



# Willson & Pechacek, P.L.C. Newsletter



General Issue

JUNE 2022

## What is Litigation?

By Jamie L. Cox

**Y**ou have probably heard someone use the term “litigation,” or you know of attorneys who refer to themselves as “litigators.” Some of the lawyers at Willson & Pechacek, including myself, are litigators who practice litigation law. But what does that actually mean? “Litigation” refers to actual contested proceedings where some type of lawsuit is filed with the court. Nasty letters and verbal arguments do not constitute litigation. True litigation starts the moment someone files an actual lawsuit with the court.

What are the general stages of civil litigation? In a civil case, the general steps of litigation are as follows: (1) Investigation and preparing the lawsuit; (2) Initiating the lawsuit by serving an original notice and petition; (3) Pretrial/scheduling stage (where pretrial deadlines and trial or evidentiary hearing dates are set); (4) Discovery stage (where the parties exchange information and documents); (5) The trial or hearing itself is held; and (6) Appeals or other post-judgment matters.

Assuming a lawsuit was just started, how long does it take to get to trial? The length of time depends on the type of case, whether you are in federal court

or state court, the scheduling preferences of the individual judge, whether either side will purposely delay, whether extensive discovery of information and documents is necessary, and many other factors. In some counties, a trial or hearing may take place within one year of the filing of the lawsuit. But in counties having a large number of filings, the expected time between the filing of the lawsuit and the trial or hearing might be two years or longer. The court system is generally making efforts to move cases along as rapidly as possible, but the COVID-19 pandemic and staff shortages have caused cases to pile up.

In the event a lawsuit is necessary, our law firm has the skill and experience to represent its clients in all aspects of litigation. But before filing suit, we help our clients explore potential ways to voluntarily resolve their disputes without the need for filing suit. Most often, this includes some investigation into the nature and origins of the dispute, and then communicating with the other side or their attorney to explain why we are right and why the dispute should be resolved. By doing so, clients are often able to settle their claims without the need for actual litigation. But, sometimes, a settlement is not possible at the outset and the client needs to file a lawsuit to protect their rights.

Our firm strives to keep costs as low as possible by focusing on what is important and necessary for a successful outcome of the dispute. But litigation can be expensive. Why does it cost so much? Litigation is expensive for a number of reasons, but the primary reason is that it is very time consuming and labor-intensive. For a lawyer to be ready for a court trial or hearing, he must know virtually every aspect or facet of the case, and he must be familiar with each and every document associated with the case. In preparation for a trial or hearing, some lawyers estimate they spend up to 10 hours of preparation time for every hour of actual court time. Sometimes the cost of expert witnesses greatly increases the litigation expenses. In other cases, the sheer number of witnesses to be interviewed and/or cross-examined can greatly influence the expense of the case. In many cases, the amount of documentation to be analyzed can fill file cabinets to the brim. The cost of litigation can multiply when the other side fights the dispute tooth and nail or uses win-at-all-cost tactics.

Is there a less expensive and time-consuming alternative to litigation? Yes. The most common option is mediation. In mediation, a neutral third party, the

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## Commercial Insurance Policies May Not Cover Losses Caused By Covid-19 Government Shutdowns

By Paul S. Wilson

**B**eginning in March of 2020, state and local governments began ordering businesses to close throughout the country to stop the spread of COVID-19. According to a study by the National Bureau of Economic Research, average business revenues declined by more than 40% in the first few weeks following the declaration of the national emergency, and showed little to no evidence of recovery as the pandemic continued.

Many business owners expected reimbursement for the lost revenue from their general commercial insurance policies, and filed lawsuits when insurance companies denied their claims. State and federal courts in Iowa, however, have decided that lost revenue from government shutdowns is not covered under the most common commercial insurance policies.

Both the Iowa Supreme Court and the Eighth Circuit Court of Ap-

peals have recently held that losses caused by government COVID-19 shutdowns are not covered by commercial insurance policies that require “direct physical loss of or damage to property.” In one case, a country club in Des Moines made a claim under its commercial property insurance policy for lost income when it was shut down under Iowa’s emergency proclamation closing bars and restaurants in March of 2020, when the COVID-19 pandemic was just beginning.

The insurance policy covered losses resulting from suspensions of operations, but only if caused by “direct physical loss of or damage to property.” The insurance company denied coverage, arguing that no physical loss or damage to the property occurred. The business owners sued.

In the Iowa and federal cases, the courts ultimately sided with the insurance companies, agreeing that the government shutdown caused no “direct physical loss” to the

properties. The courts reasoned that some damage has to happen to some “physical aspect” of the properties, and the loss of use caused by government shutdowns does not constitute physical damage covered by the policies.

In other jurisdictions, courts have sided with the insured business owners on this issue, but only when an insured business can show that the COVID-19 virus physically contaminated the premises, resulting in a temporary closure of the business. This argument probably would not have made a difference in the Iowa cases, though, because the policies contained a specific exclusion for losses resulting from viruses.

If you have any questions regarding issues related to your general commercial insurance policy, please feel free to contact one of our firm’s attorneys.

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mediator, helps the parties and their attorneys resolve disputes through a voluntary process that often lasts less than one day. A mediator’s job can vary depending on the personalities and wishes of the parties and their attorneys, and the nature and history of the dispute. But a good mediator urges participants to talk to each other, helps the parties understand their problems and the source of their conflict, defuses unrealistic expectations, main-

tains order and civility, carries messages between the parties, helps participants negotiate, suggests solutions, and, finally, persuades them to accept a specific resolution. There has been a rapid increase in the use of mediation over the past several years because it is faster and cheaper than full-blown litigation. Our firm’s clients have generally given rave reviews of the mediation process and the rapid finality it brings to their cases.

If you are involved in any disputes that are headed to litigation or that may be ripe for mediation, please feel free to contact us to discuss the matter so that we can explore your options and the best way for you to proceed. We look forward to speaking with you.

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## New (and Improved) Iowa Income Tax Exclusions

By Lee M. Rankin

In addition to rate changes, the Iowa Legislature made changes designed to reduce the tax burden of older Iowans beginning in 2023 and here are a few highlights:

### Retirement Income Exclusion

The big change is all retirement income will be exempt from Iowa tax for those who are 55 years of age or older or who are disabled. Currently and for past years, individuals are allowed to deduct \$6,000.00 of retirement income. Military retirement benefits will continue to be fully excludable regardless of age.

### Employee-Owned Stock Plan Gain Exclusion

Another provision allows for a three-year phase-in exclusion of gain from the sale of stock acquired as part of a “qualified” employee-owned stock plan. This one-time election requires the employee to have owned the stock for at least ten years, and

once the election is made it remains company specific. Gain from additional sales will be excluded, but stock acquired from different employment would not.

### Farm Rental Income Exclusion

The last new income exclusion provision is directed at the retired farmer turned landlord. This new provision allows the retired farmer to exclude rent income received on a written farm lease. While this sounds like a great provision, qualification for this exclusion may prove to be challenging given the following requirements:

- The farmer must be 55 years of age or older or are disabled,
- Previously was “Materially Participating” in a farming business for 10 or more years,
- Currently owns and has previously owned the real property leased for at least 10 years (no entities eligible except maybe a single member LLC), and

- No longer “Materially Participating” in a farming business.

The Iowa Department of Revenue is expected to provide guidance to help clarify the criteria for eligibility later this year, and we understand this election will be carefully scrutinized.

In addition, those who are able to elect to exclude income under this provision do give up the Iowa capital gain deduction on a farm sale and will be unable to utilize the beginning farmer tax credit.

If you have questions about these exclusions or any other matters, please be sure to contact our office.



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## New Iowa Tax Rates

By Lee M. Rankin

For individuals, the new Iowa tax rates take effect in 2023 and remain graduated until 2026 where the switch is made to a flat tax. Here are the top rates by year:

2022	8.53 percent (graduated and federal income tax deductible)
2023	6 percent (graduated)
2024	5.7 percent (graduated)
2025	4.82 percent (graduated)
2026 and beyond	3.9 percent (flat)

Corporate tax rates currently are graduated and range from 5.5% to a top rate of 9.8%. If certain tax revenue thresholds are achieved by the State the top rates will be reduced incrementally each year until the top rate becomes 5.5% thereby becoming a flat tax.

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Newsletter

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Willson & Pechacek, P.L.C. is pleased to announce that our Clarinda office will be relocating to 301 E. Main Street in Clarinda, Iowa. Willson & Pechacek, P.L.C. will be sharing an office with Turner, Jones & Bitting. Paul S. Wilson, an attorney of the firm, will begin meeting with clients at the relocated Clarinda office effective immediately. The telephone number remains the same: 712-542-2141. Appointments are available every Tuesday and Thursday. Paul is from Clarinda and graduated from CHS in 2008.

Willson & Pechacek, P.L.C. also has offices in Council Bluffs, Carroll, Harlan, Oakland, Onawa and Treynor, and practices in individual and corporate tax planning, estate and trust planning, real estate and civil litigation.

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