

## Hon. Mark W. Bennett



Hon. Mark W. Bennett(Ret.) was appointed by President Clinton as a Federal Judge of the United States District Court for the Northern District of Iowa in 1994 and served for 24 years between 1994 and 2019. He presided over numerous noteworthy cases and several of his decisions were ultimately affirmed by the U.S. Supreme Court, including two cases where he was reversed a total of three times by the Eighth Circuit en banc!!!

Judge Bennett also served as a U.S. Magistrate Judge for the S.D. of Iowa from 1991-1994. Judge Bennett sat by designation by the appointment of Chief Justice of the U.S. Supreme Court on both the 8th and 9th Circuits and in the districts of Arizona, Idaho, M.D. of Fla., Northern Mariana Islands (Saipan), and the S.D. of Iowa on more than 700 cases. Judge Bennett is an active scholar having published more than 25 law review articles in the past nine years at law reviews at Alabama, American, Cardozo, Florida, Harvard, Iowa, Northwestern, Texas, U.C. Davis, U.C.L.A., and Yale, etc. He has also published dozens of other articles in various legal periodicals. He was for many years a co-author on a treatise on employment law. His over 1000 published judicial opinions are widely noted for his dedication to keen legal scholarship. He has taught at the Drake University Law School, University of Iowa College of Law, University of Nebraska College of Law, University of Hawaii William S. Richardson College of Law, and the University of Florida Levin College of Law. He has also visited several other law school as a visiting jurist in residence. He is a judicial fellow for the NYU Civil Jury Project where he trains state and federal trial judges on jury trial innovations and is an adjunct professor for the National Judicial College.

Judge Bennett started his own law firm upon graduation from the Drake University Law School and argued his first case in the U.S. Supreme Court when he was less than four years out of law school and had three more cert. petitions granted before he was 32. As a trial lawyer, Judge Bennett appeared in more than two dozen federal district courts, several of the courts of appeals and several state trial and appellate courts, as well as the U.S. Supreme Court.

Judge Bennett is a highly sought after CLE speaker and has spoken at more than 500 programs in 41 states and several foreign countries and many state and federal judicial conferences. Judge Bennett has been extremely active in both the Iowa and American Bar Association and held leadership positions in both. He has educated more than 4000 state and federal judges on topics ranging from implicit bias in the courtroom to sentencing, case management, and jury trial innovations.



His national experience and perspective acquired in over four decades of private practice, judging at both the trial and appellate levels, law teaching, legal scholarship, and lecturing makes him exceptionally-qualified to assist parties and their counsel in resolving disputes.

## **Areas of Expertise:**

- ANTITRUST
- APPELLATE
- ATTORNEY FEE / MALPRACTICE
- BANKING / LENDER LIABILITY
- CIVIL RIGHTS
- CONSTRUCTION
- CORPORATE INVESTIGATIONS / WHITE COLLAR
- EMPLOYMENT / LABOR
- ENVIRONMENTAL / CERCLA
- HEALTHCARE
- INSURANCE / REINSURANCE
- IP (TRADEMARK & COPYRIGHT)
- MDL
- PATENT
- PHARMACEUTICALS
- PRODUCT LIABILITY
- SECURITIES / FINANCIAL SERVICES
- TELECOMMUNICATION
- TRADE SECRET

## REPRESENTATIVE CASES:

### ANTITRUST CASES:

- *In re Iowa Ready-Mix Concrete Antitrust Litig.*, 768 F. Supp. 2d 961 (N.D. Iowa 2011)  
(antitrust class action by purchasers against producers and sellers of ready-mix concrete: holding that the plaintiffs had failed to meet the pleading requirements for an antitrust conspiracy claim).
- *Randall v. Buena Vista Cty. Hosp.*, 75 F. Supp. 2d 946 (N.D. Iowa 1999)  
(action by a certified registered nurse anesthetist discharged from a public hospital: denying the defendants' motion for summary judgment on the plaintiff's antitrust conspiracy claim based on exclusive contracts and "tying" and on an alleged "group boycott").
- *Wahpeton Canvas Co. v. Bremer*, 958 F. Supp. 1347 (N.D. Iowa 1997)  
(patent infringement action in with an antitrust counterclaim: granting summary judgment in favor of the patent holder on the accused infringer's "attempt to monopolize" counterclaim).

### BUSINESS LITIGATION CASES:

- *Gen. Elec. Capital Corp. v. FPL Serv. Corp.*, No. C 13-59-MWB (N.D. Iowa 2014)  
(two-part opinion in lessor's action against lessee of industrial copiers, claiming the lessee breached the parties' contract by failing to make lease payments after the copiers were destroyed in a hurricane). 986 F. Supp. 2d 1029 (part one) (granting in part and denying in part the lessor's motion for summary judgment). 995 F. Supp. 2d 935 (N.D. Iowa 2014) (part two) (holding that the lessor was entitled to deficiency damages plus attorney's fees and costs).
- *Hedge-to-Arrive (HTA) Contract Cases, between grain producers and elevators and other grain buyers, which were found to be "cash forward contracts" that fell outside the purview of Commodity Exchange Act (CEA), including the following published decisions:*  
*Top of Iowa Co-op. v. Schewe*, 149 F. Supp. 2d 709 (N.D. Iowa 2001), *aff'd*, 324 F.3d 627 (8th Cir. 2003); *Top of Iowa Co-op. v. Schewe*, 135 F. Supp. 2d 969 (N.D. Iowa 2001); *Asa-Brandt, Inc. v. ADM Inv'r Servs., Inc.*, 138 F. Supp. 2d 1144 (N.D. Iowa 2001), *aff'd* in part, *rev'd* in part, 344 F.3d 738 (8th Cir. 2003); *Gunderson v. ADM Inv'r Servs., Inc.*, 85 F. Supp. 2d 892 (N.D. Iowa 2000); *Larson v. Farmers Co-op Elevator of Buffalo Ctr., Iowa*, 58 F. Supp. 2d 1013 (N.D. Iowa 1999); *Gunderson v. ADM Inv'r Servs., Inc.*, 43 F. Supp. 2d 1058 (N.D. Iowa 1999), *rev'd*, 230 F.3d 1363 (8th Cir. 2000); *Scallon v. U.S. Ag Ctr., Inc.*, 42 F. Supp. 2d 867 (N.D. Iowa 1999); *Johnson v. Land O' Lakes, Inc.*, 181 F.R.D. 388 (N.D. Iowa 1998); *Johnson v. Land O' Lakes, Inc.*, 18 F. Supp. 2d 985 (N.D. Iowa 1998); *Barz v. Geneva Elevator Co.*, 12 F. Supp. 2d 943 (N.D. Iowa 1998); *Top of Iowa Co-op. v.*

Schewe, 6 F. Supp. 2d 843 (N.D. Iowa 1998), aff'd, 324 F.3d 627 (8th Cir. 2003); Oeltjenbrun v. CSA Inv'rs, Inc., 3 F. Supp. 2d 1024 (N.D. Iowa 1998); Brown v. N. Cent. F.S., Inc., 987 F. Supp. 1150 (N.D. Iowa 1997); Gunderson v. ADM Inv'r Servs., Inc., 976 F. Supp. 818 (N.D. Iowa 1997); Brown v. N. Cent. F.S., Inc., 173 F.R.D. 658 (N.D. Iowa 1997); N. Cent. F.S., Inc. v. Brown, 951 F. Supp. 1383 (N.D. Iowa 1996); Farmers Co-op. Elevator of Buffalo Ctr., Iowa v. Abels, 950 F. Supp. 931 (N.D. Iowa 1996); Farmers Co-op. Elevator, Woden, Iowa v. Doden, 946 F. Supp. 718 (N.D. Iowa 1996).

## **CIVIL RIGHTS CASES:**

- *Baldwin v. Estherville, Iowa, 333 F. Supp. 3d 817 (N.D. Iowa 2018)*  
(action arising from the plaintiff's arrest for riding his ATV on and in a ditch beside a city street alleging violations of the Iowa Constitution: holding that the "all due care" qualified immunity defense to search and seizure violations of the Iowa Constitution established by the Iowa Supreme Court in answer to certified questions applied to municipalities as well as individual officers and that the police officers lacked probable cause to arrest the plaintiff, but denying summary judgment on whether the police officers exercised "all due care" to conform with the requirements of the law).
- *Church v. Anderson, 249 F. Supp. 3d 963 (N.D. Iowa 2017)*  
(arrestee's § 1983 action for use of excessive force in violation of the Fourth Amendment and state-law torts: holding that Heck v. Humphrey, 512 U.S. 477 (1994), which held that a state prisoner's claim was not cognizable under § 1983 when the resolution of such a claim would call into question the validity of an outstanding criminal conviction or sentence, did not apply, but the officer's use of deadly force was objectively reasonable under the circumstances), aff'd, 898 F.3d 830 (8th Cir. 2018).
- *Sak v. City of Aurelia, Iowa, 832 F. Supp. 2d 1026, 1030 (N.D. Iowa 2011)*  
(granting a request for a preliminary injunction by a seriously disabled retired police officer to bar a city from enforcing an ordinance prohibiting pit bull dogs in the city against his part pit bull certified service dog, Snickers, as violating the plaintiff's rights under the public accommodations and "public entities" provisions of the ADA).
- *Dorr v. Weber, 741 F. Supp. 2d 1010 (N.D. Iowa 2010)*  
(action by an applicant alleging that a county sheriff's decision to deny him a concealed carry permit was in retaliation for exercise of his First Amendment rights: holding after a bench trial that the sheriff retaliated for the plaintiff's activities including protesting, passing out leaflets, and writing letters to the editor and because those activities offended members of the community).
- *Doctor John's, Inc. v. City of Sioux City, Iowa, No. C 03-4121-MWB (N.D. Iowa)*  
(series of cases involving constitutional challenges to zoning ordinances enacted by a city in an effort to block an adult entertainment products store). 467 F. Supp. 2d 925

(N.D. Iowa 2006) (reaffirming that “constitutionality” issues were for the court and only “applicability” and “damages” issues were for the jury, consistent with the Seventh Amendment right to jury trial); 438 F. Supp. 2d 1005 (N.D. Iowa 2006) (bifurcating proceedings and holding that the “sexual device shop” provision of a city ordinance violated substantive due process); 389 F. Supp. 2d 1096 (N.D. Iowa 2005) (holding that an “adult media” ordinance amendment was unconstitutional); 305 F. Supp. 2d 1022 (N.D. Iowa 2004) (granting the business owner’s request for a preliminary injunction to enjoin enforcement of zoning ordinances based on a likelihood that the amended ordinances violated the First Amendment).

### **CLASS & COLLECTIVE ACTIONS CASES:**

- *Tourgeman v. Nelson & Kennard, 900 F.3d 1105, 1106 (9th Cir. 2018)*  
(panel member, sitting by designation) (putative class action against debt collector under the Fair Debt Collection Practices Act (FDCPA) affirming dismissal, because the consumer had the burden to produce evidence of the debt collector’s net worth to establish entitlement to class statutory damages, but failed to produce such evidence at trial).
- *Harvey v. AB Electrolux, 9 F. Supp. 3d 950 (N.D. Iowa 2014)*  
(putative class action under the Fair Labor Standards Act (FLSA) and the Iowa Wage Payment Collection Act (IWPCA) by hourly employees at a plant that manufactured laundry appliances: holding on summary judgment that the majority of time the employees spent donning personal protective equipment (PPE) was time spent changing clothes and was not compensable).
- *Harvey v. AB Electrolux, 857 F. Supp. 2d 815 (N.D. Iowa 2012)*  
(putative class action under the Fair Labor Standards Act (FLSA) and the Iowa Wage Payment Collection Act (IWPCA) by hourly employees at a plant that manufactured laundry appliances: conditionally certifying a collective action).
- *Rattray v. Woodbury Cty., Iowa, 253 F.R.D. 444 (N.D. Iowa 2008)*  
(putative class action by arrestees against county, county sheriff, and deputy sheriff alleging Fourth Amendment violations as a result of a county policy for strip-searches: denying class certification for lack of risk of inconsistent adjudications, predominance of class questions, and superiority of class action to adjudicate the controversy), *aff’d sub nom. Rattray v. Woodbury Cty., IA, 614 F.3d 831 (8th Cir. 2010)*.
- *Bouaphakeo v. Tyson Foods, Inc., 564 F. Supp. 2d 870 (N.D. Iowa 2008)*  
(putative collective action under the FLSA and IWPCA by workers at a pork production facility seeking leave to proceed as representatives of a group of employees: granting

conditional certification of a FLSA collective action and an IWPCA class and designating class representatives).

### **CONSTRUCTION LITIGATION CASES:**

- *Nationwide Agribusiness Ins. Co. v. SMA Elevator Const. Inc.*, 816 F. Supp. 2d 631 (N.D. Iowa 2011)  
(action by an insurer of a grain elevator arising from an explosion caused by an overheated or hot pillow block selected, specified, and installed on an elevator leg: holding that the grain elevator was not a “product” within the meaning of the Iowa statute limiting products liability of non-manufacturers of a product, disposing of other claims, but denying summary judgment on the insurer’s claim for breach of express warranty).
- *Accurate Controls, Inc. v. Cerro Gordo Cty. Bd. of Sup’rs*, 627 F. Supp. 2d 976 (N.D. Iowa 2009)  
(sub-subcontractor’s consolidated actions to recover payment from a county board of supervisors, a general contractor, and the contractor’s surety after an electrical subcontractor for a county jail project walked off the job and did not pay the sub-subcontractor: granting in part and denying in part cross motions for summary judgment).
- *Aetna Cas. & Sur. Co. v. Leo A. Daly Co.*, 870 F. Supp. 925 (S.D. Iowa 1994)  
(bench trial) (insurer’s action for damages to a racetrack facility, caused when water pipes froze and burst, and the contractor cross-claim against the architect for contribution: holding, among other things, that even if the design and the construction were the legal cause of damage, capping of the vents by racetrack personnel was the superseding cause of damages).

### **EMPLOYMENT & EMPLOYMENT DISCRIMINATION CASES:**

- *Zetwick v. Cty. of Yolo*, 850 F.3d 436 (9th Cir. 2017) (author, sitting by designation)  
(action by a female county correctional officer against the county and the male county sheriff alleging that the sheriff created a sexually hostile work environment, in violation of Title VII and California law, based on unwelcome hugs on over 100 occasions and at least one unwelcome kiss, reversing summary judgment for the defendants).
- *Newkirk v. GKN Armstrong Wheels, Inc.*, 168 F. Supp. 3d 1174 (N.D. Iowa 2016)  
(action by a Caucasian employee, allegedly fired for making an inappropriate racial comment: granting the employer’s motion for partial summary judgment as to Counts II (reverse race discrimination, in violation of Title VII), V (promissory estoppel), VI (wrongful termination), VII and XI (defamation), VIII and XIV (negligence), X and XII

(negligent/intentional infliction of emotional distress), but denying the motion as to Count XIII (invasion of privacy)).

- *Scott v. City of Sioux City, Iowa, 68 F. Supp. 3d 1022 (N.D. Iowa 2014)*  
(action by a city employee for retaliation in violation of Title VII and the Iowa Civil Rights Act for her complaint that the city manager had sexually harassed her: holding that the claims were limited to timely claims, but that the plaintiff could seek relief for the denial of a full-time administrative assistant position in a different department in retaliation for complaints of sexual harassment by the city manager during an investigation ten years earlier).
- *Hagen v. Siouxland Obstetrics & Gynecology, P.C., 934 F. Supp. 2d 1026 (N.D. Iowa 2013)*  
(action by a doctor who was terminated from his position as president of an obstetrics practice: denying the defendants' motion for summary judgment on claims for fraudulent misrepresentation, conspiracy to defraud, forgery, promissory estoppel, tortious interference with prospective business advantage, retaliatory discharge, breach of fiduciary duty, breach of contract, and punitive damages).

#### **ENVIRONMENTAL CASES:**

- *Ctr. for Food Safety v. Vilsack, 636 F.3d 1166 (9th Cir. 2011)*  
(panel member, sitting by designation) (action for injunctive relief by organic seed business owners against the developer of genetically engineered herbicide-resistant sugar beets, seeking destruction of the sugar beets planted pursuant to permits issued by Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), on the ground that APHIS violated the National Environmental Policy Act (NEPA) by segmenting its environmental analysis concerning a donor organism that was a plant pest: holding that the owners failed to demonstrate that the permitted sugar beet steckling plants presented a possibility, much less a likelihood, of genetic contamination or other irreparable harm).
- *B & D Land & Livestock Co. v. Schafer, 584 F. Supp. 2d 1182 (N.D. Iowa 2008)*  
(judicial review of determination by the United States Department of Agriculture (USDA) that the plaintiff improperly converted wetlands to farmland in violation of the "Swampbuster" Act, 16 U.S.C. §§ 3801, 3821-24: holding that the agency's delineation of wetlands on the plaintiff's property was arbitrary and capricious).
- *Castenson v. City of Harcourt, 86 F. Supp. 2d 866 (N.D. Iowa 2000)*  
(action by landowners whose property was designated as the location for a city sewage lagoon asserting non-compliance with the National Environmental Policy Act (NEPA): granting summary judgment for the city).



- *Lakes Region Legal Def. Fund, Inc. v. Slater, 986 F. Supp. 1169 (N.D. Iowa 1997)*  
(action by citizen group alleging violations of NEPA and seeking to enjoin a highway project: denying permanent injunctive relief, dissolving a restraining order, and entering judgment for the defendants).

### **INSURANCE CASES:**

- *Opheim v. Standard Ins. Co., 293 F. Supp. 3d 846 (N.D. Iowa 2018)*  
(bench trial in an action under the Employee Retirement Income Security Act (ERISA) by the widow of a deceased plan participant against the plan seeking payment of additional term life insurance benefits under a group life insurance plan and the plan administrator's third-party complaint against the participant's father to impose a constructive trust over benefits it paid to him: holding that the plan administrator abused its discretion in refusing to pay benefits to the widower and was not entitled to impose a constructive trust over benefits it erroneously paid to the participant's father).
- *Niver v. Travelers Indem. Co. of Illinois, 412 F. Supp. 2d 966 (N.D. Iowa 2006)*  
(injured worker's action against an insurer for bad faith failure to pay worker's compensation benefits: holding on cross-motions for summary judgment that, as a matter of law, the insurer could not "fairly debate" that the worker was entitled to workers compensation benefits and did, in fact, know that it had no reasonable basis to deny the claim).
- *Baxter v. Briar Cliff Coll. Grp. Ins. Plan, 409 F. Supp. 2d 1108 (N.D. Iowa 2006)*  
(beneficiary's action pursuant to ERISA against an employee benefit plan, the plan administrator, and the plan insurer, alleging that her long-term disability benefits under plan were improperly reduced based on the estimate of the social security disability benefits to which she purportedly was entitled and that she was not timely provided with plan documents upon her written request: holding on cross-motions for summary judgment that the insurer reasonably interpreted the plan, did not abuse its discretion in reducing the beneficiary's monthly benefit, and that the beneficiary received all documents that established or governed the plan).

### **INTELLECTUAL PROPERTY CASES:**

- *Syngenta Seeds, Inc. v. Bunge N. Am., Inc., 820 F. Supp. 2d 953 (N.D. Iowa 2011)*  
(action by producer of transgenic corn seed against grain elevator company alleging false advertising in violation of the Lanham Act for refusing to accept transgenic corn grown from its seed: denying request for preliminary injunction on Lanham Act claim).
- *Serverside Grp. Ltd. v. Tactical 8 Techs., L.L.C., 985 F. Supp. 2d 900 (N.D. Iowa 2013)*  
(action for infringement of patents for creating personalized credit or debit cards over the internet: holding on summary judgment that the certain claims of one patent were



not infringed as a matter of law, but trial was required on non-infringement of other claims of that patent, and that a second patent was not infringed as a matter of law), adhered to on reconsideration, 985 F. Supp. 2d 944 (N.D. Iowa 2014).

- *Interbake Foods, L.L.C. v. Tomasiello*, 461 F. Supp. 2d 943 (N.D. Iowa 2006)  
(action by a maker of ice cream sandwich wafers against a former employee and a competitor who hired him for misappropriation of trade secrets under Iowa law: granting a preliminary injunction against disclosure of the wafer maker's trade secrets, but denying a preliminary injunction prohibiting the employee from working for the competitor).
- *Maytag Corp. v. Electrolux Home Prod., Inc.*, 448 F. Supp. 2d 1034 (N.D. Iowa 2006)  
(action for infringement of a patent for washing machine baskets and the process for making them, with a counterclaim of invalidity: holding on summary judgment that the patents were invalid for failure to comply with the "written description" and "enablement" requirements), aff'd, 224 F. App'x 972 (Fed. Cir. 2007).
- *Int'l Motor Contest Ass'n, Inc. v. Staley*, 434 F. Supp. 2d 650 (N.D. Iowa 2006)  
(action by a motor contest association against a racing promoter for copyright infringement of its official rules: holding that the promoter adequately pleaded misuse of copyright and unclean hands defenses and an abuse of process counterclaim).
- *Sioux Biochemical, Inc. v. Cargill, Inc.*, 410 F. Supp. 2d 785 (N.D. Iowa 2005)  
(action by the licensor of process for manufacturing the nutritional supplement chondroitin sulfate against a former licensee for, inter alia, breach of contract, misappropriation of trade secrets, and fraudulent misrepresentation: holding that the complaint stated claims for conversion and misappropriation of intellectual property, but that the alleged misrepresentation in a patent application that the licensee invented the process was not actionable).
- *Walker Mfg., Inc. v. Hoffmann, Inc.*, 261 F. Supp. 2d 1054 (N.D. Iowa 2003)  
(action by a farm implement manufacturer against a competitor for copyright infringement, trademark infringement, and trade secret misappropriation: denying summary judgment on misappropriation of design drawings, reverse palming off, copying and modification and relabeling of proprietary designs, but denying summary judgment on the trade secrets claim).

## **RACKETEERING INFLUENCED AND CORRUPTION ORGANIZATION ACT (RICO) CASES:**

- *Baker v. Patterson*, No. 4:16-CV-00181-MWB, 2017 WL 2903340, at \*1 (D. Idaho Apr. 20, 2017)  
(visiting judge) (action arising from a doctor's alleged importation of and use on various

patients of Chinese manufactured counterfeit Botox and Chinese manufactured breast implants, which were not approved by the Federal Drug Administration (FDA): granting the defendant's motion to dismiss the plaintiffs' repleaded substantive RICO claims and RICO conspiracy claim).

- *Kim v. Ramon K. Quichocho*, 763 F. Supp. 2d 1214 (D. N. Mar. I. 2011)  
(visiting judge) (client's action alleging that his attorney, his law firm, and his wife, defrauded the plaintiff of two of her businesses, which own poker machines, under the guise of protecting her from litigation by her former husband and his family and helping her through a period of depression: declining to dismiss substantive RICO claims, but dismissing a RICO conspiracy claim).

### **SECURITIES CASES:**

- *McGraw v. Wachovia Sec., L.L.C.*, 756 F. Supp. 2d 1053 (N.D. Iowa 2010)  
(action by investors against securities broker's employers, seeking to recover sums they gave now-deceased broker to invest in fictitious "special investments," asserting claims of sale of unregistered securities, aiding and abetting the sale of unregistered securities, fraudulent practices, and aiding and abetting fraudulent practices, all in violation of Iowa securities law: holding that the investors established relevant duties as a matter of law, but that breach of the duties was a jury question).
- *Armstrong v. Am. Pallet Leasing Inc.*, 678 F. Supp. 2d 827 (N.D. Iowa 2009)  
(action by investors against a corporation and its officers, inter alia, for violations of the Securities Act and the Securities Exchange Act: holding that the plaintiffs failed to state securities fraud claims against auditors and an escrow agent, but did state securities fraud claims against contributors, officers, and counsel).
- *Top of Iowa Co-op. v. Schewe*, 6 F. Supp. 2d 843 (N.D. Iowa 1998)  
(a grain producer's counterclaim in a hedge-to-arrive (HTA) contract case alleging the contracts were securities sold in violation of the Securities Exchange Act: holding that the HTAs were not "investment contract securities" subject to regulation under the federal securities laws), aff'd, 324 F.3d 627 (8th Cir. 2003)

### **TELECOMMUNICATIONS CASES:**

- *Cnty. Voice Line, L.L.C. v. Great Lakes Commc'n Corp.*, 18 F. Supp. 3d 966 (N.D. Iowa 2014)  
(action by a provider of streaming broadcast services against a telecommunications carrier that allegedly failed to pay the provider commissions it collected from the consumers' originating carries, denying in part and granting in part the defendants' motion to dismiss).

- *Aventure Commc'ns Tech., L.L.C. v. Iowa Utilities Bd., 734 F. Supp. 2d 636 (N.D. Iowa 2010)*  
(action by telecommunications provider challenging the state utility board regulations declaring interexchange carriers (IXCs) were not required to pay access charges to local exchange carriers (LECs) for telecommunications traffic terminated to conference call service providers: holding the IXCs had sufficient interest to intervene as of right and that the regulations were not unconstitutionally vague).
- *McLeodUSA Telecommunications Servs., Inc. v. Qwest Corp., 469 F. Supp. 2d 677 (N.D. Iowa 2007)*  
(action by a competitive local exchange carrier (CLEC) alleging breaches of interconnection agreements with counterclaims by a telecommunications carrier: holding that the carrier inadequately pleaded a legal duty to disclose source information and negligence, but adequately pleaded interference with its property, violation of its possessory rights in property, fraud, and fraudulent concealment).

### **TORTS, MALPRACTICE, AND PRODUCTS LIABILITY CASES:**

- *Glenn v. B & R Plastics, Inc., 326 F. Supp. 3d 1044 (D. Idaho 2018) (visiting judge)*  
(action by a consumer against a manufacturer of a plastic stepstool: excluding expert testimony and test results and holding on summary judgment that the manufacturer was not liable to the consumer for any defect in the stool).
- *Sec. Nat. Bank of Sioux City, Iowa v. Abbott Labs., 947 F. Supp. 2d 979 (N.D. Iowa 2013)*  
(action by the conservator for a child who suffered severe brain damage from bacterial meningitis as a neonate against the manufacturer of powdered infant formula (PIF) that was allegedly the source of the bacteria: holding on summary judgment that only the conservator's "warning defect" claim would go to trial).
- *Stults v. Int'l Flavors & Fragrances, Inc., 31 F. Supp. 3d 1015, 1017 (N.D. Iowa 2014)*  
(one of several "popcorn lung" cases, this one under Michigan law, in which the plaintiff alleged that he developed "popcorn lung" by consuming multiple bags of microwave popcorn with butter flavorings made with diacetyl daily for several years: denying summary judgment on the plaintiff's failure to warn and design defect claims and the flavoring suppliers' defense that the popcorn manufacturer was a "sophisticated user").
- *Estate of McFarlin v. Lakeside Marina, Inc., 979 F. Supp. 2d 891 (N.D. Iowa 2013)*  
(mother's personal injury action against operators of a public marina after her son was killed in a boating accident: holding that the operators of the marina did not owe a common law duty to warn of hazards on the lake and nothing in the operator's lease agreement with the city created such a duty).

- *Estate of Thompson v. Kawasaki Heavy Indus., Ltd.*, 922 F. Supp. 2d 780 (N.D. Iowa 2013)  
(action by the representatives of the estate of a motorcyclist against the manufacturers of the motorcycle and certain parts: granting summary judgment for defendants on claims of a manufacturing defect claim, breach of implied warranty of fitness for a particular purpose, and negligence, but denying the motion on a design defect claim and a prayer for punitive damages).
- *Timmerman v. Eich*, 809 F. Supp. 2d 932 (N.D. Iowa 2011)  
(debtors' and bankruptcy trustee's action against bankruptcy attorneys for legal malpractice: the attorneys' motion for summary judgment was granted as to a prayer for emotional distress damages and a breach of warranty claim, but that motion was denied as to the attorneys' in pari delicto defense and prayer for punitive damages).
- *dePape v. Trinity Health Sys., Inc.*, 242 F. Supp. 2d 585 (N.D. Iowa 2003)  
(action by a Canadian physician against a law firm, stemming from the physician's failed attempt to immigrate to United States for employment: after a bench trial, holding that the law firm was extraordinarily negligent in failing to inform and communicate with they physician concerning his immigration and in counseling him to perpetrate a fraud on the INS in order to gain entry to the United States and holding that, as a result of the damages caused by this negligence, the physician was entitled to \$278,736.20 damages for his lost income and emotional distress).

**ADMITTED TO PRACTICE:**

- IOWA (1975)

**EDUCATION:**

- J.D. Drake University Law School (1975)

**PROFESSIONAL AND COMMUNITY SERVICE:**

- Numerous awards from state and federal bar association and legal groups
- U.S. Judicial Conference Committee work
- Numerous Iowa and ABA Bar Association Committees