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IOWA DEFENSE COUNSEL ASSOCIATION

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The Impact of *Iowa Insurance Institute v. The Core Group of the Iowa Association for Justice* in Workers' Compensation Cases

by Joseph A. Happe and Sarah K. Franklin, Davis Brown Law Firm, Des Moines, IA



Joseph A. Happe

On June 12, Iowa employers and insurers celebrated a victory, as the Iowa Supreme Court announced its ruling in *Iowa Insurance Institute v. The Core Group of the Iowa Association for Justice*, No. 13-1627 (Iowa June 12, 2015) and re-affirmed defense counsel's right to withhold surveillance of workers' compensation claimants as work product until after the claimant's deposition. The court's decision will once again allow defense counsel in workers' compensation cases the ability to conduct surveillance in order to ascertain the truthfulness of the claimant's subjective complaints.

WHAT BROUGHT US TO THE IOWA SUPREME COURT?

Iowa Code section 85.27(2) requires employees, employers, and insurance carriers to release all information regarding the employee's physical or mental condition related to a workers' compensation claim. The statute specifically states that the employee, employer, or insurance carrier "waives any privilege for the release of the information." See Iowa Code § 85.27(2).



Sarah K. Franklin

In 2012, The Core Group of the Iowa Association of Justice, a group of attorneys representing workers' compensation attorneys, filed a petition for declaratory judgment with then Iowa Workers' Compensation Commissioner Chris Godfrey asking that the commissioner find that section 85.27(2) requires employers or insurance carriers defending workers' compensation claims to immediately provide copies of

Continued on page 3

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WHAT'S INSIDE

The Impact of <i>Iowa Insurance Institute v. The Core Group of the Iowa Association for Justice</i> in Workers' Compensation Cases.....	1
IDCA President's Letter.....	2
2015 Legislative Recap.....	4
Medical Misconduct and Respondeat Superior: A Glimpse at the Frontier.....	7
Young Lawyer Profile.....	9
IDCA Welcomes New Members.....	9
IDCA's New Jurdy Verdict Database.....	10
IDCA Schedule of Events.....	10
IDCA Annual Meeting Registration Brochure.....	11

IDCA President's Letter - *Get Involved*

JUDICIAL NOMINATING COMMISSIONS

In the last few years, IDCA has actively recruited members to apply for statewide and district court judicial nominating commissions. In addition, IDCA also publicizes requests from the Iowa Supreme Court for nominees to various court commissions or task forces.

IDCA's vision is to "protect and promote a balanced civil justice system." To that end, IDCA members want thoughtful, well-qualified individuals serving in our judiciary—not unlike what the greater Iowa bar and general population is looking for in our judiciary. IDCA members serving on judicial nominating commission help promote these goals.

In the last State Judicial Nominating Commission election, two IDCA members filled the two open positions. In the prior election re-forming the commission to parallel Iowa's congressional seats, five IDCA members were elected. Similarly, in the districting nominating commissions, IDCA members have successfully filled openings.

Interested in serving? Watch your email. IDCA will publicize openings and seek candidates. If multiple members apply, the task force will review the candidates and ultimately choose one IDCA member to support for each open position that the task force thinks will be the most effective commissioner.

Questions have arisen about why IDCA chooses among its members seeking election to nominating commissions. It is without a doubt difficult to select one member over another. But if IDCA supports multiple IDCA members running in an election, we risk diluting the power of our vote. Use your experience defending civil claims to benefit our state by helping to select smart, hard-working judicial candidates who have experience with and understand the rules of evidence, rules of discovery and trial procedure.

As we know all too well, the independence of our judiciary has been under attack. Every day our judges and appellate courts are faced with resolving difficult, sometimes politically-charged issues. These attacks are not likely to stop. IDCA members can be a part of the solution in many ways, but one important way is to support Iowa's merit selection process by answering the call to serve on our nominating commissions.

AMICUS OPPORTUNITIES

On another note, kudos to Joe Happe for doggedly hanging in there on behalf of IDCA and several insurance trade groups in challenging the authority of the Iowa Workers' Compensation Commissioner to require surveillance evidence to be produced before the claimant was deposed. IDCA is thrilled to be a part of this successful effort. Stay tuned for the outcome of the petition for rehearing.

Similarly, many thanks to Ryan Koopmans for writing the amicus brief in the *Fagen v. Grand View University* matter regarding production of mental health records. See *Fagen v. Grand View Univ.*, 861 N.W.2d 825 (Iowa 2015). Although IDCA's position did not win the day, IDCA greatly appreciated Ryan's efforts to protect broad discovery of mental health records in claims involving emotional distress.

IDCA welcomes amicus requests for our members' thorny issues that have broader implications for the defense practice. If the issue is one that makes sense for IDCA to take on, we will gladly find advocates like Joe Happe and Ryan Koopmans to assist.



Christine Conover
IDCA President
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Attention young lawyer members: we need good lawyers to take on these amicus projects. They are a perfect opportunity for our young lawyer members to get involved and make a difference. Contact me at cconover@simmonsperine.com if you would like to become involved.

Continued from Page 1

surveillance videos, photographs, and reports concerning the claimant's physical or mental condition upon request. The Iowa Insurance Institute, Iowa Defense Counsel Association, Iowa Self Insurers' Association, Property Casualty Insurers Association of America, National Association of Mutual Insurance Companies, and the Iowa Association of Business and Industry resisted the Iowa Core Group's efforts.

In October 2012, Commissioner Godfrey entered his ruling and held that section 85.27(2) applied to surveillance videos, and that the work product privilege was waived in workers' compensation claims. The commissioner's decision was upheld by the district court and the court of appeals.

WHAT DID THE IOWA SUPREME COURT SAY?

The Iowa Supreme Court considered whether surveillance video of employees claiming workers' compensation benefits was work product. After concluding that the surveillance materials were work product, the court turned to whether materials protected by the work product doctrine were included within the meaning of section 85.27(2), which requires employers to waive "any privilege for the release of the information."

In deciding this question, the court considered the legislature's intent in drafting the language "all information" and "any privilege." The court determined that the entire context of section 85.27 was related to health care. Accordingly, section 85.27(2) applies only to health care-related materials, and not all information and materials. The court also ruled that because the work-product doctrine was not a privilege, the language in the statute stating that the employer "waives any privilege" does not force the employer to waive work-product. Finally, the court determined that it would create absurd results if the legislature had intended to force employers to waive all privileges and protections.

The court also found that the legislature intended the waiver in section 85.27(2) to apply to past physical or mental conditions, not conditions documented while preparing for litigation. The court also noted that most other states allow the employer to withhold surveillance materials until after the employee has been deposed in order to facilitate the truth-finding function of the litigation. Finally, the court found that as long as the employee testifies truthfully, he will not be prejudiced by the fact that he has not had an opportunity to see the surveillance video. In short, because assessing a claimant's credibility is critically important to the workers' compensation system, the court ruled the purpose of the workers' compensation system would be advanced by not allowing claimants to see surveillance videos before they are deposed under oath. Under the court's ruling, defense counsel can now withhold surveillance materials until after the claimant's deposition.

HOW DOES THIS RULING IMPACT IOWA WORKERS' COMPENSATION CASES GOING FORWARD?

Depositions, particularly in workers' compensation matters, are critical to an employer's defense. Using surveillance as a tool is especially relevant in workers' compensation actions because of the injured worker's subjective complaints of pain. If the commissioner's decision had been allowed to stand, claimants who may be exaggerating their symptoms could better tailor their deposition testimony to the evidence and protect themselves from being exposed. Knowing surveillance is a possibility, the injured workers will be more likely to follow temporary or permanent restrictions and tell the truth about it when being deposed. Under the Court's decision, defense counsel can once again use surveillance to test the veracity of the injured worker and withhold that surveillance until after the injured worker's deposition.

On June 23, 2015, the Core Group filed a petition for rehearing asking the Iowa Supreme Court to reconsider its ruling. That Petition is still pending with the court.



2015 Legislative Recap

by IDCA Lobbyists Scott Sundstrom and Brad Epperly, Nymaster Goode, P.C., Des Moines, IA



Scott Sundstrom



Brad Epperly

The first session of the 86th Iowa General Assembly convened on January 12, 2015, (the Iowa Constitution requires the legislature to convene on the second Monday of January of each year). To no one's surprise, for the fifth year in a row the legislative session lasted longer than the per diem payments to legislators (legislators receive per diem payments for 110 calendar days in even years). Legislators' per diem payments expired on May 1, but the session did not adjourn sine die until June 5, for a total of 145 days.

The elections of 2014 did not change control of the legislature (although there were many newly elected legislators). Democrats maintained their control of the Senate by the same narrow 26 to 24 margin. Top leadership remained the same as well: Majority Leader Mike Gronstal (D-Council Bluffs), President Pam Jochum (D-Dubuque), and Minority Leader Bill Dix (R-Shell Rock). Republicans strengthened their control of the House and now hold 57 of the 100 House seats, a net gain of four seats in the 2014 elections. As with the Senate, House leadership was unchanged: Speaker Kraig Paulsen (R-Hiawatha), Majority Leader Linda Upmeyer (R-Clear Lake), and Minority Leader Mark Smith (D-Marshalls town).

The 2015 session focused on two primary issues: (1) the legislature voted to increase the tax on motor fuel by 10 cents a gallon (the first increase since 1989); and (2) extended fighting over state spending, particularly on K-12 public education. The budget fights between Senate Democrats and House Republicans were particularly bitter and protracted this session.

In 2015 we monitored the following legislative activity for the Iowa Defense Counsel Association ("IDCA"):

- 1,733 bills and study bills (study bills are prospective committee bills)

- 118 resolutions
- 630 amendments (amendments can be as simple as changing a single word or number in a bill or can be the equivalent of lengthy, complicated bills in themselves)
- 150 bills passed both chambers

The governor had 30 days after the legislature adjourned sine die (i.e., until July 5, 2015) to approve or veto legislation sent to him in the last three days before adjournment or sent to him after the legislature adjourns. Budget bills are subject to item vetoes, meaning the Governor has the power to veto parts of those bills and allow other parts to become law. The Governor signed, vetoed, or item vetoed all bills on or before July 2. This report will state whether each bill referenced has been enacted. Unless otherwise noted, enacted bills take effect on July 1, 2015.

Bills that were not finally acted upon during the 2015 remain eligible for consideration during the second session of the 86th Iowa General Assembly, which will convene on January 11, 2016.

I. JUDICIAL BRANCH BUDGET

For the past several years, the IDCA has, in conjunction with the Iowa State Bar Association and the Iowa Association for Justice, supported the Judicial Branch in its efforts to secure adequate funding at the legislature. At the beginning of the session, the Judicial Branch sought an additional \$8.2 million (an overall 4.7% increase), which included \$2 million to increase judges' salaries by 4.5%. The Judicial Branch argued that it needed increased funding merely to maintain current service levels because of increased costs, primarily due to built-in (non-judge) increases in employee salaries. Without increased funding, the Judicial Branch warned legislators of a number of severe consequences, including:

- Part-time clerk of court offices;
- Delays in the resolution of legal disputes;
- Delays in the implementation of a new track of litigation, expedited civil actions;
- Limited enhancements to current technological services (EDMS, Iowa Courts Online);
- Travel restrictions for all judicial branch personnel, including judges and court reporters;
- Inability of juvenile court officers to meet face to face with first time offenders;

- Reduction in family treatment courts and other problem-solving courts (e.g., drug courts, veterans courts, mental health courts, and business courts);
- Delays in the processing of child support payments; and
- Delays in development of new technology to provide increased services to lowans.

Given the general acrimony surrounding budget negotiations this year, it came as no surprise that the House and Senate had to work through significant differences in the Judicial Branch budget bill, Senate File 496. The original Senate version of the bill increased the Judicial Branch's appropriation by \$5.5 million over the previous fiscal year and did not include a salary increase for judges. This amount was sufficient to maintain current service levels. The House version of the bill included no funding increase at all, thus risking the decreases in service outlined above. Like all of the other budget bills, SF 496 went to a conference committee to allow legislators to work through their differences.

The result of the conference committee process was something of a surprise.

The Judicial Branch budget bill finally emerged from conference committee and was passed by both chambers on June 2. Disappointingly, the conference committee report was exactly the same as the House version of the bill, and thus provided no increase in funding to the Judicial Branch. However, this was not the end of the discussion.

Behind the scenes, the Judicial Branch was working to secure more funding by offering the state more revenue. Court personnel developed a clever proposal to do so: they proposed changing how the Judicial Branch collects court debt. The Judicial Branch currently has a contract with a third-party vendor to collect court debt, but the vendor does not attempt to collect the debt until it is a year past due. The Judicial Branch determined that if the vendor were authorized to start debt collection efforts much sooner, then it would have significantly better results (because the debt would be less stale) and thus increase the amount of debt collected. This would be the case even though the Judicial Branch would not propose any change to the current fine or fee amounts.

The Judicial Branch was able to sell this idea to legislators, and language making the change was inserted into the standing appropriations bill, Senate File 510. The Legislative Services agency estimated that this would net the state's general fund an additional \$12 million per year. As a result of the increased revenue, two things happened. First, the Judicial Branch's appropriation was increased by \$7.2 million. Second, a Judicial Officer Compensation Fund was proposed to be created. For the next five fiscal years, \$2 million a

year collected from court debt would be deposited into the Judicial Officer Compensation Fund to be used for a potential future judicial salary increase. Judges' salaries were not actually increased now (the legislature must specifically authorize a salary increase at some point in the future), but the belief was that having the money set aside in a fund will make a future judicial salary increase more likely.

The Judicial Branch budget bill, SF 496, was **ENACTED**. The standing appropriations bill, SF 510, with the court debt changes (Division XV, sections 89-96) and the \$7.2 million additional funding for the Judicial Branch (section 21) was also **ENACTED**. However, the Governor vetoed Division XXVII (sections 156 and 157) of SF 510, which created the Judicial Officer Compensation Fund. In his veto message the Governor stated the following:

I am unable to approve the item designated as Division XXVII, in its entirety. This item sets aside a one-time funding source to fund possible raises for judges in the future years. I recommended judicial raises for fiscal year 2016 and I am disappointed the legislature did not fund raises for judges. I believe judicial raises should be funded in a straight-forward manner. Funding ongoing salary expenses with a one-time funding source is a bad budgeting practice.

II. SEAT BELT DAMAGE MITIGATION

The IDCA again pushed for legislation to repeal the arbitrary 10% limitation on the amount of reduction in damages for a plaintiff who fails to wear a seatbelt in an auto accident case. This year, the bill, House File 533, moved further than in years past. Despite strong opposition from both the Iowa State Bar Association and the Iowa Association for Justice, the bill was approved by both a subcommittee and the full House Judiciary Committee. The controversy surrounding the bill prevented it from being debated by the full House, however.

III. EXPERT WITNESS FEES

The Iowa State Bar Association sought to increase the maximum amount of expert witness fees that could be taxed as costs from the current \$150 a day to a total of \$2,500. The bill, Senate File 220, would also have allowed taxing of expert witness fees for statements of health care providers admitted in lieu of testimony pursuant to Iowa Rule of Civil Procedure 1.281. The bill passed the Senate but died in the House Judiciary Committee due to the opposition of House Judiciary Chairman Rep. Chip Baltimore (R-Boone).

IV. STATUTE OF LIMITATIONS FOR SEX ABUSE OF MINORS

As has been the case for the past few years, advocates for victims of sexual abuse sought to substantially increase the statutes of limitation for claims of sexual abuse against minors. Currently,



such claims must be brought within one year of the attainment of majority or within four years of discovery of the claim if the discovery occurred after the attainment of majority. The bill, Senate File 447, would have increased the time periods to bring a claim to 25 years after the alleged victim turned 18, or 25 years after the discovery of the claim if the discovery occurred after the alleged victim turned 18. The bill received emotional support from advocates for victims of child sexual abuse, with grown men crying in Senate subcommittee meetings. The bill passed the Senate but died in the House Judiciary Committee.

V. STATUTE OF REPOSE FOR BUILDING DEFECT CLAIMS

House File 194 would have decreased the statute of repose for claims involving building defects for non-residential construction to 10 years from the current 15 years. The bill passed the House but received no attention in the Senate due to opposition from the Iowa Association for Justice and organized labor.

VI. MUNICIPAL TORT LIABILITY FOR RECREATIONAL ACTIVITIES

Several bills were filed this session to provide liability protection for various types of recreational activity that occurs on publicly owned property (i.e., sledding in city parks and sports activities at schools). After much discussion, a compromise on these bills was reached in House File 570. The bill, which was signed by the Governor on April 1, rewrites a provision of the Municipal Tort Claims Act, Iowa Code § 670.4, paragraphs "n" and "o". As rewritten, those Code paragraphs provide liability protection for:

- (1) claims of negligent design and negligent construction of all public facilities designed for "recreational activities" if the facilities were constructed in accordance with generally recognized engineering safety standards or design theories at the time of construction; and
- (2) claims for injuries or damages based on acts or omissions of municipal employees or the municipality's governing body arising out of recreational activities occurring on the municipality's property where the injuries or damages resulted from the normal and expected risks of the recreational activity and the claimant was voluntarily on the public property where the injuries occurred.

HF 570 was **ENACTED**.

VII. MEDICAL MALPRACTICE – CANDOR BILL

The Iowa Medical Society brought legislation, Senate File 426, to create a system that would allow health care providers to engage in confidential settlement discussions with potentially aggrieved patients. The bill was the result of discussions between the IMS and the Iowa Association of Justice. IDCA had some concerns about what, if anything, the bill would actually accomplish, but stayed neutral out of deference to health care provider clients who were seeking passage of the bill. The bill provides confidentiality for discussions between patients and health care providers and seeks to avoid requiring providers to report settlements and payments reached under the bill to the Iowa Board of Medicine or other regulators. The bill was **ENACTED** and signed by the Governor on April 14.



Medical Misconduct and Respondeat Superior: A Glimpse at the Frontier

by Frank Hart, Nyemaster Goode, P.C., Des Moines, IA



Frank Hart

In its January 14, 2015, decision in *Giudicessi vs. State of Iowa, et al.*, No. 13-2041, the Iowa Court of Appeals weighed in on the murky boundaries of Iowa law of respondeat superior. In doing so, it demonstrated a new willingness to assume a more active role in shepherding aspects of claims that some commentators argue are best left to a jury. The *Giudicessi* decision provides welcome guidance, but

leaves unanswered questions in this dynamic area of the law of employment and professional liability.

BACKGROUND

Sonni Giudicessi was seduced and sexually abused by her former psychiatrist, Sergio Paradiso. The sexual encounters occurred four months after the patient-physician relationship ended, and throughout the abuse, Paradiso knew he “could get in trouble” for the relationship and directed Giudicessi to keep it “secret.” Paradiso’s employer, the University of Iowa Hospitals and Clinics, had state of the art preventative policies consistent with state law and the American Psychiatric Association Code of Ethics.

CLAIMS ASSERTED

Giudicessi sued for medical negligence under a respondeat superior theory. She also pursued claims of negligent hiring, supervision, and retention and breach of contract. The State of Iowa moved for interlocutory appeal after the district court denied its motion for summary judgment on the respondeat superior theory. On appeal, the Iowa Court of Appeals reversed, finding no disputed material fact on the theory of respondeat superior.

THE DECISION

The court’s decision was founded on the conclusion that: (1) the focus on foreseeability should be the intent of the physician – not the subjective belief of the victim; (2) the “transference theory” was irrelevant to the analysis; and (3) under the facts of the case, the trial court was wrong to consider the foreseeability of the relationship as a fact issue for the jury. Without expressly stating as much, the court adopted the equivalent of a two-step Daubert¹ mechanism for evaluating foreseeability under respondeat superior in Iowa. While the court’s analysis of both the transference theory and expectations of the actors is significant and worthy of further discussion, this piece will focus on the foreseeability test.

Traditional Law of Respondeat Superior

The *Giudicessi* court recited Iowa hornbook law on respondeat superior.² Iowa had long looked to the Restatement of Agency in evaluating respondeat superior negligence claims.³ An employer may be held liable for an agent’s conduct committed within the scope of employment. In contrast to a direct claim such as negligent hiring, respondeat superior is a claim of vicarious liability resting on two elements: (a) proof of the agency relationship; and (b) evidence that the harm occurred within the scope of the relationship.⁴

The court recognized that the focus is always the second element and quoted the Restatement:

Section 229(2) of the Restatement (Second) of Agency (1957) lists the following factors to be considered in determining whether conduct of an employee may be characterized as occurring within the scope of the employee’s employment:

- a. Whether or not the act is one commonly done by such servants;
 - b. The time, place and purpose of the act;
 - c. The previous relations between the master and the servant;
 - d. The extent to which the business of the master is apportioned between different servants;
 - e. Whether or not the act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant;
 - f. Whether or not the master has reason to expect that such an act will be done;
 - g. The similarity in quality of the act done to the act authorized;
 - h. Whether or not the instrumentality by which the harm is done has been furnished by the master to the servant;
 - i. The extent of departure from the normal method of accomplishing an authorized result; and
 - j. Whether or not the act is seriously criminal
- Comment a, concerning subsection (2), explains that the ultimate question in determining whether an employee’s conduct falls within the scope of employment is whether or not it is just that the loss resulting from the servant’s acts should be considered as one of the normal risks to be



borne by the business in which the servant is employed. Restatement (Second) of Agency § 229 cmt. a.

“Although the question of whether an act is within the scope of employment is ordinarily a jury question, depending on the surrounding facts and circumstances, the question as to whether the act which departs markedly from the employer’s business is still within the scope of employment may well be for the court.” *Sandman*, 154 N.W.2d at 118 (deciding the question whether employee was acting within scope of employment was properly a question for the court, not jury); cf. *Mary KK v. Jack LL*, 203 A.D.2d 840 (N.Y. App. Div. 1994) (noting that “scope of employment” is usually a jury question, but summary judgment is appropriate where there is no conflicting evidence or the facts are undisputed).⁵

Analysis Of Prior Decisions

The *Giudicessi* court discussed a number of prior decisions exploring the “scope” issue. It analyzed *Godar v. Edwards*⁶ *Riniker v. Wilson*,⁷ *Weems v. Federated Mut. Ins. Co.*,⁸ and *Block v. Gomez*.⁹ The analysis focused on the intent of the agent rather than the expectations or beliefs of the plaintiff.

Two Part Test

Essentially, the court made it clear that Iowa courts must engage in a two part analysis when examining respondeat superior claims of this sort. First, the court must engage in a thorough examination of the facts and make a determination as to the question of scope, focusing on the reasonable and actual beliefs of the actor as to whether the conduct was within the scope; and second, only if reasonable minds could differ on the preliminary analysis is the trial court to allow a claim to go forward.¹⁰

Guidance for Employers

The *Giudicessi* decision provides valuable guidance for employers. To avoid an issue of fact for a jury, it is important to create clear policies that would prevent a dispute among reasonable persons as to whether conduct could be considered within the scope of a relationship. In *Giudicessi*, the important elements were:

1. A clear commandment: “Thou shalt not sleep with any University of Iowa Psychiatry Hospital patient unless it be thy spouse;”
2. Recurring training on the prohibition;
3. Policies prohibiting sexual harassment; and
4. APA ethical prohibitions on sexual relations between physician and current or former patients.

Unanswered Questions and Developing Law

The *Giudicessi* decision left two major questions unanswered: (1) should concepts of strict liability be engrafted upon the law of respondeat superior in the context of a “special” scenario like the doctor-patient relationship; and (2) does the analysis differ where there are facts calling into question subsection (f) of the Restatement – whether or not the master has reason to expect the conduct at issue.

The question of strict liability is a thorny issue. An analysis of recent legislative enactments and developments in the “risk spreading doctrine” could support a prediction that strict liability might one day be imposed in a *Giudicessi* scenario. The *Giudicessi* court did not address the issue because of error preservation constraints.¹¹

The “expectation analysis” is an intriguing issue. Under the Restatement, an act can be “within the scope” if the employer “has reason to expect that such an act will be done.”¹² This highlights the fascinating intersection between the law of negligent hiring or retention and respondeat superior. Where there is evidence that an agent is a “repeat offender” and the employer is actually aware of such conduct, under the *Giudicessi* two step analysis, the matter of scope could be considered a fact question for the jury. This must be contrasted with the situation where the employer has no actual knowledge of the repeat offenses. In such cases, the matter would not go to the jury on the vicarious liability theory of respondeat superior. If there is some evidence that the employer reasonably should have known of the repeat conduct, the matter might pose a jury question – but only under the direct liability theory of negligent hiring or retention.

Conclusion

The *Giudicessi* decision presents numerous interesting questions for Iowa employers – especially medical employers. It provides welcome guidance; but it also highlights some potential areas of risk.

¹ *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

² *Id.* at 7-8

³ *Id.*, p.7 (citing Restatement (Second) of Agency § 229). See also *Sandman v. Hagan*, 154 N.W.2d 113, 117-18 (Iowa 1967).

⁴ See *Godar v. Edwards*, 588 N.W.2d 701, 705 (Iowa 1999).

⁵ *Giudicessi* at 7-8 (quoting Restatement (Second) of Agency § 229(2)).

⁶ 588 N.W.2d 701, 706-07 (Iowa 1999).

⁷ 623 N.W.2d 220, 232 (Iowa Ct. App. 2000).

⁸ 220 F.Supp.2d 979, 994 (N.D. Iowa 2002).

⁹ 549 N.W.2d 783, 785 (Wis. Ct. App. 1996).

¹⁰ *Giudicessi* at 10-12.

¹¹ *Giudicessi* at 6 n.2.

¹² Restatement (Second) Agency § 229(2)(f).

YOUNG LAWYER PROFILE

In every issue of *Defense Update*, we will highlight a young lawyer. This month, we get to know John Lande at Dickinson, Mackaman, Tyler & Hagen, P.C. in Des Moines.



John Lande is an associate attorney at Dickinson, Mackaman, Tyler, & Hagen, P.C. His practice covers a range of complex litigation matters including contract disputes, bankruptcy, business torts, agency regulatory actions, municipal law, and UCC disputes, among others.

He also presents on cybersecurity law to industry groups.

John was born in Ames and grew up on a farm near Alleman. He graduated from Drake University in 2009 and the University of Iowa College of Law in 2011. While in law school he worked at the Dickinson Law firm and the Federal Public Defender in Cedar Rapids, and he was an active member of the moot court, trial advocacy, and alternative dispute resolution programs.

John is a co-chair of the Young Lawyers Division mock trial committee and is a member of the American Bar Association, Iowa State Bar Association, Polk County Bar Association, and Iowa Defense Counsel Association. John has been a Case Law Update presenter at the IDCA Annual Meeting & Seminar for several years, and was a recipient of the IDCA Rising Star Award in 2014. When not at work he enjoys running and spending time with his wife and child.

IDCA WELCOMES 7 NEW MEMBERS

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IDCA's New Jury Verdict Database

IDCA introduced a new Jury Verdict Database when the new website launched earlier this year. Members are indicating this is one of the most valuable resources on the new website!

This resource is only as good as the information IDCA receives! Please be sure to enter in your jury verdicts and help us build this database!

It's easy, and only takes a few minutes.

1. Go to www.iowadefensecounsel.org and **Sign In**. (Read the FAQs for assistance signing in.) FAQs are found online, www.iowadefensecounsel.org/IDCA/About_US/Website_FAQs/IDCA/FAQs.aspx?
2. Under **Members**, select **Jury Verdict Database >> Enter Jury Verdicts**
3. Click the **+** icon, complete the form, and click **Save & Close**.

You are done!

Don't forget to make the IDCA Jury Verdict Database your first stop for information!

IDCA Schedule of Events

September 17 – 18, 2015

51ST ANNUAL MEETING & SEMINAR

Stoney Creek Hotel & Conference Center
Johnston, IA

September 2015

IDCA CLE WEBINAR

Topic and date to be announced. Watch you inbox for details.

December 2015

IDCA CLE WEBINAR

Topic and date to be announced. Watch you inbox for details.



IOWA DEFENSE COUNSEL ASSOCIATION

51st Annual Meeting & Seminar
SEPTEMBER 17 – 18, 2015



IOWA
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51st ANNUAL MEETING & SEMINAR

SEPTEMBER 17–18

ATTENDEE REGISTRATION

2015

Stoney Creek Hotel &
Conference Center

5291 Stoney Creek Court
Johnston, IA 50131

Hotel Reservations

For reservations, call the Stoney Creek Hotel & Conference Center directly at **(515) 334-9000**. Ask for the **Iowa Defense Counsel Association** group room rate.

Room Rates

\$119.00/night plus tax (Single/Double/Triple/Quad)

Check-in: 3:00 p.m.

Check-out: 11:00 a.m.

The cut-off date for the IDCA room block is September 2, 2015.

HOW TO REGISTER

NEW THIS YEAR!

Online Registration, www.iowadefensecounsel.org.

It's fast and easy to register for the Annual Meeting online! Be sure to sign in to receive the IDCA member rate. If you are a member, your Username is the first letter of your first name followed by your last name. (Example: John Doe's Username is JDoe). If you forgot your password, click **Forgot My Password**.

If you are not a member, you need to create an account before you register. We invite non-members to take advantage of IDCA's first-time member promotion. Join now and receive complimentary dues until December 2016 and the member rate to the IDCA Annual Meeting. First-time members only.

Fax: (515) 334-1174

Mail: Iowa Defense Counsel Association
1255 SW Prairie Trail Parkway
Ankeny, IA 50023-7068

Questions? Email staff@iowadefensecounsel.org or call (515) 244-2847.

IDCA requests you do not email registrations with credit card information. This is not a secure way to transmit your credit card information.

CLE HOURS

Approved for 12.0 State CLE Hours (Includes 2.0 Ethics Hours)
Activity Number 189849. Approved for 7.0 Federal
CLE Hours.

REGISTRATION INCLUDES

Full Registration: Thursday and Friday Continental Breakfast, Thursday Awards and Annual Business Meeting Lunch, Thursday Iowa Hall of Pride Evening Reception, access to the Hospitality Room, and all breaks on Thursday and Friday.

Thursday Only Registration: Thursday Continental Breakfast, Thursday Awards and Annual Business Meeting Lunch, Thursday Iowa Hall of Pride Evening Reception, access to the Hospitality Room, and all breaks on Thursday.

Friday Only Registration: Friday Continental Breakfast and all breaks on Friday.

Materials will be provided in advance. Access to download materials will be emailed to attendees one week prior to the Annual Meeting & Seminar. Attendees may print and bring materials to the Annual Meeting & Seminar. Printed materials and CDs will not be available from IDCA.

CANCELLATION/REFUND POLICY

- If written cancellation is received by September 9, 2015, a full refund will be received.
- No refunds for cancellations after September 9, 2015.
- No refunds for No-Shows.

WHAT'S NEW

IDCA Mobile Website

IDCA is launching a mobile website focused solely on the IDCA Annual Meeting. You will have access to your itinerary, all session handouts, information about our sponsors, and the ability to keep up with any last-minute changes or events onsite.

IDCA Gives Back

IDCA is partnering with the Food Bank of Iowa and we are issuing a challenge to our attendees: **Together, our goal is to collect 1,000 high-need items to be distributed to food pantries across the state.**

Join us in this effort by **bringing five or more items to the Registration Desk when you arrive.** All those who donate five or more items—or make a monetary donation—will be entered into a drawing for a new iPad. Two iPads will be given-away on Friday morning.

The most needed items include: high protein foods (canned meats and peanut butter), canned soup, instant oatmeal, boxed meal kits, 100% fruit juice, and paper and personal care products.

Young Lawyer Breakfast and Young Lawyer Track

Thursday, September 17, starting at 7:00 a.m.

Included in Full and Thursday Only Registration Options

All lawyers admitted to the Bar four years or fewer are invited to attend the Young Lawyers Breakfast. This is a great place to meet, connect and ask questions before the Annual Meeting gets started. Stay and participate in the education sessions developed specifically for you by the Young Lawyers Committee.

Women In Law Breakfast

Friday, September 18, 7:00 a.m.

Included in Full and Friday Only Registration Options

All of IDCA's Women in Law are invited to attend breakfast and learn about IDCA's newest committee.

BACK BY DEMAND

IDCA Hospitality Room

Wednesday, September 16, 8:00 p.m.

Thursday, September 17, 8:30 p.m.

Stoney Creek Hotel, Club Room located on the Lower Level
Hosted by the Young Lawyers Committee. All are welcome!

Iowa Hall of Pride Evening Reception
 Thursday, September 17, 6:00–8:00 p.m.
 Included in Full and Thursday Only Registration options.
 Additional tickets, \$50.

Join us for a competitive, and interactive, evening at the Iowa Hall of Pride. The Iowa Hall of Pride showcases the achievements of all Iowans, from student athletes to sports legends, movie stars to scientists, and musicians to politicians. The IDCA Olympics will allow everyone an opportunity to tap into their competitive side. Heavy hors d'oeuvres, bar and transportation provided.



IOWA DEFENSE COUNSEL ASSOCIATION
 51st Annual Meeting & Seminar
 SEPTEMBER 17 – 18, 2015

SCHEDULE OF EVENTS

Time	Wednesday, September 16, 2015
8:00 PM	IDCA Hospitality Suite Open, Hosted by Young Lawyers Committee

Time	Thursday, September 17, 2015
7:00 AM–5:00 PM	Registration Open/Food Bank of Iowa Donations Accepted
7:00 AM	Exhibitor Set-up/Exhibits Open
7:00–8:00 AM	Continental Breakfast/Young Lawyers Breakfast
8:00–8:15 AM	Welcome & Opening Remarks
8:15–9:15 AM	Cyber Threat Brief , SA Jordan T. Lloyd, FBI Des Moines Resident Agency - Cyber, Des Moines, IA

CONCURRENT SESSIONS

	General Session Track	Young Lawyer Track
9:15–10:00 AM	Cyber Exposure for Insureds , Michael Flanagan, BigData Insure, Chicago, Ill.	Mediation from the Perspective of Mediator, Attorney and Claims Adjustor : Justice Baker, Cedar Rapids, IA; Joseph A. Happe, Davis Brown Law Firm, Des Moines, IA; and Todd Witke, EMC Insurance Companies, Des Moines, IA
10:00–10:15 AM	Networking Break with Exhibitors	
10:15–11:00 AM	The Digital Disruptor and Crisis Communications , Mark Mathis, Amperage, Cedar Rapids, IA	Voir Dire: One Lawyer's View , Mark Schultheis, Nyemaster Goode, P.C., Des Moines, IA
11:00 AM–12:00 PM	Doping Allegations and Investigation , Onye Ikwuakor, United States Anti Doping Association, Colorado Springs, CO	
12:00–1:00 PM	IDCA Awards and Annual Business Meeting Lunch	
1:00–2:30 PM	It's Not the Fruit, It's the Root: Getting to the Bottom of Our Ethical Ills , Sean Carter, Lawpsided Press, Inc., Mesa, AZ	
2:30–2:45 PM	Networking Break with Exhibitors	

SCHEDULE OF EVENTS

Time	Thursday, September 17, 2015	
CONCURRENT SESSIONS		
	In-House Counsel Track	Personal Injury Practice Track
2:45–3:15 PM	Corporate Privilege , <i>Michael Mock, Midland National Life Insurance Company, West Des Moines, IA</i>	Case Law Updates Employment/Civil Procedure: <i>Alex Grasso, Cartwright, Druker & Ryden, Marshalltown, IA</i> Commercial/Contracts: <i>Andrea Mason, Lane & Waterman LLP, Davenport, IA</i> Torts/Negligence: <i>Abhay Nadipuram, Lederer Weston Craig PLC, Cedar Rapids, IA</i>
3:15–4:00 PM	Managing Relationships with Outside Counsel – Panel Presentation: <i>Michele Hoyne, Farm Bureau Property and Casualty Insurance Company, West Des Moines, IA; Kent Gummert, Lederer Weston Craig PLC, West Des Moines, IA; Tamara Evans, EMC Insurance, Des Moines, IA; Bob Truhlsen, Casey’s General Stores, Inc., Ankeny, IA; and Lori Brandau, Bradshaw Fowler Proctor & Fairgrave PC, Des Moines, IA</i>	Life Care Plans , <i>Lewis Vierling and Dorothy Vierling, Vierling & Associates Inc., Johnston, IA</i>
4:00–5:00 PM	Class Actions , <i>Laura Geist and Douglas Scullion, Dentons US LLP, San Francisco, CA</i>	Medicare Compliance Update , <i>Jessica Smythe, ISO Claims Partners, NC</i>
5:30 PM	Board shuttle transportation to Iowa Hall of Pride. Shuttle departs at 5:40 PM	
6:00–8:00 PM	Iowa Hall of Pride Evening Reception	
8:00 PM	Board shuttle for transportation back to the Stoney Creek Hotel & Conference Center	
8:30 PM	IDCA Hospitality Suite Open, Hosted by Young Lawyers Committee	

Time	Friday, September 18, 2015
7:00 AM	Registration Open/Food Bank of Iowa Donations Accepted
7:00–8:00 AM	Continental Breakfast/Past Presidents Breakfast/Women in Law Breakfast
7:00 AM–1:00 PM	Exhibits Open
8:00–8:30 AM	Legislative Update , <i>Scott Sundstrom, Nyemaster Goode, PC, Des Moines, IA</i>
8:30–9:00 AM	Update on the Business Court , <i>Judge John D. Telleen, District Court Judge, District 7, Davenport, IA</i>
9:00–9:45 AM	Know Your Audience: Appellate Advocacy Pointers with Video Clips from Oral Argument , <i>Justice Thomas Waterman, Iowa Supreme Court, Des Moines, IA</i>
9:45–11:15 AM	Traumatic Brain Injury Evaluations , <i>Dr. Alan Weintraub, Craig Institute, Englewood, CO</i>
11:15–11:30 AM	Networking Break with Exhibitors
11:30 AM–12:30 PM	Complex Commercial Litigation , <i>Jason M. Casini, Whitfield & Eddy, PLC, Des Moines, IA; and Kent Kelsey, Cabela’s Incorporated, Sidney, NE</i>
12:30–1:00 PM	What to Do When Opposing Counsel Isn’t A Lawyer (A Guide to UPL) , <i>Tre Critelli, Office of Professional Regulations, Des Moines, IA</i>

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Register Online: www.iowadefensecounsel.org

September 17-18, 2015
Stoney Creek Hotel &
Conference Center
5291 Stoney Creek Court
Johnston, IA 50131



CONTACT INFORMATION

Name _____ Firm _____

Address _____ City _____ State _____ ZIP _____

Phone _____ Email _____

Spouse / Guest Name Badge _____

(Iowa Hall of Pride Evening Reception only. Must be registered to attend. Select the Iowa Hall of Pride Only registration option.)

Dietary Restrictions/Food Allergies (Please specify) _____

Special Needs Request (Please specify) _____

(Wheelchair access, etc.)

REGISTRATION FEES

	Member	Young Lawyer Member*	Non-Member**	Young Lawyer* Non-Member	Claims Professionals***
Full Registration	<input type="checkbox"/> \$275	<input type="checkbox"/> \$175	<input type="checkbox"/> \$475	<input type="checkbox"/> \$275	<input type="checkbox"/> \$100
Thursday Only	<input type="checkbox"/> \$185	<input type="checkbox"/> \$100	<input type="checkbox"/> \$285	<input type="checkbox"/> \$200	<input type="checkbox"/> \$100
Friday Only	<input type="checkbox"/> \$120	<input type="checkbox"/> \$75	<input type="checkbox"/> \$240	<input type="checkbox"/> \$150	<input type="checkbox"/> \$100
Iowa Hall of Pride Only	<input type="checkbox"/> \$50				

*Young Lawyer Rate: Admitted to practice four (4) years or fewer.

**Take advantage of IDCA's new member promotion. Join now and receive complimentary dues until December 2016 and the member rate to the IDCA Annual Meeting. First-time members only.

**Claims Professionals Rate: Not receiving CLE.

CLE TRACKS

Attendees must indicate CLE Tracks you plan to attend:

Thursday, September 17, 9:15 – 11:00 AM:

General Session Track or Young Lawyer Track

Thursday, September 17, 2:45 – 5:00 PM:

In-House Counsel Track or Personal Injury Practice Track

OPTIONAL EVENTS

Attendees must indicate in which optional events you will participate:

- Young Lawyers Breakfast
- Thursday Awards and Annual Business Meeting Lunch
- Iowa Hall of Pride Evening Reception
- Past President's Breakfast
- Women In Law Breakfast

Total _____

METHODS OF PAYMENT ACCEPTED

Check Visa Mastercard AMEX

Card # _____ Exp. Date _____

Print Name on Card _____

Signature _____

Register by September 9, 2015

Register online, www.iowadefensecounsel.org, or return completed form and payment to:
Iowa Defense Counsel Association
1255 SW Prairie Trail Parkway
Ankeny, IA 50023
Fax: 515.334.1174

THANK YOU TO OUR 2015 ANNUAL MEETING & SEMINAR SPONSORS

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