**WISCONSIN WORKER’S COMPENSATION – CASE LAW IN 2021**

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***Graef v. Continental Indemnity Company*, 2021 WI 45 (2021): Wisconsin’s exclusive remedy provision.**

In May 2021, the Supreme Court of Wisconsin determined if the exclusive-remedy provision of the Wisconsin Worker’s Compensation Act, Wis. Stat. 102.03(2), bars a tort action. In sum: it does.

In November 2012, the Applicant was working at a livestock yard when a bull gored him, causing both physical and mental injuries. Duloxetine, an antidepressant, was prescribed to treat the Applicant’s depression. The Applicant filled his prescription regularly, and Continental, the worker’s compensation carrier, authorized and paid for the prescription. In June of 2015, the Applicant attempted to fill his prescription but was denied. He left without a refill. On August 9, 2015, the Applicant attempted suicide with a firearm and suffered a gunshot wound. The Applicant never filed a worker’s compensation claim with the Department of Workforce Development as mandated by the Act. Instead, he filed an action in circuit court.

In 2017, the Applicant filed an action in circuit court, alleging that Continental was negligent in failing to authorize and pay for the June 2015 Duloxetine prescription. He alleged that the failure to pay for his prescription was the direct cause of his suicide attempt. He sought to recover compensatory damages including medical expenses, personal injuries, pain, suffering, and disability. Continental moved for summary judgment alleging that the Applicant should have instead filed a claim with the Department of Workforce Development. The Circuit Court denied the motion because Continental refused to concede that the Applicant would prevail if the correct forum was used. The Court of Appeals reversed and remanded with instructions to grant the summary judgment motion. The Applicant appealed to the Supreme Court of Wisconsin.

The Supreme Court explained that Wisconsin was the first state to create a constitutionally valid worker’s compensation system, and the first to put forth the “grand bargain”, ensuring smaller but more certain remedies than might be available in tort. *County of LaCrosse v. WERC*, 182 Wis. 2d 15, 30, 513 N.W.2d 579 (1994). Wis. Stat. § 102.03 sets out the basic requirements for compensability: (1) the employee sustains an injury; (2) the employer and employee are both subject to the Act at the time of the injury; (3) the employee is performing service growing out of employment; (4) the injury is not intentionally self-inflicted; and (5) the accident or disease causing injury arises out of the employment. Wis. Stat. § 102.03(1) provided that when the basic requirements of liability are satisfied, the Worker’s Compensation Act provides the exclusive remedy. The Supreme Court determined that all conditions were met; stating that there was an “unbroken chain of events starting with his November 1, 2012 injury and ending with his August 9, 2015 suicide attempt”. ¶ 15. Even the self-inflicted gunshot wound was found to be the direct result of the original workplace injury.

The Applicant attempted to argue that an exception should be created outside of the Act for the negligent denial of worker’s compensation claims. The Court determined that such an exception would go against the grand bargain of worker’s compensation and that such an exception would need to be the result of legislative action. ¶ 22. Even claims of bad-faith denial must be brought as a worker’s compensation claim. Wis. Stat. § 102.18(1)(bp). Finally, the Court ruled that Continental did not have an obligation to concede that a claim would prevail within the correct forum. In sum, the Supreme Court upheld the structure of the Act and ensured lesser exposure for insurers.

***Vanden Heuvel v. James Calmes & Sons*, Claim No. 2018 — 000284 (LIRC February 18, 2021): Can a petition for commission review constitute bad faith?**

The Applicant was employed as a construction manager for the insured. He was injured when he fell from a 10-foot ladder when attempting to use a nail gun to secure a box to the wall. Respondents denied the injury on the basis that it was self-inflicted. The Applicant allegedly stated “Watch this!” prior to falling from the ladder. Despite that alleged statement, at hearing, Judge Sass determined that there was no reasonable basis to conclude that the Applicant injured himself intentionally. He awarded benefits and assessed the maximum bad faith penalty of $30,000. The Respondents filed for Commission review. On review, the Labor and Industry Review Commission affirmed the findings of the ALJ. The Applicant then filed a hearing application alleging that the Respondents acted in bad faith when they appealed Judge Sass’s decision to the Commission. Judge Falkner dismissed the hearing application for the additional bad faith claim, and the Applicant now appeals.

The Commission confirmed that there may be multiple bad faith claims in a single worker’s compensation claim. However, the Commission also confirmed that the right to appeal to the Commission is an essential part of due process. The Commission provided examples of appeals that might be bad faith: (1) appeals of a non-final order for the purpose of delaying the hearing process,; (2) filing an untimely appeal to delay the payment of benefits; or (3) repeated appeals for the same issue without the offer of additional evidence. The Commission ultimately found that the Respondent did not act in bad faith by requesting Commission review of Judge Sass’s decision.