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**Jeffrey D. Stone**  
**Justin L. Sullivan**  
**WHITFIELD & EDDY, P.L.C.**  
**699 Walnut Street, Suite 2000**  
**Des Moines, IA 50309**  
**Telephone: (515) 288-6041**  
**Facsimile: (515) 246-1474**  
**Email: [stone@whitfieldlaw.com](mailto:stone@whitfieldlaw.com)**  
**Email: [sullivan@whitfieldlaw.com](mailto:sullivan@whitfieldlaw.com)**

### I. MECHANIC'S LIEN BASICS

The Iowa legislature significantly changed the structure of the Iowa mechanic's lien statute in 2013. The major changes, which will be discussed in more detail below, include the following. First, all mechanics' lien filings on or after January 1, 2013 are to be filed with the Iowa Secretary of State, rather than with the Clerk of District Court in the County in which the improvement was made. The law implemented a new online registry, called the "Mechanic's Notice and Lien Registry," ("MNLR") which is used for filing (1) residential and commercial mechanic's liens; (2) residential notices; and (3) all other lien documents. Further, for all residential construction, the contractor is required to submit a notice within 10 days of starting the job. Contractors not filing the notice are not able to get a mechanics' lien. A subcontractor on residential construction must also post a "Preliminary Notice" to be entitled to a mechanics' lien.

#### A. Requirements

##### 1. Important Dates

Under Iowa Code Chapter 572, general contractors and subcontractors (suppliers are included within the statutory definition of "subcontractor")<sup>1</sup> have 90 days from the date of furnishing the last labor or materials to the property in which to file a statement of lien.<sup>2</sup> The last labor performed or the last material furnished must be something other than a minor visit to the site merely made to restart the time period for filing the lien. In other words, there must be something significant done for the project at the time of the last visit.<sup>3</sup>

A mechanic's lien filed beyond the 90-day period may still be enforced. However, the priority of the lien may be lost. For example, a purchaser of a liened property who acquires the property after the 90-day filing period, but before the actual filing of the mechanic's lien, will overcome the mechanic's lien of a contractor or subcontractor.<sup>4</sup>

The filing deadline is particularly critical to a subcontractor or supplier. A subcontractor or supplier can file a lien after the expiration of the 90-day period but the lien amount will not exceed the balance due from the owner to the contractor at the time the notice of the late-filed lien is served upon the owner.<sup>5</sup> This makes it extremely important for subcontractors and suppliers to closely monitor their records of payment from general contractors.

A suit to foreclose the lien must be brought within two years and 90 days from the date that materials were last furnished or labor was last performed on the property.<sup>6</sup> In many cases, the value of the owner's equity in the project will not be sufficient to pay all unpaid contractors, suppliers, or subcontractors. This is due to the fact that, in most instances, the mortgagee has priority over all other lien claimants. If there is some equity remaining to be distributed among the lien claimants, the mechanic's liens shall have priority over each other in the order of filing.<sup>7</sup>

## **2. Where and How to File a Mechanic's Lien**

After the recent change in legislation, mechanic's liens are perfected by filing the actual mechanic's lien statement with the Secretary of State's office, which administers the MNLR System.<sup>8</sup> The mechanic's lien form must be verified (notarized) and contain a statement of the amount due the mechanic's lien claimant after allowing any credits. The mechanic's lien statement must also set out the date when material was first furnished or labor first performed, the date when the last material was furnished or labor was last performed, the legal description of the property to be charged with the lien, the name and last known mailing address of the owner of the property, the address of the property or a description of the location of the property if there is no address, and the tax parcel identification number of the parcel. After the lien is filed, the Administrator of the MNLR will mail a copy of the lien to the owner.<sup>9</sup>

However, if the lien is filed by a subcontractor or supplier after the expiration of the 90-day period, the subcontractor or supplier must cause the notice of the lien to be served on the owner of the property.<sup>10</sup>

## **3. Special Lien Provisions Pertaining to "Residential Construction" Properties**

While lien laws are generally designed to protect unpaid contractors or subcontractors, the Iowa legislature amended the mechanic's lien statute to incorporate protections for "Residential Construction" properties (in other words, to protect owners of single-family residential properties). Most of the provisions are designed to insure the homeowner is aware subcontractors or suppliers may have mechanic's lien rights despite the fact that the homeowner fully paid the general contractor with the expectation that the subcontractors would be paid by the general contractor. Section 572.13 pertains to general contractors, who must provide owners with the following notice in "boldface type" and a minimum size of ten points:

Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the owner. The mechanics' notice and lien registry provides a listing of all persons or companies furnishing labor or materials who have posted a lien or who may post a lien upon the improved property.<sup>11</sup>

A general contractor failing to provide the notice will not be entitled to a lien. Section 572.13A pertains to a general contractor or owner builder, who must post a "Notice of Commencement" of work to the MNLR no later than 10 days after the commencement of work on the property. General contractors must meet this requirement regardless of whether or not it has

contracted with subcontractors on the project.<sup>12</sup> The notice of commencement will be effective only to labor, service, equipment, and material furnished to the property subsequent to the posting of the notice.<sup>13</sup> The Notice of Commencement must include the name and address of the owner; the name, address, and telephone number of the general contractor or owner-builder; the address or general description of the property; the legal description; the date the work was commenced; and the tax parcel ID number.<sup>14</sup> A failure to post the Notice of Commencement will eliminate the general contractor or owner-builder's ability to file a lien on the project.

Sections 572.13B and 572.14 pertain primarily to subcontractors (including suppliers). These sections provide that a subcontractor may lose his lien rights unless he provides a "Preliminary Notice" to the owner in the form specified by the statute.<sup>15</sup> The notice is to be posted before the balance due is paid to the general contractor. The notice must contain the name of the owner; the MNLN number; the name, address, and telephone number of the subcontractor furnishing the labor, service, equipment, or material; the name and address of the person who contracted with the claiming subcontractor; the address of the property or general description if it has none; the legal description of the property; the date the material or materials were first furnished or labor was performed; and the tax parcel ID number.

The subcontractor or supplier is well advised to provide notice beyond what the administrator provides, which can be made by certified mail, personal service, or a signed receive of notice from the owner.<sup>16</sup> This is prudent because, in the event of a dispute, the subcontractor bears the burden of demonstrating receipt of the Preliminary Notice. If the subcontractor or supplier fails to provide such a notice, the subcontractor or supplier may be deprived of his lien rights if the owner has already paid the general contractor.

## **B. Enforcement and Foreclosure of the Lien**

A petition to foreclose a mechanic's lien must be filed in the district court where the lien was filed within two years and 90 days of the last day that labor was performed or materials were furnished. If the suit is not filed within that time period, the lien will no longer be enforceable. At the foreclosure action, the court may establish priority among all other lien claimants for any equity available in the property for the payment of all the claims. In addition, certain lien claimants may be entitled to recovery of attorney's fees expended to foreclose their mechanic's lien rights.

The Code provides that the plaintiff (lien claimant) in a foreclosure action, if successful, may be awarded reasonable attorney's fees.<sup>17</sup> A prevailing owner also may in certain situations recover attorney fees.<sup>18</sup> If an owner of a residential construction property prevails in resisting a mechanic's lien foreclosure, then such owner may be awarded attorney fees. Additionally, if the lien was filed in bad faith or the supporting affidavit was materially falsified, then the court shall award to the owner \$500 or the amount of the lien, whichever is less.

## **C. Lien Rights of Second-Tier Subcontractors—Commercial Construction**

Iowa Code Section 572.33 deals with notice requirements for persons furnishing labor or material to a subcontractor, but only for commercial construction projects (also known as second-tier subcontractors because they are not in privity of contract with the principal contractor). The

one-time notice must be furnished to the general contractor or owner-builder within 30 days of first furnishing materials or labor. The notice requires the name, mailing address, and telephone number of the person furnishing the materials or labor, and the name of the subcontractor to whom the materials or labor were furnished. The notice covers additional material or labor furnished by the same person to the same subcontractor for use in the same construction project. If the deadline for providing notice is not met then all lien rights of the second-tier subcontractor are lost.

The same section also provides that the general contractor or owner-builder has the right to request information from a person furnishing materials or labor to a subcontractor regarding payments made or to be made by the subcontractor.

#### **D. No Mechanic's Liens on Public Projects**

The principle of sovereign immunity—"one cannot sue the king"—prohibits the enforcement of lien remedies against property owned by the government or its various subdivisions. However, the federal government and all states have enacted statutes which provide lien-like remedies for those who perform work on or provide materials for public property. Most of these statutes, however, serve to protect subcontractors and suppliers rather than general contractors. General contractors are usually left with only contract remedies in cases involving work performed on public property. Chapter 573 of the Iowa Code addresses this topic. It provides the procedure for making claims for labor performed and materials supplied on public improvement projects.

## **II. STATUTES OF LIMITATION AND REPOSE**

### **A. Statute of Limitations**

Under Iowa Code Section 614.1(4), actions generally founded on "injuries to property" and fraud are to be brought within five years. Under Section 614.1(5), actions founded on written contracts must be brought within ten years.

It is well settled in Iowa that no cause of action accrues until the wrongful act produces loss or damage to the claimant.<sup>19</sup> Under the discovery rule, "a cause of action based on negligence does not accrue until plaintiff has in fact discovered that he has suffered injury or by exercise of reasonable diligence should have discovered it."<sup>20</sup> The discovery rule has been applied to cases involving negligence<sup>21</sup> and express and implied warranty.<sup>22</sup>

### **B. Statute of Repose**

Statutes of repose are different from statutes of limitation. A statute of limitation "bars, after a certain period of time, the right to prosecute an accrued cause of action."<sup>23</sup> A statute of repose, by contrast, "terminates any right of action after a specified time has elapsed, regardless of whether or not there has as yet been an injury."<sup>24</sup>

Despite the fact that Iowa Code Chapter 614 is titled "Limitations of Actions," Section 614.1(11) is in all actuality a statute of repose. This section limits actions in residential construction to ten years, and eight years for all other improvements. It states that "[i]n addition

to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty . . . and founded on injury to property, real or personal ... shall not be brought more than fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury.” The section also expressly excludes claims against a “person” solely “in the person’s capacity as an owner, occupant, or operator of an improvement to real property.”<sup>25</sup>

### **III. PRE-SUIT NOTICE OF CLAIM AND OPPORTUNITY TO CURE**

Iowa law requires that, in order to maintain an action for breach of warranty, notice of an alleged breach of the warranty must be given within a reasonable time after the claimant discovered, or should have discovered, the breach.<sup>26</sup>

### **IV. INSURANCE COVERAGE AND ALLOCATION ISSUES**

Standard commercial general liability policies provide coverage for amounts the insured is liable to pay because of property damage occurring during the policy period. When a contractor makes an insurance claim for property damage on a construction project, there is often a dispute over which policy applies and whether or not the damage is covered.

Generally, no coverage for defective construction work is afforded to contractors if the only damage is to the work product itself.<sup>27</sup>

### **V. CONTRACTUAL INDEMNIFICATION**

Under a contract for indemnification, “one party (the indemnitor) promises to hold another party (the indemnitee) harmless for loss or damage of some kind.”<sup>28</sup> Iowa courts have maintained that “indemnifying agreements will be enforced according to their terms, as in any other contract case.”<sup>29</sup>

There are, however, some “unique rules” in the indemnity context. First, “where an indemnification is not given by one in the insurance business but is given incident to a contract whose main purpose is not indemnification, the indemnity provision must be construed strictly in favor of the indemnitor.”<sup>30</sup> Furthermore, “an indemnity contract is strictly construed against the drafter.”<sup>31</sup> Second, a party can receive indemnity for its own negligence only if the indemnity provides for it in clear and unequivocal language.<sup>32</sup> “Broad and general language” will not suffice to “shift the burden of liability, particularly when the damage is caused by the indemnitee’s sole negligence.”<sup>33</sup>

When interpreting and construing an indemnity problem, the Iowa courts frame the issue with reference to two questions: “(1) for whose negligent acts causing damage is indemnity promised? and (2) what is the scope of the area in which indemnity is available?”<sup>34</sup> However, this general concept and liberal view of the right to contract was largely abrogated by statute as Iowa Code Section 537A.5. That section holds any such indemnity agreement which attempts to hold another party liable for a party’s own negligence is void and unenforceable as contrary to public policy concerns.<sup>35</sup>

## **VI. CONTINGENT PAYMENT AGREEMENTS**

There is no per se legal prohibition against contingent payment clauses in Iowa. The enforceability and requirements of contingent payment agreements depend whether the project is private or public.

### **A. Private Projects**

Under Iowa Code Section 572.30, a contractor who engages a subcontractor or supplier to provide labor or materials on an owner-occupied dwelling must pay the subcontractor for labor and materials within 30 days after the contractor receives full payment from the owner. If the contractor fails to pay the subcontractor as required, the unpaid subcontractor or supplier may sue the contractor and recover in addition to the actual damages, “exemplary damages” against the contractor in an amount not less than 1 percent and not exceeding 15 percent of the amount due the subcontractor.

Prior to instituting such an action, however, the subcontractor or supplier must give written notice to the contractor of nonpayment indicating the amount of payment due and a description of the real estate improved.

The general contractor can avoid the exemplary damages penalties under the statute if he or she does one or both of the following:

1. Establishes that all proceeds received from the person making the payment have been applied to the cost of labor or material furnished for the improvement.
2. Within 15 days after receiving notice of nonpayment the principal contractor gives a bond or makes a deposit with the clerk of the district court, in an amount not less than the amount necessary to satisfy the nonpayment for which notice has been given under this section, and in a form approved by a judge of the district court, to hold harmless the owner or person having the improvement made from any claim for payment of anyone furnishing labor or material for the improvement, other than the principal contractor.<sup>36</sup>

### **B. Public Projects**

Under Iowa Code Section 573.12, the public corporation must make prompt payment to the principal contractor. Further, the principal contractor must pay subcontractors no later than either 1) 7 days after receipt of payment for the subcontractor’s work or 2) a reasonable time after the prime contractor could have received payment for the subcontractor’s work, if nonpayment is not the subcontractor’s fault. This last clause could overcome contrary pay-if-paid or pay-when-paid clauses.

## **VII. DAMAGES LIMITATIONS**

### **A. Personal Injury Damages v. Construction Defect Damages**

The damages that a plaintiff may recover arising from a construction project include both personal injury damages and construction defect damages depending on the circumstances. Unlike other states, the legislature has not recently enacted a statute that affects this issue. Thus, basic contract and tort principles apply.

## **B. Attorneys' Fees**

The general rule is that parties may recover attorney fees only pursuant to a statute or contract. Iowa courts have recognized a limited exception to this rule “when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.”<sup>37</sup> To be entitled to an award under this common law rule, the injured party must demonstrate that the offending party’s actions “rise to the level of oppression or connivance to harass or injure another.”<sup>38</sup>

## **C. Consequential Damages**

A contractor may recover “consequential damages,” which includes damages foreseeable at the time the parties entered the contract, or damages naturally flowing from the contract’s breach.<sup>39</sup>

## **D. Delay and Disruption Damages**

Generally, delay and disruption damages, if shown to be consequential, are recoverable. A plaintiff seeking such damages must “establish the amount of claimed damages with some reasonable degree of certainty [but] mathematical precision is not required.”<sup>40</sup>

## **E. Economic Loss Doctrine**

The general rule in Iowa is that a plaintiff “cannot maintain a claim for purely economic damages arising out of [a] defendant’s alleged negligence.”<sup>41</sup> In the construction project context, the Iowa Supreme Court has made the following remarks concerning the economic loss doctrine: “(T)he line to be drawn is one between tort and contract rather than between physical harm and economic loss. . . . 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.”<sup>42</sup>

Note, however, that an exception to the Economic Loss Doctrine has been carved out for licensed professionals such as architects and engineers.<sup>43</sup>

## **F. Interest**

Interest is permitted, in pertinent part, on all money due on judgments and decrees of courts at a rate calculated under Iowa Code Section 668.13.<sup>44</sup> Additionally, in construction cases, Iowa courts have held that a nonbreaching party may recover interest payments made to third parties if “reasonably foreseeable and proximately caused by the defaulting party’s breach.”<sup>45</sup> Additionally, contractors may recover interest on an open account (i.e. “finance charges”), provided the formalities of Iowa Code Section 535.11 are adhered to.

### **G. Punitive Damages**

Unless provided for by statute, punitive damages will not be awarded for breach of contract. A narrow exception, however, has been recognized in Iowa when the breach “also constitutes an intentional tort, or other illegal or wrongful act, if committed maliciously.”<sup>46</sup>

While the intentional tort or illegal/wrongful act may occur at the time of and/or in connection with the breach, such a “wrongful act” is not committed by the breaching of the contract, even if intentional.<sup>47</sup>

## **VII. CASE LAW AND LEGISLATION UPDATE**

In 2008, the Iowa Supreme Court held that the implied warranty of workmanlike construction runs to the benefit of subsequent purchasers of a home.<sup>48</sup> The Court further held that the implied warranty is a judicially created warranty that is independent of the construction contract. Builder-vendors, according to the Court, should be liable to subsequent purchasers for breach of the implied warranty of workmanlike construction because builder-vendors are in a superior position as a result of the builder’s expertise in construction.

In 2011, the Iowa legislature passed SF 396 and thereby banned “broad-form” indemnification in most construction contracts. The new law is codified at Iowa Code Section 573A.5.

In 2011, the Iowa legislature passed HF 646 in an effort to reduce (post bid submittal) bid-shopping. The amended law (Iowa Code Section 8A.311) requires general contractors on State construction projects to identify their subcontractors 48 hours after the published date for which bids must be submitted, obtain approval from the State before changing subcontractors, and disclose the change in subcontract price caused by a change in subcontractor.

In 2012, the Iowa Court of Appeals declined to extend the implied warranty of workmanlike construction to subcontractors, even where general contractors had become insolvent, and subcontractors had performed the allegedly defective work.<sup>49</sup> In 2013, the Iowa Mechanic’s Lien Law was substantially changed by the introduction of the MNLR and attendant provisions discussed in the above section concerning mechanic’s liens.

Early in 2014, the Iowa Court of Appeals again refused to extend the implied warranty of workmanlike construction, this time based on a request to broaden it to multi-unit residential dwellings and to protect consumer lenders providing funds to build a multi-unit dwelling for occupancy as a residence.<sup>50</sup>



In 2017, the Iowa Senate passed House File 586 which expanded the requirement in Iowa Code § 572.13A(1) to file a Commencement of Work Notice to residential general contractors whether or not subcontractors are contracted for the project. The legislative action was taken in response to the ruling in *Standard Water Control Systems, Inc. v. Jones*, which pointed out the former loophole in the statute.<sup>51</sup>

In 2019, SF412 passed, titled as the Post-Loss Assignment of Insurance Benefits from Homeowners to Contractors in Iowa Code § 515.137A. It imposes various new requirements upon certain residential remodelers where the exterior work performed is covered by the homeowner's property insurance policy. Predominately this act may imply additional requirement for "storm chasers" or other contractors who may participate in door to door sales techniques.<sup>52</sup>

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- <sup>1</sup> Iowa Code § 572.1 (2018).
- <sup>2</sup> *Id.* §§ 572.9, 572.11.
- <sup>3</sup> *Skemp v. Olansky*, 85 N.W.2d 580 (Iowa 1957).
- <sup>4</sup> Iowa Code § 572.18.
- <sup>5</sup> *Id.* § 572.11.
- <sup>6</sup> *Id.* § 572.27.
- <sup>7</sup> *Id.* § 572.17.
- <sup>8</sup> *Id.* § 572.8.
- <sup>9</sup> *Id.*
- <sup>10</sup> *Id.* § 572.10.
- <sup>11</sup> *Id.* § 572.13(1).
- <sup>12</sup> *Id.* § 572.13A(1) (abrogating *Standard Water Control. Sys., Inc. v. Jones*, 888 N.W.2d 673, 675-76 (Iowa Ct. App. 2016)).
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.* § 572.13A(1)(a)-(g).
- <sup>15</sup> *Id.* § 572.13B(1).
- <sup>16</sup> *Id.* § 572.13B(3)(b).
- <sup>17</sup> *Id.* § 572.32.
- <sup>18</sup> *Id.*
- <sup>19</sup> *Bob McKiness Excavating & Grading, Inc. v. Morton Bldgs., Inc.*, 507 N.W.2d 405, 408 (Iowa 1993).
- <sup>20</sup> *Id.* (citing *Chrischilles v. Griswold*, 150 N.W.2d 94, 100 (Iowa 1967)).
- <sup>21</sup> *Id.*
- <sup>22</sup> *Brown v. Ellison*, 304 N.W.2d 197, 201 (Iowa 1981).
- <sup>23</sup> *Bob McKiness Excavating & Grading, Inc.*, 507 N.W.2d at 408.
- <sup>24</sup> *Id.* (citing *Hanson v. Williams Cty.*, 389 N.W.2d 319, 321 (Iowa 1984)).
- <sup>25</sup> Iowa Code § 614.1(11).
- <sup>26</sup> *Kirk v. Ridgway*, 373 N.W.2d 491, 496 (Iowa 1985).
- <sup>27</sup> *Cont'l W. Ins. Co. v. Jerry's Homes, Inc.*, No. 5-848/04-1890, 2006 Iowa App. LEXIS 122 (Iowa Ct. App. Feb. 1, 2006).
- <sup>28</sup> *McNally & Nimergood v. Neumann-Kiewit Constructors, Inc.*, 648 N.W.2d 564, 570 (Iowa 2002) (citing II E. Allan Farnsworth, *Farnsworth on Contracts* § 6.3, at 108 (2d ed. 1998)).
- <sup>29</sup> *Pugh v. Prairie Constr. Co.*, 602 N.W.2d 805, 808 (Iowa 1999).
- <sup>30</sup> *Id.* at 808.
- <sup>31</sup> *Id.*
- <sup>32</sup> *McNally & Nimergood*, 648 N.W.2d at 571.
- <sup>33</sup> *Herter v. Ringland-Johnson-Crowley Co.*, 492 N.W.2d 672, 674 (Iowa 1992).
- <sup>34</sup> Roger Stone, *Indemnity in Iowa Construction Law*, 54 Drake L. Rev. 125, 133 (2005) (citing *Modern Piping, Inc. v. Blackhawk Automatic Sprinklers, Inc.*, 581 N.W.2d 616, 624 (Iowa 1998) (internal citations omitted)).
- <sup>35</sup> Iowa Code § 537A.5
- <sup>36</sup> Iowa Code § 572.30.
- <sup>37</sup> Roger Stone, *Construction Damages in Iowa*, 52 Drake L. Rev. 449, 460 (2004) (citing *Remer v. Bd. of Med. Exam'rs*, 576 N.W.2d 598, 603 (Iowa 1998) (internal quotation omitted)).
- <sup>38</sup> *Id.* (citing *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co.*, 510 N.W.2d 153, 159-60 (Iowa 1993)).
- <sup>39</sup> *Metro. Transfer Station, Inc. v. Design Structures, Inc.*, 328 N.W.2d 532, 536 (Iowa Ct. App. 1982) (citing *Mihills Mfg. Co. v. Day Bros.*, 50 Iowa 250, 252 (1878)).
- <sup>40</sup> *Mills v. Guthrie Cty. Rural Elec. Coop. Ass'n*, 454 N.W.2d 846, 851 (Iowa 1990) (citing *Bushman v. Cuckler Bldg. Sys.*, 421 N.W.2d 145, 148 (Iowa App. 1988)).
- <sup>41</sup> *Neb. Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.*, 345 N.W.2d 124, 128 (Iowa 1984).
- <sup>42</sup> *Determan v. Johnson*, 613 N.W.2d 259, 262 (Iowa 2000) (citing *Nelson v. Todd's Ltd.*, 426 N.W.2d 120, 125 (Iowa 1988)).
- <sup>43</sup> *Kemin Indus. v. KPMG Peat Marwick LLP*, 578 N.W.2d 212, 221 (Iowa 1998); *Burns Philp, Inc. v. Cox, Kliewer & Co., P.C.*, No. 4-99-CV-90033, 2000 U.S. Dist. LEXIS 21653 (S.D. Iowa Nov. 2, 2000)

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<sup>44</sup> Iowa Code § 535.3.

<sup>45</sup> Roger Stone, *Construction Damages in Iowa*, 52 Drake L. Rev. 449, 458 (2004) (citing *Metro. Transfer Station, Inc.*, 328 N.W.2d at 536).

<sup>46</sup> *Muchmore Equip., Inc. v. Grover*, 315 N.W.2d 92, 100 (Iowa 1982) (citing *Pogge v. Fullerton Lumber Co.*, 277 N.W.2d 916, 919-20 (Iowa 1979)).

<sup>47</sup> *Id.*

<sup>48</sup> *Kemin Indus.*, 578 N.W.2d at 221; *Burns Philp, Inc.*, 2000 U.S. Dist. LEXIS 21653.

<sup>49</sup> *Village at White Birch Town Homeowners Ass'n v. Goodman Assocs., Inc.*, No. 2-605/11-1842, 2012 Iowa App. LEXIS 904 (Iowa Ct. App. Oct. 31, 2012).

<sup>50</sup> *Luana Sav. Bank v. Pro-Build Holdings, Inc.*, No. 3-1052/13-0060, 2014 Iowa. App. LEXIS 12 (Iowa Ct. App. Jan. 9, 2014).

<sup>51</sup> Iowa Code § 572.13A(1) (abrogating *Standard Water Control. Sys.*, 888 N.W.2d at 675-76).

<sup>52</sup> Iowa Code § 515.137A