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IOWA DEFENSE COUNSEL ASSOCIATION

# DEFENSE UPDATE

SUMMER 2018 VOL. XX, No. 3

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## The Restatement of the Law of Liability Insurance: A Restatement That Wasn't

By Richard J. Kirschman, Whitfield & Eddy, PLC, Des Moines, Iowa



Richard J. Kirschman, Whitfield & Eddy, PLC, Des Moines, Iowa

Things Are Not Always as They Seem; the First Appearance Deceives Many; the Intelligence of a Few Perceives What Has Been Carefully Hidden. – Phaedrus

In more than 25 years as an Iowa lawyer handling product defense and insurance coverage matters, there have been countless times where I consulted one of the many Restatements of law laboriously compiled by the American Law Institute. The consideration and, when appropriate, the adoption of Restatement principles has a long history in Iowa. Numerous Iowa Supreme Court decisions thoroughly consider and, when appropriate under Iowa law, adopt Restatement provisions. *Thompson v. Kaczinski*, 774 N.W.2d 829, 835 (Iowa 2009) (adopting provision of Restatement (Third) of Torts); *Wright v. Brooke Group Ltd.*, 652 N.W.2d 159, 169 (Iowa 2002) (adopting provision from Restatement (Third) of Torts); *Hawkeye-Security Ins. Co. v. Ford Motor Co.*, 174 N.W.2d 672, 684 (Iowa 1970) (adopting section 402A of the Restatement (Second) of Torts). Iowa courts have also not been hesitant to disregard Restatement provisions that are not consistent with Iowa law. *Heinz v. Heinz*, 653 N.W.2d 334, 339 (Iowa 2002) (stating

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## IDCA President's Letter



Kevin Reynolds  
IDCA President

### "Anchoring" and Iowa Damage Awards for Non-Economic Damages

I was diligently working at my desk in my office, preparing the defense of a civil case. An e-mail comes across. The word is that a jury in Sioux County, Iowa, on June 13, 2018, has returned a verdict for \$29.5 million in a medical malpractice case. Very capable and experienced defense counsel were up against a known Reptile Plaintiff. What is going on? Have jurors in Iowa courtrooms "checked" their common sense at the courthouse door? Are Iowa jurors no longer conservative on both liability and damages?

In most cases it seems as though liability or negligence and causation are the primary defenses. This is true today and it will most likely be true for the foreseeable future. The issue of damages, however, is sometimes brushed aside, deemed not worthy of analysis, or altogether forgotten. Are Plaintiff's counsel better at arguing damages? Are lay-person jurors more naturally impelled to action by emotional pleas and arguments? Do defense lawyers have some homework to do when it comes to arguing damages before a lay person jury? If we are to be brutally honest with ourselves, I would say "yes."

A 2016 *Iowa Law Review* article recently came to my attention. The article is: "Countering Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments," 101 *Iowa L. Rev.* 543 (2016). If you defend personal injury cases for a living, you must read this article. To summarize, "anchoring" is a psychological technique used by plaintiff's counsel to grossly inflate awards for personal injury damages, most often emotional distress or pain and suffering damages. This law review article reported the findings of a social science study on juror behavior. Like all studies, it

is not perfect and the methodology could probably be cross-examined to death. Yet, there may be some important lessons to be learned here.

Mock jurors were presented a shortened medical malpractice trial. Six different damages arguments were used. The plaintiff either demanded \$250,000 or \$5,000,000 in non-economic, i.e., pain and suffering or emotional distress damages. Note: jury awards for pain and suffering and emotional distress damages in Iowa have been exponentially increasing, and of great concern to defendants and the business community. In the study, the defense responded in one of three ways: first, it offered a counter-anchor of \$50,000; or, as a second alternative, it ignored Plaintiff's demand; or third, the defense attacked Plaintiff's demand as outrageous. Then, the mock jury would deliberate and render a decision on liability and damages. Both individual juror and collective jury responses were logged.

A couple of excerpts of the law review article are noteworthy:

*"Numerous studies establish that the jury's damages decision is strongly affected by the number suggested by the plaintiff's attorney, independent of the strength of the actual evidence (a psychological effect known as "anchoring"). Indeed, the strength of the effect appears so powerful that some researchers advise that "the more you ask for, the more you get."*

The article continues:

*"For the defendant, what strategy should his or her attorney use to counteract the plaintiff's attempt to anchor with a high ad damnum (damages demand)? Can a defendant attack the plaintiff's high demand and thereby undermine the plaintiff's credibility? Alternatively, should defendants provide a lower damages number to the jury? Such a "counter-anchor" could wash out the plaintiff's anchoring effect, but some attorneys worry juries will interpret such a response as a concession of liability. But are concession affects real?"*

In summary, I would list the following "takeaways" from the anchoring study:

1. Anchoring has a powerful effect on damages.
2. Anchoring has a small negative effect on liability determinations.

3. "Credibility effects" are overwhelmed by "anchoring effects."
4. No defense strategies in the study were an effective antidote to a "high" anchor.
5. A defendant's choice to offer a lower counter-anchor award did not adversely affect liability determinations.
6. Making a counter-anchor in a strong defense case is a bad idea.
7. In close cases or strong plaintiff's cases it is less likely to hurt.

The previous issue of *Defense Update* featured an article titled "Defense Techniques for Combating Plaintiff's Reptile Strategy." Since that article ran Iowa appellate courts have filed two opinions that are very helpful to defendants in grappling with the Reptile strategy. See *Kinseth v. Weil-McLain*, Iowa Sup. Ct. No. 15-0983 (filed June 1, 2018); and *Bronner v. Reicks Farms, Inc.*, Iowa Ct. App. No. 17-0137 (filed June 6, 2018). In *Kinseth*, a plaintiff's verdict of \$4 million compensatory and \$2.5 million in punitive damages in Wright County was reversed by the Iowa Court of Appeals, and that reversal and remand for a new trial was affirmed by the Iowa Supreme Court. A big part of the reason for the reversal was misconduct by plaintiff's counsel in jury argument. In *Bronner*, a plaintiff's verdict of \$1,559,189 in an auto accident case in Howard County, with \$59,000 in medicals, was thrown out by the trial judge, based on lawyer misconduct by the plaintiffs, who were well-traveled Reptilian acolytes.

*Kinseth* and *Bronner* are welcome additions to Iowa jurisprudence. Other cases addressing lawyer misconduct issues are in the appellate pipeline, and the IDCA is filing amicus briefs in at least one of those cases. When it comes to fighting reptiles, some judicial help may be on the way. If you are interested in issues like these—and spend a majority of your time defending civil litigation—we hope to see you at the 54th Annual Iowa Defense Counsel Association Meeting and Seminar at the Embassy Suites by Hilton in Des Moines on September 13 and 14, 2018. IDCA and its membership stands ready, willing and able to slay these dragons.



Kevin M. Reynolds

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that the Iowa Supreme Court “look[s] to the Restatement not as the law but as a guide”); *Moad v. Libbey*, 2015 WL 1055080 at \*2, 863 N.W.2d 37 (Iowa Ct. App. Mar. 11. 2015) (quoting *Heinz* and stating that Restatement provisions are only pertinent to the extent they are deemed consistent with Iowa law). This is particularly important when considering the Restatement of the Law of Liability Insurance as many of the terms and provisions adopted by and advocated for are contrary to established insurance law as applied in Iowa and the majority of other states.

## The American Law Institute

The American Law Institute is an independent organization that works with the stated purpose to “clarify, modernize and otherwise improve the law.” ALI Membership is limited to 3,000 elected members that are comprised of judges, lawyers and law professors. There are more than 4,500 total members, including life, honorary and ex-officio members. The election process commences through a nomination by an ALI member that is supported by two additional members. The ALI recognizes that as a body that is not publicly elected, it “has limited competence and no special authority to make major innovations in matters of public policy.” *A Handbook for ALI Reporters and Those Who Review Their Work*, at p. 6.

The ALI is best known for two distinct publications: 1) Principles of Law; and 2) Restatements of Law. While Principles of Law are aspirational, Restatements are intended, as the name suggests, to provide a restatement of the current and existing state of the law in a particular area. Restatements are crafted to assist courts and legal practitioners. Alternatively, Principles projects are intended to assist legislators and administrative agencies involved in policy making.

Restatements are primarily addressed to courts. They aim at clear formulations of common law and its statutory elements or variations and reflect the law as it presently stands or might appropriately be stated by a court. Principles are primarily addressed to legislatures, administrative agencies, or private actors. They can, however, be addressed to courts when an area is so new that there is little established law.

*ALI website*, Frequently Asked Questions, How Do Principles of Law Differ from Restatements of the Law?

## The Restatement of the Law: Liability Insurance

On May 22, 2018, ALI membership approved and adopted the Restatement of the Law of Liability Insurance. This particular Restatement, which initially began as a Principles project in 2010, has a long, storied history. Despite being conceived and labeled

as a Principles project in 2010 and passing through multiple drafts, that status was changed in October 2014 when, based on the content of the drafts, it became apparent to the ALI that the material presented was more properly a Restatement. Based on the final content, that decision remains in question.

Insurance law is generally established by state legislators and, sometimes by courts through juridical decisions that establish precedent. Unlike ALI, the legislature and judiciary have public accountability. Many courts across the country, including Iowa courts, consider restatement provisions to be persuasive and frequently adopt those principles when making determinations on legal issues. Many of the positions within the Restatement of the Law of Liability Insurance are inconsistent with existing law as interpreted by American courts. Specifically, this Restatement blurs the line between restating and revising the law. Within this Restatement, important sections advocate what the Restatement Reporters believe constitute a “better” approach for liability insurance law, rather than a restatement of the “black letter” law as it currently exists.

Restatements are intended to summarize existing judicial and common law rules in a manner that reflects and provides a clear formulation of the law as it presently exists to assist judges and lawyers. In part, the preeminent status of the ALI as a legitimate and reputable entity is based upon the expectation of practitioners and judges that restatements identify and present the law as it currently stands. Under the ALI Style Manual, however, Restatements are not compelled to follow precedent, but may propose a better rule and provide the rationale for that choice. *ALI Style Manual*, at p. 5. The ALI touts its “significant contribution” in anticipating the direction that the law is trending and expressing that development in a way that is consistent with established principles. *Id.* This search for a better rule and efforts to guide or shape the law, however, has created issues with many provisions within the Restatement of Liability Insurance.

For example, Section 3 of the Restatement reformulates the “plain meaning” rule, a core principle in insurance policy and contract interpretation, as it is currently applied in Iowa and the majority of jurisdictions.

### **The Presumption in Favor of the Plain Meaning of Standard-Form Insurance-Policy Terms**

(1) The plain meaning of an insurance-policy term is the single meaning, if any, to which the language of the term is reasonably susceptible when applied to the claim at issue, in the context of the insurance policy as a whole, without reference to extrinsic evidence regarding the meaning of the term.

(2) An insurance-policy term is interpreted according to its plain meaning, if any, **unless** extrinsic evidence shows that a reasonable person in the policyholder's position would give the term a different meaning. That different meaning must be more reasonable than the plain meaning in light of the extrinsic evidence, and it must be a meaning to which the language of the term is reasonably susceptible.

### Restatement of the Law: Liability Insurance, at §3.

While the long-accepted plain meaning rule is essentially set forth in section 3(1), section 3(2) disregards the rule by permitting extrinsic evidence, including evidence regarding the insured's beliefs, regardless of the clarity of the policy language. Section 3.2 operates similar to an ambiguity standard, which traditionally only applies when the language of the policy is unclear or ambiguous on its face. Conversely, section 3(2) permits the consideration of extrinsic evidence under any circumstances.

Courts typically follow the "plain meaning" rule when interpreting insurance policies and other contracts. The Restatement provision, however, departs from this most basic application of the plain meaning rule by always permitting extrinsic evidence to be considered. The plain meaning rule guides insurers when formulating policy language and in seeking to deliver insurance products that are affordable and predictable. The Restatement's formulation potentially subjects every contested policy provision to the presentation of extrinsic evidence based upon what a policyholder "reasonably expected." Alternatively, under the current iteration of the plain meaning rule, if a policy provision is reasonably susceptible to more than one interpretation it is construed against the insurer and extrinsic evidence is not considered. If the terms are clear, they are applied as drafted and extrinsic evidence is not considered. It is only in cases where ambiguity has been established that extrinsic evidence is considered. This bright line rule is easily followed and only permits the consideration of extrinsic evidence under limited circumstances. The Restatement version of the plain meaning rule will decrease the certainty that is prized by both insurers and insureds, will result in more coverage litigation, will increase the costs of coverage litigation and, based on the uncertainty respecting the application policy terms under this modified plain meaning standard, will certainly decrease the ability to obtain summary judgment.

The Restatement also proposes rules regarding the duty to defend that are contrary to Iowa law. Section 13 of the Restatement mandates that an insurer who has assumed the insured's defense continue to provide a defense until the obligation is terminated

by a declaratory judgment action (Section 18) or, alternatively, the undisputed facts establish that: 1) the defendant is not an insured under the policy; 2) the vehicle involved in the accident is not covered under the policy; 3) the claim was reported late under a claims-made-and-reported policy; or 4) the policy was properly cancelled. *Restatement of the Law: Liability Insurance*, at §13. This provision will also increase the cost of coverage litigation. Rather than permitting an insurer to abandon the defense when undisputed facts establish that coverage is not present, unless one of the four exceptions is satisfied, the insurer would be required to undertake a declaratory judgment action to withdraw from the defense.

Section 19 sets forth the consequences for breaching the duty to defend. Under Section 19, an insurer that breaches the duty to defend has no further right to control the defense or settlement. Further, if the breach was found to be without a reasonable basis, the insurer is obligated to provide coverage for the entire matter, regardless of any policy grounds precluding or providing a basis to contest coverage. Iowa law currently permits an insured to seek bad faith damages for an insurer's failure to provide a defense. An insured cannot, however, recover damages that were not within the terms of the insurance policy. Under the Restatement provision, an insurer may be held responsible to provide coverage for categories of damages that are expressly excluded and for which there is no coverage. For example, while Iowa courts interpret the broad language of CGL coverage to include punitive damage claims, they also enforce exclusionary language that precludes coverage for punitive damages. Under the rule presented in the Restatement, coverage for those claims would be provided.

Section 24 of the Restatement obligates an insurer to make a reasonable settlement decision. A reasonable settlement decision is defined as "one that would be made by a reasonable insurer who bears the sole financial responsibility for the full amount of the potential judgment" and also includes "the duty to make its policy limits available to the insured for the settlement of a covered legal action that exceeds those policy limits if a reasonable insurer would do so in the circumstances." *Restatement of the Law: Liability Insurance*, at §24. An insurer that is found to be in breach of this obligation becomes responsible for all damages awarded at trial, regardless of the insurer's policy language or limits. This section also extends the insurer's liability to "any other foreseeable harm caused by the insurer's breach of the duty" to defend.

While the reasonable settlement decision is comparable to Iowa law as set forth in *Kelly v. Iowa Mutual Ins. Co.*, 620 N.W.2d 637, 643-44 (Iowa 2001), the Restatement penalty significantly deviates from Iowa law. Pursuant to Iowa law, upon proper



presentation of evidence, the insurer may be held responsible for bad faith damages. Under the Restatement, the insurer becomes obligated to pay all damages, including punitive damages, regardless of any existing policy exclusions or monetary limits. Further, comments to the Restatement make it clear that the insurer has a duty to “make an offer to settle,” even when no demand has been made.

## CONCLUSION – The Quest for Consistency and Certainty

Consistency and certainty are critical issues for insurers and insureds. Consistency in insurance law allows for stable, consistent application of laws that insurers, their insureds and counsel can rely upon when litigating disputed policy language. Certainty is important for evaluating risk, for underwriting policies and understanding how the policies will be applied. The Restatement of the Law of Liability Insurance, however, proposes rules that are inconsistent with core, established insurance law principles. As a result, when consulting the new restatement, Justice Scalia's comments should be heeded:

[M]odern Restatements . . . are of questionable value, and must be used with caution. The objective of the original Restatements was “to present an orderly statement of the general common law.” Over time, the Restatements' authors have abandoned the mission of describing the law, and have chosen instead to set forth their aspirations for what the law ought to be. . . . Restatement sections [that aren't supported by precedent] should be given no weight whatever as to the current state of the law, and no more weight regarding what the law ought to be than the recommendations of any respected lawyer or scholar. And it cannot safely be assumed, without further inquiry, that a Restatement provision describes rather than revises current law.

*Kansas v. Nebraska*, 135 S. Ct. 1042, 1064 (Scalia, J. concurring and dissenting). This cautionary advice is critically important. If an ALI-endorsed rule or position is contrary to the prevailing or established law, courts may erroneously understand those statements as guidance on the current state of the law. Because of the need by counsel and the judiciary to rely on reliable, authoritative sources, it is essential that those sources present the best information regarding the governing standards, rather than the drafter's opinions.

## New Lawyer Profile



**Josh Strief**

In every issue of *Defense Update*, we will highlight a new lawyer. This issue, we get to know Joshua Strief at Elverson Vasey, L.L.P., in Des Moines.

Josh Strief is an associate attorney at Elverson Vasey, L.L.P. His practice primarily focuses on insurance defense and subrogation, including personal injury defense, products liability, property damage litigation, and dram shop liability.

Josh was born in Sac City, Iowa. He received his B.A. in Political Science, along with Minors in Music and History, with honors from Drake University and his Juris Doctorate with honors from Drake University in 2014. During law school, Josh was a member of Drake's mock trial and negotiations competition teams, was named to the Order of the Barristers, and was awarded both the Davis, Brown, Koehn, Shors & Roberts Award for Excellence in Advocacy and the 2014 Martin Tollefson Award. In 2014, Josh was admitted to the Iowa State Bar and U.S. District Court, Southern and Northern Federal Districts of Iowa.

Josh was one of the first to try a jury trial in Polk County under Iowa's Expedited Civil Action lawsuit track, and his article "Expedited Civil Actions: Where We Are and Where We Could Go" was published in the Iowa Defense Counsel Association's *Defense Update*, Summer 2017 edition. Josh is a member of the Iowa Defense Counsel Association, Iowa State Bar Association, and Polk County Bar Association. He is also active in the Des Moines community and has held leadership positions with several local organizations, most recently as the Civic and Culture Chair for the Young Professionals Connection, an Initiative of the Greater Des Moines Partnership.

Josh and his fiancé, Daphne, live in Clive. In his spare time, he enjoys golfing, travelling with his fiancé, and hanging out with their dog, Carter.



## IDCA Schedule of Events



## REGISTER ONLINE BY AUGUST 31 TO RECEIVE EARLY-BIRD PRICING [WWW.IOWADEFENSECOUNSEL.ORG/ANNUALMEETING2018](http://WWW.IOWADEFENSECOUNSEL.ORG/ANNUALMEETING2018)

This year's program is approved for 11.25 State CLE Hours (includes 0.75 Ethics Hours) activity number 297709.

### HOTEL INFORMATION

**Reserve by August 30 for IDCA room rate.**

**Reserve online:** <http://group.embassysuites.com/IDCA-AnnualMeeting>

**Reserve by phone:** 1-800-EMBASSY and ask for the IDCA Annual Meeting (IDC)

### Room Rates

\$169/night plus tax. Rate includes two-room suite, daily complimentary made-to-order breakfast and happy hour. Parking is additional. A city-owned parking lot is available across the street for \$1/hour up to 10 hours or \$10/day. Valet parking is \$23/day. (Parking prices subject to change.)

### Area Neighborhoods and Attractions

Embassy Suites by Hilton Des Moines Downtown hotel is located in the heart of downtown Des Moines with scenic views of the river and easy access to an unbeatable range of Des Moines businesses and attractions. The hotel is located within the Historic East Village, considered one of Des Moines most trendy neighborhoods featuring eclectic shopping and dining options. The Court Avenue Entertainment District is located just over the bridge from the hotel and it features numerous dining and entertainment options.

The Embassy Suites by Hilton Des Moines Downtown is surrounded by popular attraction destinations, within a couple of blocks from the hotel is the Des Moines Civic Center, the Iowa Events Center including Wells Fargo Arena, the Science Center of Iowa, the World Food Prize Hall of Laureates, the Iowa Historical Building and Principal Park- Home of the Iowa Cubs.

With so much to do and see, attendees should plan to come early or stay late and Catch Des Moines.

# SCHEDULE OF EVENTS

## THURSDAY SEPTEMBER 13, 2018

- 7:00 a.m.–5:00 p.m. Registration & Exhibits Open
- 7:00–8:00 a.m. *Defense Update* Board of Editors Breakfast
- 8:00–8:15 a.m. Welcome & Opening Remarks
- 8:15–9:00 a.m. **Opportunities and Platforms: Overcoming Adversity**  
*Aaron Thomas, Motivational Speaker, Parkersburg, Iowa*
- 9:00–10:15 a.m. **Accident Reconstruction and Injury Causation Investigations: A Look at Low-Speed Rear-End Collisions**  
*Megan Toney-Bolger and Christopher Andreacovich, Exponent, Chicago, Ill*
- 10:15–10:30 a.m. Networking Break with Exhibitors
- 10:30–11:15 a.m. **A View from the Jury Box**  
*Jason O'Rourke, Lane & Waterman LLP, Davenport, Iowa*
- 11:15 a.m.–12:00 p.m. **Iowa Worker's Compensation Reform 2017**  
*James Bryan, Andersen & Associates, West Des Moines, Iowa*
- 12:00–12:30 p.m. IDCA Awards and Annual Business Meeting
- 12:30–1:15 p.m. Networking Lunch

### CONCURRENT SESSIONS

Choose between the General and New Lawyer Sessions

- 1:15–2:00 p.m. **GENERAL Youtoo#? - Preventing/Defending Employment Claims in the Metoo# Era**  
*Bryan O'Neill, Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, Iowa*
- 1:15–2:00 p.m. **NEW LAWYER Overlooked Basics that Every Young Lawyer Should Know**  
*Judge Christopher Bruns, District VI Court, Cedar Rapids, Iowa*
- 2:00–2:45 p.m. **GENERAL Courtroom Technology Tips and Approaches**  
*Elizabeth Carter, Faegre Baker Daniels, Des Moines, Iowa*
- 2:00–2:45 p.m. **NEW LAWYER Depositions**  
*Stephen Powell, Swisher & Cohrt, P.L.C., Waterloo, Iowa*
- 2:45–3:00 p.m. Networking Break with Exhibitors

- 3:00–3:45 p.m. **Motion in Limine & Voir Dire**  
*Sharon Greer, Cartwright Druker & Ryden, Marshalltown, Iowa*
- 3:45–5:15 p.m. **Case Law Updates Torts/Malpractice/Insurance Litigation**  
*Alex Barnett, Lane & Waterman, LLP, Davenport, Iowa*
- Employment/Civil Procedure**  
*Alex Grasso, Hopkins & Huebner, P.C., Des Moines, Iowa*
- Contracts/Commercial**  
*Stephanie Koltookian, Bradshaw Fowler Proctor & Fairgrave PC, Des Moines, Iowa*
- 5:15–6:30 p.m. **Networking Reception**  
Join us for cocktails and light hors d'oeuvres before enjoying a **night on your own in the East Village.**
- 8:30 p.m. IDCA Hospitality Suite Open  
*Hosted by the New Lawyers Committee*

## FRIDAY SEPTEMBER 14, 2018

- 7:00 a.m.–1:15 p.m. Registration & Exhibits Open
- 8:00–9:00 a.m. **Social Media**  
*Ian Russell, Lane & Waterman LLP, Davenport, Iowa*
- 9:00–10:00 a.m. **Claim Representatives and Counsel: Claims Handling – Perspectives from Insurance Representatives**  
*Joan Ward and Todd Witke, EMC Insurance Companies, Des Moines, and Andrew Johnson, Bradshaw Fowler Proctor & Fairgrave PC, Des Moines*
- 10:00–10:45 a.m. **Iowa Supreme Court Updates**  
*Justice Brent Appel, Iowa Supreme Court, Des Moines, Iowa*
- 10:45–11:00 a.m. Networking Break with Exhibitors
- 11:00–11:45 a.m. **SHOW ME THE MONEY: The 2018 Legislative Session**  
*Brad Epperly, IDCA Lobbyist, Nyemaster Goode, P.C., Des Moines, Iowa and Stephen Doohen, IDCA Legislative Committee Chair, Whitfield & Eddy, PLC, Des Moines, Iowa*
- 11:45 a.m.–12:30 p.m. **The OPR Report**  
*Tré Critelli, Office of Professional Regulation, Des Moines, Iowa*
- 12:30–1:15 p.m. **Bad Faith**  
*Kent Gummert, Lederer Weston Craig, PLC, Cedar Rapids, Iowa*

## SPEAKER HIGHLIGHTS

### Keynote Speaker: Opportunities and Platforms: Overcoming Adversity



**Aaron Thomas, Motivational Speaker  
Parkersburg, Iowa**

Holding true to what you believe is important in life and it will be tested in the most difficult situations. How will you react when life surprises you with adversity? Life presents you with opportunities in both good and bad situations but how an individual responds to those opportunities is crucial. Aaron will challenge you to look at your life, your family and your job to see if you are maximizing the circumstances you are presented with.

Aaron Thomas' father, Ed, was a beloved high school football coach, who not only trained generations of players on the importance of hard work, dedication, excellence, and commitment, but personally put those values into action as the community leader who inspired his town to rebuild in the wake of a deadly EF5 tornado. Not long after the community withstood the disaster of the storm, the small town of Parkersburg, Iowa, endured a far worse tragedy...the fatal shooting of Coach Ed Thomas by a former player with mental issues.

Following his father's murder, Aaron was approached to return home to take over Ed's responsibilities as athletic director, and to continue the legacy his father had built in being not only a school leader, but in being an example for the town to follow. Aaron, his wife Ellie, and their three sons moved back to Parkersburg one month after his father was murdered.

Rather than shun the family of their father's murderer and perpetuate the tragedy Parkersburg faced, Aaron and his family called for understanding and forgiveness, because that's what Ed Thomas would have wanted them to do.

In this incredible story of ordinary people thrust into an extraordinary situation, Aaron Thomas shares his family's journey of showing uncommon strength during the darkest of times.

Aaron will discuss how to deal with adversity and how to make the most of all opportunities. You will be challenged to look at your life, your family, and your organization to see if you are being a true difference maker. He and his family are the recipients of the Arthur Ashe Award for Courage presented at the 2010 ESPY Awards, for being the people Ed Thomas would have expected. Aaron also received the Missouri Valley Conference 2010 Most Courageous Award.

### Accident Reconstruction and Injury Causation Investigations: A Look at Low-Speed Rear-End Collisions



**Megan Toney-Bolger, Exponent  
Chicago, Ill**

This presentation will provide an introduction to accident reconstruction and biomechanical analyses associated with minor vehicle impacts. Basic concepts and engineering principles utilized in these analyses will be explained. Real-world examples will be discussed, and potential red flags for when accident reconstruction and/or biomechanics analyses may be helpful will be highlighted. We will also present new data from recent crash testing and discuss the benefits and limitations associated with relying on vehicle electronic data recorders (EDRs) in low-speed collisions.

*Dr. Megan Toney-Bolger, Ph.D., Manager / Biomechanics with Exponent, received her B.S.E. degree in Biomedical Engineering from Duke University in 2009 and her Ph.D. in*



**Christopher Andrecovich, Exponent  
Chicago, Ill**



*Applied Physiology from Georgia Institute of Technology (Georgia Tech) in 2014. She was and NIH Fellow for Prosthetics and Orthotics Research Training, 2009-2012 and a finalist for P.E.O. Scholar Award from Georgia Institute of Technology.*

*Mr. Andrecovich has expertise in the fields of accident reconstruction, and impact and injury biomechanics. His area of focus involves accident reconstruction analysis through the use of conventional techniques and computer simulation of vehicle collisions that utilize time-based energy and momentum models.*

### A View from the Jury Box



**James Bryan, Anderson & Associates  
West Des Moines, Iowa**

*James works as in-house counsel for Travelers Insurance. He litigates both workers' compensation cases and tort cases involving Travelers' Insureds. James earned a J.D., with honors, from Drake University Law School in 2007. He was the winner of the Drake Law School Supreme Court Day Competition in 2007. James started his legal career in the Polk County Attorney's Office. Prior to joining Travelers, James worked for the Des Moines firm of Grefe & Sidney.*

A comprehensive look at the Iowa Legislature's changes to the Iowa Workers' Compensation Act, enacted July 1, 2017. This was the most substantial change to Iowa work comp laws in decades.

*James works as in-house counsel for Travelers Insurance. He litigates both workers' compensation cases and tort cases involving Travelers' Insureds.*

*James earned a J.D., with honors, from Drake*

### Overlooked Basics that Every Young Lawyer Should Know



**Judge Christopher Bruns, District VI  
Court, Cedar Rapids, Iowa**

Covering important but often overlooked basics of appearing in court that are vital to building and maintaining a reputation as a good lawyer. This will include, but not be limited to:

- Preparing good clean pleadings, motions, and briefs;
- Presenting at hearings and trials;
- Maintaining professionalism while zealously advocating for clients; and
- Not so obvious basics every lawyer should know and follow.

*Judge Christopher Bruns, Cedar Rapids, was appointed to the bench on December 17, 2014. He earned his bachelor's degree in History and Political Science from Drake University in 1988 and his law degree from Drake Law School in 1991, Order of the Coif. After graduation from law school, Judge Bruns was in private practice with Cedar Rapids law firms until his appointment to the bench. His practice primarily involved civil jury cases. He is a Fellow in the Iowa Academy of Trial Lawyers, member of Abota, member of the Linn County Bar Association, and member the Iowa Judges' Association.*

## Claim Representatives and Counsel: Claims Handling – Perspectives from Insurance Representatives

Joan Ward and Todd Witke, EMC Insurance Companies, Des Moines, Iowa

Andrew Johnson, Bradshaw Fowler Proctor & Fairgrave, PC, Des Moines, Iowa

Join us for this session as we explore the interaction between counsel and the claims professional. We'll cover the top things counsel should do to be retained again, items the claims professional needs for their file and how to work in collaboration to achieve the best possible outcome.

### The OPR Report

A review of the recent and historical data regarding the



Tré Critelli, Office of Professional  
Regulation, Des Moines, Iowa

practice of law in Iowa from the perspective of the boards and commissions of the Office of Professional Regulation.

*Tré Critelli serves as the Director of the Office of Professional Regulation, which oversees the regulation, education and discipline of Iowa's lawyers, court reporters and court interpreters.*

*He was appointed to the position in December of 2016. Prior to his appointment he*

*served as an Assistant Director of Boards and Commissions administering the Continuing Legal Education (CLE) and Unauthorized Practice of Law (UPL) Commissions, staff lawyer for the Judicial Education Division and Assistant Ethics Counsel for the Attorney Disciplinary Board.*

## NETWORKING EVENTS

### **IDCA Hospitality Room**

**Wednesday, September 12, 8:00 p.m.**

**Thursday, September 13, 8:30 p.m.**

**Hosted by the New Lawyers Committee**

Registered attendees are welcome to meet up and exchange stories at the end of each day in the Hospitality Room. This is a great opportunity to get to know other members in a relaxed atmosphere.

### **Thursday Evening Reception**

**Embassy Suites by Hilton Des Moines Downtown, Patio**

**Thursday, September 13**

**5:15–6:30 p.m.**

**Included in Full and Thursday Only Registration options**

Join us for a beautiful evening on the patio overlooking the Simon Estes Amphitheater. Enjoy light hors d'oeuvres and cocktails before heading out for a night on your own in Des Moines' East Village.

## EXPLORE THE HISTORIC EAST VILLAGE

Following Thursday evening's reception, we invite you to discover Des Moines' East Village. From unique locally-owned restaurants to wine bars and Iowa brews, there are countless activities to explore all within walking distance of the hotel. Restaurant reservations are recommended. Go to <https://eastvillagedesmoines.com/explore/eat-in-the-east-village> to learn more!

# IDCA ATTENDEE REGISTRATION

## REGISTER ONLINE

[www.iowadefensecounsel.org/AnnualMeeting2018](http://www.iowadefensecounsel.org/AnnualMeeting2018)

### CONTACT INFORMATION

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

Dietary Requirements/Food Allergies (Please specify) \_\_\_\_\_

Special Needs Request (Please specify) \_\_\_\_\_

(Wheelchair access, etc.)

### REGISTRATION FEES

	Full Registration		Thursday Only		Friday Only	
	On/Before Aug. 31	After Aug. 31	On/Before Aug. 31	After Aug. 31	On/Before Aug. 31	After Aug. 31
Member	\$275	\$325	\$185	\$235	\$120	\$170
In Practice 4 Years or Less – Member	\$175	\$225	\$100	\$150	\$75	\$125
Non-Member*	\$475	\$525	\$285	\$335	\$240	\$290
In Practice 4 Years or Less - Non-Member*	\$275	\$325	\$200	\$250	\$150	\$200
Claims Professional**	\$100	\$150	\$100	\$150	\$100	\$150

\*Take advantage of IDCA's new member promotion. Join now and receive complimentary dues until December 2019 and the member rate to the IDCA Annual Meeting. First-time members only.

\*\*Claims Professionals Rate: Not receiving CLE.

Total \$ \_\_\_\_\_

### I PLAN TO ATTEND

These events are included your registration fees.

For planning purposes, indicate in which you will participate:

Thursday Networking Lunch     Thursday Evening Reception

### METHOD OF PAYMENT ACCEPTED

Check     Visa     Mastercard     AMEX

Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_

Print Name on Card \_\_\_\_\_

Signature \_\_\_\_\_

Register online,

[www.iowadefensecounsel.org/AnnualMeeting2018](http://www.iowadefensecounsel.org/AnnualMeeting2018)

or return completed form and payment to:

Iowa Defense Counsel Association

1255 SW Prairie Trail Parkway

Ankeny, IA 50023-7068

Fax: (515) 334-1174

For security purposes, do not email payment information.

**Early-bird registration ends August 31, 2018.**

### CANCELLATION/REFUND POLICY

If written cancellation is received by September 7, 2018, a full refund less a \$50 processing fee will be issued. No refunds for cancellations after September 7, 2018; no refunds for no-shows.



## IDCA Annual Meetings

September 13–14, 2018

### **54<sup>TH</sup> ANNUAL MEETING & SEMINAR**

*September 13–14, 2018*

Embassy Suites by Hilton, Des Moines Downtown

Des Moines, IA

*Register online, [www.iowadefensecounsel.org/AnnualMeeting2018](http://www.iowadefensecounsel.org/AnnualMeeting2018)*

September 12–13, 2019

### **55<sup>TH</sup> ANNUAL MEETING & SEMINAR**

*September 12–13, 2019*

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