

# Wisconsin Supreme Court Limits Tort Claims Related to Conduct Following Worker's Compensation Injury

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On May 20, 2021, the Wisconsin Supreme Court limited the tort claims an employee may bring based on alleged conduct that occurred between injuries covered under the state's workers' compensation law. The opinion in *Graef v. Continental Indemnity Company* may support employer arguments to limit employment-related litigation claims brought by employees because worker's compensation provides an exclusive remedy to employees injured in the course of employment.

## Background

On November 1, 2012, Francis Graef was gored by a bull in a livestock yard at his workplace. As a result of his physical injury, Graef developed depression. His employer and his employer's worker's compensation insurer, Continental Indemnity Company, did not contest that the physical injury was covered by Wisconsin's Worker's Compensation Act. On June 23, 2015, however, Continental rejected a pharmacy's request for payment when Graef sought a refill of his antidepressant prescription. Graef was unable to pay for the antidepressant himself. On August 9, 2015, he attempted suicide and sustained a gunshot injury.

Graef subsequently filed a tort claim in circuit court that alleged Continental had negligently refused to authorize payment for the antidepressant medication refill. Graef claimed that Continental's legal duty was established by its responsibility to pay for the prescription under the state worker's compensation act. In response to the employee's tort action, the insurance carrier moved for summary judgment at the outset of the case.

## The Court's Analysis

The Wisconsin Supreme Court held that Wisconsin's Worker's Compensation Act precluded Graef's tort claim against Continental because it provided his exclusive remedy. The court explained that under the act,

[E]mployers and worker's compensation insurance carriers have a duty to pay for a subsequent injury that naturally flows from a covered workplace injury, including any injury caused or worsened by the treatment, or lack of treatment, of the original work-related injury.

The court then expounded that when these conditions are met, the Worker's Compensation Act provides the employee's "exclusive remedy," as provided by the statute. In analyzing Graef's allegations, the court stated that he "present[ed] an unbroken chain of events" beginning with his November 1, 2012, injury and concluding with his suicide attempt on August 9, 2015. According to the court, the gunshot wounds he suffered as a result of that suicide attempt were "a direct result of the original workplace accident" and subject to coverage by the act.

The court rejected Graef's argument that Continental had broken the "causal chain" when it rejected payment of the prescription refill on June 23, 2015, because, the court reasoned, Continental's duty to Graef arose out of the fact that his depression was caused by his workplace injury. The court also concluded that Continental did not have to concede Graef would succeed in bringing his worker's compensation claim in order for the court to dismiss his tort claim. Rather, Continental was entitled to litigate in the proper forum where Graef would have to prove his allegations that Continental was obligated to pay for his antidepressant and that its failure to do so had led to injuries sustained during his suicide attempt, for which Continental therefore would also be responsible.

## Key Takeaways

The *Graef* case reminds Wisconsin employers to consider raising, as a defense, that an employee's tort claims are foreclosed by the exclusive remedy of the Worker's Compensation Act and must be brought in the worker's compensation forum when the claims are based on conduct arguably flowing from an injury compensable by the worker's compensation system. This decision may be particularly significant to employers facing tort claims that an employee contracted COVID-19 at work. Employers may want to consider whether such tort claims should have been brought under the Worker's Compensation Act. As implied by the Wisconsin Supreme Court in *Graef*, an employer may find the greater likelihood, but lesser expense, of recovery by an employee under the act to be a more attractive forum.

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