to be about \$66B in 2025 and expected to continue growing.³

THCCOOH is conjugated with glucuronide by the liver to enhance excretion. Sixty to seventy percent is excreted in feces and the remainder in urine with the glucuronide conjugate being the larger fraction. The gut microbiome can cleave the glucuronide moiety and THCCOOH can then be reabsorbed from the gut in a process known as enterohepatic recirculation.

Because of high solubility in adipose tissue and enterohepatic recirculation, urine samples can remain positive for more than a month in chronic users. In samples used to monitor compliance with ordered abstinence, THC carboxylic acid in urine is normalized with urinary creatinine, a metabolic product of muscular activity excreted at a constant rate and also used clinically as a measure of kidney function. Urinary excretion over time of THCCOOH from chronic users shows a general decline with many fluctuations and, generally, no less than three samples are required to demonstrate abstinence. This variation over time is evident in Figure 1 below.

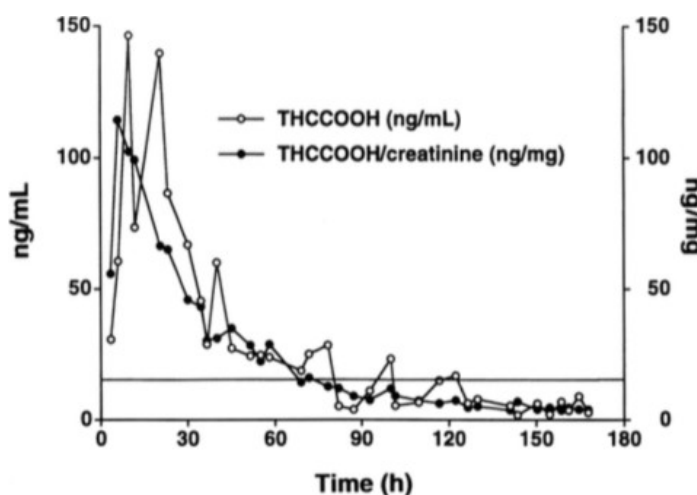


Figure 1. Variation in urinary excretion profile of THCCOOH measured as concentration and normalized to creatinine. From Huestis & Cone, 1998.

The urine screening available for cannabis produce inconsistent results because of the specificity of the antibodies used for the two primary THC metabolites that occur in urine—THC carboxylic acid or THCCOOH and its glucuronide conjugate. Prior

to confirmation analysis, generally the sample is enzymatically treated to cleave the glucuronide and then the total THCCOOH in the sample is reported.

The Farm Act of 2018 legalized hemp products containing no more than 0.3% THC by weight (Schlутtenhofer & Yuan, 2017). However, positive urine screens for cannabis can occur following hemp oil use (Costantino et al. 1997; Holler et al. 2008; Struempfer et al., 1997). A nurse who admitted to hemp oil use was returning from a home visit in a traffic accident in which the other driver ran a red light. A mandatory post-accident urine sample was obtained from the nurse and tested positive for marijuana. The medical review officer at the medical facility whose job is to review drug screens was unaware of the potential for legal hemp oil to produce a positive marijuana screen and the nurse was about to lose her job.

In half of the screening devices given FDA 510(k) clearance in the last three years, the antibody was highly specific for THCCOOH whereas in the other half, the bespoke antibody used in the device was subject to about 70% cross-reactivity with the glucuronide. The ratio of these two metabolites in urine is itself highly variable; hence, both individual difference in metabolism and excretion as well as the specificity of antibody used in the screening device contribute to overall uncertainty.

Urine testing for cannabis is also used for criminal sentencing decisions. Dr. Marilyn Huestis, formerly of the National Institute of Drug Abuse, and her coworkers have published a statistical model for interpretation of sequential urine measurements of Cr-normalized THCCOOH. Dr. Huestis counsels that for sentencing decisions, the 99% level of certainty should be used to ensure no one is wrongfully sent to prison (Schwilk et al. 2011).

In two different instances in memos from Ms. Pat Pizzo of Alere Toxicology, she assumed that any positive urinary result was indicative of new marijuana use, inconsistent with the advice from Dr. Huestis and coworkers. Ms. Pizzo was either unaware of the statistical model, incapable of performing the calculations, or chose not to use this model for some reason.

HAIR TESTING

Drugs may occur in hair by three mechanisms: transfer from to the follicle; transfer from sweat and sebum; and (iii) external contamination. The chemical characteristics of drugs that contribute to binding to hair are lipid solubility, the presence of an aromatic ring and a nitrogen-containing amine group, characteristics shared by a host of substances including cocaine, amphetamines, the anti-malarial drug mefloquine, opioids, anti-depressants and anti-psychotic drugs, dioxins, polychlorinated biphenyls.

The Society of Hair Testing recommends a decontamination strategy that includes an initial organic solvent wash followed by an aqueous wash but points out that "standardised wash procedures that will effectively remove any trace of external contamination without actively removing the drugs incorporated into the hair are not currently available" (Cooper et al. 2012). At present, no consensus exists on the most effective decontamination procedure for hair, and drug use cannot be distinguished from external contamination (Mantinięks et al., 2018).

For this reason, in 2009, the FBI laboratory in Quantico, VA suspended hair testing for cocaine except for young children (LeBeau & Montgomery, 2009).

One significant concern is drug use during pregnancy. Testing meconium is considered the "gold standard" for neonatal drug screening (Montgomery et al. 2006). Hair testing results do not correspond to meconium results. In a study of 80 mother-infant pairs from Spain, Latin American, 13 mothers had positive hair results for methamphetamine in the last trimester but only 4 of their infants had quantifiable methamphetamine in meconium (Joya et al. 2016). This finding makes clear the lack of reliability of hair testing.

Nonetheless, many who work for child protective services consider hair testing to be a valid procedure. An attorney once asked me during testimony if I had ever given methamphetamine to pregnant women. I'm not usually speechless but that time I stared at her in silent disbelief for about twenty seconds. I can surmise only that the question arose out of her desperation to impeach my testimony.

CONCLUSIONS

Their procedures used by drug testing labs are closely guarded with lack of transparency being the hallmark of this industry. In my experience, they tell their clients what they want to hear and disclose none of the uncertainty inherent in their methods. This refusal to be transparent is not at all evident in forensic testing labs operated by state governments.

A conspiracy theorist might believe some devil's bargain has been struck between the drug testing industry and the operators of prisons. The private prison industry accounts for several billion in total revenue each year.⁴ The motives of those in child protective services are even less clear.

What is troubling is the possibility that for some, money may not be the motive. Perhaps, like Lord Voldemort of the Harry Potter books or Cersei Lannister of *Game of Thrones*, individuals such as that attorney from child protective services or Pat Pizzo of Alere Toxicology find satisfaction in cruelty.

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- 2 https://www.redwoodtoxicology.com/about_us/tech_brief/quantisal
- 3 <https://www.grandviewresearch.com/press-release/global-legal-marijuana-market>
- 4 <https://www.propublica.org/article/by-the-numbers-the-u.s.s-growing-for-profit-detention-industry>

New Lawyer Profile



Alex Barnett

In every issue of *Defense Update*, we will highlight a new lawyer. This issue, we get to know Alex Barnett of Lane & Waterman LLP in Davenport.

Alex Barnett is an associate attorney at Lane & Waterman in Davenport, where he practices primarily in the areas of commercial litigation, medical malpractice, construction law, insurance coverage disputes, and product liability and mass

torts. His practice is almost entirely devoted to litigation and appeals in the state and federal courts of Iowa and Illinois. He has represented clients in a wide variety of civil disputes. His clients have been individuals and companies as well as plaintiffs and defendants. He regularly assists Lane & Waterman's senior partners with complex civil litigation and enjoys finding creative solutions to difficult problems.

Alex received his B.A., with distinction, in Economics and Philosophy from the University of Iowa and his J.D. from the University of Iowa College of Law. Prior to joining Lane & Waterman, Alex served as a law clerk for Iowa's Seventh Judicial District, where he worked extensively with the Honorable John Telleen on Iowa's Specialty Business Court. The experience of working with judges as they decide cases provided unique insight on how to deconstruct complex business situations so they can be properly addressed by the legal system, and continues to inform Alex's approach to the practice of law.

Alex enjoys being active in the Scott County Bar Association and has volunteered as a junior high mock trial coach the past two years. In his free time, Alex enjoys taking advantage of the Quad Cities' live music scene, playing disc golf and participating in a local pinball league. He resides in Davenport.

Case Law Update

By Alex Barnett, Lane & Waterman LLP, Davenport, IA



Alex Barnett

SLAUGHTER V. DES MOINES UNIV. COLLEGE OF OSTEOPATHIC MEDICINE, 925 N.W.2D 793 (IOWA 2019)

Slaughter v. Des Moines Univ. College of Osteopathic Medicine, 925 N.W.2d 793 (Iowa 2019) (4-3; affirming summary judgment for medical school dismissing student's ADA and ICRA claims that

the school failed to accommodate her depression because she failed to identify any reasonable accommodation that would have allowed her to meet academic standards).

Why It Matters: The most notable part of the *Slaughter* decision comes in the differing approaches taken by the majority and dissent in analyzing each party's burden at summary judgment. The majority analyzed the sufficiency of plaintiff's evidence at the summary judgment stage, and this is the new go-to case for "no-evidence" summary judgments, stating: "Summary judgment is not a dress rehearsal or practice run; it is the put up or shut up moment in a lawsuit, when a nonmoving party must show what evidence it has that would convince a trier of fact to accept its version of events." *Id.* at 808 (cleaned up). The dissent, on the other hand, focused heavily on the moving party's initial burden to demonstrate no issue of material fact exists. With the recent additions of Justices McDonald and Christensen to the Iowa Supreme Court, this decision may indicate greater deference to district court decisions granting summary judgment, especially where the plaintiff lacks sufficient evidence to establish a *prima facie* claim.

Summary: *Slaughter* came to the Iowa Supreme Court on appeal directly from the Polk County District Court. *Id.* The dispute arose when Slaughter, a Des Moines University ("DMU") medical student, alleged DMU failed to accommodate her depression. *Id.* at 796. After a year of continued academic struggles, DMU dismissed Slaughter from its medical program. *Id.* Slaughter appealed the

district court's refusal to impute a DMU psychologist's knowledge of her depression to the medical school's academic decision-makers. *Id.* Slaughter also appealed the district court's summary judgment ruling that her failure-to-accommodate claim failed as a matter of law. *Id.*

To analyze the district court's ruling on DMU's motion for summary judgment, the Supreme Court had to initially determine when DMU became aware of the Slaughter's depression. *Id.* According to Slaughter, a DMU employed psychologist's diagnosis of Slaughter's depression should have imputed knowledge of her depression to DMU's academic decision-makers at the time of diagnosis *Id.* at 801. (The diagnosis was made in September of 2014, but Slaughter did not disclose her depression to school officials until December 2014). The Supreme Court disagreed. *Id.* As a matter of first impression, the Supreme Court held DMU's staff psychologist's knowledge of Slaughter's depression, learned while the psychologist was treating Slaughter as a patient, could not be imputed to DMU's academic decision-makers, notwithstanding the psychologist's status as a DMU employee. In reaching this conclusion, the Supreme Court noted Iowa Code Section 228.2 broadly imposes a duty of confidentiality on information obtained by mental health professionals from their patients. *Id.* at 802. While this duty can be waived by the patient, Slaughter expressly declined to waive confidentiality in filling out treatment forms. *Id.* at 803. Further, no other statutory exceptions to confidentiality would have allowed the therapist to disclose treatment information to the school. *Id.* at 802-03. Typically, an agent's knowledge is imputed to a principle, but this rule does not apply when an agent has a duty *not to disclose* the information at issue. *Id.* at 804. Because the school staff psychologist was subject to a statutory duty of confidence, the psychologist had no ability to disclose the information to the school, and the psychologists' knowledge of Slaughter's depression could not be imputed to DMU's academic decision-makers. *Id.* at 804.

The Iowa Supreme Court then affirmed the district court's summary judgment ruling, finding Slaughter had no evidence the medical school denied any reasonable accommodation she requested or that any reasonable accommodation existed that would have allowed her to meet the school's academic standards. *Id.* at 812. In determining summary judgment was properly granted the majority emphasized Slaughter's failure to identify specific accommodations which would have helped her succeed academically despite her disability. *Id.* at 807-08. The court noted DMU worked with Slaughter in a variety of ways in attempting

to improve her academic performance both before and after she disclosed her depression. *Id.* at 806-07. Despite the school's continued interest in her academic success, Slaughter failed to identify any specific accommodations she requested that DMU denied. *Id.* at 807.

The most notable part of the opinion stems from the majority's analysis of Slaughter's burden at the summary judgment stage. *Id.* at 808. Rather than focusing on the proof offered by DMU, the court relied heavily on Slaughter's failure to offer evidence of specific accommodations which could have helped her succeed academically. *Id.* at 808-09. "We need not decide whether DMU should have done more to engage in the interactive process with Slaughter. To avoid summary judgment, Slaughter had to make a facial showing that a reasonable accommodation existed that could have enabled her to meet the medical school's academic requirements. She made no such showing." *Id.* The majority noted that Slaughter had to put forth specific facts supporting her allegations to defeat DMU's motion for summary judgment. *Id.* at 809. Relying "upon the mere allegations or denials of [a] pleading" alone is insufficient to create issues of material fact sufficient to place a case before a jury. *Id.* at 808 (internal citations omitted). Stated more robustly: "Summary judgment is not a dress rehearsal or practice run; it is the put up or shut up moment in a lawsuit, when a [nonmoving] party must show what evidence it has that would convince a trier of fact to accept its version of the events." *Id.*

Ultimately *Slaughter* provides strong precedent when a plaintiff has little evidence supporting her claims and the defense wants strong language to remind the district court that the plaintiff must move beyond generalities and raise a triable issue to defeat a motion for summary judgment. The majority also noted that Iowa courts grant deference to academic judgments, which might foreshadow greater deference in other fields.

Why The Dissent Matters: A dissent composed of Justices Appel, Cady, and Wiggins adopted a contrary view regarding Slaughter's burden at the summary judgment stage. *Id.* at 812. According to the dissent, Slaughter was not required to propose specific accommodations during the interactive process. *Id.* at 817. Instead, once Slaughter made DMU aware of her depression it was the school's duty to consider the precise nature of Slaughter's disability and how specific accommodations might be developed to address it. *Id.* This contrasts with the majorities' view that Slaughter had a duty to make recommended accommodations to the school. *Id.* at 809. The dissent held the school's actions were insufficient to accommodate Slaughter's individualized disability because the school only offered Slaughter accommodations available to the general student body. *Id.* at

817. Therefore, according to the dissent, summary judgment was inappropriate because the undisputed facts failed to demonstrate DMU adequately engaged in the interactive process. *Id.* at 818.

The dissent offered three standards for evaluating summary judgment in failure to accommodate claims, all of which place a burden on the defendant. *Id.* The first, which the dissent believed to be the Iowa standard, requires the defense to place forth undisputed evidence it engaged in the interactive process. *Id.* at 819. The second requires the defendant to put forth undisputed evidence that the interactive process would have failed to produce reasonable accommodations. *Id.* And the final approach, which the dissent indicated it would not adopt, is a burden shifting approach requiring the plaintiff to put forth a "facially plausible" accommodation, "at which point, summary judgment [would be] denied unless the [defendant] presents undisputed facts that the student could not perform even with the facially plausible accommodation or that accommodating the student would pose an undue hardship." Each of these standards conflict with the majority's approach which looks to the sufficiency of evidence offered by the plaintiff at the summary judgment stage. *Id.* at 808-09.

HAWKINS V. GRINNELL REGIONAL MEDICAL CENTER, 929 N.W.2D 261 (IOWA 2019)

Hawkins v. Grinnell Regional Medical Center, 929 N.W.2d 261 (Iowa 2019) (unanimous; reversing \$4.5 million jury verdict in employment discrimination case for errors admitting hearsay and holding employer is entitled to "same decision" defense and jury instruction under Iowa Civil Rights Act, replacing *McDonnell Douglas* with *Price Waterhouse* analysis at trial).

Why It Matters: *Hawkins* establishes the analysis for mixed-motive discrimination and retaliation causes of action under the Iowa Civil Rights Act ("ICRA"). The Iowa Supreme Court formerly relied on the *McDonnell Douglas* burden-shifting analysis and determining-factor standard when instructing the jury. While the Court had previously mentioned the *Price Waterhouse* same-decision defense in dicta, it never actually applied the same-decision defense in mixed-motive cases such as this. The Court held it was only fair to allow the employer the affirmative defense because Iowa has adopted the motivating-factor standard for plaintiffs, which is a lower standard than the determinative-factor test. *Id.* at 271-72 (citing *Haskenhoff v. Homeland Energy Sols., LLC.*, 897 N.W.2d 553 (Iowa 2017) and *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1, (Iowa 2009)). In light of *Hawkins*, Iowa courts "no longer rely on the *McDonnell Douglas* burden-shifting analysis and determining-factor standard when instructing the jury[.]" and if the defendant *properly pleads and proves* the same-decision

defense recognized in *Price Waterhouse*, the defendant is entitled to an instruction on the same-decision defense. *Id.* at 272.

While this answers the question of how the jury should be instructed for mixed-motive discrimination and retaliation claims, it leaves uncertainty as to whether the *McDonnell Douglas* burden shifting analysis is still the proper analysis in a motion for summary judgment under the ICRA. The Iowa Supreme Court avoided this question in *Hedlund v. State*, No. 18-0567, __ N.W.2d __ (Iowa June 28, 2019), stating it “need not decide” the continued viability of *McDonnell Douglas* on summary judgment because Hedlund’s age claim failed anyway. This leaves the following unanswered questions: Will the Court move further toward “but-for” causation under the ICRA? Will the *Price Waterhouse* analysis continue in summary judgment proceedings?

Summary: Gregory Hawkins was employed at the Grinnell Regional Medical Center (“GRMC”) since 1976 and served as the laboratory director from 1985 to 2015. *Hawkins v. Grinnell Regional Medical Center*, 929 N.W.2d 261, 264 (Iowa 2019). In November 2013, Hawkins was diagnosed with stage III breast cancer. *Id.* Initially, he was only able to continue working part-time, but GRMC needed a full-time director. *Id.* He eventually began working full-time again. *Id.* at 262. Hawkins alleged, however, that GRMC insisted he retire and made complaints about his diminished work quality. *Id.* On May 13, 2015, Hawkins filed his Iowa Civil Rights Commission complaint, alleging age discrimination, disability discrimination, and retaliation, and on June 3, 2015, GRMC fired him. *Id.* at 263.

The jury returned a verdict in Hawkins’ favor on all claims. *Id.* GRMC then filed a motion for a new trial and remittitur of damages. *Id.* Hawkins subsequently moved for equitable relief and attorney fees. *Id.* The trial court denied GRMC’s motion and granted Hawkins’ motion. *Id.* GRMC appealed, arguing, in part, the district court erred in admitting hearsay and refusing to submit GRMC’s requested same-decision jury instruction. The Court found the evidentiary issue was dispositive and reversed the jury’s \$4.5 million award, but the Court addressed whether it was appropriate for the trial court to refuse to submit GRMC’s requested same-decision jury instruction because the issue may arise on retrial. *Id.*

The Iowa Supreme Court ultimately held that, when the Court employs a motivating-factor test for causation in ICRA cases, the employer should be entitled to the same-decision affirmative defense laid out in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). *Hawkins*, 929 N.W.2d at 271-72. In the Civil Rights Act of 1991, Congress codified the motivating-factor standard and same-decision defense adopted by the Court in *Price Waterhouse*, under 42 U.S.C. §§ 2000e-2(m) and 2000e-5(g)(2)(B), respectively.

Hawkins, 929 N.W.2d at 268. Under § 2000e-2(m), the plaintiff must demonstrate her protected characteristic was a motivating factor in the challenged employment practice, even if other factors motivated the employer. *Id.* If the plaintiff satisfies this burden, then § 2000e-5(g)(2)(B) allows the employer to claim an affirmative defense if it can demonstrate it would have made the same employment decision absent or independent of the impermissible motivating factor. *Id.* at 269.

The ICRA does not contain language similar to the federally codified *Price Waterhouse* affirmative defense. *Id.* In *DeBoom*, the Iowa Supreme Court held a plaintiff must establish the “termination occurred under circumstances giving rise to an inference of discrimination” and the plaintiff’s status as a member of a protected class was a motivating factor in that decision. *DeBoom*, 772 N.W.2d at 12-14. While the ICRA sets forth a motivating-factor burden of proof for plaintiffs, there is not comparable language in the ICRA incorporating the same-decision defense. *Hawkins*, 929 N.W.2d at 271-72. In mixed-motive cases such as this—where there are arguably multiple motivations behind a certain employment decision, such as a person’s disability coupled with their poor work performance—some jurisdictions have applied the *McDonnell Douglas* burden-shifting analysis, while others have applied the *Price Waterhouse* analysis. *Id.* at 271.

Because the Iowa Supreme Court took the first step in *DeBoom* and adopted the motivating-factor standard, which is a lower standard than the older “determining-factor” standard, the Court held in *Hawkins* that fairness should afford the employer the same-decision affirmative defense. *Id.* at 271-72. This defense would allow the employer to avoid liability when the employee proves by a preponderance of the evidence that the discrimination was a motivating factor in the employer’s actions. *Id.* Therefore, on retrial, Defendants will be entitled to the *Price Waterhouse* same-decision defense, and the trial court will not use the *McDonnell Douglas* burden-shifting analysis or determining-factor standard when instructing the jury. *Id.*

IDCA Bootcamp by the Numbers

By Susan M. Hess

In 2016 IDCA launched its one day "Bootcamp" program. The primary goal of the program was to offer targeted skills training in conducting depositions for attorneys with less than five years of experience. The inaugural event was held at Grinnell Mutual Reinsurance Company. It was originally set up to accommodate 24 attorneys; however, due to the large number of volunteers that flooded in, the program expanded to accept 28 recruits. Fifteen experienced IDCA members served in attorney and witness roles to help facilitate the skills training. The program includes case materials involving a fictitious case provided to recruits in advance of the camp. Recruits spend the morning receiving instruction on role play for the deposition and guidance for taking a full deposition of a treating physician and/or chiropractor. The recruits then break into their small groups and conduct depositions. Immediately following the deposition, the volunteer attorneys and witnesses offer valuable feedback to the recruits.

In 2017, IDCA drill sessions resumed at Grinnell Mutual. Thirteen Bootcamp recruits worked with 12 volunteer IDCA members to hone their deposition skills.

IDCA is currently gearing up for our third Deposition Bootcamp which will be held on October 25, 2019, in Grinnell. We encourage you to

recruit attorneys in your firm that are looking to improve on their deposition skills. The valuable CLE opportunity combines instruction from seasoned lawyers with practical small group exercises where participants will learn to apply critical skills to effectively take depositions. Registration fees include materials, lunch, snacks and an opportunity to network at the cocktail reception.

Kami Holmes, who organized the 2016 and 2017 events, noted that "with each Bootcamp, we strive to include more information to assist the attorneys with real life practice scenarios. We also provide the opportunity to sit down with experienced attorneys and receive useful, honest feedback in a comfortable, non-judgmental setting. Often times it may be difficult for a newer attorney to hear and/or receive feedback from the partners in their firm, as they are worried about judgment. Over 41 attorneys have attended the two, space limited, Bootcamp programs and the feedback we received has been overwhelmingly positive."

Availability is limited! For details on this upcoming event, or to volunteer, please contact Bryan O'Neill at boneill@dickinsonlaw.com.

The Iowa Defense Counsel Association presents the

DEPOSITION BOOTCAMP

For attorneys with 2–5 years of experience.

Friday, October 25, 2019

GRINNELL MUTUAL REINSURANCE COMPANY
GRINNELL, IOWA

SAVE THE DATE

Agenda, event details available online August 2019

Only 28 spots available –first registered, first-in
Pending approval for 8 hours State CLE

**Registration: \$225/members
\$275/non-members**

Includes program, lunch and breaks

Basic Training: The Rules and Goals of Taking a Deposition

Drills Session 1: Depose Plaintiff

Mess Hall: Panel Discussion: In the Trenches: Battles Fought

Drills Session 2: Depose Training Physicians

Drills Session 3: Depose Chiropractors



2019

55th IDCA Annual Meeting & Seminar
SEPTEMBER 12–13, 2019

Register Today at: www.iowadefensecounsel.org/AnnualMeeting2019
Embassy Suites by Hilton Des Moines Downtown, Des Moines, Iowa

SCHEDULE AT-A-GLANCE

TIME	WEDNESDAY, SEPTEMBER 11
5:00–7:00 p.m.	IDCA Welcoming Reception featuring music from The Torts <i>(open to all Annual Meeting attendees and sponsors)</i>
7:00 p.m.	IDCA Hospitality Suite Open
TIME	THURSDAY, SEPTEMBER 12
7:00 a.m.–5:00 p.m.	Registration and Exhibits Open
7:00–8:00 a.m.	<i>Defense Update</i> Board of Editors Breakfast
7:50–8:00 a.m.	Welcome and Opening Remarks
8:00–8:45 a.m.	Leadership and Perseverance Through Adversity
8:45–9:30 a.m.	Everything You Need to Know About State Constitutional Tort Claims
9:30–10:30 a.m.	Taking the Heat for Tweet: Ethical Concerns with Lawyers' Use of Social Media
10:30–10:45 a.m.	Networking Break with Exhibitors
10:45–11:30 a.m.	Beyond the Numbers: How to Use an Expert in Alcohol & Drug Cases
11:30 a.m.–12:15 p.m.	Let's Talk About Your Health
12:15–1:15 p.m.	IDCA Awards and Annual Business Meeting & Networking Lunch
1:15–2:15 p.m.	Power Hour: Discussing the Health and Wellness of the Judicial System
2:15–3:00 p.m.	Utilizing the Forensic Chiropractor in Bodily Injury Litigation
3:00–3:15 p.m.	Networking Break with Exhibitors
3:15–4:00 p.m.	Helping to Save Jury Trials Through Jury Trial Innovations
4:00–4:45 p.m.	Reptile Revisited and Reversed
4:45–5:00 p.m.	Case Law Updates: Torts/Negligence
5:30–7:30 p.m.	Thursday Night Reception at The Iowa Taproom featuring the Cody Hicks Band
After Evening Events	IDCA Hospitality Suite Open
TIME	FRIDAY, SEPTEMBER 13
7:00 a.m.–1:15 p.m.	Registration and Exhibits Open
8:00–8:15 a.m.	Case Law Updates: Contracts/Commercial
8:15–9:15 a.m.	Voir Dire: The Good, Bad and the Ugly as Seen from the Bench
9:15–10:45 a.m.	Bringing it Together for Trial, Attacking Damages
10:45–11:00 a.m.	Networking Break with Exhibitors
11:00 a.m.–12:00 p.m.	The Ethical Conundrums of Marketing and Managing
12:00–12:15 p.m.	Case Law Updates: Developments in Employment Law and Civil Procedure
12:15–1:15 p.m.	Web 3.0 Beyond Facebook: Current Trends in Social Media Investigations



REGISTRATION

Save money and register by Friday, **August 30, 2019**. Rates increase after this date.

REGISTER ONLINE

www.iowadefensecounsel.org/AnnualMeeting2019

Receive immediate confirmation and receipt when you register online! Members must sign in to receive the IDCA member rate.

If you are not a member, you will need to create an account before you can register. We invite you to take advantage of IDCA's first-time member promotion. Join now and receive complimentary dues until December 2020 and the member rate to attend the IDCA Annual Meeting. This offer is for first-time members only.

FAX: (515) 334-1483

MAIL:
Iowa Defense Counsel
Association
1255 SW Prairie Trail
Parkway
Ankeny, IA 50023-7069

Allow two business days for confirmation and receipt to be emailed if registering by fax or mail.

QUESTIONS: Email Kristen Dearden at meetings@iowadefensecounsel.org or call (515) 334-1482.

For security purposes, do not email registration and payment information. This is not a secure way to transmit your credit card information. IDCA is not responsible for credit card information sent by email.

ABOUT IDCA

IDCA members are more than 320 lawyers and claims professionals actively engaged in the practice of law or in work relating to the handling of claims and the defense of legal actions. IDCA's mission is to be the trusted professional voice for the defense of civil litigants.

CLE

Approved for 12.5 State CLE Hours (includes 2.0 Ethics Hours), Activity Number 325821. CLE hours are posted to your IDCA profile following the meeting and available at www.iowadefensecounsel.org when you log-in with your user credentials.

REGISTRATION INCLUDES

Full Registration includes sessions, meals, breaks and networking events listed for Wednesday (Welcome Reception), Thursday and Friday in the published Schedule of Events. Thursday Only and Friday Only Registration includes all published activities for those days only.

Materials are provided on the event website, www.iowadefensecounsel.org/AnnualMeeting2019. An email will be sent to all registered attendees once session handouts are available. Printed materials and CDs are not available.

NETWORKING EVENTS

Wednesday Welcoming Reception

Embassy Suites by Hilton

Des Moines Downtown

Featuring: Music from The Torts

Wednesday, September 11, 5:00–7:00p.m.

Included in Full and Thursday Only Registration options



Start the meeting off by networking with your colleagues and friends while enjoying light hors d'oeuvres and drinks on the Embassy Suites patio. This reception also will feature some great music from the band, The Torts, are an insurance rock band. Formed by a group of like-minded musicians at Grinnell Mutual, they create fun,

audience-friendly music experiences for corporate and community events. Their setlist focuses on upbeat, recognizable music with just enough special seasoning to make each song unique. The Torts feature (from right) insurance professionals Dan McCue (lead vocals guitar), Mike Shepardson (bass guitar, vocals), John Landkamer (keyboards), and Hugh Sheridan (percussion, vocals). At left is IDCA member Pete Lahn.

IDCA Hospitality Room

Wednesday, September 11, 7:00 p.m.

Thursday, September 12, After Evening Events

Hosted by the New Lawyers Committee

Registered attendees are welcome to meet up and exchange stories in the Hospitality Room. This is a great opportunity to get to know other members in a relaxed atmosphere.

Thursday Evening Reception

Iowa Taproom, 215 E. 3rd Street, Des Moines, IA 50309

Featuring: Music from The Cody Hicks Band

Thursday, September 12th

5:30–7:30 p.m.

Included in Full and Thursday Only Registration options



Join us as we head on over to the Iowa Taproom for some great food, drinks, music, and fun with your colleagues! The Iowa Taproom is one of the coolest places to be in Des Moines, and it is within walking distance from the Embassy Suites in Des Moines East Village. We also have on tap music by The Cody Hicks Band! Cody Hicks

has been playing live music for over a decade: from cover bands, original bands, and as a solo acoustic act. The Cody Hicks Band has opened for acts such as: Brothers Osborne, Casey Donahew, Granger Smith, Phil Vassar, Chase Rice, Tyler Farr, and Trace Adkins. The band was able to first record their original music in Nashville with producer Patric Johnson in the summer of 2014; that record titled "Gettin' Our Feet Wet" dropped in the spring of 2015. That summer the band shot their first music video for "In the Morning" with producer Rick Burger of Stang Films. The video was a huge success, reaching over 100,000 views on Facebook within the first week, and the views on YouTube continue to climb. Following the success of the music video the band released their first single "In the Morning" to country radio. The following spring, the guys released their follow up single, "Left Turn". This song quickly became the blue-collar anthem for dirt track racers nationwide. This single, also produced a music video which shared a combined 1M views between Facebook and YouTube. The music video for "Left Turn" was a 2018 Midwest CMA Music Video of the Year nominee.

IDCA FUNDRAISER: SILENT AUCTION

Wednesday, September 11– Friday, September 13th

IDCA will be conducting a Silent Auction throughout the Annual Meeting to raise money for the Iowa Legal Aid. If you would like to donate an item for the auction, please contact Kristen at meetings@iowadefensecounsel.org.

Register Today at:

[www.iowadefensecounsel.org/
AnnualMeeting2019](http://www.iowadefensecounsel.org/AnnualMeeting2019)

IDCA 55TH ANNUAL MEETING & SEMINAR

SESSION SPEAKERS & DESCRIPTIONS

Wednesday, September 11, 2019

5:00–7:00 p.m.



IDCA Welcome Reception Featuring Music from The Torts

Join us for cocktails and light hors d'oeuvres and enjoy music from the band, The Torts. Open to all IDCA Annual Meeting attendees and sponsors.

Sponsored by: Grinnell Mutual Reinsurance Company

7:00 p.m.

IDCA Hospitality Suite Open, Hosted by the New Lawyers Committee

Thursday, September 12, 2019

7:00 a.m.–5:00 p.m.

Registration and Exhibits Open

Breakfast on your own. Embassy Suites guests may enjoy the hotel's complimentary made-to-order breakfast.

7:00–8:00 a.m.

Defense Update Board of Editors Breakfast

7:50–8:00 a.m.

Welcome & Opening Remarks

8:00–8:45 a.m.

Leadership and Perseverance Through Adversity



Jeff Menary, President & CEO, Grinnell Mutual, Grinnell, IA

Jeff Menary was set to take over as president and CEO of Grinnell Mutual in December 2017, however in September 2017, he was sidelined after he was bitten by a mosquito which happened to be carrying the West Nile virus. Jeff will share his story of working through the ranks at Grinnell Mutual, his recovery from West Nile virus and how this illness has affected his thoughts on leadership and his own leadership style as CEO.

8:45–9:30 a.m.

Everything You Need to Know About State Constitutional Tort Claims



Todd Pettys, Esq., H. Blair and Joan V. White Chair in Civil Litigation, University of Iowa College of Law, Iowa City, IA

After briefly reviewing the current status of Bivens claims under the U.S. Constitution, we will discuss the newly emerging field of state constitutional tort claims in Iowa, paying particular attention to the Iowa Supreme Court's recent rulings in *Godfrey v. State* and *Baldwin v. City of Estherville*.

Thursday, September 12, 2019 – con't.

9:30–10:30 a.m.



Taking the Heat for Tweet: Ethical Concerns with Lawyers' Use of Social Media

John G. Browning, Esq., Passman & Jones, Dallas, TX

Using real-world examples drawn from cases, disciplinary actions, and ethics opinions across the country; this presentation examines the ethical pitfalls of attorney use (and misuse) of social media. From concerns about confidentiality, fact investigation, and preservation of evidence, to counseling clients and researching jurors' online profiles, this program offers lawyers invaluable guidance about some of today's most cutting-edge issues.

10:30–10:45 a.m.

Networking Break with Exhibitors

10:45–11:30 a.m.

Beyond the Numbers: How to Use an Expert in Alcohol & Drug Cases

Ted W. Simon, Ph.D., DABT, Principal, Ted Simon LLC, Atlanta, GA



An expert can help clarify scientific evidence for a judge or jury and help counsel craft a science-based and persuasive argument. This presentation will cover toxicology on alcohol and the recognition of impairment, cannabis as a causal factor in MVA, Ambien and sleep-driving, and hair testing for amphetamines and cocaine.

11:30 a.m.–12:15 p.m.

Let's Talk About Your Health

Dr. Amy Michelle Wilcockson, Live Healthy Iowa, Ames, IA



Dr. Amy will discuss what we think we know, that attorneys experience alcohol use disorders at a higher rate than other professional populations in addition to mental health distress. Dr. Amy will examine how we can address the stress in our lives and what we can do to make our health a priority so that we can try to avoid the pitfalls that plague our profession.

12:15–1:15 p.m.

IDCA Awards and Annual Business Meeting & Networking Lunch

Sponsored by: Exponent and Minnesota Lawyers Mutual Insurance

1:15–2:15 p.m.

Power Hour: Discussing the Health and Wellness of the Judicial System



*Judge Rebecca Goodgame Ebinger, U.S. District Court for the Southern District
Chief Justice Mark Cady, Iowa Supreme Court
Chief Judge Kellyann Lekar, Iowa District Court 1B
Judge Michael J. Melloy, U.S. 8th Circuit
Judge Thomas N. Bower, Iowa Court of Appeals*

Moderator: Justice Christopher McDonald, Iowa Supreme Court

You don't want to miss this candid panel discussion with six of Iowa's most well-respected justices and judges about the health and wellness of the legal system including demands on the court system, professionalism and candor before the court, and attacks on the integrity and credibility of the judicial system overall.

Thursday, September 12, 2019 – con't.

2:15–3:00 p.m.



Utilizing the Forensic Chiropractor in Bodily Injury Litigation

Dr. Scott Misek, Heritage Musculoskeletal Assessment Center, Omaha, NE

Not all bodily injury cases are alike, especially when the injured party seeks chiropractic care. Learn from a Forensic Chiropractor on how to overcome challenges with chiropractic case analysis. Topics covered include standards of care, clinical practice guidelines and maximum medical improvement.

3:00–3:15 p.m.

Networking Break with Exhibitors

3:15–4:00 p.m.



Helping to Save Jury Trials Through Jury Trial Innovations

Judge Mark Bennett, Retired U.S. District Court Judge for the Northern District of Iowa

Judge Bennett will discuss his experience in civil jury trials in six different federal district courts using jury trial innovations to make juror good-will ambassadors for the jury trial system and make jury trials more enjoyable for counsel.

4:00–4:45 p.m.

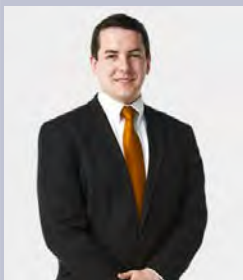


Reptile Revisited and Reversed

Brian Yung, Esq., Klass Law Firm, L.L.P., Sioux City, IA
Judge Sharon Soorholtz Greer, Iowa Court of Appeals
John Gray, Esq., Heidman Law Firm, Sioux City, IA

We've all likely experienced tactics used by some attorneys which focus on establishing safety rules that have obviously been violated and have nothing to do with any legal standard that exists in trying to sway the jury to their side of the case. We will discuss the latest tactics that have been used, how the courts have addressed these theories and when the use of the Reverse Reptile may be helpful in your case.

4:45–5:00 p.m.



Case Law: Updates Torts/Negligence

Josh Strief, Esq., Elverson Vasey, Des Moines, IA

A brief overview of the past year's appellate decisions affecting civil tort litigation.

Thursday, September 12, 2019 – con't.

5:30–7:30 p.m.

**Thursday Night Reception at The Iowa Taproom, 215 E. 3rd St. #100, Des Moines Featuring Music from The Cody Hicks Band**

Join us for fun, drinks and heavy appetizers. Plus, enjoy music from the Cody Hicks Band at The Iowa Tap Room located in the East Village of Des Moines, IA.

After Evening Events

IDCA Hospitality Suite Open, Hosted by the New Lawyers Committee

Friday, September 13, 2019

7:00 a.m.–1:15 p.m.

Registration and Exhibits Open

Breakfast on your own. Embassy Suites guests may enjoy the hotel's complimentary made-to-order breakfast.

8:00–8:15 a.m.

**Case Law Updates: Contracts/Commercial**

Luke Jenson, Esq., Swisher & Cohrt, Waterloo, IA

A survey of notable Iowa Supreme Court and Iowa Court of Appeals decisions focused primarily on contract law and commercial law from September 15, 2018, through August 5, 2019.

8:15–9:15 a.m.

**Voir Dire: The Good, Bad and the Ugly as Seen from the Bench**

Judge Richard D. Stochl, Iowa District Court 1B

Judge Jeffrey D. Farrell, Iowa District Court 5C

Have you ever wondered what the judge thought of your voir dire? The Honorable Richard D. Stochl and The Honorable Jeffrey D. Farrell will give you some insights on the voir dire they've seen: the good, the bad, and the ugly, as well as provide some tips for a more effective voir dire.

9:15–10:45 a.m.

**Bringing it Together for Trial, Attacking Damages**

J. Ric Gass, Esq., Gass Weber Mullins LLC, Milwaukee, WI

They are "claims" until a jury decides what are "damages." This presentation looks at how to deal with claims of damages and to "handle" them without being perceived as "attacking." It also presents "The Five Ways to Deal with Damages" and how to deal with damages claims "holistically" in the entire trial and not as a separate distinct segment.

Friday, September 13, 2019 – con't.

10:45–11:00 a.m.

Networking Break with Exhibitors

11:00 a.m.–12:00 p.m.

The Ethical Conundrums of Marketing and Managing

Karen R. Glickstein, Esq., Jackson Lewis P.C., Overland Park, KS



Marketing has become expected for attorneys seeking to build their book of business. And, once that business comes in the door, client work is often performed by various members of a legal “team.” Ms. Glickstein will lead a discussion of the ethical issues and rules involved in seeking out new clients and in working with professional and administrative personnel to insure the client’s needs are met without any intentional or inadvertent hitches.

12:00–12:15 p.m.

Case Law Updates: Developments in Employment Law and Civil Procedure

Kristymarie Shipley, Esq., Shuttleworth & Ingersoll, Cedar Rapids, IA



This program will cover relevant case law reflecting changes in employment law and/or civil procedure. This will include information about the process to update the model jury instructions and e-filing guidelines for electronic exhibits.

12:15–1:15 p.m.

Web 3.0 Beyond Facebook: Current Trends in Social Media Investigations

Ben Stevenson, Esq., Threlkeld Stevenson, Indianapolis, IN



While Facebook discovery is now commonplace, much of the population has moved on to other social media sites such as Instagram, Twitter, YouTube, Reddit, and Snapchat. This presentation examines how to obtain and preserve discovery from these sites, along with suggestions for overcoming plaintiff’s attempts to hinder social media investigations.



ATTENDEE REGISTRATION

CONTACT INFORMATION

Name _____ Firm _____

Address _____ City _____

Phone _____ Email _____

Dietary Requirements/Food Allergies (Please specify) _____

Special Needs Request (Please Specify) (Wheelchair access, etc.) _____

REGISTRATION FEES

	FULL REGISTRATION		THURSDAY ONLY		FRIDAY ONLY	
	On/Before Aug. 30	After Aug. 30	On/Before Aug. 30	After Aug. 30	On/Before Aug. 30	After Aug. 30
Member	<input type="checkbox"/> \$275	<input type="checkbox"/> \$325	<input type="checkbox"/> \$185	<input type="checkbox"/> \$235	<input type="checkbox"/> \$120	<input type="checkbox"/> \$170
In Practice 4 Years or Less – Member	<input type="checkbox"/> \$175	<input type="checkbox"/> \$225	<input type="checkbox"/> \$100	<input type="checkbox"/> \$150	<input type="checkbox"/> \$75	<input type="checkbox"/> \$125
Non-Member*	<input type="checkbox"/> \$475	<input type="checkbox"/> \$525	<input type="checkbox"/> \$285	<input type="checkbox"/> \$335	<input type="checkbox"/> \$240	<input type="checkbox"/> \$290
In Practice 4 Years or Less – Non-Member*	<input type="checkbox"/> \$275	<input type="checkbox"/> \$325	<input type="checkbox"/> \$200	<input type="checkbox"/> \$250	<input type="checkbox"/> \$150	<input type="checkbox"/> \$200
Claims Professional**	<input type="checkbox"/> \$100	<input type="checkbox"/> \$150	<input type="checkbox"/> \$100	<input type="checkbox"/> \$150	<input type="checkbox"/> \$100	<input type="checkbox"/> \$150

*Take advantage of IDCA's new member promotion. Join now and receive complimentary dues until December 2020 and the member rate to the IDCA Annual Meeting. First-time members only.

**Claims Professionals Rate: Not receiving CLE

I PLAN TO ATTEND

These events are included within your registration fees. For planning purposes, indicate which you will participate:

- ☐ Wednesday Welcoming Reception
- ☐ Thursday Networking Lunch
- ☐ Thursday Evening Reception

METHOD OF PAYMENT ACCEPTED

☐ Check ☐ Visa ☐ MasterCard ☐ American Express

Card Number _____ Expiration Date ____ / ____

Print Name on Card _____ CVV: _____

Signature _____

Early-bird registration ends August 30, 2019.

CANCELLATION/REFUND POLICY

If written cancellation is received by September 6, 2019, a full refund will be issued. No refunds for cancellations after September 6, 2019, no refunds for No-Shows.

For security purposes, do not email payment information.

Register online, www.iowadefensecounsel.org/AnnualMeeting2019 or return completed form and payment to:

Iowa Defense Counsel Association
1255 SW Prairie Trail Parkway
Ankeny, IA 50023-7068
Fax: (515) 334-1174

IDCA Annual Meetings

September 12–13, 2019

55th ANNUAL MEETING & SEMINAR

September 12–13, 2019

Embassy Suites by Hilton, Des Moines Downtown

Des Moines, IA

Registration Open

October 25, 2019

DEPOSITION BOOTCAMP

October 25, 2019

Grinnell, IA

Registration Open

September 17–18, 2020

56th ANNUAL MEETING & SEMINAR

September 17–18, 2020

Embassy Suites by Hilton, Des Moines Downtown

Des Moines, IA

September 16–17, 2021

57th ANNUAL MEETING & SEMINAR

September 16–17, 2021

Embassy Suites by Hilton, Des Moines Downtown

Des Moines, IA