April 2008 - October 2008 Case Law Update

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DAMAGES

Litterer v. Hy-Vee (Iowa Ct. App. July 16, 2008)

FACTS: Mary Litterer was exiting a tent in a Hy-Vee grocery store parking lot when she tripped on a piece of shrinkwrap and fell. Mary and her husband filed a premises liability suit against Hy-Vee, alleging Hy-Vee was negligent in maintaining its premises. The jury determined Hy-Vee was negligent and awarded $11,839.75 in past medical expenses, $500 for past loss of function, and $500 for past pain and suffering. The Litterers filed a motion for a new trial. The Litterers claimed the jury's failure to award past lost wages related to medical appointments was inconsistent with the award of medical expenses. The district court denied the motion for new trial.

HOLDING: The district court erred in denying the motion for new trial, as the jury's failure to award past lost wages related to medical appointments was inconsistent with its award of medical expenses.

ANALYSIS: The undisputed evidence showed that Mary had to take time of work to obtain medical care for the injury she sustained in the Hy-Vee parking lot. Although Mary obtained paid medical leave from her employer to go to her medical appointments, time taken as sick leave is compensable. It was "illogical" to award medical expenses for treatment of an injury but to award nothing for proven time missed from work due to medical appointments.

Dock v. Nicoletto (Iowa Ct. App. June 25, 2008)

FACTS: Patrick Nicoletto rear-ended Allisa Dock's vehicle. Dock claimed the accident injured her neck and back. She sought damages for past and future medical expenses, loss of earnings, loss of earning capacity, and pain and suffering. A jury returned a verdict in favor of Dock, awarding Dock only medical expenses. Dock moved for a new trial, claiming the jury's award was inadequate. More specifically, she claimed the jury should have awarded her damages for pain and suffering. When the district court denied her motion for a new trial, Dock appealed.

HOLDING: The district court correctly denied the motion for new trial, because an award of medical expenses is not inconsistent with failure to award damages for pain and suffering.

ANALYSIS: The Court noted that there is no inflexible rule in a personal injury action that a verdict awarding damages for medical expenses, but no damages for pain and suffering, is inadequate. The jury could have logically concluded past medical expenses would be sufficient to compensate Dock.

PREMISES LIABILITY

Janine Rivers v. American Family Thrift Store for the Blind, Inc. (Iowa Ct. App. Aug. 13, 2008)

FACTS: On a fall day in 2004, Janine Rivers and her friend, Karen Wayman, stopped at American Family Thrift Store for the Blind, Inc. Wayman told the thrift store cashier, "There were two guys in the parking lot that just looked like they didn't belong there." The cashier said somebody would check it out and not to worry. After finishing shopping, Rivers and Wayman went back to their car. Rivers was attacked from behind by one of the men Wayman had previously observed. A thrift store employee witnessed the incident, ran into the store, and told the cashier to call the police. Meanwhile, another employee of the store was finishing her lunch at a nearby picnic table. She went to help Rivers and Wayman upon hearing their screams. She said she had noticed a man sitting behind their car prior to the attack but had not paid much attention to him. Rivers filed a personal injury suit against the thrift store, alleging it was negligent in failing to protect her from attack.

HOLDING: The thrift store was entitled to summary judgment, since the assault of Rivers was unforeseeable.

ANALYSIS: A possessor of land does not have a duty to warn of or protect a patron from unforeseeable harm. Because the attack was not foreseeable to the store, the store had no duty to warn Wayman of the attack or protect her from the attack. Wayman's statement to the cashier that the man who assaulted her did not seem to "belong" in the parking lot was held to be "too speculative" in nature to establish foreseeability. Moreover, there was no evidence that the store or its surrounding area had been the scene of any crimes prior to the incident.

DOG BITE STATUTE

Welcher v. Spees (Iowa Ct. App. Aug. 13, 2008)

FACTS: Butchie the dog belonged to Michael Aebersold, and Aerbersold had given dog lover Kathleen Spees permission to assist with Butchie's care. One day, Spees was tending to Butchie in Aebersold's backyard when Spees observed that Butchie was tangled in a cable that restrained him. She momentarily unhooked him. Butchie seized the opportunity and bolted. Unfortunately, postal carrier Larry Welcher was delivering mail in the neighborhood at the time. As he walked toward his truck, he heard the sound of a chain, which he surmised was Butchie breaking loose from his restraints. Fearing Butchie would bite, Welch broke into a "dead run," jumped into his truck, and landed on his back. Welcher

sued Spees. A jury concluded Butchie did try to bite Welcher, but this attempt was not the cause of any damage to Welcher. The district court refused to grant Welcher a new trial on the basis of improper instruction on Iowa's dog owner statute, and Welcher appealed.

HOLDING: The district court properly refused to grant a new trial on the basis of improper instruction on Iowa's dog owner statute.

ANALYSIS: The Iowa dog owner statute renders an "owner" of a dog strictly liable for all damages caused by his or her dog. It was proper for the district court not to tell the jury about the dog owner statute, since there was no evidence Spees was the owner of Butchie and thus could be liable pursuant to the dog owner statute. Moreover, although an individual who harbors a dog on his or her premises may be liable for damages a dog causes, Butchie was not on Spees' premises on the day of the incident, nor was there evidence Spees ever cared for him on her premises.

EMOTIONAL DISTRESS

Marilyn Overturff v. Raddatz Funeral Services, Inc. (Iowa Sup. Ct. Sept. 12, 2008).

FACTS: Jack Overturff was diagnosed with cancer. Jack executed durable power of attorney documents providing Vale Overturff, one of his sons, authority to make health care decisions for him. Jack also filed a petition for dissolution of his fifteen-year marriage to Marilyn Overturff. When Jack died, he was still married to Marilyn. Vale signed an authorization for Raddatz to cremate Jack. Raddatz did not learn Jack was married at the time of death until Jack's family came in to pick up his ashes. Marilyn sued Raddatz, alleging negligent infliction of emotional distress. The district court granted Raddatz summary judgment.

HOLDING: Defendant did not owe Plaintiff any duty not to inflict emotional distress and was thus entitled to summary judgment.

ANALYSIS: The Court noted Martha had no contract with Raddatz for funeral services, so Iowa case law recognizing a right of recovery for negligent performance of funeral service contracts was inapplicable. In addition, no Iowa law provided Martha any right to control the disposal of Jack's body, given that Vale held a durable power of attorney for health care. Consequently, Raddatz had no duty not to inflict emotional distress on Martha.

Audrey Mitchell v. Hy-Vee, Inc. & Ric Anderson (Iowa Ct. App. Aug. 27, 2008).

FACTS: Audrey Mitchell sued her co-employee, Ric Anderson, and her employer, Hy-Vee, alleging Anderson committed an assault at Hy-Vee that caused emotional distress. Anderson had allegedly pointed a screwdriver at Mitchell. The district court granted both Hy-Vee and Anderson's motions for summary judgment, finding Mitchell's exclusive remedy was pursuant to Iowa's workers'

compensation laws. Mitchell appealed only the court's award of summary judgment on her claims against Anderson.

HOLDING: Defendant Anderson was entitled to summary judgment, as Plaintiff's sole remedy was pursuant to Iowa workers' compensation law.

ANALYSIS: The Iowa Workers' Compensation laws provide an exclusive remedy for an employee against a co-employee for a work-related injury, unless the injury was a result of the co-employee's "gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another." Iowa Code 85.20(2). To prevail on a claim based on gross negligence, the plaintiff must prove the co-employee: (1) had knowledge of the peril, (2) had knowledge that injury was a probable result of the peril, and (3) consciously failed to avoid the peril. The second element requires a showing the co-employee knew his actions would place the plaintiff in "imminent danger," such that the plaintiff more likely than not would be injured. The requisite showing of "imminent danger" can be made by: (1) proving the co-employee's actual or constructive knowledge of a history of accidents under similar circumstances, or (2) showing a high probability of harm, even in the absence of such a history.

Because there was insufficient evidence that Anderson had knowledge injury was a probable result of pointing the screwdriver at Mitchell, Anderson's conduct was not grossly negligent as a matter of law, and Mitchell's sole remedy was pursuant to the workers' compensation laws. There was no evidence Anderson had actual or constructive knowledge of a history of emotional harm under similar circumstances. In addition, there was no evidence that Anderson's act actually generated a high probability of harm.

COMPARATIVE FAULT/ASSUMPTION OF RISK

<u>Kamradt v. Froehlig</u> (Iowa Ct. App. Oct. 1, 2008)

FACTS: Nova Kamradt and Anita Froehlig were involved in a car accident at an uncontrolled intersection. Kamradt had the right-of-way under Iowa law, since her vehicle was to the right of Froehlig's. Kamradt sued Froehlig, alleging Froehlig was negligent in several particulars, including failure to yield the right-of-way. At trial, the jury was instructed that if Kamradt's fault "was 50% or less of the total fault, the Court will reduce the plaintiffs' damages by the percentage of Nova Kamradt's fault." The jury concluded Kamradt and Froehlig were each 50% at fault. Kamradt's recovery was thus reduced by 50%. Kamradt moved for a new trial, claiming an instruction on comparative fault should not have been submitted. Kamradt's motion was denied.

HOLDING: A comparative fault instruction was appropriate under the circumstances.

ANALYSIS: The Court rejected Kamradt's argument that there was insufficient evidence to support the submission of a comparative fault instruction because Kamradt had

the right-of-way. The Court noted that the statutory right-of-way law does not trump every other law. A comparative fault instruction was thus appropriate, since there was evidence to support the instruction. Froehlig's expert surmised that Kamradt was speeding and that she was inattentive.

Feld v. Barkowski (Iowa Ct. App. Oct. 1, 2008)

FACTS: A group of male high schoolers formed a softball team. One day when the group got together to practice, Luke Barkowski lost hold of the bat when he swung at a ball. The bat flew toward first base and hit Benjamin Feld, causing Feld to lose sight in his left eye. Feld brought a negligence claim against Barkowski. The district court granted Barkowski's motion for summary judgment under the "contact sports exception." Pursuant to this exception, a participant in a contact sport can only bring suit for actions done to intentionally inflict injury or in reckless disregard for participant safety.

HOLDING: The contact exception barred Plaintiff's recovery.

ANALYSIS: The court followed a two-prong analysis in determining whether the contact-sports exception applied. The court first found that softball is a contact sport. A previous Iowa case had implied that baseball was a contact sport, and softball is similar to baseball. The court next concluded that Benjamin assumed the risk of being hit by a flying bat. A flying bat is just part of the "rough and tumble" of a softball game, in the court's view. Having found the contact exception applicable, the court found that the lack of evidence Barkowski intentionally or recklessly inflicted injury on Feld entitled Barkowski to summary judgment.

ERISA Preemption

Magellan Health Services, Inc. v. Highmark Life Insurance, 755 N.W.2d 506 (Iowa 2008)

Facts: Jane Doe's son, John, was diagnosed with leukemia in the 1990s. Although John was covered by his mother's health insurance provided by her employer, Principal Financial Group, John was also covered by his father's insurance plan—the Magellan "90/60 Preferred Provider Option" (Magellan 90/60 Policy). The Magellan 90/60 Policy contained a COB provision. Jane left her employer but exercised her COBRA rights to ensure John's medical bills would be paid for 18 months. Subsequently, John was then covered under his father's Magellan 90/60 Policy. In order to ensure John's care, Jane obtained an individual insurance policy for John from Wellmark, pursuant to Iowa Code chapter 513C, which requires health insurers operating in Iowa to provide a basic or standard level of health insurance coverage to an Iowa resident regardless of the person's health status. Subsequently, the Iowa Insurance Commissioner promulagated regulations mandating that polices issued pursuant to 513C not duplicate benefits paid under any other health insurance coverage. As a result, Wellmark amended John's policy to include this "always secondary" language. In 2001, John's leukemia

returned, causing Magellan, ostensibly the primary insurer, to purchase a stop-loss reinsurance policy with Highmark. Subsequently, however, Highmark denied Magellan's claim for the losses Magellan incurred due to John's medical care in 2002. Highmark asserted that the Wellmark policy was actually John's primary policy and therefore had to be exhausted prior to its contribution. Magellan filed suit against Highmark and Wellmark, alleging Highmark had breached the provisions of the stop loss policy. Highmark argued that ERISA preempted application of the "always secondary" regulation and that the COB language of the Magellan 90/60 Policy rendered the Wellmark Policy primarily liable for the claims submitted by John. The district court held that ERISA did not preempt Iowa Code chapter 513C and the accompanying "always secondary" regulation. Highmark appealed, arguing, among other things, that ERISA preempts Iowa Code chapter 513C.

Holding: Iowa Code 513C is not preempted by ERISA. Consequently, because Magellan was liable for the loss, Highmark, as the stop-loss insurer, must pay Magellan under the terms of Highmark's policy.

Analysis: The analysis of ERISA preemption ordinarily requires three steps. The first step is whether the state statue in question "relates to" an ERISA plan and is therefore within the scope of the preemption clause. If so, the next question is whether the statue statute is nonetheless saved through application of the savings clause. Finally, where a state statue falls within the scope fo the preemption clause but is also within the scope of the savings clause, the analysis moves on to a savings clause does not apply as a result fo the deemer clause. In the case at bar, the court found that the "always secondary" language does not seriously erode the main objective of ERISA, which is providing employees with stable benefits. Moreover, the purpose of the "always secondary" language is to facilitate coverage to individuals regardless of their health status. As a result, the court concluded that Iowa Code chapter 513C is not sufficiently "related to"ERISA to trigger preemption.

Scope of Insurance Coverage

Shelter Mutual Insurance v. Paul Davis and Kerry Davis, 753 N.W.2d 18, 2008 WL 2200082 (Iowa App. 2008)

Facts: Paul and Kerry Davis met with Rod Brannan, a Shelter Mutual Insurance Company agent, seeking full liability coverage on their Ankeny home, their Panora vacation home, their vehicles, their watercraft, and each and every piece of recreational equipment they owned. Brannan sold them Shelter policies for homeowner's insurance, automobile liability, and watercraft liability. Brannan also sold them a $1 million umbrella policy to provide excess personal liability coverage. In October 2002, after he had purchased the above-mentioned policies, Paul purchased two ATVs. Paul contacted Brannan, provided him the necessary information about the ATVs, and requested that he provide "full coverage" for the

ATVs. Brannan told him that he would have “full coverage” for the ATVs. On May 31, 2003, Paul gave his sons Zach and Alex permission to invite several friends to their Panora vacation home. Some of Alex’s friends snuck into Paul’s bedroom, took the keys, and went for a ride on the ATVs. One of the boys, third-party defendant Ryan Eifler, drove an ATV off the Davises' property onto a road owned and maintained by the local homeowners' association. Eifler lost control of the ATV, struck a tree, and came to rest in a “community area” of the local homeowner association. Eifler sustained serious injuries in the crash. Eifler's parents brought a suit against Paul and Kerry Davis for their son's injuries. Ultimately, the district court held that the Davis’s Shelter insurance policies did not cover the above incident, finding that the ATVs were not listed under the Davises' automobile policy, and that the provisions in the homeowners' and umbrella policies excluded coverage for recreational vehicle accidents that occurred away from the premises insured by the homeowners' policy. The Davises appealed, arguing that even if the policies excluded coverage for the incident, the doctrine of reasonable expectations should nevertheless avoid the exclusions under the policies.

Holding: The doctrine of reasonable expectations applied to avoid the exclusions under the Shelter insurance policies.

Analysis: Under the doctrine of reasonable expectations, the reasonable expectations of the insured may not be frustrated even though a “painstaking study” of the policy would negate those expectations. In the case at bar, the court reasoned that conversation between Paul and his Shelter agent where Paul asked for full coverage on his new ATVs constituted a distinct set of negotiations to purchase coverage on the new ATVs to foster coverage expectations for the ATVs. Dispite Paul’s specific request for full coverage and Brannan’s assurance that he would be fully covered, Brannan neither placed the ATVs under the Davises’ automobile policy nor told them that they would only be covered so long as they used the ATVs in a specific geographic area. Because Shelter is regarded as an expert in the insurance field, it has a heavy responsibility to its insured. For that reason, the court held Shelter must provide coverage for the limits set forth in the relevant policies.

Scott Thomas and Rhonda Thomas v. Progressive Casualty Insurance, 749 N.W.2d 678 (Iowa 2008)

Facts: In 2004 Rhonda Thomas purchased an automobile liability insurance policy from Progressive. While this policy was in effect, her husband, Scott, was driving the insured vehicle when he was involved in an accident. Scott was injured, and the insurer of the other driver paid its policy limits to Scott. The Thomases, believing their damages exceeded their recovery from the other driver, sought payment from Progressive under the underinsured motorist (UIM) coverage of Rhonda's policy. Progressive denied coverage for Scott's claim because Scott was listed on

a named driver exclusion that excluded coverage for any claim arising from Scott's operation of a motor vehicle. The Thomases then filed this suit, seeking UIM benefits under the Progressive policy. In its answer, Progressive asserted it had no coverage for Scott's damages due to the named driver exclusion. The district court granted the Thomases motion for summary judgment, finding the named driver exclusion did not apply to the underinsured motorist coverage of the policy. Progressive appealed, arguing the Thomases were not entitled to recover from Progressive because the underinsured motorist coverage excluded Scott. Specifically, Progressive argues the exclusion is unambiguous and by its clear terms applies to "any claim arising from an accident or loss involving a motorized vehicle being operated by [the] excluded person." The insurer points out it is undisputed Scott was an excluded person, he was operating a motorized vehicle at the time of the accident, and his claim arises from that accident.

Holding: Progressive's named driver exclusion was unambiguous and excludes coverage for any claim that arises from the excluded driver's operation of a motor vehicle, including underinsured motorist claims. Moreover, the Progressive policy comported with the requirements of Iowa's underinsured motorist statute and was not contrary to public policy.

Analysis: The court analyzed the policy language using a traditional contract analysis: the court will supply the words in the contract their plain and ordinary meaning. Upon review, the court concluded that the policy contained no ambiguity. In addition, the court analyzed whether the policy was inconsistent with Iowa's underinsured motorist statute. Because Scott had no liability coverage under the policy, Progressive was not required to offer UIM coverage to him. As a result, Iowa law does not require a written rejection of UIM coveage as a condition of Progressive's exclusion of Scott from UIM coverage. Consequently, Progressive's policy comported with Iowa's underinsured motorist statute and was consistent with public policy.

The Cumulative Injury Rule

Hi-Rail Corporation and Cincinnati Insurance Companies v. James Thomson and Zenith Insurance Company, 755 N.W.2d 144, 2008 WL 2520846 (Iowa App. 2008)

Facts: James Thompson's hand was crushed in a machine at Hi-Rail, resulting in a partial amputation and a significant impairment to his upper left extremity. Upon returning to work, Mr. Thomson did most of his work with his right arm. On January 25, 2002, Thomson met with Dr. Steyers to discuss recurring pain in his left arm related to the previous injury, but he also informed that he suffered from pain now in his right shoulder and arm. Dr. Steyers did not take Mr. Thomson off work, limit his work activities, or prescribe treatment for his right shoulder. On March 19, 2002, Mr. Thomson had to leave work early due to pain in his right shoulder. The next day, Mr. Thomson once again left work early. Dr. R. Kumar Kadiyla, a shoulder specialist, diagnosed Thomson with right shoulder

impingment and right lateral epicondylitis, gave him a cortisone injection and took him off work. In Thomson's claim for workers' compensation benefits, the deputy found that March 20, 2002, was the date of injury because that was the date that Dr. Kadiyala took the claimant off of work because of his right shoulder. The commissioner agreed, as did the district court. On appeal, Thomson argued that the court should have found that January 25, 2002 should have been the date of injury because that was the date that Thomson first complained of his injury.

Holding: The district court correctly affirmed the commissioner's finding that the date of injury occurred March 20, 2002—as opposed to the date Thomson purported, January 25, 2002.

Analysis: The date of injury under the cumulative injury rule is the date on which the disability manifests itself. Stated differently, the injury and its causal relationship to the claimant's employment are required to be plainly apparent to a reasonable person. One important factor in this analysis is the date the injury causes the claimant to be absent from work due to his inability to perform. Consequently, because Thomson was absent from work subsequent to his appointment with Dr. Kadiyla, the court found substantial evidence existed supporting the commissioner's decision.

Exhaustion of Administrative Remedies

Stephanie Dohmen v. Iowa Department for the Blind, 755 N.W.2d 144, 2008 WL 2513802 (Iowa App. 2008)

Facts: Stephanie Dohmen, who is legally blind, sought to bring her guide dog into the Orientation and Adjustment Center provided by the Iowa Department for the Blind. Dohman's dog was denied access, and Dohman was informed she would be required to use a white cane while completing her educational program at the center. Accordingly, Dohmen sought relief in Iowa district court under the Rehabilitation Act of 1973, the Americans with Disabilities Act, and sections 216.9 and 216C.11 of the Iowa Civil Rights Act. The district court granted the Department's summary judgment motion on Dohmen's federal claims because her exclusion from the program was not based on her disability, but rather on her desired method of "traveling." The district court ultimately ruled for the Department on all three of Dohmen's claims on the basis that she failed to exhaust her administrative remedies. Dohmen appealed, arguing that the district court erred in granting summary judgment because the Department waived its ability to challenge jurisdiction by not raising the issue in its answer.

Holding: The district court erred in granting the Department's motion for summary judgment because— by not challenging the exhaustion of remedies issue at the first opportunity— the Department waived its opportunity to challenge the court's authority to hear the case.

Analysis: Contrary to the Department's position, the court rejected the notion that the district court lacked subject matter jurisdiction. The court articulated the fundamental principle that a court vested with the power to hear a certain class of cases is deemed to possess subject matter jurisdiction over the case or controversy. In Iowa, district courts are empowered to hear challenges to the Department's administrative rules. While lack of subject matter jurisdiction cannot be waived, failure to exhaust administrative remedies can be waived. Thus, challenges to a court's authority under an exhaustion of administrative remedies theory must be raised at the first opportunity or it will be deemed waived.

Res Ipsa Loquitur

Jason Banks v. Susan Beckwith, M.D. and The Iowa Clinic, P.C., 755 N.W.2d 143, 2008 WL 2357715 (Iowa App. 2008)

Facts: Dr. Susan Beckwith inserted a catheter in Jason Banks's subclavin vein in the area between the clavicle and the first rib. The catheter was inserted for long-term venous access for the delivery of chemotherapy to Banks's body. Sometime later, the catheter had fractured and a small piece had migrated to Banks's heart. The fractured piece was removed and returned to the manufacturer for testing. The manufacturer determined the catheter was not defective, stating the fracture was "most commonly" the result of compressive forces associated with improper placement in the subclavin vein. Banks sued Dr. Beckwith and the Iowa Clinic, P.C., alleging Dr. Beckwith improperly implanted the catheter in his vein. The petition stated that Banks intended to use the doctrine of res ipsa loquitur to prove his claim. At trial, Banks made no showing as to how Dr. Beckwith had actually inserted the catheter. Banks's expert testified that Dr. Beckwith must have improperly placed the catheter in Banks's vein because an improperly placed catheter would be "more susceptible" to damage resulting from the "scissors-like effect between the first rib and the clavicle." The same expert conceded, however, that a catheter could fracture even if it was placed in the vein properly. At the conclusion of the evidence, the court denied Banks's request for a res ipsa loquitur instruction. The jury found neither Dr. Beckwith nor the Iowa Clinic at fault for the accident. Banks appealed, arguing the court should have instructed the jury on res ipsa loquitur.

Holding: It was not reversible error for the district court to deny Banks's request for a res ipsa loquitur instruction.

Analysis: Res ipsa loquitur is a type of circumstantial evidence that permits a jury to circumstantially infer the cause of the injury from the injury itself. Stated differently, res ipsa loquitur is a rule of evidence that permits, but does not compel, a fact-finder to find a defendant negligent absent specific proof. In order to warrant a res ipsa loquitur instruction, the plaintiff must show that the injury was caused by an instrumentality under the defendant's exclusive control and that

the injury would not have resulted absent negligence. In applying the law to the case at bar, the court found that Banks failed to provide substantial evidence that his injury would not have resulted absent negligence. After all, the plaintiff's own expert conceded that this injury could have resulted from no negligence whatsoever.

Res Judicata

Jeffrey George v. D.W. Zinser Co., 755 N.W.2d 143, 2008 WL 2357761 (Iowa App. 2008)

Facts: Jeffery George filed a complaint with the Iowa Division of Labor Services (Division), alleging his employer, D.W. Zinser, violated provisions of Iowa's Occupational Safety and Health Act (IOSHA). The Division investigated George's complaint and inspected the workplace and issued citations to D.W. Zinser for multiple violations of IOSHA. Later, George filed another complaint with the Division claiming D.W. Zinser terminated his employment in retaliation for notifying the Division of the company's violations of IOSHA. He also filed a retaliatory discharge claim in district court. The agency commissioner found that George was laid off from D.W. Zinser prior to his complaint to the Division regarding the company's violations of IOSHA. George did not seek judicial review of the commissioner's decision. Upon the agency's dismissal, D.W. Zinser filed a motion to dismiss George's petition in district court, arguing that the agency's dismissal precluded him from relitigating the issue in district court. The district court agreed and dismissed the petition. George appealed, arguing the district court erred in applying the doctrine of res judicata to bar his retaliatory discharge and wage payment claims against his employer.

Holding: The doctrine of res judicata barred George's retaliatory discharge claim, but the doctrine did not bar his wage payment litigation in district court.

Analysis: Res judicata is a generic term that includes the doctrines of claim preclusion and issue preclusion. Claim preclusion bars a subsequent action between the same parties on the same claim as to both claims that were or could have been presented to the court for determination. Claim preclusion does not apply unless the party against whom preclusion is asserted had a full and fair opportunity to litigate the claim or issue in the prior action. In the case at bar, the administrative proceedings and the district court proceedings involved the same parties and the same retaliatory discharge claim. Therefore, because a final adjudicative determination by an administrative tribunal has the same effects under the rules of res judicata as a judgment of a court, George's suit in district court was properly dismissed upon the agency's disposal of his administrative suit. However, because George's wage payment claim was not litigated in the prior agency action, that claim should have been heard by the district court.