

# Index

**ABUSE OF PROCESS**  
First-party cases, **10:26**

**ADMIRALTY JURISDICTION**  
**PREEMPTION**  
Defenses, **7:25**

**ADVICE OF COUNSEL**  
Defenses, **7:13**

**AFFILIATED ENTITIES**  
Defendants, **6:27**

**APPORTIONMENT OF FEES**  
Damages, **8:12**

**ARBITRATION**  
Defenses, **7:28**

**ASSIGNEES**  
Generally, **6:5 et seq.**  
Assignability, **6:6**  
Assignable portion of claim for bad faith, **6:7**  
Timing of assignment, **6:8**

**ATTORNEY-CLIENT DEFENSE**  
Defenses, **7:21**

**ATTORNEYS' FEES**  
Damages, **8:11**  
Of statutes, **9:15**

**BAD-FAITH ACTIONS**  
Generally, **1:1 et seq.**  
Layers of coverage, **1:8**  
Marketing of insurance, **1:10**  
Policy types, **1:6**  
Structure of an insurance policy, **1:9**

**BANKRUPTCY TRUSTEES**  
Plaintiffs, **6:14**

**CO-INSURERS**  
Defendants, **6:23**

**COLLATERAL ESTOPPEL**  
Defenses, **7:11**

**CONFORMITY FO INDUSTRY**  
**STANDARDS**  
Defenses, **7:15**

**CONSTITUTIONAL LIMITATIONS**  
**ON PUNITIVE DAMAGES**  
Damages, **8:9**

**CONSUMER PROTECTION**  
**STATUTES**  
Statutes, **9:16**

**CONTRACTOR MISCONDUCT**  
First-party cases, **5:25**

**CONTRACTUAL LIMITATIONS**  
**ON SUIT**  
Defenses, **7:8**

**CORPORATE RESPONSIBILITY**  
Damages, **8:7**

**DAMAGES**  
Generally, **8:1 et seq.**  
Apportionment of fees, **8:12**  
Attorneys' fees, **8:11**  
Constitutional limitations on punitive damages, **8:9**  
Corporate responsibility, **8:7**  
Emotional distress, **8:4**  
Excessive awards, **8:5**  
Excess judgments and other economic harm, **8:3**  
Factors in determining amount of award, **8:8**  
Insurance policy proceeds, **8:2**  
Prejudgment interest, **8:10**  
Punitive damages, **8:6**

**DEATH OF THE INSURED**  
Defenses, **7:22**

**DEFENDANTS**  
Affiliated entities, **6:27**  
Co-insurers, **6:23**  
Excess liability carriers, **6:21**

**DEFENDANTS—Cont'd**

Health maintenance organizations, **6:26**  
Home protection companies, **6:29**  
Insurance Guarantee Associations, **6:20**  
Insureds, **6:18**  
Insurers issuing indemnity policies, **6:28**  
Judicial and legislative regulation of insurance marketing practices, **6:16**  
Management groups, **6:17**  
Public insurers, **6:25**  
Reinsurers, **6:19**  
Representatives, **6:15**  
Self-insured entities, **6:24**  
Statutes, **9:11**  
Sureties, **6:22**

**DEFENSES**

Admiralty jurisdiction preemption, **7:25**  
Advice of counsel, **7:13**  
Arbitration, **7:28**  
Attorney-client defense, **7:21**  
Collateral estoppel, **7:11**  
Conformity fo industry standards, **7:15**  
Contractual limitations on suit, **7:8**  
Death of the insured, **7:22**  
Election of remedies, **7:17**  
Employee's exclusive worker's compensation remedy, **7:12**  
Failure to exhaust administrative remedies, **7:23**  
Malicious defense, **10:27**  
Mitigation, **7:19**  
Plaintiff's bad faith, **7:10**  
Plaintiff's breach of contract, **7:9**  
Plaintiff's negligence, **7:16**  
Preemption, **7:24**  
Release, **7:18**  
Res judicata, **7:11**  
Sovereign immunity, **7:27**  
Statute of limitations generally, **7:2 et seq.**  
Statutes, **9:13**  
Tender of the policy limits, **7:14**

**DEFENSES—Cont'd**

Third-party cases, **4:11**  
Third-party set up of the insurer, **7:26**  
Waiver and estoppel, **7:20**

**ELECTION OF REMEDIES**

Defenses, **7:17**

**ELEMENTS OF A CAUSE OF ACTION**

Statutes, **9:4**

**EMOTIONAL DISTRESS**

Damages, **8:4**

**EMPLOYEE'S EXCLUSIVE WORKER'S COMPENSATION REMEDY**

Defenses, **7:12**

**EXCESSIVE AWARDS**

Damages, **8:5**

**EXCESS JUDGMENT**

Damages, **8:3**  
Third-party cases, **3:36**

**EXCESS LIABILITY CARRIERS**

Defendants, **6:21**  
Plaintiffs, **6:12**

**FACTORS IN DETERMINING AMOUNT OF AWARD**

Damages, **8:8**

**FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**

Defenses, **7:23**

**FIRST-PARTY CASES**

Generally, **10:1 et seq., 11:2 et seq.**  
Abuse of process, **10:26**  
Anderson v. Continental Insurance Co., **2:13**  
Answer, **11:5**  
Bad faith among states, **2:15**  
Break with tradition, **2:11**  
Common mistakes, **10:5**  
Communications with the insurer, **10:6**  
Complaint, **11:4**

## INDEX

**FIRST-PARTY CASES—Cont'd**

- Contractor misconduct, insurer's responsibility for, **5:25**
- Decision to sue, **10:7**
- Defendant's interrogatories and requests for admissions, **11:9**
- Defendant's request for production of documents, **11:8**
- Demand letter, **11:3**
- Elements of the cause of action
  - generally, **5:1 et seq.**
  - meaning of bad faith
    - generally, **5:2 et seq.**
  - varieties of unreasonable claims
    - settlement practices
      - generally, **5:7 et seq.**
- Ethics of setting up insurance companies, **10:3**
- Extension of the cause of action for bad-faith to first-party cases, **2:10**
- Gruenberg v. Aetna Insurance Co., **2:12**
- Initial strategic considerations, **10:2**
- Malicious defense, **10:27**
- Matters leading to litigation, **11:2**
- Plaintiff's interrogatories and requests for admissions, **11:7**
- Plaintiff's request for production of documents, **11:6**
- Planning the litigation
  - generally, **10:8 et seq.**
  - choice of cause of action, **10:14**
  - choice of defendants, **10:10**
  - choice of forum, **10:9**
- Rationales for extending the cause of action, **2:14**
- Retroactive premium adjustments, **5A:13**
- Setting up the claim, **10:4**
- Special problems
  - generally, **5A:1 et seq.**
- Texas, **5:5**

**GENERAL BUSINESS PRACTICE**

- Statutes, **9:5**

**HEALTH MAINTENANCE ORGANIZATIONS**

- Defendants, **6:26**

**HISTORICAL DEVELOPMENT**

- Generally, **2:1 et seq.**
- First-party cases
  - Anderson v. Continental Insurance Co., **2:13**
  - bad faith among states, **2:15**
  - break with tradition, **2:11**
  - extension of the cause of action for bad-faith to first-party cases, **2:10**
  - Gruenberg v. Aetna Insurance Co., **2:12**
  - rationales for extending the cause of action, **2:14**
- Implied covenant as a tool of contract interpretation, **2:16**
- Restatement (Second) of Contracts, **2:17**
- Third-party cases
  - generally, **2:2 et seq.**
  - breach of contract remedy and its inadequacies, **2:2**
  - coalescence of negligence and bad faith standards, **2:6**
  - Comunale's precursors, **2:9**
  - Comunale v. Traders & General Insurance Co., **2:8**
  - implied covenant of good faith and fair dealing, **2:7**
  - liability based on bad faith, **2:5**
  - liability based on negligence, **2:4**
  - traditional tort remedies, **2:3**
- Uniform Commercial Code, **2:17**

## HOME PROTECTION COMPANIES

- Defendants, home protection companies as, **6:29**

## INDEMNITY POLICIES

- Defendants, insurers issuing indemnity policies, **6:28**

## INSURANCE GUARANTEE ASSOCIATIONS

- Defendants, **6:20**

## INSURANCE POLICY PROCEEDS

- Damages, **8:2**

**INSUREDS**

Defendants, **6:18**

**INTEREST**

Of statutes, **9:15**

**JUDICIAL AND LEGISLATIVE REGULATION OF INSURANCE MARKETING PRACTICES**

Defendants, **6:16**

**MALICIOUS DEFENSE**

First-party cases, **10:27**

**MANAGEMENT GROUPS**

Defendants, **6:17**

**MITIGATION**

Defenses, **7:19**

**MULTIPLE PARTIES**

Generally, **4:17 et seq.**

Duties of coinsurers, **4:19**

Effects of reinsurance, **4:21**

Insurer's duty in case of multiple claimants and insureds, **4:20**

Joint tortfeasors and the insurer's evaluation of the case, **4:18**

**NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, MODEL LEGISLATION**

Of Statutes, **9:2**

**PARTIES**

Statutes, **9:9**

**PENALTIES**

Of statutes, **9:15**

**PLAINTIFFS**

Assignees

generally, **6:5 et seq.**

assignability, **6:6**

assignable portion of claim for bad faith, **6:7**

timing of assignment, **6:8**

Bankruptcy trustees, **6:14**

Beneficiaries, **6:4**

Co-insureds, **6:2**

Excess liability carriers, **6:12**

**PLAINTIFFS—Cont'd**

Relatives of the insured, **6:10**

Statutes, **9:10**

Strangers, **6:11**

Third-party claimants and judgment creditors, **6:9**

Uninsured motorists, **6:13**

Unnamed insureds, **6:3**

**PLAINTIFF'S BAD FAITH**

Defenses, **7:10**

**PLAINTIFF'S BREACH OF CONTRACT**

Defenses, **7:9**

**PLAINTIFF'S NEGLIGENCE**

Defenses, **7:16**

**PRACTICE AIDS**

Generally, **11:1 et seq.**

First-party cases

generally, **11:2 et seq.**

answer, **11:5**

complaint, **11:4**

defendant's interrogatories and requests for admissions, **11:9**

defendant's request for production of documents, **11:8**

demand letter, **11:3**

matters leading to litigation, **11:2**

plaintiff's interrogatories and

requests for admissions, **11:7**

plaintiff's request for production of documents, **11:6**

Third-party cases

generally, **11:10 et seq.**

assignment of cause of action, **11:12**

complaint, **11:13**

interrogatories in the underlying case, **11:10**

other pleadings, **11:14**

policy limits settlement offer, **11:11**

**PREEMPTION**

Defenses, **7:24**

**PREJUDGMENT INTEREST**

Damages, **8:10**

## INDEX

**PRIVATE CAUSES OF ACTION**  
**UNDER UNFAIR CLAIMS**  
**SETTLEMENT PRACTICES**  
**STATUTES**  
Statutes, **9:3**

**PUBLIC INSURERS**  
Defendants, **6:25**

**PUNITIVE DAMAGES**  
Damages, **8:6**

**REINSURERS**  
Defendants, **6:19**

**RELATIVES OF THE INSURED**  
Plaintiffs, **6:10**

**RELEASE**  
Defenses, **7:18**

**REMEDIES**  
Statutes, **9:12**

**REPRESENTATIVES**  
Defendants, **6:15**

**RES JUDICATA**  
Defenses, **7:11**

**RETROACTIVE PREMIUM**  
**ADJUSTMENTS**  
First-party cases, **5A:13**

**SELF-INSURED ENTITIES**  
Defendants, **6:24**

**SOVEREIGN IMMUNITY**  
Defenses, **7:27**

**STATUTE OF LIMITATIONS**  
Generally, **7:2 et seq.**

**STATUTES**  
Generally, **9:1 et seq.**  
Application of ERISA to group insurance claims, **9:17**  
Attorneys' fees, recovery of, **9:15**  
Conclusion of underlying action and determination of insured's liability, **9:7**  
Consumer protection statutes, **9:16**  
Defendants, **9:11**  
Defenses, **9:13**  
Elements of a cause of action, **9:4**

**STATUTES—Cont'd**  
Failure to settle once liability is clear, **9:8**  
General business practice, **9:5**  
Interest, recovery of, **9:15**  
Litigating insurance claim disputes under ERISA, **9:18**  
Model Act, 1990 amendments, **9:14**  
National Association of Insurance Commissioners, model legislation of, **9:2**  
Parties, **9:9**  
Penalties, recovery of, **9:15**  
Plaintiffs, **9:10**  
Private causes of action under unfair claims settlement practices statutes, **9:3**  
Remedies, **9:12**  
UNUM Life Insurance Co. v. Ward, **9:19**  
Violation of relevant provision of statute, **9:6**

**STRANGERS**  
Plaintiffs, **6:11**

**STRATEGY, TACTICS, AND**  
**PROCEDURE**  
Generally, **10:1 et seq.**  
First-party cases  
generally, **10:1 et seq.**  
common mistakes, **10:5**  
communications with the insurer, **10:6**  
decision to sue, **10:7**  
discovery  
generally, **10:29 et seq.**  
defendant's perspective, **10:46**  
ethics of setting up insurance companies, **10:3**  
initial strategic considerations, **10:2**  
planning the litigation  
generally, **10:8 et seq.**  
choice of cause of action, **10:14**  
choice of defendants, **10:10**  
choice of forum, **10:9**  
setting up the claim, **10:4**  
settlement, **10:37**

**STRATEGY, TACTICS, AND PROCEDURE—Cont'd**

First-party cases—Cont'd  
trial, **10:36**

Insurer's perspective  
generally, **10:61 et seq.**  
general strategic considerations, **10:61**  
role of the defense attorney, **10:63**  
setting up the defense, **10:62**

Third-party cases  
generally, **10:49 et seq.**  
assignment of the insured's cause of action, **10:53**  
choice of causes of action, **10:56**  
common interests, **10:50**  
demand letter, **10:52**  
discovery, **10:57**  
expert witnesses, **10:59**  
insured's option, **10:60**  
lawyers and law firm as defendants, **10:55**  
planning the litigation, **10:54**  
setting up the claim, **10:51**  
trial, **10:58**

**SURETIES**

Defendants, **6:22**

**TENDER OF THE POLICY LIMITS**

Defenses, **7:14**

**TEXAS**

First-party cases, **5:5**

**THIRD-PARTY CASES**

Generally, **2:2 et seq., 10:49 et seq., 11:10 et seq.**  
Assignment of cause of action, **11:12**  
Assignment of the insured's cause of action, **10:53**  
Bad faith refusal to defend, **4:10**  
Breach of contract remedy and its inadequacies, **2:2**  
Choice of causes of action, **10:56**  
Coalescence of negligence and bad faith standards, **2:6**  
Common interests, **10:50**  
Complaint, **11:13**  
Comunale's precursors, **2:9**

**THIRD-PARTY CASES—Cont'd**

Comunale v. Traders & General Insurance Co., **2:8**  
Defense in bad faith, **4:11**  
Demand letter, **10:52**  
Discovery, **10:57**  
Disputed coverage  
disputed coverage and insurer's duty to settle  
generally, **4:12 et seq.**  
insurer's duty to defend  
generally, **4:3 et seq.**  
Duties of defense attorneys and policy limits settlement offers, **4:24**  
Elements of the cause of action  
generally, **3:1 et seq.**  
causation, **3:39**  
contractual solutions to the problem of settlement, **3:42**  
effect of insured's conduct, **3:34**  
Excess judgment, **3:36**  
factors indicating existence of bad faith  
generally, **3:2 et seq.**  
insured's demands regarding settlement, **3:35**  
insurer's duty to negotiate  
generally, **3:30 et seq.**  
insurer's duty when settlement value exceeds policy limits, **3:33**  
liability insurer's duty of good faith and fair dealing, **3:41**  
outcome of action as evidence of reasonableness of settlement offer, **3:38**  
payment of excess judgment as a prerequisite to a cause of action, **3:37**  
prerequisites of a settlement offer  
generally, **3:25 et seq.**  
settlement of the underlying action, **3:40**  
standards governing the insurer's duty to settle  
generally, **3:14 et seq.**  
Expert witnesses, **10:59**

## INDEX

### **THIRD-PARTY CASES—Cont'd**

Implied covenant of good faith and fair dealing, **2:7**  
Insured's option, **10:60**  
Interrogatories in the underlying case, **11:10**  
Lawyers and law firm as defendants, **10:55**  
Liability based on bad faith, **2:5**  
Liability based on negligence, **2:4**  
Multiple parties  
    generally, **4:17 et seq.**  
    duties of coinsurers, **4:19**  
    effects of reinsurance, **4:21**  
    insurer's duty in case of multiple claimants and insureds, **4:20**  
    joint tortfeasors and the insurer's evaluation of the case, **4:18**  
Other pleadings, **11:14**

### **THIRD-PARTY CASES—Cont'd**

Plaintiffs, **6:9**  
Planning the litigation, **10:54**  
Policy limits settlement offer, **11:11**  
Problem of attorney-witnesses, **4:25**  
Setting up the claim, **10:51**  
Traditional tort remedies, **2:3**  
Trial, **10:58**

### **UNINSURED MOTORISTS**

Plaintiffs, **6:13**

### **UNUM LIFE INSURANCE CO. V. WARD**

Statutes, **9:19**

### **VIOLATION OF RELEVANT PROVISION OF STATUTE**

Statutes, **9:6**

### **WAIVER AND ESTOPPEL**

Defenses, **7:20**