

Section M

Work Comp & Third Party Claims

Mark Hedberg

Hedberg & Boulton, P.C.
100 Court Avenue, Suite 425
Des Moines, IA
mark@hedberglaw.com



The following information, in printed and electronic form, can ONLY be used by the individual specifically registered with IAJ to attend IAJ's Claimants & Plaintiffs Trial Lawyer Conference or an individual member of IAJ, and SHALL NOT be disseminated, either orally or in writing, to any other individual or entity without the express written permission of IAJ.

1. Is there a Third Party Claim?
 - a. Construction Accident Liability
 - i. Owner
 1. Duty to those working on the property.
 - a. Owners are required to keep the worksite in a reasonably safe condition, use ordinary care in controlling the work and can be under a legal and/or contractual duty to provide specific safeguards against danger. *See Downs v. A&H Construction, Limited*, 481 N.W.2d 520 (Iowa 1992).
 2. Contracts to shifts.
 - a. The contract with the owner can further demonstrate the control they assumed over the work of the subcontractors and the entire work site.
 - ii. General Contractor
 1. Review architect contracts
 2. 3 different ways you're an employer—look at OSHA rules.
 - iii. Subcontractor
 - b. Plant Accident
 - i. Products liability
 - ii. Subcontractor
 - iii. Suppliers
 - iv. Outsourced—such a repair of equipment or skid loader/forklift. Another example would be a forklift leaking hydraulic fluid.
 - c. Gross Negligence
 - i. The Iowa Workers' Compensation Act is the exclusive remedy for employees seeking to recover damages for their workplace injuries. Iowa Code § 85.20. The exception to this is when an "injury is caused by another employee's gross negligence 'amounting to such lack of care as to amount to wanton neglect for the safety of another.'" *Nelson v. Lindaman*, 867 N.W.2d 1, 10 (Iowa 2015).
2. Settling the Workers' Compensation claim.
 - a. Agreement v. Special
 - i. *Bankers Standard Ins. Co. v. Stanley*, 661 N.W.2d 178 (2003)
 - b. Lien Waiver
 - c. Release of coworkers
3. Potential Liens
 - a. Liens in general are covered under Iowa Code Section 85;
 - i. Code: When an employee receives an injury or incurs an occupational disease or an occupational hearing loss for which compensation is payable under this chapter, chapter 85A or chapter 85B, and which injury or occupational disease or occupational hearing loss is caused under circumstances creating a legal liability against some person, other than the employee's employer or any employee of such employer as provided in section 85.20 to pay damages, the employee, or the employee's dependent, or the trustee of such dependent, may take proceedings against the employer for compensation, and the employee or,

in case of death, the employee's legal representative may also maintain an action against such third party for damages.

- ii. Underinsured v. non insured
- iii. Attorney Cost: reduction of lien based on attorney fee and costs.
- iv. Loss of Consortium Claim: No lien on loss of consortium cases.