

California Practice Guide

INSURANCE LITIGATION

CHAPTERS 1-6

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Second District

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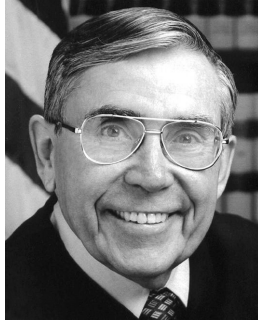


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ABOUT THE AUTHORS



IN MEMORIAM

Hon. H. Walter Croskey coauthored the first edition of this Practice Guide and remained actively involved in its annual revisions until his death in 2014.

For nearly three decades, he sat as an Associate Justice on the California Court of Appeal, Second District, Division Three, where he made stellar contributions to California law with his brilliant, scholarly and thoughtful opinions.

Indeed, Justice Croskey authored many of the landmark insurance decisions discussed in this Practice Guide. His lifelong work was to reach the fair and just decision.



ANNOUNCING RETIREMENT

Hon. Rex Heeseman (Ret.) has retired as an author of this Practice Guide. Judge Heeseman holds the distinction of being the last remaining original author, having served since the Guide's inception in the 1990s. Over the course of nearly four decades, he devoted thousands of hours to its development and improvement, bringing to that work an unwavering commitment to excellence. He is, in no small measure, responsible for the stature this

Guide has earned as a widely-respected and authoritative resource. Over his long and distinguished career, he also has served the California legal community not only as an author, but as a scholar, teacher, speaker, judge, and member of the Judicial Council and the Ninth Circuit Advisory Committee. His dedication, scholarship, and service have left an enduring mark on the law, on those who have had the benefit of his work, and on the colleagues who have enjoyed the privilege of working with him.



Jeffrey I. Ehrlich is the principal of The Ehrlich Law Firm, APC in Claremont, California. Mr. Ehrlich's practice focuses on providing appellate representation to the California plaintiffs' trial bar, particularly in insurance-related cases. He has briefed and argued appeals in the U.S. Supreme Court, the California Supreme Court, more than half of the federal circuit courts of appeals and every appellate court in California.

Mr. Ehrlich is certified as an appellate specialist by the California State Bar's Board of Legal Specialization. He is an emeritus member of the Board of Governors of the Consumer Attorneys Association of Los Angeles, and is Editor-in-Chief of that organization's *Advocate* magazine. He has been voted a Southern California Super Lawyer annually since the inception of the survey.

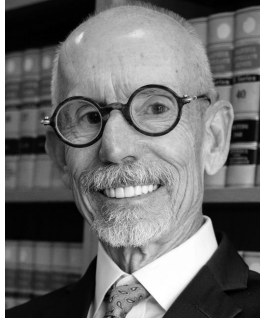
Mr. Ehrlich is a cum laude graduate of the Harvard Law School. He is a frequent author and speaker on appellate advocacy, legal writing, and insurance law, among other subjects.



Peter H. Klee is a partner with Sheppard, Mullin, in the firm's San Diego office. His focus is defending insurance companies and their affiliates that are sued in individual actions and class actions for bad faith, fraud, unfair competition and other torts. He has handled over 2,000 such cases throughout the country over the past 35 years. His client list includes most of the major insurance carriers doing business in California.

Mr. Klee has handled numerous jury trials in both state and federal court, and has consistently obtained favorable results for his clients in these contested proceedings. He is a member of ABOTA and a Fellow of the American College of Trial Lawyers, which limits its membership to the top 1% of trial lawyers in the United States and Canada. Mr. Klee is ranked by *Chambers USA* and has also been recognized as one of California's Top 100 Attorneys by the *Los Angeles Daily Journal*.

Mr. Klee is also a frequent lecturer on insurance issues, and has conducted training seminars for insurance organizations as well as lawyers.



Hon. Michael C. Kelley is a judge of the San Luis Obispo Superior Court, where he serves as the Civil Supervising Judge. Previously, Judge Kelley was a trial judge on the Los Angeles Superior Court. Judge Kelley has been appointed by the Chairperson of the Judicial Council to serve as justice pro tem of the Second District Court of Appeal, Divisions 1 and 6, on three occasions (2022, 2024 and 2026.)

Judge Kelley is a 1979 Graduate of the Yale Law School. He was a litigation partner in the international law firm, Sidley Austin, LLP until 2018, where he held various leadership positions, including Managing Partner of the Los Angeles office and member of the firmwide Executive Committee. Judge Kelley's practice focused on professional liability and securities litigation. He was recognized as a leading lawyer in the 2011-2017 editions of *The Best Lawyers in America* in three fields: Commercial Litigation, Securities Litigation, and SEC Enforcement.

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PREFACE

This Practice Guide evolved from materials prepared for judicial education programs presented by the California Judges Association and The Rutter Group. The purpose of these programs was to help judges, many of whom had limited experience in insurance litigation, hear and decide the increasing number of cases involving insurance law issues. These programs continued over a period of several years and the materials became increasingly comprehensive.

This Practice Guide subsumes those earlier efforts. It also incorporates and updates materials from the former *California Practice Guide: Bad Faith*, published by The Rutter Group.

The work before you is designed to provide concise, reliable answers to the issues most commonly encountered in insurance litigation.

Keep in mind, however, that there are many issues in this field to which there are no finite answers and upon which other lawyers and judges may disagree with our views. In addition, our analysis in a given area may be affected by rules and doctrines discussed under other topics. (We include many cross-references but cannot foresee every overlap.) The bottom line is that readers must ultimately rely on their own research and analysis of a particular case.

We are committed to keeping this Practice Guide up to date and re-writing it as required to reflect developments in the law. Our readers can also help. We welcome and invite your comments on how this work can be improved and on any changes or corrections that you deem appropriate.

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