2015 IDCA CASE LAW UPDATE: Torts, Malpractice, and Insurance
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IOWA COURT OF APPEALS

TORTS

Lane v. Emeritus Corp., No. 13-0353, filed July 30, 2014

FACTS: Lane filed suit individually and as administrator of the estate of his father, Robert Lane ("Robert"). Robert lived in a residential care facility named Silver Pines beginning in August 2005. Lane visited his father in April 2006 and noticed that this father's health had deteriorated significantly; Robert had lost weight, had sores on his legs, and was suffering from lack of personal hygiene. Lane took Robert to Mercy Hospital in Cedar Rapids. Doctors discovered Robert was suffering from lymphoma and had ulcers in his stomach. After 11 days in the hospital, Robert was released to Heritage Nursing Home. He was readmitted to Mercy shortly thereafter, and died of pneumonia the next day. Lane sued Silver Pines. At trial, a jury instruction was submitted that informed the jury that Silver Pines could be negligent in any of seven different ways. Included were a failure to abide by all relevant state regulations and administrative codes and a failure to document any interventions that addressed Robert's weight loss. A verdict came back for Silver Pines. There were several discovery disputes that Lane raised on appeal. Most relevant to this case law update was the issue of the jury instructions. Lane argued that the district court erred in not granting a directed verdict based on Section 14 because the Restatement (Third) of Torts and the district court also erred in granting his directed verdict based on the citations which Silver Pines was issued based on the violations of the Administrative Code.

Lane asked the Court of Appeals to adopt Section 14 of the Restatement (Third) of Torts, which states:

> An actor is negligent if, without excuse, the actor violates a statute that is designed to protect against the type of accident the actor's conduct causes, and if the accident victim is within the class of persons the statute is designed to protect.

ISSUE: Was the district court's jury instruction proper and did it err in not granting a directed verdict?

HOLDING: The Court of Appeals adopted Section 14 of the Restatement (Third) of Torts and held that the jury instruction that was issued by the district court embodied Section 14. The Court of Appeals held, however, that the administrative citations did not provide a basis for a directed verdict. The Court held that the citations can be "evidence of a regulatory violation but do not establish a per se breach of duty for purposes of tort liability."

Primer v. Langer, No. 13-0930, filed October 1, 2014

FACTS: The non-contract, tort-related issues in this case were the misappropriation of trade secrets, conversion or destruction of property, acting in concert, and defamation. Primmer Transportation, Inc. ("Primmer") and Lillibridge Transportation, Inc. ("LTI") were both in the business of brokering loads of common carriers. Primmer hired John Langer in August 2008 subject to a non-competition agreement and nondisclosure agreement. Both Primmer and LTI gathered and used much of their own information to broker loads which were confidential. Shortly after Primmer hired Langer, Primmer hired Langer's wife, Laura. Laura was eventually terminated due to declining sales. Laura began contacting LTI shortly thereafter regarding job openings. In November 2009, Primmer learned Langer sent sales records, customer files, and a list of prospective customers to his personal email. Primmer's owner, Richard Primmer, approached Langer, who said that he simply emailed himself as a back-up. Primmer asked Langer to delete the files; however, Primmer never confirmed whether Langer deleted the files. Langer would eventually leave Primmer for LTI; however, sometime prior to his departure, Langer apparently bragged to others that he told a Primmer customer to file a claim against Primmer because "that's the only way you will get paid."

In January 2010, Langer left Primmer and accepted a job at LTI. Primmer employees witnessed Langer shred documents and remove boxes from his office the day Langer left Primmer. These employees alleged Langer took rates and contract information and shredded information regarding customer contracts, customer load history, quoted lanes, and future lanes. Employees also alleged Langer deleted archived business information from his work computer, such as customer contracts, potential customer contacts, lane bids, load history, and future business. The day Langer begin working at LTI, one LTI employee observed Langer bring in printouts of information from Primmer including rates, names, and phone numbers. Primmer employees also alleged Langer admitted to using names of others when making sales calls so the calls could not be traced back to him. Shortly thereafter, Primer's sales dropped dramatically and they were forced out of business. Primmer alleges LTI and its ownership's mismanagement of its company led Primmer out of business. Primmer sued Langer, LTI, and LTI's owner, Lance Lillibridge, for various claims. Defendants moved for summary judgment on all claims. The district court granted summary judgment on all claims except defamation. Defendants moved for summary judgment again on the defamation claim and district court granted the motion with respect to LTI and its owner, Lance. Primmer eventually dismissed the defamation claim against Langer with prejudice. Defendants then filed a motion for attorney fees pursuant to the trade secrets attorney fees statute, Iowa Code Section 550.6. The district court granted the motion and awarded defendants $56,559.50 in attorney fees and $1,642.15 in expenses. Primmer appealed both district court rulings granting defendants' motions for summary judgment and the award of attorney fees and costs. Defendants requested appellate attorney fees pursuant to section 550.6. The Court

of Appeals affirmed the district court on the defamation rulings because Primmer failed to address in its brief the district court's rationale or holding of the order granting summary judgment of the defamation claim against LTI and Lillibridge. The Court of Appeals also affirmed the district court's ruling that plaintiffs were not entitled to punitive damages.

ISSUES:

1. Did Langer misappropriate Primmer's trade secrets?

2. Did Langer convert or destroy Primmer's property?

3. Did the defendants act in concert "to the conversion and destruction of trade secrets of Primmer"?

4. Were defendants entitled to attorney fees and appellate fees pursuant to Iowa Code Section 550.6?

HOLDING:

1. No. The Court held that the information at issue Primmer contended were trade secrets did not meet the definition of "trade secret" under Iowa law. The court held affirmed the district court's finding that the information is "available and/or known to [Primmer's] competitors and the public." The Court of Appeals held that the information is available through customers who use brokerage firms to arrange truck transportation, and that simply because Primmer's information would make it easier and quicker to gain such information, the information was readily ascertainable to the public, and thus not a trade secret pursuant to Iowa Code Section 550.2(4)(a), which defines "trade secret."

2. No. Richard Primmer admitted that Primmer retained a copy of all the information Langer took and never deprived use of the information.

3. No. The Court of Appeals held that "acting in concert" is only applicable to tort claims, not to claims that are premised upon breach of contract as the plaintiffs alleged in their petition.

4. No. Under Iowa Code Section 550.6, the court may award attorney fees if a claim misappropriation of trade secrets is made in "bad faith." The district court granted attorney fees pursuant to the following "bad faith test":

> These courts reasoned that "bad faith" exists when the court finds (1) objective speciousness of the plaintiff's claim, and (2) plaintiff's subjective misconduct in bringing or maintaining a claim for misappropriation of trade secrets. Objective speciousness exists where there is a complete lack of evidence supporting Plaintiff's claims. Subjective misconduct is judged by the relative degree of

> speciousness of plaintiff's trade secrets claim and its conduct during litigation.

Sun Media Sys., Inc. v. KDSM, LLC, 587 F. Supp. 2d 1059, 1073 (S.D. Iowa 2008).

The Court of Appeals held that Primmer did not bring its claim in bad faith. LTI employees saw Langer bring printouts of Primmer information to work when he began working at LTI. Langer also allegedly used the names of others when calling customers so the calls could not be traced back to him. Although the Court of Appeals affirmed the district court's ruling that the information Langer took did not constitute trade secrets, it found that Primmer's action was not brought in bad faith, and thus, the defendants were not entitled to attorney fees. For the same reasons, the Court of Appeals held that defendants were not entitled to appellate attorney fees.

City of Des Moines v. Webster, No. 13-1802, filed December 24, 2014

FACTS: The City of Des Moines posted notices in January 2013 under the Martin Luther King Jr. bridge in Des Moines stating that the homeless individuals who had set-up campsites there were in violation of a municipal code. The notice stated that they would have to leave or be forcibly removed or arrested by a particular date. The individuals were given a deadline to appeal the notice. The individuals filed an appeal and an administrative hearing was held. The city presented numerous reasons why the encroachment on the property was detrimental to the city. The city noted that the campsites were fire hazards, disturbed citizens who used a passing trail for recreational purposes, and were a violation of the minimum housing standards set by the city code. The homeless individuals, represented by Iowa Legal Aid, raised the defense of necessity based on Restatement (Second) of Torts Section 197, which generally states that an individual is privileged to enter and remain on the land of another if it is reasonably necessary to prevent serious harm to the individual or his chattel. The homeless testified that there was not sufficient space in the city's homeless shelter. They also stated that even if the shelter had space, they would not be able to retain their personal possessions because the shelter lacked storage. The homeless also put on testimony from employees at the Primary Health Care Outreach, who stated that increasing the number of individuals at the shelter would lower the quality of services provided to the homeless. The City argued that the defense of necessity was inapplicable because there was no threat of bodily harm to the homeless individuals, which is required to justify them encroaching no city property.

The hearing officer ruled against the city and stated that the defense of necessity was applicable because the lack of available beds in the shelter and cold weather created a necessity for the homeless to continue residing under the bridge. The city petitioned the district court for a writ of certiorari requesting the court to sustain the

writ, annul the defense of necessity, and allow the city to remove the encroaching campsites. The district court upheld the hearing officer's ruling, stating that the defense of necessity was applicable. The city appealed. The Court of Appeals reversed holding that the defense of necessity did not apply to the facts of the case.

ISSUES: 1. Does the defense of necessity apply in civil cases?

2. Doe substantial evidence support the defense of necessity?

HOLDINGS: 1. Yes. The Court of Appeals adopted Section 197 of the Restatement (Second) of Torts. Section 197 defines "private necessity" as:

> (1) One is privileged to enter or remain on land in the possession of another if it is or reasonably appears to be necessary to prevent serious harm to:
>
> > (a) the actor, or his land or chattels, or
> >
> > (b) the other or a third person, or the land or chattels of either, unless the actor knows or has reason to know that the one for whose benefit he enters is unwilling that he shall take such action.
>
> (2) Where the entry is for the benefit of the actor or a third person, he is subject to liability for any harm done in the exercise of the privilege stated in Subsection (1) to any legally protected interest of the possessor in the land or connected with it, except where the threat of harm to avert which the entry is made is caused by the tortious conduct or contributory negligence of the possessor.

Citing to Section 197, the Court held:

> The defense of necessity allows an individual to enter and remain on another's property without permission in an emergency situation when such entry is reasonably necessary to prevent serious harm. The privilege must be "exercised at a reasonable time and in a reasonable manner."

2. No. The Court of Appeals held that the dangers associated with living under the bridge outweighed the homeless individuals' arguments in favor of encroaching on city property. The Court of Appeals noted that the heat sources used by the individuals caused major hire hazards for those living on the campsites, which also endangers first responders who would be responsible for putting-out fires and managing other emergencies in the area. Furthermore, Section 197 requires there be an emergency situation to

constitute a "necessity." Section 197 illustrates emergency situations as a "violent storm" suddenly overtaking a ship forcing it to moor at another's dock, an airplane pilot forced to land in a field under a reasonable belief he must land to protect himself, or an individual who must take refuge at another's home due to "an attack of illness." The Court of Appeals held that cold weather does not fall into the same category as those situations. Furthermore, the evidence revealed that had the homeless sought shelter at the over-capacity homeless shelter, they would not have been turned away in light of the severe cold weather.

Crow v. Simpson, No. 13-2046, filed December 24, 2014

FACTS: Crow sued Simpson and his trucking company, Simpson Trucking, when Simpson parked an end loader in the traveled portion of a roadway. Simpson was doing street work in order to connect his lot to Albia's sewer and water lines. This required cutting a hole in the road. Simpson was required to obtain a city permit before starting the work. He did not obtain a permit because the person that issued permits was on vacation, but he received verbal permission from the sanitation commissioner to begin the work. After finishing the work, Simpson parked his end loader on the south end of the hole to prevent anyone from traveling over the hole before the mortar dried. That night, at about 2:30 am, Crow was test-driving his friend's moped. He ended-up on the same street as the end loader and eventually wrecked the moped. Crow testified that he was riding the moped and just before he wrecked it, he remembered seeing something "big and yellow" and grabbed the brakes.

Crow walked away from the accident scene and had his friends pick him up. Crow's friend found her moped by the end loader. The moped would not start. Crow eventually drove himself home from his friend's house and began vomiting. His parents took him to the ER. He was eventually airlifted to Des Moines where he had emergency surgery for an epidural hematoma. He was then transferred to University of Iowa for a second surgery. The day after the surgery, Crow's friend and the friend's mother visited the accident scene and found skid marks leading up to the end loader and Crow's class ring underneath the end loader. Simpson admitted to parking the end loader there and admitted to not following city ordinances of placing cones or flashing light barricades around and behind the end loader.

At trial, the jury was instructed on negligence per se. Crow moved for a directed verdict on negligence per se, but admitted that the question of comparative fault was still to be determined. The jury found that Simpson was negligent; however, it determined that Simpson's negligence did not cause Crow's damages. Crow filed a motion for a new trial, which the district court denied. Crow appealed.

ISSUE: Was the jury's verdict supported by substantial evidence?

HOLDING: No. The Court of Appeals reversed the district court and granted Crow a new trial. Both parties' accident reconstructionists testified that the damage to the moped was consistent with the moped being put on its side. The district court erroneously denied Crow's motion claiming that Crow could have suffered a pre-collision hemorrhage based on a doctor's testimony. Even though the doctor testified that a pre-collision hemorrhage was possible, the Court of Appeals found that the doctor's statement in the context it was made was not sufficient evidence to support a verdict that Simpson's negligence was not the cause of the crash or any injury to Crow. The Court of Appeals noted that although causation is for the jury to decide, this was an exceptional case.

Benson v. 13 Associates, L.L.C., No. 14-0132, filed February 11, 2015

FACTS: Sandra Benson was working for her employer in a warehouse the employer leased from the defendant, 13 Associates, when a light fixture supported by ceiling brackets fell from the ceiling and struck Benson's neck and back, knocking her flat on the table of her workstation. Benson suffered serious injuries as a result of being struck.

The lease between the employer and 13 Associates stated that the employer took the premise "as is". The lease stated that 13 Associates would be responsible for keeping, *inter alia*, the "lighting" in "good repair." The lease stated that the "Landlord shall not be liable for failure to make any repairs or replacements unless Landlord fails to do so within a reasonable time after written notice from Tenant." The lease also stated "Tenant shall maintain the premises in a reasonable safe . . . condition, and except for the repairs and replacements provided to be made by the landlord [as stated above], shall make all repairs, replacements and improvements to the premises . . ." Testimony revealed that 13 Associates agreed to make the ceiling and lighting in "good and safe" order prior to the commencement of the lease. Further, 13 Associates retained authority to reconfigure the space the employer leased.

Benson and her husband sued 13 Associates. 13 Associates moved for summary judgment alleging it owed no duty of care to Benson. 13 Associates argued that the employer agreed to take the premises "as is" and thus, its obligation to repair or replace an existing condition arose only if the employer gave 13 Associates written notice of the repair need, and the employer gave no notice of the need for repair of the ceiling or lights. 13 Associates also argued that it did not maintain sufficient control of the premises for a duty to be imposed on it as a "possessor" because "once [the employer] took possession of the leased premises, [the employer] was in control of the premises." The district court granted 13 Associates' motion, holding that under *Van Essen v. McCormick Enterprises Co.*, 599 N.W.2d 716 (Iowa 1999), that a landlord who is not a possessor is not liable for injuries

sustained by the tenant or third parties on the property. Benson appealed and the case was transferred to the Iowa Court of Appeals.

ISSUE: Did 13 Associates owe a duty of care to the employer and its employees including Benson?

HOLDING: Yes. The Court of Appeals reversed the district court and stated that 13 Associates owed a duty of care to the employer and employees. The Court of Appeals found that in both the Restatement (Second) and (Third) of Torts, the concepts of retaining control and contracting to keep the property in good repair arise. The Restatement (Third) of Torts "requires an updated duty analysis in the case of commercial landlords. Section 40 of the Restatement (Third), which discusses duties based on special relationships, states that "An action in a special relationship owes a duty of reasonable care with regard to the risks that arise within the scope of the relationship." One of these special relationships is "a landlord with its tenants." Section 40 states "The affirmative duty imposed by this Section applies to common areas and other areas of the premises over which the landlord has control." The Court also noted that Section 53 of the Restatement (Third) states that a lessor's duties "derive from the lessor's retained possession of portions of the leasehold" and supersedes and replaces the sections of the Restatement (Second) regarding the lessor's duties to tenants.

The Court of Appeals noted that the lease allowed 13 Associates to retain ongoing authority to reconfigure the space the employer leased. The evidence revealed that 13 Associates exercised joint control over the premises with the employer, and that 13 Associates was able to offer any portion of the area occupied by the employer to a new tenant. Therefore, the employer did not have sole control over the property; 13 Associates retained enough control over the premises to have a duty of care. The Court found that the record "suggests the landlord sent workers into the warehouse to build walls to accommodate a new tenant during the pendency of the lease with [the employer]." 13 Associates argued that Benson was not injured in an area within 13 Associate's possession. However, the Court found that there was a genuine issue of material fact as to whether Benson was injured in an area subject to joint control because 13 Associates had control over the entire premises. Therefore, the Court of Appeals held that 13 Associates could not prove as a matter of law that it owed no duty of care to Benson in the area the light fixture fell.

Winger v. CM Holdings, L.L.C., No. 14-0199, filed May 20, 2015

FACTS: Shannon Potts fell off a balcony of an apartment complex in Des Moines and died. The railing on the balcony from which Shannon fell was 32 inches. Potts' parents sued CM Holdings, which owned the complex. Plaintiffs alleged CM Holdings was negligence per se because the balcony height violated the Des Moines municipal housing code. At trial, CM Holdings moved for a directed verdict on two grounds: First, that the guardrails were "grandfathered" into the housing code

existing at the time the apartment complex was built; and second, that if the guardrails were not code compliant, CM Holdings' violation of the housing code was legally excused. Plaintiffs moved for a directed verdict asserting that CM Holdings was negligent per se. The district court instructed the jury that CM Holdings was in violation of the housing code and that the violation constituted negligence. The jury returned a verdict for plaintiffs. CM Holdings filed a motion for a new trial asserting the court's finding of negligence per se was erroneous and the damages were excessive. CM Holdings also filed a motion JNOV on the same grounds as its motion for directed verdict. The court denied CM Holding's JNOV motion and granted a new trial, concluding it had improperly taken the issue of CM Holding's negligence from the jury. The plaintiffs appealed.

ISSUE: Is the violation of a municipal housing code negligence per se?

HOLDING: No. The Court of Appeals held that while a violation of a municipal housing code is evidence of negligence, it is not negligence per se. Therefore, the district court did not err in granting a new trial.

MALPRACTICE

Quad City Bank & Trust v. Elderkin & Pirnie, P.L.C., No. 13-2025, filed February 25, 2015

FACTS: Elderkin & Pirnie (the "law firm") represented Quad City Bank & Trust (the "bank") in a lawsuit against an accounting firm. Ultimately, the bank lost the lawsuit and the verdict was upheld on appeal. The bank then sued the law firm for malpractice. The bank won the malpractice lawsuit, which was the subject of this appeal. The law firm appealed on various claims. At issue for the purposes of this case law update, however, is the bank's cross appeal. The bank claims the court should have allowed it to offer evidence of the attorney fees the bank paid to the law firm for prosecuting the lawsuit against the accountant. The district court refused to permit the evidence, concluding the case law applicable to professional negligence cases did not permit the recovery of attorney fees from the underlying case.

ISSUE: May the bank recover attorney fees from the underlying case in this malpractice action?

HOLDING: Yes. The Iowa Court of Appeals noted that the goal of malpractice actions is to put the plaintiff back into the position it would have been had the lawyer not been negligent. The Court held that an injured client recovering attorney fees when the client paid an hourly fee for the underlying case accomplished that goal. The Court held that the district court erred in refusing to permit the bank to offer evidence as to the amount of attorney fees the bank paid the law firm to prosecute the lawsuit against the accounting firm. Further, the Court held that the attorney fees were an element of damages from the jury. Thus, the Court remanded the case to the district

court for a new trial for the jury to determine the amount of attorney fees to which the bank is entitled from the lawsuit between the bank and the accounting firm.

INSURANCE

Villarreal v. United Fire & Cas. Co., No. 14-0298, filed January 14, 2015

FACTS: The individual plaintiffs' restaurant was insured by United Fire. In 2007, the restaurant was destroyed in a fire and United Fire paid $108,310 under the policy to plaintiff's mortgagor for the next payment on the destroyed building. In March 2008 plaintiffs sued United Fire alleging United Fire breached the insurance agreement by refusing to pay the remaining amounts due. United Fire answered alleging that plaintiffs were fully compensated for all covered damages. The parties stipulated that the plaintiffs were insured for the value of the building and personal property and that an "accidental" fire "destroyed the property." The jury awarded $236,901.52 in compensatory damages and the court entered judgment on the verdict. Four years after the fire, in April 2011, the plaintiffs filed a satisfaction of judgment. Plaintiffs then filed a bad faith action in June 2011 and sought punitive damages. Plaintiffs alleged United Fire "knew it had no objective reasonable basis for the denial or failure to make payment on their insurance claim" and United Fire's "bad faith was the proximate cause of damage, including lost profits, lost wages, [and] emotional distress."

Untied Fire filed a pre-answer motion to dismiss claiming plaintiffs' claims were barred due to claim preclusion because they did not assert the bad faith claim during the prior contract action. United Fire also claimed the individual plaintiffs were not insureds under the policy, and the policy's named insured was the restaurant itself. Plaintiffs resisted. The district court denied United Fire's motion to dismiss based on *Leuchtenmacher v. Farm Bureau Mut. Ins. Co.*, 460 N.W.2d 858, 869 (Iowa 1990), where the Supreme Court stated that "a bad-faith claim might well be based on events subsequent to the filing of the suit on a policy and therefore could not be based on the 'same facts.'" The district court ultimately held that events "during the course of the prior litigation could be evidence of bad faith" and "the elements to establish breach of an insurance contract are different than the elements to establish bad faith" and thus, claim preclusion was not applicable.

18-months later, United Fire filed a motion for summary judgment stating again that plaintiffs' bad faith claim was barred by claim preclusion, and neither individual plaintiffs were insureds under the policy. The district court ultimately granted United Fire's motion. The district court found a case from the U.S. Court of Appeals for the First Circuit, *Porn v. Nat'l Grange Mut. Ins. Co.*, 93 F.3d 31 (1st Cir. 1996), to be persuasive. In *Porn*, the Second Circuit held that the characterization that a breach of contract claim and bad faith claim as arising out of two different transactions is "artificially narrow" because both actions rise out of a company's refusal to pay a claim, and that any potential prejudice of bringing the

claims together could be resolved by bifurcation. *Porn* also recognized that some facts supporting bad faith may be unknown to plaintiffs until the first litigation has been completed; but, in that case, most of the factual allegations were made aware to the plaintiff prior to the first lawsuit. Plaintiffs appealed, and the case was transferred to the Iowa Court of Appeals

ISSUES:

1. Were the subject matter and claims for relief in the earlier contract action and the bad faith tort action the "same claim" for the purposes of claim preclusion?

2. Was United Fire's assertion that the individual plaintiffs were insureds under the policy barred by issue preclusion?

HOLDING:

1. No. Turning to the Restatement (Second) of Judgments § 24, the Court of Appeals held that the two cases were not sufficiently related in time, space, origin, or motivation to constitute the same transaction and same claim. The Iowa Court of Appeals held that the protected right in both cases is *not* the right to recover the proper amount under the insurance policy. The Court held that that the plaintiffs' right under the first action—a contract claim—is the right to be paid contracted-for insurance benefits after suffering an insured loss. That right is not the same as the protected right that the insurance company has to utilize an objectively and subjectively nontortious claim process. Further, the Court of Appeals held that the alleged wrong is not the same. The alleged wrong in the first action was United Fire's breach of contract by failing to pay the amounts owed under the insurance policy while the alleged wrong in the bad faith action was United Fire's knowing and intentional failure to conduct its claim process and administration in a nontortious manner, the latter being much broader than a mere failure to pay. The Court of Appeals also held that the recovery available in the contract action is not the same as the recovery the plaintiffs' seek in the tort action. The Court of Appeals held that the set of relevant facts for each case were different. The contract case involved a determination of the value of the building and the value of the personal property. The bad faith action, however, involved the facts showing how United Fire employees conducted the processing of the plaintiffs' claim and the employee's decision-making processes. The bad faith action will also involve facts about the intent of the United Fire employees during the processing of the claim, which is not necessary for a breach of contract claim. The Court of Appeals also noted that the claims would not be convenient for the same trial. The Court noted that almost all federal circuits agree claim preclusion is measured by claims that had accrued by the time of the original pleading in the earlier action and here, some of the bad faith evidence occurred as late as during the first trial.

2. Yes. The Court of Appeals found that in the contract action, the parties

stipulated that the individual plaintiffs *and* the restaurant were insureds under the policy. This fact was "material and relevant" to whether United Fire breached a contractual duty to them. Thus, United Fire is barred from claiming in the bad faith action that the individual plaintiffs are not insureds under the policy.

IOWA SUPREME COURT

TORTS

Luana Savings Bank v. Pro-Build Holdings, No. 13-0060, filed December 12, 2015, amended February 23, 2015

FACTS: Luana Savings Bank secured a line of credit to developers to purchase farmland to develop. The developers contracted with Pro-Build to build apartment buildings on the land. The developer then assigned its payments to another developer. The second developer defaulted and eventually transferred the property with the apartment buildings to Luana to avoid foreclosure. Luana found mold and other problems with the apartments and sued Pro-Build for negligence, breach of implied warranty of workmanlike construction, and breach of contract. The district court granted Pro-Build's motion for summary judgment for all claims except the breach of contract claim. Luana then sought interlocutory appeal to determine whether there was a genuine issue of material fact that precludes summary judgment. The appeal was transferred to the Court of Appeals, which held that the implied warranty of workmanlike construction does not extend to lenders. The Court of Appeals held that in *Kirk v. Ridgway*, 373 N.W.2d 491 (Iowa 1985) and *Speight v. Walters Dev. Co.*, 744 N.W.2d 108 (Iowa 2008), the Supreme Court held that purchasers and subsequent purchasers of a home may bring a claim of breach of implied warranty of workmanlike construction. However, the Court of Appeals noted that the Iowa Supreme Court had not extended such right to lenders. The lender sought further review.

ISSUE: Does the implied warranty of workmanlike construction extend to lenders?

HOLDING: No. The Iowa Supreme Court held that no other court has extend the theory to allow claims for breach of implied warranty of workmanlike construction and a majority of courts decline to allow recovery by for-profit owners of apartment buildings. A claim for breach of implied warranty of workmanlike construction was created by the judiciary to redress the disparity in bargaining power and expertise between homeowners and professional buildings, and to provide a remedy for consumers living in defectively constructed homes. The Iowa Supreme Court held that there was no valid policy reason to extend the implied warranty to a "sophisticated financial institution that can protect itself through other measures."

Rosauer Corp. v. Sapp Dev., L.L.C.; Todd Sapp; Whispering Creek, L.L.C.; and W.C. Dev., Inc., filed December 12, 2014, amended February 23, 2015

FACTS: Rosauer, a contractor-developer, bought an empty lot from a realtor to build townhomes for sale. Rosauer alleges that the lot improperly compacted backfill, which required extensive additional work to prepare it for construction. Rosauer sued the original developers whose contractor performed the soil work for breach

of implied warranty of workmanlike construction. The defendants filed a motion for summary judgment. The district court granted the motion, stating that the implied warranty of workmanlike construction does not extend to residential lots without a home or structure. The Iowa Court of Appeals affirmed because the Iowa Supreme Court had yet to extend the implied warranty to this scenario. The Iowa Supreme Court granted further review.

ISSUE: Does the implied warranty of workmanlike construction extend to the sale of a residential lot without a home or other structure?

HOLDING: No. The majority of courts have held that the implied warranty of workmanlike construction does not apply to the sale of a lot with no dwelling. This particular implied warranty was designed to protect *residents* from substandard living and to redress the disparity in expertise and bargaining power between consumers and builder-vendors in recognition of the difficulty of discovering latent defects in *modern residential* structures. The Iowa Supreme Court held that developers are able to protect themselves through express contract terms and simple soil tests. For-profit developers are different than innocent homeowners insofar that the former class of purchasers have the resources to inspect lots and create contract provision to protect themselves.

Veatch v. City of Waverly and Jason Leonard, No. 13-0417, filed January 9, 2015

FACTS: Maxine Veatch visited her mother at Bartels Nursing Home in Waverly and was seen shoving her mother into a wheelchair. After the staff found bruises on Veatch's mother, they notified Officer Leonard of the Waverly Police Department, who investigated the matter. Leonard spoke with the witnesses and Bartels staff, and the next day, he contacted Veatch and asked her to meet him at the Waverly Law Center to discuss the matter. During their conversation, Veatch asked for an attorney, at which point Leonard left the room to retrieve a complaint form. When he returned, he placed Veatch under arrest for assault. The State of Iowa charged her with simple misdemeanor assault, and after a jury trial, the jury returned a verdict of not guilty.

Veatch then filed two suits, one in federal district court and one in state district court. She sued the City and Leonard for false imprisonment, negligence, and malicious prosecution. The federal case eventually went to the Eighth Circuit Court of Appeals to determine whether Leonard had probable cause to arrest Veatch. It decided that he did. Leonard and the City then filed a motion for summary judgment in the state action based on issue preclusion, claiming that the Eighth Circuit decided Leonard had probable cause, and therefore, Veatch was precluded from continuing the action in state court. The state district court granted their motion, stating that she was precluded from bringing her claim due to the Eighth Circuit's decision. Veatch appealed, and raised several issues. The Court of Appeals affirmed the district court's granting of summary judgment on the

malicious prosecution, negligence, and punitive damages claims; however, it engaged in a lengthy discussion and remanded Veatch's false imprisonment claim. The Iowa Court of Appeals held that a genuine issue of material fact existed as to whether a public offense had "in fact" been committed within the meaning of Iowa Code § 804.7(2)[1], governing warrantless detentions. The Iowa Court of Appeals concluded that the federal court's determination that Leonard had probable cause to arrest Veatch under the Fourth Amendment standard was not preclusive of the question whether the arrest was valid under § 804.7. The defendants sought further review on the false imprisonment claim, and the Iowa Supreme Court granted further review. On further review, the Supreme Court vacated the decision of the Iowa Court of Appeals and affirmed the district court's ruling.

ISSUE: Pursuant to Section 804.7(3), must an arresting officer have reasonable grounds for believing the offense has been committed at the time of the arrest and was Veatch's arrest justified under either Iowa Code § 804.7(2) or (3)?

HOLDING: Yes. Veatch's arrest was justified under Iowa Code § 804.7(3). The standard for evaluating probable cause under § 804.7(3) is objective. The relevant question is "what offenses a reasonable person armed with the same knowledge could have considered" at the time of the arrest, not what offenses Leonard subjectively considered when arresting Veatch. Thus, the focus is on what facts Leonard knew at the time of the arrest, not merely what potential offenses Leonard announced or considered at the time he made the arrest. The Iowa Supreme Court held that there was not a genuine issue of material fact merely because Veatch was not arrested for an "indictable offense" as stated in § 804.7(3) or because Leonard did not announce that an indictable offense was "within the universe of potential offenses he considered at the time of the arrest." The Iowa Supreme Court noted that many other courts, including the Eight Circuit have held that because probable cause is evaluated objectively, an arrest can be sustained by probable cause for a more serious offense than the crime the officer announced at the time of the arrest.

Leonard arrested Veatch for dependent adult abuse, an aggravated misdemeanor under Iowa Code § 235B.20(6), which is an indictable offense. The Iowa Supreme Court found that the facts justified Veatch's arrest for dependent adult abuse. The

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[1] Iowa Code § 804.7 reads, in part:

> A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:
>
> 1. For a public offense committed or attempted in the peace officer's presence.
> 2. Where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it.
> 3. Where the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.

Iowa Supreme Court vacated the decision by the Iowa Court of Appeals and affirmed the district court's ruling granting summary judgment on the false imprisonment claim.

Cameron Fagen v. Grand View University, NPI Security, and Ross Iddings, No. 14-0095, filed April 3, 2015.

FACTS: Plaintiff Fagen, was assaulted by Iddings, and others, in Fagen's dorm at Grand View University. In his petition, Fagen claimed "mental pain" and "mental disability" as a result of the assault. In Fagen's deposition, Fagen disclosed that he underwent treatment for anger management when he was in fourth through sixth grades. Iddings requested Fagen provide him with a signed patient's waivers so Iddings could access Fagen's mental health records. Fagen refused, and Iddings filed a motion to compel. The district court granted the motion, holding that Fagen waived his right to privacy to his mental health records by pleading mental pain and mental disability as a result of the assault. Fagen filed an interlocutory appeal with the Iowa Supreme Court, which the Court granted.

ISSUE: Is a tortfeasor in a civil case entitled to a signed patient's waiver from the injured party to obtain the injured party's mental health records when the injured party is alleging in the petition a claim for mental disability or mental distress?

HOLDING: Yes, but only under certain circumstances. The Iowa Supreme Court adopted a balancing test to determine when a tortfeasor is entitled to a signed patient's waiver to obtain mental health records of the plaintiff, when the injured party is claiming mental pain or a mental disability. The Iowa Supreme Court held that when a district court is determining whether a tortfeasor is entitled to a signed patient's waiver, it must balance the patient's right to privacy in her mental health records against the tortfeasor's access to the injured party's mental health records without restriction.

The Iowa Supreme Court held that the person requesting the waiver

> [m]ust make a showing that he or she has a reasonable basis to believe the specific records are likely to contain information relevant to an element or factor of the claim or defense of the person or of any party claiming through or under the privilege. In doing so, the person seeking the patient's waiver need not establish the records sought actually contain admissible evidence concerning an element or factor of the claim or defense. The person seeking the patient's waiver need only advance some good-faith factual basis for demonstrating how the records are reasonably calculated to lead to admissible evidence germane to an element or factor of the claim or defense. An important requirement of this showing is the person seeking the patient's waiver must show a nexus between the records sought and a specific claim or defense made in the case. If a party can make this showing, the patient–

> physician privilege is lost as to those records and the party requesting the waiver shall be entitled to the waiver to obtain those records within the scope of discovery.

Furthermore,

> If the court requires a party to sign and deliver a patient's waiver, the party seeking the records must keep confidential the records obtained with the waiver. The patient's waiver authorizes access only to records meeting the requirements of the protocol. If a party needs to disseminate the records to a third party to prepare for trial, the court should allow such dissemination with the appropriate safeguards. Finally, the records are not admissible as evidence unless the party can show the records are necessary as evidence in the proceeding.

The Iowa Supreme Court held that it was unable to apply the balancing test to this case because the record from the hearing in the district court did not show what *type* of mental suffering Fagan was claiming and the extent to which Fagen underwent anger management counseling. Furthermore, the Court held that Iddings did not present sufficient evidence to warrant full access to all of Fagen's mental health records because Iddings could not show how all of the records were relevant to Fagen's specific claim for mental distress.

Sanford v. Fillenwarth, No. 14-0411, filed May 8, 2015.

FACTS: Two families, the Lawlers and the Sanfords, both independently vacationed at Fillenwarth Beach, a resort in Okoboji. Michael and Tonya Lawler checked-in with their children, Cari, James, and Kyle. Michael Lawler paid for all expenses on the trip. Joseph and Suzanna Sanford checked-in on the same day. Fillenwarth offers cruises on Lake Okoboji on boats that serve alcoholic beverages. Fillenwarth owns the boats. These cruises are limited to Fillenwarth guests. The Lawlers and Sanfords signed-up for an evening cruise. James Lawler consumed a number of alcoholic beverages on the boat. The bartender served James two mixed drinks and he drank some beers from a self-serve keg near the bar. After the cruise ended, James Lawler and Joseph Sanford got into a physical altercation which ended with James assaulting Joseph Sanford. James Lawler apparently punched Joseph Sanford once in the head, which caused him to fall down and strike a low wall or curb, resulting in serious injury. The Sanfords sued Fillenwarth, its owners, and James Lawler. The legal theories of recovery included dramshop liability against Fillenwarth, loss of consortium based on the dramshop liability, assault and battery against James Lawler with related loss-of consortium claims, and premises liability and related loss-of-consortium claims against Fillenwarth.

Fillenwarth moved for summary judgment. Fillenwarth argued that the dramshop statute did not apply to his case because the alcoholic beverages were not "sold"

but only *served* as an amenity of the resort. It also claimed no sale could have been made to James because he was not a paying guest. The district court granted Fillenwarth's motion, finding that no sale took place because James did not provide any consideration for the alcoholic beverages served to him. The Sanford sought interlocutory appeal and the Iowa Supreme Court retained the case.

ISSUE: Is the meaning of "sold" within the Iowa Dramshop Law, Iowa Code Section 123.92 broad enough to include alcoholic beverages served by a resort as an amenity?

HOLDING: Yes. The Iowa Supreme Court held that the intent of the legislature under the dramshop statute was to capture all direct and indirect sales supported by consideration tangibly benefiting the dramshop. This broad definition allows the statute to be applied to tackle the problem sought to be addressed by the legislature in enacting the statute and is consistent with the Court's prior case law. The Iowa Supreme Court found that Michael Lawler paid for the beverages as part of a package that included all amenities. James Lawler was a third-party beneficiary of Michael's purchase under the Restatement (Second) of Contracts, adopted by the Court. The Iowa Supreme Court ultimately held that the district court erred in granting summary judgment to Fillenwarth, and reversed and remanded the case.

Sanon v. City of Pella, No. 13-1438, filed June 26, 2015

FACTS: Two children drowned in a pool operated by the City of Pella. The City was in violation of an Iowa Administrative Code section that required the pool to have sufficient overhead lighting, or, in the alternative, underwater lighting. The City did not have the lighting required to meet the standards of the Iowa Administrative Code sections. The parents of the children sued the City of Pella for negligence, conduct constituting a criminal offense, premises liability, a constitutional due process violation, and loss of consortium. The City answered and moved for summary judgment under the immunity provision of Iowa Code Section 670.4(12). The parents resisted, stating that the City's acts or omissions constituted involuntary manslaughter, a criminal offense that would remove the City from immunity. The plaintiffs also alleged that the violation of the Iowa Administrative Code regulations constituted criminal offenses.

The district court granted partial summary judgment based on immunity, dismissing the remaining tort theories to the extent those claims were premised on alleged violations of applicable regulations. The City and the parents filed motion to amend or enlarge the summary judgment ruling, requesting the court to clarify the immunity on the claim of negligent supervision. The City also asked the court to determine the burden of proof for the criminal offense of involuntary manslaughter, arguing the court should require the parents to prove their claims beyond a reasonable doubt. The district court ruled that the negligence and premises liability claims, including negligent supervision, survived to the extent

they could constitute the criminal offense of manslaughter. The district court declined to set the burden of proof for the manslaughter offense. The parents voluntarily dismissed their claim for nuisance after the court's ruling on the motion for summary judgment. The City and parents filed un-resisted applications for interlocutory appeal, and the Iowa Supreme Court retained the case.

ISSUES:

1. Is a violation of an administrative rule promulgated by the Iowa Department Public Health a crime that removes a municipality from immunity under Iowa Code Section 670.4(12)?

2. Is manslaughter a criminal offense that removes a municipality from immunity under Iowa Code Section 670.4(12) and if so, what level of proof is needed to remove this claim from immunity?

HOLDINGS:

1. Yes. Iowa Code Chapter 135 creates the Department of Public Health and grants it the authority to make and enforce rules. Further, Iowa Code Chapter 135 states that a violation of a rule created by the Department is a misdemeanor. Contrary to the City's position, Chapter 135I is not the authority for the Department to adopt the rules. Chapter 135I simply states that the Department must create rules pursuant to the Iowa Administrative Procedure Act. Because a violation of Chapter 135 is a criminal offense—that is, a misdemeanor—the Court held that a violation of a Department rule is in fact a criminal offense that removes the municipality from immunity. Thus, the district court erred in granting summary judgment in favor of the City.

2. Yes. The term "criminal offense" refers to that conduct which is prohibited by statute and is punishable by fine or imprisonment. Furthermore, the Court held that the conduct need not be punished or result in a conviction to be punishable; no conviction is required to avoid the immunity defense. The Court held that the plaintiffs need only prove by a preponderance of evidence—not beyond a reasonable doubt, as the City urged—that a municipal employee or officer committed the criminal act causing injury.

MALPRACTICE

Ahmad S. Vossoughi and C, N, & A, Inc. v. Joseph A. Polaschek and Michael J. Meloy, No. 13-1381, filed February 13, 2015, amended April 22, 2015

FACTS: Vossoughi was the sole owner of C, N, & A Inc. ("CNA") (collectively, "plaintiffs"). CNA owned and operated Cigarette Oasis, LLC ("Oasis") in Davenport. In September 2006, plaintiffs entered into a set of agreements with Mark Polaschek ("Mark"). Mark managed BVM Enterprises LLC ("BVM") and PPM Properties, Inc. ("PPM"). Plaintiffs were represented by defendant Michael

Meloy ("Meloy"), and Mark and his companies were represented by Mark's brother, defendant Joseph Polaschek ("Polaschek"). On September 15, 2006, the parties executed three separate agreements. The first was an "asset and business name purchase agreement" that stated BVM would pay CNA approximately $260,000 to acquire Oasis. The second was a noncompetition agreement requiring PPM to pay Vossoughi an additional $70,000. The third was a "real estate contract" requiring PPM to pay Vossoughi $40,000 for real property. An "addendum to the real estate contract" stated that any default under the noncompetition agreement would also constitute a default under the real estate contract. The addendum also allowed PPM to prepay the balance due on the real estate contract without penalty, but the payment obligations under the other two agreements would remain secured by the real property until fully paid. Vossoughi believed the addendum read so that a lien on the real property secured the payments due on all three of the agreements. However, the agreements and addendum did not provide for perfection of a security interest securing plaintiffs' interest in the personal property, nor did they provide for a mortgage against the real estate securing the contractual right to receive payments under two of the agreements in the event PPM exercised its right to repay the purchase price on the real estate contract.

The buyers took possession of the property and started making installment payments to Vossoughi. But, 6 months later in March 2007, Mark told Meloy that he wanted to pay in full the balance on the real estate contract. On March 28, 2007, Meloy told Vossoughi the same; however, when Meloy told Vossoughi that Meloy would charge Vossoughi a fee for the real estate transaction, Vossoughi terminated the attorney-client relationship and Meloy did not further work for plaintiffs.

Vossoughi went to Polaschke's office the next and executed a warranty deed transferring the title to the real estate to PPM. Polaschek prepared the deed and charged Vossoughi $500 for the transaction. Vossoughi told Polaschek that he was concerned that the deed did not mention cross-collateralizing language of the addendum and no mention of the buyers' remaining payment obligations under the other two agreements. Polaschek told Vossoughi that after he signed the deed, Polaschek would attach an additional page incorporating the provisions of the addendum and ensuring the remaining obligations would remain secured by the real property. Vossoughi signed the warranty deed; however, the deed was later recorded without any additional language nor a second page referencing the cross-collateralized agreements.

In February 2008, buyers stopped making payments on the other two contract obligations. Vossoughi soon thereafter learned that the warranty deed he signed was recorded on April 9, 2007 without the additional page incorporating the provisions of the addendum. Even worse, Vossoughi also learned that Mark borrowed over $180,000 from a bank and secured a loan with a mortgage on the Oasis real estate.

Plaintiffs sued BVM, PPM, and Mark for breach of contract but nothing came of the lawsuit. But, because the Illinois Secretary of State involuntarily dissolved BVM, and PPM and Mark filed for Chapter 7 bankruptcy, the bank from which Mark borrowed the money and obtained a mortgage foreclosed on the mortgage. Vossoughi and CNA filed a petition in the bankruptcy court asking the court to determine that PPM's and Mark's contract obligations arising from the asset and business name purchase noncompetition agreements were non-dischargeable in bankruptcy, but the bankruptcy court denied their request for relief in May 2012. However, because the bankruptcy court found no evidence that PPM and Mark committed any malicious or fraudulent acts, the court ruled that the debts arising from the two agreements were dischargeable. Thus, plaintiffs were left with over $200,000 in unsecured, non-priority, fully dischargeable claims—and took nothing from the bankruptcy.

Plaintiffs sued defendants on June 16, 2010 asserting defendants were negligent in preparing the warranty deed and conveyance in March 2007. Meloy filed an affidavit disclaiming any involvement in the March 2007 transaction and plaintiffs dismissed the action against Meloy without prejudice on April 18, 2011. Plaintiffs sued Meloy again on June 26, 2012, alleging Meloy negligently performed legal services in negotiating, drafting, and providing legal advice regarding the three agreements executed in September 2006. Each defendant filed a motion for summary judgment.

Meloy's motion was based on the statute of limitations. The district court deemed that plaintiffs discovered their injury on March 29, 2007 when Vossoughi signed the warranty deed because Vossoughi's signature on the deed imputes to him knowledge of the deed's contents. The district court also held that the plaintiffs discovered the injury when the warranty deed was recorded on April 9, 2007. The district court held that because the lawsuit against Meloy was not filed until June 26, 2012, the five-year statute of limitations for malpractice expired before plaintiffs sued Meloy in June 2012. Plaintiffs filed a motion to amend the court's ruling stating that plaintiffs' injury did not occur until Mark and PPM stopped making payments in February 2008, and that the failure to secure the sellers' interest in the contract was only a "prospect of future harm" and thus the limitations period only began running in February 2008. The district court rejected that argument, however. It held that pursuant to *Neylan v. Moser*, 400 N.W.2d 538, 542 (Iowa 1987), the date of the injury is the "last possible date when the attorney's negligence became irreversible." The district court found that Meloy's negligence became "irreversible" when the deed was signed and recorded because at that point, plaintiffs became insecure and had no remedy in the event the buyers defaulted. Thus, the injury occurred the limitations period began to run in April 2007.

Polaschek filed his motion and argued that his acts and omissions could not have been the cause of any damages. He argued that even if he breached his duty by recording the deed without incorporating the restrictive terms of the addendum,

plaintiffs would not have been able to collect any judgment rendered against PPM and Mark because they filed for bankruptcy. Polaschek argued that the only consequence of his breach was that the liquidated damages remedy was not included in the deed. The district court agreed, finding that plaintiffs would not have been able to collect from PPM and Mark even if they had a remedy, so Polaschek's negligence could not have been the "but for" cause of plaintiffs' damages.

Plaintiffs appealed and the Iowa Supreme Court retained the appeal.

ISSUE:

1. Did plaintiffs' insecurity alone—caused by Vossoughi signing the 2007 Agreement—create an "actual injury" giving rise to a malpractice claim causing the statute of limitations to begin to run in 2007?

2. Did Polaschek sufficiently show that plaintiffs were actually unable to collect on a potential judgment against PPM and Mark rendering Polaschek's negligence not a "but for" cause of plaintiffs damages?

HOLDING:

1. No. Insecurity alone is not an "actual injury" for the purposes of a malpractice claim. Plaintiffs did not suffer an actual injury until PPM and Mark stopped making payments in February 2008. The Iowa Supreme Court held that insecurity alone does not constitute an actual injury because it was possible that the decision to structure the transaction without the protection of a mortgage on the real estate or a perfected security interest in the personal property would cause the sellers no actual injury. Until at least February 2008, plaintiffs suffered only prospective future harm. Thus, the district court erred in ruling the plaintiffs' claims against Meloy were time-barred.

2. No. The Iowa Supreme Court held that there was a genuine issue of material fact as to whether plaintiffs would have been able to collect on a judgment against PPM and Mark. The Iowa Supreme Court held that the experts had "competing visions" of the potential practical consequences of incorporating and recording the language from the addendum in the warranty deed. The competing visions raised a genuine issue of material fact which should be left to the factfinder to decide.

Nelson v. Lindaman, No. 13-0719, filed April 24, 2015

FACTS: Jonas Neiderbach brought his three-week-old infant, EN, to the emergency room on June 18, 2009 and claimed that he heard EN's arm snap when he set EN down with his arm behind. The arm was in fact fractured. The emergency room physician did not believe Jonas and reported his concerns to DHS. DHS investigated. Eventually, the case was referred to Dr. Lindaman, the co-defendant in this case, a pediatric orthopedic surgeon, to treat the fracture. On June 19, Dr. Lindaman noted

and told the DHS caseworker that "the mechanism they described fits the fracture," meaning that it was plausible that EN's arm could have been pinned behind him with Jonas laid him down. Dr. Lindaman also told the caseworker that the family seemed "appropriate". On June 26, Dr. Lindaman conducted a follow-up examination on EN and noted the arm was in good alignment. The caseworker decided not to seek a no-contact order and allowed EN to go home with his parents. EN's parents and paternal grandfather, with whom EN lived, agreed that EN's father old not be left alone with EN. On June 30, a multidisciplinary team of attorneys, DHS employees, and physicians met and concluded that the injury to EN could not have occurred as Jonas described. Dr. Lindaman did not change his original opinion regarding biomechanics, but acknowledged that additional information obtained at the team meeting made Jonas' story very unlikely. The caseworker sought a no-contact order on July 8. That same day, EN was admitted the hospital with massive brain injuries, seventeen rib fractures, some which were fresh, and some that were older.

In an affidavit, signed January 10, 2013, Dr. Lindaman stated that he refused to give DHS an opinion regarding the Jonas' credibility because he had not investigated child abuse cases in the past. Dr. Lindaman swore that he only provided an opinion regarding the biomechanics of the arm, that the father's story about the arm being pinned and twisted behind EN's back, if true, could be consistent with the type of fracture Dr. Lindaman diagnosed.

EN was adopted by the Nelsons, the plaintiffs in his case, who filed suit on June 10, 2011. The Nelsons alleged that Dr. Lindaman negligently failed to detect and report the child abuse and that conduct was reckless and/or willful; they sought punitive damages. Defendant's moved for summary judgment under the immunity provision of Iowa Code Section 232.73 and the lack of evidence to prove causation or the willful and wanton misconduct required for punitive damages. The motion for summary judgment was denied, and the defendants applied for interlocutory appeal. The Supreme Court retained the case.

ISSUE: Was Dr. Lindaman immune from civil liability pursuant to Iowa Code Section 232.73?

HOLDING: Yes. A physician responding in good faith to inquiries from a child abuse investigator is entitled to immunity from claims alleging not only negligence, but the willful, wanton, or reckless conduct required for punitive damages. Iowa Code Section 232.73 applies in medical malpractice actions brought against private physicians who provide information to child abuse investigators. The "good faith" requirement of Section 232.73 is subjective, not objective because immunity under the section extends to negligent acts. Thus, reasonableness and the objective standard do not play a part in determining good faith. For a plaintiff to avoid summary judgment based on Section 232.73, he or she must present evidence that the defendant acted dishonestly, not merely carelessly, in assisting DHS. The Court

noted that the subjective standard encourages healthcare providers to report child abuse to DHS.

The Court found that Dr. Lindaman was entitled to summary judgment because he participated in good faith in aiding and assisting in the assessment of a child abuse report. Dr. Lindaman opined that it was plausible that the baby's arm was injured in the manner Jonas, the father, said it was. There was no genuine issue of material fact that Dr. Lindaman acted dishonestly in communicating with the DHS caseworker.

INSURANCE

Amish Connection, Inc. v. State Farm Fire and Casualty Co., 13-0672, filed March 20, 2015, amended June 1, 2015

FACTS: Amish Connection leased space in Crossroads Mall in Waterloo. One night, it rained heavily in Waterloo, causing a drain pipe above Amish's ceiling to burst, flooding portions of Amish' storage space and causing damage to the unit and the property within. Approximately 1-2 days after the incident, Amish contacted State Farm, who held Amish's business policy. State Farm denied coverage because it contended that Amish's loss was excluded because the damage was caused by "rain," which was specifically excluded from coverage in the policy. The relevant portion of the limitation read:

> We will not pay for loss:
>
> . . . .
>
> 6. to the interior of any building or structure, or the property inside any building or structure, caused by **rain**, snow, sleet, ice, sand, or dust, whether driven by wind or not, unless:
>
>   a. the building or structure first sustains damage by an insured loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
>
>   b. the loss is caused by thawing of snow, sleet or ice on the building or structure

Amish sued State Farm for breach of contract. State Farm moved for summary judgment and argued that the property damage was caused by rain and thus, the

damage the rainwater caused fell within the policy exclusion. The district court granted State Farm's motion for summary judgment. Amish appealed.

The Iowa Court of Appeals held that the district court erred in finding that the property damage was in fact caused by "rain." The Court of Appeals held that rainwater is "water falling from the sky." Here, the water was not failing from the sky when it caused the damage. Rather the water came from a bursting pipe. Thus, the rain exclusion in the policy was not applicable to these facts.

State Farm sought further review, and the Iowa Supreme Court reversed the Iowa Court of Appeals, and affirmed the district court.

ISSUE: Did the district court err in finding that the property damage was in fact caused by "rain"?

HOLDING: No. In deciding an issue of first impression, the Iowa Supreme Court held that the language of the rain limitation in the policy was unambiguous and precluded coverage for the damage caused by the rainwater escaping the ruptured interior drainpipe. The Iowa Supreme Court held that "rainwater" is caused by "rain". Because it was undisputed that the drainage pipe ruptured and released "rainwater", the damage that was caused by the rainwater was in fact caused by rain and was thus excluded from the policy. The Iowa Supreme Court held that if

> [w]ter is only considered rain while it is falling and becomes rainwater after it strikes a surface then the policy's limitation on coverage for damage "caused by rain" would be eviscerated. Water does not damage property while merely falling through the air, but only after it strikes a surface. Under the court of appeals' interpretation, the rain limitation in the policy would be superfluous, and the coverage for rainwater damage would extend to leaky roofs and skylights.