Related Texts

Determining Economic Damages
Slip and Fall Practice
Litigating Neck & Back Injuries
Model Interrogatories

For ordering information, please turn to the back of the book.

Copyright © 1989 - 2012
James Publishing, Inc.

This publication is intended to provide accurate and authoritative information about the subject matter covered. It is sold with the understanding that the publisher does not render legal, accounting, or other professional services. If legal advice or other expert assistance is required, seek the services of a competent professional.

Persons using this publication in dealing with specific legal matters should exercise their own independent judgment and research original sources of authority and local court rules.

The publisher and author make no representations concerning the contents of this publication and disclaim any warranties of merchantability or fitness for a particular purpose.

We view the publication of this work as the beginning of a dialogue with our readers. Periodic revisions to it will give us the opportunity to incorporate your suggested changes. Call us at (714) 755-5450 or send your comments to:

Revision Editor
James Publishing, Inc.
3505 Cadillac Avenue, Suite H
Costa Mesa, CA  92626

First edition, 1/89  Revision 17, 5/06
Revision 1, 2/90  Revision 18, 8/07
Revision 2, 11/90  Revision 19, 9/08
Revision 3, 12/91  Revision 20, 11/09
Revision 4, 12/92  Revision 21, 10/10
Revision 5, 1/94  Revision 22, 10/11
Revision 6, 11/94  Revision 23, 11/12
Revision 7, 8/95
Revision 8, 8/96
Revision 9, 5/97
Revision 10, 4/98
Revision 11, 5/99
Revision 12, 3/00
Revision 13, 11/01
Revision 14, 10/02
Revision 15, 10/03
Revision 16, 11/04
Preface

How can you get an unresponsive insurance adjuster to reply to your telephone calls and letters? How can you be sure that your client’s claim is being handled in a fair and timely manner by the insurance company? How can you effectively negotiate a fair settlement with an adjuster? The answers to these questions lie in understanding how a claim is handled—from start to finish—by an insurance company.

*How Insurance Companies Settle Cases* provides an insider’s tour of the workings of the insurance industry. While offering information and insights to help attorneys prepare and negotiate their clients’ cases, *How Insurance Companies Settle Cases* covers:

- How to Play the Claims Game
- Insurance Policy Defenses and Coverage Issues
- Avoiding Bad Faith Traps
- Unfair Settlement Techniques
- Effective Coverage Investigations
- Negotiation Tactics

Each chapter lists key points to remember when dealing with an insurance company and helpful tips for cogent communications with insurance industry personnel. Sample letters, checklists and insurance forms are included to help streamline the preparation process. From cover to cover, *How Insurance Companies Settle Cases* presents information and methods that give you the inside track advantage. Put it to work for you on your next insurance case.

The Editor
About the Author

David Frangiamore

Mr. Frangiamore is a principal of 2nd Insight, Inc., a consulting firm that provides expert witness services and testimony in a wide variety of insurance related cases. He is a former unit claims manager for Nationwide/Wausau Insurance. While at Nationwide/Wausau, Mr. Frangiamore was responsible for the supervision, litigation, and settlement of most of the major West Coast environmental claims and litigation. He also served as manager of the California construction defect unit, which handled insurance claims involving some of the largest residential construction projects throughout the State of California. Mr. Frangiamore has also testified in numerous environmental cases, and is available to testify as an expert on complex insurance claims. Many judges, private mediators, special masters, and attorneys recognize Mr. Frangiamore as one of the most effective negotiators of complex insurance claims in the country.

Mr. Frangiamore graduated from Union College in Schenectady N.Y in 1981 with a bachelors degree in political science; and from Golden Gate University with a Juris Doctor in law 1985. Mr. Frangiamore has been admitted to practice law in California (active) and Washington State (inactive).
Table of Contents

1. Introduction to the Claims Game
2. The Fundamentals
3. Creating the Claims File
4. Investigating Coverage
4A. Researching Opposing Insurance Defense Counsel
5. The Factual Investigation
5A. How to Check the Financial Health of Defendant’s Insurer
6. Using Insurance Consultants and Experts
7. Settlement Negotiations and Compromises
7A. How to Succeed at Settlement Conferences
7B. Common Negotiating Mistakes
8. Techniques Not Found in Claims Manuals
8A. Claim Complaints: The Art of Being a Squeaky Wheel
9. Claims Denials
9A. Claim Evaluation Software
10. Action Letter Outlines
11. Releases and Covenants
12. How to Estimate Bodily Injury Settlements
13. Underinsured Motorist Coverage
14. How to Take a Claims Representative’s Deposition
15. Bad Faith—Bad News
15A. Extraordinary Bad Faith Cases
15B. Common Claim Myths
16. Settling the $5,000 to $75,000 Bodily Injury Claim
17. Uninsured Motorist Claims
18. The Claims Department and the Claims Manual

Chapter 1. Introduction to the Claims Game

§100 In General—David and Goliath Relationship
§101 Where Is the Money to Pay Claims: Is It Always at the Insurance Company?
§102 Why Does It Take so Long for the Insurer to Make Claim Payments?
§110 The Games Played in Wrongfully Denying Claims
§111 The Objective: Settlement and Payment
§112 The Means to an End—Salesmanship
§113 Salespeople
§114 The Product—Pain and Suffering (Damages)
§115 Packaging a Settlement Demand to an Insurer
§116 Reciprocal Presentations
§117 Trading Settlement Demands and Offers
§118 Selling the Settlement Demand
§119 No Settlement Means Substantial Future Costs Leading Up to Trial
§120 Avoiding Bad Faith
§120.1 How to Avoid Bad Faith Conduct
§130 The Players
§131 The Plaintiff—A Fortuitous Person
§132 The Insured—Who Is Protected Under the Policy?
§133 The Agent or Broker—Middleman
§134 The Insurer—Protector
§135 The Adjuster—Bull or Bear

§135.1 Adjusting the Adjuster—Why Many Adjusters Have Lost Contact With Their Claims
§136 The Attorney—Adversary or Assistant
§137 The Insurance Commissioner—Regulator
§138 The Courts—Can Give Authority to Issue Broad Discovery Orders on Other and Similar Claim Files
§139 Agent/Broker Liability

§139.1 Liability of Agent or Broker to Insurer
§139.2 Liability of Agent or Broker to Insured
§139.3 Liability of Agent or Broker to Third Parties
§139.4 Damages

§140 The Rules of the Game

§141 Showing of Good Faith

§150 Duties Owed by the Parties

§160 Common Insurance Industry Acronyms

§170 Locating Old Policies—Insurance Archeology

§170.1 What Standards Do Claim Handlers Apply to Verify Coverage if a Claim Is Presented?
§170.2 Company Loss Runs
§171 Insurance Premium Payment Records
§172 Certificates of Insurance
§173 Prior Company’s Sales/Mergers
§174 Annual Reports, Financial Statements and Staff Reports
§175 State Insurance Departments and Former Law Firms
§176 Insurance Company Computers
§177 Broker Correspondence Files and Accounts Payable Files

§180 Rescission—The Ultimate Defense to Claims

§181 Misrepresentation or Fraud in Marine Coverage
§182 Misrepresentation or Fraud in Life or Disability Coverage
§183 Reformation—Correcting Policy Mistakes

§190 Insurance Fraud

§191 Claim Withdrawal—Is It a Legitimate Practice? Or Is It Blackmail?

Key Points to Remember

Chapter 2. The Fundamentals

§200 In General

§201 Why the Application Is Important
Sample: Automobile Application for Insurance
Sample: Homeowners Application for Insurance

§202 The Application as an Escape Device

§203 The Application as a Negotiating Tool

§204 Rescission

§205 Post-Claims Underwriting

§206 Slow Processing Resulting in Coverage—Friend or Foe, You Get No Dough!

§207 Ratification of a Known Misrepresentation—Waiver

§210 The Automobile Accident

§211 The Policy Contains Four Major Branches of Coverage That Must Be Considered

§211.1 Claims by the Insured
§211.2 Claims by the Claimant
§211.3 Notice Is Notice

§212 Is Notice of a Claim or Occurrence to the Agent the Same as Notice to the Insurance Company?

§212.1 Conflict of Interest—Agent Acting as the Adjuster
§212.2 Coverage Adjustment
§212.3 Factual Investigation
§212.4 Two Estimate Adjusting
§212.5 Minor Claims Only
§213 Prompt Reporting by the Agent
§213.1 Notifying the Claims Department
Sample: Accord Form
§213.2 Confusion Regarding Who May Be Acting on Behalf of the Claims Department
§213.3 Service Is the Product
§214 Initial Claim Avoidance by the Agent—Does the Agent Have a Conflict of Interest?
§214.1 Referral to the “Other Carrier”
§214.2 Talking the Insured Out of a Claim
§214.3 Bad Faith by the Agent of the Insurer
§220 Agent’s Initial Report to the Claims Department
§221 All Lines of Coverage Confirmed
§221.1 Determine All Possible Insured(s) Who Have Notified the Insurer of the Claim/Occurrence
§222 Policy Number Verified
§223 Limitations
§230 Facts of the Accident
§230.1 Date and Time of Loss
§230.2 Location of Loss
§230.3 Driver’s Name
§230.4 Permissive Driver
§230.5 Vehicle Description
§230.6 The “Black Box”
§230.7 Alternative Vehicle
§230.8 Exclusions—Intentional Acts
§230.9 Insured’s Attitude
§230.10 Hardships
§231 Agent’s Request for Status—Identification
§232 Agent’s Bonus Plan Jeopardized
§240 Answers to Frequently Asked Questions About Claims Adjusters and Insurance Companies
§250 Forms of Insurance Companies
§260 Parts of the Whole Insurance Company
§270 Anatomy of the Insurance Contract
§280 Insurance Company Attitudes Toward Payment of Claims and Why Some Companies Pay More Than Others

Key Points to Remember

Chapter 3. Creating the Claims File

§300 In General
§301 How the Claims File Is Created
§302 Real and “Dummy” Files Created
§302.1 Claim Filed With an Administrative Date of Loss
§303 Coverage Documentation
§304 Duties of Primary Insurers Owed to Excess Insurers
§310 Fact Finding Team Assignments
§320 Local and Companywide Claim Numbers
§321 Multiple Claims Offices
§330 Late Reporting Problems—Liability Claims
§331 By the Insured
§332 By the Agent
§333 By the Broker
§340 Checklist for Coverage Investigations—Automobile, Environmental, Construction, and Job Site Injury Claims

(Rev. 23, 11/12)
§350 Checklist for Factual Investigations

§360 “First Call” Settlements

§361 Diary Dates
§362 Non-Waiver Guidelines—When Are They Valid?
§363 Reservation of Rights Guidelines—What Is a Proper Reservation?
    Sample: Reservation of Rights Letter
§364 Advice of Counsel Defense Through Use of Independent Attorney Letter
§365 Carbon Copy Notice—May Be Evidence of a “Home Office” Claim File
§366 Claim Reserves and Dates of Loss and Why They Are Important
    §366.1 Individual Reserves Are Made for Each Line of Coverage
    §366.2 Reserves for Legal Costs
    §366.3 Claim File Reserves on “Wasting” Policies

§370 Attorneys Involvement in the Claim Process: Is the Attorney Playing Adjuster?

§380 Proofs of Loss (POL) and Examinations Under Oath (EUO)

§380.1 Insurance Company’s Policy
    Sample: Proof of Loss (Homeowner)
    Sample: Proof of Loss (Automobile)

§380.2 Waivers
    §380.2.1 Money Limits
    §380.2.2 No Fraud Suspected

§390 Verifying the Timely Handling of the Claims File

§391 Date/Name Stamping
§392 Contact Rules With the Claimant and Insured
§393 Agent Contact and Status Reports

Key Points to Remember

Chapter 4. Investigating Coverage


§401 The Policy
§402 Coverage Analysis
§403 Policy Interpretation
    §403.1 Ambiguities in Policy Language
§404 Reasonable Intent of Insured
§405 Reduction in Coverage
§406 Marketing Brochures and Advertising
§407 Duty to Defend
§408 Trigger of Coverage
§409 Reserved

§410 Fiduciary Disclosure by the Insurer
§411 Good Faith and Fair Dealing
§412 Independent or Cumis Attorney Disclosure: Third Party

§420 Documents Necessary for a Coverage Investigation

§420.1 Insurer’s Claim File
§420.2 Application for Insurance
§420.3 Agent’s Files
§420.4 Underwriter’s Files
§420.5 Coverage Question Investigation File
§420.6 Factual Investigation File
§420.7 Promotional/Advertising Materials
§420.8 Insurance Commissioner’s File
§420.9 Declaration Sheet
§420.10 Insurance Policy Endorsements
§420.11 Underwriting Manuals
§420.12 Outside Independent Legal Opinion
§420.13 Home Office Insurance Claim Files
§420.14 Drafting History of Policy Forms

§430 Obtaining the Necessary Statements

§440 Policy Defenses

§440.1 No Notice of Claim or Improper Notification of Claim
§440.2 No Insurable Interest
§440.3 Occurrence Not Within Term Policy Period
§440.4 Undefined Policy Terms
  §440.4.1 Vague or Ambiguous Policy Terms
§440.5 Failed Policy Conditions
  §440.5.1 The Bankruptcy Clause
  §440.5.2 Duty to Cooperate
  §440.5.3 The No Action Clause
  §440.5.4 The Other Insurance Clause
  §440.5.5 Notice of Occurrence and Lawsuit
  §440.5.6 The No Assignment Clause
  §440.5.7 The Voluntary Payments Clause
  §440.5.8 The Subrogation Clause
§440.6 Exclusions
  §440.6.1 Burden of Proof on Exclusions and Exceptions to Exclusions
  §440.6.2 Expected and Intended Injury
  §440.6.3 Contractual Liability
  §440.6.4 Pollution Exclusion
  §440.6.5 Automobile Exclusion
  §440.6.6 War Exclusion
  §440.6.7 Damage to Owned Property
  §440.6.8 Damage to “Your Product”
  §440.6.9 Damage to “Your Work” or “Faulty Workmanship”
  §440.6.10 Unenforceable Exclusionary Clauses and Policy Conditions
  §440.6.11 Business Pursuits Exclusion
  §440.6.12 Policy Exclusion Riders
§440.7 Claims for Emotional Distress
§440.8 Policy Limits, Aggregate Limits, and Exhaustion Issues
  §440.8.1 History of Policy Limit Insurance Forms
  §440.8.2 Exhaustion: When Insurer Can Withdraw From Defense
  §440.8.3 Claim Payment Allocation and Policy Exhaustion Issues
§440.9 Prorating Coverage
§440.10 Vehicle Ownership, Maintenance, Use, of Operation
§440.11 Pre-Existing Condition
§440.12 Prejudice

§450 Contract Defenses

§450.1 Fraud/Recission: Voiding the Policy
§450.2 Mistake and Reformation
§450.3 Policy Cancelled
§450.4 Renewal or Cancellation of Coverage
§450.5 Covered Malicious Torts
§450.6 Partial Defenses Liquor Liability Exclusion

§460 Third-Party Liability Policies: Specialized Issues

§461 Duty to Defend
§462 Obligation to Provide Defense for Claims
  §462.1 Meaning of Suit Extended to Include “Calderon Notices” in California
  §462.2 Insurer Is Obligated to Defend a Contractor in Certain Federal “Adjudicatory” Administrative Proceedings
§463 Duty to Defend and Independent or Cumis Counsel
  §463.1 Duty to Defend Under Several Applicable Policies?
§464 Duty to Indemnify
§465 Deductibles and Self-Insured Retentions
§466 Stop Losses and Aggregate Deductibles
§467 Beware of Allocation Games on Deductibles and SIR’s

§470 Good Faith Coverage Investigation
§471 Alternative Coverage Investigation
§472 Numerous Theories of Denial—Waiver

§480 Alternative Dispute Resolution
§481 Four Basic Methods
§482 Declaratory Relief Action

§490 First Party Property Claims
§491 Scope of Coverage: All Risk or Specified Peril?
  §491.1 Investigation of a Property Claim
  §491.2 Proof of Loss Requirements
  §491.3 Submitting and Completing Proof of Loss Form
  §491.4 Defects in Proof of Loss
  §491.5 Examinations Under Oath
  §491.6 Actual Cash Value
  §491.7 Replacement Coverage in Homeowners Policies
§492 Collapse and Imminent Collapse
§493 Concurrent Causation
§494 Computer Viruses and Software Coverage
§495 Mold Claims
  §495.1 What Is Mold and Why Has It Become an Insurance Issue?
  §495.2 First Party Mold Claims
  §495.3 Is there Coverage for Mold for Third Party Claims?
  §495.4 Additional Research

§4100 Title Insurance Claims and Coverage
§4101 Standard Form Title Insurance Policies
§4102 Applicable Insurance Code Statutes and Regulations for Title Insurance
§4103 Basic Title Insurance Terms and Definitions
§4104 What a Title Insurance Policy Covers and Does Not Cover
§4105 What Is the Title Insurer’s Obligation if a Defect Is Found?
§4106 Benefits Payable Under a Title Insurance Policy

§4110 Investigating Reinsurance Coverage
§4111 What Is Reinsurance?
  §4111.1 Primary Purpose: To Spread Loss
  §4111.2 Secondary Purpose: To Allow Insurer to Write More Business
§4112 Non-Admitted Insurers
§4113 A Very Brief History of Reinsurance
§4114 Lack of Case Law on Many Reinsurance Issues
§4115 Understanding Reinsurance and Reinsurance Terminology
§4116 How Reinsurance Contracts Work
§4117 Notice and the Following the Fortunes Rule
  §4117.1 More on Following the Fortunes
§4118 Is Bad Faith or Punitive Damages Claims Covered by Reinsurance?
§4119 How Reinsurance Can Affect an Insurance Claim
  §4119.1 Insolvency of Ceding Insurer

§4120 Coverage Under Personal and Commercial Umbrella Policies
§4121 When Does an Excess or Umbrella Insurer Have an Obligation to Pay Under Its Policy?
§4122 Horizontal vs. Vertical Exhaustion
§4123 Insolvency of Primary Insurer
§4124 If Primary Insurer Refuses to Defend Its Policyholder Leaving Excess Insurer Alone
§4125 If Primary Insurer Is Defending But Refuses to Contribute Towards Settlement Within Its Own Limits
§4126 Obligation of Excess Insurer to Defend or Indemnify When There Is a Self-Insured Retention (“SIR”)

§4130 Coverage Under “Claims Made” Policies
§4131 What Is a “Claims Made” Policy?
§4132 Reporting Period
§4133 Retroactive Date
§4134 Claim and Potential Claim
§4135 How Does a “Claims Made” Policy Differ From an Occurrence Based Policy?
§4136 Issues for Specific Types of “Claims Made” Policies
  §4136.1 Directors and Officers Coverage
  §4136.2 Limitations on D&O Coverage—Application Terms and Exclusions
  §4136.3 Employment Practices Liability Coverage (“EPLI”)
  §4136.4 Environmental Impairment Liability Coverage
  §4136.5 Professional Liability Policies

§4140 Emerging Coverage Disputes—Liability Coverage for Wrongful Imprisonment Claims
§4141 The Origins of a Wrongful Conviction Lawsuit and the Resulting Insurance Claim
§4142 Coverage Issues in Wrongful Conviction and Imprisonment Cases
§4143 Insurers’ Arguments That Coverage Is Limited to Policies in Effect on Date of Arrest or Conviction
§4144 Arguments by Insureds and Claimants That All Policies in Force During Imprisonment Provide Coverage

§4150 Emerging Coverage Disputes—Personal Injury Coverage for Song-Beverly Suits

§4160 Coverage Issues for Life Insurance Policies
  §4160.1 Life Insurance Products
  §4161 Life Insurance Coverage Disputes
    §4161.1 Insurable Interest and STOLI
    §4161.2 Life Insurance Application Misrepresentations
    §4161.3 Incontestability Clauses
    §4161.4 Suicide and Hazardous Activity Exclusions
    §4161.5 Murder of Insured by Beneficiary
    §4161.6 Life Insurance Claims by Beneficiary of Missing Persons
  §4162 Coverage Issues for Accidental Death Policies
    §4162.1 Major Types of Accidental Death Policies
    §4162.2 Accidental Death Policy Exclusions
    §4162.3 Concurrent Causation
    §4162.4 Coverage for an Accidental Death Policy Under ERISA
  §4163 Viatical Life Insurance Settlement Contracts and Annuities
    §4163.1 Viatical Settlements
    §4163.2 Annuities

Key Points to Remember

Chapter 4A. Researching Opposing Insurance Defense Counsel

§400A In General
§410A Search Martindale-Hubbell
§420A Review Firm Web Page
§430A Search Internet
§440A Ask Other Attorneys
§450A Watch Out for “Coordinating Counsel”
  §451A When the Insurer Appoints New Counsel
§460A Research the Attorney’s Written Papers, Articles, Periodicals, and Filed Pleadings
§470A Search State Bar Websites
Chapter 5. The Factual Investigation

§500 Role of the Claims Adjuster/Representative and Claims Management
§501 Contact and Control
§501.1 Introduction of a Plaintiff’s Attorney
§502 The Preliminary Investigation—Scope of Investigation
§502.1 Favorable Facts
§502.2 Unfavorable Facts
§503 Duty to Disclose Coverage and Reservations of Rights
§503.1 Duty to the Claimant
§503.2 Duty to the Policyholder—Implied Covenant of Good Faith and Fair Dealing
§503.3 Agent’s Duty to Insurer

§510 Incident Statements (Signed, Unsigned or Recorded)
Sample: Automobile Loss Notice
Sample: Homeowners Loss Notice
§510.1 Checklist for Injury Evaluation
§510.2 Should Plaintiff’s Counsel Let the Adjuster Take the Plaintiff’s Statement?

§511 No Personal Contact—Just Forms
§512 Insured Driver
§513 Witness in Insured Vehicle
§514 Witness in Adverse Vehicle
§515 Known Independent Witnesses
§515.1 Police Officers’ Statements or Interviews
§515.2 Tow Truck Drivers
§515.3 Ambulance Driver
§515.4 Unknown Scene—Canvassed Witness

§520 Insurance Claim Forms Documentation
§520.1 Medical Authorization
Sample: Medical Authorization
§520.2 Dental Authorization
§520.2.1 Special Notice
§520.3 Employment Records Authorization
§520.4 School Records
§520.5 Advance Payments—Med Pay
§520.6 Releases (Partial or Final)
§520.7 Indexes
§520.7.1 Bodily Injury
§520.7.2 Vehicle
§520.7.3 ISO ClaimSearch for Casualty, Property, and Auto Claims

§521 Documentation of Bodily Injury Claims
§521.1 Medical Bills
§521.2 Medical Reports
§521.3 Lost Wage Reports
§521.4 Police Reports
§521.5 Death Certificate
§521.6 Coroner’s Report
§521.7 Criminal and Civil Court Records

§522 Photographs
§522.1 Insured Vehicle (by Adjuster)
§522.2 Claimant’s Vehicle (by Adjuster)
§522.3 Police Department—Vehicles
§522.4 Police Department Scene
§522.5 Police Department—Injured Parties
§522.6 Private Photos
§530 Classification of Parties
- §531 First Party
- §532 Third Party
- §533 Both First and Third Party
- §534 Experts and Expert Witnesses—Accident Reconstruction Experts
  - §534.1 Seat Belt Experts
  - §534.2 Auto Accident Reconstruction Experts
  - §534.3 Medical Defense Doctors—Can They Commit Bad Faith?
  - §534.4 Independent Medical Examiner (“IME”)
- §535 Independent Adjusters/Investigators
- §536 Examination Under Oath Statements

§540 A Settlement Demand in Excess of Policy Limits
- §541 Bodily Injury Claims
  - §541.1 Value of Each Claim
  - §541.2 Prorating/Compromise
  - §541.3 Interpleader Action in Federal Court
- §542 Property Damage Claims
  - §542.1 Value of Each Claim
  - §542.2 Prorating/Compromise

§550 When Multiple Insurance Policies Cover the Same Loss
- §550.1 Insured Driver’s Policy (Third Party Coverage)
- §550.2 Insured Driver’s Policy (Non-Owned Auto)
- §550.3 Insured Driver’s Policy (First Party—Under/Uninsured)
- §550.4 Insured Driver’s Policy (Primary, Secondary and Under/Uninsured Coverage)
- §550.5 Insured Driver’s Policy (Rental Car)
- §550.6 When Excess Insurers Must Pay if There Are Multiple Retained Limits or Multiple SIRs

§551 Anti-Stacking Rule and Non-Accumulation Clauses
§552 Homeowner’s Policy
§553 Drop Down Insurance

§560 Assessing Comparative Fault
- §561 Phantom Vehicles
- §562 Landowners

§570 Maintenance of the Claim File
- §571 30/90 Day Diary
  - §571.1 Reserves as a Bad Faith Tip-Off

§580 Liens and Assignments—“Notice Claimants”
- §581 Medical Liens
- §582 Worker’s Compensation
- §583 Prior Attorney Representation
- §584 Banks/Mortgage Companies
- §585 Auto Body Repair Shops
  - Sample: Auto Body Shop Assignment of Benefits

§590 Unfair Claims Settlement Practices
- §591 Misrepresentation/Communication
- §592 Reasonable Standards/Prompt Settlement
- §593 Repetitive Documentation/Extortion
- §594 Forced Litigation/Sham Arbitration
- §595 Altered Application
- §596 Disclosing Paid Benefits
- §597 Directly Advising Against Representation
- §598 Statute of Limitations—Insurers Must Generally Provide Notice of Expiration to Policyholders
- §599 Improper Investigation

Key Points to Remember
Chapter 5A. How to Check the Financial Health of Defendant’s Insurer

§500A In General
§505A The Problem of the Global Economy and the Consolidation of Financial Services Firms
§510A Insurer Rating Sources
§520A Rating Resources
§530A IRIS Tests
§540A A Primer on Insurer Insolvency
§550A What to Do When Warning Signals Flash
§560A How to Secure Funds Before the Insurer Goes Into Receivership—Make the Insurer Post a Bond

Key Points to Remember

Chapter 6. Using Insurance Consultants and Experts

§600 Is an Insurance Consultant or Expert Necessary?
§610 Timing: Usually the Sooner an Expert Is Retained, the Better
§620 How to Locate an Insurance Expert
  §621 Word of Mouth
  §622 A National Directory of Experts
  §623 Reported Cases at the Trial Level
  §624 Internet and Websites
  §625 Attorney Trade Organization or Local Bar Groups

§630 Interviewing the Expert
  §631 By Telephone
  §632 Face to Face
  §633 The Expert’s Curriculum Vitae (CV)
  §634 Expert’s Prior Cases
  §635 Will the Expert Qualify?
  §636 Does Expert Believe He or She Can Be an Asset to the Case?

§640 Fees, Expenses and Timing of Payments
  §641 Retainer Fees
  §642 Different Fees for Different Services
  §643 Trial Testimony and Standby Fees
  §644 Travel Fees (Advanced or Not)
  §645 Retention Agreements
  §646 Contingency Agreements and Failure to Pay Expert Fees Until Settlement
  §647 Accounting of Expert’s Fees and Expenses
  §648 Dispute Resolution of Fees/Costs

§650 Scope of the Expert’s Retention

§660 What Is the Expert to Opine On
  §661 Relationship Between the Agent and Insured
  §662 Formation of the Insurance Contract (Where, When, and How)
  §663 Is the Claim Covered?
  §664 Insurance Industry Customs and Practices
    §664.1 Insurance Product Marketing
    §664.2 Solicitation and Formation of Insurance Contract by Agent/Broker and Agent/Broker’s Duties in Application Process
    §664.3 Representations by the Agent/Broker at Formation of Insurance Contract
    §664.4 The Insurer’s Underwriting Department’s Underwriting Guidelines
    §664.5 Issuance of the Insurance Policy
  §665 Submitting and Processing of Insurance Claim
    §665.1 Promptly?
    §665.2 Thoroughly?
§665.3 Objectively?
§665.4 Failure to Process
§666 Avoidance of Appearance of Conflict of Interest Within Claims Department?
§667 Avoidance of Appearance of Conflict of Interest Within “In-House” Counsel Department
§668 Insurance Bad Faith Claims
§668.1 Processing
§668.2 Investigation
§668.3 Disclosure
§668.4 Coverage Investigation
§668.5 Objective Factual Analysis
§668.6 Coverage Analysis
§668.7 Low-Ball Issues
§668.8 Stonewalling Issues
§668.9 Wrongful Denial of Claim Issues?
§669 Special Investigation Unit—Insurer’s Fraud Unit

Key Points to Remember

Chapter 7. Settlement Negotiations and Compromises

§700 In General
§700.1 Characteristics of a Good Negotiator
§700.2 Negotiation Tips
§700.3 The Seven Social Sins of Negotiating
§701 The Beginning of the Sale
§701.1 Settling Smaller Cases Over the Phone
§702 Open Communications—Issues
§702.1 Coverage Issues
§702.2 Liability Issues
§702.3 Limit Issues
§702.4 Damage Issues
§702.5 Commitment from the Insurer
Sample: Letter of Admission
§702.6 Documentation of Commitment
§702.7 Reasonable Demands
§702.7.1 Time Limits
§702.7.2 Damages
§702.7.3 Assessment of Liability
§702.7.4 Monetary Damages
§703 Out of Court Dollars
§704 Reciprocal Good Faith Duties
§704.1 Prompt Response to Settlement Demand

§710 Reasonable Settlement Defined
§711 Sources of Standards
§712 Bilateral Duty to Start Negotiations
§713 Innovative Ways to Settle a Case
§714 Proving Pain and Suffering and Hedonic Damages to the Insurance Company

§720 Support/Documentation of the Settlement Demand
§720.1 Demand vs. Offer to Settle
§720.2 Facts: Police Reports/Statements
§720.3 Law(s): Vehicle Code/Negligence
§720.4 Comparative Fault
§720.5 Damages: Documents/Reports
§720.6 Computations and Conclusions
§720.7 Reasonable Response Time
Chapter 7A. How to Succeed at Settlement Conferences

§700A Initial Considerations
§701A When to Mediate or Enter Into Settlement Discussions
§702A Settlement Conferences Are Increasingly Common
§703A Claim Adjuster at Settlement Conference

§710A Know Your Audience—Determine What Is the Most Appropriate Forum for Your Case to Settle
§720A Be Prepared
§730A Be Brief
§740A Welcome and Anticipate Questions
§750A Be Flexible and Innovative
§760A Send a Lone Ranger, Not a Mongol Horde
§770A Be Assertive, But Not Abrasive
§780A Believe in Your Case
§790A Know Your Aims

Chapter 7B. Common Negotiating Mistakes

§700B In General
§710B Failure to Read Medical File Closely
§720B Overpricing Claim Value
§730B Lack of Objectivity
§740B Fuzzy Demands, Using a Value Range
§750B Running Up Specials
§760B Assuming You Know How All Insurers Value Cases
§770B Failure to Properly Investigate Facts
§780B Hubris
§790B Loose Lips
§7100B Mistaking Form for Substance in Demand Presentation
§7110B Using Warped Sounding Boards
§7120B Failure to Use Objective Experts
Chapter 8. Techniques Not Found in Claims Manuals

§800 The Claims Representative Has the Power

§810 Lowballing—Paying Less Than What Is Known to Be Owed
§811 Lowballing the Claimant
§812 Lowballing the Attorney
§813 Lowballing and Forcing an Arbitration
§814 Lowballing the Property Damage Claim and Its Effect on Personal Injury Damages
§814.1 Handling Property Claim Gratis
§814.2 To Recover Fee, Ask Client for Lien
§814.3 Why Insurers Lowball Property Claims
§814.4 One Adjuster for Both Claims
§814.5 Insurer’s Strategy for Reducing Property and Bodily Injury Payouts
§814.6 Misleading Photos
§814.7 Ignoring Hidden Damage
§814.8 Incomplete Appraisals
§814.9 Insured’s Vehicle Damaged While Client’s Is Not
§814.10 Total Loss Payout
§814.11 Unrealistic Costs for Parts
§815 Forcing Policyholders to Sue to Get Coverage to Which They Are Entitled

§820 Unreasonable Delays
§821 The Indicators of Poor Claims Management

§830 Stonewalling—Friend or Foe, You Get No Dough!
§831 “Benefits Delayed” Are “Benefits Denied”
§831.1 Unfair Leveraging
§831.2 Excess Coverage
§831.3 Economic Pressure
§831.4 Claims Maze
§831.5 Need Insured’s Cooperation First
§831.6 Nickel and Dime the Claimant
§831.7 Musical Chair Claim Adjusters
§831.8 Some Now—All Later
§831.9 Waiting for the Insured’s Contribution
§831.10 Setting Up the Claimant
§831.11 Fabricated Denial
§832 Stonewalling the Attorney
§833 Stonewalling the Insured

§840 Intimidation
§841 Retaliation
§842 Attacking the Claimant
§843 Social Duress and Blackmail

§850 Digging Into the Settlement Technique Grab Bag
§850.1 Seasonal Settlements
§850.2 Guidelines for Waiver of Bad Faith Claims in Settlements
§850.3 Backlog Settlements
§850.4 Nuisance
§850.5 Factoring
§850.6 Refusal to Negotiate
§850.7 The Hard Ball
§850.8 The Nice Guy Approach
§850.9 The Principled Approach
§850.10 Carrot and Stick—Example of Improper Claim Payments Tactics by an Insurer
§850.11 Failing to Acknowledge or Process a Claim Received
Chapter 8A. Claim Complaints: The Art of Being a Squeaky Wheel

§800A Why Insurance Companies Behave Differently From Other Private Companies
§810A How Do You Complain?
§820A Document Complaints
  §821A Letter to Adjuster
  §822A Letter to Supervisor
  §823A Letter to Home Office
§830A Follow Up

Chapter 9. Claims Denials

§900 In General
§910 First Party Denials
  §911 No Insurable Interest or No Covered Loss Location
  §912 No Coverage
  §913 Expiration of Statutes of Limitation and Tolling Issues Related to Suing an Insurer
  §914 Failed Condition of Policy
    §914.1 Late Notice by Insured of Insurance Claim
    §914.2 No Cooperation—Failure to Submit to Examination Under Oath
    §914.3 No Proof of Loss
  §915 Fraud by Insured
  §916 Material Misrepresentation
    §916.1 Life Insurance
  §917 Intentional Act
    §917.1 Criminal Act
  §918 Policy Cancellations and Policy Rescissions
  §919 Date of Loss Outside Policy Term and Trigger of Coverage Issues
§920 Policy Exclusions
  §921 Exclusion Riders
    §921.1 Driver Exclusion
    §921.2 Vehicle Exclusion
    §921.3 Territory Exclusion
  §922 Punitive Damage, Penalties, and Fines
  §923 Family Member Exclusion Void: Public Policy
§930 Word Games—Examples of How Undefined Policy Terms Can Result in Coverage
  §931 Not a “Vehicle”
  §932 Not an “Insured”
  §933 Not an “Agent”
  §934 Not an “Accident”
  §935 Not a “Roof”
  §936 Not a Reasonable and Necessary Medical Treatment
  §937 Not an “Occupant”
  §938 “Use” of Vehicle; “Loading and Unloading”
  §939 “Employee” v. “Independent Contractor”
§940 Third Party Denials
  §941 No Coverage in Force
§942 No Liability on the Part of the Insured
  §942.1 A Trap for the Insurer
§943 Fraud
§944 No Cooperation
§945 The Running of the Statute of Limitations
§946 Intentional Act
  §946.1 Intent Difficult to Prove
§950 Duty to Defend Versus Duty to Indemnify: What Is the Difference?
  §951 Dangerous Stand by Insurer
§960 Blind Denials

Key Points to Remember

Chapter 9A. Claim Evaluation Software

§900A Insurers' Use of Claim Valuation Software
  §910A Xactimate Software—Used to Estimate Building Repairs
  §920A Colossus
  §930A Jury Verdict Research; Free Verdict Reports Available
  §931A Trialsmith and Related Services
  §940A Caveats and Opportunities
  §950A Beware of GIGO—Garbage In Garbage Out

Chapter 10. Action Letter Outlines

§1000 In General
  §1001 Voluntary Motivation
  §1002 Involuntary Motivation
  §1003 Ten Tips for Writing Effective Letters and E-Mails
§1010 Letters by the Attorney
  §1011 Letter to the Adverse Motorist
  §1012 Letter to the Agent
  §1013 Introductory Letter to the Claims Representative
  §1014 Letter to an Unresponsive Claims Adjuster
  §1015 Letter to the Home Office of the Insurance Company
  §1016 Letter to the Insurance Commissioner
  §1017 Discovery Letter to the Insurance Adjuster
      Sample: Discovery Letter to Insurance Adjuster
§1020 Time Limit/Policy Limit and Statutory Demand Letters
      Sample: Time Limit/Policy Limit Demand Letter to Adjuster
  §1021 Property Damage Considerations
  §1022 Additional Considerations
§1030 Settlement Demand Letters
      Sample: Settlement Demand Letter to Adjuster
§1040 Letters by the Insurance Company
  §1041 Statute of Limitations Letter
  §1042 Reverse Bad Faith Letters—Is There Such a Thing?
§1050 Summary Checklist for Effective Demand Letters
§1060 Soft Sell

Key Points to Remember
Chapter 11. Releases and Covenants

§1100 In General
 §1101 Release or Covenant Not to Sue
Sample: Release of All Claims
 §1102 Releases and Covenants Functioning as Contracts

§1110 How a Release Works
 §1111 Who and What Is Released?
 §1111.1 Releases in Uninsured Motorist Claims
 §1112 Bargaining for Fair and Adequate Consideration
 §1113 Determining the Legal/Mental Capacity of the Claimant
  §1113.1 Obtaining Court Approval
Sample: Parents’ Release and Indemnity Agreement

§1120 Specific Releases
 §1121 Open/Limited Release
 §1122 Signed Releases
 §1123 Witnessed/Notarized Releases
 §1124 When No Release is Signed—Walk Away Settlements
 §1125 Signing Multiple Releases
 §1126 Recording Releases Over the Telephone—A Very Questionable Practice
 §1127 Reserving Extra Contractual Damages
 §1128 Good Faith Release and Multiple Parties
 §1129 Parents Release Indemnity Agreement

§1130 Breaking the Written/Signed Release
 §1131 Fraud or Misrepresentation in the Inducement to Sign a Release
 §1132 Reformation of the Release
 §1133 Good Faith Settlement Exposure
  §1133.1 Sliding Scale Rule

§1140 Covenants Not to Execute and Assignments

§1150 Mary Carter Agreements

§1160 Release of the Claim and Bad Faith

§1170 High Low Agreements

Key Points to Remember

Chapter 12. How to Estimate Bodily Injury Settlements

§1200 In General
 §1201 How Settlement Demands and Offers Have Changed Recently
 §1202 What Is the Scope of Bodily Injury Settlements?
 §1203 What Is the Basis of Bodily Injury Settlements?
  §1203.1 Disputed Liability or Damages
  §1203.2 Undisputed Liability or Damage
 §1204 First Party vs. Third Party Claims

§1210 Categories of Bodily Injury Damages
  §1210.1 Current Damages
  §1210.2 Future Damages
  §1210.3 Rehabilitation Damages
  §1210.4 Punitive Damages
  §1210.5 Loss of Enjoyment of Life Damages
  §1210.6 Loss of Inheritance
  §1210.7 Loss of Consortium
§1220 Thirteen Steps in Evaluating a Bodily Injury Claim

§1220.1 Step One: Legal Liability of the Defendant
§1220.2 Step Two: Credibility and Quality of the Plaintiff
§1220.3 Step Three: Credibility of Plaintiff’s Doctor
§1220.4 Step Four: Pre-Existing Injuries
  §1220.4.1 No Accounting
  §1220.4.2 Independent Accounting
  §1220.4.3 Double Conditional Accounting
  §1220.4.4 Single Conditional Accounting
§1220.5 Step Five: Current Medical Expenses
§1220.6 Step Six: Current General Damages
  §1220.6.1 Low Range Example
  §1220.6.2 Mid Range Example
  §1220.6.3 High Range Example
§1220.7 Step Seven: Current Lost Wages or Income
§1220.8 Step Eight: Future Medical Expenses—Projected
§1220.9 Step Nine: Future General Damages
  §1220.9.1 Low Range Example
  §1220.9.2 Mid Range Example
  §1220.9.3 High Range Example
  §1220.9.4 Special Note: Lifetime General Damages
§1220.10 Step Ten: Future Lost Wages or Income—Projected
§1220.11 Step Eleven: The Vocational/Professional Rehabilitation Expenses
§1220.12 Step Twelve: Punitive Damages
§1220.13 Step Thirteen: Loss of Enjoyment of Life Damages

§1230 Physical Capacities Evaluation

§1231 Some Plaintiffs May Be Barred From Recovery for Pain and Suffering

Key Points to Remember

Chapter 13. Underinsured Motorist Coverage

§1300 Elements of Coverage

§1301 The Insured Claimant’s Auto Policy Must Contain Coverage
§1302 The Claimant Must Sustain a Bodily Injury
§1303 The Claimant Must Be Legally Entitled to Recover From the Underinsured Motorist
§1304 The Underinsured Motorist Must Be Insured—Otherwise an Uninsured Motorist Claim
§1305 The Underinsured Motorist Must Have Bodily Injury Coverage With Limits Less Than the Claimant’s Underinsured Limits
§1306 The Insured Claimant’s Insurer Stands in the Shoes of the Underinsured Motorist
  §1306.1 Potential Conflict of Interest
  §1306.2 Avoiding Bad Faith by the Insurer
§1307 Arbitration of Disputes
  §1307.1 Legal Liability
  §1307.2 Damages
  §1307.3 Total Damages—Not Policy Limits’ Damages

§1310 Procedures and Statute of Limitations Issues

§1311 The Insured Claimant’s Bodily Injury Claim Must Be in Excess of the Underinsured Motorist’s Policy Limits
§1312 Putting the Underinsured’s Insurer on Certified Written Notice of Underinsured Coverage Claim
§1313 File Suit Against Underinsured Motorist
§1314 Get “Permission” From the Underinsurance Insurer to Settle With Underinsured Motorist
  §1314.1 Exception
§1320 Offset and Exclusions
§1321 Excess Bodily Injury Claims of Both Policies
§1322 Computation of the “Total” Value of the Bodily Injury
  §1322.1 Reasonable Expectation of the Insured Claimant—Policy Limits Due Without Offset
  §1322.2 Collateral Source Doctrine May Apply—No Offset
  §1322.3 Exhaustion of Primary Limits of Liability
§1323 Exclusions

§1330 Minors
§1331 Most Policy Time Limits Apply Equally to Adults and Minors

§1340 Stacking Policies
§1341 Multiple Vehicles on a Single Policy
§1342 Multiple Policies for Multiple Vehicles Issued to the Insured
§1343 Independent Multiple Policies

§1350 Distinguishing Uninsured From Underinsured Motorist Coverage

§1360 Subrogation

§1370 Underinsured Motorist Carriers Bad Faith Conduct

§1380 Special Notes

Key Points to Remember

Chapter 14. How to Take a Claims Representative's Deposition

§1400 Pre-Deposition Homework
§1410 Subpoenaed or Requested Documentation
  §1410.1 The Claims File and Loss Reserves
  §1410.2 The Claims Manual
  §1410.3 The Policy Manual
  §1410.4 The Claims Representative’s Personnel File
    §1410.4.1 Job Description
    §1410.4.2 Goals for Previous Year of Employment
    §1410.4.3 Goals for Current Year of Employment
    §1410.4.4 Promotions or Demotions—Why?
    §1410.4.5 Case Load Count
    §1410.4.6 Enrolled Courses and Education
    §1410.4.7 General Duties and Responsibilities
    §1410.4.8 Longevity—Old Timer or Rookie?
    §1410.4.9 Why Was the Claims Representative Assigned This Particular File?
    §1410.4.10 The Attorney/Adjuster
  §1410.5 The Insurance Policy—Make Sure You Have a Complete Copy
    §1410.5.1 Endorsements
    §1410.5.2 Amendments
    §1410.5.3 Policy Jacket
    §1410.5.4 Declaration Sheet(s)
    §1410.5.5 Application
  §1410.6 Loss Reserve History
    §1410.6.1 Original
    §1410.6.2 Changes
    §1410.6.3 Discoverability
    §1410.6.4 Reinsurance Documents
  §1410.7 The Agent’s Policy File
  §1410.8 The Agent’s Claims File
  §1410.9 The Reinsurance Treaty
  §1410.10 The Reinsurance Claims File
  §1410.11 The Underwriting File
  §1410.12 Training Manuals/Publications
Chapter 15. Bad Faith—Bad News

§1500 General Principles and Definitions
  §1500.1 Scope of Coverage
  §1500.2 Origins of Bad Faith Actions
§1501 Bad Faith
  §1501.1 Non Insurance Companies — HMO
§1502 Extra-Contractual Damages
§1503 Assignment of Bad Faith
§1504 Lien Rather Than Assignment
§1505 A Working Definition of Bad Faith
  §1505.1 The Unreasonable
  §1505.2 Withholding
  §1505.3 Policy Benefits
  §1505.4 Without Proper Cause—Excuse
  §1505.5 Equitable Subrogation by an Excess Insurer
§1506 Alter Ego: Parent and Subsidiary Corporations
§1510 The Four Major Areas of Bad Faith
§1511 Wrongful Denial of Coverage
  §1511.1 Failure to Indemnify the Insured for Property First Party Claims
  §1511.2 Failure to Defend the Insured and Pay Settlements and Judgments on the Insureds Behalf
  §1511.3 To the Claimant
§1512 Unreasonable Delay of Benefits
§1513 Underpayment of Claimed Benefits (Lowballing)
  §1513.1 Intentionally
  §1513.2 Negligently
  §1513.3 Failure to Process Claim

§1520 First Party Bad Faith
§1521 Implied-in-Law Covenant
  §1521.1 Use of Unfair Claims Practices Statutes
§1522 Fiduciary Duties Owed the Insured
§1523 ERISA
§1524 Premature Arbitration by Insurer
  §1524.1 Bad Faith Arbitration
§1525 Third Party Beneficiaries—When Can They Claim Insured Status?
§1526 Additional Insureds

§1530 Bad Faith Wrongful Death

§1540 Theories of Extra-Contractual Damages for First Party Claimants
§1541 Common Law Bad Faith
§1542 Examples of Unreasonable Withholding
  §1542.1 Deceptive Claims Practices
  §1542.2 Intimidation Claims Practices
  §1542.3 Failure to Communicate
  §1542.4 Failure to Educate
  §1542.5 Capricious Cut-Off of Benefits
  §1542.6 Arbitrary Declaratory Relief
  §1542.7 Failure to be Objective
  §1542.8 Distorted Policy Interpretation
  §1542.9 Unreasonable Delay of Payment
  §1542.10 Failure to Thoroughly Investigate
  §1542.11 Failure to Reconsider Denial
  §1542.12 Breaches of Unreasonableness During Litigation
  §1542.13 Failure to Settle When Liability Is Reasonably Clear
  §1542.14 Incompetence of Insurer’s Investigator
  §1542.15 Extortion
  §1542.16 Encouraging Adjusters to Practice Lowballing Insurance Claims
  §1542.17 Failure to Defend
  §1542.18 Bad Faith/Negligent Defense
  §1542.19 Interference With the Insured’s Representation
  §1542.20 Forcing Claimant Into Arbitration
§1543 Breach of Fiduciary Duty
  §1543.1 Service
  §1543.2 Peace of Mind
  §1543.3 Trust
§1544 Statutory Bad Faith
§1545 Exception to the “Fairly Debatable Rule”
§1546 Denial of Claim Based on Void Exclusion
§1547 Fraud
§1548 Insurer’s Negligent Release of the Insured’s Claim Against a Third Party
§1549 Negligent Referrals
§1550 Theories of Extra-Contractual Damages for Third Party Claimants
   §1550.1 Fraud, Deceit, Misrepresentations
   §1550.2 Intentional Infliction of Emotional Distress
   §1550.3 Excess Judgments
      §1550.3.1 Excess Insurer’s Bad Faith Claim Against Primary Insurer
   §1550.4 Trial of Bad Faith Claim Before Coverage Issue
   §1550.5 Third Party Beneficiary
   §1550.6 Statute
   §1550.7 Case Law
   §1550.8 Lack of Coverage Under Policy
   §1550.9 Reserved
   §1550.10 Strict Liability

§1551 Coaching the IME Doctor
§1552 Information Sharing by SIUs

§1560 Defenses to Bad Faith Actions
   §1561 Statutory Privilege
   §1562 No Unreasonable Withholding
   §1563 Release of Bad Faith
   §1564 Mandatory Arbitration
   §1565 Claims Representative’s Reliance on Advice of Counsel
   §1566 Statute of Limitations
      §1566.1 “Time to Sue” Policy Provision
   §1567 Comparative Bad Faith
   §1568 Federal Pre-Emption
      §1568.1 Exceptions
   §1569 Workers’ Compensation Exclusive Remedy
      §1569.1 Exceptions

§1570 Damages
   §1571 Tort or Extra-Contractual Damages
   §1572 Contractual Damages
      §1572.1 Non Adjunct Bad Faith Cases
   §1573 Punitive Damages
   §1574 Warning Signs of Punitive Damages
   §1575 Emotional Damage Need Not Flow From Economic Loss
   §1576 Treble Damages Under RICO

§1580 Bad Faith Liability When There Is No Coverage

§1590 Public Bad Faith Fines
   §1591 Defendant—Independent Adjusting Firms
   §1592 Tort Reform Has no Effect on Insurance Premiums

Key Points to Remember

Chapter 15A. Extraordinary Bad Faith Cases

§1500A Introduction
   §1501A Campbell v. State Farm Insurance
   §1501.1A Update
   §1502A Middler v. State Farm Insurance Companies
   §1503A State Farm Fire and Casualty Company v. Superior Court (Taylor)
      §1503.1A Declarations of Amy Zuniga in State Farm v. Superior Court
      §1503.2A Declaration of Amy Zuniga in Stoliar v. State Farm
   §1504A Robinson v. State Farm Mutual Automobile Insurance Company
   §1505A Betty Olson v. State Farm Mutual Insurance Company
   §1506A Allstate Insurance Company’s 9000 Reconsideration Claims
   §1507A State Farm Auto Insurance Company Takes a $1.2 Billion Hit
   §1508A Teresa Goodrich v. Aetna U.S. Health Care of California, Inc.
   §1509A Diamond v. General American Insurance Company
Chapter 15B. Common Claim Myths

§1500B In General
§1501B Myth #1: “Threatening to File Suit Will Soften Adjuster’s Position”
§1502B Myth #2: “Insurers and Adjusters Use ‘Three-Times-Specials’ Formula”
§1503B Myth #3: “It’ll Be More Expensive to Defend Than to Settle”
§1504B Myth #4: “Time Limit Demands Usually Expedite Adjuster Responses”
§1505B Myth #5: “Adjusters Receive Bonuses Based on What They ‘Save’ Off a Claim”
§1506B Myth #6: “Adjusters Cannot Evaluate Cases as Well as Attorneys”
§1507B Myth #7: “The Insurer Denied My Claim; However, I am Confident That the Claim Is Covered. If I Ask the Insurer to Reconsider, I Probably Will Not Have to Sue to Get Coverage”
§1508B Myth #8: “A Wrongful Denial of a Claim Will Automatically Subject the Insurer to Punitive Damages”
§1509B Myth #9: “The Insurer Must Have a Reasonable Basis for Denying the Claim Because It Issued a Long Letter Explaining That the Claim Is Denied”
§1510B Myth #10: “I Was Treated so Badly by the Insurance Company That I am Certain a Lawyer Will Take My Case on Contingency”
§1511B Myth #11: “If I Sue the Insurance Company, It Will Teach Them a Lesson and They Will Not Do the Same Thing to Other People”
§1512B Myth #12: “I lost the Insurance Policy Copies That Prove I Have Used This Insurance Company for the Last Twenty Years, and the Insurer Is Required to Have Saved Copies”
§1513B Myth #13: “The Adjuster Working on May Claim Is Probably Well Trained and the Insurer Would Not Use the Adjuster if the Adjuster Did Not Know What He/She Was Doing”
§1515B Myth #15: “My Claim Is Clearly Covered and the Insurer Has Not Asserted Any Policy Limitations, Defenses or Exclusions; Therefore, I Should Expect the Claim to Be Paid Within the 30-Day Period Prescribed by Most Insurance Regulations”
§1516B Myth #16: “The Insurer Says the Policyholder’s Conduct Related to the Claim Was Intentional and Therefore They Are Justified in Denying My Claim”
§1517B Myth #17: “The Bigger and Richer an Insurance Company Is, the Higher the Likelihood that It Will Promptly and Fully Pay My Insurance Claim”
§1518B Myth #18: “The Insurance Company Admits That It Made a Mistake When It Did Not Pay My Claim. However, the Insurance Company Claims It Will Never Be Held Liable for Bad Faith Due to a Mistake”

Chapter 16. Settling the $5,000 to $75,000 Bodily Injury Claim

§1600 Introduction: The “Bread-and-Butter” Case
§1610 This Is Not the Lottery
§1620 Limited Partnership
§1630 Funding the Settlement
§1640 Finding the Funder
§1650 Preparation for Preliminary Negotiations
§1660 The Sale—What the Case Is Worth
§1670 Hypothetical Case From Start to Finish
§1671 Sample: Settlement Letter to Adjuster re Hypothetical Case
§1672 Analysis of Demand Letter
§1673 Conclusion
§1673.1 Attorney’s Liability—Settling Too Low
§1680 Trying the “Bread and Butter” Case
Chapter 17. Uninsured Motorist Claims

§ 1700 Introduction

§ 1710 Definition of Uninsured Motorist Vehicle
§ 1711 Causal Connection of Bodily Injury

§ 1720 Definition of Insured
§ 1721 Third Party Beneficiaries

§ 1730 Uninsured Motorist Coverage
§ 1731 Limits of Liability
§ 1732 Stacking Coverage
§ 1733 Property Damage
§ 1734 Offset Procedures
§ 1735 Notice to Insurer
§ 1736 Relatives
§ 1737 Joint and Several Liability
§ 1738 Physical Contact

§ 1740 Statute of Limitations

§ 1750 Discovery

§ 1760 Arbitration
§ 1761 Amounts Recoverable in Arbitration

§ 1770 Subrogation
§ 1775 Bad Faith Conduct of Insurer in Mishandling the Uninsured Motorist Claim

§ 1780 Exclusions

§ 1790 Offsets

Chapter 18. The Claims Department and the Claims Manual

§ 1800 Insurance Is a Transfer of Risk for Money Involving Loss Ratios

§ 1810 What the Policy Promises
§ 1811 What the Agent Said the Policy Promises: Is It a Managing General Agent?
§ 1812 What the Advertising Implies That the Policy Promises
§ 1813 What the Courts Say the Policy Promises
§ 1814 Implied Promises—Minimum Standards
§ 1815 Four Corners of the Philosophy
  § 1815.1 Service
  § 1815.2 Trust
  § 1815.3 Protection
  § 1815.4 Peace of Mind

§ 1820 Who Carries Out Promises—The Claims Department
§ 1821 The Claims Department—The Leak in the Dike

§ 1830 The Claims Manual
§ 1831 General Topical Sections
  § 1831.1 Forward
  § 1831.2 Draft Authority
  § 1831.3 Components of a Prompt, Thorough, Objective File: Example—Automobile Claim
  § 1831.4 Statements
  § 1831.5 Desirability of Risk
  § 1831.6 Index Bureau
  § 1831.7 Releases
  § 1831.8 Lien Laws—Attorneys, Doctors and Hospitals
  § 1831.9 Time Limit/Policy Limit Demands
  § 1831.10 Federal Tort Claims Act
  § 1831.11 Alternative Settlement Options
§1831.12 Advances for Medical Payments and Wage Loss Claims
§1831.13 No Release
§1831.14 Admitted Ambiguity in Policy
§1831.15 Like Kind and Quality Parts
§1831.16 Depreciation Tables and Betterment
§1831.17 Glass Breakage
§1831.18 Conference Report on Fair Insurance Claims Adjustment—Preamble
§1831.19 Guiding Principles Relating to Auto Insurance Claims
§1831.20 Statement of Principles in Determining Damage to Vehicles
§1831.21 National Conference of Lawyers and Liability Insurers Guiding Principles
§1831.22 First Call Bodily Injury Settlements
§1831.23 Denial of Claim
§1831.24 Concurrent Insurance Coverage
§1831.25 Comparative Negligence
§1831.26 Non-Waivers
§1831.27 Boilerplate Policy Defenses
§1831.28 Permissive User
§1831.29 Subrogation
§1831.30 Arbitration
§1831.31 Inter-Insurance Arbitration Agreement
§1831.32 Staffing Ratio: Adjusters to Caseload
§1831.33 Education
  §1831.33.1 Claims Schools
  §1831.33.2 On-the-Job Training
  §1831.33.3 Continuing Education
§1831.34 Those Other Doctors
§1831.35 Coverage Inclusions and Exclusions
§1831.36 Excess Liability Insurer’s Duties Are Triggered Prior to Primary Policy Exhaustion

§1832 Counsel’s “Claims Manual”

§1840 The Claims Representative as a Witness

§1850 Reservation of Rights Letter
  Sample: Reservation of Rights Letter

§1860 Proof of Loss

§1870 Investigation Practices
  §1871 “Questionable” Claims
  §1872 Investigations That Violate Claims Manual

§1880 Claim Department Payment Policies Can Vary
  Key Points to Remember

Table of Cases

Index
Introduction

It is the intent of this book to reduce your stress level, as well as your client’s, while processing your insurance cases. *How Insurance Companies Settle Cases* is designed to show you how to get your client’s claim processed promptly with the least amount of hassle.

In order to accomplish these objectives, the book explains how the claims game is played and by whose rules. Usually the insurance company is not going to volunteer settlement until you show you know what you are doing and that you are serious. This is salesmanship and communication.

This book is offered to both “new” attorneys and seasoned trial attorneys. It shows you the basics of motivation, within the claims industry. It is our hope that you will learn how to “sell” your case outside of the courthouse.

A major portion of the book will show you how to walk through the claims maze. It outlines, in a straightforward manner, how to get your client’s case concluded by use of letters and checklists. It is important to know where your case has been, its current status and what is necessary to conclude the case. Additionally, the book will assist you in developing a plan and theme to sell your case, rather than litigating it.

*How Insurance Companies Settle Cases* stresses discipline, organization, documentation and open communications. Practical tips are offered on when and what to ask the adjuster, in order to sell your case.

Your attitude is as valuable as your client’s case. A bad attitude and a good case usually means that you are going to trial.

Remember, insurance policies, even the “easy to read” policies, are not clearly understood by the insurance companies who write the policies, or their agents, brokers, adjusters, attorneys or the courts. Many times there is more than one opinion as to what was intended, what was said and what was heard.

Please keep firmly in mind that the context of this book is about general standards. There are exceptions to the general principles outlined in this book. Do not develop “tunnel vision.” Remain open-minded.

This book is about how insurance companies settle cases and the balancing of rights, duties, expectations and promises.
(This page intentionally left blank.)