

## Discovery of Surveillance Materials in Iowa Workers' Compensation Contested Cases: A Novel Challenge to Current Work Product Privilege Rules

By Michael L. Mock, Parker, Simons & McNeill, P.L.C., West Des Moines, IA

Surveillance of workers' compensation claimants is an important tool used by insurers to verify that suspicious claims are in fact legitimate. In some cases, surveillance shows the claimant is in fact acting consistently with their claimed level of disability, giving the insurer reassurance that its benefit payments are appropriate. In other situations, however, surveillance can show a claimant acting inconsistently with his or her claimed disability, often demonstrating that the claimed disability is exaggerated. On rare occasions, surveillance even detects claimants who are outright defrauding the system. *See, e.g., Cincinnati Ins. Cos. v. Kirk*, 801 N.W.2d 856, 858 (Iowa Ct. App. 2011) (claimant was filmed intentionally striking his arm prior to medical appointments in an apparent attempt to exaggerate his condition and prolong his healing period; the court held that the insurer could maintain a common law fraud suit to recover excess benefit payments obtained through the claimant's fraudulent conduct).

Discovery of surveillance information—both whether surveillance has been conducted as well as the underlying surveillance reports, videos, photos, and audiotapes—has long been a hotly contested issue within the Iowa workers' compensation system. However, a series of agency decisions beginning in the early 1990s established a basic set of rules pertaining to discovery of surveillance materials, based in large part on long-established federal case law. Generally speaking, those current rules are: a) surveillance information and materials are protected as attorney work product prior to

the deposition of the claimant; b) once the deposition of the claimant has been taken, the existence of surveillance as well as any related reports, videos, photos, and audiotapes must be produced (at least if the insurer intends to use those materials at hearing—there is disagreement as to whether surveillance materials the insurer does not intend to use at hearing must be disclosed); and c) if surveillance materials are disclosed to a third-party prior to the claimant's deposition—*e.g.*, by showing them to a doctor or other expert witness—the surveillance materials are immediately discoverable. *See Hoover v. Iowa Dep't. of Ag.*, IWCC File No. 529205 (App. Dec. Apr. 30, 1991) (citing *Daniels v. Nat'l R. Passenger Corp.*, 110 F.R.D. 160, 161 (S.D.N.Y. 1986); *Hikel v. Abousy*, 41 F.R.D. 152, 155 (D. Md. 1966); *Martin v. Long Island R.R. Co.*, 63 F.R.D. 53, 55 (E.D.N.Y. 1974); *Blyther v. Northern Lines, Inc.*, 61 F.R.D. 610, 611–12 (E.D. Penn. 1973)); *accord Ramirez v. Riverview Care Ctr.*, IWCC File Nos. 1243830, 1253740, 1253741, 1253742, 1253743 (App. Dec. Aug. 2, 2002) (citing *Wegner v. Cliff Viessman, Inc.*, 153 F.R.D. 154, 159 (N.D. Iowa 1994)).

Although the basic framework for discovery of surveillance materials has been in place for over two decades, on April 20, 2012, the Workers' Compensation Core Group ("the Core Group") of the Iowa Association for Justice (IAJ) filed a petition for declaratory order pursuant to Iowa Code § 17A.9 with the workers' compensation commissioner. The Core Group sought a ruling from the commissioner declaring that discovery of surveillance materials is not limited by the work product privilege. Instead, the Core Group contended

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that the legislature by statute has explicitly waived all privileges—including the work product privilege—in workers’ compensation claims:

Any employee, employer or insurance carrier making or defending a claim for benefits agrees to the release of all information to which the employee, employer, or carrier has access concerning the employee’s physical or mental condition relative to the claim **and further waives any privilege for the release of the information. The information shall be made available to any party or the party’s representative upon request. . . .**

### **IOWA CODE § 85.27(2011) (EMPHASIS ADDED).**

The commissioner circulated the Core Group petition for comment among the various workers’ compensation stakeholder groups. Property Casualty Insurers Association of America (PCI) intervened to raise the procedural issues of: a) whether the Core Group had standing to pursue a declaratory order action; and b) whether a declaratory order proceeding was the proper vehicle for bringing the issue before the commissioner, rather than seeking a discovery ruling in a contested case proceeding or initiating an agency rulemaking process (full disclosure—the author of this article is counsel of record for PCI in this matter). The Iowa Defense Counsel Association (IDCA), Iowa Insurance Institute (IIS), and Iowa Self-Insurers Association (ISIA) jointly intervened to argue the merits of whether Iowa Code § 85.27(2) constitutes a statutory abrogation of the work product privilege (the IDCA group of intervenors were represented by attorneys Joseph Happe and Elizabeth Meyer of the Davis Brown Law Firm in Des Moines).

PCI filed a brief arguing that the Core Group, in their capacity as attorneys representing injured workers, lacked standing to assert claims on behalf of current or prospective clients because they would not personally suffer any injury from the commissioner’s continued enforcement of the work product privilege to protect surveillance materials from disclosure prior to the deposition of the claimant. Although Iowa Code § 17A.9 provides that “any person” may file a petition for declaratory order, the commissioner’s rules provide that the commissioner will decline to rule on a petition filed by a person who will not be “aggrieved or adversely affected by the failure of the workers’ compensation commissioner to issue an order.” IOWA ADMIN. CODE r. 876-5.9(1)(2). This rule is consistent with Iowa common law rules regarding standing, including cases where groups of attorneys were found to lack standing to challenge court orders on behalf of general groups of current or prospective clients or third-party litigants. See *Iowa Civil Liberties Union v. Critelli*, 244 N.W.2d 564, 567 (Iowa 1976) (criminal defense attorneys and the ICLU lacked standing to raise claims of third-party criminal defendants): *Williamson v. Kelley*, 271 N.W.2d 727, 729 (Iowa 1978) (local attorneys lacked standing to challenge judge’s order closing county courthouse and ordering jury

trials held in an alternate location on behalf of current and prospective clients); see also *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008) (workers’ compensation claimant lacked standing to challenge statute on behalf of all current and future workers’ compensation claimants).

PCI also argued that a declaratory order proceeding was an improper vehicle for objecting to the application of a privilege in the context of discovery. See IOWA ADMIN. CODE r. 876-5.9(1)(5) (by rule, the commissioner should decline to rule on a declaratory order petition if “[t]he questions presented [] would more properly be resolved in [another] type of proceeding”). The Core Group’s position would be a radical new interpretation of Section 85.27(2), would conflict with established agency precedent as to the applicability of the work product privilege, and would be inconsistent with the commissioner’s current discovery rules interpreting Section 85.27(2) as applying solely to the discovery of medical records. See IOWA ADMIN. CODE r. 876-4.17, 4.18, 8.9. PCI argued that it would be more appropriate to permit the issues raised by the Core Group to be litigated in the context of a contested case proceeding where real parties to a live discovery dispute could develop a full evidentiary record on which to base a ruling. Alternatively, PCI argued that the Core Group could elect to petition the commissioner for a formal rule-making process on the issue, which would permit all stakeholders in the system to participate fully in the process and develop a factual record on which to base such a significant potential rule change, while subject to the statutory due process protections which accompany a formal rule-making process.

The IDCA group of intervenors argued the merits of the work product privilege issue. IDCA noted that the work product privilege had its origins in the common law and has been incorporated into the Iowa Rules of Civil Procedure, which in turn are incorporated into the commissioner’s rules for contested case proceedings to the extent they are not in conflict with other commissioner rules or the Workers’ Compensation Act. See Iowa R. App. P. 1.503(3); IOWA ADMIN. CODE r. 876-4.5. IDCA argued that the commissioner’s current interpretation of the application of the work product privilege is consistent with case law from numerous federal and state courts which similarly protect surveillance materials as work product until after the deposition of the claimant. IDCA also made a strong public policy argument that permitting liberal discovery of surveillance materials free from work product privilege would encourage fraud by permitting a claimant to tailor his testimony to meet the evidence in the hands of the employer and to fabricate testimony in areas not covered by the surveillance materials.

The commissioner held a hearing on the Core Group’s petition on June 26, 2012. Counsel for the Core Group, IDCA, and PCI each argued their positions. The commissioner then requested supplemental briefing by the parties as to how other states approach discovery of surveillance materials in workers’ compensation cases. The Core Group and PCI each filed supplemental briefs. PCI observed that other states

utilize a range of approaches to discovery of surveillance materials, often tailored to each state's unique statutes, rules of procedure, and agency rules. However, PCI identified twenty-two states which afford work product privilege or similar protection from discovery to surveillance materials prior to the deposition of the claimant, while identifying only six states where surveillance materials were not protected and discovery was mandatory upon request regardless of whether the claimant had been deposed.

On October 23, 2012, the commissioner entered a Ruling on Petition for Declaratory Order. As a preliminary matter, the commissioner determined the Core Group had standing to bring the declaratory order action based upon their status as attorneys who represent workers' compensation claimants who might be subject to surveillance, and by virtue of their involvement as counsel who regularly propound discovery in agency actions and argue discovery motions before the agency.

Turning to the merits issues, the commissioner first noted that the waiver of privilege language in Iowa Code § 85.27(2) is both intrinsically broad and has been interpreted broadly by the Iowa Supreme Court in the only major case to examine that language. *See Morrison v. Century Eng'g*, 434 N.W.2d 874 (Iowa 1989). The *Morrison* court interpreted the waiver of privilege language broadly enough to permit a defense attorney to meet with a treating physician without the claimant or his counsel present. The *Morrison* court's rationale was based in large part on a policy determination that workers' compensation claims are intended to be handled in an informal and non-adversarial manner (which seems at odds with actual practice in contemporary contested case proceedings).

The commissioner next determined that surveillance information was evidence related to the claimant's physical or mental condition. The commissioner further noted that

the impeachment value of surveillance information also related to the claimant's physical or mental condition because it purports to show inconsistencies between the claimant's report of his condition and his actual activities. Consequently, the commissioner concluded that surveillance information fell within the scope of the broad waiver of privileges for medical information contained in Iowa Code § 85.27(2). The commissioner did, however, carve out an exception for materials containing the "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation", which remain absolutely privileged from discovery.

In reaching his conclusion, the commissioner discussed the role of surveillance in workers' compensation claims. The commissioner acknowledged the impeachment value of such information. The commissioner, however, downplayed the need for delaying discovery of surveillance information, asserting that the impeachment value of the evidence is not significantly diminished by routine discovery prior to the claimant's deposition. The commissioner also noted that surprise is generally rejected in modern litigation in favor of full and open discovery.

At this time, the defense intervenors have not yet determined whether they intend to seek judicial review. Even if judicial review is sought, the commissioner's interpretation of Iowa Code § 85.27(2) will remain in force for pending and future contested cases unless a stay is granted by the district court (and even then, the commissioner's reasoning could be adopted by deputy commissioners hearing individual motions to compel). Employers, insurers, insurance administrators, and defense counsel should assume that surveillance information will be fully discoverable upon request of claimant's counsel unless and until the commissioner's ruling in this matter is challenged and reversed on judicial review.

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## Mark Your Calendar

### Robert J. Barth, Ph.D. Presenting at the IDCA Annual Meeting & Seminar

If you missed the 48th Annual IDCA Annual Meeting & Seminar in September, you missed a great presentation on current changes in Medicare law and Jury Voir Dire, among other great topics. Additionally, there were 10 insurance companies represented by 28 lawyers and claims personnel attending. The IDCA Annual Meeting & Seminar is a great place to network with other defense lawyers and claims professionals in the insurance industry. We hope you will consider attending next year's IDCA Annual Meeting & Seminar, September 19-20, 2013. Robert J. Barth, Ph.D. has agreed to reprise his popular DRI presentation on Resolving Claims Through Facts, Rather Than Expert Opinion. Dr. Barth is just one of many interesting speakers who will be speaking at next year's meeting. Mark your calendars today!



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## A message from the president ...

**T**his is my first letter to you as President of the Iowa Defense Counsel Association. My plan for the year is to continue following the lead set by my predecessors, including Greg Barntsen, who established a new committee structure. I have requested members to volunteer and asked certain individuals within our organization to serve on the various committees.

In September, at the IDCA 48<sup>th</sup> Annual Meeting & Seminar, **IDCA welcomed 18 new members** into the organization. These new members are listed in this issue of *Defense Update*. Please reach out and welcome them into the association. This significant contribution to membership was made in part by the efforts of the Board of Directors, but more importantly, by the Chairs of the Membership Committee, Gale Juhl and Bill Roerman, with significant contribution from Kami Holmes and Carol Kirkley.

Also at the Annual Meeting & Seminar, the **Young Lawyers Committee** held a social event in West Des Moines that was highly attended and will continue at next year's meeting. Ben Weston and Kami Holmes and the Committee also established the IDCA Facebook page and Twitter feed. Please be sure to "Like" IDCA on Facebook at [www/facebook.com/IowaDefenseCounselAssociation](http://www.facebook.com/IowaDefenseCounselAssociation) and "Follow" us on Twitter, <https://twitter.com/IADefense>.



Bruce Walker

### The next step is a technology upgrade so there will be a new, user-friendly, IDCA website!

The **Iowa Supreme Court** continues to ask for participation from our organization, among others, in rule making. I ask that if you want to participate in this area, let one of the IDCA Board of Directors shown below know that you are interested. The most recent Iowa Supreme Court committee contains members of our organization and we would like to continue contributing in whatever fashion that we can.

Contact has been made with the Litigation Section Chair to try to allow the IDCA legislative program to be more successful in the future. The highlights of the current plan are legislation involving the Pitts case, which is a successor to the Langwith case involving insurance agent liability, the seat belt rule, hedonic damages, and adult waivers of minor claims.

The **Legislative Committee**, headed by Greg Witke, is always interested at any developments in the legislative agenda of other organizations so that we can be as proactive or reactive as necessary. Please bring any concerns you have to their attention.

### Other current activities of IDCA include:

- Our organization, by unanimous vote by the Board of Directors, **agreed to contribute \$5,000 to Justice Not Politics to assist in the follow-up of our agreement to support all judges and justices that stood for retention in November.** Members of our Board of Directors actively participated in a number of retention related committees in promoting civics education, responding to misinformation and attacks on the judiciary in various ways.
- IDCA has been involved in **securing a slate of candidates for the State Judicial Nominating Commission.** You should have received an e-mail on this subject. I encourage you not only to vote for the candidates in your district, but also, to promote them to others.
- The IDCA Board also agreed to **support the effort to overturn the rule adopted by the Workers' Compensation Commissioner on production of surveillance and other work product to claimant's counsel.** This is a very important issue to those members who practice primarily in this field and the IDCA is taking this development very seriously because of the impact it has on the defense practice.
- The IDCA Board unanimously agreed to **support an effort to educate the citizens of our state on the significance of the judicial branch of government.** To be able to participate in this essential program, please contact IDCA Headquarters. There are materials available on request and more materials are currently being developed and will be available soon. All you need to do is let us know that you are interested and we will make every effort to assist you in the presentation process. In the past, contact with the principal of your local school, typically, has led to the classroom teacher in the field of government or citizenship who could then schedule you for a short presentation followed by questions by the students. I trust that if you participate in this worthwhile endeavor, you will find it as satisfying as I have when I have presented to our local high school classes.

As you can see, the *Defense Update* Board of Editors is continuing its hard work in providing articles on current issues of concern to our membership. The Board of Editors is listed at the bottom of page one of this issue. If you have any issues that you would like to see covered, or if you wish to contribute to an upcoming issue, please contact one of the editors.

I look forward to serving IDCA during the next year, and in cooperation with the Executive Council and the Board of Directors, I will do my best to serve our association properly.

# Langwith v. American National General Ins. Co. — An Update

By: Benjamin J. Patterson, Lane & Waterman LLP, Davenport, IA

In 2010, the Iowa Supreme Court issued its decision in *Langwith v. Am. Nat'l Gen. Ins. Co.*, 793 N.W.2d 215 (Iowa 2010) (*Langwith I*), overruled by IOWA CODE § 522B.11(2011). In *Langwith I*, the Court made significant changes in the law regarding an insurance agent's duty to their insurance client. See *Langwith v. American National General Ins. Co. – A Test For Determining the Scope of Duty of Insurance Agents*, by Benjamin J. Patterson, Defense Update, Vol. XIV, No. 1 (Winter 2011). Specifically, *Langwith I* overruled *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457 (Iowa 1984) “to the extent it limits an expanded duty to those cases in which the agent holds himself out as an insurance specialist, consultant, or counselor and receives compensation for additional or specialized services.” *Langwith I*, 793 N.W.2d at 223.

Relying heavily on the Restatement (Third) of Agency, the court concluded that a “more flexible method of determining the undertaking of an insurance agent is appropriate.” *Id.* at 221. This new flexible approach was accomplished by the court's holding “[t]hat it is for the fact finder to determine, based on a consideration of all the circumstances, the agreement of the parties with respect to service to be rendered by the insurance agent and whether that service was performed with the skill and knowledge normally possessed by insurance agents under like circumstances.” *Id.* at 222. The court instructed that some of the circumstances that may be considered by the fact finder in determining the undertaking of the insurance agent include:

- the nature and content of the discussions between the agent and client;
- the prior dealings of the parties, if any;
- the knowledge and sophistication of the client;
- whether the agent holds himself out as an insurance specialist, consultant, or counselor; and
- whether the agent receives compensation for additional or specialized services.

*Id.*

Following the *Langwith I* decision, The Independent Insurance Agents of Iowa led a fight in the General Assembly to enact legislation to restore the *Sandbulte* decision. Despite strong opposition from the Iowa Association for Justice, section 45 of Senate File 406 was enacted in 2011. The legislation added new subsection 7 to Iowa Code section 522B.11:

7. a. Unless an insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for consultation and advice apart from commissions paid by an insurer, the duties and responsibilities of an insurance producer are limited to those duties and responsibilities set forth in *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457 (Iowa 1984).

b. The general assembly declares that the holding of *Langwith v. Am. Nat'l Gen. Ins. Co.*, (No. 08-0778) (Iowa 2010) is abrogated to the extent that it overrules *Sandbulte* and imposes higher or greater duties and responsibilities on insurance producers than those set forth in *Sandbulte*.

## IOWA CODE § 522B.11(7)(2011).

While it seems fairly plain that the new legislation restored the status quo before *Langwith I*, the case recently made its way to the Iowa appellate courts for a second time. *Langwith v. Am. Nat'l Gen. Ins. Co.*, No. 11-1924, 2012 WL 4513904 (Iowa Ct. App., Oct. 3, 2012) (*Langwith II*). After the Iowa Supreme Court reversed the summary judgment and remanded the case for trial, but before trial took place, Iowa Code section 522B.11(7) was enacted. *Id.* at \*1. Based on the recently enacted legislation, Fitzgerald again moved for summary judgment, which was granted by the district court. *Id.*

Plaintiffs argued that the legislation abrogating *Langwith I* should not be applied retroactively because laws should not look back and affect accrued rights. *Id.* at \*3. Rejecting this argument, the court pointed out that the Plaintiffs' lawsuit depended upon the Iowa Supreme Court's expansion of an insurance agent's duties, as it did in *Langwith I*. *Id.* By enacting subsection 7 and abrogating *Langwith I*, the General Assembly restored the status quo. In other words, the General Assembly did not take away accrued rights; rather, it took away only what was given by *Langwith I*. *Sandbulte* applied when Plaintiffs' suit was filed and *Sandbulte* applied following the new legislation. *Id.* Accordingly, the court affirmed the district court's grant of summary judgment in favor of Fitzgerald. *Id.*

## IDCA Upcoming Events

### **CLE Webinar**

*Registration form found in this issue! See page 9.*

**Dec. 6, 2012**

Noon – 1:00 p.m.

### **49<sup>th</sup> Annual Meeting & Seminar**

**Sept. 19–20, 2013**

8:00 a.m. – 5:00 p.m.

### **50<sup>th</sup> Annual Meeting & Seminar**

**Sept. 18–19, 2014**

8:00 a.m. – 5:00 p.m.

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# IDCA 48th Annual Meeting & Seminar Recap

The 48<sup>th</sup> Iowa Defense Counsel Association's Annual Meeting & Seminar was held in September at the West Des Moines Marriott in West Des Moines, IA. Nearly 200 attorneys from throughout the state gathered for two days of education and networking. Following are some highlights

## Outgoing Board Members Honored

Joel J. Yunek, Yunek Law Firm in Mason City served on the IDCA Board of Directors for six years as District II Representative.

Christine L. Conover, Simmons Perrine Moyer Bergman PLC, in Cedar Rapids, has served on the Board of Directors since 2003, in positions of Young Lawyers Representative and At-Large Representative. Conover was recognized

for her past work as she moves into the Secretary position on the Board of Directors.

Gregory G. Barntsen, Smith Peterson Law Firm in Council Bluffs, was recognized for his service as President of the IDCA Board of Directors.

Thank you, Joel, Christine, and Greg, for your long-standing commitment to the Iowa Defense Counsel Association.



*Gregory G. Barntsen recognised*

## Seitzinger Award Presented to Kevin Reynolds

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 2012 is Kevin M. Reynolds, Whitfield & Eddy, PLC, in Des Moines. Reynolds has served in many ways for IDCA, including speaker at IDCA events, author and Board of Editors for Defense Update, and co-chair of the Commercial Litigation & Products Liability Committee. Most recently, Reynolds was voted by the IDCA membership to serve on the IDCA Board of Directors. Celebrating with Kevin at the IDCA Awards Dinner are his brothers from Newton, Iowa, and Chicago, Illinois, and stepmother.



*Kevin Reynolds receives award*

## IDCA Congratulates Member J. Michael Weston



*J. Michael Weston*

At DRI's Annual Meeting held in October in New Orleans, DRI welcomed its new officers including President-Elect, J. Michael Weston, Lederer Weston Craig PLC, Cedar Rapids, Iowa. Weston has been an active member in IDCA and has served many roles, including IDCA President in 2002 - 2003. IDCA congratulates Weston as he represents Iowa, and the profession, on a national level.

## Lifetime Award Presented to Philip Willson

The Lifetime Award is bestowed upon IDCA members whose longstanding commitment and service to the Iowa Defense Counsel Association has helped to preserve and further the civil trial system in the State of Iowa.

This year, IDCA is pleased to bestow this award upon Philip Willson. Phil was past president of the IDCA and was a speaker at the IDCA Annual Meeting & Seminar for many years. He is Past President of the Iowa Bar Association and a long-time member of the Iowa Bar Association's Jury Instruction Committee and committee on the Iowa Rules of Civil Procedure. He wrote the book, Iowa Practice with Professor Vestal.



*Wilson receives award*

# IDCA 48th Annual Meeting & Seminar Recap continued

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## Dram Shop Rules Change

Iowa Code § 123.92 requires that all liquor control licensees furnish proof of financial responsibility by the existence of a liability insurance policy in an amount determined by the Division of Alcohol, Beverages and Controlled Substances. The relevant rule is Iowa Admin. Code r. 185-5.8(2)(123). The current policy requires the following coverage:

- a. \$50,000 for bodily injury to or death of one person in each claim or occurrence;
- b. \$100,000 for bodily injury to or death of two or more persons in each occurrence;
- c. \$25,000 for loss of means of support of any one person in each occurrence; and
- d. \$50,000 for loss of means of support of two or more persons in each occurrence.

Historically many carriers took the position that these limits were the maximum provided in any one calendar year. If an accident occurred and one person was injured, the maximum liability for that occurrence would be \$75,000; the maximum

liability for an occurrence with two or more persons would be \$150,000. Furthermore, the position was taken that this would be the most that the carrier would have to pay in a given year, regardless of the number of occurrences.

Historically the Alcohol and Beverages Division has felt otherwise. Armed with an Attorney General's opinion, the Division is in the process of changing this rule, to provide that the coverage required applies to every occurrence in a calendar year. For example, if there is dram shop liability for ten occurrences, each involving one person, the maximum exposure to the carrier will now be \$750,000.

Although the coverage may be minimal per occurrence (unless the licensee elects to get additional coverage), it now appears that it will be impossible for a licensee to "run out" of insurance during the calendar year.

### The practice of "aggregating" coverage will be eliminated.

This new rule is still in the rule making process, and is not yet final. However, it is felt that it will easily be accomplished.



**Iowa Defense Counsel Association Webinar**  
**“Ethical Issues and Practice Issues when Serving as ‘Local Counsel’”**  
**THURSDAY, DECEMBER 6, 2012**  
**12:00 Noon to 1:00 p.m.**

**This webinar is hosted by the IDCA Commercial Litigation & Products Liability Committee.**

**Program:** Ethical Issues and Practice Issues when Serving as ‘Local Counsel’

**Speakers:** Judge Walters (Magistrate - S.D. of Iowa);  
 Jay Casini, Whitfield & Eddy, PLC, Des Moines, IA (Co-Chair IDCA Commercial Litigation & Products Liability Committee)

**About the Program:** This webinar will cover ethical issues and practical considerations when serving as "local counsel," including review and discussion of the specific ethical rules and requirements that apply to both Iowa counsel and "out-of-state" counsel (admitted pro hac vice) with regard to the client, other parties and the Court.

Participants will access the webinar from their computers for video and audio. **A unique link for the webinar will be distributed to you on December 5, 2012.**

**Approved for 1.0 State Credit Hours Activity# 92702 (Includes 1.0 Ethics Hours)**

**Approved for 1.0 Federal Credit Hours**

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