defense UPDATE

The Iowa Defense Counsel Association Newsletter February 2011 Vol. XIV, No. 4

PAY AND WALK CLAUSES

By Ted J. Wallace, American Family Insurance

There comes a time in the career of every insurance defense attorney when s/he has a case that the carrier wants to settle for the policy limits – but cannot. A typical situation is when insurer A covers an automobile but the driver of that vehicle is not the named insured and carries her/his own policy of insurance. It is generally the case in Iowa that the omnibus coverage clause in a motor vehicle policy will provide coverage to the driver,[1] and the driver's own policy will provide an additional layer of coverage. If the insurance carriers are different, there may be disagreement about the settlement value of the case such that the underlying carrier wants to settle by paying, for example, a low limit, and the secondary carrier does not wish to contribute any additional settlement funds. The first carrier, and its primary defense attorney, are seemingly stuck defending the case until/unless the second carrier agrees to contribute to a settlement or the plaintiff's attorney agrees to take only the first limit in exchange for a release. My experience is that plaintiff attorneys generally will not agree to follow this course of action.

The question then becomes this: Is there anything that the underlying carrier can do to either force a settlement or stop spending money to defend a case in which the policy limits have been offered? The short answer, in Iowa, is possibly. Although no Iowa cases have addressed the exact issue, most, if not all, insurance policies issued in this State have some form of "pay-and-walk" clause.[2] The most common language is something similar to the following: "Our duty to defend the insured ends when our limit of liability has been exhausted by payment of settlements or judgments."[3] A review of cases decided in other State jurisdictions has generally concluded that the ability of an insurer to extricate itself from the defense of an insured is dependent upon the language of the particular pay-and-walk clause.

One of the State Supreme Courts to look at the viability of the pay-and-walk clause was in Louisiana. In *Pareti v. Sentry Indemnity Co.*,[4] the Louisiana Supreme Court was reviewing the language of a Sentry insurance policy that was found to be ambiguous by a lower appellate court.[5] Factually, Pareti was rear ended by an automobile operated by an individual named Schneller. Schneller was insured by Pennsylvania General and the Paretis were insured by Sentry.[6] During the proceedings, Pareti settled with Schneller and Pennsylvania General for the full policy limits of $50,000.00.[7] This, however, left remaining an underinsured claim against Sentry filed by Pareti in conjunction with the tort action. After the underlying settlement, Sentry filed a cross-claim against Schneller seeking contribution should it be required to make any payment for

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1 The typical insurance policy contains an omnibus coverage clause that provides coverage to any insured person or any person using the vehicle with proper permission. Further, Iowa Code Chapter 321 provides that any policy issued to provide "financial liability coverage" must insure any person using a motor vehicle with permission of the insured. See also *Lee v. Grinnell Mut. Reinsurance Co.*, 646 N.W.2d 403 (Iowa 2002).

2 The phrase "pay-and-walk" is used to refer to the language generally found in all insurance policies which allows the insurer to stop defending an insured after their limits have been paid due to settlement or judgments.

3 See e.g. *Pareti v. Sentry Indemnity Co.*, 536 So. 2d 417 (La. 1988), which reviewed a policy with language similar to this example.

4 536 So. 2d 417 (La. 1988).

5 519 So. 2d 225 (La. App. 1988) reversed by 536 So. 2d 417 (La. 1988).

6 536 So. 2d at 419.

7 Id.

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underinsured motorist benefits.[8] Pennsylvania sent the Schnellers a letter that they would not provide a defense to the cross-claim due to the exhaustion of the policy limits in the prior settlement. The Schnellers hired their own counsel to defend the cross-claim and also brought an action against Pennsylvania asserting a breach of contract.[9] The trial court held in favor of Pennsylvania Insurance, and the Court of Appeals reversed the trial court finding a breach of the duty to defend. The Court of Appeals held that the language of the Pennsylvania policy was ambiguous as it pertained to the insurer's duty to defend. The Supreme Court took the matter up on further appeal.

> The language of the Pennsylvania General policy at issue in *Pareti* was as follows:
>
> We will pay damages for bodily injury or property damage for which any covered person becomes legally responsible because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.[10]

The court of appeals concluded that there was an ambiguity in the language of the policy because it provided that the insurer will defend or settle *any* claim, but also stated that the duty to defend ended when the coverage was exhausted.[11] In reversing this conclusion, the Louisiana Supreme Court found when read as a whole the policy was not ambiguous. They noted the promise to defend "any" suit was clearly qualified by the language contained in the same paragraph describing when the duty to defend "any" suit would end.[12] Looking at the language of the policy as a whole and reading all of the provisions in conjunction could lead to only one reasonable interpretation: the insurer could terminate any defense after the coverage limits had been exhausted.[13]

A second basis the *Pareti* appellate court utilized was that the policy did not specify "in what manner the limit of liability must be exhausted in order to trigger termination of the duty to defend."[14] Although the Supreme Court of Louisiana had little trouble with this issue, the argument that the failure to specify the "manner of exhaustion" was central to the decision of *Brown v. Lumbermens Mut. Co.*, decided by the North Carolina Supreme Court.[15]

In *Brown*, the underlying lawsuit involved an automobile accident between Coleen Brown and Joan Hinson. Hinson filed suit for her injuries. Brown was covered by an insurance policy issued by Lumbermens which contained coverage limits of $25,000 per person. Lumbermens at some point offered to pay to Hinson the policy limits of the applicable coverage. Hinson refused stating that she would accept $43,000. The Browns refused to contribute above the available policy limit and Lumbermens paid its $25,000 limit pursuant to N.C.G.S. § 1-540.3.[16] Thereafter, they withdrew from the defense of Brown in the underlying action. Notably, the insurance policy issued by Lumbermens contained the *identical* language as the policy issued in *Pareti*.[17]

The North Carolina Court of Appeals found that the duty to defend provision in the Lumbermens' policy was ambiguous in that it failed to specify in what manner the policy coverage limits would have to be exhausted before its duty would be discharged.[18] The North Carolina Supreme Court agreed and found the language at issue to be ambiguous. It noted that an insurer could "exhaust" its coverage limits in any number of ways.[19] The *Brown* court reasoned as follows:

> [The insurer] could pay [its limits] into court and interplead conflicting claimants in a declaratory judgment action. It could pay them to one of several claimants in return for a complete settlement of that claim against its insured. It could pay them in full or partial satisfaction of a judgment against its insured. It could advance the sum to its insured in lieu of investigating whatever defenses might be available. It could, as was done here, pay them to the injured party, in return for a release of the insurer and not the insured. Other methods of exhausting coverage limits are possible.[20]

8 Id.
9 Id. at 419-20.
10 Id. at 420.
11 Id. at 420-21.
12 Id. at 421.
13 Id.
14 Id.
15 390 S.E.2d 150 (N.C. 1990).
16 N.C.G.S. § 1-540.3 deals with the payment of advance or partial payments to claimants in personal injury claims.
17 390 S.E.2d at 151.
18 Id. at 152.
19 Id. at 154.
20 Id. at 154.

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Because of the number of apparent manners in which a policy limit could be exhausted, the Court found that there was an ambiguity and the insurer was liable to the insured for its failure to defend. However, the decision still left some room for an insurer to utilize the pay and walk clause. The decision held, given the ambiguity, that the insurer's duty to defend continues until its coverage limits have been exhausted in the settlement of claims against the insured or until a judgment against the insured is reached.[21]

There was a lengthy dissent which followed the majority opinion in *Brown*. Justice Whichard, joined by two other judges, believed that there was no ambiguity in the Lumbermens' policy and that it was not in breach for failing to continue to defend Brown. Justice Whichard did not believe that the word "exhausted," nor the manner in which exhausting the policy limits occurred, would be ambiguous.[22] His opinion was that the only reasonable interpretation was that by paying the full policy limits to a party injured by an insured, the insurer had exhausted its limit of liability and its duty to defend.[23] Further, his opinion was that finding the provision to be ambiguous, as did the majority, would render the language allowing termination of the duty to defend meaningless.[24] He wrote:

> The majority would interpret the provision in question to mean "that the insurer's duty to defend continues until its coverage limits have been exhausted in the settlement of a claim or claims against the insured or until judgment against the insured is reached." Where a settlement or judgment has been reached in the factual context presented here, no claim against the insured remains. The duty of the insurer to defend thus terminates inevitably, and contractual provision therefor is unnecessary. To interpret the provision as the majority does thus renders it meaningless surplusage, without purposeful effect.[25]

In effect, the minority states, to only allow an insurer to pay and discontinue the defense of an insured after there is a settlement or judgment, which would necessarily terminate the need for a defense, eliminates any purpose to the pay-and-walk language within the policy.

Another decision which interpreted different language of a pay-and-walk provision was analyzed by the Wisconsin Court of Appeals in *Novak v. American Family Mut. Ins. Co.*[26] In *Novak*, the policyholder who had struck and killed a bicyclist sued American Family for failing to continue defending him. American Family offered its policy limits of $100,000 in exchange for a full release. The decedent's widow rejected the deal and filed a wrongful death suit. American Family thereafter paid its $100,000 limits and obtained a release for the insured to the extent of the payment. It did not provide any further defense. Novak thereafter sued for damages and bad faith.

The provision of the American Family policy differed from that in *Pareti* and *Brown*. It read as follows:

> We will pay damages an insured person is legally liable for because of bodily injury and property damage due to the use of a car or utility trailer. We will defend any suit or settle any claim for damages payable under this policy as we think proper. HOWEVER, WE WILL NOT DEFEND ANY SUIT AFTER OUR LIMIT OF LIABILITY HAS BEEN OFFERED OR PAID. [caps in original][28]

The insured contended that any duty to defend would only be fulfilled upon payment of a settlement agreement that met his approval or by judgment. This would have been the same position found in the previously discussed *Brown* case.

In reviewing the provision at issue, the *Novak* court analyzed a prior decision with a slightly different pay-and-walk clause. In *Gross v. Lloyds of London Ins. Co.*,[29] the insurer sought to terminate its defense of an insured by tendering its policy limits. The language at issue provided for a termination of the defense of an insured after the applicable limit had been exhausted "by payment of judgments or settlements or after such limit of the Company's liability has been tendered for settlements."[30] The *Gross* decision noted that the "tendered for settlements" was a substantial change in language and persuasive evidence of a change in the obligation of the insurer.[31] The decision ultimately held that the insured had never received notice of the provision and it could not be enforced,

[21] Id. at 154.
[22] Id. at 156.
[23] Id. at 156.
[24] Id. at 157.
[25] Id. at 157.
[26] 515 N.W.2d 504 (Wis. App. 1994).
[27] 515 N.W.2d at 505.
[28] Id.
[29] 121 Wis. 2d 78, 358 N.W.2d 266 (1984).
[30] Id. at 506, fn. 2.
[31] Id. at 506.

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but dicta provided that with proper notice an insurer might terminate its obligation to defend by only tendering an offer which would exhaust the policy limits.[32]

Without deciding the issue, the *Gross* decision opened the way for the court in *Novak* to rule directly upon the ability of an insurer to terminate a defense after an offer of the policy limits for settlement. In fact, that is exactly what occurred. The *Novak* Court determined that the mere offer of settlement for the policy limits was sufficient to terminate the duty to defend by the insurer.

While there are no cases in Iowa that have addressed the issue, there are clear principles or guidelines for interpreting insurance policy provisions which might suggest how an Iowa appellate court might rule in a case of this nature. Insurance policies are construed according to the parties' intention at the time the contract was entered into.[33] Unless there is an ambiguity, the intent of the parties to an insurance contract is determined by the language of the policy.[34] The intention of the parties to the contract must be derived from the language of the entire contract.[35] The courts also strive to give effect to all of the language of a contract and an interpretation which gives a reasonable, lawful, and effective meaning to all terms is preferred to an interpretation which leaves part of the contract unreasonable, unlawful or of no effect.[36] Iowa law would certainly seem to avoid the holding in *Brown* which the dissent chastised as effectively eliminating the meaning of the pay-and-walk clause at issue in that case. Further, the case precedents developed in this State would seem to be more akin to those found in *Novak* and *Pareti* in which the pay and walk clauses were found valid and enforceable.

Under the clearly enunciated legal standards for interpreting insurance contracts, there does not seem to be any reason why an Iowa court would not enforce a plainly worded pay and walk clause. Although some may argue that the result of an insurer abandoning its policyholder may be harsh, there is nothing within the statutes of the State of Iowa which would prevent this outcome. Conversely, it is possible that enforcement of this type of provision could produce the effect of a conscientious insurance consumer purchasing additional amounts of coverage to reduce the likelihood of such a predicament. Such higher levels of accident coverage would undoubtedly be beneficial to those persons unfortunate enough to have been injured in an automobile collision.

[32] Id.
[33] See *Ellsworth-William Cooperative Co. v. United Fire & Cas. Co.*, 478 N.W.2d 77, 80-81 (Iowa 1991).
[34] See *Bituminous Cas. Corp. v. Sand Livestock Systems, Inc.*, 728 N.W.2d 216, 220 (Iowa 2007).
[35] See *Schlotter v. Leudt*, 255 Iowa 640, 123 N.W.2d 434, 438 (1963).
[36] See *Weber v. IMT Ins. Co.*, 462 N.W.2d 283, 286 (Iowa 1990) .

IDCA SCHEDULE OF EVENTS

April 1, 2011
IDCA Spring Seminar
8:00 a.m. – 5:00 p.m.
Coralville Marriott Hotel and Conference Center, Coralville, IA

September 15–16, 2011
47th Annual Meeting & Seminar
8:00 a.m. – 5:00 p.m. both days
West Des Moines Marriott, 1250 Jordan Creek Pkwy.,
West Des Moines, IA

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MESSAGE FROM THE PRESIDENT

Stephen J. Powell

When I accepted the President's gavel from Jim Pugh at the Annual Meeting in September of 2010, I was humbled by the honor and excited about the opportunity to tackle the challenges associated with leading the IDCA into the great unknown of 2011. Little did we know that our first challenge would come two weeks later with the sad news that Bob Kreamer, our long time Executive Director, Legislative Lobbyist and good friend, had passed away on October 1, 2010. Although the news was shocking, it came as no surprise to learn that Bob insisted that his fight with cancer remain a private matter. Bob just figured he would beat the cancer, dust off his hands and step up to the podium to give his Annual Legislative Update. Sadly, that was not the way it played out. Bob Kreamer was a powerful advocate for all things related to the IDCA. His temperament, talents and convictions will be greatly missed. Most importantly, Bob was a wonderful human being and a great guy. Farewell to a good friend.

Within days of Bob's passing, the Executive Committee, along with the superb guidance and organizational energy provided by Molly Lopez and Heather Tamminga at Association Management, Ltd. (AML) started the process of developing an action plan for the recruitment of candidates to replace Bob. It was during the early stages of this process that the decision was made to bifurcate the responsibilities of the Executive Director and the Legislative Lobbyist positions. Heather Tamminga was serving as Bob's Assistant Executive Director and she was the obvious choice of the Executive Committee to take over as the Executive Director. Heather knows the IDCA inside and out and in her new role she will continue to do a great job for our organization as she has in the past.

We then turned our attention to the task of the selection of a Legislative Lobbyist. During the month of November, we implemented a plan which encompassed the development of job descriptions, application procedures and interviews of perspective lobbyists. Although the process was time consuming for the Executive Committee and AML, we were gratified when we learned that there were several well qualified applicants who were interested in representing the Legislative Agenda of the IDCA at the Capitol. The Executive Committee conducted an initial screening process and the list was narrowed down to a handful of applicants that were each interviewed in person by the committee. We were extremely pleased to select as our lobbyist the Legislative Group at the Nyemaster Firm headed up by Scott Sundstrom and Brad Epperly. Time was of the essence in this selection process as the 2011 Legislative Session was quickly approaching.

We are very excited about our new partnership with Scott, Brad and their colleagues in the Legislative Group at the Nyemaster Firm. We feel that we are entering a new era of participation in the legislative process. I think that the membership will appreciate the fact that the IDCA will be taking a more active role in the legislative debate on topics that are of mutual interest to our membership. Stay tuned, there will be more to come in our next issue of the Defense Update concerning our legislative progress.

In the midst of our internal transitions, the leadership was confronted with the looming specter of the Retention Vote in the November election. The IDCA went on the record early in its support of the current retention system. The Iowa State Bar Association, the Iowa Academy of Trial Lawyers, the Iowa Association for Justice, the IDCA and ABOTA all joined together in support of the current retention system in the months leading up to the November election. Financial contributions were made by each of these organizations, as well as, many individual firms and lawyers throughout the state in an attempt to educate the public on the value and benefits of supporting the retention of judges based upon nonpartisan statutory criteria. After much discussion, the Board of Directors of IDCA voted to join the other bar and trial organizations in contributing funds to the educational effort undertaken by a number of organizations that were concerned about any attempt to politicize what has been considered to be the "gold standard" of judicial retention systems in the United States. Our collective efforts in this regard will not end with the results of the November retention vote. It does not appear that this issue will quietly fade into the sunset any time soon. The Board of Directors feels that it is critically important that we receive feedback from our membership on this topic. We are currently involved in a number of discussions with the other bar and trial organizations in an attempt to develop strategies in an effort to support our nonpartisan judicial retention system. The advice of our membership in this regard would be greatly appreciated. Please direct any comments or suggestions to Heather Tamminga. Heather can be reached at the following email address: staff@iowadefensecounsel.org. Rest assured that your input will be shared with the Executive Committee and the Board of Directors.

I hope that I have the opportunity to visit with as many of you as possible during the coming year. Please feel free to contact me concerning any issues that you believe would be of mutual interest to our membership. Your ideas, comments and suggestions are always welcome.

Stephen J. Powell, IDCA President

DISCOVERY DEPOSITIONS - A DILEMMA

By Michael W. Ellwanger, Sioux City, IA

Generally there are two separate and distinct purposes for the taking of depositions. The first is as a discovery tool, to evaluate the testimony of the witness in order to prepare for cross-examination at trial. Such a deposition is typically referred to as a "discovery deposition." The second purpose is to obtain testimony to be read to the judge or jury at trial, typically referred to as a "trial deposition." Although these two purposes are different, the procedures for taking the depositions are the same, with one possible exception. If a party wants to take a deposition for use at trial, and the witness is a non-expert who would be otherwise available at trial, one should obtain a stipulation from opposing counsel waiving the availability requirement of Rule 1.704(3). Otherwise, if the witness's attendance could be procured with a subpoena, the deposition is inadmissible hearsay. [Expert witnesses and treating physicians' depositions are admissible under Rule 1.704(4).]

This article is prompted by a situation which occasionally arises when a party wants to take a discovery deposition of the other side's expert. As noted above, the purpose of this "discovery deposition" is to obtain testimony which will assist the attorney in preparing for cross-examination at trial. However, occasionally the opposing attorney wants to convert this discovery deposition into a trial deposition. Opposing counsel will use his opportunity to cross examine the witness extensively. The attorney may wish to go over the witness's qualifications, discuss his CV and get him to elaborate on his opinions. The problems which this presents for the "discovering" lawyer are many:

a. The purpose of taking the deposition in the first place was to better enable counsel to do cross-examination at trial. This opportunity is now lost.
b. The discovering counsel might not ask the same questions or take the same organizational approach if he knew that his discovery deposition was going to end up as part of a trial deposition [although every discovery deposition of an expert is potentially useable as a trial deposition--see Rule 1.704(4)].
c. The opposing counsel has now obtained testimony from his expert which presumably has to be paid for by the discovering attorney. The same holds true for the court reporter fees.

One of the first tip offs that opposing counsel is going to try and convert the deposition into his own trial deposition is if he hires a videographer--although you usually don't even know that until you arrive at the deposition.

I have objected to opposing counsel engaging in this practice on the grounds that opposing counsel has not given "notice" that he is going to take a trial deposition of his own expert. Under Rule 1.707(1), a party desiring to take a deposition "shall give reasonable notice in writing to every other party to the action." I have filed a motion for protective order in one federal case to prevent this from occurring. The relief provided was:

1. Plaintiff's counsel had to pay for the testimonial time of his own expert;
2. Plaintiff's counsel had to pay for the court reporting time; and
3. Counsel should communicate about the length of time they will be taking at future depositions, e.g., I will be using one hour for my own questions after you are done (this was prompted because two lawyers missed their planes).

Even if opposing counsel does give you notice, this still does not solve the main problem. You are still denied the opportunity to take that expert's testimony, research the validity of the statements made and prepare for trial cross-examination. There is nothing in the rules that states that the plaintiff has the right to take his or her trial deposition immediately upon the completion of a discovery deposition. Rule 1.707(1) states that you must give "reasonable notice." I would argue that such notice is not reasonable.

I have never filed a motion to strike the plaintiff's deposition on the grounds that I did not have notice or that the procedure was improper. I do not know what a judge would do with such a question. Opposing counsel is usually allowed the opportunity to ask a few questions to "clarify" some of his testimony in the discovery deposition. However, the problem is when this practice of follow-up with a few limited questions is converted to an outright plaintiff's deposition. I have deposed plaintiff's experts in which I have asked no questions about the expert's qualifications because I didn't want my discovery deposition to be read at trial. This is then followed by plaintiff's counsel questioning the witness extensively regarding his qualifications, identifying his CV as an exhibit, going over the materials reviewed and finally exploring his opinions.

Rule 1.708(1) does state that "Examination and cross-examination of witnesses may proceed as permitted at the trial." This does, at least, establish the right of opposing counsel to do cross-examination. Discovering counsel's response would have to be that the plaintiff is not doing true cross-examination. He or she is going into areas outside the scope of the direct exam. Furthermore, the questions of opposing counsel in such a situation are usually leading. Many of the questions have already been asked and answered in the initial discovery deposition. Opposing coun-

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DISCOVERY DEPOSITIONS - A DILEMMA ... *Continued from page 6*

sel just wants them to be stated more succinctly and perhaps in a more organized fashion.

Rule 1.717 deals with irregularities and objections. Errors or irregularities occurring during the deposition as to the "manner of taking it" are waived unless seasonably objected to during the deposition. You should therefore be prepared to object as soon as plaintiff's counsel goes beyond the typical few clarification questions. The objections might be as follows:

1. This is a discovery deposition taken on notice by the defendant (or plaintiff as the case might be).
2. Opposing counsel has not provided a notice that he is going to depose his own expert at this time, presumably for use at trial.
3. Plaintiff's taking of a deposition of his expert at this time, without notice, is not authorized by the Rules of Civil Procedure. Consequently, a motion to strike this deposition will be filed and an objection to its admissibility at trial will also be made.
4. I will not be paying for the expert's time in responding to these questions.
5. I will not pay for the court reporter's time for transcribing this deposition.
6. And if you really want to be contentious, state that you will be asking for sanctions by way of reimbursement of your own attorney fees while you have to sit there and listen to the opposing counsel's questions.
7. Of course the "nuclear option" is to get up and walk out.

No one wants depositions to be overly combative. Most depositions can be taken very civilly. However, I do think that the above process by opposing counsel is unfair and contradicts the purpose of the rules of discovery. Furthermore, on at least one occasion, I have missed an airplane while opposing counsel is trying to get all of his testimony from his expert. We have also considered not taking discovery depositions for some of plaintiff's experts, for the reason that we felt that the plaintiff might not bring back the expert live. If he has no deposition, then the expert disappears.

One can readily see why opposing counsel might want to utilize this tactic. Sometimes a party has a whole bank of experts and does not want to bring them all in live. This offers counsel the opportunity for a cheap trial deposition of his own expert.

The abuses described herein are not limited just to plaintiff's counsel--defense counsel could probably try the same thing. Once again, it is usually done when a party has a large group of experts and is willing to have some of them testify by way of trial deposition.

If all else fails, you can apply to the court to be allowed to subsequently cross-examine the expert, after you have obtained the transcript back from your original discovery deposition. This could be done telephonically, with or without video. This was authorized by the court in the case described above in which defendant filed for a protective order.

Further information on this topic can be obtained in Riley, Trial Handbook for Lawyers, §52:1-39. In §52:31, the author actually suggests that the attorney follow-up his opponent's discovery deposition with some trial deposition testimony regarding qualifications and opinions. However, no authority for the right to do so is identified. See also Iowa Academy of Trial Lawyers, Trial Handbook, p.183.

In conclusion:

1. Consider filing a motion for protective order prior to the deposition.
2. Be prepared to object at the deposition.
3. Consider filing a motion to strike after the deposition.
4. If necessary, consider filing a request to cross-examine the witness after you have received the witness's transcript.

IN REMEMBRANCE

Angela Simon, IDCA District I Director, died July 31, 2010, after a sudden illness. Born in Fort Sill, Okla., she was adopted at the age of five by her paternal grandparents in Hazel Green, Wis., following the death of her father. Early in her adult life, she worked full-time as an x-ray technician at Mercy Hospital in Dubuque while raising two children and attending Loras College. She graduated from Loras in 1981, and received her J.D. from the University of Iowa College of Law in 1985.

Most of her legal career was spent at the Hammer, Simon & Jensen law firm in Dubuque. During the time she was with the firm, she was an active member of a number of law-related organizations, including serving as District 1 Director on the Iowa Defense Counsel Board of Directors, and received numerous awards.

She became a professor at the University of Dubuque in 2006 where her dedication and knowledge made criminal justice one of the leading majors at the university.

Angela is survived by her son, Jerome; daughter, Abigail; six grandchildren; her brothers, Bernie and Robert; two nieces and two nephews.

Herbert S. Selby, IDCA Past President (1980 – 1981), died September 22, 2010. He was born April 3, 1925, to Rodney Q. Selby and Lucile M. Welker in Des Moines, Iowa. He grew up in Des Moines and graduated from Roosevelt High School in 1942. Rather than wait to be drafted, he volunteered for the Army Paratrooper Corps and was assigned to the 17th Airborne Division. While undergoing final training in England he was accidentally run over by a Jeep, and after several months in the hospital his military career was over. After returning, he attended Drake University and graduated from the University of Iowa College of Law in 1949 and joined the Newton law firm of Cross & Hamill, later Selby & Updegraff. Herb represented the fifth generation of senior-partner status following the Honorable David Ryan (who started the original firm in 1867), W.O. McElroy, John E. Cross, and W. Keith Hamill, all preceded him as senior partners.

Herb was active in both civic and professional endeavors, including 10 years as Newton City Attorney, President of County and District 5A Associations, President of the Iowa Defense Counsel Association, President of the Newton Country Club, the greater Newton Area Chamber of Commerce, the United Way Drive Chairman and later President of the Newton United Way Board. He served as Co-Chair of the Newton School Bond effort in the early 1990s. Herb has served on the Dollars for Scholars and the YMCA Endowment Board. Herb was active in organizing non-partisan campaign slates for municipal elections since 1951. He served as Republican Congressional District Chairman and member of the Republican State Central Committee (1964-1970), and for 12 years, General Counsel to that committee. He served twice as a delegate of the Republican National Convention. He was a long-time Board Member of US Bank in Newton. Herb served as General Counsel for The Vernon Company since 1955.

In the earlier years of his practice, Herb was a defense lawyer in civil matters primarily, hired by insurance companies to defend against personal injury and property claims. For the last four decades, he has practiced with a greater emphasis on corporate, trust, and estate tax areas. Herb has trusts that he has managed and served as a Trustee on for years and continued to manage many of those assets as an agent for the beneficiaries long after the trusts have ended. Many of his clients have been with him through those decades, as well as his long time secretary, Roxie Ashby, who worked with him for nearly 42 years.

Herb married Harriett Kirkham on February 14, 1947, in Des Moines. They had two sons, Spencer Selby (Sara O'Meara), who is a writer and resides in Ames and Kirk Selby who resides in Newton, and a daughter, Martha Selby (Mitchell Squire), who lives in Ames and is on the faculty at the Iowa State University College of Engineering, and two grandchildren, Alexa and Malcolm, both of Ames. Also left to honor Herb's memory is his half-brother, Steven Gatschet of Philadelphia, Pennsylvania. He was preceded in death by his parents, Rodney Q. Selby and Lucile M. Welker Anderson; step-mother, Mary R. Selby; his brother, John R. Selby; and sister, Patricia Young.

Robert M. Kreamer, IDCA Executive Director, died on October 1, at Iowa Methodist Hospital of cancer. Bob was born January 5, 1941, in Sioux City, the first child of Floyd "Pete" and Helen (McDonald) Kreamer. He graduated from Roosevelt High School in 1959 where he was a high school football All-American and first team All-State halfback on the 1958 undefeated state champion football team and was the 1959 state champion and record holder in the 220-yard dash. Bob attended the University of Iowa on a football scholarship and graduated with a B.A. degree in 1963 after lettering in both football and track and serving as president of his social fraternity, Phi Kappa Psi. He graduated from the University of Iowa law school in 1966 with a J.D. degree.

Bob practiced law in Des Moines. In 1968 he was the youngest Republican elected to the Iowa House of Representatives, representing the Beaverdale area in Des Moines. He served three more terms in the Iowa House of Representatives where he was selected by his party caucus to be Assistant Majority Leader, Speaker Pro Tempore, and Assistant Minority Leader.

He was an associate and partner in the Des Moines law firm of Whitfield and Eddy for 25 years and in 1996 formed the Kreamer Law Office. Throughout his legal practice, his area of specialization was lobbying which allowed him to keep daily contact with his beloved State Capitol.

IN REMEMBRANCE ... *Continued from page 8*

Bob was always very active in his community and served on numerous boards and positions of leadership with the YMCA of Greater Des Moines, Beaverdale Little League, Des Moines Community Playhouse, Drake Relays Executive Committee where he served as past chair and past chair of the Hospice of Central Iowa board of directors. At the time of his death, Bob was a member of the Indianola City Council, First United Methodist Church of Indianola, an inductee into the B'Nai B'rith Sports Hall of Fame, and a member of the Iowa High School Athletic Association Football Players' Hall of Fame. The Drake Relays occupied a very special place in Bob's heart, having run in the Drake Relays from elementary school through college. He helped repay the joy he received from competing in the Relays by finishing his 44th year as a Relays official, the last 26 years as Chief-Clerk of the Course. In 1994 he was inducted as a member of the Drake Relays Officials Wall of Fame.

Most important to Bob was his family - he loved cooking for family dinners and attending family reunions. He enjoyed attending his children's and grandchildren's activities. He managed his sons' Beaverdale Little League baseball teams for 15 years and loved the opportunities it provided him to be near them.

Bob enjoyed the theatre, travel, politics, athletics and competition in all forms. Before medical reasons forced him to restrict activities, he won 12 consecutive Iowa Senior Games raquetball singles titles and participated in two National Senior Games in racquetball.

Bob is survived by his wife Donna; sons Todd (Katie and her children) of West Des Moines, Bradley (Mariko) of Nagano, Japan, and Andrew (Sara) of Montgomery, IL; grandchildren Maddie and Ben; brothers James (Judy) of Naperville, IL, Thomas (Jan) of Kansas City, MO, and Richard (Donna) of Osage Beach, MO; and Donna's daughters Dawn (Scott) Sams, Alison (Dan) Flaherty of Indianola and Joy Ashbaugh (Chris Wise) of Iowa City, and their children.

IDCA ANNUAL MEETING RECAP

The 46th Annual Iowa Defense Counsel Association's Annual Meeting & Seminar was held September 15-16, 2010, at the West Des Moines Marriott in West Des Moines. Almost 200 of your colleagues from throughout the state gathered together for two days of education and networking.

Here are some of the highlights.

Seitzinger Award Presented to Gerald Goddard

L to R: Gerald Goddard, Pam Nelson, Edward Seitzinger's daughter, and James Pugh, IDCA Outgoing President

In 1988, IDCA president Patrick Roby proposed to the board, in Edward F. Seitzinger's absence, that the IDCA honor Ed as a founder and its first president and for his continuous and complete dedication to the IDCA for its first 25 years by authorizing the Edward F. Seitzinger Award, which was dubbed "The Eddie Award."

Edward Seitzinger was an attorney with Farm Bureau and besides his family and work, IDCA was his life. This award is presented annually to the board member who contributed most to the IDCA during the year. It is considered IDCA's most prestigious award.

The very deserving recipient of the Eddie Award for 2010 is Gerald Goddard, Cray Goddard Miller & Taylor LLP, in Burlington, IA. Goddard has served in many ways for IDCA, including on the IDCA Board of Directors and organizing IDCA's teleclasses and webinars.

Congratulations Jerry!

Sen. Hogg Receives IDCA Public Service Award

L to R: James Craig, District VI Director from Cedar Rapids, presents Senator Robert Hogg with the IDCA Public Service Award at the Senator's office in Linn County.

IDCA presented the prestigious Public Service Award to Sen. Robert Hogg (D – District 19) based on the merit of his work in helping to defeat the Loss of Enjoyment of Life bill and for his continued effort to be responsive to IDCA's legislative needs.

Sen. Hogg serves District 19, which includes northern and eastern Cedar Rapids in Linn County. He recently was elected to his second term in the Iowa Senate.

Sen. Hogg is chair of the Rebuild Iowa Committee and vice-chair of three committees: Judiciary, Environment & Energy Independence, and the Justice Systems Budget Subcommittee. He also serves on the Appropriations and Ways & Means committees.

Sen. Hogg is an attorney with Elderkin & Pirnie in Cedar Rapids.

IDCA Exhibitors

IDCA wishes to thank the following exhibitors for sharing their products and services with attendees at the Annual Meeting.

- A Legal Resource Aid
- Employment Cost Solutions
- Iowa Legal Aid
- Minnesota Lawyers Mutual Inc. Co.
- Packer Engineering, Inc.

IDCA Platinum Sponsor

Sponsor of the Annual Meeting CD distributed to all attendees!

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Incoming President Stephen Powell presents outgoing President James Pugh with the IDCA President's Award.

Outgoing President James Pugh presents outgoing DRI Representative Michael Thrall with a board plaque honoring Thrall's three years of service as DRI Representative.

Harold Peterson (right) and Michael Thrall (center) present outgoing President James Pugh with the DRI Presidential Award.