

BOOK REVIEW

Reviewed by Douglas G. Houser

Litigation and Prevention of Insurer Bad Faith

Second Edition

By Dennis J. Wall

McGraw-Hill 1994

707 pages

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In *Litigation and Prevention of Insurer Bad Faith*, Dennis Wall provides an exhaustive and useful update of the vast changes that have taken place nationwide in the field of insurer good faith and fair dealing since the publishing of the first edition of this treatise in 1985. The second edition serves as an excellent reference source for practitioners in all jurisdictions faced with any facet of bad faith claims involving insurers, insureds, and third parties, whether the practitioner is prosecuting or defending such a claim. The author has done the public, the profession, and the courts a real favor in this exceptionally thoughtful and complete publication.

In *Litigation and Prevention of Insurer Bad Faith*, the author recognizes that insurance bad faith law has expanded to cover many situations that could not have been contemplated earlier. Thus, in order to address this expanding and changing field of the law, he has written the second edition

... in a continuing effort to describe in one place, for the first time, all the features of insurer bad faith law. A large number of sources is provided for both the interested student and the active practitioner. Cases and statutes define what the law is and where it is or may be going. ... In the end, the coverage of this book consists of a single reference source for advising clients and conducting successful litigation through final appeal.

Wall states that the second edition of his treatise "is not concerned with the procedural practices of any one court or even with the substantive law of any single jurisdiction. An attempt has been made here to describe every development in all United States jurisdictions, and some in the Anglo-Commonwealth jurisdictions as well, in order to assist in the outcome of litigation." Therefore, he has made an effort "to describe here just how to determine the right thing to do in

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any case of possible insurer bad faith. Virtually every jurisdiction in the United States is represented in the course of the text. All rules and case dispositions in the area are presented."

This edition of *Litigation and Prevention of Insurer Bad Faith* is a one-volume, comprehensive 707-page treatise divided into five parts. Part I provides an introduction and background into the area of insurer bad faith claims. It addresses the contrasting good faith requirements in contract law and fiduciary law, as well as Uniform Commercial Code provisions and provisions of the *Restatement of Contracts* addressing good faith requirements. Part I concludes with a history of general insurer good faith requirements.

Part II addresses third-party claims in the context of bad faith litigation. It encompasses standards of conduct toward the insured, the responsibilities of the insured, the insurer's defenses against actions by the insured, the relationship of primary insurers with excess carriers and reinsurers, actions by other parties and an insurer's defenses, and discovery from insurers concerning their handling of third-party claims. These topics encompass the requirements of good faith in the context of settlement of claims, the refusal to defend, and the conduct of the defense.

Part III addresses third-party claims and their relationship to insurer bad faith. It addresses the standards of insurer conduct in first-party claims, the responsibilities of the insured in presenting first-party claims, the insurer's defenses against first-party actions by an insured, as well as discovery from insurers on these issues.

Part IV addresses damages in insurer bad faith actions. It thus encompasses compensatory damages, emotional distress damages, consequential damages, punitive damages, statutory penalties, as well as costs, attorneys' fees, and prejudgment interest. Part IV also addresses damages payable to the insurer by the insured, by the primary to the excess insurer, and by the excess carrier to the primary insurer.

Part V contains a summary and conclusion of the current state of the law relating to the litigation and prevention of insurer bad faith.

The treatise also contains appendixes addressing sample letters to be used by counsel with regards to bad faith claims, sample complaints, answers, and defenses to be used in state and federal courts, as well as sample jury instructions.

In short, *Litigation and Prevention of Insurer Bad Faith* is a comprehensive treatise useful to practitioners in all jurisdictions on all sides of insurer bad faith claims. It will serve as a useful starting point for practitioners or students who seek to locate the law—and the trend of the law—in their particular jurisdiction.