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# DEFENSE UPDATE

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## Iowa's Economic Loss Rule: An Overview and Discussion of the Professional Negligence Exception

By Frederic C. Hayer

Aspelmeier, Fisch, Power, Engberg & Helling, P.L.C.



Frederic C. Hayer

The economic loss rule is a powerful legal doctrine that can be used to summarily dispose of improper negligence claims. As a common law doctrine, the economic loss rule differs widely across the states. Currently in Iowa, some aspects of the economic loss rule are fairly well determined, while other aspects are still hotly contested.

Generally stated, "the economic loss rule bars recovery in negligence when the plaintiff has suffered only economic loss."<sup>1</sup> Basically, the economic loss rule will only apply to bar negligence claims. Further, the rule will bar negligence claims for "purely economic damages".<sup>2</sup> It is important to note that phrases like "economic loss" and "pure economic damages" are legal terms of art and that the full potential of the economic loss rule may not be realized if these phrases are understood only according to their everyday meaning.

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## IDCA President's Letter



**Susan Hess**  
IDCA President

Greetings, everyone:

The old adage is: "Time flies when you are having fun." This year, serving as your IDCA President has flown by for me and was not only fun, but also a rewarding and humbling experience. While I won't pass the gavel until September, this is my last opportunity to address our membership in "Defense Update".

As the first order of business, allow me to begin by expressing my sincere gratitude for all the help, guidance, and encouragement that so many of you have shared with me these past months. I would be remiss if I did not begin by thanking my team at Hammer Law Firm, PLC, for holding down the proverbial fort while I was at meetings in Des Moines, closeted away on Zoom meetings, or focused on the representation of our interests as the defense bar.

In the past three President's Letters that I authored, I attempted to focus on several themes:

- The quality of the CLEs that we sponsor;
- The numerous professional benefits of membership in IDCA;
- The networking opportunities that come with IDCA membership;
- An emphasis on health and wellness—both physical and mental;
- The importance of involvement and participation in the IDCA;
- Examples of leadership within our bar, and specifically this Association; and

- The high standards of the defense bar, particularly as exhibited by the quality of programming presented each year at our annual meeting.

I am proud of those who have gone before us and equally gratified by the quality of the leadership team present at the helm of IDCA. We should also thank those who volunteered their time and expertise this year to make our inaugural session of web-based CLE programming such a success. As a reminder, there is one more session being held in August focusing on employment law updates that are especially important given recent legislative changes in this area. Again, thank you to all of you who make IDCA the valuable resource that it is!

Speaking of great teams, I had the privilege to represent IDCA at the DRI Regional Meeting of the Mid, Atlantic, and Northeast Regions in Austin, Texas, this past April. The meeting was held in conjunction with the DRI Trucking Law Seminar. The programming at the Seminar was informative beyond measure, particularly in the area of accident reconstruction. When a presenter can get nearly 500 insurance defense attorneys to gasp audibly and collectively in response to their material, you are at a good CLE! Additionally, the Regional Meeting was an excellent opportunity to network with practitioners from around the nation. I would highly encourage our IDCA membership to check out what DRI has to offer. You will be pleasantly surprised with resources such as the DRI Expert Bank, networking opportunities, and high-quality CLE programming.

On the topic of networking opportunities and high-quality CLE programming, it is time to put the IDCA Annual Meeting on your calendars! While it is only August, the Annual Meeting will be here in a matter of weeks. I am excited to share the agenda that Sam Anderson has crafted and once again we will have stimulating panel discussions, presenters from all levels of the Iowa judicial branch, and keynotes from national experts such as John Remsen, Jr. of the Remsen Group in Atlanta, Georgia.

I hope to see you in Des Moines! Until then, have a safe, healthy, and productive summer!

Susan M. Hess

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## PURE ECONOMIC LOSS

In *Annette Holdings, Inc. v. Kum & Go, L.C.*, Justice Mansfield—in perhaps the most comprehensive discussion of the economic loss rule by the Iowa Supreme Court—quoted Peter Benson while detailing the history of the rule. This quote defined pure economic loss as “economic loss unrelated to injury to the person or the property of the plaintiff.”<sup>3</sup> While the pure financial loss incurred by the plaintiff in *Annette Holdings* certainly falls within the ambit of Iowa’s economic loss rule, it is clear from the Iowa case law and Justice Mansfield’s discussion thereof that the rule may encompass physical consequences beyond the mere “loss of money”.

For example, in *Nelson v. Todd’s Ltd.*, the Iowa Supreme Court held that losses due to spoiled meat caused by a defective curing agent were economic losses for which recovery under the tort theory of strict liability would be improper. Essentially, the economic loss rule serves as a bar against tort claims whose underlying circumstances favor the application of contract law. As such, whether a loss is considered to be purely economic depends on an analysis of whether the loss should be properly addressed under contract or tort law.<sup>4</sup>

## EXCEPTIONS TO THE ECONOMIC LOSS RULE

A negligence claim for a purely economic loss may still survive if it falls within one of the recognized exceptions to the economic loss rule. One of these exceptions is for claims of negligent misrepresentation. The Iowa Supreme Court has held that because the tort of negligent misrepresentation is “an economic tort allowing for recovery of purely economic damages”, “[a]pplication of the economic loss doctrine in negligent misrepresentation cases would essentially eliminate the tort”.<sup>5</sup> Furthermore, the economic loss rule does not apply in circumstances where a duty of care is breached that arises out of a principal-agent relationship.<sup>6</sup>

Another exception to the economic loss rule applies in cases involving professional negligence. This exception certainly applies to claims involving the professional negligence of attorneys and accountants.<sup>7</sup> However, the question of whether an exception to the economic loss rule extends to professional negligence beyond that of attorneys and accountants is not clearly answered by Iowa case law. A commonly litigated issue is whether an exception to the economic loss rule exists which would allow claims to be brought alleging professional negligence of architects and engineers.

## PROFESSIONAL NEGLIGENCE EXCEPTION FOR ARCHITECTS AND ENGINEERS?

Although Federal Courts have explicitly held that there is an exception to Iowa’s economic loss rule for claims relating to the professional negligence of architects and engineers, Iowa state courts provide a less stable basis for this proposition. The Federal Courts which have recognized such an exception inevitably trace their reasoning back to the Iowa Supreme Court’s decision in *Kemin Industries, Inc. v. KPMG Peat Marwick LLP*. As only Iowa courts can create state substantive law, *Kemin* should be carefully examined to determine if and to what extent it supports the proposition that there is an exception to Iowa’s economic loss rule for claims involving the professional negligence of architects and engineers.

*Kemin* involved a suit by an agricultural feed company against their accounting firm alleging breach of contract and negligence. After the company received a favorable verdict on both its breach of contract and negligence claims, the accounting firm moved to reduce the judgment by the percentage of the company’s contributory fault because the issue should have been submitted to the jury solely on the tort theory. The district court granted this motion, and the company appealed.

In the first of the company’s two arguments in support of its appeal, the company contended that the comparative fault law did not apply to actions that only seek recovery for economic loss. The Court rejected this argument and distinguished the facts of the case at hand on the basis that they dealt with “the specialized situation of professional negligence.”<sup>8</sup> Latching on to this language, Federal Courts have interpreted *Kemin* to hold that “the economic loss doctrine does not apply to professional negligence claims.”<sup>9</sup>

The fundamental weakness in this interpretation is that, because only the issue of whether Iowa’s comparative fault law applied to actions seeking recovery for economic loss was addressed, the *Kemin* Court never directly discussed or decided the issue of whether there is an exception to Iowa’s economic loss rule for professional negligence. On the contrary, rather than being a point of contention, it was apparently acknowledged by both parties and the Court that “a professional negligence claim against an accounting firm may be brought under a tort theory”.<sup>10</sup>

Furthermore, as *Kemin* involved the recognized exception to the economic loss rule for cases involving the professional negligence of accountants, extrapolating its holding to include the professional negligence of architects and engineers is certainly a stretch. In their defense, the Federal Courts to have so interpreted *Kemin* were using inferences from the decision to make their best

"Erie guess" about how the issue would be resolved by an Iowa court. However, recent Iowa court precedent creates doubt as to whether this guess was correct.

In generally discussing the parameters of Iowa's economic loss rule in *Annette Holdings*, Justice Mansfield noted that an exception to the rule exists "in actions asserting claims of professional negligence against attorneys and accountants." Although this is far from a holding, if Justice Mansfield understood a broad exception to the economic loss rule to exist in all cases of professional negligence—or even in cases of the professional negligence of architects and engineers—he did not say so.

Furthermore, the Iowa Court of Appeals recently wrote that "no case has exempted engineering negligence from the economic loss rule."<sup>11</sup> Although dicta, this clearly repudiates the Federal Court's reliance on *Kemin* in creating a broad exception to the economic loss rule for all cases involving professional negligence.

## CONCLUSION

In determining whether the economic loss rule may be successfully employed to defend against negligence claims, due care should be given to determining whether the claim is for "purely economic losses" as interpreted by Iowa courts. If it is determined that a claim meets these criteria, it should be analyzed to determine if a recognized exception applies that would allow the claim to be brought. Although Federal Courts in the past have interpreted Iowa law to create exceptions to the economic loss rule for cases involving the professional negligence of architects and engineers, the legitimacy of these past interpretations is—especially in light of recent Iowa precedent—dubious. From the defense perspective, if facing claims based on the professional negligence of architects or engineers, the economic loss rule should be given due consideration.

1 St. Malachy Roman Cath. Congregation of Geneseo v. Ingram, 841 N.W.2d 338, 351 (Iowa 2013) (quoting *Annett Holdings, Inc. v. Kum & Go, L.C.*, 801 N.W.2d 499, 503 (Iowa 2011)).

2 *Nebraska Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.*, 345 N.W.2d 124, 128 (Iowa 1984).

3 *Annett Holdings, Inc. v. Kum & Go, L.C.*, 801 N.W.2d 499, 503 (Iowa 2011) (quoting Peter Benson, *The Problem with Pure Economic Loss*, 60 S.C. L.Rev. 823, 823 (2009)).

4 *See Nelson v. Todd's Ltd.*, 426 N.W.2d 120, 122–125 (Iowa 1988) ("When, as here, the loss relates to a consumer or user's disappointed expectations due to deterioration, internal breakdown or non-accidental cause, the remedy lies in contract. Tort theory, on the other hand, is generally appropriate when the harm is a sudden or dangerous occurrence, frequently involving some violence or collision with external objects, resulting from a genuine hazard in the nature of the product defect." (citations omitted)); *see also Determan v. Johnson*, 613 N.W.2d 259, 261–264 (Iowa 2000).

5 *Van Sickle Const. Co. v. Wachovia Com. Mortg., Inc.*, 783 N.W.2d 684, 693 (Iowa 2010).

6 *Annett Holdings, Inc.*, 801 N.W.2d at 504.

7 *Annett Holdings, Inc. v. Kum & Go, L.C.*, 801 N.W.2d 499, 504 (Iowa 2011) (quoting *Van Sickle Constr. Co. v. Wachovia Commercial Mortg.*, 783 N.W.2d 684, 692 n. 5 (Iowa 2010)).

8 *Kemin Indus., Inc. v. KPMG Peat Marwick LLP*, 578 N.W.2d 212, 220 (Iowa 1998).

9 *Burns Philp Inc. v. Cox, Kliewer & Co., P.C.*, No. 4-99-CV-90033, 2000 WL 33361992, at \*8 (S.D. Iowa Nov. 2, 2000).

10 *Kemin Indus., Inc.*, 578 N.W.2d at 221.

11 *Ziel v. Engery Panel Structures, Inc.*, 949 N.W.2d 653 (Iowa Ct. App. 2020).

## New Member Profile



Frederic C. Hayer

Frederic C. Hayer is an associate attorney at Aspelmeier, Fisch, Power, Engberg & Helling, P.L.C. Frederic graduated from Drake Law School in 2021. While at Drake, he worked as a student attorney for the Entrepreneurial/Transactional Clinic and served as a research editor for the *Drake Law Review*. Currently, Frederic mainly practices insurance defense and general civil litigation.

While originally from the Des Moines area, Frederic has enjoyed getting more familiar with south-east Iowa over the last year. He particularly enjoys walking around Lake Geode and checking out the downtown Burlington Farmers Market. After settling down a bit since law school, he began weight lifting and martial arts training. Frederic also enjoys spending time in nature and is a passionate bow-hunter.

Frederic is excited to potentially have his first case go to trial later this summer!

## IDCA Case Law Update

By Stephanie Koltookian  
Faegre Drinker Biddle & Reath LLP



Stephanie Koltookian

### *DESOUSA V. IOWA REALTY CO., 975 N.W.2D 416 (IOWA 2022)*

#### WHY IT MATTERS

*DeSousa* provides a concise analysis of whether a duty exists under the Restatement (Third) of Torts, including how to identify the possessor of land when the property is vacant. Additionally, this case reinforces that the

existence of a duty arising from the possession of property hinges largely on control.

#### FACTUAL & PROCEDURAL BACKGROUND

A pair of homeowners hired a real estate agent with Iowa Realty Company, Inc. to list a vacant house. The Iowa Realty agent was responsible for scheduling all viewings of the house and could give permission to prospective buyers and their agents to view the property. If a potential buyer's agent was showing the home, the homeowners were responsible for snow and ice removal.

In December 2018, an interested buyer, Amanda DeSousa, contacted her agent about the house. Her agent contacted the Iowa Realty listing agent, who scheduled a viewing for the next morning. It snowed overnight, but DeSousa decided to still visit the house.

When DeSousa pulled into the driveway, her agent was there, but the Iowa Realty listing agent was not. DeSousa slipped and fell on the driveway, sustaining injuries. DeSousa sued the homeowners and Iowa Realty claiming that the defendants were negligent.

Iowa Realty moved for summary judgment, arguing that it owed no duty to DeSousa and the danger was open and obvious. The district court denied Iowa Realty's motion, and Iowa Realty sought an interlocutory appeal. The Iowa Supreme Court retained the case to determine whether a sales agent has a duty to protect prospective buyers from hazards on a property they are listing for sale.

#### HOLDING

A listing agent who is not present and whose role is limited to granting access does not normally owe a duty of care to persons viewing the property.

#### ANALYSIS

Whether a duty exists is a question of law to be decided by the court. Under the Restatement (Third) of Torts, the court may consider only two factors: (1) the relationship between the parties and (2) public policy.

The Court first considered whether Iowa Realty was a "land possessor" that owed a duty of reasonable care to prevent DeSousa's fall. Because the house was vacant when DeSousa fell, the land possessor was the person entitled to immediate occupation and control of the land. Here, the only land possessors were the homeowners because the homeowners had the authority to tell Iowa Realty to stop scheduling showings of the house. The Court surveyed the sparse authority from other jurisdictions and noted that most courts finding that a listing agent owed a duty in a similar situation involving real estate agents who were conducting an open house or showing a property.

Next, the Court analyzed the practical implications of recognizing a duty under these facts. The listing agent was not at the property when DeSousa fell, and the Iowa Realty agent's right to enter the property to show it was not the same as having possession and control. The Court noted that if DeSousa's theory was correct, a neighbor, friend, or relative watching a house while the homeowner is out of town could be sued if they gave someone access to the property and an accident occurred. Similarly, recognizing a duty would require real estate agents to change how they do business to minimize litigation risks. This burdensome and costly change for homeowners would not provide a meaningful benefit to slip-and-fall plaintiffs, who can seek recovery from the homeowner. Therefore, the Court reversed the district court's denial of summary judgment and remanded the case for entry of summary judgment in favor of Iowa Realty.

### *STRUCK V. MERCY HEALTH SERVICES-IOWA CORP., 973 N.W.2D 533, (IOWA 2022)*

#### WHY IT MATTERS

This is the first Iowa Supreme Court case addressing the certificate of merit requirement in Iowa Code section 147.140

governing medical malpractice actions. The Court held the plaintiff “effectively pleaded herself out of court” by alleging only “professional negligence” claims without filing a certificate of merit.

#### **FACTUAL & PROCEDURAL BACKGROUND**

On January 18, 2018, Plaintiff Jaqueline Struck was admitted to a hospital in Sioux City to treat her prolonged dizziness, headaches, and unsteadiness. Her physicians adjusted her medications but did not impose safety measures to keep her from standing unattended. On January 25, Struck stood up, fell, and sustained a laceration to her chin.

Struck sued the hospital and several of her healthcare providers, alleging a “healthcare provider-patient relationship” and that her injuries were caused by their “professional negligence” when providing “healthcare services.” Struck’s negligent hiring claim alleged “professional negligence” in “hiring and retaining [individual defendants] and non-party staff who were individually and jointly responsible for her care and treatment.” She did not allege a premises liability claim or that an unsafe condition in her hospital room caused her to fall.

Defendants answered and later moved to dismiss pursuant to Iowa Code section 147.140(6). Struck asked for an extension to file her certificate of merit, but never filed one. She did not seek leave to amend her petition to allege premises liability or ordinary negligence claims. The district court granted the motion to dismiss and Struck appealed.

On appeal, Struck argued for the first time that her petition included ordinary negligence claims of premises liability or nonprofessional negligence. The court of appeals affirmed the dismissal of the individual defendants but held that Struck sufficiently pleaded ordinary negligence claims against the hospital that did not require certificates of merit. The Iowa Supreme Court granted further review.

#### **HOLDING**

Iowa Code section 147.140 required early dismissal with prejudice of medical malpractice plaintiff’s entire petition where the plaintiff exclusively alleged professional negligence claims but failed to timely file a certificate of merit.

#### **ANALYSIS**

Iowa Code section 147.140 provides a mechanism for early dismissal with prejudice of professional liability claims against healthcare providers that lack supporting expert testimony. Iowa Code section 147.140(1)(a) requires the plaintiff to file a certificate of merit within sixty days of a defendant’s answer when the plaintiff pleads (1) an “action for personal injury or wrongful

death,” (2) “against a healthcare provider,” (3) which is “based upon the alleged negligence in the practice of that profession or occupation in patient care,” and (4) “includes a cause of action for which expert testimony is necessary to establish a prima facie case.”

Failure to timely and substantially comply with the certificate-of-merit requirement results in dismissal of all causes of action in which expert testimony is necessary to establish a prima facie case. Struck admitted that section 147.140 applied to her claims alleging professional negligence of her healthcare providers. This alone was fatal to her claims against all defendants.

The Court expressly rejected that plaintiff could try to relabel her professional negligence claim on appeal to ordinary negligence. As to Struck, the issue was waived because she never argued that her petition alleged general negligence at the trial court level. But even if she had raised this argument at the district court, Struck’s petition did not allege any facts to support an ordinary negligence claim.

Similarly, Struck’s negligent hiring and retention claim against the hospital also fell within the scope of Iowa Code section 147.140 because it required proof of a case within a case—that the healthcare provider employees’ underlying tort or wrongful act caused her injuries, and that the negligent hiring, supervision, or retention by the employer-hospital was a cause of Struck’s injuries.

The Court held that Struck’s petition could not be saved by liberal pleading rules, and she was bound by the allegations pleaded within the four corners of her petition, which only alleged “professional negligence.” Because she did not timely file a certificate of merit, she effectively pleaded herself out of court.

## CALENDAR OF EVENTS

### **58TH ANNUAL MEETING & SEMINAR**

September 15–16, 2022

Embassy Suites by Hilton, Des Moines Downtown  
Des Moines, Iowa



# 2022 IDCA 58th Annual Meeting & Seminar

## September 15–16

Embassy Suites by Hilton Des Moines Downtown  
101 East Locust Street, Des Moines, IA 50309

**Register Online:** [www.iowadefensecounsel.org/AnnualMeeting2022](http://www.iowadefensecounsel.org/AnnualMeeting2022)

### HOTEL INFORMATION

**Embassy Suites by Hilton Des Moines Downtown**  
101 East Locust Street  
Des Moines, IA 50309

**Group Room Block Ends on August 29, 2022**

### RESERVE ONLINE

[www.iowadefensecounsel.org/AnnualMeeting2022](http://www.iowadefensecounsel.org/AnnualMeeting2022)  
Click on the **Hotel** tab for the online reservation portal.

**RESERVE BY PHONE**, 1-800-EMBASSY and ask for the IDCA Annual Meeting room rate.

### ROOM RATES

\$169/night plus tax. Rate includes a two-room suite and complimentary breakfast. Parking is additional. A city-owned parking lot is available across the street. On-site self-parking is \$18/day.

### AVAILABLE CLEs

Pending 12.0 State CLE Hours, activity number TBD (includes 1.0 Ethics Hours, 1.0 Wellness Hours and 1.0 Diversity and Inclusion Hours). CLE hours are posted to your IDCA account following the meeting and available at [www.iowadefensecounsel.org](http://www.iowadefensecounsel.org) when you log in with your user credentials.

### NETWORKING EVENTS

#### THURSDAY EVENING RECEPTION

*Sponsored by Minnesota Lawyers Mutual Insurance Company*



**Thursday, September 15** | 6:00–8:00 p.m.

Iowa Taproom  
215 E 3rd Street #100, Des Moines, IA 50309  
**Included in Full and Thursday Only Registration options**  
**Also open to IDCA Sponsors**

Join us as we head on over to the Iowa Taproom for some great food, drinks, and fun with your colleagues! The Iowa Taproom is a Historic, industrial haunt with over 100 regional craft beers & locally sourced New American fare and undeniably one of the coolest places to be in Des Moines.

The Iowa Taproom is located in the Historic East Village, 215 E. 3rd Street, #100, Des Moines.

Transportation is on your own. The Iowa Taproom is 0.3 miles from the hotel and is a quick 5-minute walk.

### IDCA HOSPITALITY ROOM NETWORKING OPPORTUNITIES

**Wednesday, September 14** | 7:00 p.m.

**Thursday, September 15** | after evening activities

Registered attendees are welcome to meet up the night before the Annual Meeting and after evening activities Thursday in the Hospitality Room to network and exchange stories. This is a great opportunity to get to know other members in a relaxed atmosphere.

# IDCA AGENDA

## Thursday, September 15, 2022

7:00 a.m.–5:00 p.m.	Registration and Exhibits Open
7:45–8:00 a.m.	Welcome & Opening Remarks
8:00–9:00 a.m.	Embracing Change: Lawyering Safely and Ethically in the Changing Practice of Law (1.0 Ethics Hours)
9:00–10:00 a.m.	Diversity at the Crossroads: Where Do We Go From Here? (1.0 Diversity and Inclusion Hours)
10:00–10:15 a.m.	Networking Break
10:15–11:00 a.m.	Case Law Updates
11:00–12:00 p.m.	The Dream Team: Expert Trends in TBI Cases
12:00–12:15 p.m.	Annual Business Meeting & Installation of the Board of Directors
12:15–1:00 p.m.	Awards & Networking Lunch
1:00–2:30 p.m.	Cultural Evolution in the Legal Profession
2:30–2:45 p.m.	Networking Break
2:45–3:00 p.m.	What's New with DRI?
3:00–4:00 p.m.	The All-Important Pretrial Conference: How The Court Can Assist Lawyers In Complex Litigation
4:00–5:00 p.m.	Judges Panel: Confronting the Reptile Theory in Court
6:00–8:00 p.m.	Networking Reception at Iowa Taproom

## Friday, September 16, 2022

7:00 a.m.–1:15 p.m.	Registration and Exhibits Open
8:00–9:00 a.m.	Updates from the Supreme Court
9:00–10:00 a.m.	Practicing in Federal Court
10:00–10:15 a.m.	Networking Break
10:15–11:00 a.m.	Keys and Impediments to Successful Mediations
11:00–12:00 p.m.	Update on the Iowa Court of Appeals and Tips to Help Navigate Through the Appellate Process
12:00–1:00 p.m.	Mental Health and Well-being for Attorneys (1.0 Wellness Hours)

## SPEAKER HIGHLIGHTS

### Thursday, September 15, 2022

- 8:00–9:00 a.m. **Ethics: Embracing Change: Lawyering Safely and Ethically in the Changing Practice of Law**  
Todd C. Scott; Minnesota Lawyers Mutual Ins. Co., Minneapolis, MN
- 
- The practice law is rapidly changing, raising new ethics and malpractice concerns for attorneys in private practice. Find out about the emerging hazards for lawyers in hybrid lawyering, electronic fund transfers, cloud-based data storage, servicing out-of-state clients, and many more emerging practice trends.
- 9:00–10:00 a.m. **Diversity at the Crossroads: Where Do We Go From Here?**  
Craig Thompson, Venable LLP, Baltimore, MD
- 
- He will address the continuing moral imperative and business case for strong and viable diversity, equity and inclusion (DEI) conversations and initiatives. Importantly, participants will leave with the skills and tools necessary to engage in the challenging conversations surrounding DEI, and the motivation to embrace leadership roles in making DEI an essential part of the home, workplace and community.

# SPEAKER HIGHLIGHTS

10:15–11:00 a.m.

## Case Law Updates

Stephanie A. Koltookian, Faegre Drinker Biddle & Reath LLP, Des Moines, IA  
Austin McMahon, Swisher & Cohrt, PLC, Waterloo, IA  
Spencer Dirth, Elverson Vasey Law Firm, Des Moines, IA



### Employment and Civil Procedure Case Law Updates with Stephanie A. Koltookian

A brief overview of the past year's appellate decisions affecting employment and civil procedure law in Iowa.



### Contract/Commercial Case Law Updates with Austin McMahon

A survey of notable Iowa Supreme Court and Iowa Court of Appeals decisions focused primarily on contract law and commercial law from September 15, 2021, through July, 2022.



### Torts/Negligence Case Law Updates with Spencer Vasey Dirth

A brief overview of the past year's appellate decisions affecting tort law and negligence in Iowa.

11:00 a.m.–12:00 p.m..

## The Dream Team: Expert Trends in TBI Cases

Amanda M. Richards, Betty, Neuman, McMahon, PLC, Davenport, IA



Over the years navigating the defense of traumatic brain injuries claims has become more complex. Gone are the days where the only expert you need is a neurologist. The latest trend from Plaintiffs is to designate numerous expert witnesses on multiple areas of medicine and psychology to raise the stakes and the cost of this litigation. The key to a successful defense is to prepare early and learn to match the Plaintiff's experts. In this presentation, we will discuss the experts that are likely to appear in your next TBI case and how to assemble a "Dream Team" of experts to best defend the interests of your client. We will discuss what to look for in Plaintiff's expert reports to know who to add to your "Dream Team" of experts.

1:00–2:30 p.m.

## Cultural Evolution in the Legal Profession

John Remsen, Jr., The Remsen Group, Atlanta, GA



Presented and facilitated by John Remsen, Jr., this 90-minute session will take a look at the future of the legal profession as we emerge from the COVID-19 pandemic. During this fast-paced, interactive session, John will share an abundance of recently collected bench-marking data on how law firms are adjusting to the current situation, and provide his thoughts and perspectives about how law firms and their leaders can best plan for the future. We will discuss firm culture, talent retention, hybrid workplace models, succession planning, marketing, business development and much more!

2:45–3:00 p.m.

## What's New with DRI

Rebecca Nickelson, Sinars Slowikowski Tomaska, St. Louis, MO, DRI Mid-Region Director;  
Kevin Reynolds, Whitfield & Eddy, PLC, Des Moines, IA, DRI State Representative



Rebecca and Kevin will discuss and answer questions about what's new at DRI, the upcoming DRI annual meeting, review DRI member benefits, and share opportunities to serve on DRI substantive law committees.

3:00 – 4:00 p.m.

## The All-Important Pretrial Conference:

### How The Court Can Assist Lawyers In Complex Litigation

Judge Richard H. Davidson, District Court Judge, Clarinda, IA



Judge Davidson will provide advice on how to work with your judge to avoid the land mines in your case. Judges and lawyers should anticipate evidentiary problems and address those issues at pretrial. Take every opportunity to educate your judge and be open to learn a few things along the way.

# SPEAKER HIGHLIGHTS

4:00 – 5:00 p.m.

## Judges Panel: Confronting the Reptile Theory in Court

Judge Lawrence P. McLellan, District Judge, Des Moines

Judge David P. Odekirk, District Court Judge, Black Hawk

Judge Gregg Rosenblatt, District Court Judge, Mason City



Judge McLellan, Judge Rosenblatt and Judge Odekirk will discuss confronting the reptile theory in the courtroom.

Friday, September 16, 2022

8:00–9:00 a.m.

## Updates from the Supreme Court



Justice Christopher McDonald, Iowa Supreme Court, Des Moines, IA

Justice McDonald will provide updates from the Supreme Court, including legislative updates, administrative updates, and changes to the rules.

9:00–10:00 a.m.

## Practicing in Federal Court



Mark Roberts, United States Magistrate Judge, Cedar Rapids, IA

Judge Roberts will provide advice on practicing law in federal court.

10:15–11:00 p.m.

## Keys and Impediments to Successful Mediations



Mark Brownlee, Boehlert Brownlee ADR, Des Moines IA

Mark Brownlee will discuss how different approaches to the mediation process serve to enhance or diminish its effectiveness. Recent trends affecting the process will be commented upon as well.

11:00 a.m.–12:00 p.m.

## Update on the Iowa Court of Appeals and Tips to Help Navigate Through the Appellate Process

Judge Sharon Soorholtz Greer, Iowa Court of Appeals, Marshalltown, IA



Judge David May, Iowa Court of Appeals, Polk City, IA

Judge Greer and Judge May will provide an update on the Iowa Court of Appeals and provide tips to help navigate through the appellate process.



12:00–1:00 p.m.

## Mental Health and Well-being for Attorneys

Dr. Kevin Carroll EdD, FACHE, LMFT, Behavioral Health Services,

UnityPoint Health, Des Moines, IA



Participants will discuss the inherent challenges of being an attorney and how job stress and depression can derail a good life and career. Participants will engage in brief self-assessment and discuss how to help themselves and others. Practical strategies for managing work and life will be shared.

## EVENT WEBSITE

[www.iowadefensecounsel.org/AnnualMeeting2022](http://www.iowadefensecounsel.org/AnnualMeeting2022)

IDCA has an event website that allows you to register for the event and gain access to the agenda, session handouts, information about our sponsors, as well as receive notifications of any last-minute changes, and see who is registered (you must be logged into your IDCA account for the attendee list).

## HOW TO REGISTER

**REGISTRATION IS ONLINE ONLY: [www.iowadefensecounsel.org/AnnualMeeting2022](http://www.iowadefensecounsel.org/AnnualMeeting2022)**

Members must sign in to receive the IDCA member rate.

If you are not a member, you need to create an account before you can register. We invite you to take advantage of IDCA's first-time member promotion. Join now and receive complimentary dues until December 2023 and the member rate to attend the IDCA Annual Meeting. This offer is for first-time members only.

## REGISTRATION INCLUDES

Full Registration includes sessions, meals, breaks, and networking events listed for Thursday and Friday in the published Schedule of Events. Thursday Only and Friday Only Registration includes all published activities for those days only.

Materials are provided only on the event website, [www.iowadefensecounsel.org/AnnualMeeting2022](http://www.iowadefensecounsel.org/AnnualMeeting2022). An e-mail will be sent to all registered attendees once session handouts are available.

## REGISTRATION FEES

	FULL REGISTRATION		THURSDAY ONLY		FRIDAY ONLY	
	On/Before Sept. 1	After Sept. 1	On/Before Sept. 1	After Sept. 1	On/Before Sept. 1	After Sept. 1
<b>Member</b>	\$350	\$400	\$260	\$310	\$195	\$245
<b>In Practice 4 Years or Less – Member</b>	\$250	\$300	\$175	\$225	\$150	\$200
<b>Non-Member*</b>	\$550	\$600	\$360	\$410	\$315	\$365
<b>In Practice 4 Year or Less – Non-Member*</b>	\$350	\$400	\$275	\$325	\$225	\$275
<b>Claims Professional**</b>	\$175	\$225	\$175	\$225	\$175	\$225

\*Take advantage of IDCA's new member promotion. Join now and receive complimentary dues until December 2023 and the member rate to the IDCA Annual Meeting. First-time members only.

\*\*Claims Professionals Rate: Not receiving CLE

## REGISTRATION QUESTIONS

When you register, you are required to indicate if you are attending the Thursday Networking Lunch and Thursday Evening Receptions. While included in the Full and Thursday Only registration options, verifying your attendance allows IDCA to better plan. You are provided an opportunity to indicate dietary restrictions and special requests during the registration process.

## CANCELLATION/REFUND POLICY

If written cancellation is received by September 5, 2022, a full refund less a \$50 processing fee will be issued. No refunds for cancellations after September 5, 2022; no refunds for no-shows.



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ASSOCIATION

1255 SW Prairie Trail Parkway  
Ankeny, IA 50023

# JOIN US FOR A **BLOOD DRIVE**

*Are you the type to save a life?*

**THURSDAY, SEPTEMBER 15**

**10:30 AM – 3:30 PM**

Embassy Suites Downtown—Junior Ballroom  
101 E Locust Street  
Des Moines, IA 50309



The 2022 Iowa Defense Counsel Association's annual meeting will include a blood drive in partnership with LifeServe Blood Center.

To learn more about donor eligibility, visit [www.lifeservebloodcenter.org](http://www.lifeservebloodcenter.org) or contact LifeServe's medical team at [nurse@lifeservebloodcenter.org](mailto:nurse@lifeservebloodcenter.org).

**Schedule Your Appointment at <https://tinyurl.com/178236-drive>**