

ISSUES IN CIVIL LITIGATION

POLK COUNTY BAR ASSOCIATION FALL GENERAL PRACTICE SEMINAR

November 18, 2016

Des Moines, Iowa

Mark W. Thomas and

Michael C. Kuehner

Grefe & Sidney, PLC

P.O. Box 10434

Des Moines, IA 50306

Phone (515) 245-4300

Issues in Civil Litigation

By Mark W. Thomas and Michael C. Kuehner

I. Releases and Indemnity

Existing Iowa law requires that the release sufficiently identify third parties to be released.

Iowa Code § 668.7, enacted in 1984, provides in pertinent part:

A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides.

Iowa Code § 668.7.

Four years after the legislature enacted Iowa Code § 668.7 the Iowa Supreme Court decided Aid Ins. Co., 426 N.W.2d 631. That decision has been the law in Iowa for over 26 years. In Aid Ins. Co. the insured negligently drove his motorcycle off of the paved surface of the road causing his motorcycle to crash and injuring his passenger. Id. Aid Insurance settled with the passenger and obtained a release from the injured parties. Id. It further concluded, as a result of its investigation, that Davis County was negligent in maintenance of the road and it filed suit against Davis County during the limitations period for contribution. Id. During trial the defendant moved for a directed verdict on the ground that the plaintiff had not discharged the defendant's liability to the injured parties as required by Iowa Code §668.7. Aid Ins. Co., 426 N.W.2d at 632. The release that Aid Insurance had negotiated with the injured party purported to discharge, "All other persons, firms, or corporations, known or unknown, who are, or might be claimed to be liable." Id. Like the release herein, it did not specifically refer to the defendant targeted for contribution.

The Iowa Supreme Court determined that the boilerplate language or general designations utilized by the insurer did not discharge other tortfeasors involved in the same event. Id. at 633. Rather, the Court stated:

In our interpretation of section 668.7, we favor a rule which would require a written release to include some specific identification of the tortfeasors to be released in order for them to be discharged. While the easier course would require naming these parties, we would not require such a rigid rule if they are otherwise sufficiently identified in a manner that the parties to the release would know who was to be benefitted. Such designations might include such classes as 'employees', 'partners' or 'officers.' While this rule may at times require evidentiary hearings to determine members of the class, it provides needed flexibility. Under this rule, a general designation such as 'any other person, firm or corporation' would not sufficiently identify the tortfeasor to be discharged.

Id. at 633-634. As Aid Ins. Co. makes clear, a written release must either specifically name the party to be released or include language descriptive enough that the person to be released can be sufficiently identified. Id.

II. Negligent Supervision Claims

"Ordinarily the employer ... of an independent contractor ... is not liable for injuries arising out of the latter's negligence." *Clausen v. R.W. Gilbert Constr. Co.*, 309 N.W.2d 462, 466 (Iowa 1981); *Lunde v. Winnebago Indus., Inc.*, 299 N.W.2d 473, 475 (Iowa 1980); *see also* Restatement (Second) of Torts § 409, at 370. The commonly-accepted reasoning for this rule "is the lack of control by the employer over the details of the contractor's work." *Lunde*, 299 N.W.2d at 475. To establish control, the employer:

[M]ust have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations or deviations.... There must be such a

retention of a right of supervision that the contractor is not entirely free to do the work in his own way.

Restatement (Second) of Torts § 414 cmt. c, at 388; *see also Downs v. A & H Constr., Ltd.*, 481 N.W.2d 520, 524-25 (Iowa 1992)(ruling a contractor's inspection of the work, receipt of reports, suggestions, recommendations, alterations, and ability to start or stop work insufficient evidence of control over a subcontractor); *Hernandez v. Midwest Gas Co.*, 523 N.W.2d 300, 303 (Iowa Ct.App.1994) (ruling a contractor's inspection every three hours, directions to wear hard hats and safety glasses, and ability to stop or resume work insufficient control over a subcontractor). The type of control envisioned by the retained control doctrine includes instructions as to the performance of specific tasks or the method of operation. *See Hernandez*, 523 N.W.2d at 303.

III. E-Filing and the “Sunday Rule”

The notice of electronic filing will record the date and time of the filing of the document in local time for the State of Iowa. **This** will be the official filing date and time of the document regardless of when the filer actually transmitted the document.

The Iowa Supreme Court has ruled the word “this” necessarily refers to the date and time recorded in the notice of electronic filing. *Concerned Citizens of Southeast Polk School Dist. v. City Development Bd. of State*. 872 N.W.2d 399, 403 (Iowa 2015).