Getting Around LHWCA's Exclusive Remedy Roadblock—Injured Employee's Claims Against Employer and Insurer for Intentional Torts

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I. Introduction—A Hypothetical

A longshoreman is injured at work. The injury is reported to both the employer's insurer and the Department of Labor's Office Workers' Compensation Program [OWCP], pursuant to the requirements contained in the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.* [LHWCA]. Thereafter, the insurer commences payment of medical benefits to the employee.

Nevertheless, despite both the employer and insurer's awareness of the employee's injury and inability to work, no compensation benefits are immediately paid as required by the LHWCA. The OWCP attempts to notify the employee of his right to compensation under the LHWCA. When these efforts are unsuccessful, the OWCP requests that the insurer provide the employee's address and medical records. The insurer ignores the request, leaving the injured employee uninformed about entitlement to compensation benefits under the statute. Thereafter, the OWCP repeatedly writes the insurer over the next three years seeking contact information for the injured employee, but the insurer ignores each request. Meanwhile, when the employee contacts the insurer to inquire about compensation benefits during his disability, the carrier assures him the benefits will be forthcoming.

Surprisingly, most courts hold that the exclusive remedy provision in the LHWCA, 33 U.S.C. § 905 (a), bars a bad faith claim. Courts have, however, allowed the injured employee to pursue intentional tort claims against insurers, notwithstanding the exclusive remedy provision

Unable to work due to his injury, the employee has no income, and he and his spouse suffer accordingly. The lack of employment causes the injured employee and his spouse to experience anxiety, stress, loss of sleep, etc.

Once the employee finally learns of his rights to compensation and of the insurer's failure to accurately inform him of such rights, can he pursue a claim for bad faith against the insurer? Surprisingly, most courts hold that the exclusive remedy provision in the LHWCA, 33 U.S.C. § 905 (a), bars a bad faith claim. Courts have, however, allowed the injured employee to pursue intentional tort claims against insurers, notwithstanding the exclusive remedy provision.

II. LHWCA—Workers Compensation for Federal Workers

The LHWCA is a comprehensive, statutory scheme designed to compel employers to provide compensation to employees who are disabled or to heirs of

employees killed in the course of their employment.[1] Typical of workers' compensation statutes, a primary purpose of the LHWCA is to provide employees with a practical and expeditious remedy for work-related injuries while relieving employers of tort liability for the employees' injuries. Therefore, the LHWCA deprives an employee of his right to pursue tort claims against his employer if he is compensated for injuries covered by the Act.[2]

The exclusive remedy provision of the LHWCA provides:

> The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, ... and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death.[3]

What if the insurer obligated to provide benefits to the employee delays processing of the application or unreasonably refuses to pay benefits, causing the employee to suffer harm from lack of necessary medical attention or loss of income while recovering from injury? Can the employee pursue a bad faith claim against the insurer?

If workers' compensation statutes enacted in various states are any guide, relief for bad faith would be available despite the LHWCA's exclusive remedy provision. Surprisingly, however, the majority of courts have determined the exclusive remedy provision in the LHWCA bars the injured employee's bad faith claim.

III. Bad Faith Claims Typically Permitted Against Workers' Compensation Carriers Despite Exclusive Remedy Provisions

Most states recognize that "all or virtually all intentionally tortuous acts committed by an employer against an employee in the course of employment are excluded from the worker's compensation system."[4] Commonly, the workers' compensation benefits are expressly available only for work-related injuries. For example, Hawaii's statute provides:

> The rights and remedies herein granted to an employee or the employee's dependents on account of a work injury suffered by the employee shall exclude all other liability of the employer to the employee ... at common law or otherwise, on account of the injury.[5]

In *Hough v. Pacific Ins. Co., Ltd.*,[6] the Hawaii Supreme Court determined that based on the plain language of this statute (and based on the entire workers' compensation scheme), the exclusive remedy applied only to "work injuries."[7] Therefore, the employee was not precluded by the exclusive remedy provision from pursuing common law tort claims against the insurer that were subsequent and unrelated to the work injury.[8]

> ***Although the majority of states authorize bad faith claims regardless of exclusive remedy provisions in their workers' compensation statute, most courts hold that a claimant for benefits under the LHWCA is barred from pursuing a bad faith claim by 33 U.S.C. § 905 (a)***

Other jurisdictions have reached a similar conclusion. For example, in *Arp v. AON/ Combined Ins. Co.*,[9] the employee fractured his skull when ejected from his vehicle, causing a severe brain injury.[10] Although temporary total disability benefits were paid, the workers' compensation carrier rejected the employee's claim for permanent and total disability even though there was no medical evidence to support its rejection.[11] Moreover, the insurer offered to pay permanent partial disability benefits amounting to only $12,000, despite knowing the claim was worth over $1,000,000.[12] When the employee sued for bad faith, the district court granted summary judgment to the insurer.[13] Acknowledging that South Dakota recognized a cause of action for bad faith in failing to pay a workers' compensation claim, the Eighth Circuit reversed.[14] A jury could determine that the insurer's obligation to pay the claim was undisputed, and the severity of the injuries was unchallenged.[15]

IV. Majority Does Not Recognize a Bad Faith Claim Pursued by LHWCA Claimant

Although the majority of states authorize bad faith claims regardless of exclusive remedy provisions in their workers' compensation statute, most courts hold that a claimant for benefits under the LHWCA is barred from pursuing a bad faith claim by 33 U.S.C. § 905 (a).

For example, in *Sample v. Johnson*,[16] two longshoremen were injured at work. The employer challenged the employees' claims for compensation, causing the injured employees to be without income for ten and nine months, respectively. The district court held there was no remedy for the insurer's bad faith act of controverting the employee's claim for compensation benefits under the LHWCA. On appeal, the Ninth Circuit hedged, but ultimately

denied the bad faith claim. Although the court agreed claims for intentional injuries were barred under 33 U.S.C. § 905 (a), it also recognized that punitive damages might be awarded for sufficiently egregious acts.[17] The Plaintiffs, however, failed to allege such acts.[18] Consequently, the plaintiffs' remedies for mere refusal to pay benefits were limited to those in the LHWCA.[19]

Other cases reach a similar result. In *Nauert v. ACE Property and Cas. Ins. Co*,[20] the plaintiff sued ACE for compensatory and punitive damages due to alleged bad faith in the handling of a claim under the LHWCA. ACE disagreed that the plaintiff's claim was work-related, and refused to pay either disability or medical benefits. The court determined the LHWCA preempted state law regarding actions for bad faith handling of LHWCA claims.[21] Accordingly, the court granted ACE's motion to dismiss.

In *Atkinson v. Gates, McDonald & Co.*,[22] compensation benefits were initially paid, but then suspended without notification to the claimant or the Department of Labor. The court held that the exclusive provisions of the LHWCA, § 905 (a), and the Act's penalty provision, § 914 (e), operated to bar the plaintiff's claim for bad faith.[23]

One court, however, disagreed that LHWCA's penalty provisions were the exclusive remedy for bad faith against the carrier. In *Martin v. Travelers Ins. Co.*,[24] the plaintiff received LHWCA compensation benefits, which he deposited and started to draw upon. The insurance company then stopped payments on the draft, causing the plaintiff financial hardship and emotional distress. The First Circuit found there was a "callous stopping of payment without warning.... A stop payment on a sizable compensation check which may have been deposited and drawn upon carries the obvious possibility of embarrassment and distress."[25] Consequently, where the carrier should have known that acute harm might follow from its actions, the exclusivity provision and the fact that the LHWCA contains a penalty for late payment did not bar an action.[26]

> ***"The courts have ... carved out an exception to exclusive liability provisions where the injury inflicted is the result of an intentional act"***

Virtually every case subsequent to *Martin*, however, has distinguished or criticized its reasoning. For example, in *Sample*, the Ninth Circuit quipped that *Martin* was "an opinion free of citation to authority."[27] And in *Nauert*, the court noted that mere refusal to pay benefits was distinguishable from the facts in *Martin*.[28]

V. Despite LHWCA's Exclusive Remedy Provision, There Is a Remedy for Intentional Torts

"The courts have ... carved out an exception to exclusive liability provisions [of the LHWCA] where the injury inflicted is the result of an intentional act."[29] For example, in *Taylor v. Transocean Terminal Operators, Inc.*,[30] a fellow employee stabbed the plaintiff. The plaintiff alleged the stabbing occurred within the course and scope of his employment, making his employer vicariously liable. The employer argued the LHWCA was the exclusive remedy, meaning it could only be liable for compensation benefits under the Act.[31] The trial court agreed and dismissed the plaintiff's suit. The appeals court reversed, noting a number of courts hold that intentional torts are an exception to the exclusive remedy provision of the LHWCA and that, in such cases, the employee may bring a tort action against the employer.[32] Moreover, the defendant cited no cases holding that the LHWCA's exclusive remedy provision barred an employer's intentional tort. Accordingly, because the LHWCA's benefit provisions did not apply to injuries caused by employer's intentional torts, it logically followed that LHWCA's exclusive remedy provision did not bar relief against an employer's intentional torts, either.[33]

Similarly, in *Hoffman v. Lyons*,[34] the plaintiff was hired as a recreation aid at Fort Dix, New Jersey. Throughout her employment at Fort Dix, the plaintiff alleged she was verbally abused and sexually harassed by other employees. Despite numerous complaints made by the plaintiff, the defendants refused to take action.[35] The plaintiff sued under a variety of theories. The defendants moved to dismiss the plaintiff's Count One (Defamation), Four (Negligent Hiring, Training, Supervision and Retention), Eight (Misprision/Obstruction/Fraudulent Falsification), and Nine (Civil Conspiracy).

Although the court acknowledged that intentional injuries by an employer were actionable outside of the LHWCA's exclusive remedy provision, the plaintiff had failed to specifically allege that her employer had the specific intent to injure her.[36] Nevertheless, because the plaintiff's alleged injuries raised a substantial question of coverage under the LHWCA, the court stayed these counts pending a determination by the Secretary of Labor.[37]

In *Kuhlman v. Crawford Co.*,[38] the plaintiff alleged the insured prepared a fraudulent labor market survey designed to reduce his compensation benefits. The plaintiff further alleged such intentional conduct was illegal under the LHWCA and had caused him bodily injury resulting in mental

anguish.[39] A claim for intentional infliction of emotional distress was not preempted by the LHWCA where the claim alleged intentional acts during the claims investigation process that caused severe emotional distress to the plaintiff.[40] Further, allegations that the insurer intentionally delayed payment of benefits or medical bills to coerce an insured to accept a lower settlement stated a claim for intentional infliction of emotional distress.[41] Nevertheless, the plaintiff did not state a claim for intentional infliction of emotional distress because there were no allegations of public embarrassment, harassment, or even being promised a certain amount of compensation only to have a lower amount fraudulently procured.[42]

Numerous additional courts have also recognized that 33 U.S.C. § 905 does not bar an employee's claim for intentional injury.[43] Given that the employer also retains remedies under state law against the employee when they are not preempted by the LHWCA,[44] permitting an employee to pursue common law claims for intentional torts seems only fair.

VI. Intentional Inflictional of Emotional Distress and Loss of Consortium Not Precluded by LHWCA

Despite the exclusive remedy provision, an employee entitled to benefits under the LHWCA may still have avenues for relief, including claims for intentional infliction of emotional distress and loss of consortium.

A. Claim for Intentional Infliction of Emotional Distress

The elements for the tort of intentional infliction of emotional distress (IIED) are typically as follows:

1) the act allegedly causing the harm was intentional or reckless;
2) the act was outrageous;
3) and the act caused;
4) extreme emotional distress.[45]

Insureds have successfully sued for IIED based on insurers' unreasonable refusal to settle and pay claims. For example, in *Young v. Allstate Ins. Co.*,[46] Mrs. Young was negligently rear-ended by Allstate's insured. Allstate offered to settle, but for an amount less than the medical expenses Mrs. Young had incurred. Mrs. Young was then awarded $45,000 for damages in non-binding arbitration, but the insured appealed and requested a trial *de novo*. The jury eventually awarded Mrs. Young $198,971.71, plus fees and costs. Allstate then offered to settle for $260,000 if Mrs. Young would forgo any claim for bad faith. Mrs. Young refused and sued Allstate for breach of the duty of good faith and fair dealing and IIED. After the trial court dismissed her claims, she appealed.

The Hawaii Supreme Court determined that Mrs. Young adequately stated a claim for IIED against Allstate. Aware of the unequal positions between the insurance company and Mrs. Young, the court stated, "The extreme and outrageous character of the conduct may arise from an abuse by the actor of a position, or a relation with the other, which gives him actual or apparent authority over the other, or power to affect his interests."[47]

In *Eckenrode v. Life of Am. Ins. Co.*,[48] a Seventh Circuit case cited in *Young*, the plaintiff sued for IIED when the insurer failed to settle her claim for life insurance proceeds. The insurer's "refusal to make payment on the policy, coupled with its deliberate use of 'economic coercion' (i.e., by delaying and refusing payment it increased plaintiff's financial distress thereby coercing her to compromise and settle) to force a settlement, clearly rises to the level of 'outrageous conduct' to a person of 'ordinary sensibilities.' "[49]

Similarly, in *Cont'l Cas. Ins. Co. v. McDonald*,[50] an insured sued claiming the insurer tried to coerce him into accepting a small lump sum settlement of his medical claim after injuring his back.[51] The insurer offered medical payments for less than the insured's anticipated future medical needs.[52] The court determined the insurer deliberately sought to cause the insured to suffer severe emotional distress in order to coerce him into accepting an unreasonably low lump-sum settlement that would drastically reduce the insurer's liability for the future medical expenses.[53]

> ***If the insurer's refusal to convey to the employee information about his rights to compensation, despite numerous requests from the OWCP, caused the employee to suffer from emotional distress, the employee would have legitimate claims for IIED***

Finally, outrageous conduct is found where the insurer has knowledge that the plaintiff is especially sensitive, susceptible, or vulnerable to injury caused by mental distress.[54] In *Dependable Life Ins. Co. v. Harris*, the insurer's rejection of the insured's claim for disability payments was without any justification or reliance upon any legal defense. Attempts to frighten the insured from collecting policy benefits "constitutes outrageous behavior on [the insurer's] part because of its fiduciary relationship with [the insured], its economic strength and power, and [the insured's] sickness, pecuniary circumstances, and

the need for (and dependence upon) the disability payments which [the insurer] wrongfully withheld."[55]

Considering this authority, a compelling argument could be made against the insurer in our hypothetical. If the insurer's refusal to convey to the employee information about his rights to compensation, despite numerous requests from the OWCP, caused the employee to suffer from emotional distress, the employee would have a legitimate claim for IIED.

B. Claim for Loss of Consortium

A derivative claim for loss of consortium is also outside the scope of the exclusive remedy provision of the LHWCA.[56]

Consortium is described as "comfort, companionship, and commitment to the needs of each other."[57] The Hawaii Supreme Court has further recognized the "concept of consortium includes not only loss of support or services, it also embraces such elements as love, companionship, affection, society, sexual relations, solace and more."[58]

If the insurer's delay or refusal to pay benefits caused such a loss to the employee's spouse, a claim for loss of consortium could also be pursued despite the exclusive remedy provision in the LHWCA.

VII. Conclusion

Although state courts recognize a claim for bad faith against workers' compensation carriers where appropriate, the exclusive remedy provision in the LHWCA has been consistently interpreted to preclude an injured employee's action for bad faith. Nevertheless, the injured worker seeking benefits under the LHWCA may still have claims against the insurer, including intentional infliction of emotional distress or loss of consortium.

[1] *See* 33 U.S.C. §§ 901–950.

[2] *See* Houston v. Bechtel Assoc. Professional Corp., *D.C.*, 522 F. Supp. 1094, 1095 (D.D.C. 1981)(explaining purpose of LHWCA).

[3] 33 U.S.C. § 905 (a). Section 904 states, "Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9 [33 U.S.C. §§ 907, 908, 909]." Sections 907, 908, and 909 discuss medical benefits, compensation for disability, and compensation for death, respectively.

[4] Fermino v. Fedco, Inc., 872 P.2d 559, 562 (Cal. 1994).

[5] Haw. Rev. Stat. § 386-5 (emphasis added).

[6] *Hough v. Pacific Ins. Co., Ltd.*, 83 Haw. 457, 927 P.2d 858 (1996).

[7] *Hough*, 83 Haw. at 464, 927 P.2d at 865.

[8] *Hough*, 83 Haw. at 464, 927 P.2d at 865. A year later, the Haw. Supreme Court considered whether the exclusivity provision of Haw. Rev. Stat. § 386-5 barred a claim for emotional distress. Furukawa v. Honolulu Zoological Society, 85 Haw. 7, 936 P.2d 643 (1997). Following reasoning similar to that employed in *Hough*, the Court noted the workers' compensation law covered employees who suffered "personal injury either by accident arising out of and in the course of employment or by disease proximately caused by or resulting from the nature of the employment." *Furukawa*, 85 Haw. at 18, 936 P.2d at 654 (quoting Haw. Rev. Stat. § 386-3). Although the Court agreed that the workers' compensation scheme served to bar a suit for physical and emotional damages resulting from work-related injuries, the plaintiff's claims were based on the alleged intentional conduct of defendant's members. *Id.*, 85 Haw. at 18, 936 P.2d at 654. Therefore, the workers' compensation statute did not prescribe such claims.

[9] Arp v. AON/ Combined Ins. Co., 300 F.3d 913 (8th Cir. 2002).

[10] *Arp*, 300 F.3d at 915.

[11] *Arp*, 300 F.3d at 916.

[12] *Arp*, 300 F.3d at 916, 919.

[13] *Arp*, 300 F.3d at 916.

[14] *Arp*, 300 F.3d at 916, 919.

[15] *Arp*, 300 F.3d at 919. A majority of courts recognize that the employee has a separate, distinct cause of action for bad faith claim handling regardless of the exclusive remedy provisions in workers' compensation statutes. *See, e.g.*, Hollman v. Liberty Mut. Ins. Co., 712 F.2d 1259, 1262 (8th Cir. 1983)(recognizing that the weight of the case law clearly supports causes of action for intentional torts, including bad faith, despite the exclusivity provisions of workers' compensation statutes); Wright v. Liberty Mut. Fire Ins. Co., No. 06-cv-351, 2009 U.S. Dist. LEXIS 95036, at *6 (D. Colo. Oct. 13, 2009)(stating it has long been recognized that recovery for an insurer's bad faith handling of a workers' compensation case is distinct from the actual benefits awarded for claimant's injury); Etten v. U.S. Food Serv., Inc., 446 F. Supp. 2d 968, 975 (N.D. Iowa 2006)(recognizing a cause of action for bad faith denial of workers' compensation benefits where investigation of injury and medical needs is incomplete); Cano v. Zurich Am. Ins. Co., No. CV-05-0511, 2006 U.S. Dist. LEXIS 44711, at *8 (D. Ariz., June 27, 2006)(acknowledging that under Arizona law, bad faith in the handling of a workers' compensation claim does not arise out of the course of employment; consequently, the exclusive remedy provision of the workers' compensation statute does not apply); *Van Biene v. ERA Helicopters, Inc.*, 779 P.2d 315, 318 (Alaska 1989)(quoting Elliott v. Brown, 569 P.2d 1323, 1327)(Alaska 1977)(recognizing an exception to the exclusivity doctrine where an intentional tort is committed by a fellow employee or employer; "We [find] that the socially beneficial purposes of the workers' compensation law 'would not be furthered by allowing a person who commits an intentional tort to use the compensation law as a shield against liability.' "); Medina v. Herrera, 927 S.W. 2d 597, 600

(Tex. 1996)(finding that although the employee's receipt of compensation benefits bars a tort suit against the employer, it does not bar his claim for common law intentional tort against a fellow employee).

[16] Sample v. Johnson, 771 F.2d 1335 (9th Cir. 1985).

[17] *Sample*, 771 F.2d at 1346.

[18] *Sample*, 771 F.2d at 1347.

[19] Sections 914 (e) and (f) increase the amount of compensation due by ten or twenty percent for overdue payments without or with an award, respectively. Further, section 928 allows for attorney's fees if the employer declines to pay compensation and an award is subsequently made. *Sample*, 771 F.2d at 1347 n. 13.

[20] Nauert v. ACE Property and Cas. Ins. Co., 2005 U.S. Dist. LEXIS 34497, at *15 (D. Colo. Aug. 27, 2005).

[21] *Nauert*, 2005 U.S. Dist. LEXIS 34497, at *16.

[22] Atkinson v. Gates, McDonald & Co., 838 F.2d 808 (5th Cir. 1988).

[23] *Atkinson*, 838 F.2d at 815.

[24] Martin v. Travelers Ins. Co., 497 F.2d 329 (1st Cir. 1974).

[25] *Martin*, 497 F.2d at 331.

[26] *Martin*, 497 F.2d at 331.

[27] *Sample*, 771 F.2d at 1346.

[28] *Nauert*, 2005 U.S. Dist. LEXIS 34497, at *14.

[29] Houston v. Bechtel Assoc. Prof'l Corp., D.C., 522 F. Supp. 1094, 1096 (D. D.C. 1981).

[30] Taylor v. Transocean Terminal Operators, Inc., 785 So. 2d 860 (La. Ct. App. 2001).

[31] *Taylor*, 785 So. 2d at 861.

[32] *Taylor*, 785 So. 2d at 862.

[33] *Taylor*, 785 So. 2d at 863. The court further noted that the LHWCA embodied the heart of the worker's compensation "bargain:" "The employee receives the certainty of a specified benefit but forgoes a tort action and the employer incurs liability for the specified benefit but avoids the risk of a tort action. . . . However, the worker's compensation 'bargain' typically does not include an employer's intentional tort." *Taylor*, 785 So. 2d at 864.

[34] Hoffman v. Lyons, No. 08-5248, 2009 U.S. Dist. LEXIS 84458 (D. N.J. Sept. 15, 2009).

[35] *Hoffman*, 2009 U.S. Dist. LEXIS 84458, at *6.

[36] *Hoffman*, 2009 U.S. Dist. LEXIS 84458, at *18.

[37] *Hoffman*, 2009 U.S. Dist. LEXIS 84458, at *18–19.

[38] Kuhlman v. Crawford & Co., No. 01-6036-CIV, 2002 U.S. Dist. LEXIS 28223 (S. D. Fla. Jan. 23, 2002).

[39] *Kuhlman*, 2002 U.S. Dist. LEXIS 28223, at *2–3.

[40] *Kuhlman*, 2002 U.S. Dist. LEXIS 28223, at *5.

[41] *Kuhlman*, 2002 U.S. Dist. LEXIS 28223, at *9.

[42] *Kuhlman*, 2002 U.S. Dist. LEXIS 28223, at *8.

[43] *See* Sample v. Johnson, 771 F.2d 1335, 1346 (9th Cir. 1985)(§ 905 (a) not applicable to claims concerning intentional injuries); Sharp v. Elkins, 616 F. Supp. 1561, 1565 (W.D. La. 1985)(in spite of broad language in § 905 (a), where an employer specifically intends to injure an employee, a common-law tort action may be maintained against the employer; intentional tort exception is appropriate because otherwise an injured employee would be left without a remedy for his injury). State courts have also determined the exclusive remedy provision of the LHWCA does not prevent an employee's pursuit of claims for intentional torts. *See, e.g.*, Talik v. Fed. Marine Terminals, Inc., 885 N.E. 2d 204, 212 (Ohio 2008)(Pfeifer, J., concurring in part, dissenting in part)(intentional tort claims may be brought against an employer because the LHWCA does not preempt all intentional torts); Leane v. Continental Maritime of San Diego, Inc., 72 Cal. Rptr. 2d 121, 127 (Cal. Ct. App. 1998)(the LHWCA does not bar all state remedies against the employer); Moss v. Dixie Mach. Welding and Metal Works, Inc., 617 So.2d 959, 961 (La. Ct. App. 1993) (intentional tort not barred by LHWCA); Bowen v. Aetna Life and Cas. Co., 512 So.2d 248 (Fla. Dist. Ct. App. 1987) (growing number of courts recognize workers can sue for injury due to intentional tort despite the exclusive remedy shield in the LHWCA).

[44] *See* Stevedoring Serv. of Am., Inc. v. Eggert, 914 P.2d 737, 747 (Wash. 1996)(employer not barred from pursuing state law claims for recovery of fraudulently obtained benefits under the LHWCA).

[45] *See* Hac v. Univ. of Hawaii, 102 Haw. 92, 107, 73 P.3d 46, 61 (2003).

[46] Young v. Allstate Ins. Co., 119 Haw. 403, 198 P.3d 666 (2008).

[47] *Young*, 119 Haw. at 425, 198 P.3d at 688 (quoting RESTATEMENT (SECOND) TORTS § 46 cmt. e). *See also* Dependable Life Ins. Co. v. Harris, 510 So. 2d 985, 988 (Fla. Dist. Ct. App. 1987)("a heightened degree of outrageousness can be supplied by the unequal positions of the parties in a relationship which gives rise to the tort, where one asserts and has the power to severely damage the other," such as an insurance adjuster seeking to force an unfair settlement).

[48] Eckenrode v. Life of Am. Ins. Co., 470 F.2d 1 (7th Cir. 1972).

[49] *Eckenrode*, 470 F.2d at 4–5 (*quoted in Young*, 119 Haw. at 425, 198 P.3d at 688).

[50] Cont'l Cas. Ins. Co. v. McDonald, 567 So.2d 1208 (Ala. 1990).

[51] *Cont'l Cas. Ins. Co.*, 567 So. 2d at 1210.

[52] *Cont'l Cas. Ins. Co*, 567 So. 2d at 1212–14.

[53] *Cont'l Cas. Ins. Co.*, 567 So. 2d at 1221. *See also* Kuhlman v. Crawford & Co., No. 01-6036-CIV, 2002 U.S. Dist. LEXIS 28223, at *9 (S.D. Fla. Jan. 23, 2002)(allegations that an insurer intentionally delayed payment of benefits or medical bills to coerce an insured to accept a lower settlement states a claim against the insurer for IIED); Birkenbuel v. Montana State Compensation Ins. Fund, 687 P.2d 700, 703 (Mont. 1984)(upholding the right of a worker to assert a separate claim for IIED occurring outside the employment relationship and during the processing and settlement of a workers' compensation claim).

[54] *See* Dependable Life Ins. Co. v. Harris, 510 So. 2d 985, 988 (Fla. Dist. Ct. App. 1987)(relying on RESTATEMENT (SECOND) TORTS § 46 cmt. f).

[55] *Dependable Life Ins. Co.*, 510 So. 2d at 989.

[56] *See* Bowen v. Aetna Life and Cas. Co., 512 So. 2d 248, 251 (Fla. Dist. Ct. App. 1987)(anticipating that plaintiff's amended complaint will state a cause of action for loss of consortium count that will not be preempted by the LHWCA).

[57] Mist v. Westin Hotels, 69 Haw. 192, 197, 738 P.2d 85, 89 (1987)(quoting Thill v. Modern Erecting Co., 170 N.W. 2d 865 (Minn. 1969)).

[58] *Mist*, 69 Haw. at 197, 738 P.2d at 89–90 (quoting Millington v. Southeastern Elevator Co., 239 N.E. 2d 897 (N.Y. 1968)).