

What's Trending in Mississippi Workers' Compensation Law? Tips to Avoid Bad Faith Suits

Are bad faith suits making a comeback? Mississippi law has long recognized an employee's right to pursue a claim against the employee's employer or employer's workers' compensation insurer for bad-faith refusal to pay benefits under the Mississippi Workers' Compensation Act. A claim for bad faith may arise when the employer or its insurer denies medical or disability benefits without a legitimate or arguable basis, engages in willful or malicious conduct, or acts with gross and reckless disregard of the employee's rights. The tort of bad faith is independent of the underlying workers' compensation claim and is not barred by the exclusive-remedy provision of the Act. Significantly, bad faith may expose employers, workers' compensation insurers, and third-party claims adjusters to punitive damages many times larger than the employee's actual damages.

Is it bad faith? We can see how these factors play out in *Liberty Insurance Corporation v. Lee*, NO. 2018-CA-00091-COA, 2019 Miss. App. LEXIS 531 (Miss. Ct. App. Oct. 29, 2019). Lee, a delivery driver, injured his back while carrying a package up a set of stairs. Lee timely reported the injury to his manager. Lee also said that he had been previously treating with a chiropractor for a back injury. The manager concluded Lee's injury was not work-related and did not report the incident to the employer's insurer. *Id.* at *3-4. Lee filed a Petition to Controvert with the Mississippi Workers' Compensation Commission. The insurer initially denied Lee's injury. *Id.* at *11-12. After further investigation, the insurer admitted the injury and paid workers' compensation benefits. *Id.* at *16-18.

After Lee's worker's compensation claim was settled, Lee filed suit against his employer and the employer's insurer. A Mississippi jury found in Lee's favor and awarded extra-contractual damages of \$500,000 against the employer and \$100,000 against the employer's insurer. *Lee*, 2019 Miss. App. LEXIS 531, at *19. Lee's employer settled. The employer's insurer appealed. *Id.* at *20. On appeal, the Court of Appeals concluded the insurer had an arguable, good-faith basis for initially denying Lee's claim. The insurer promptly investigated the claim by availing itself of the discovery procedures afforded under the Mississippi Workers' Compensation Act before admitting compensability. *Id.* at *47. Thus, extra-contractual damages were not warranted against the insurer. *Id.* at *49.

What can employers and their insurers take away?

- **Report**

- Employers should immediately report any alleged work injury to their workers' compensation carrier.
- Hand in hand, employers should also have a policy that requires employees to immediately report workplace injuries to their supervisor or other designated representative.
- See <https://www.mwcc.ms.gov/#/home> for required forms and timelines for reporting work injuries to the Mississippi Workers' Compensation Commission.

- **Investigate**

- Take statement from the injured worker;
- Contact between the employer, its insurer, and third party administrator, if any;
- Obtain medical records and bills;
- Interview known witnesses; and
- Consult a lawyer if there are questions concerning compensability.

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