

BAD FAITH UPDATE

By Mark W. Thomas

We have been routinely updating the development of the tort of bad faith in Iowa. This tort is based upon contract. The Iowa Supreme Court has, for more than thirty years, determined that there is a duty inherent in an insurance contract that obligates the insurer to act reasonably and in good faith in its dealings with its insured. As far back as a 1972 case, Amsten v. Grinnell Mutual Reinsurance Company, 203 N.W.2d 252 (Iowa 1972), the Supreme Court held that “there is an implied duty of good faith and fair dealing” inherent in every insurance contract.

The epidemic of bad faith cases is nationwide and it involves both first party (the insurer and the insured) and third party (the insurance company and the claimed beneficiary of the benefits of the contract) actions. Iowa courts have not yet adopted third-party claims, but the epidemic continues in Iowa as well. Plaintiff’s attorneys, mindful of the fact that adverse bad faith verdicts often carry huge punitive elements, now routinely throw this assertion into settlement conversations.

I believe that this Iowa Supreme Court, absent some horrific fact situation, seems unlikely to expand this tort, either by adopting third party bad faith or by relaxing the elements of proof required for the first party claim.

In very general terms Iowa cases can be divided into two categories. The first category involves those concerning liability cases and the second involves those concerning workers’ compensation cases.

The early cases, in large part, concerned general liability claims. The Iowa Courts, early

on, determined that an insurer could be held responsible, if with no justification whatsoever, it blindly ignored offers within limits in cases where the judgment is very probably going to exceed the insurance available. Other examples of conduct determined to be in “bad faith” have been listed in earlier seminar outlines.

The Iowa Supreme Court, as mentioned, has been holding the line in its further expansion of this doctrine. In the recent case of Bellville v. Farm Bureau Mutual Insurance Company, 702 N.W.2d 468 (Iowa 2005) the Court reiterated that:

“An insurer is innocent of bad faith as a matter of law...if the insurer took a position in regard to a claim that reasonable minds could hold unless the trial court is prepared to grant a directed verdict to the insured on his claim under the policy and to hold that reasonable minds could not disagree as to the insurer’s entitlement to proceeds under the policy. It follows that reasonable minds could disagree about the insured’s entitlement to policy proceeds. Therefore an insurer should be entitled to a directed verdict in its favor on the insured’s bad faith claim unless the insured is entitled to a directed verdict in his favor on the policy claim.

That is very clear language, and seems to state quite clearly that a position taken which is fairly debatable should result in a dismissal on summary judgment of all bad faith claims. Unfortunately, this ruling has been ignored and/or qualified by almost every federal judge in Iowa who has had a chance to apply it. For this reason we recommended not removing bad faith actions from state to federal court.

The Iowa Supreme Court very recently had a chance to reiterate it’s position in a related context in the case of City of Madrid, Iowa and EMC Insurance Companies v. Angela Blasnitz,

decided October 5, 2007. That case involved a workers' compensation appeal. Ms. Blasnitz claimed an injury occurred during her employment as a peace officer for the City of Madrid. Liability for the injury was hotly contested with surveillance, deposition and other evidence being produced by the defendants. The liability decision went against the defendants and an award of penalty benefits was also imposed. That award was affirmed on appeal to the Commissioner who in affirming the penalty benefits, noted that there was a dispute in the evidence.

The defendants appealed to the district court who recognized a problem and determined to remand the issue to the Commissioner. That decision was appealed to the Court of Appeals which agreed with the district court. The Supreme Court stepped in and determined that the Commissioner had misapplied the law and directed the district court to order the Commissioner to dismiss the penalty claim. The award of penalty benefits is not far off from a determination of bad faith. Penalties can be assessed if a claimant seeking to recover under the statute establishes a delay in the commencement of benefits or terminates the benefits "without reasonable or proper cause or excuse." A reasonable cause or excuse exists if either the delay was necessary for the insurer to investigate the claim or the employer had a reasonable basis to contest the employee's entitlement to benefits. *See, Christensen v. Snap On Tools Corporation*, 554 N.W.2d 254, 260 (Iowa 1996).

The Supreme Court listed twelve separate factual disputes which precluded penalty benefits in the Blasnitz case. The Court, after reviewing these factual disputes noted "only one conclusion can be drawn from the undisputed evidence of the foregoing statements, testimony and records: "the insurer had a reasonable basis to contend the claimant did not sustain a rotator

cuff tear when she fell on January 17, 2003.” The Supreme Court determined that under the state of the record the claim was fairly debatable as a matter of law and that no penalty benefits, therefore, could be imposed.

The import of the Bellville and City of Madrid cases on state of Iowa law is to be determined. The Commissioner, unlike the federal judiciary, has to listen to the Iowa Supreme Court. The Commissioner doesn't have the ability to dodge or weave application of these cases because a defendant can simply appeal the matter to the district court or above, and get the matter corrected.