Samuel De Dios v. Indemnity Insurance Company of North America and Broadspire Services, Inc., __ N.W.2d __ (Iowa May 10, 2019) (amended May 14, 2019) (Case No. 18-1227).

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Editor's Note: The Iowa Defense Counsel Association and The American Insurance Association filed an amicus brief authored by IDCA member Keith Duffy. The brief is available at https://www.iowadefensecounsel.org/IDCAPdfs/Amicus_Brief-Dedios_v_Indemnity.pdf.

In a case that attracted nationwide attention, the Iowa Supreme Court, in a five-to-two decision, recently issued an opinion concluding that "under Iowa law, a common law cause of action for bad-faith failure to pay workers' compensation benefits is not available against a third-party claims administrator of a worker's compensation insurance carrier." In addition to stating that Iowa did not recognize the cause of action, the opinion elaborated on the nature of, and justifications for, a claim of bad-faith denial of workers' compensation benefits.

Procedural Background.

De Dios filed suit against his employer's workers' compensation insurance carrier, Indemnity Insurance Company of North America ("Indemnity"), and Broadspire Services, Incorporated ("Broadspire"), alleging Indemnity "delegated its authority of investigating, handling, managing, administering, and paying benefits under Iowa Workers' Compensation Laws to [Broadspire]" and that "Broadspire or, in the alternative, Indemnity made the decision to deny him workers' compensation benefits" in bad faith. Opinion, at 3-4. Broadspire moved to dismiss the claims against it for failure to state a claim and Judge Bennett of the Northern District of Iowa, certified the following question to the Iowa Supreme Court: "In what circumstances, if any, can an injured employee hold a third-party claims administrator liable for the tort of bad faith for failure to pay workers' compensation benefits?" Opinion, at 2.

Bad Faith Denial of Workers' Compensation Claims Prior to *De Dios.*

Writing for the majority, Justice Mansfield noted in *De Dios* that the Iowa Supreme Court first recognized the tort of first-party insurer bad faith in *Dolan v. Aid Insurance Company*, 431 N.W.2d 790 (Iowa 1988) (en banc). The *Dolan* decision was based on the fact "that insurance policies are contracts of adhesion . . . due to the inherently unequal bargaining power between the insurer and insured, which persists throughout the parties' relationship and becomes particularly acute when the insured sustains a physical injury or economic loss for which coverage is sought." According to the *Dolan* court, "Recognition of the first-party bad faith tort redresses this inequality."

Four years later, the court extended the holding in *Dolan* to workers' compensation in *Boylan v. Am. Motorists Ins.*, 489 N.W.2d 742 (Iowa 1992). The *Boylan* court recognized that Iowa Code Section 85.27 and Iowa Administrative Code rules 876—2.3 and r. 876—4.10 placed affirmative obligations on insurers. Opinion, at 8-9. These "affirmative obligations" placed upon an insurer were "the predominant justification for recognizing a bad-faith tort against workers' compensation carriers." Opinion, at 9-10. The bad-faith tort was later extended to "self-insured" employers in *Reedy v. White Consolidated Industries, Incorporated*, 503 N.W.2d 601 (Iowa 1993), where the court noted there was "no distinction between a workers' compensation insurance carrier

for an employer and an employer who voluntarily assumes self-insured status under the act." Opinion, at 11. The court then determined in *Bremer v. Wallace*, 728 N.W.2d 803, 804 (Iowa 2007), that an employer who fails to obtain workers' compensation insurance or qualify as "self-insured" under the statute cannot be liable for common law bad-faith refusal to pay workers' compensation benefits because the employer "is not an insurer, nor is he the substantial equivalent of an insurer." Opinion, at 11-12.

It was against this backdrop that the Iowa Supreme Court addressed the certified question presented in *De Dios*.

Positions of the Parties

De Dios asked the Court to "answer the certified question in the following manner: a third-party claims administrator may be held liable under the tort of bad faith when there exists a special relationship between a third-party administrator and an injured worker." Appellant's Br., at 14. Specifically, he urged the Court to adopt a

> factor test to determine whether a third-party has a special relationship with an injured worker: (1) whether a third-party administrator has the power to decide to deny the payment of workers' compensation benefits without the approval of an insurer; (2) whether a third-party administrator has the power to pay workers' compensation benefits without the approval of the an insurer; (3) whether a third-party administrator has the financial motivation to act unscrupulously in the investigation and servicing of the claim; and (4) whether the third-party administrator assumes some of the financial risk of loss from the claim.

Appellant's Br., at 14; Appellant's Reply Br., at 8-9. De Dios asserted that the same "public policy" justifications that led to the Court's recognition of bad faith claims by an employee against the employee's workers compensation carrier in *Boylan v. American Motors Insurance Company*, 489 N.W.2d 742 (Iowa) also justified recognition of bad faith claim against a third-party administrator under the circumstances detailed above. Appellant's Br., at 16-17. De Dios also argued that recognition of a bad faith claim against a third-party administrator was necessary because he "need[ed] extra leverage against the corporation that has the discretionary power to impact his statutory rights." Appellant's Br., at 21.

Broadspire, on the other hand, argued "that bad faith tort liability for failing to impose workers' compensation benefits cannot be imposed absent an insurer/insured relationship" and that bad faith claims should not be imposed on third-party administrators because, unlike insurance carriers and self-insurance employers, these administrators do not have "financial responsibility" for the claims of an injured worker. Appellee's Br., at 9-13. Broadspire also asserted that third-party administrators are not the "substantial equivalent" of insurers and therefore should not be liable for bad faith claims and that an injured worker's claim against the insurer or self-insured employer is an adequate remedy. Appellee's Br., at 18-24. Finally, Broadspire pointed out that other jurisdictions within the Eighth Circuit refused to recognize such a claim.

The Iowa Defense Counsel Association and American Insurance Association filed an *amici curiae* brief in support of Broadspire, pointing out that statutes and regulations relied on in *Boylan*

to justify a bad faith claim against insurance carrier did not apply to third-party administrators and therefore the rationale for recognizing the claim against insurers and self-insured employers did not apply to third-party administrators. *Amici* Br., at 7-10. The *amici* also argued that the existence of a bad faith claim should not depend on the terms of the contract between the insurer or self-insured employer and the third-party administrator. *Amici* Br., at 11-12.

The Court's Analysis & Conclusion

After examining the history of the tort of bad faith denial of workers' compensation claims in Iowa, the court noted, "When we consider these existing grounds for bad-faith liability in the workers' compensation field, it is difficult to see how they would apply to third-party administrators." Opinion, at 13. The "third-party administrator is not in an insurer/insured relationship with anyone. And unlike a self-insured employer, a third-party administrator does not have to meet rigorous financial requirements and is not under the ongoing supervision of the workers' compensation commissioner." Opinion, at 13-14.

The court also agreed with the position asserted by the *amici* that Iowa's "workers' compensation statutes also do not impose 'affirmative obligations' on third-party administrators as they do on insurers." Opinion, at 14. While there are references to workers' compensation third-party administrators (indicating the legislature's awareness of these entities) neither the workers' compensation statutes nor the administrative regulations implementing them impose the same sort of affirmative obligations recognized underlying the *Boylan* decision. While the employer immunity for common law suits provided by Iowa Code Section 85.20 did not apply to third-party administrators, the court noted that the lack statutory immunity did not provide an "affirmative reason" to recognize a bad faith claim.

The Court also noted that refusing to recognize a claim against third-party administrators would somehow reduce or eliminate an insurer's liability for bad faith denials. If the third-party administrator was an agent of the carrier, "then vicarious liability applies." In addition, the "duties imposed by Iowa statutes and administrative regulations remain on the carrier regardless of any attempt to pass them to a third-party" because such duties are "nondelegable."

Turning to other jurisdictions, the court noted that Colorado was "the only jurisdiction that to our knowledge has allowed bad-faith claims against third-party administrators or other entities retained by workers' compensation carriers," and Colorado's statutory and regulatory scheme differed from that of Iowa's. Moreover, the court noted that even outside of the workers' compensation realm, "most jurisdictions to have considered the issue have declined to recognize bad-faith claims against third-party administrators and other entities that are not in privity with the insured." The court observed that not only would imposing a duty of good faith on a third-party administrator be "redundant" because the insurer already faces liability in the event of bad faith, the administrator already "owes a duty to the insurer who engaged him. A new duty to the insured would conflict with that duty and interfere with its faithful performance. This is poor policy."

In a footnote, the Court also addressed De Dios' argument that, under *Bremer*, "any entity that is 'the substantial equivalent of an insurer' should be liable in bad faith." However, the court noted that *Bremer*'s "language needs to be read in context." The point made in *Bremer* was that under workers' compensation law, "a self-insured employer is the substantial equivalent of an

insurer in terms of its statutory and regulatory duties," whereas a third-party administrator is not. This would appear to limit the "substantial equivalent" language in *Bremer* to an entity that qualifies as a self-insured employer.

Ultimately, the Iowa Supreme Court relied on its "precedent holding the compensation carrier to a duty of good faith and fair dealing vis-à-vis the injured worker rests upon statutes and regulations directed specifically at the carrier. These statutes and regulations do not apply to third-party administrators." Accordingly, the Court rejected De Dios' request for a factor based test in favor of a "workable bright line" rule already embodied in Iowa law and answered the certified question by holding that under Iowa law, a common law cause of action for bad-faith failure to pay workers' compensation benefits is not available against a third-party claims administrator of a worker's compensation insurance carrier.