

WORKERS' COMPENSATION—Employee's Allegation that Workers' Compensation Insurer Terminated His Benefits in Bad Faith Stated Bad Faith Tort Claim Against the Insurer—*Boylan v. American Motorists Insurance Co.*, 489 N.W.2d 742 (Iowa 1992).

I. INTRODUCTION

Robert Boylan was injured while working at Cresline Plastic Pipe Company (Cresline).¹ American Motorists Insurance Company (AMIC), Cresline's workers' compensation insurance carrier, was responsible for providing workers' compensation benefits to Boylan for the injuries he suffered.² When AMIC terminated Boylan's workers' compensation benefits, Boylan filed suit for continuance of his benefits and alleged a cause of action in tort based on AMIC's bad faith.³

Boylan alleged AMIC "delayed and then terminated [his] workers' compensation weekly benefits and medical benefits, arbitrarily and capriciously, without notice and in bad faith."⁴ He further alleged that his "original injuries were aggravated" because of AMIC's acts and omissions.⁵ Boylan sought "compensatory damages, including consequential damages for aggravated injuries, punitive damages, and attorney fees."⁶

The district court granted summary judgment in AMIC's favor because Boylan failed "to state a claim upon which relief [could] be granted."⁷ The court refused to extend tort liability for bad faith⁸ to an employer's workers' compensation insurance carrier.⁹ The trial court found the "relationship between a workers' compensation claimant and the employer's insurer is more analogous to the relationship between a tort victim and the tortfeasor's liability insurer."¹⁰ Thus, the court, relying on the Iowa Supreme Court's refusal to "recognize bad faith tort liability on the part of the liability insurer"¹¹ in *Long v. McAllister*,¹² declined to recognize this cause of action in the workers' compensation context.¹³

The district court also relied on the exclusive statutory remedy of the Workers' Compensation Act.¹⁴ The court concluded the "statutory remedy for

1. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 742 (Iowa 1992).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. The Iowa Supreme Court recognized a cause of action for bad faith in a first-party insurance claim in *Dolan v. AID Ins. Co.*, 431 N.W.2d 790, 794 (Iowa 1988).

9. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 742 (Iowa 1992).

10. *Id.*

11. *Id.*

12. *Long v. McAllister*, 319 N.W.2d 256 (Iowa 1982).

13. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d at 742.

14. *Id.* Iowa Code section 85.20 provides:

The rights and remedies provided in this chapter, chapter 85A or chapter 85B for an employee on account of injury . . . for which benefits . . . are recoverable,

unreasonably delayed or terminated workers' compensation benefits in Iowa Code section 86.13 . . . militates against recognition of a common-law tort remedy."¹⁵ Iowa Code section 86.13 provides:

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the industrial commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.¹⁶

Based on the assumption that the bad faith tort liability claim in *Boylan* was analogous to the circumstances in *Long* and to the statutory remedy provided in the Workers' Compensation Act, the district court dismissed Boylan's claim.¹⁷

Boylan appealed, contending the trial court erred in dismissing his claim based on the pleadings.¹⁸ The Iowa Supreme Court *held*, reversed and remanded.¹⁹ An employee's allegation that the workers' compensation insurer terminated his benefits in bad faith stated a bad faith tort cause of action against the insurer. *Boylan v. American Motorists Insurance Co.*, 489 N.W.2d 742 (Iowa 1992).

II. ANALYSIS

A. The Bad Faith Standard

The *Boylan* Court stated that the standard for bad faith on the part of a workers' compensation insurance carrier is the same as the test for first-party insurance claims established in *Dolan v. AID Insurance Co.*²⁰ Under this approach, "[t]o show a claim for bad faith, a plaintiff must show the absence of a reasonable basis for denying benefits of the policy and defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim."²¹ This

shall be the exclusive and only rights and remedies of such employee . . . at common law or otherwise . . . against:

1. the employee's employer; or
2. any other employee of such employer, provided that such injury . . . arises out of and in the course of such employment and is not caused by the other employee's gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another.

IOWA CODE § 85.20 (1993).

15. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 742 (Iowa 1992).

16. IOWA CODE § 86.13 (1993).

17. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d at 742.

18. *Id.*

19. *Id.*

20. *Id.* at 744. The court stated "that recognition of tort liability on the part of workers' compensation insurance carriers guilty of the type of bad-faith conduct for which tort liability was recognized in *Dolan* is a logical extension of that decision." *Id.*; see *Dolan v. AID Ins. Co.*, 431 N.W.2d 790, 794 (Iowa 1988).

21. *Dolan v. AID Ins. Co.*, 431 N.W.2d at 794. The second part of the *Dolan* test—requiring a showing of defendant's knowledge or reckless disregard—has been relaxed to requiring a

objective standard emphasizes the "intentional nature of the tort."²² If a claim is "fairly debatable," the insurer may refuse to pay and may contest the claim.²³

B. The Statutory Basis

The Iowa Supreme Court's statutory basis for its holding focused on the duties imposed on an insurer by the Workers' Compensation Act and the administrative regulations.²⁴ The court found the duties the workers' compensation carrier owed to the claimant were similar to the duties involved in the first-party insurance claim recognized in *Dolan*.²⁵

Iowa Code section 86.13 gives the industrial commissioner the authority to award benefits as a penalty above and beyond benefits payable under the Iowa Workers' Compensation provisions when benefits are delayed or terminated without reasonable or probable cause or excuse.²⁶ The amount allowed as a penalty can be "up to fifty percent of the amount of benefits that were unreasonably delayed or denied."²⁷ The court decided the statute required "an affirmative obligation on the part of the employer and insurance carrier to act reasonably in regard to benefit payments in the absence of specific direction by the commissioner."²⁸ Under this analysis, an insurance carrier may be penalized not only for unreasonable delay or termination of benefits after the industrial commissioner determines benefit eligibility, but an insurance carrier may also be penalized for an unreasonable delay or termination prior to the industrial commissioner's ruling.²⁹

The court also relied on section 85.27 of the Workers' Compensation Act which "imposes an affirmative obligation [on the employer] to furnish medical and hospital supplies to an injured employee" promptly and without "undue inconvenience" to the injured worker.³⁰ Although this statute specifically addresses the employer and makes no mention of the employer's insurance carrier, the court found the "commissioner's regulations consign these obligations to

showing that the defendant denied the claim knowing, or having reason to know, the denial was without basis. *Reuter v. State Farm Mut. Auto. Ins. Co.*, 469 N.W.2d 250, 253 (Iowa 1991).

22. *Dolan v. AID Ins. Co.*, 431 N.W.2d at 794.

23. *Id.*

24. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 743 (Iowa 1992); see IOWA CODE §§ 86.13, 85.27 (1993); IOWA ADMIN. CODE r. 343-2.3 (1986); *id.* r. 343-4.10; *infra* text accompanying notes 26-35.

25. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d at 744. For a detailed discussion of *Dolan*, see *infra* text accompanying notes 38-59.

26. IOWA CODE § 86.13 (1993); see *supra* text accompanying note 16.

27. IOWA CODE § 86.13 (1993).

28. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d at 743. The court recognized this action "at least with respect to temporary disability or healing period benefits." *Id.*

29. *Id.*

30. *Id.* Iowa Code § 85.27 provides: "The employer, for all injuries compensable under this chapter . . . shall furnish reasonable surgical, medical, dental . . . and hospital services and supplies therefor. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." IOWA CODE § 85.27 (1993).

the employer's insurance carrier."³¹ Thus, the court determined AMIC stepped into the shoes of the employer, Cresline, and had a statutory obligation to expedite treatment of the injury and provide reasonable treatment.³²

The court relied on two industrial services division regulations in the Iowa Administrative Code to extend to the workers' compensation insurer the employer's obligation to act in a reasonable manner.³³ First, the court relied on Iowa Administrative Code regulation 343-4.10, which states, "Whenever any insurance carrier shall issue a policy with a clause in substance providing that jurisdiction of the employer is jurisdiction of the insurance carrier, the insurance carrier shall be deemed a party in any action against the insured."³⁴ Second, the court relied on Iowa Administrative Code regulation 343-2.3, which provides:

[a]ll licensed insurers . . . insuring workers' compensation . . . shall designate one or more persons geographically located within the borders of this state, which person or persons shall be knowledgeable of the Iowa Workers' Compensation Laws and Rules and shall be given the authority and have the responsibility to expedite the handling of all matters within the scope of Iowa Code Chapters 85, 85A, 85B, 86, and 87.³⁵

"As a result of the obligations that these statutes and administrative regulations place on the insurer, this case is more similar to *Dolan* than it is to *Long*."³⁶ The court, therefore, extended *Dolan's* first-party insurance claim to the relationship between the workers' compensation carrier and the injured employee.³⁷

C. The Dolan Decision

In *Dolan v. AID Insurance Co.*,³⁸ the Iowa Supreme Court recognized for the first time a first-party bad faith tort claim against an insurer in the handling of an insured's claim.³⁹ The insured, Dolan, filed suit against his insurer, AID Insurance Company, n/k/a Allied Insurance Group (Allied), for "bad faith failure to settle for the underinsured motorist policy limit."⁴⁰ Dolan was in an automobile accident with Bob Schroeder, whose liability policy limits were insufficient to cover Dolan's damages.⁴¹ Dolan contacted Allied, with whom he had an

31. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 743 (Iowa 1992); see IOWA ADMIN. CODE r. 343-2.3 (1986); *id.* r. 343-4.10.

32. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d at 743.

33. *Id.*

34. IOWA ADMIN. CODE r. 343-4.10 (1987).

35. *Id.* r. 343-2.3.

36. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 743 (Iowa 1992).

37. *Id.* at 744.

38. *Dolan v. AID Ins. Co.*, 431 N.W.2d 790 (Iowa 1988).

39. *Id.* at 790. The court mentioned previous cases that "consistently found it unnecessary to adopt or reject the tort of bad faith in the first-party situations." *Id.* (citing *Hoekstra v. Farm Bureau Mut. Ins. Co.*, 382 N.W.2d 100, 112 (Iowa 1986); *Pirkl v. Northwestern Mut. Ins. Ass'n*, 348 N.W.2d 633, 636 (Iowa 1984); *Higgins v. Blue Cross*, 319 N.W.2d 232, 236 (Iowa 1982); *M-Z Enter. v. Hawkeye-Security Ins. Co.*, 318 N.W.2d 408, 415 (Iowa 1982)).

40. *Id.* at 791.

41. *Id.* at 790-91.

underinsured motorists coverage policy, informing Allied of the insufficiency of Schroeder's liability policy to fully cover his damages.⁴² Dolan settled with Schroeder's insurer for the policy limit of \$25,000.⁴³ Allied, however, refused to provide any additional payment to Dolan under his underinsured motorist policy.⁴⁴

Allied waived its right to subrogation and refused to accept service of a petition to provide underinsured motorist coverage.⁴⁵ Instead, Allied began an investigation into whether Dolan had any pre-existing injuries which would affect his recovery amount.⁴⁶ Dolan conceded he had previous soft tissue injuries, but asserted he had informed Allied these injuries had healed prior to the accident with Schroeder and "that no residual disability existed when the accident occurred."⁴⁷ Allied continued, however, to investigate his previous injury instead of paying any benefits.⁴⁸

One week before trial, Allied offered a \$20,000 settlement, but Dolan did not respond to the offer.⁴⁹ Ultimately, a jury awarded Dolan damages exceeding \$100,000 and Dolan received the policy limit of \$40,000 on his underinsured motorist coverage from Allied.⁵⁰ Dolan then filed a bad faith action against Allied because of the way it handled the negotiations.⁵¹

The *Dolan* court looked to other jurisdictions for arguments for and against establishing a bad faith cause of action in a first-party insurance situation.⁵² The court found the issue had generally been resolved "by determining whether the contractual relationship between the insurer and the insured [was] sufficiently special to warrant providing the insured with additional protection and, relatedly, by determining whether the insured's remedies for the insurer's wrongful conduct [was] adequate without resort to the tort of bad faith."⁵³

The court decided that, in a contractual relationship between insurer and insured, "traditional damages for breach of contract [would] not always adequately compensate an insured for an insurer's bad faith conduct."⁵⁴ The court looked beyond the penalty provisions of Iowa Code 507B, recognizing situations where the penalties in the Code "provide slight consolation to an aggrieved insured."⁵⁵ It also modified the requirements for a bad faith cause of action by deciding that it would not require intentional infliction of emotional distress,

42. *Id.* at 791. The limit on Dolan's insurance policy with Allied was \$40,000. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* Dolan was actually awarded \$79,361 in excess of the \$25,000 Dolan received from Schroeder's insurer. *Id.*

51. *Id.*

52. *Id.* at 791-92.

53. *Id.* at 792.

54. *Id.* at 794.

55. *Id.*

which was previously required to recover from an insurer for bad faith.⁵⁶ The court held it was time to "recognize the first-party bad faith tort to provide the insured an adequate remedy for an insurer's wrongful conduct."⁵⁷ Yet, even though the court recognized this action for the first time,⁵⁸ it ultimately found Dolan had failed "to show the absence of a reasonable basis for Allied's action."⁵⁹

D. The Long Decision

In *Long v. McAllister*,⁶⁰ the Iowa Supreme Court refused to recognize a bad faith cause of action permitting a third party to recover against the tortfeasor's liability insurer for failing to settle a liability claim against the insured.⁶¹ Long sought to recover for damages to his automobile sustained when a farm wagon, owned by Dan McAllister and McAllister Seed Co., Inc., rolled down a hill and struck Long's vehicle.⁶² McAllister had property damage liability insurance with defendant I.M.T. Insurance Co. (I.M.T.) and another insurance company, but a dispute arose between Long and I.M.T. "concerning adjustment of motor vehicle property damage under the liability coverage" of the insurance policy.⁶³

When a settlement was not reached through negotiations, Long brought a tort action against I.M.T. alleging I.M.T. had breached its fiduciary duty "to adjust the loss promptly and in good faith"⁶⁴ by not paying "the part of his claim not in dispute."⁶⁵ The trial court entered summary judgment for I.M.T., dismissing Long's bad faith tort claim against the insurer.⁶⁶

Long appealed to the Iowa Supreme Court "to recognize a new tort that would permit a third party to recover against an insurer for the insurer's bad faith toward the third party in failing to settle a liability claim against the insured."⁶⁷ The court, however, refused to recognize a cause of action between a tort victim and the tortfeasor's liability insurer.⁶⁸ The court distinguished this situation—a third party direct claim—from a first party action and a third party excess judgment case.⁶⁹ In the latter two situations the dispute is between the insurer and the insured, not a third party.⁷⁰

56. *Id.*; see *Amsden v. Grinnell Mut. Reinsurance Co.*, 203 N.W.2d 252, 254 (Iowa 1972) (allowing a first-party tort for an insurer's intentional infliction of severe emotional distress on its insured).

57. *Dolan v. AID Ins. Co.*, 431 N.W.2d 790, 794 (Iowa 1988).

58. *Id.*

59. *Id.* at 794-95.

60. *Long v. McAllister*, 319 N.W.2d 256 (Iowa 1982).

61. *Id.* at 257.

62. *Id.*

63. *Id.*

64. *Id.* at 257-58.

65. *Id.* at 258.

66. *Id.* at 257-58.

67. *Id.* at 261.

68. *Id.* at 257.

69. *Id.* at 261.

70. *Id.* An excess judgment case considers "whether the insurer was guilty of bad faith toward the insured in failing to settle the injured party's claim within policy limits." *Id.* A first

The court declined to follow the two theories Long advanced for allowing this action.⁷¹ First, the court refused to accept the insurance contract as the basis to "recognize the victim as a third party beneficiary of the insurance contract."⁷² Second, the court dismissed Long's attempt to impose a duty on the insurer under general tort principles.⁷³

The court, in considering the contractual basis for the claim, compared this scenario to third party beneficiary principles.⁷⁴ Under this approach, the crucial factor was "whether the contracting parties intended that a third person should receive a benefit which might be enforced in the courts."⁷⁵ Because the insurance contract was not made a part of the record, the court could not address the issue of whether the contract between McAllister and I.M.T. "contain[ed] an express or implied intention to make the victim a policy beneficiary."⁷⁶ The court refused to consider Long's other beneficiary argument that he was an "incidental beneficiary" because "he will benefit if the contract is carried out in accordance with its terms."⁷⁷ The court stated, "We refuse to extend the third party beneficiary concept to the limits advocated by plaintiff."⁷⁸

The court also declined, under general tort principles, "to recognize a duty of the insurer to the victim," finding the fiduciary duty the insurer owed to its insured resulted in an adversary relationship with the victim.⁷⁹ Because the insurance policy was between the insured and the insurer, the insurer's interests were aligned with those of the insured.⁸⁰ As a result of this relationship, the insurer's fiduciary duty was to the insured, and consequently, "the insurer must give as much consideration to the insured's interests as it does to its own."⁸¹ The insured had no such duty to consider the interests of the injured third party.⁸² Because "the insurer stands in the shoes of the insured in dealing with the victim,"⁸³ the insurer had the same "right to require liability to be proven as a predicate for payment of the loss" as the insured.⁸⁴ Thus, the court found "[n]o basis . . . for giving the victim a greater right when negotiating with the tortfeasor's insurer than exists when the victim negotiates with the tortfeasor

party action considers "whether the insurer was guilty of bad faith in failing to pay the insured's own claim." *Id.*

71. Long v. McAllister, 319 N.W.2d 256, 262 (Iowa 1982).

72. *Id.*

73. *Id.*

74. *Id.* (citing Khabbaz v. Swartz, 319 N.W.2d 279, 284 (Iowa 1982)).

75. *Id.* (citing Bailey v. Iowa Beef Processors, Inc., 213 N.W.2d 642, 645 (Iowa 1973), cert. denied, 419 U.S. 830 (1974)).

76. *Id.*

77. *Id.* (citing Khabbaz v. Swartz, 319 N.W.2d at 285).

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

directly."⁸⁵ Consequently, the third party action by the victim against the tortfeasor's insurer was rejected by the Iowa Supreme Court.⁸⁶

III. EXTENDING THE BAD FAITH TORT CLAIM TO WORKERS' COMPENSATION

A. *The Contractual Basis*

Because the *Boylan* court found the relationship between *Boylan* and AMIC more analogous to *Dolan* than to *Long*, the court recognized an implied contract between the workers' compensation insurer and the injured employee.⁸⁷ The *Dolan* court emphasized the "contractual relationship between [the] insurer and insured" in finding that the insured could bring a cause of action for bad faith conduct on the part of the insurer in the handling of a claim.⁸⁸ The insurer in *Dolan*, because of the insurance contract with the insured, had a duty to act in the best interest of the insured.⁸⁹ Applying this duty to the facts of *Boylan*, AMIC, whose insurance contract was with the employer, had a duty to act in good faith to the employee—who was not a party to the insurance contract.

Ironically, although the court did not find *Boylan's* situation analogous to the third party in *Long*, the *Long* court's contractual analysis supports the recognition of a duty owed by a workers' compensation carrier to the injured employee.⁹⁰ In *Long*, the court considered "[t]he determinative question . . . [to be] 'whether the contracting parties intended that a third person should receive a benefit which might be enforced in the courts.'"⁹¹ The remedial purpose of workers' compensation⁹² may indicate the contract between the workers' compensation insurer and the employer was intended to make the employee a policy beneficiary.⁹³ The employer does not provide workers' compensation coverage for the employer's sole benefit;⁹⁴ rather, the employer provides compensation for the benefit of employees in the case of work-related injuries.⁹⁵

The relationship between the workers' compensation insurer and the injured employee is different from the first-party insurance claim in *Dolan* and

85. *Id.* (citing *Kranzush v. Badger State Mut. Casualty Co.*, 307 N.W.2d 256, 265 (Wis. 1981)).

86. *Id.*

87. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 743 (Iowa 1992).

88. *Dolan v. AID Ins. Co.*, 431 N.W.2d 790, 792 (Iowa 1988).

89. *Id.* at 793.

90. See *supra* text accompanying notes 74-78.

91. *Long v. McAllister*, 319 N.W.2d 256, 262 (Iowa 1982) (quoting *Bailey v. Iowa Beef Processing, Inc.*, 213 N.W.2d 642, 645 (Iowa 1973), *cert. denied*, 419 U.S. 830 (1974)).

92. See IOWA CODE § 85.3(1) (1993). This section provides that "any and all personal injuries sustained by an employee arising out of and in the course of the employment" are to be compensated under the terms of the Workers' Compensation Act. *Id.*

93. See *supra* text accompanying notes 74-78.

94. The employer does receive freedom from liability under a common-law action because workers' compensation is the "exclusive and only" remedy of the employee. IOWA CODE § 85.20 (1993).

95. See 82 AM. JUR. 2D *Workers' Compensation* § 141 (1992); IOWA CODE § 85.3(1) (1993).

the third-party action in *Long*. The workers' compensation carrier simply provides the coverage the injured worker is entitled to under the Act. The carrier does not have a special relationship to the employee like the relationship between the insured and the insurer in *Dolan*.⁹⁶ The insurance carrier also does not step into the shoes of the employer and become an adversary to the employee as in *Long*.⁹⁷ Thus, reliance on either of these insurance cases is inappropriate in the workers' compensation setting.

B. Going Beyond the Exclusive Remedy Provision

The *Boylan* court disregarded the penalty provision for the insurer's wrongful conduct in the administration of benefits contained in the Iowa Workers' Compensation Act.⁹⁸ It also disregarded the exclusive remedy provision of the Act.⁹⁹

The court concluded it was "unlikely that the legislature intended the penalty provision in section 86.13 to be the sole remedy for all types of wrongful conduct by carriers with respect to administration of workers' compensation benefits."¹⁰⁰ The court reached this conclusion for the following reasons: (1) in looking at the terms of the penalty provision, "it applies only to delay in commencement or termination of benefits";¹⁰¹ (2) the penalty provision did not contemplate the "willful or reckless acts" necessary for a bad faith cause of action, but only negligent conduct;¹⁰² (3) the penalty provision does not provide a remedy "for delay or failure to pay medical benefits";¹⁰³ and (4) other jurisdictions have held that a common-law bad faith action is not precluded by "[p]enalty provisions for mere delay in payment or improper termination of benefits."¹⁰⁴

The court's interpretation of the legislative intent, however, is not a sound basis for going beyond the penalty provision provided in the Iowa Code. It is highly improbable that the legislature intended a workers' compensation claim to be taken outside of the statutory provisions. The court's reasoning that Iowa Code section 86.13 applies only to delay in commencement or termination of benefits,¹⁰⁵ and not to delays at other times, would frustrate the purpose of section 86.13. Just as the court believes "it is unlikely that the legislature intended the penalty provision . . . to be the sole remedy" for delays in payment,¹⁰⁶ it is also unlikely the legislature meant to award penalties only for delays in commencement or termination of benefits. There is no reason to make a distinction

96. See *Dolan v. AID Ins. Co.*, 431 N.W.2d 790, 791 (Iowa 1988).

97. See *Long v. McAllister*, 319 N.W.2d 256, 257-58 (Iowa 1982).

98. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 744 (Iowa 1992); see IOWA CODE § 86.13 (1993).

99. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d at 744; see IOWA CODE § 85.20 (1993).

100. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d at 744.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

between the two types of payments. Furthermore, the court's finding that the penalty provision does not provide a remedy "for delay or failure to pay medical benefits"¹⁰⁷ is also flawed. Section 86.13 applies to delay or termination of benefits; it does not list specific benefits.¹⁰⁸ This section is broad enough to provide a penalty for all types of benefits allowable under the Workers' Compensation Act.

The court's reasoning that the penalty provision "contemplates negligent conduct rather than the willful or reckless acts" required for a bad faith action¹⁰⁹ is also questionable. It is logical to assume the legislature considered wrongful conduct of the degree required for a bad faith claim. The legislators could have reasonably believed that an additional "fifty percent of the amount of benefits that were unreasonably delayed or denied"¹¹⁰ was a substantial penalty and a deterrent to wrongful conduct. If the legislature wished to allow a common-law cause of action, it could have statutorily provided for a bad faith cause of action.

This cause of action stems from the same source as the original action—an injury arising out of and in the course of employment.¹¹¹ Such an injury is regulated under the Workers' Compensation Act.¹¹² If the court is applying the duties of the employer to the insurer in handling a claim and providing benefits,¹¹³ the insurer should also be afforded the exclusive protection of the Act.

C. Other Courts' Treatment of the Issue

The *Boylan* court noted that "a number of well-reasoned decisions from other jurisdictions have recognized the potential tort liability of workers' compensation insurers for willful or reckless disregard of their obligation to pay benefits to injured employees."¹¹⁴ For example, in *Hollman v. Liberty Mutual Insurance Co.*,¹¹⁵ the Eighth Circuit Court of Appeals, while acknowledging the exclusive remedy provision of the South Dakota Workers' Compensation Act,¹¹⁶ found the statutory language did not apply to torts "which occur independent of the industrial injury."¹¹⁷ Furthermore, the court found the plaintiff's cause of action was "implicitly recognized within the South Dakota statutes."¹¹⁸ Finding the intentional tort to be a separate action from the workers' compensation work-

107. *Id.*

108. See IOWA CODE § 86.13 (1993).

109. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 744 (Iowa 1992).

110. IOWA CODE § 86.13 (1993).

111. *Id.* § 85.3(1).

112. See *id.* § 85.3(1).

113. See *supra* text accompanying notes 24-37.

114. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 743 (Iowa 1992).

115. *Hollman v. Liberty Mut. Ins. Co.*, 712 F.2d 1259 (8th Cir. 1983).

116. S.D. CODIFIED LAWS ANN. § 62-8-6 (1993).

117. *Hollman v. Liberty Mut. Ins. Co.*, 712 F.2d at 1261.

118. *Id.* The *Hollman* court determined § 58-12-3, which "provides that a grant of attorney fees 'shall not be construed to bar any other remedy, . . . in tort . . . arising out of its refusal to pay such loss,'" implicitly allowed a tort action. *Id.* (quoting S.D. CODIFIED LAWS ANN. § 58-12-3 (1993)). The court elaborated, stating that "[t]his clause coupled with the language in the title '[o]ther remedies not barred' strongly suggests that the legislature did not intend to bar an action for intentional torts independent of the party's claim for worker's [sic] compensation." *Id.*

related injury, the Eighth Circuit, like a number of other courts,¹¹⁹ held the injured employee was not barred by the exclusivity provision of the Workers' Compensation Act.¹²⁰

In contrast, the *Boylan* court noted a number of courts have refused to recognize the bad faith tort against the workers' compensation insurer.¹²¹ The basis for not recognizing this cause of action is "the exclusive remedy provision of the workers' compensation statute."¹²² The Eleventh Circuit Court of Appeals in *Connolly v. Maryland Casualty Co.*¹²³ held the exclusiveness of the remedy provision prohibits a compensation claimant from "transform[ing] a delay in payments into an actionable tort cognizable in the Circuit Court simply by calling that delay outrageous, fraudulent, deceitful, or an intentional infliction of emotional distress."¹²⁴ Accordingly, under this analysis, the immunity from suit afforded employers under the Workers' Compensation Act is extended to the insurer.¹²⁵

IV. CONCLUSION

The possible effect of *Dolan* on workers' compensation claims is unclear. What is clear is that the Iowa Supreme Court will now look beyond the exclusive remedy provision of the Workers' Compensation Act when it is alleged a carrier has not acted in good faith in the handling of an employee's workers' compensation claim.

As a matter of public policy, the *Boylan* decision is probably correct. Workers' compensation laws were designed to make the compensation for a work-related injury an easy process for the employee. Under workers' compensation laws, an employee is not required to prove his entitlement to benefits for a genuine work-related injury.¹²⁶ When a workers' compensation carrier deliberately or unjustly denies a claimant's rights to compensation, the injured party should have legal recourse.

The cornerstone of the workers' compensation system is, however, the exclusivity of the Workers' Compensation Act. If an insurer is exposed to a common-law remedy for a claim, the insurance company's increased exposure to risk will be passed on to the employer through increased rates. Ultimately, this added exposure to risk will be passed on to the consumer through higher prices for goods.

119. See *Gibson v. National Ben Franklin Ins. Co.*, 387 A.2d 220, 222 (Me. 1978); *Kaluza v. Home Ins. Co.*, 403 N.W.2d 230, 236 (Minn. 1987).

120. *Hollman v. Liberty Mut. Ins. Co.*, 712 F.2d 1259, 1261 (8th Cir. 1983).

121. See *Connolly v. Maryland Casualty Co.*, 849 F.2d 525, 527 (11th Cir. 1988), cert. denied, 489 U.S. 1083 (1989); *Whitten v. American Mut. Liab. Ins. Co.*, 468 F. Supp. 470, 474-75 (D.S.C. 1977), aff'd, 594 F.2d 860 (4th Cir. 1979); *DePew v. Hartford Accident & Indem. Co.*, 185 Cal. Rptr. 472, 475 (Ct. App. 1982).

122. *Boylan v. American Motorists Ins. Co.*, 489 N.W.2d 742, 743 (Iowa 1992).

123. *Connolly v. Maryland Casualty Co.*, 849 F.2d 525 (11th Cir. 1988).

124. *Id.* at 526 (quoting *Old Republic Ins. Co. v. Whitworth*, 422 So. 2d 1078 (Fla. Dist. Ct. App. 1983)).

125. *Id.*

126. 82 AM. JUR. 2d *Workers' Compensation* § 141 (1992).

Because the relationship between the third party and the insurer arises from the Workers' Compensation Act, the duty the insurer owes to the injured party is determined by that Act, which currently provides a remedy for delay or termination of benefits.¹²⁷ If this penalty provision is not enough of a deterrent to force workers' compensation carriers to act in a reasonable and good faith manner, the legislature, not the judicial system, should impose a more severe penalty.

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127. See IOWA CODE § 86.13 (1993).