

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 30, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2041

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

INTEGRITY MUTUAL INSURANCE COMPANY,

PLAINTIFF-APPELLANT,

V.

**LABOR AND INDUSTRY REVIEW COMMISSION, AND
DONALD J. BAYSINGER,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. Integrity Mutual Insurance Company (Integrity) appeals from an order affirming a Labor and Industry Review Commission (LIRC) decision. That decision awarded penalties totaling \$8,278 for bad faith and inexcusable delay in handling Donald Baysinger's worker's compensation claim.

The issues are whether we owe deference to LIRC's decision, whether LIRC's application of the law to the undisputed facts is sustainable, and whether the penalties were excessive. We affirm.

¶2 Donald Baysinger incurred substantial medical costs in 1996 for treatment of a knee injury. He asserted that the injury was work related and filed a worker's compensation claim. Integrity, his employer's insurer, initially contested the claim, alleging a pre-existing condition. However, the parties agreed that Integrity would pay Baysinger \$15,000 and "agree to indemnify [Baysinger] for any unpaid past medical expense for which the applicant is personally liable and which was not covered by health insurance and hold [Baysinger] harmless from the claims of health insurance carriers and providers." LIRC approved that settlement.

¶3 Baysinger's medical insurer, Compcare, failed to pay all of his medical costs relating to the injury and subsequent surgery. Consequently, in March 1997 Baysinger's attorney, Thomas Hartley, presented Integrity with a Burlington Memorial Hospital bill for \$7,378.¹ Integrity, by attorney Richard Ward, responded that Baysinger should submit the bill to his health insurer. On April 16, Hartley again submitted the bill to Integrity for payment. By letter dated April 18, Ward responded:

There is absolutely no reason that Mr. Baysinger's health insurance should not cover the hospital expenses relating to the surgery Has Mr. Baysinger submitted the claims to his health carrier? If not, why not? If he has, on what grounds did they deny his claim? Please provide me with

¹ Baysinger also submitted other minor bills, which Integrity ultimately paid.

any correspondence from his health carrier indicating their reasons for denying the claim.

On April 30, 1997, Hartley replied “[w]e are again submitting the Memorial Hospital bills to Integrity for payment under the terms of the compromised agreement. These bills had been previously submitted to Compcare and have been rejected.” Hartley went on to advise that the bills were in collection and legal action had been threatened against Baysinger. By letter dated May 2, 1997, Ward responded with a request for detailed information on Baysinger’s submission of the bills to Compcare and Compcare’s response. His letter concluded:

As you know, the Compromise Agreement provided that Integrity would pay only outstanding medical bills that were not covered by health insurance. To date, you have not provided me with any explanation of why the hospital bills ... were not covered by Mr. Baysinger’s health insurance. Until you do so, I cannot recommend to my client that it pay those bills pursuant to the Compromise Agreement.

¶4 Burlington Memorial Hospital subsequently sent copies of its bills to Integrity. Ward responded by questioning why Memorial sent the bills to Integrity, and suggested that it submit them to Compcare.

¶5 In October 1997, Baysinger filed a bad faith claim with LIRC based on Integrity’s refusal to pay the outstanding bills. While the matter was pending, Compcare advised Ward that it had refused payment on the bills and that Integrity was responsible for them. In January 1998, Ward responded by restating Integrity’s position that Compcare was responsible for the bills. The hospital bills remained unpaid until LIRC’s decision of June 1998 ordered Integrity to pay them. LIRC’s order also required Integrity to pay Baysinger an equal amount as a penalty for its bad faith conduct in the matter and an added penalty of 10% of the

total for inexcusable delay. The trial court affirmed the order, resulting in this appeal.

¶6 WISCONSIN STAT. § 102.18(1)(bp) (1999-2000)² provides that LIRC may assess up to 200% of compensation due for the bad faith refusal to pay worker's compensation due the employee, subject to a \$15,000 maximum. WISCONSIN STAT. § 102.22(1) provides that LIRC may assess a penalty of 10% of the amount of compensation due if the employer or its insurer inexcusably delays payment.

¶7 The test for bad faith is whether the claimant has shown the absence of a reasonable basis for the employer's or insurer's decision to deny benefits, and knowledge or reckless disregard of a lack of a reasonable basis for denying or delaying payment. *North American Mech., Inc. v. LIRC*, 157 Wis. 2d 801, 807, 808, 460 N.W.2d 835 (Ct. App. 1985); *see also* WIS. ADMIN. CODE § DWD 80.70(2) (an employer or its insurer who, "without credible evidence which demonstrates that the claim for the payments is fairly debatable, unreasonably fails to make payment of compensation ... shall be deemed to have acted with malice or in bad faith"). Because the facts concerning Integrity's refusal to make the hospital payments are not in dispute, whether its refusal constitutes bad faith and inexcusable delay is a question of law. *Kimberly-Clark Corp. v. LIRC*, 138 Wis. 2d 58, 66, 405 N.W.2d 684 (Ct. App. 1987).

¶8 We are not bound by LIRC's conclusion that Integrity exercised bad faith in handling Baysinger's claim. *See West Bend Educ. Assoc. v. WERC*,

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

121 Wis. 2d 1, 11, 357 N.W.2d 534 (1984). However, an agency's interpretation or application of a statute may be accorded great weight deference, due weight deference, or de novo review depending on the circumstances. *UFE, Inc. v. LIRC*, 201 Wis. 2d 274, 284, 548 N.W.2d 57 (1996). We accord great weight deference when the agency has the duty to administer a statute; the agency's interpretation of the statute is longstanding; the agency employed expertise or specialized knowledge in forming its interpretation; and the agency's interpretation provides uniformity and consistency in applying the statute. *Id.* Under the great weight standard, we will uphold the agency's interpretation and application of a statute if it is reasonable, even if we determine that an alternative interpretation is more reasonable. *Id.* at 287.

¶9 LIRC's determinations on Integrity's bad faith and inexcusable delay are entitled to great weight deference. LIRC is the agency directly responsible for applying WIS. STAT. §§ 102.18(1)(bp) and 102.22(1) to worker's compensation disputes. It has done so in a substantial number of cases over the twenty-year history of those statutes, and has consequently developed considerable expertise in applying them. Deference to LIRC's interpretation provides uniformity and consistency in its application.

¶10 LIRC reasonably determined that Integrity was guilty of bad faith in handling Baysinger's claim. No later than April 30, 1997, Integrity was reliably informed that Baysinger was personally liable for medical expenses his insurer had refused to pay. Integrity's response over the next year, until LIRC finally ordered it to pay, was to repeatedly demand more information. It took the position, in effect, that under the settlement it could unilaterally determine its own liability. Because the terms of the settlement plainly granted Integrity no such

leeway, LIRC reasonably determined that Integrity's efforts to resist and delay payments amounted to bad faith.

¶11 Integrity also contends that the penalties were excessive and inequitable because Baysinger was also guilty of bad faith while pursuing his claim. LIRC deemed the allegations against Baysinger unsupported and found "nothing even approaching" bad faith in his conduct. LIRC's findings of fact are conclusive on appeal if they are supported by credible and substantial evidence. *Michels Pipeline Constr., Inc. v. LIRC*, 197 Wis. 2d 927, 931, 541 N.W.2d 241 (Ct. App. 1995). Integrity fails to cite facts of record demonstrating that LIRC's finding on Baysinger's alleged bad faith is erroneous under this standard. LIRC's finding is therefore conclusive.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

