

IN THE SUPREME COURT OF IOWA

No. 18-1227

SAMUEL DE DIOS,

Plaintiff-Appellant,

vs.

**INDEMNITY INSURANCE OF NORTH AMERICA and
BROADSPIRE SERVICES, INC.,**

Defendants-Appellees.

CERTIFIED QUESTION FROM FEDERAL DISTRICT COURT

Northern Dist. County No. C 18-4015-MWB

APPELLANT'S FINAL REPLY BRIEF

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CERTIFIED QUESTION TO THE IOWA SUPREME COURT

- I. 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?

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PROOF OF SERVICE AND CERTIFICATE OF FILING

The undersigned certifies that this Appellant's Proof Brief was served and filed on the 26th day of November 2018, upon the following persons and upon the Clerk of the Supreme Court by electronic filing and electronic delivery to the parties via the EDMS system, pursuant to Iowa R. App. P. 6.902(2) and Iowa Ct. R. 16.1221(2) to the following:

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TABLE OF AUTHORITIES

Iowa Supreme Court Cases

Boylan v. American Motors Insurance Company, 489 N.W.2d 742 (Iowa 1992)

Bremer v. Wallace, 728 N.W.2d 803 (Iowa 2007)

Dier v. Peters, 815 N.W.2d 1 (Iowa 2012)

Dolan v. AID Insurance Company, 431 N.W.2d 790 (Iowa 1988)

McIlravy v. North River Insurance Company, 653 N.W.2d 323 (Iowa 2002)

Pirkl v. Northwestern Mut. Ins. Ass'n, 348 N.W.2d 633 (Iowa 1984)

Reedy v. White Consolidated Industries, Inc., 503 N.W.2d 601 (Iowa 1993)

Federal Authority

Fed. R. Civ. P. 8(a)(2)

Ashcroft v. Iqbal, 556 U.S. 662, 677–78, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009)

Buhmeyer v. Case New Holland, Inc., 446 F. Supp. 2d 1035 (S.D. Iowa 2006)

Raymie v. Insurance Co. of State of Pennsylvania, No. 4:09-cv-00222-JAJ,
2009 WL 8621559 (S.D. Iowa 2009) (unreported)

Zimmer v. Travelers Ins. Co., 521 F. Supp. 2d 910 (S.D. Iowa 2007)

Persuasive Legal Authority from Other Jurisdictions

Arp v. AON/Combined Ins. Co, 300 F.3d 913 (8th Cir. 2002)

Cary v. United of Omaha, 68 P.3d 462, 469 (Colo. 2003)

Delos v. Farmers Ins. Group., Inc. 93 Cal. App. 3d 642,
155 Cal. Rptr. 843 (4th Dist. 1979)

Wathor v. Mutual Assurance Administrators, Inc., 87 P.3d 559, 562 (Okla. 2004)

REPLY

Defendant Broadspire Services, Inc. (“Broadspire”), and Amici use many pages of their briefs to show that Plaintiff’s bad faith claim against Broadspire does not meet the requirements of prior Iowa cases imposing liability for a bad-faith refusal to pay workers’ compensation benefits. But that is not the issue presented by the certified question. The question presented is under “what circumstances, if any” can a third-party administrator be held liable for its own bad-faith conduct in refusing the payment of WC benefits. It is up to this Court to determine whether those circumstances extend beyond the parameters of current case law. Plaintiff submits that there are sound reasons that third-party administrators having a special relationship with the employee should be held directly liable for their tortious conduct, as other states have allowed.

The Iowa Supreme Court adopted the tort of first-party bad faith in part to discourage the arbitrary denial or delay of payment of insurance benefits. *See Dolan v. AID Insurance Company*, 431 N.W.2d 790, 792 (Iowa 1988). That goal can best be accomplished when the party with the authority to make payment decisions is held responsible for those decisions. In his brief, Plaintiff has suggested the circumstances warranting such liability, and has proposed factors that should be considered in determining whether a third-party administrator has

payment authority under circumstances that would allow the third-party administrator to benefit financially from an arbitrary denial or delay in payment.

Broadspire and Amici urge the court to require statutory insurer status and a contractual relationship, as prior cases have done, before imposing liability for bad faith. Yet, these elements are merely a shorthand way to identify the party with the power or authority to determine payment of workers' compensation benefits. Plaintiff suggests that as the insurance industry has developed, entities other than the insurer who has a contractual relationship with the insured— "third-party administrators"—have assumed responsibility for determining liability for payment of benefits and for authorizing payment. Liability for making those decisions in bad faith should be imposed on those third-party administrators under the circumstances suggested in Plaintiff's brief.

Broadspire argues that the facts of this case would not support liability under the test proposed by Plaintiff. But, again, that is not the issue in this case. The question certified to this court is a legal one, not a factual one: are there circumstances under which a third-party administrator may be held liable for its bad-faith denial of workers' compensation benefits? If this Court determines there are circumstances under which such liability exists, under notice pleading rules, the allegations of Plaintiff's complaint sufficiently allege a claim of bad faith against Broadspire so as to permit Plaintiff the opportunity to prove that claim to a jury.

This appeal is not the proper forum to argue about whether Plaintiff can or cannot ultimately prove that claim.

Finally, Broadspire argues that Plaintiff's proposed test for determining when a third-party administrator may be held liable for its own bad faith "goes beyond the scope of the certified question posed to this Court." To the contrary, Plaintiff's brief directly addresses the certified question by discussing "what circumstances" should warrant third-party-administrator liability.

CONCLUSION

Plaintiff requests that the Court 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.

Plaintiff requests the Court to adopt the following 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.

Respectfully submitted,

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ATTORNEY'S COST CERTIFICATE

We hereby certify that the costs paid for printing Appellant's Proof Reply Brief for was the sum of \$_____.

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CERTIFICATE OF COMPLIANCE

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