DOES WORKERS' COMPENSATION BAD FAITH EXIST IN MEDICAL CARE ISSUES?

Iowa courts have recognized the tort of bad faith in the workers' compensation setting for many years. While the general cause of action is easily understood, the practical litigation of the tort including proof and defenses are complex and outside the scope of this outline. This outline does not examine what concepts or requirements exist in determining what is, or is not, bad faith as discussed in Bellville and its lineage of cases. Rather, this outline focuses upon the singular issue of whether the tort of bad faith for an insurer's delay, or denial of medical care (not payment of medical bills) is available.

Medical benefits for injured workers are mostly provided for in Iowa Code § 85.27(4), which in part states "the employer is obliged to furnish reasonable services and supplies to treat an employee." Like many issues in the law, the answer on whether bad faith for delay/denial of medical care exists is not fully established and has multiple subparts that require analysis.

Hypothetical Facts

The following hypothetical sets the stage for a discussion concerning this topic.

Worker(Joe) is an out-of-state driver for an Iowa based trucking company (Haulers) insured by (Devine). Joe lives and drives out of Tennessee. On January 3, 2007, Joe reports to Haulers a left knee injury sustained while unloading his semi, which was in Tennessee. Joe is treated by a family Dr. and Devine then sends Joe to company Dr. in Tennessee. The doctor confirms the injury and places Joe on light duty. Haulers requires Joe to return to Iowa for light duty. When Joe reports, he is informed that he has to go see the company orthopedic surgeon. Joe goes to the Iowa based surgeon who on January 12, reports the injury has healed and releases Joe to return to full-time employment with no restrictions.

Joe drives the truck without any report to Devine of problems sustained from injury until April 1. At that time Joe again sees his family physician for continuing problems with the knee. Family

physician sends Joe to an orthopedic surgeon in Tennessee who schedules an MRI, revealing a torn meniscus requiring surgery. Joe reports the findings to Haulers and sends the MRI results to Devine. Devine in turn sends the MRI to the Iowa orthopod for an opinion. Dr. states unless he sees Joe, he cannot give an opinion on any aspect of the claimed injury.

The Tennessee orthopod places Joe on no work status until surgery. Devine requests medical records of family Dr. and the orthopod. Devine receives all such records by May 21 including the orthopedic opinion of the need for surgery related to the work injury in January.

Devine pays no indemnity benefits and authorizes no medical treatment so injured worker retains Tennessee lawyer in early May to file a workers compensation proceeding in Tennessee. Devine resists stating that Joe signed an agreement that all workers compensation proceedings are to be held in Iowa. Devine sends Tennessee lawyer a letter which *inter alia* stated that in view of the inconsistent findings between the Iowa doctor and the Tennessee Dr. that Devine "requests" Joe to return to Iowa to "his authorized treating Dr. for an examination prior to surgery and if the Iowa doctor determines that surgery is necessary and the condition related to the January incident Devine will authorize surgery with the Iowa doctor or selected Dr. in Tennessee to perform the procedure".

Joe refuses to return to Iowa to be seen by the Iowa doctor. The State of Tennessee declines jurisdiction. Devine continues to refuse to make indemnity payments and authorize medical treatment. Joe ultimately hires, in July, an Iowa lawyer who demands surgery. Devine states it is investigating and continues to refuse offering benefits.

Joe's attorney files an alternate medical petition in September and Devine finally agrees to authorize surgery with the Tennessee orthopedic surgeon, who incidentally had already been on the list of Devine's authorized doctors in Tennessee. Devine further agrees to commence payment of indemnity benefits. Ultimately an agreement was reached between the parties to pay for the past indemnity benefits from April to October, pay all medical bills and to pay for permanent partial disability.

Subsequently, a bad faith petition is filed against Devine, in state court. During pendency of the bad faith case a disgruntled former friend accused Joe of lying about his injury, which resulted in a counterclaim filed by Devine. State court denied Devine's motion for summary judgment and ruled the case should proceed to trial for

determination by a jury of bad faith for denial of medical care and indemnity benefits as well as trial for the counterclaim.

Decision was made to dismiss the state court action to avoid trying the bad faith action with the counterclaim, and to refile in federal court. Ultimately the federal court granted employer's motion for summary judgment holding no bad faith as a matter of law.

How could two different courts reach different decisions?

Importance of Medical Care

*R.R. Donnelley vs. Barnett 670 NW2d 190,(Iowa 2003)*emphasizes the importance of medical care when the Court stated:

> Section 85.27 addresses a variety of medical care issues faced by injured workers, **but foremost** requires employers to furnish reasonable medical services and supplies for all injuries compensable thereunder.
>
> When workers' compensation law does not provide an adequate remedy for an injured employee, then the claim falls outside the exclusivity provision and the employee may file a tort suit. *id. at 195.*

Is There Bad Faith for Denial of Medical Care?

At first blush the answer seems obvious; that undoubtedly bad faith for delay/denial of care does exist. However, as is the case in most situations it is not so obvious. Injured workers would state that anytime medical care is denied there would have to be bad faith because there is no benefit more important to an injured worker than receiving medical care. Without a tort of bad faith for denial of medical care, insurers could routinely deny care or refuse to pay for care on an unlimited basis without any concern that it could be held liable, or to pay for the consequences of its conduct.

Injured workers denied medical care could suffer tremendous health consequences as a result of denial of medical care. I have been involved in cases where medical care has been denied for treatment for an injured leg and the injured worker ends up confined to a wheelchair. Surely such drastic and uneven consequences would mandate that there would be available the tort of bad faith for denial of medical care.

Employers/Insurers would state; however, the answer is no bad faith is available because all such medical care decisions are within the exclusive province of the Workers' Compensation Commissioner and the Workers' Compensation Act, Iowa Code Chapter 85.

I) Is a Delay/Denial of Medical Benefits Within the Jurisdiction of the Workers' Compensation Commissioner or Within the Jurisdiction of the Courts?

A) Remedies Under Chapter 85 – The Commissioner's Jurisdiction

i. Employer Defense Based Upon Commissioner Jurisdiction – Dissatisfaction of Care

The most significant defense raised on the issue of bad faith in the medical setting is the Employer/Insurer argument that bad faith exists only when there is no adequate remedy under Chapter 85. Since there are remedies within Chapter 85 when an injured worker demands medical care, the argument provides that courts do not possess jurisdiction to decide the issue of bad faith in a delay/denial of medical care case. The primary remedy for denial of care is through the filing of a petition for alternate medical care under Iowa Code § 85.27(4). This, however, is only available when liability for the injury is not disputed.

There is a line of cases decided by the Iowa Supreme Court that arguably supports the position. Such cases include *Good v. Tyson*, *Harned v. Farmland*, and *Kloster v. Hormel*. Additionally, there is an 8th Circuit decision in which in *dicta* supports these cases. In each case the injured worker filed suit against employer. In each case the Court ruled there was no liability because the injured worker was simply dissatisfied with medical care, which meant the injured worker had an adequate remedy within the confines of Chapter 85. These cases are summarized as follows:

Harned v. Farmland, 331 N.W.2d 98 (Iowa1983)

Harned v. Farmland, 331 N.W.2d 98 (Iowa1983) is a confusing case to the tort of bad faith as it pertains to a failure to provide medical care. There, the plaintiff alleged that the insurer

committed an intentional act in refusing to send the injured worker to a chiropractor. The district court dismissed the action finding there was no intentional failure to provide care as employer was already providing care.

The Supreme Court agreed that there was no intentional tortuous act of the employer. But more significantly the Court stated:

The fourth paragraph of section 85.27 is especially significant and revealing. It specifies that an em- ployee who is not satisfied with the type of care being provided by an employer may apply to the industrial commissioner for an order directing alternative care. Id at 99.

How much of this decision is applicable is debatable because it preceded *Boylan* by 9 years.

Kloster vs. Hormel Foods, 612 N.W.2d 772 (Iowa 2000)

In *Kloster vs. Hormel Foods, 612 N.W.2d 772 (Iowa 2000)* the plaintiff filed a cause of action based upon the tort of intentional interference, not bad faith. The court found among the relevant facts that the insurance company did promptly provide medical care and treatment. The complaint of the plaintiff was not based upon failure to provide prompt medical care and treatment, but upon the insurance company's alleged tortious interference with the doctor-patient relationship by trying to influence the treating doctor to send the injured worker back to work. The Iowa Supreme Court found however:

> Although Kloster notes he was not dissatisfied with the course of treatment received, he was clearly dissatisfied with the relationship between Formanek and Hormel, and perceived that a lack of objectivity resulted. A patient has a right to expect health care professionals will make decisions based on sound, qualified medical judgment. When a physician acts contrary to the best interests of a patient, these acts or omissions undermine the public trust, and may rise to the level of malpractice. This necessarily calls into question the reasonableness of care.
>
> By the court's characterization of plaintiff's tort claim in this manner, it is readily apparent Kloster had recourse under the statutes to request alternate care with a

physician he could trust to diagnose his condition, and to evaluate his ability to perform appropriate tasks at work. Plaintiff, however, did not raise his claim before the industrial commissioner as required by section 85.27. *id at 775*.

Good v. Tyson, 756 N.W.2d 42 (2008 Iowa App)

Good v. Tyson, 756 N.W.2d 42 (2008 Iowa App) was not a bad faith decision. It was a co-employee gross negligence case. Second, the plaintiff was provided medical care and treatment but was dissatisfied with the treatment being offered. Because of this, the court stated the basic premise that:

> Generally, if an employee's injury arises out, of and in the course of employment, the workers' compensation law provides the employee's exclusive remedy against the employer." When workers' compensation laws do not provide an adequate remedy for an injured employee, then the claim falls outside the exclusivity provision and the employee may file a tort suit. A claim of dissatisfaction with employer-provided medical care, however, comes within the exclusivity provision. *id. at 138*.
>
> The Goods claim defendants failed to provide Marianne with prompt medical care. Section 85.27(4) provides an adequate remedy for an employee dissatisfied with the employer's delay in providing care. Claims of dissatisfaction with care, including claims of failure to provide requested care, come under workers' compensation law. i*d.*

Petrillo v. Lumbermens Mut. Cas. Co., 378 F.3d 767 (8th Cir. 2004)

Petrillo v. Lumbermens Mut. Cas. Co., 378 F.3d 767 (8th Cir. 2004) is a decision that seems to follow in the viewpoint of the above cases. *Petrillo* involved an issue of whether bad faith can exist against an insurance company for denial of medical care when the complete authority for such medical care was directed by the employer. The 8th Circuit said no. Further the 8th Circuit *in dicta* did address the issue of whether a tort of bad faith can exist for denial of medical care when it said:

> We need not consider whether the insurer could be liable in bad faith if the policy delegated the employer's right to choose the care to the insurer, or if the insurer in fact chose the medical provider in a particular case. In such a case one question would no doubt be whether a bad faith claim would lie for an employee who, like Petrillio, failed to file a petition for alternate care, the statutory remedy in Iowa for an employee who is "dissatisfied with the care offered". i*d. at 770*.

B) Injured Workers' Counter in Practice and Reality to the Argument of Commissioner Jurisdiction.

i) Injured Worker Favorable Cases

Injured workers do have a response to the "dissatisfaction of medical care" defense in the tort of bad faith. One must first start with the decision recognizing the tort of bad faith*; Boylan vs. American Motorist Ins. Co., 489 N.W.2d 742 (Iowa 1992).* In that case the worker alleged that the defendant "delayed and then terminated his workers compensation weekly benefits and medical benefits…" *id at 742.*

As such the Supreme Court found that the tort of bad faith in workers' compensation setting did exist and for delay/denial of weekly benefits and medical benefits. After much discussion the Supreme Court concluded that the Iowa legislature, in establishing section 86.13, did so for negligent conduct only and not the type of conduct contemplated in bad faith. Significantly the court noted that "In addition, no remedy is provided under section 86.13 for delay or failure to pay medical benefits". i*d at 744.*

Employers/Insurers contend that Boylan stands for the proposition that while there might be a cause of action, it is for denial of "benefits" but not for "care". Meaning, Employers/Insurers will contend that the tort is limited to refusal to pay for medical bills, or medical devices but not for actual delay/denial of treatment. This has to be considered because it is a plausible argument if you take a strict interpretation of *Boylan.*

Gibson v. ITT Hartford Ins. Co., 621 N.W.2d 388 (Iowa 2001)

Gibson v. ITT Hartford Ins. Co., 621 N.W.2d 388 (Iowa 2001) is a very beneficial decision that arguably reaffirms Boylan that there is bad faith for delay/denial of medical care. The Supreme Court heard this case on appeal after the injured worker obtained a substantial verdict. The injured worker first filed an application for alternate care for a myelogram on his back and the deputy ordered the employer to authorize the procedure. The insurer had admitted liability or compensability.

Subsequently, another alternate medical care petition was filed with the Industrial Commissioner seeking an order from the commission to require employer to authorize treatment with a psychiatrist for the work related injury. The Commissioner dismissed the application because compensability for the alleged mental injury was denied. The insurer contended that no causal connection existed between the original physical injury and the need for mental care.

Gibson also filed a petition in state court *inter alia* alleging bad faith for denial of indemnity benefits and for denial of medical care (psychiatric treatment). On appeal, the Supreme Court revisited and reaffirmed *Boylan* while making several rulings significantly affecting the tort of bad faith. First it reaffirmed the "affirmative duty" on the part of the employer and insurance carrier to act reasonably in the absence of specific direction by the Commissioner. *id at 397*.

The Court also stated:

> If an application [for alternate medical care] is filed where the liability of the employer is an issue, the application will be dismissed without prejudice. The deputy's order explained the dismissal by noting that, 'before any benefits can be ordered, including medical benefits, compensability of the claim must be established, either by admission of liability or by adjudication.' ITT knew that when it denied liability for Gibson's injury, the denial would prevent Gibson from having a hearing on his November 15 alternate medical care application.
>
> The evidence also supports a finding that ITT knew Gibson was statutorily entitled to psychiatric treatment pursuant to Iowa code section 85.27 and had no reasonable basis to

> refuse payment but nevertheless chose not to pay for those treatments. *id at 398.*

In footnote (17) the Court noted:

> By its verdict, the jury found that ITT intentionally denied compensability in its answer to Gibson's petition for benefits for the primary purpose of preventing Gibson from obtaining statutory benefits, i.e., psychiatric treatment at ITT's expense for his work-related depression. **ITT's other purpose was to prevent Gibson from having a hearing--a statutory right** under Iowa Code sections 17A.12 and 85.27 on his application for alternate medical care before the industrial commissioner. *id at 399.*

It definitely can be argued that the Supreme Court equated denial of medical benefits (payment of medical bills) with denial of medical care. If medical care is denied, then denial of payment of medical bills would follow.

Wilson v. IBP, Inc., 558 N.W.2d 132, 137 (Iowa 1996)

Wilson v. IBP, Inc., 558 N.W.2d 132, 137 (Iowa 1996) is another good decision. In this case, the injured worker claimed the company nurse, in her statements to the company doctor, slandered him and she had violated the fiduciary duty imposed on her as an occupational nurse. The Supreme Court found that the acts as plead were independent of 85.27 because they were claims of slander and breach of fiduciary duty which were intentional torts falling outside the scope of the remedies available under the workers' compensation act.

Phillips v Swift, 137 Fed Sup2d 1126.(S.D. Iowa 2000)

In Phillips v Swift, 137 Fed Sup2d 1126(S.D. Iowa 2000) Judge Robert Pratt also addressed this issue. Patterned after Wilson, this tort was a breach of fiduciary duty based upon the manner Swift handled work restrictions.

Judge Pratt noted that this was not the first case where an injured employee tried to escape Chapter 85 exclusivity and further noted that it did not make the decision any easier. Judge Pratt found that "the employer has a right to choose medical care so long as a choice is reasonable, and the mere fact that the employee disagreed with it did not make it unreasonable." Judge Pratt discussed Wilson

and found that the real claim there was based upon an intentional tort whereas with respect to Harned it factually was not.

Judge Pratt also discussed *Kloster* and found that the essence of the claim was "dissatisfaction with medical care" because of the alleged interference between the employer and the treating doctor which could be resolved by alternate medical care proceedings. As such Judge Pratt found Phillips to be a different scenario. Ultimately, Judge Pratt found that "like the claim in *Wilson*, Phillips' breach of fiduciary duty claim is cognizable, if at all, outside the workers' compensation act." Id at 1140.

***Niver vs. Travelers* 412 F. Supp. 2d 966 (S.D. Iowa 2006)**

Niver vs. Travelers 412 F. Supp. 2d 966 (S.D. Iowa 2006) is case that was based on medical benefits. Niver had hernia surgery in 1995 and a reinjury occurred in 2000 and Travelers denied a claim. Apparently in reading through the case file, Travelers knew that it was connected to the original injury and knew that Niver had a case for lifetime medical benefits. This was a case in which Judge Bennett actually entered summary judgment in favor of Niver.

Judge Bennett held that a claim in bad faith for denial of medical benefits only exists and in fact entered summary judgment in favor of Niver.

ii) File Alternate Care

If the insurer/employer denies liability for an injury under Chapter 85, the Workers' Compensation Commissioner is deprived of jurisdiction to decide the reasonableness of care in an alternate care proceeding. Therefore you should file for alternate care even if you believe the employer will file a denial of liability. This should be done in order to remove any doubt about whether it is possible to "satisfy" a medical claim within the jurisdiction of the Workers' Compensation Commissioner.

This places the onus directly upon the insurer to decide to accept or deny the claim. If there is a denial then according to *Gibson* a claim for bad faith should stand.

At that time the battle just begins because a court can closely scrutinize the alleged facts in a case to determine whether the claim of bad faith for denial of medical care factually can stand.

Fact Based Denial of Bad Faith for Medical Benefits

A fair reading of the case law is that if compensability is denied, an injured worker can state a cause of action based upon delay/denial of medical care. However, insurers can attempt an end run if they wish to deny compensability yet still avoid a claim of bad faith. This is the defense of "Lack of Cooperation" which has various facets to it and is fact based.

Investigation

All courts have consistently held that any employer/insurer has a right to conduct a reasonable investigation for a reasonable time before deciding whether to accept or deny a claim. There has been considerable decisions both common law and within the industrial commission dealing on this subject. Applied to the bad faith setting the courts will apply this principle and scrutinize very carefully whether the employer did conduct a bona fide investigation which includes the length of the investigation.

Christensen vs. Snap-On Tools 554 NW2d 254 (Iowa 1996)

Christensen vs. Snap-On Tools 554 NW2d 254 (Iowa 1996) is an example of two important principles. First, *Christensen* emphasized that workers' compensation is a unique statutory scheme, as it places an affirmative obligation on the part of the employer and insurance carrier to act reasonably in regard to its duties under Chapter 85 even in the absence of specific direction by the commissioner. Second, *Christensen* emphasized that employers and insurance carriers in the workers' compensation setting rely on doctor's reports in determining right and entitlement to benefits under Chapter 85. *id. at 261*

The Court held a 2-month delay between the receipt of the worker's doctor's opinion and obtaining the employer's "IME" was reasonable under the particular facts of the case. However the Court did find as unreasonable the 13-day delay between the receipt of the IME report essentially agreeing with the workers doctor and the company decision to accept the claim.

Even Judge Pratt noted in *Zimmer v. Travelers 2007 U.S. Dist. LEXIS 85921* ruled:

> Further, a reasonable jury could have concluded that Defendants failed to act reasonably in evaluating Plaintiff's claim when they continued to deny Plaintiff's claim after August 3, 1999, despite receiving additional medical documentation. Plaintiff "tendered" an injury claim to his employer, triggering a duty by the workers' compensation carrier to act reasonably in regards to his claim. The duty to act reasonably is an affirmative one, and 'includes the duty to fully and fairly investigate a claim rather than to stand back and deny a claim simply because they wish to deny it.' *See Pickering v. Squealer Feeds, No. 99-0295, 2000 WL 961920, at *8 (Iowa Ct. App. July 12, 2000)* (citation omitted).

Lack of Cooperation

Lack of cooperation of the injured worker while the insurer is investigating is a factual determination and seems to run counter to the affirmative duty obligation of the insurer as stated in Boylan.

The Courts will look at this defense to determine whether a claim of bad faith can stand.

Lack of Cooperation Concerning an 85.39 Exam

This falls within the right of the employer to "investigate". An 85.39 exam can be asserted even when a claim is denied. A refusal to submit to an 85.39 examination could result in dismissal of a bad faith petition. Lack of cooperation would be asserted in that refusal to submit to the examination thwarts the insurer's investigation. The insurer would argue: how can it determine if the claim is compensable or that that medical care is even needed without such an examination?

The 85.39 request for examination by the insurer has to be carefully considered before a decision is made on whether to agree to the exam or deny it. It is acknowledged that there are other considerations at play besides bad faith. But it is a consideration that should be made.

You should also be aware of the Commissioner's decision in 2010 regarding and explaining the rights and obligations of an injured

worker and the insurance company regarding 85.39. This declaratory judgment ruling was affirmed by the Iowa District Court.

A. Filing for Protective Order to 85.39 Exam

If while denying liability the insurer requests an 85.39 examination the injured worker regards as unreasonable, the injured worker must respond in some fashion in order to maintain a claim of bad faith, let alone a claim for entitlement of indemnity benefits during the period of refusal. The employee cannot file an alternate medical petition so the remedy is to file a motion for protective order with the Commissioner. The Commissioner then has the power to determine whether the employer's request is reasonable.

B. Objecting to Distance for Examination

Frequently the insurer will demand the injured worker must travel some distance outside of his/her local area for an 85.39 exam. The case law is mixed on this issue. There are commissioner decisions where the commissioner ordered an injured worker to travel from South Carolina to Iowa for an examination. On the other hand, there are decisions denying the request of the employer/insurer as being unreasonable for an injured worker to travel from Dubuque to central Iowa.

There is now case law from associated issues that support the notion a worker does not have to travel outside his/her area for an 85.39 exam.

For Medical Treatment

It is settled law that for purposes of medical treatment there is a 50-mile rule which requires the employer/insurer to provide medical treatment within 50 miles of an injured worker's residence. *Westside Transport vs. Cordell 601 NW2d 691 (Iowa 1999); Trade Professionals vs. Shriver, 661 NW2d 119 (Iowa 2003); Bitner vs. Cedar Falls Const. 2004 Ia Wk. Comp. LEXIS 695.*

For Light Duty Work

Neal vs. Annett Holdings, 815 NW2d 512 (Iowa 2012)

Neal vs. Annett Holdings, 815 NW2d 512 (Iowa 2012) is the most important case in this area and the latest. The Supreme Court engaged

in an extensive discussion of the issue of travel in employment decision and wholeheartedly endorsed the concept of restricting travel for employees.

Neal involved the issue whether an injured worker on light duty was required to travel long distances for light duty work, which in this case was 387 miles. The Supreme Court said no. The Court found that traveling this distance was not "suitable work" pursuant to 85.33(3). The Court based its decision on the "geographic concept" in employment law and applied it to workers compensation proceedings.

Given the decision in *Neal* it can be forcefully argued that the "locality rule" should apply in 85.39 examinations regardless of prior decisions that are mixed at best.

Be aware that there is a Federal District Court decision disregarding the 50 mile rule cases holding that a request for examination is for different purposes than for treatment and as such the 50 mile rule need not be followed, at least for purposes of bad faith. *See, Spencer v. Annett Holdings, 905 F Sup 953 (S.D. Iowa 2012)*.

Failure to Cooperate in Obtaining Medical Records, Etc.

Lack of cooperation can also be asserted if the employee does not cooperate and request medical records to allow insurer to "investigate". *See, Spencer v. Annett Holdings, 905 F Sup 953 (S.D. Iowa 2012)*. For a contrary opinion *see, Etten v. US Food Service 446 6 F Sup 968 (N.D. Iowa)*. The same would hold true for such requests of the insurer concerning taking the injured worker's statement or the injured worker refusing to provide such other information as known witnesses, police reports ,if there is an vehicular collision, or other similar requests.

Therefore, it is recommended that if the employer/insurer makes a request, a prompt and reasonable response is made. Obviously there are other, and perhaps more important, considerations in deciding how to respond to such requests. It is still an issue to consider if a bad faith suit is being considered.

AMCO Mut. Ins. Co. v. Lamphere, 541 N.W.2d 910, 914 (Iowa App. 1995) has been asserted as authority for denial of bad faith based upon lack of cooperation in this area even though it is not

a workers' compensation bad faith case. In that case, the Court concluded that an insured's lack of cooperation in providing documents requested by insurer established an objectively reasonable basis for denial.

Consider Use of Other Associated Torts with Tort of Bad Faith

It may be incidental but in *Gibson*, plaintiff filed other associated torts. A claim for abuse of process was filed wherein the injured worker asserted the employer used its answer denying liability in the petition for alternate medical care for an improper basis, that is to deny medical treatment to the injured worker. A claim for intentional interference of the contract between the injured worker and his doctor was also asserted. In addition, the worker filed a claim for fraudulent misrepresentation wherein the worker alleged the insurer misrepresented the health status of the worker to the doctor.

Wilson v. IBP, Inc., 558 N.W.2d 132, 137 (Iowa 1996)

Wilson v. IBP, Inc., 558 N.W.2d 132, 137 (Iowa 1996) centered around the claim that the employer medical service was tortious. The tort alleged was not based on bad faith but on slander and breach of fiduciary duty. The court found those claims were torts independent of workers' compensation law. *See also, Phillips v Swift, 137 Fed Sup2d 1126.(S.D. Iowa 2000)*

Can a bad faith claim for medical services can exist without claim for indemnity benefits?

The answer should be yes.

Gibson was the case where compensability was admitted for the injury but denied for the mental aspect of the claim. Benefits had been paid for a portion of the physical injury but denied for a substantial portion. In this mixed case, the Supreme Court did not even address this issue, presumably because it was so clear-cut.

Conclusion

The issues surrounding this topic are based upon an actual case. The hypothetical are facts taken from the case. The case was initially filed in state court and the state court judge denied the

self-insured's motion for summary judgment. For reasons stated above, the state court action was dismissed and re-filed in federal court. Judge Robert Pratt ultimately granted summary judgment to the self-insured. Included is a copy of the state court decision. The federal court decision of Judge Pratt can be found at *Spencer v. Annett Holdings, 905 F Sup 953 (S.D. Iowa 2012*)