October 2007- April 2008 Case Law Update

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Evidence / Relevancy

Mohammed v. Otoadese, 738 N.W.2d 628 (Iowa 2007)

Facts: Conservator of comatose patient brought medical malpractice action against surgeon, alleging that surgeon's negligence damaged patient's recurrent laryngeal nerves. Following a defense verdict the plaintiff sought a new trial claiming it was prejudiced by the erroneous admission of evidence concerning plaintiff's prior lawsuit for a slip-and-fall injury and by allowing evidence that plaintiff's medical bills had been paid by Medicare and Medicaid.

Holding: The court held plaintiff's prior unrelated personal injury lawsuit was not relevant because it did not have any tendency to make the existence of any fact that is of consequence to the determination of the present lawsuit more probable or less probable. However, erroneous admission of evidence does not require reversal unless a substantial right of the party is affected, which did not happen in this case. Further, the court found Iowa Code section 668.14 expressly permitted the admission of evidence concerning plaintiff's medical insurance (but not a state or federal program) in personal injury cases; the reasons for excluding evidence of the existence of liability insurance were not applicable to medical insurance coverage; and it was unlikely that the jury would have returned a verdict in the doctor's favor simply because government programs paid for the plaintiff's medical expenses. As such, the Court held that the district court did not err in allowing defendant to present evidence that the bills were paid by Medicare and Medicaid.

Premises Liability/ Statutory Immunity

Monica Brown Kirkwood and Elton Kirkwood, Jr. v. City of Cedar Rapids, 742 N.W.2d 605 (Iowa App. 2007)

Facts: Plaintiff fell on a snow-covered brick sidewalk owned by the City of Cedar Rapids. She sued the city for damages resulting from her broken ankle. At trial, she was awarded damages. The City argued on appeal that it was entitled to immunity under Iowa Code section 668.10 which excluded municipalities from liability for failure to remove snow from a highway, road, or street. The sidewalk on which Plaintiff fell ran adjacent to a major street.

Holding: The Court of Appeals concluded that the sidewalk was included in the definition of street, as public land directly adjacent to the street. Thus, the City could claim immunity. The Court did not side with the City on the issue of whether it had constructive notice of the condition of the sidewalk. Noting that each case is factually unique, the Court found the following facts were sufficient to create a jury issue as to

notice: intermittent snow for several days prior to the morning Plaintiff fell, the most recent snow exceeded one inch ending in the early hours before she fell, the City had sent out snowplows, and Plaintiff testified that the sidewalk had not been cleared of snow.

Landlord/Tenant

Smutz v. CIMIA, 742 N.W.2d 605 (Iowa App. 2007)

Facts: Plaintiffs/landlords suffered water damage to property from water coming from a clothes washer hook-up pipe on rental property. The tenants were in the process of moving out of the property at the time. The insurance company denied coverage based on three policy exclusions which excluded coverage for: (1) "loss which results from an act committed by or at the direction of an insured and with the intent to cause a loss"; (2) "loss which results from the neglect of an insured to use all reasonable means to save and preserve covered property"; and (3) "loss caused by freezing or the resulting discharge, leakage, or overflow from ... domestic appliance" in an unoccupied residence. The district court found that the insurance covered the loss, the policy exclusions did not apply, and further dismissed the insurance company's claim for contribution against the tenant.

Holding: On appeal, the Court of Appeals agreed that the house was not "unoccupied" or "vacant", in that there was only a temporary absence of tenants, as the tenant intended to return to retrieve some remaining boxes and she maintained responsibility under the lease through December 31. The court also ruled there was insufficient evidence to show the damage was caused negligently or intentionally by the owners or tenant. Thus, the policy exclusions did not apply.

Professional Negligence/ Mandatory Reporting Immunity

Howell v. Metropolitan Medical Laboratory P.L.C., (Iowa Ct. App., November 15, 2007).

Facts: The parents of a five-year-old took her to see Dr. Sandberg for symptoms of a urinary tract infection. Following an examination, Dr. Sandberg ordered a urinalysis which was performed by Metropolitan Medical. The lab reported to Dr. Sandberg the presence of trichomonad parasites in the child's urine, an indication of trichomoniasis, which may be transmitted through sexual contact. Dr. Sandberg, who also believed trichomonads were present in the urine sample, notified the Iowa Department of Human Services of suspected child abuse. The allegations were investigated, and it was later determined that there had been no trichomonad infestation. The child and the parent brought a suit against Dr. Sandberg, his employer, and Metropolitan Medical claiming medical or professional negligence. Metropolitan Medical moved for summary judgment claiming immunity under section §232.73. The motion was granted, and the parents appealed.

Holding: The Court of Appeals held that the determination of whether a person is acting in good faith in making or assisting in the making of a child abuse report is a subjective one, and rests on whether the defendant believes he is aiding and assisting in the investigation

of a child abuse report. The Court found that Metropolitan Medical simply ran a test as requested by Dr. Sandberg, who at the time had no suspicion of child abuse. As such, nothing in the summary judgment record supported a finding that the lab had a good faith belief it was aiding or assisting in the investigation of a child abuse report at the time the test was conducted, and reversed the district court's grant of summary judgment in favor of Metropolitan Medical.

Premises Liability

Welch v. YWCA of Clinton (Iowa Ct. App., Nov. 15, 2007)

Facts: Plaintiff slipped and fell on a thin patch of ice on the sidewalk in front of the YWCA building. Plaintiff filed a negligence action against the YWCA. Summary judgment was granted in the YMCA's favor. On appeal, plaintiff claimed that the sidewalk's icy condition had existed for such a time that the YWCA, in the exercise of reasonable care, should have known about it. The evidence before the court included: A weather report indicating freezing and thawing temperatures during the week prior to the plaintiff's fall, the existence of precipitation the previous day and a low temperature of 34 degrees the night before, testimony from a YMCA employee that he had previously witnessed ice forming at the location of plaintiff's fall and evidence that YWCA opened for business at 6:30 a.m. but the sidewalk was not inspected until 8:00 a.m.

Holding: The Court of Appeals ruled that based on the record, plaintiff had introduced sufficient evidence to trigger a jury question as to whether the YWCA had constructive knowledge of the icy condition on the sidewalk and summary judgment should not have been granted.

Medical Malpractice/ Evidence and Punitive Damages

Cawthorn v. Catholic Health Initiatives Iowa Corp., 743 N.W.2d 525 (Iowa 2007)

Facts: Dennis L. Cawthorn sued Catholic Health Initiatives Iowa Corp. d/b/a Mercy Hospital Medical Center, for damages arising out of the defendants' treatment of the plaintiff. The jury returned a substantial verdict for the plaintiff and allocated seventy percent of the fault to Dr. Daniel Miulli, the plaintiff's treating doctor (who had settled prior to trial), and thirty percent to Mercy. Mercy cross-appealed from the district court's admission of detailed evidence of an investigation of Dr. Miulli by the Iowa Board of Medical Examiners (IBME). Mercy argued that this evidence was confidential under Iowa Code §272C.6(4) (1999) and privileged under §147.135. Mercy also argued that any probative value of this information was outweighed by the prejudice inherent in its admission. In addition, the issue of punitive damages was addressed on appeal.

Holding: The Court held that §272C.6(4) prohibits admission of such investigative evidence and that introduction of the IBME investigation, including the transcript of the IBME hearing that was introduced at the trial, was improper. Further, it stated that the impact of this evidence was so great as to require a new trial and the exclusion of all evidence of the IBME investigation.

With regard to plaintiff's claim for punitive damages the court held that Cawthorn's claim for punitive damages rested on his contention that Mercy Hospital was aware that Dr. Miulli was likely to injure a patient through negligent treatment. The Court found

that while evidence existed that Mercy Hospital was aware that Dr. Miulli's competency was at issue, the evidence did not support a finding of willful and wanton conduct, as required by section 668.1(1)(a).

Service of Process

Antolik v. McMahon, 744 N.W.2d 82 (Iowa 2007)

Facts: Mark Antolik sued Tara McMahon for damages sustained in a motor vehicle accident. Antolik's suit was filed on July 29, 2005, but he did not serve an original notice on the defendant until December 29, 2005, well beyond the ninety-day period provided for service of notice under Iowa R. Civ. P. 1.302(5). The district court granted the defendant's motion for summary judgment and dismissed the case, concluding that the issue of timeliness of service was properly raised in the defendant's amended answer, and an ex parte order extending the ninety-day period was insufficient as a matter of law.

Holding: The Iowa Supreme Court affirmed holding that the defendant driver did not waive insufficiency of service by raising the issue in answer to the plaintiff's complaint rather than by pre-answer motion to dismiss. Settlement negotiations did not constitute good cause for motorist's failure to serve defendant driver with a copy of complaint, as grounds for extension of time for service.

Products Liability

Ayers v. Ford Motor Co., (Iowa App. Jan. 16, 2008)

Facts: The plaintiff brought a products liability and negligence claim against Ford Motor Company after his truck caught fire and was damaged. The plaintiff designated an expert who worked as a consultant specializing in cause and origin of vehicle fires but had no training or education in engineering. The defendant at trial moved to prohibit the plaintiff's expert from describing the clamp that came loose as defective arguing that the determination of whether it was defective could only be made by an engineer and that whether it was defective was a legal standard. The expert testified but did not allow him to use the word defective. At the close of the evidence the district court granted the defendant's motion for directed verdict. On appeal the plaintiff asserted it had proven the clamp was defective.

Holding: The court held that the plaintiff's expert did not conclude there was anything wrong with the clamp that would constitute a design defect. Therefore, there was no evidence to suggest that the clamp was defective and directed verdict was proper.

UIM

Huffman v. Stammer, et. al. (Iowa Ct. App. Jan. 16, 2008).

Facts: Catherine Huffman suffered injuries when her vehicle was struck by a vehicle driven by defendant Stammer. The vehicle driven by Stammer was owned by Pyle. The plaintiff claimed that Stammer was operating the vehicle with Pyle's consent. Pyle denied that she had given Stammer permission to drive her car, claiming she had provided the vehicle for the use of her son, Jacob. Jacob and Stammer were high school friends. Jacob testified that a couple of times a week, he would let Stammer borrow the

car keys in order to sit in the car and smoke a cigarette. Jacob also indicated that he told Stammer several times not to drive the car, and he was not aware that she had ever operated the vehicle until after the accident occurred. Pyle also provided proof that Stammer, as a result of the accident, had plead guilty to the charge of operating a vehicle without the owner's consent, and admitted to the police officer at the scene of the accident that she did not have permission to drive the car. Plaintiff's underinsured motorist insurer argued that Stammer had implied permission to operate the vehicle, because Jacob had given her the keys.

Holding: The Court of Appeals reasoned that although there is a rebuttable presumption that a vehicle is driven with the consent of the owner, the inference may be negated by proof that there was no consent. Based on the facts, the Court determined that no implied consent existed.

Implied Warranty of Workmanlike Construction

Speight v. Walters Development Co., (Iowa Sup. Ct. Feb. 1, 2008).

Facts: Robert and Beverly Speight bought a home in Clive, Iowa in August of 2000. The home was custom built in 1995 by Walters Development Company. The Speights were the third owners of the home. After they purchased the home, they noticed water damage and mold. A building inspector concluded that a defectively constructed roof and defective rain gutters caused the damage. None of the previous owners had any knowledge of the defects. The Speights filed suit against Walters Development Company, alleging a breach of implied warranty of workmanlike construction. Iowa law historically had limited this cause of action to the initial home buyers.

Holding: The Supreme Court held that subsequent home buyers may recover for breach of implied warranty of workmanlike construction against the builder of the home with all the same rights as the original purchasers.

Medical Malpractice

Rathje v. Mercy Hospital, et al., (Iowa Sup. Ct. Feb. 22, 2008).

Murtha v. Cahalan, et al., (Iowa Sup. Ct. Feb. 22, 2008).

The Iowa Supreme Court recently handed down two decisions regarding Iowa Code § 614.1(9), which provides the statute of limitations for medical malpractice claims. In reaching its decision, the Court "clarified" its previous application of section 614.1(9), and held that in determining when the statute of limitations is triggered in a medical malpractice case, the analysis must include the element of causation. These cases are covered in greater detail in another section of the materials.

Employment/ Retaliation

Carlson v. ACH Food Co., (S.D. Iowa, March 10, 2008)

Facts: Plaintiff alleged that she was terminated from her job in retaliation for seeking worker's compensation benefits. Her employer contended that she was terminated because she accepted another job, while refusing to accept light-duty work that was offered.

Holding: The court held that the plaintiff had not produced sufficient evidence to prove that her filing of a worker's compensation claim was the determinative factor in the decision to terminate her employment, therefore plaintiff had not proved a causal connection between her termination and her pursuit of worker's compensation benefits. In addition the court found that the defendant's stated reason for termination was not pretext.

Statute of Limitations

Buechel, et.al. v. Five Star Quality Care, Inc. et.al. (Iowa Sup. Ct. March 7, 2008)

Facts: On January 15, 2003, the plaintiffs filed an action against defendant nursing home alleging negligence in connection with the death of Junita Buechel who died as a result of asphyxiation from an accident with a bed at the nursing home facility. The petition included a products liability claim against the unnamed manufacturer of the bed. The petition certified pursuant to Iowa Code section 613.18(3) (2003) that the manufacturer of the bed had not yet been identified thus tolling the applicable statute of limitations. Plaintiffs commenced formal discovery upon the filing of the suit. On September 15, 2003, the plaintiffs learned that the Joerns Furniture Company and Sunrise Medical, Joerns's successor, manufactured the bed in question. Plaintiffs, however, did not move to amend their petition to include Joerns and Sunrise until October 28, 2003, more than a month after these entities were first identified in discovery. When Sunrise was added it asserted defenses arising out of both the applicable statute of limitations and the statute of repose. Sunrise argued that the cause of action accrued on January 21, 2001, when the family learned that Juanita's death was caused by accidental asphyxiation and that only 5 days of the statute of limitations period remained at the time of discovery of the manufacturer on September 15, 2003. Summary judgment was granted to defendant Sunrise.

Holding: The statute of limitations for personal injury actions accrues at the time a plaintiff discovers or in the exercise of reasonable care should have discovered "all the elements of the action." The undisputed facts show that plaintiffs knew on January 21, 2001 that the cause of death was accidental and that the bed frame played a role in causing the asphyxiation and, therefore, the statute of limitations barred the action.

Implied Warranty

Munson v. Bruck Construction (Iowa Ct. App. February 13, 2008)

Facts: Bruck was hired to design and oversee parts of the construction of the plaintiff's home. Plaintiff however, against advice of some experts made the decision on where to place a water spigot. The spigot was placed on an exterior wall. Approximately five years later the pipe leading to the spigot cracked as a result of freezing. Plaintiff filed a lawsuit claiming breach of contract and breach of implied warranty. At trial a directed verdict was entered in defendant's favor.

Holding: Directed verdict was proper where plaintiff presented no evidence that Bruck failed to act in a manner consistent with industry standards.

Insurance/ Stacking

Ewing v. American National Property and Casualty Company & American National General Insurance Company (f/n/a ANPAC) (Iowa Ct. App. February 13, 2008)

Facts: In October 2006, Timothy Ewing was injured in a motorcycle accident and the other driver had insufficient insurance to cover all of Ewing's accident-related damages. Ewing had three of defendant ANPAC's insurance policies covering four vehicles, including the motorcycle, and each policy provided $100,000 of underinsured motorist (UIM) coverage per vehicle. Ewing sought to stack[1] the policies and recover $400,000. When ANPAC declined to pay more than $100,000 to Ewing, he sued for breach of contract. The district court granted summary judgment for defendants

Holding: Under the terms of Iowa Code 516A.2(3) Ewing's recovery is limited to $100,000 and the doctrine of reasonable expectations was not applicable as it cannot be used to avoid the consequences of express statutory provisions.

Carrier Liability

M.B. Construction, Inc. v. Mid-States Express, Inc. (Iowa Ct. App. February 27, 2008)

Facts: M.B. ordered a $30,000 electrical control panel for a construction project on a sewer lift station in Postville, Iowa. Mid-States, a regional common and contract carrier, picked up the panel from the manufacturer in a suburb of St. Paul, Minnesota, on Wednesday, January 29, 2003. On Thursday, January 30, Mid-States delivered the panel to M.B. in Postville. M.B. signed the delivery invoice, which contains the printed text, "received in good condition except as noted," and did not note any damage to the panel. On Friday, January 31, M.B. transported the panel to the job site. When the packaging was removed from the panel, M.B. discovered significant concealed damage to the internal parts. The district court ruled in favor of plaintiff stating that as a general rule, a carrier is liable for damages to cargo without the need for the claimant to prove the carrier was negligent, . . . in effect, the carrier is an insurer against loss or damage to the cargo, so long as it is established that neither the shipper nor the receiver caused the damage.

Holding: The Court held that a carrier bears a heavy burden of proof akin to res ipsa loquitur because it has peculiarly within its knowlegde facts which may relieve it of liability. Therefore, the court found that substantial evidence supported the district court's determination that the damage occurred while in the care of the defendant.

Vicarious Liability

Tomkinson v. Turner (Iowa Ct. App. April 9, 2008)

Facts: Bradley Tomkinson was struck by a vehicle driven by Kyle Turner. The vehicle was owned by Kyle's mother, Sharon Turner. Tomkinson filed suit against Kyle and Sharon. His claims against Sharon were based on the vicarious liability provisions of Iowa Code section 321.493(1)(a) (2005). After a trial a jury found Kyle intentionally caused bodily injury to Tomkinson. Sharon claimed that because Kyle engaged in an

intentional act she should not be liable under section 321.493(1)(a). The district court found section 321.493(1)(a) applied in this case.

Holding: The court held that the concept of "negligence" generally does not include intentional acts. Section 321.493(1)(a) provides for the liability of the owner of a motor vehicle "in all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner . . . ." The court concluded the legislature intended to create vicarious liability for the owner of a motor vehicle, driven with the owner's consent, only when the driver engaged in a negligent act, and not when the driver has intentionally harmed another reversing the district court.

Document Production and Privilege

Amendments to Iowa Rule of Civil Procedure 1.503

The Iowa Supreme Court recently approved amendments to the Iowa Rules of Civil Procedure regarding discovery, to take effect May 1, 2008. The amendments expand the definition of "documents" in a request for production or subpoena to encompass electronically stored information. The party requesting such information may specify the form in which it is to be produced. If no specification is made, the responding party must produce the information in the form in which it is ordinarily maintained or in a form that is reasonably usable. The information does not have to be produced in more than one form. Absent exceptional circumstances, a court may not impose sanctions on a party for failing to provide electronically stored information that was lost as a result of the routine good faith operation of an electronic information system.

A section has also been added regarding claims of privilege or protection of trial preparation materials. A party withholding information under a claim of privilege must now make that claim expressly, and "describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection."