

Current 2025 Claims Seminar Manual

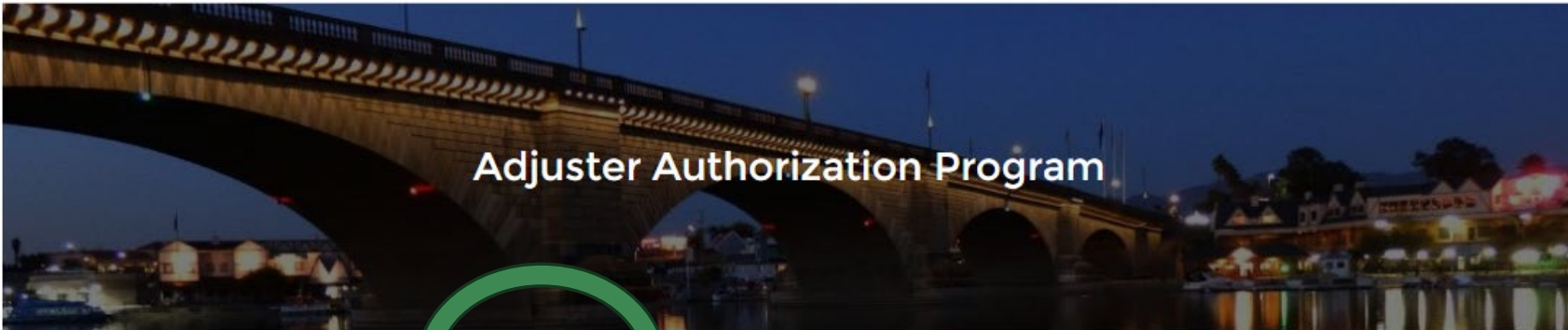
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2025 ICA Claims Seminar Manual



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Adjuster Authorization Program

Program Information Internet Based Training **Class Registration**

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The ICA uses the Google Suite; and webinars are conducted with Google Meets. The transition to G Suite may require participants to have a Google Account. Before the registering for a class, please confirm with your IT department that you are able to:

- Achieve connectivity to our resources such as the Google Meet. Install or use Google Chrome as it is the preferred browser.

If you experience problems after the above steps have been completed, please contact the Commission at the number and/or email toward the bottom of this page.

Upcoming Classes

My Enrolled Classes

My Attended Classes



Adjuster Authorization?
Log into Community Account & Register in 'Class Registration'

Good Faith Claims Management

v.

Bad Faith and Unfair Claims Processing Practices

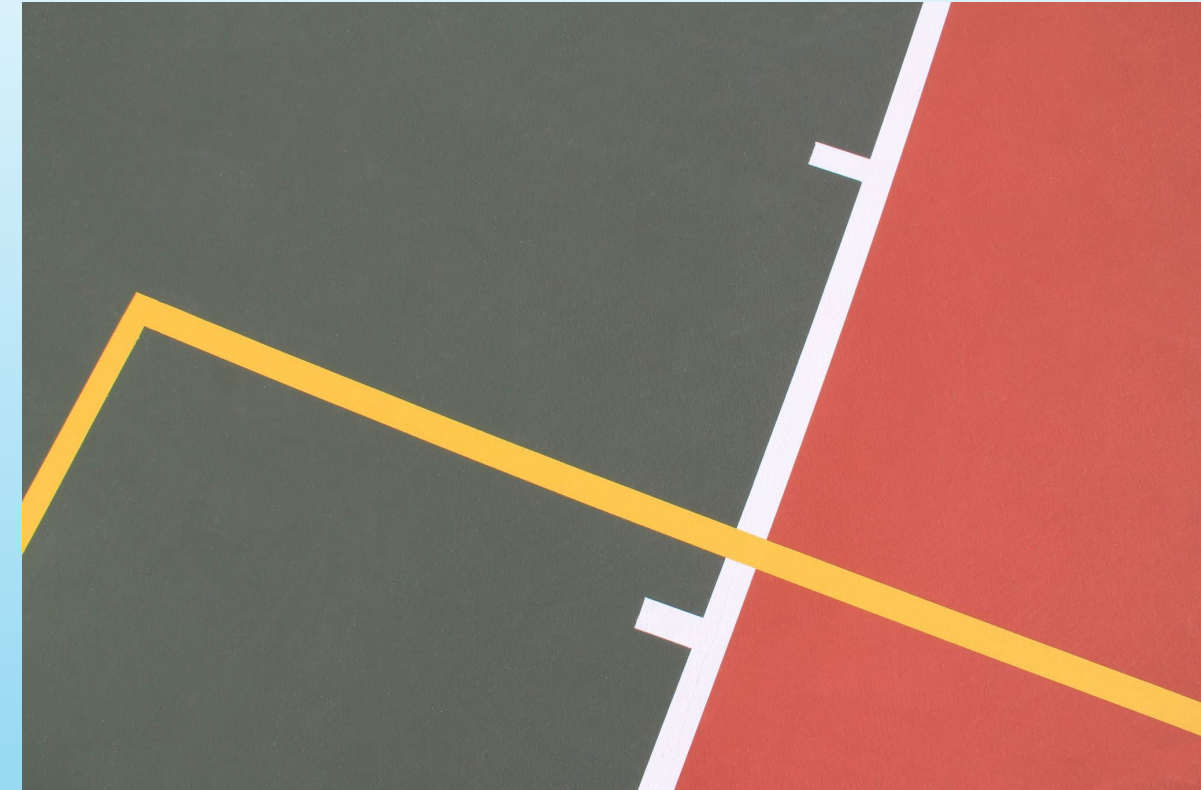
2025 INDUSTRIAL COMMISSION OF ARIZONA
CLAIMS SEMINAR

- ERIC C. AWERKAMP, ESQ.
- KEVIN KARGES, ESQ.



ARIZONA REVISED STATUTES & ARIZONA ADMINISTRATIVE CODE

- 1) THE ARIZONA STATUTE – A.R.S. §23-930
- 2) ARIZONA WC RULES – A.A.C. R20-5-163





Arizona Revised Statutes Title 23. Labor § 23-930.
Unfair claim processing practices; bad faith; civil penalties

A. The commission has exclusive jurisdiction as prescribed in this section over complaints involving alleged unfair claim processing practices or bad faith by an **employer, self-insured employer, insurance carrier or claims processing representative** relating to any aspect of this chapter. The commission shall investigate allegations of unfair claim processing or bad faith either on receiving a complaint or on its own motion.



§23-930
Continued
(\$\$Penalties\$\$)

B. If the commission finds that unfair **claim processing or bad faith** has occurred in the handling of a particular claim, it shall award the claimant, in addition to any benefits it finds are due and owing, a benefit penalty of **twenty-five per cent of the benefit amount** ordered to be paid **or five hundred dollars**, whichever is more.

C. If the commission finds that an employer, self-insured employer, insurance carrier or claim processing representative **has a history or pattern of repeated unfair claim processing practices or bad faith**, it may impose a civil penalty of up to **one thousand dollars** for each violation found. The civil penalty shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund.

§23-930
Continued (ICA
will adopt rules
defining unfair
claims
processing and
bad faith)

D. Any party aggrieved by an order of the commission under this section may request a hearing pursuant to § 23-947. The hearing and decision shall be conducted pursuant to the provisions of § 23-941.

E. The commission shall adopt by rule a definition of unfair claim processing practices and bad faith. In adopting a rule under this subsection, the commission shall consider, among other factors, recognized and approved claim processing practices within the insurance industry, the commission's own experience in processing workers' compensation claims and the workers' compensation and Insurance Relations of this state ~~the~~ construed as limiting or interfering with the authority of the department of insurance as provided by law to regulate any insurance carriers, including the jurisdiction of the department of insurance over unfair claim settlement practices as provided in § 20-461.

Ariz. Admin. Code § 20-5-163

A. For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative **commits "bad faith"** if the employer, self-insured employer, insurance carrier, or claims processing representative:

1. Institutes a proceeding or interposes a defense that is not:

a. Well-grounded in fact;

b. Warranted by existing law; or

c. A good faith argument for the extension, modification, or reversal of existing law;



How do applicant's view adjusters when payments are late.



Ariz. Admin. Code § 20-5-163

Continued

2. Unreasonably delays:

a. Payment of benefits; or

b. Authorization for, or receipt of, medical benefits or treatment;

3. Unreasonably underpays benefits;

4. Unreasonably terminates benefits;

5. Intentionally misleads a claimant as to applicable statutes of limitation, benefits, or remedies available to the claimant under the Act or under this Article; or

6. Unreasonably interferes with or obstructs the claimant's right to choose the claimant's attending physician, except in cases involving a self-insured employer under A.R.S. § 23-1070.



Ariz. Admin. Code § 20-5-163

Continued

B. For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits "unfair claim processing practices" if the employer, self-insured employer, insurance carrier, or claims processing representative:

1. Unreasonably issues a notice of claim status without adequate supporting information in its possession or available to it;
2. Unreasonably fails to acknowledge communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
3. Fails to act reasonably and promptly upon communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
4. Directly advises a claimant not to consult or obtain the services of an attorney; or
5. Communicates directly, for an improper purpose, with a claimant represented by an attorney.



Ariz. Admin. Code § 20-5-163

Continued

C. A person alleging bad faith or unfair claim processing practices ("complainant") shall file a written complaint with the claims manager of the Commission. The complainant, or the complainant's authorized representative, shall sign the complaint.

D. The complaint shall describe the specific actions of the employer, self-insured employer, insurance carrier, or claims processing representative, that are alleged to constitute bad faith or unfair claim processing practices. A complaint form is available upon request from the Commission.

E. Upon receipt of a complaint under this subsection, the claims manager of the Commission shall serve the complaint upon all parties.



Ariz. Admin. Code § 20-5-163

Continued

F. If the Commission acts on its own motion under A.R.S. § 23-930(A), the claims manager shall mail a notice of alleged bad faith or unfair claim processing practices to the claimant or the claimant's authorized representative and the:

1. Employer;
2. Self-insured employer;
3. Insurance carrier; or
4. Claims processing representative.

G. The person or entity named in a complaint or notice served under A.R.S. § 23-930 and this Section shall file with the claims manager a written response to the complaint or notice, within 30 days after service by the Commission of the complaint or notice.



Ariz. Admin. Code § 20-5-163

Continued

H. The person or entity filing a **written response** shall serve a copy of the response upon the complainant, or the complainant's authorized representative, if represented.

I. If the person or entity named in a complaint or notice served under A.R.S. § 23-930 and this Section fails to file a written response, the Commission shall consider the **absence of a response a denial of the allegations of the complaint or notice.**

J. Upon receipt of a written response, or upon the expiration of 30 days if no response is filed, the **Commission shall enter an award as it deems, in its discretion, appropriate** under A.R.S. §§ 23-930(B) or (C).





TORT CLAIMS BAD FAITH AND UNFAIR CLAIMS PROCESSING (COMPENSATORY AND PUNITIVE DAMAGES \$\$\$)

¶ 14 Although we have not comprehensively addressed the ways a carrier can commit bad faith, it has been recognized that a workers' compensation carrier can commit the tort in two distinct 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”). *Merkena v. Fed. Ins. Co.*, 237 Ariz. 274, 349 P.3d 1111, 713 Ariz. Adv. Rep. 28 (Ariz. App. 2015)

Merkena v. Fed. Ins. Co., 237 Ariz. 274, 349 P.3d 1111, 713 Ariz. Adv. Rep. 28 (Ariz. App. 2015)

Bad Faith Jury Instructions



There is an implied duty of good faith and fair dealing in every insurance policy. Plaintiff claims that Insurance carrier breach this duty.

To prove that Defendant breach the duty of good faith and fair dealing, Applicant must prove:

1. Defendant intentionally [denied the claim] [failed to pay the claim] [delayed payment of the claim] without a reasonable basis for such action; and

2. Defendant knew that it acted without a reasonable basis, or Defendant failed to perform an investigation or evaluation adequate to determine whether its action was supported by a reasonable basis

Jury Instructions

Some appellate cases state that a cause of action for first-party bad faith have **two elements**:

1. the **lack of a reasonable basis** for the insurer's decision, and
2. **knowledge or reckless disregard of the lack of a reasonable basis (tenable position)**

Reckless disregard: “failed to perform an investigation adequate to determine whether its position was tenable”



Questions at your deposition – Standard of Good Faith!

Do you agree:

- 1. **As the adjuster you MUST conduct an immediate and adequate investigation of**
 - **Medical aspects** (“We will deny for now because we have not done an investigation!”)
 - **Legal aspects** (“We are denying because we don’t know yet if he was actually an employee!”)
- 2. **As the adjuster you MUST evaluate the claim fairly (Equal Consideration)**
 - **Must consider all information**
 - **May not ignore favorable information**
 - **Must not focus on finding ways to deny benefits**
- 3. **Benefits may not be denied**
 - **On conjecture or speculation**
 - **To force injured worker to prove claim in court** (Do you have the right to have your day in court?)
 - **For spite or leverage** (Starve them out to force them to work!)
- 4. **Benefits may only be denied after adequate investigation and the evaluation demonstrates the claim is not payable**

- 5. **The adjuster must know the applicable laws and coverages concerning**
 - Benefits due
 - Deadlines
 - Rules and statutes

- 6. **A claims decision MAY NOT be made to obtain financial avoidance for the insurer**

- 7. **An adjuster may not substitute personal opinion for medical opinions**

- 8. **An adjuster's job in part is to assist the injured employee with the claim**
 - Explain rights, benefits and responsibilities

- 9. **The adjuster must be honest with insured**

- 10. **The adjuster may not attempt to intimidate the injured employee with false information**

Case law Re: Bad Faith claims:

A claim by an injured employee against the workers' compensation carrier is a **first-party claim**. *Franks v. United States Fidelity & Guarantee Company*, 149 Ariz. 291, 295, 718 P.2d 193, 197 (App. 1985); *Travelers Ins. Co. v. Savio*, 806 P.2d 1258, 1272 (Colo. 1985); and *Mendoza v. McDonald's Corp.* 222 Ariz. 139, para 32, 213 P.2d 288 (App. 2009)

Insurance Contract Language:

Workers' compensation is a system of statutory benefits. **The insuring clause of the ISO standard form of worker's compensation coverage provides:** "We will **pay promptly** when due the benefits required of you in the workers' compensation law." The Defendants' coverage and benefit obligations are set forth in the applicable provisions of the Arizona Workers' Compensation Act, A.R.S. 23-901 et. Seq., the rules, and regulations promulgated under the Act (A.A.C. R20-5-101 through R20-5-164), and case law interpreting those obligations. See *Rowland v. Great States Insurance Company*, 20 P.3d 1158, 199 Arizona 577 (App. 2001). Under the Act, **both the insurer, and the claim processing representative are charged with the duty of good faith.** A.R.S. 23-930.

The tort of bad faith arises when the workers' compensation carrier/adjustor intentionally denies, or fails to process or pay a claim without a reasonable basis for such action, although such acts or omissions are not the exclusive bases for a bad faith claim. *Rowland v. Great States Ins. Co.*, 20 P.3d 1158, 199 Ariz. 577 (App. 2001). The duty of the carrier to conduct a reasonable investigation as part of a decision making process, and to **give equal consideration** to the interest of the insured worker, are established as a matter of law. RAJI (Civil) 6th Ed. *Rowland*.

Adequacy of Investigation

In all aspects of investigating or evaluating a claim, Carrier is required to give as much consideration to Applicant's interests as it does to its own (or employer's) interests.

Rawlings: An insurer must deal fairly with an insured, giving **equal consideration in all matters** to the insured's interests.

Definition of Intentional

To prove that the Defendant acted intentionally [on the bad faith claim], Applicant must prove that Defendant intended its conduct, but **Applicant does not need to prove that Defendant intended to cause injury.**

- “the intent to do the act” *Rawlings*

Defendant’s conduct is not intentional if it is inadvertent or due to a good faith mistake.

- “inadvertence, loss of papers, misfiling of documents and like mischance.”
Rawlings



Bad Faith
Complaint #1 –
TPD not timely
paid despite
promises

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BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

[REDACTED])
Applicant,) ICA NO. [REDACTED]
CARRIER NO: [REDACTED]
DATE OF INJURY: 1/13/11

v.)
[REDACTED])
Defendant Employer,)
[REDACTED])
Defendant Carrier.)

COMPLAINT OF BAD FAITH/
UNFAIR CLAIMS PROCESSING
(A.R.S. §23-930(A) &
A.A.C. R20-5-163(A)(2))

Applicant's temporary compensation and medical benefits were terminated without permanent impairment by Defendants on 5/2/12 by Notice of Claim Status issued on 6/5/12. Applicant requested a hearing.

On 5/31/12, Applicant was examined by a spinal surgeon, Dr. Dennis Crandall, who took her off work and recommended active medical treatment. Defendants refused to approve the treatment.

Defendants set up an IME with Dr. William Stevens on 8/29/12. Dr. Stevens reported that Applicant needed further active medical treatment or had a permanent impairment and found her capable of only sedentary work activity.

On 9/26/12, Administrative Law Judge Deborah Nye issued an award cancelling further hearings scheduled for medical testimony and dismissed Applicant's Request for Hearing on

Bad Faith Complaint 1 continued

1 Defense Attorney's avowal that the Carrier would issue a Notice of Claim Status rescinding the
2 closure of the case and reinstating her temporary compensation benefits. (Exhibit A).

3 On 10/5/12 Applicant's counsel faxed a letter to Defense Counsel asking him to have his
4 client issue the promised notice and bring Applicant's compensation up-to-date in good faith. No
5 action having been taken, Applicant filed a "J" Request for Hearing on 10/17/12. (Exhibits B & C).

6 On 10/26/12, Defense Counsel wrote the ALJ and provided a notice rescinding the
7 protested one. No compensation was paid however. Based upon that letter, the ALJ dismissed
8 Applicant's "J" Request for Hearing. (Exhibits D & E).

9 In a phone conversation on 10/31/12, the claims representative advised that a
10 compensation check bringing Applicant's compensation up-to-date would be issued. In a phone
11 conversation on 11/13/12, Defense Counsel also advised that payment of retroactive compensation
12 had been approved and a check would be issued. Since then, no compensation has been paid and
13 the claims representative has not returned several phone calls regarding the status of the check.
14 Earlier this week, Defense Counsel advised that the Carrier did not have adequate reserves set
15 but promised that a check would be sent overnight to Applicant's attorney by Wednesday 11/28/12.
16 No check has yet been received.

17 Additionally, on 10/2/12, Applicant sent Defense Counsel a letter with a receipt in the
18 amount of \$209.08 for Dr. Crandall's examination and requested reimbursement. No
19 reimbursement has been issued for that amount yet either.

20 As of today, Defendants owe Applicant \$11,622.00 in temporary compensation. (Daily rate
21 \$54.82 x 212 days). The nonpayment of temporary compensation and non-reimbursement of the
22 money paid to Dr. Crandall has caused a great financial hardship for the Applicant, a single mother
23 of three daughters who has had no wages or compensation since 5/2/12.

24 Based upon the above, it is submitted that Defendants have committed bad faith under
25 A.R.S. §23-930 and A.A.C. R20-5-163(A)(2) by unreasonably delaying the payment of
26 compensation. Accordingly, Applicant is requesting that the Industrial Commission issue an order

Bad Faith Complaint 1 continued

1 | under A.R.S. §23-930(B) that Defendants be assessed a penalty of 25% of the compensation
2 | owing from 5/2/12 until the date that compensation is actually paid in full.

Ariz. Admin.
Code § 20-5-163

A. For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits "bad faith" if the employer, self-insured employer, insurance carrier, or claims processing representative:

2. Unreasonably delays:

a. Payment of benefits; or

...

Bad Faith Complaint 2

THE INDUSTRIAL COMMISSION OF ARIZONA

6
7 [REDACTED]
8 Applicant,) ICA Claim No.: [REDACTED]
9 v.) Carrier Claim No.: [REDACTED]
10 [REDACTED]) DOI: 08/11/2005
11 Defendant Employer,) ALJ Case No.: N/A
12 and)
13 [REDACTED])
14 Defendant Carrier.) Assigned to the Hon.
15)

APPLICANT'S REQUEST FOR BAD FAITH/ UNFAIR CLAIMS PRACTICES BENEFITS

16 The Applicant hereby requests that the Industrial Commission of Arizona enter a finding
17 for bad faith and/or unfair claims practices against Defendants [REDACTED] and
18 [REDACTED] pursuant to A.R.S. §23-930 and A.A.C. R20-5-163.

19 A.R.S. §23-930(A) provides that "The commission shall investigate allegations of unfair
20 claim processing or bad faith either on receiving a complaint or on its own motion." A.R.S. §23-
21 930(C) directs the Industrial Commission to adopt a rule defining unfair claims processing and
22 bad faith, and those definitions can be found in A.A.C. R20-5-163 (hereinafter, R20-5-163).

23 R20-5-163(A) provides as follows:

24 For purposes of A.R.S. §23-930, an employer, self-insured employer, insurance
25 carrier, or claims processing representative commits "bad faith" if the employer,
self-insured employer, insurance carrier, or claims processing representative:

- 26 1. Institutes a proceeding or interposes a defense that is not:
 - 27 a. Well-grounded in fact;
 - b. Warranted by existing law; or

Bad Faith Complaint 2 Continued

- c. A good faith argument for the extension, modification, or reversal of existing law;
2. Unreasonably delays:
 - a. Payment of benefits; or
 - b. Authorization for, or receipt of, medical benefits or treatment;
3. Unreasonably underpays benefits;
4. Unreasonably terminates benefits;
5. Intentionally misleads a claimant as to applicable statutes of limitation, benefits, or remedies available to the claimant under the Act or under this Article; or
6. Unreasonably interferes with or obstructs the claimant's right to choose the claimant's attending physician, except in cases involving a self-insured employer under A.R.S. §23-1070.

R20-5-163(B) provides as follows:

For purposes of A.R.S. §23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits "unfair claim processing practices" if the employer, self-insured employer, insurance carrier, or claims processing representative:

1. Unreasonably issues a notice of claims status without adequate supporting information in its possession or available to it;
2. Unreasonably fails to acknowledge communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
3. Fails to act reasonably and promptly upon communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
4. Directly advises a claimant not to consult or obtain the services of an attorney; or
5. Communicates directly, for an improper purpose, with a claimant represented by an attorney.

FACTS

1. On June 10, 2019, the applicant submitted a petition to reopen his claim to the Industrial Commission through the claim portal.

Bad Faith Complaint 2 Continued

- 1 2. Due to delays from the Industrial Commission, a notification letter to [REDACTED]
2 was not sent until August 6, 2019. That notification started the twenty-one-day response
3 time for defendants to issue a notice of claims status.
 - 4 3. On August 29, 2019, the undersigned filed a request for penalty benefits pursuant to A.R.S.
5 §23-1061(M). The penalty benefits provide that Defendants pay compensation benefits as
6 if the claim were open until such time that a notice is issued.
 - 7 4. On September 9, 2019, the Industrial Commission sent a solicit letter to the carrier
8 notifying them of the "A.R.S. 23-1061M violation..." giving the carrier 14 more days to
9 respond. That time has now passed and Defendants have not issued a notice of claims
10 status nor have they issued benefits.
 - 11 5. On October 6, 2019, the Industrial Commission issued a Bad Faith Complaint against the
12 carrier. Still, no action by Defendants.
- 13 Pursuant to A.R.S. §23-930(B), the Applicant requests that the Commission order the
14 payment of benefits due and owing pursuant to the applicant's 23-1061(M) request and enter a
15 finding of bad faith or unfair claims practices for the complete and utter failure to process this
16 claim in a fair and timely manner. Further, the applicant requests that along with the bad faith
17 and/or unfair claims practices finding, that the Commission or Defendants to pay a "benefit
18 penalty of twenty-five percent of the benefit amount ordered to be paid or five hundred dollars,
19 whichever is more."

Bad Faith Complaint 3

Received by ICA on 05/18/2020 11:50:00

Submitted on 05/29/2020 02:57:19 PM

[REDACTED]	Applicant
TS. [REDACTED]	Defendant Employer
[REDACTED]	Defendant Insurance Carrier

COMPLAINT OF BAD FAITH AND/OR UNFAIR CLAIM PROCESSING PRACTICES

ICA CLAIM NO: [REDACTED]

CARRIER CLAIM NO: [REDACTED]

DATE OF INJURY: [REDACTED]

COMES NOW [REDACTED] and pursuant to

(Party filing complaint)

A.R.S. Section 23-930 and A.A.C. R20-5-163, alleges that [REDACTED] INSURANCE has committed bad faith and/or unfair claim processing practices in the handling of my workers' compensation claim. The specific action or action(s) which violate A.A.C. R20-5-163 are as follows: (attach any relevant documents to complaint)

I've only spoken to the INSURANCE [REDACTED] ONCE
and I've emailed her numerous of times with NO response. I've
reached out to my company and IC to get the info I needed
to file my claim. I've done everything on my end with no
response from the insurance company. They had me send
in my receipts for a reimbursement but I haven't received
or heard anything since the only letter in March from
both [REDACTED] and IC. I've enclosed a few emails that
would prove to show I tried to make contact with no return
responses. Thank you for your time and consideration.

Pursuant to this complaint, I request that the Industrial Commission conduct an investigation and, if appropriate, order penalty benefits under the provisions of A.R.S. Section 23-930.

I have this date mailed a copy of this complaint to the person or entity named in the complaint.

Possible Denied Claim

From:

To:

Date: (Tuesday, March 17, 2020, 07:15 AM MST)

Hello

I received a letter from your office yesterday and I am confused on a few of the wordings in this letter.

I will be denied if this IC of Arizona notifies you or your company. I will also call the number provided to me as well. From my understanding of this letter I see that this is being based off of not the diagnosis of the physician (Podiatrist) but the company's findings.

What is the purpose of a physician (Podiatrist) if you are only going to go off what the company says? Believe me if this injury could have been avoided it would have, but based on the physician (Podiatrist) this was due to my work, as for the reason of filing a claim. I've done what was asked of me and more to ensure everything was conveyed to the company of yours and mine. I would greatly appreciate it if you could explain this to me as to know my next move.

I will see the physician (Podiatrist) today and will see what the next steps to my recovery are going to be. I hope to hear from you with a detailed explanation for this letter.

Respectfully

Sent from Yahoo Mail on Android

Bad Faith Complaint 3 Continued

Bad Faith Complaint 3 Continued

Claim

[REDACTED]

Afternoon

[REDACTED]

I am writing to you to see what it is that needs to be done to get this fixed. I sent an email before asking why and how are these findings being based off of when my Podiatrist said this is work related. What is the point of having a physician's diagnoses if you are going to proceed on what you want? Furthermore I haven't heard from you or anyone stating anything different. Please contact me ASAP as for me to understand. I received a letter from industrial that my paperwork was approved but I got a call from my company saying you all are denying me. Please explain.

Respectfully

[REDACTED]

Sent from [Outlook Mobile](#)

Bad Faith Complaint 4

13 Defendant Insurance Carrier.

14 **APPLICANT'S COMPLAINT**
15 **FOR BAD FAITH OR UNFAIR**
16 **CLAIM PROCESSING**

17 **SUPPLEMENTAL**

18 Applicant, through counsel, submits this Supplemental Complaint for Bad Faith or Unfair
19 Claim Processing because Defendant Insurance Carrier, through either the claim representative or
20 counsel (collectively and individually Defendant), has not responded to multiple communications
21 and, more importantly, has not issued payment for an adjustment of temporary disability (TD)
22 benefits following a final increase in Applicant's average monthly wage (AMW). This Complaint
23 follows a previous Complaint filed April 10, 2023, joining the Industrial Commission of Arizona
24 (ICA) Claims Division's February 27, 2023, notification of an investigation pursuant to ARS §23-

Bad Faith Complaint 4 Continued

4 1061 (J) because Defendant twice failed or refused to respond to requests for submission of an ICA
5 Form 108 (Recommended AMW Calculation of Carrier).
6

7 Defendant, finally, on May 8, 2023, responded not to the ICA inquiries but to Applicant's
8 bad faith-unfair claim processing complaint (Defendant Response). Defendant attached to its
9 response the then-thrice requested Form 108 acknowledging that Applicant's actual earnings in
10 the 25 days he worked before his April 02, 2021, accident were \$6888.50, representing \$8380.82
11 monthly earnings, and recommending an AMW of \$5030.33, the statutory maximum for the 2021
12 calendar year. Defendant's response also included the representation that "Defendants have been
13 paying temporary disability benefits at a slightly [sic] lower rate and will promptly process and pay
14 any underpayment" (Defendant Response). The ICA issued a Notice of Average Monthly Wage
15 on June 16, 2023, serving copies to Defendant Employer, Defendant Insurance Carrier, and
16 counsel for Defendant.

17 **A. TEMPORARY DISABILITY ADJUSTMENT FROM INCREASED AMW APRIL**
18 **2, 2021, TO THE PRESENT**

19 Counsel for Applicant formally requested payment of the TD benefits due and owing
20 based on an increase of the AMW to \$5030.33 from the estimated \$4333.00 Defendant had been
21 using to calculate TD benefits, on July 5, 2023. The increase was calculated at about \$12,090.00
22 from April 2, 2021, through June 1, 2023, a period of 26 months. Counsel for Applicant proposed
23 that Defendant pay an additional sum reflecting the 25 percent penalty payable if the ICA granted

Bad Faith Complaint 4 Continued

4 Applicant's April 7, 2023, Complaint that Defendant engaged in bad faith-unfair claim processing.
5
6 A Waiver of Applicant's right to request a hearing on the June 16 Notice of AMW was included
7 with the demand for payment of the retroactive TD benefits adjustment and that notice became
8 administratively final.

9 Defendant was reminded by email on July 13, 2023, that counsel for Applicant had
10 received no response to the July 5 correspondence and email. Paula Arnett, the representative for
11 Defendant [REDACTED] emailed on July 13 (Thursday) that she would have an answer by the
12 next day, Friday, July 14, and requested an address for her to deliver payment by overnight check.
13 Counsel for Applicant replied with an overnight delivery address on July 13 and having received
14 nothing from [REDACTED], legal counsel who had been copied on all
15 communications, counsel for Applicant again informed Defendant by email on July 18 that there
16 was no record of the payment promised on July 13, and no further contact from [REDACTED] or
17 counsel. Counsel for Applicant considered the matter appropriate for presentation again to the
18 ICA as a bad faith-unfair claim processing Complaint.

19 **B. TEMPORARY DISABILITY BENEFITS FROM MONTHLY STATUS REPORTS** 20 **SUBMITTED JULY 5, 2023**

21 Counsel for Applicant also reminded Defendant on July 18 that he had no record of a
22 payment of TD benefits from two Monthly Status Reports (MSRs) that had been submitted, by
23 email, on July 5, 2023. The MSRs covered the periods from April 24-May 23, 2023, and May 24-
24 June 22, 2023; both were completed properly and signed by Applicant. The last Notice of Claim

Bad Faith Complaint 4 Continued

4 Status issued by Defendant is dated August 24, 2022, and shows an acknowledgment of entitlement
5 to TD benefits. Defendant has not, on information and belief, issued any subsequent Notice
6 indicating that Applicant is no longer entitled to TD benefits.
7

8 C. COMPLAINT

9 Defendants' refusal to remit payment of additional TD benefits from an admitted substantial
10 increase in Applicant's AMW, based on information Defendant had available since at least July 30,
11 2021, violates Rule 63 (A)(2)(a), Workers' Compensation Practice and Procedure, AAC R20-5-163
12 (A)(2)(a) [unreasonably delays payment of benefits]; see also Rule 63 (A)(3), AAC R20-5-163 (A)(3)
13 [unreasonably underpays benefits]. Defendant was put on notice in July 2021 of Applicant's actual
14 earnings at the time of his accident and injuries, when counsel for Applicant submitted wage and
15 other work records to establish employment during litigation on the compensability of the claim
16 [REDACTED]. Defendant, if there legitimately was some concern (see
17 Defendant Response at page 1, lines 23-24), had more than "months to get wage information from
18 the employer," and actually had almost two years. Counsel for Applicant again sent wage records by
19 email to [REDACTED] and counsel for Defendant on April 27, 2022, and it was not until almost 13
20 months later that Defendant finally gave up the pretense of claiming to need to verify what was
21 already known.
22

23 Defendants have committed, and are continuing to commit, unfair claim processing
24 practices by unreasonably failing to acknowledge, and to act reasonably and promptly on receipt of,

Bad Faith Complaint 4 Continued

4 communication from Applicant's attorney. Rule 63(B)(2) & (3), AAC R20-5-163(B)(2) & (3).
5
6 Defendants have committed and are continuing to commit "bad faith" by unreasonably delaying
7 payment of [or underpaying] TD benefits that ██████████ represented would be paid "promptly"
8 (Defendant Response), and then advised would be paid on or about Friday, July 14, TD benefits
9 that are now and have been due and owing with finality of the Notice of AMW. Rule 63 (A)(2)(a),
10 AAC R20-5-163(A)(2)(a); see also Rule 63 (A)(3), AAC R20-5-163 (A)(3).

11 Applicant submits that Defendant Insurance Carrier has violated Workers' Compensation
12 Practice and Procedure rules more than once, and Applicant is entitled to multiple penalty awards
13 for each separate unfair claim process and act of bad faith, individually at 25 percent of the TD
14 benefits payable from April 2, 2021, until the present . ARS §23-930(B).

Bad Faith Complaint 5

10 [REDACTED])
11 Defendant Employer,)
12 and)
13 [REDACTED] and)
14 [REDACTED])
15 Defendant Carrier and TPA.)

APPLICANT'S
REQUEST FOR BAD FAITH/
UNFAIR CLAIMS PRACTICES
BENEFITS

Assigned to the Hon.

15 The Applicant hereby requests that the Industrial Commission of Arizona enter a finding
16 of bad faith and/or unfair claims practices against [REDACTED] and/or [REDACTED]
17 pursuant to A.R.S. §23-930 and A.A.C. R20-5-163.

18 A.R.S. §23-930(A) provides that "The commission shall investigate allegations of unfair
19 claim processing or bad faith either on receiving a complaint or on its own motion." A.R.S. §23-
20 930(C) directs the Industrial Commission to adopt a rule defining unfair claims processing and
21 bad faith, and those definitions can be found in A.A.C. R20-5-163 (hereinafter, R20-5-163).

22 R20-5-163(A) provides as follows:

23 For purposes of A.R.S. §23-930, an employer, self-insured employer, insurance
24 carrier, or claims processing representative commits "bad faith" if the employer,
25 self-insured employer, insurance carrier, or claims processing representative:

- 26 1. Institutes a proceeding or interposes a defense that is not:
 - 27 a. Well-grounded in fact;
 - 28 b. Warranted by existing law; or
 - c. A good faith argument for the extension, modification, or reversal of existing law;

Bad Faith Complaint 5 Continued

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2. Unreasonably delays:
 - a. Payment of benefits; or
 - b. Authorization for, or receipt of, medical benefits or treatment;
3. Unreasonably underpays benefits;
4. Unreasonably terminates benefits;
5. Intentionally misleads a claimant as to applicable statutes of limitation, benefits, or remedies available to the claimant under the Act or under this Article; or
6. Unreasonably interferes with or obstructs the claimant's right to choose the claimant's attending physician, except in cases involving a self-insured employer under A.R.S. §23-1070.

R20-5-163(B) provides as follows:

For purposes of A.R.S. §23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits "unfair claim processing practices" if the employer, self-insured employer, insurance carrier, or claims processing representative:

1. Unreasonably issues a notice of claims status without adequate supporting information in its possession or available to it;
2. Unreasonably fails to acknowledge communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
3. Fails to act reasonably and promptly upon communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
4. Directly advises a claimant not to consult or obtain the services of an attorney; or
5. Communicates directly, for an improper purpose, with a claimant represented by an attorney.

FACTS

1. Mr. [REDACTED] has an open industrial claim with Defendant [REDACTED].
[REDACTED] At all times relevant hereto, Defendant [REDACTED] was administering the claim.

Bad Faith Complaint 5 Continued

2. On August 3, 2023, the defendants suspended Mr. [REDACTED] benefits claiming he moved without proper permission.
3. On August 7, 2023, three days after [REDACTED] issued the suspension notice, my office received an email from [REDACTED], defendant's attorney, stating that a claims representative was allegedly "informed" that Mr. [REDACTED] had moved to Virginia from someone at Dr. Putty's office. According to the email, the carrier intended to suspend his benefits and wanted to confirm the information with my office. (Please see Exhibit A.)
4. In fact, Mr. [REDACTED] has not moved and continues to reside in Arizona and has therefore not left the state without permission.

LEGAL ARGUMENT

Rule 163(B) requires that a carrier have "supporting information in its possession or available to it" when issuing a notice of claims status. Here, [REDACTED] issued a notice of claims status suspending Mr. [REDACTED] benefits without any factual basis to support the notice, despite the fact that the hearsay information relied upon to issue the notice could have easily been verified by calling the undersigned, Mr. [REDACTED] attorney. Given that [REDACTED] was sending Mr. [REDACTED] compensation checks to the undersigned and given that the parties are currently in litigation, clearly [REDACTED] was aware that Mr. [REDACTED] was represented by counsel.

Mr. [REDACTED] was made aware at some point that his client intended to suspend benefits and at some point took action to verify [REDACTED] information. The carrier, however, through its administrator [REDACTED] simply could not wait to obtain any supporting information, actual facts, that could have been obtained with a simple phone call. Instead, [REDACTED] took the most drastic action possible.

Pursuant to A.R.S. §23-930(B), the Applicant requests that the Commission order the payment of benefits due and owing and a "benefit penalty of twenty-five percent of the benefit amount ordered to be paid or five hundred dollars, whichever is more."

Bad Faith Complaint 6 Continued

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- iii. Closure and payment of permanent benefits based upon IME
- m. On 8/1/2024 and 8/2/2024 follow up emails sent to carrier regarding payment of temporary/permanent benefits and claim status
- n. On 8/6/2024 a Request for Hearing was filed for carrier's failure to pay temporary and permanent disability benefits and for failure to communicate.

2. **Unfair Claims Processing Practices:**

- a. Defendant carrier has engaged in Unfair Claims Processing Practices for *Unreasonable delays in payment of benefits and authorizing medical benefits or treatment (R20-5-163 (A)(2) and by failing to act reasonably and promptly upon communications (R20-5-163 (B)(3)*

Based on the foregoing, Applicant requests that the Industrial Commission issue an Award finding that [REDACTED] has committed unfair claims processing practices and apply appropriate penalties.



A.A.C. § 20-5-163 (Bad Faith and Unfair Claims Processing)

A. 2. Unreasonably delays:

...

b. Authorization for, or receipt of, medical benefits or treatment;

&

B. For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits "unfair claim processing practices" if the employer, self-insured employer, insurance carrier, or claims processing representative:

2. Unreasonably fails to acknowledge communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;

3. Fails to act reasonably and promptly upon communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;

Avoiding bad faith and unfair claims processing complaints

Communication !!!!!

Timely paying benefits!!!!

Timely approval of reasonably necessary medical benefits

Appropriate Denials

- Investigations
- Documentation
- Compensability reviews

Respond to ICA Solicitations

Legal Opinions

- Use and abuse your defense counsel!

ICA Claims Division Newsletter includes comments regarding good claims management and training possibilities.

“In support of §23-1061(F), part of good claims management and optimizing outcomes is creating trust and clearly communicating with all interested parties. By issuing timely notices and establishing the average monthly wage, the payer promptly reassures the injured worker that they are aware of and agree with their benefit status. When the injured worker doesn't agree, they have clear protest rights. They are also empowered with the calculations of how their benefits are being paid.”



ICA Claims Division Updates

Summer 2023

Summer is here!

A Message from the Claims Manager!

We are seeing an increase in claims that are accepted as medical only claims but indemnity benefits are being paid and claims with benefits paid, but no notices issued. Let's review the payer's requirements per ARS § 23-1061(F).

There is some discussion in the community that the claim doesn't have to be accepted or Average Monthly Wage (AMW) set until the ICA's 'notification' is issued (see 1061(M)), however, 1061(F) states notices are required when benefits are "not denied". In plain language, this statute directs the payer to issue a notice when first compensation is paid, establish the recommended AMW within 30 days, and issue subsequent notices each time the eligibility for compensation changes (i.e. light duty, regular work, MMI).

In support of 1061(F), part of good claims management and optimizing outcomes is creating trust and clearly communicating with all interested parties. By issuing timely notices and establishing the average monthly wage, the payer promptly reassures the injured worker that they are aware of and agree with their benefit status. When the injured worker doesn't agree, they have clear protest rights. They are also empowered with the calculations of how their benefits are being paid.

FROM THE A.C.T.S. TEAM - §23-1061(N)

According to A.R.S. §23-1061(N), if an insurance carrier or self-insured employer receives written notification of an injury from an employee who was injured and intends to file a claim for compensation, the insurance carrier or self-insured employer must forward the written notification to the commission within seven business days and inform the employee of the employee's requirement to file a claim with the commission. The one-year period as prescribed in subsection A of this section is suspended from the date the insurance carrier or self-insured employer received written notification of the injury intended for compensation until the date that the insurance carrier or self-insured employer forwards the written notification to the commission. When the commission receives such notification, the commission must notify the employee of the employee's responsibility to file a claim with the commission pursuant to this section.

Some indicators that the carrier may be required to file the "Intent to File" with the Commission include, but not limited to;

1. The claim has not been legally filed (no 102/407), and
2. Communication from the injured worker that there was an injury/incident at work, and
3. Their need for treatment or time off from work related to the injury was received in writing.





Reminder: Do not file the 101, 102, or 407 through the intent to file portal. These should be faxed to the ICA at 602-542-3373. The Intent to File submission should be the document from the injured worker; such as an email, text message, or other document in writing from the injured worker.

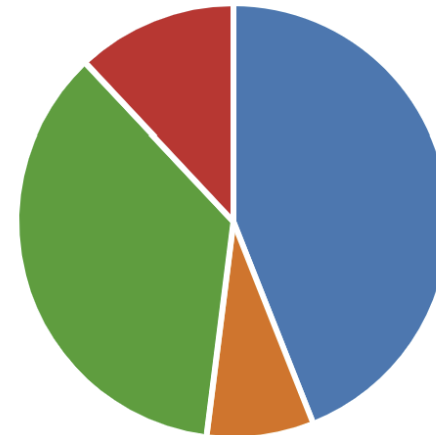
Please visit the Claims Division [Training Videos](#) for more detailed information on this topic.

Bad Faith Statistics (2023)

1. What is the biggest driver of ICA bad faith claims?

[More Details](#)

 Late Disability Payments	11
 Improper denial	2
 Failure to communicate	9
 Other	3



ICA Initiated Bad Faith/Unfair Claim Processing Statistics

ICA Initiated Bad Faith/Unfair Claims Processing Statistics

- Fiscal Year 2025 (July 1, 2024 – June 30, 2025)
 - * ICA Initiated Bad Faith/Unfair Claims Processing Awards
- Total awarded: 18! We've seen great improvement across the industry in timely compliance.
- Most common reasons for ICA Initiated Bad Faith/Unfair Claims Processing Awards
 - Failure to accept or deny the claim timely.
 - Failure to establish or correct the average monthly wage calculation.
 - Payers sometimes rely on the employers non-participation.
 - Submitting the same incorrect notice over and over again.

How to Avoid Alleged Failure to Communicate with ICA under R20-5-163(B)(2)(3)

If a notice is incorrect or missing from the file the ICA will send a **“Solicitation” letter**.

You have **14 days** to respond and failure to respond could result in ICA pursuing alleged bad faith.

Next, **ICA will send “Bad Faith Correspondence”**. They attach a copy of the unanswered solicitation letter and again ask for a response. If no response is received in **14 days** ICA will conduct a bad faith investigation.

Finally, the ICA will issue a **Notice of Alleged Bad Faith. A response is required within 30 days.**

This is the time when I get the referral- Don't do that! Respond to the first Solicitation letter or even the second “Bad Faith Correspondence” letter.

If you have questions or need clarification on what the ICA is asking for, again use and abuse your defense counsel.

How to Avoid Alleged Unreasonable Delay of Payments Under R20-5-163(A)(2)

As the prior slide demonstrated, the majority of Bad Faith complaints originate from this issue.

Keep an **open line of communication** with the applicant or applicant's counsel. Typically, in the referrals I receive there was some kind of technical error.

Most applicants/counsel will immediately notify and reach out when payment is late. ***Please respond promptly*** The issue I see is when multiple inquires into missing payment go unanswered.

If you determine a payment is missing please **take immediate action to correct and again a quick FYI email to applicant/counsel** will be greatly appreciated.

Take steps to safeguard the error causing the delay won't happen again.

Documenting the communication will help defend against any alleged bad faith complaints.

Questions?

Thank You