Index

BAD FAITH

Unjustified refusal by insurer to defend, § 4:38A

CONTRIBUTION, SUBROGATION AND INDEMNITY

Generally, § 10:1-10:20

Effect of joint payment by insurers subject to reservation of rights to assert claims for contribution and indemnity, § 10:15

Indemnity, § 10:11

Insurers right to reimbursement for costs incurred in fulfilling duty to defend, § 10:2

Primary insurers right to contribution from another primary insurer, § 10:3

Primary insurers right to contribution from excess insurer, § 10:4

Right of excess insurer to indemnity or subrogation from primary insurer

Costs incurred in fulfilling duty to indemnify, § 10:13

Costs incurred in fulfilling duty to defend, § 10:14

Right of insurer to indemnity or subrogation from another insurer that was solely liable, § 10:12

Statute of limitations in actions for contribution, indemnity, and subrogation, § 10:16

Subrogation

generally, § 10:5-10:10

insureds claim for indemnity or contribution from joint or severally liable tortfeasor, § 10:8

Insurer as partial subrogee in action filed in name of insured. § 10:9

CONTRIBUTION, SUBROGATION AND INDEMNITY—Cont'd

Subrogation—Cont'd

Insurers right as affected by volunteer doctrine, § 10:10

pro tanto, § 10:6

wrongdoer, § 10:7

Use of assignment when recovery sought from another insurer, § 10:20

Use of loan receipt agreement, when recovery sought from another insurer, § 10:17

Between injured party and partys insurer when recovery sought from wrongdoer, § 10:18

Between injured party and wrongdoers insurer when recovery sought from another wrongdoer, § 10:19

COVERAGE ACTIONS

Generally, § 9:1-9:35

Actions by injured party against insurer, Policy benefits, § 9:11

Payments in excess of policy limits, § 9:12

Suit in capacity of judgment creditor, § 9:13

Appraisal requirements, § 9:33 Arbitration, § 9:30

Effect of insurers denial of coverage on right to compel, § 9:32

Waiver by insurer of right to compel, § 9:31

Bad faith and punitive damages, § 9:26

Bad faith claims, Use of expert witnesses, § 9:26A

Burden of proof, § 9:1

Contractual limitations clause

generally, § 9:3-9:8

Applicability to tort actions, § 9:7

COVERAGE ACTIONS—Cont'd CRIMINAL ACTS, § 11:42 Contractual limitations clause CRIMINAL ACTS EXCLUSION, —Cont'd § 11:42 generally, § 9:3-9:8—Cont'd Enforceability following insur-**DECLARATORY JUDGMENT** ers breach of contract, ACTIONS § 9:4 Generally, § 8:1-8:14 Tolling, **§ 9:6** Actions Waiver and estoppel, § 9:5 generally, § 8:6-8:9 Excuse for breach, § 9:8 injured party against insurer, § 8:8 Direct action statutes, § 9:10 insured against insurer, § 8:6 Discovery of insurers claims file, insurer against injured party, § 8:7 Work product privilege Actions between insurers generally, § 9:19-9:21A generally, § 8:9-8:12 Attorney-client privilege, § 9:21 Attorneys fees awards, § 8:14 Discovery of documents relating to Burden of proof, § 8:13 other claims, § 9:21A Insured as indispensable party, Substantial need doctrine, § 9:20 § 8:12 Effect on injured persons rights of Insured as necessary party, § 8:11 judgment for insurer against Providing insured an interim insured defense, § 8:10 Garnishment actions Actions by insurer against insured, generally, § 9:14-9:18 Whether insurer has duty to Injured person as indispensable defend party, § 9:18 generally, § 8:2-8:5 Suit as assignee, § 9:15 Following a denial of coverage, Suit as beneficiary of statutory § 8:5 cause of action, § 9:17 Resolution of factual and legal Suit as third-party beneficiary, issues pertinent to underlying § 9:16 action against insured, § 8:4 Fiduciary duty, § 9:28A Whether insurer provides cover-Good faith and fair dealing, § 9:34 age, § 8:3 Insurers conduct after coverage liti-**DUTY TO DEFEND** gation has commenced, § 9:28 Prejudgment interest awards, § 9:22 Generally, § 4:1-4:45 Attorneys fees awards, § 9:24 Administrative proceeding or suit seeking injunctive relief, § 4:16 Computation of amount of award, Allegiance of defense counsel hired § 9:23 for insured by insurer, § 4:19 Recovery of penalties, § 9:25 Allocation of defense costs among Punitive damages awards, Liability consecutive insurers, § 4:45 for acts of agents, § 9:27 Attorney, client privilege, § 4:19A Reformation of policy, § 9:29 Chinese wall, § 4:24A Statute of limitations, § 9:2 Circumstances when duty is absolute, Third-party complaint by insured § 4:7 against insurer, § 9:9 Conflict of interest Unfair trade or insurance practices two insureds. § 4:23

act, § 9:35

DUTY TO DEFEND—Cont'd

Conflict of interest between insured and insurer, § 4:20

Ethical considerations, § **4:21**

Satisfying duty to defend, § 4:24

Defense costs jointly incurred for insureds and non-insureds, § 4:14

Duty following insurers justified refusal to defend, § 4:8

Duty to appeal adverse judgments, § 4:17

Duty when another insurer also owes, insured a defense, but no defense is yet being provided to the insured, § 4:10A

Duty when another insurer is defending, § 4:10

Excess insurers duty to defend, § 4:11

Existence of duty, § 4:1

Existence of duty to defend after indemnity duty has been satisfied, § 4:32

Extrinsic evidence giving rise to duty, § 4:3

Extrinsic facts to prove that person claiming coverage is not an insured, § 4:5

Failure to assert compulsory counterclaim on behalf of insured, § 4:41

Insureds duty to hire own counsel if insurer refuses to defend, § 4:18

Insureds refusal to accept defense offered by insurer, § 4:25

Defense offered subject to a reservation of rights, § 4:26 Effect, § 4:27

Insurers agreement to defend following unjustified refusal to defend, § 4:9

Insurers duty to investigate prior to refusing to defend, § 4:6

Insurers inadequate defense

Failure to provide appropriate counsel in a conflict of interest situation, § 4:39

Negligence of insured8217s defense counsel, **§ 4:40**

DUTY TO DEFEND—Cont'd

Insurers refusal to defend based on existence of extrinsic facts, § 4:4

Insurers withdrawal of defense of insured

generally, § 4:28-4:31

Effect of withdrawal when insurer precluded from doing so, § 4:31

Loss of right to withdraw defense of insured, § 4:30

Reservation of right to withdraw, § 4:29

Intervention by insurer in lawsuit filed against insured, § 4:43

Pre-tender defense costs, § 4:44

Provision of partial defense, § 4:13

Resolution of doubts and ambiguities, § 4:2

Right to defend, § 4:1A

Scope of insurers duty to defend, § 4:12

Unethical conduct by counsel hired by insurer to defend insured, § 4:42

Unjustified refusal by insurer to defend, bad faith, § 4:38A

Unjustified refusal by insurer to defend, Damages

generally, § 4:33-4:38A

Attorneys fees, § 4:35

Bad faith, **§ 4:38A**

Consequential damages, § 4:34

Damages beyond policy limits, § 4:36

Estoppel to deny coverage, § 4:37 Practical disadvantages, § 4:38

Unnecessary defense costs incurred by insured, § 4:15

DUTY TO INDEMNIFY

Generally, § 6:1-6:50

Amount of loss to insured who forgoes claim as part of a settlement, § 6:30

Anti-stacking clauses in one-insurer cases, § 6:12

Awards against insured based upon intentional wrongdoing, § 6:19

DUTY TO INDEMNIFY—Cont'd

Binding effect on insurer of a judgment against insured in the underlying action, Collateral estoppel, § 6:22

Collusion, § 6:24

Policy language, § 6:23 Summary, § 6:25

Binding effect on insurer of judgment on behalf of insured against uninsured motorist, § 6:21

Breaches by insured of promissory warranties, § 6:15

Causation, § 6:7

Certificates of insurance, § 6:37A Change in coverage afforded by a renewal policy, § 6:9

Conditions precedent, § 6:15A Conditions subsequent, § 6:15B

Contract interpretation, § 6:2

Coverage through estoppel, § 6:33 Improper applications of theory, § 6:34

Coverage through waiver, § 6:35 Coverage under insurance binders, § 6:36

Existence, § 6:37

Coverage when excluded risk is not causally connected to loss, § 6:8

Damages in the event of breach by insurer, Contract, § 6:39

Tort, § 6:40

Determining whether grounds for judgment were outside policy coverage, Evidentiary issues, § 6:26

Burden of proof, § 6:27

Determining whether grounds for settlement were outside policy coverage, § 6:31

Duties of insurance brokers, § 6:44 Effect of duty to defend on duty to indemnify, § 6:10

Effect of settlement with one insurer on another insurers liability, § 6:32

Excess insurers duty to indemnify, § 6:45

Existence of a duty, § 6:1

DUTY TO INDEMNIFY—Cont'd

Implied or apparent authority, § 6:44B

Implied warranty of fitness for intended purpose, § 6:4

Indemnification of attorneys fees, § 6:20

Industry practice, § 6:50

Insurable interest, § 6:49

Liability to others under liability insurance policies, § 6:6

Liability versus indemnity insurance versus first-party coverage, § 6:5

Loss in progress/known risk rule, § 6:46

Multiple policy years of coverage, § 6:47

Offsets, § 6:42

Other insurance clauses, § 6:11

Policy provisions dealing with insureds knowledge of a problem prior to inception of coverage, § 6:46A

Postjudgment interest taxed against insured, § 6:17

Prejudgment interest taxed against insured, § 6:16

Prohibitions against other insurance, § 6:14

Punitive damage awards against insured, **§ 6:18**

Reasonable expectations rule, § 6:3 Reimbursement to insurer of defense costs, § 6:43

Restitution of payments, § 6:41 Satisfaction of duty under liability insurance policies, § 6:38

Settlements entered into by insured with injured party, § 6:29

Settlements entered into by insured with tortfeasor, § 6:28

Stacking when there are multiple years of triggered coverage, § 6:48

What payments by primary insurer serve to exhaust the primarys coverage, § 6:45A

When the other insurance is uncollectible, § 6:13

DUTY TO INDEMNIFY—Cont'd

Who is the broker acting on behalf of, § 6:44A

DUTY TO SETTLE

Generally, § 5:1-5:27

Absence of duty owed to the claimant, § 5:25

Actions that can be taken by insurer, insured, and injured party to protect and advance their interests, § 5:24

Amount of damage caused by breach of duty, § 5:20

Circumstances under which insured may enter into an unauthorized settlement, § 5:16

Contributory negligence by excess insurer, § 5:27

Damages for insurers bad faith breach of duty to settle, § 5:21

Determining whether insurer is guilty of bad faith breach of duty to settle, § 5:13

Effect of insured8217s financial responsibility, § 5:19

Effect of judgment or settlement in excess of policy limits encompassing both covered and noncovered acts, § 5:18

Excess insurers duty to settle, § 5:26 Good faith breach by insurer of its

duty to settle, § 5:14
Insureds duty to settle, § 5:22

Duty owed to excess insurer, § 5:23

Insurers duty to settle when it erroneously believes that there is no coverage, § 5:5

Insurers duty to settle when settlement offer is in excess of policy limits, § 5:7

Insurers duty to settle when there are claims against more than one insured, § 5:9

Insurers duty to settle when there are multiple claims against insured, § 5:8

Insurers duty to settle when there is coverage for only some of the

DUTY TO SETTLE—Cont'd

allegations made against insured, § 5:10

Insurers duty when insured directs it not to settle, § 5:3

Insurers liability for settlement in excess of policy limits following breach of duty to settle, § 5:17

Interpleader, § 5:2A

Necessity of an obligation by insurer to control insureds defense, § 5:6

Necessity of opportunity to settle, § 5:2

Necessity of proving that insurer acted in bad faith, § 5:12

Prejudgment interest, § 5:10A

Settlement entered into without insureds consent, § 5:4

Settlements of the covered, but not uncovered, claims, § 5:11

Significance of bad faith investigation, § 5:15

GOOD FAITH OWED BY INSURED, § 4:38A

INSURED CONTRACTS, § 11:39

INTERPRETATION OF POLICY PROVISIONS

Generally, § 11:1-11:42

Absolute pollution exclusion, § 11:11 Additional insured provisions, § 11:30

Advertising injury coverage, § 11:29 Aggregates, § 11:32

Alienated premises exclusion, § 11:17

Any insured exclusions, § 11:8
Arising out of exclusions, § 11:22A
Assault and battery exclusion,

§ 11:23

Bodily injury, § 11:2

Breach of contract exclusion,

§ 11:7A
Business pursuits exclusion, § 11:15

Care, custody, or control exclusion, § 11:18

Conditional pollution exclusion, § 11:12

INTERPRETATION OF POLICY PROVISIONS—Cont'd

Contracts in which the named insured third party an additional insured, § 11:30A

Coverage for breach of contract claims, § 11:7

Coverage for injuries arising out of use of premises, § 11:22B

Coverage for Y2K claims, § 11:33

Coverage under claims-made policies, § 11:5

Covered autos, § 11:36

Damage to property, § 11:10A

Disability insurance, § 11:34

Earth movement exclusion, § 11:23A Employment related practices exclu-

sion, § 11:14A

Exclusion for damages arising out of owned premises, § 11:19A

Exclusion for damage to owned property, § 11:19

Exclusion for damage to property on which insured is performing operations, § 11:18A

Exclusion or an insuring agreement, different meaning, § 11:22H

Exclusion or coverage for injuries arising out of use of an automobile, § 11:22

Existence of an occurrence, § 11:3 Flood or surface water exclusion, § 11:37

Impaired property exclusion, § 11:21 Importance of particular policy language, § 11:22C

Including language, § 11:22F

Injury to employee exclusion, § 11:14

Insolvency/bankruptcy provisions, § 11:38

Insurance for damages owed by insured, § 11:6

Insurance for what the insured is legally obligated to pay, § 11:7

Insureds work/product exclusions, § 11:10

Insured versus insured exclusion, § 11:18B

INTERPRETATION OF POLICY PROVISIONS—Cont'd

Intentional act exclusion, § 11:9 Irrelevance of fairness, § 11:22E

Loss of use exclusion, § 11:21A

Number of claims, § 11:27A

Number of occurrences, § 11:24

Cases finding multiple occurrences, § 11:27

Cases finding one occurrence, § 11:26

Interstate Fire case, § 11:25

Personal injury coverage, § 11:28

Products-completed operations hazard, § 11:20

Professional services exclusion and coverage for professional services, § 11:16

Property damage, § 11:1

Related language, § 11:22D

Reoccurrences, § 11:9

Replacement cost versus actual cash value, § 11:35

Self-insured retention, § 11:31

Sexual molestation exclusion,

§ 11:23B

Sistership or withdrawal from market exclusion, § 11:13

Trigger of coverage under an occurrence policy, § 11:4

Unjust enrichment by insured, § 11:22G

Unjust enrichment by insurer, § 11:22GG

LOSS OF PROPERTY, § 11:40, 11:41

NOTICE OF CLAIM

Generally, § 1:1-1:7, 3:1-3:12

Access to books and records, and submission to examinations, § 3:4

Circumstances under which failure to comply with notice requirement will be excused. § 1:2

Duty not to commit fraud or swear falsely, § 3:6

Duty not to enter into unauthorized settlements with injured party, § 3:9

NOTICE OF CLAIM—Cont'd OBLIGATIONS OF INSURER Duty not to release wrongdoer, § 3:7 —Cont'd Insurers duty to consent to release, Duty to pay that portion of a claim § 3:8 that is undisputed, § 2:22 Duty to cooperate, § 3:2 Effect of error in reservation of rights letter, § 2:15 Effect of breach of policy by one insured on coverage for innocent Effect of settlement with claimants co-insured, § 3:12 attorney Effect of unexcused delay, § 1:4 attorney was not authorized to settle on behalf of claimant, Forwarding of demand letters and § 2:33 suit papers, § 3:5 Failure promptly to respond to notice Notice received from source other than the insured, § 1:6 of claim Estoppel to deny coverage, § 2:3 Notice requirement, § 1:1 Notice to excess insurers, § 1:3 Incontestability clauses, § 2:32 Insurer deemed to have waived right Notice under a claims-made policy, § 1:7 to rescind, § 2:30 Proof of loss clauses, § 3:3 Insurer estopped from asserting right Release of insured from obligations to rescind, § 2:29 under insurance contract Insurer estopped from denying cover-After insurer denies coverage, after insurer denies coverage, failure to issue a reservation of § 3:10 rights letter, § 2:10 under other circumstances, Absence of conflict of interest, § 3:11 § 2:12 To whom notice must be given, § 1:5 Absence of control of insureds defense, § 2:11 **OBLIGATIONS OF INSURER** Existence of demonstrable prej-Generally, § 2:1-2:33 udice, § 2:13 Action by insurer inconsistent with Insurer precluded from denying rescission, § 2:31 coverage Based on concealment of material failure to issue a reservation of information not encompassed by rights letter, § 2:9 application, § 2:27 Insurers duty to investigate, § 2:5 Based on failure to supplement Insurers loss of rights, § 2:4 answers given in application, Investigation of claim prior to notify-§ 2:28 ing insured of coverage position, Consent by insured to defense offered § 2:6 subject to reservation of rights, § 2:17 Necessity of reservation of rights letter prior Contents of declination of coverage institution of a lawsuit against insured, § 2:8 Estoppel from asserting unmentioned policy defenses, Nonwaiver agreement, § 2:19 § 2:24 Notification of preliminary coverage Contents of reservation of rights letposition ter, § 2:14 insurer does not provide a defense,

Declination of coverage, § 2:23

claims, § 2:21

Duty promptly to pay undisputed

§ 2:20

Notifying insured of benefits to

which it is entitled, § 2:2

OBLIGATIONS OF INSURER

-Cont'd

Refusal to accept reservations when defense offered is inadequate, § 2:18

Rescinding policy, based on misrepresentations in application, § 2:26

Reservation of rights letter Notification of insurers preliminary

coverage, § 2:7
Supplemental reservation of rights letter, § 2:16

Waiver of unmentioned policy defenses, § 2:25

PHYSICAL DAMAGE, § 11:40

RIGHTS AND DUTIES AS BETWEEN INSURERS

Generally, § 7:1-7:10
Conflicting other insurance clauses, § 7:1

Recommended approach, § 7:2

Duty to defend owed to excess
insurer, § 7:9A

Duty to settle owed to excess insurer, § 7:8

RIGHTS AND DUTIES AS BETWEEN INSURERS

—Cont'd

Duty to settle owed to excess insurer, Effect of settlement by primary insurer for amount less than its policy limits, § 7:9

Duty to settle owed to primary insurer, § 7:8A

Liability of one insurer for another insurers deductible, § 7:7

Proration, Between insurers of defense costs, § 7:6

Proration, between insurers that provide indemnity coverage at the same level, § 7:4

Proration, Between primary insurers when there is excess insurance, § 7:5

Reinsurance, § 7:10

Resolving conflicting clauses, § 7:3

SEVERABILITY CLAUSE, § 11:8

UNJUSTIFIED REFUSAL BY INSURER TO DEFEND

Bad faith, § 4:38A