



# Iowa General Assembly

## 2004 Legal Updates

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us>

**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### **WORKERS' COMPENSATION INSURER - NO BAD-FAITH TORT LIABILITY FOR MEDICAL TREATMENT PROVIDED BY EMPLOYER**

Filed by the United States Court of Appeals – Eighth Circuit  
August 5, 2004

Petrillo v. Lumbermens Mutual Casualty Company, No. 03-2860

<http://www.ca8.uscourts.gov/tmp/032860.html>

**Factual and Procedural Background.** Plaintiff Petrillo slipped and fell at work in February 1999. Her employer sent her to a physical therapist who treated her for hip pain. The workers' compensation insurer, defendant Lumbermens Mutual Casualty Company, paid for the treatment. Petrillo continued working but in November 1999 complained that her hip pain had returned. Her employer sent her back to the therapist and then to a physician who diagnosed a broken hip. Lumbermens resumed payment of benefits. The physician referred Petrillo to an orthopedic surgeon who concluded that her hip pain was most likely related to a childhood condition. When notified of this opinion, Lumbermens terminated benefits as of March 4, 2000. Petrillo continued medical treatment, undergoing three hip replacement surgeries and surgery to implant a spinal stimulator. She experienced hip deterioration and developed chronic regional pain syndrome. In June 2001, Lumbermens ordered an independent medical examination of Petrillo. When the physician opined that Petrillo was suffering from a preexisting hip condition aggravated by a work injury, Lumbermens reinstated workers' compensation benefits and paid Petrillo's medical bills retroactive to March 4, 2000, with interest.

Petrillo brought a diversity action in federal district court for the Northern District of Iowa, against her employer and Lumbermens. Petrillo claimed that Lumbermens acted in bad faith by not requiring her employer to send her to a physician instead of a physical therapist between February and November 1999. This claim was tried to a jury which returned a verdict in favor of Lumbermens. Petrillo appealed to the Eighth Circuit Court of Appeals claiming that the jury should have been instructed that Lumbermens had a duty to "furnish" as well as "pay for" reasonable and necessary medical care.

**Issue.** Whether Iowa law imposes tort liability on a workers' compensation insurer for bad-faith failure to monitor and direct the medical treatment being furnished by the employer-insured to an injured employee.

**Analysis.** The Eighth Circuit Court of Appeals found that Petrillo's employer unilaterally made the decision to send her to a physical therapist after her injury at work. The court noted that it was undisputed that the Lumbermens policy reserved to the employer-insured the right to choose the medical provider who would provide treatment to an injured employee, for which Lumbermens was obligated to pay. The court stated that Iowa Code section 85.27(4) provides that "the employer is obliged to furnish reasonable services...to treat an injured employee, and has the right to choose care." The court further stated that the Iowa administrative rules do not establish that the insurer has a duty to supervise and control an employer exercising its right under section 85.27(4) to choose the medical provider and Petrillo did not cite any case in which an Iowa court has held a workers' compensation insurer liable for bad faith in the furnishing of medical care to an injured employee.

**Conclusion.** The Eighth Circuit Court of Appeals affirmed the district court and held that "under Iowa law, no claim for bad faith to furnish medical services will lie against a workers' compensation insurer where the employer, consistent with the policy, has exercised its statutory duty 'to furnish reasonable services' and its right 'to choose the care.'" The court

specifically did not consider whether an insurer could be liable for bad faith if the policy delegated the employer's right to choose medical care to the insurer, or if the insurer chose to assume that right in a particular case.

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