

## PLAINTIFF SUES FEDERAL INS. CO. FOR BAD FAITH

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### *Merkens v. Federal*

Arizona Court of Appeals, May 21, 2015

Merkens was injured on the job when she accidentally inhaled vinyl cyclo-hexene diepoxide, a toxic substance, while working as a laboratory research associate. She sought workers' compensation, and Federal Ins. Co., her employer's workers' compensation carrier, accepted the claim and paid her medical expenses and temporary total disability benefits. After awhile, Federal terminated Merkens' temporary total disability compensation and medical expenses based on a report finding her disability not permanent. Merkens did not challenge Federal's decision with the Industrial Commission. Instead, she sued Federal for bad faith. The trial court granted Federal summary judgment on the ground that Merkens failed to exhaust her administrative remedies.

The court of appeals affirmed. A workers' compensation carrier can commit the tort of bad faith in two ways: (1) the intentional and unreasonable denial of a claim ("bad faith denial of benefits"); or (2) the intentional and unreasonable failure to process, handle, or pay the claim ("bad faith handling of the claim"). Where the claim is for the denial of benefits, the Industrial Commission has exclusive jurisdiction to adjudicate the controversy. But the superior court has jurisdiction to consider an allegation of bad faith handling of the claim, because this does not arise out of and in the course of employment. The duty of good faith precedes official intervention and permeates all of the dealings between the parties.

Here, Merkens tied all her claims to the carrier's refusal to pay her benefits. And once an injured worker makes a claim for workers' compensation, the Industrial Commission has the exclusive jurisdiction to determine whether the injured worker is entitled to benefits and the amount of those benefits. In a bad faith denial of benefits lawsuit, the finder of fact would have to make a compensability determination to find that Federal unreasonably terminated Merkens' benefits. Further, without a compensability determination, the finder of fact could not award unpaid policy benefits due from the industrial injury because only the Industrial Commission can determine whether benefits are due. As such, the worker must first have at least sought a compensability determination from the Industrial Commission. Because Merkens did not seek a determination from the Industrial Commission that she was entitled to continuing benefits, she had failed to exhaust her administrative remedies, and Federal appropriately won summary judgment.

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