

June-August, 2001

Iowa Supreme Court

Corporations - Insurance Policy Holders Derivative Standing

Rieff v. Evans, et al. Mutual Insurance Company policy holders have standing to bring a shareholder's derivative suit against company and its individual board member where they allege actions occurred to the detriment of the policy holders.

<http://www.judicial.state.ia.us/decisions/supreme/opinions/20010531/99-0313.asp>

Iowa Appellate Court

Personal Injury - Damages - Chronic Pain Syndrome

Dock v. Pioneer. \$230k verdict upheld in auto accident where plaintiff's "chronic pain and headaches" after accident reduced her work capacity and quality of life.

<http://www.judicial.state.ia.us/appeals/opinions/20010613/00-1106.asp>

<http://www.ca8.uscourts.gov/opndir/01/06/992853P.pdf>

Indiana Supreme Court

FIFRA - Preemption

Dow Chemical v. Ebling. Failure to warn claim is not preempted by federal insecticide, fungicide and rodenticide act as it involves a company that applies pesticides.

<http://www.state.in.us/judiciary/opinions/archive/08230101.bed.html>

Products Liability

Progressive Insurance v. GM. Insurance Companies cannot maintain action against automobile manufacturers for damage to vehicles under product liability law where the only damage is to the product itself. Any change in this line of cases must come from the legislature.

<http://www.state.in.us/judiciary/opinions/archive/06060101.trb.html>

Products Liability - Damage to Product

Fleetwood Enterprises v. Progressive Insurance. Where product damages itself and other property, plaintiff can maintain action for damage to other property but not for damage to product under Indiana Product Liability Law.

<http://www.state.in.us/judiciary/opinions/archive/06060102.trb.html>

Indiana Appellate Court

Products Liability - Erector

RR Donnelly v. North Texas Steel. Person who erects component parts can be considered a manufacturer for the purposes of invoking Product Liability claim.

<http://www.state.in.us/judiciary/opinions/archive/06210101.nhv.html>

Illinois Supreme Court

Federal Boat Safety Act - Preemption

Sprietsma v. Mercury Marine. Federal FBSA impliedly preempts state claims for failure of outboard motors to have safety guards.

<http://www.state.il.us/court/Opinions/SupremeCourt/2001/August/Opinions/Html/89492.htm>

Illinois Appellate Court

Negligence - Use of Cell Phone (among issues discussed)

Hiscott v. Peters. Use of cellular telephone is relevant to issue of degree of negligence and trial court erred in excluding such evidence at trial requiring remand for new trial.

<http://www.state.il.us/court/Opinions/AppellateCourt/2001/2ndDistrict/August/Html/2000893.htm>

Products Liability - Medical Device - Learned Intermediary

Friedel v. Airsource. Learned Intermediary doctrine does not apply to requirement that equipment manufacturer provide user with instruction in correct use of equipment.

<http://www.state.il.us/court/Opinions/AppellateCourt/2001/1stDistrict/July/Html/1000877.htm>

Premises Liability - Exception to Hearsay

Pavlik v. Wal Mart. Alleged statement by unknown employee that spilled material should have been cleaned up before fall of Plaintiff was sufficient to prevent entry of summary judgment against Plaintiff on issue of knowledge of Defendant as to condition.

<http://www.state.il.us/court/Opinions/AppellateCourt/2001/1stDistrict/June/Html/1003279.htm>

Premises Liability - Liability to Minor

Luu v. Kim, et al. Shopping Mall operator not liable for injury to minor who was hurt while playing on a conveyor belt in an area of the mall not open for public use.

<http://www.state.il.us/court/Opinions/AppellateCourt/2001/1stDistrict/June/Html/1002210.htm>

Premises Liability - Negligent Hiring

Montgomery v. McDonalds. Employer cannot be liable for attack by employee who was off duty on patron of restaurant nor can it be liable for hiring person where past conduct did not show propensity for violent behavior. The court reasons that if everyone with a checkered past were not hired "idle hands are the devil's workshop." (HONEST!)

<http://www.state.il.us/court/Opinions/AppellateCourt/2001/1stDistrict/June/Html/1991701.htm>

Corporations - Individual Liability of Officers

Cardem Inc. v. Marketron. President of Company who executed guarantee in capacity of corporate officer where corporation had been involuntarily dissolved at the time is personally liable for guarantee and payment of obligation.

<http://www.state.il.us/court/Opinions/AppellateCourt/2001/2ndDistrict/May/Html/2991451.htm>

Civil Procedure - Class Representative Standing

Arriola v. Time Warner. Tender of payment to individual attempting to represent a class will defeat class representative status so long as tender is made before the class is certified.

<http://www.state.il.us/court/Opinions/AppellateCourt/2001/1stDistrict/June/Html/1992136.htm>

Attorney Client Privilege - Discovery

Hayes v. Burlington Northern. Corporate regional Claims Manager can be considered control group individual for purposes of attorney client privilege where individual makes settlement decisions and directs outside counsel. In addition, memos from individual to in house general counsel seeking legal advice and to outside counsel may be considered privileged under work product.

<http://www.state.il.us/court/Opinions/AppellateCourt/2001/1stDistrict/June/Html/1001156.htm>

Environmental Law - Contract for Sale

Bond Drug v. Amoco. Specific performance upheld by appellate court in property transaction where appellate court had earlier held that buyer of property could require seller to remediate environmental contamination under theory that such contamination violated city of Chicago health and safety ordinances.

<http://www.state.il.us/court/Opinions/AppellateCourt/2001/1stDistrict/June/Html/1000961.htm>

Michigan Supreme Court

Premises Liability - Security

MacDonald v. PKT, Inc. Merchants are not required to provide security to prevent criminal acts but are required to reasonably request police assistance when such assistance is needed.

<http://www.iowabar.org/MiscDoc.nsf/2b85a4ea12f4bfac8625669d006e27ab/d5ea607d17acf99c86256a78001dda59!OpenDocument>

Michigan Appellate Court

Environmental - Clean up costs

RCO Engineering v/ ACR Industries. Where MDEQ clean-up directions were not specifically denoted, jury is allowed to determine whether the clean up activities undertaken by the plaintiff were appropriate in light of the cost. Here, Plaintiff sought \$1.5m in clean-up costs and jury awarded \$990k, feeling the Type A cleanup was not required.

[http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010622_C201436\(135\)_201436O.OPN.PDF](http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010622_C201436(135)_201436O.OPN.PDF)

Automobile - Lemon Law

Telly's Inc. v. Land Rover. Vehicle "rattles" and minor malfunctions are not sufficient to trigger Lemon Law liability since there is no significant impairment to vehicle.

[http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010622_C216562\(36\)_216562.OPN.PDF](http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010622_C216562(36)_216562.OPN.PDF)

Negligence - Electricity

Insurance Exchange v. Detroit Edison. Jury verdict for homeowner 's subrogated insurer upheld where testimony was presented by plaintiff that electrical meters were defectively designed and did not include safeguards to prevent fires caused by transient voltage.

[http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010619_C216834\(59\)_216834.OPN.PDF](http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010619_C216834(59)_216834.OPN.PDF)

Premises Liability - "Open and Obvious"

Boyd v. Warren Restaurants. Where cracked concrete on an entrance ramp was open and obvious, land owner was entitled to summary judgment unless the condition was unreasonably dangerous.

<http://www.michbar.org/opinions/home.html?/opinions/appeals/2001/070301/10762.pdf>

Premises Liability - Slip & Fall - Ice

Chretien v. Lakeshore Motel. Patron who walked on icy grass to avoid icy sidewalk and fell has a cause of action against land owner since there was no reasonable way to avoid ice and "open and obvious" doctrine does not apply to such situations.

[http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010608_C221593\(32\)_221593.OPN.PDF](http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010608_C221593(32)_221593.OPN.PDF)

Premises Liability - Baseball

Benejam v. Detroit Tigers. Michigan will adopt the Limited Duty Rule with respect to baseball fields and holds that there is no duty to prevent projectiles from hitting spectators at games nor to warn that such things might occur so long as there is screening at home plate.

[http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010710_C217727\(83\)_217727.OPN.PDF](http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20010710_C217727(83)_217727.OPN.PDF)

Premises liability - Open and Obvious

Williams v. Kroger. Pea pods lying in an aisle of a grocery store are open and obvious and injured patron cannot maintain action for injury caused by the condition.

[http://courtofappeals.mjud.net/documents/OPINIONS/FINAL/COA/20010713_C224776\(27\)_224776.OPN.PDF](http://courtofappeals.mjud.net/documents/OPINIONS/FINAL/COA/20010713_C224776(27)_224776.OPN.PDF)

E-Commerce - E-mail confidentiality

Chrysler Corporation v. Sheridan. E-mails directed to corporate counsel by outside counsel are protected by attorney client privilege even if inadvertently attached to pleadings filed in court.

[http://courtofappeals.mjud.net/documents/OPINIONS/FINAL/COA/20010710_C227511\(64\)_227511.OPN.PDF](http://courtofappeals.mjud.net/documents/OPINIONS/FINAL/COA/20010710_C227511(64)_227511.OPN.PDF)

Employment - Policy change

Briney v. Kelsey-Hayes. Employer's attempt to modify written vacation policy violated employee vested contractual rights resulting in affirmed \$360k judgment against employer.

[http://courtofappeals.mjud.net/documents/OPINIONS/FINAL/COA/20010821_C218621\(53\)_218621.OPN.PDF](http://courtofappeals.mjud.net/documents/OPINIONS/FINAL/COA/20010821_C218621(53)_218621.OPN.PDF)

Minnesota Supreme Court

Insurance - Intentional Act Exclusion

American Family v. Walser. Where there is specific intent to cause injury, conduct is intentional for purposes of an intentional act exclusion, and not accidental for purposes of a coverage provision. But where there is no intent to injure, the incident is an accident, even if the conduct itself was intentional.

<http://www.courts.state.mn.us/opinions/sc/current/c100349.html>

Employment - Disability

Hoover v. Norwest. Employee who claimed Fibromyalgia caused her to require additional help to do her duties stated a claim for a limitation in a major life activity, employment, and thus could maintain a claim for discrimination when she was terminated for non performance.

<http://www.courts.state.mn.us/opinions/sc/current/c8991281.html>

Minnesota Supreme Court

Premises Liability - Duty of Landlord - Criminal Acts

Funchess v. Cecil Neuman Inc. There is no "special relationship" duty between a landlord and tenant to cause the landlord to be responsible for a criminal act against the tenant in the apartment or apartment complex.

<http://www.courts.state.mn.us/opinions/sc/current/c80090.html>

Missouri Appellate Court

Cameron Insurance v. Moll. Court agrees that insurance company has no duty to defend homeowner under policy's intentional exclusion where homeowner: fired shotgun toward two teenagers fishing from his dock, hit one in the head with the shotgun, forced them to take their clothes off and threw the clothes in the lake, and made them sit naked on a gravel driveway while he called the sheriff...who arrested him for assault. (But it did have a duty to defend his wife who was named as a co-defendant)

<http://www.osca.state.mo.us/courts/pubopinions.nsf/ccd96539c3fb13ce8625661f004bc7da/95a3b684e45ac04786256a8400483464?OpenDocument>

Nebraska Appellate Court

Premises Liability - Slip/Fall

Giron v. Safeway. Business invitee cannot maintain claim for negligence in slip and fall absent evidence of condition that caused fall and evidence of premises owner's knowledge of condition or involvement in creating condition.

<http://court.nol.org/opinions/2001/august/aug28/a00-604.htm>

8th Circuit Court of Appeals

ADA-FMLA

Hatchett v. Philander. Employer is not required under FMLA to give reduced work days to employee who is not able to perform essential job duties while at work.

<http://www.ca8.uscourts.gov/opndir/01/06/001693P.pdf>

Discovery Sanctions

Martin v. DaimlerChrysler. District court has power to dismiss Plaintiff's case and award sanctions to Defendant where Plaintiff is found to have committed "repeated perjury" in discovery.

<http://www.ca8.uscourts.gov/opndir/01/06/002908P.pdf>

7th Circuit Court of Appeals

Consumer Fraud - Injury

Sanfield v. Finlay. Competitor who claims other company violated consumer fraud statutes by advertising "sale prices" where there is not base price to claim a reduction from must still show injury in fact to maintain an action.

<http://www.ca7.uscourts.gov/fox/foxweb.exe/Op3?submit1=showop&caseno=99-4234>

6th Circuit Court of Appeals

EEOC - Scope of Investigation

EEOC v. Roadway Express. Once the EEOC initiates an investigation, it has authority to expand the scope of the investigation and subpoena records from the employer beyond the scope of the immediate charge to determine whether there is a pattern of discrimination involving the employer.

<http://pacer.ca6.uscourts.gov/cgi-bin/getopn.pl?OPINION=01a0280p.06>

District Court - ND NY

Environment - MTBE Litigation

In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation. In a 95 page opinion, the Court denies most of the relief requested by defendants. The consolidated cases assert concerted activity theories of liability against the defendant oil companies. The court holds such theories are viable as are products liability, nuisance, strict liability, negligence and failure to warn counts.

<http://www.nysd.uscourts.gov/courtweb/Pdf/D02NYSC/01-08922.PDF#xml=http://www.nysd.uscourts.gov/dtSearch/dtisapi6.dll?cmd=getpdfhits&DocId=20311&Index=D%3a%5cProgram%20Files%5cdtSearch%5cUserData%5cALL&HitCount=4&hits=2b7+1b39+22ba+35e8+&.pdf>

USDC ND IA

ERISA - Criminal exclusion

Strasser v. Unum. Intoxicated driver is excluded from life insurance benefit payment due to criminal involvement exclusion since driving while intoxicated is a crime.

<http://www.iand.uscourts.gov/iand/decisions.nsf/44ef38b26a83d2e58625693d005dd094/1113a84216cec23a86256aab005a2538?OpenDocument>

USDC SD IOWA

Defamation - Attorney comments

Smith v. Iowa Jewish Senior Life Center. Defamatory per se comments made by employer's attorney to employer's husband about employee are not protected by litigation privilege where litigation had not yet been initiated.

<http://www.iasd.uscourts.gov/iasd/opinions.nsf/49bb3d458bdfed386256863007bc595/f24aa74e209fdb4e86256ab50051e714?OpenDocument>