

# THE BAD FAITH CLAIM AGAINST THE INSURER

## 1.0 INTRODUCTION

### 1.1 Definitions

## 2.0 WHAT CAUSE OF ACTION IS RELIED UPON

### 2.1 Breach of Contract

### 2.2 Tort

### 2.3 Breach of Fiduciary Obligation

### 2.4 Breach of a Statutory Duty

### 2.5 Summary

## 3.0 TO WHOM IS THE DUTY OWED

### 3.1 To the Insured

### 3.2 To the Claimant

### 3.3 Excess Insurer

### 3.4 To Persons Other Than The Insured - But Who Would Benefit From Settlement Within The Limits

### 3.5 Does the Insured Owe A Duty to the Insurer

## 4.0 STANDARD OF CARE REQUIRED OF AN INSURER

### 4.1 Bad Faith, Negligence of Absolute Liability

### 4.2 Test Used to Determine Whether Standard of Care has been met

### 4.3 Indications of Bad Faith

#### 4.3.1 the failure to investigate

#### 4.3.2 the failure to defend properly

#### 4.3.3 the failure to negotiate settlement

#### 4.3.4 the failure to inform

#### 4.3.5 failure to move promptly

## 5.0 THE ADDITIONAL OBLIGATIONS FACED BY THE INSURER IN BAD FAITH CLAIMS

### 5.1 Excess Judgment

### 5.2 Punitive Damages

### 5.3 Aggravated Damages

### 5.4 Interest

### 5.5 Costs

## 6.0 SUGGESTED APPROACHES TO BAD FAITH CLAIMS

### 6.1 Claimant's Approach (Third Party)

- 6.1.1 how much can you collect
- 6.1.2 make the offer
- 6.1.3 inform the insurer and the insured fully
- 6.1.4 demand an advance payment
- 6.1.5 proceed with the litigation without delay
- 6.1.6 prove the entire amount of your claim
- 6.1.7 consider subsequent offers to settle if the first one is not accepted
- 6.1.8 try to see that the insured is represented and well informed
- 6.1.9 do not lose sight of the magnitude of the claim
- 6.1.10 isolate the insurer

### 6.2 Claimant's Approach (First Party)

- 6.2.1 obligation of first party claimants
- 6.2.2 claimant's rights
- 6.2.3 remedies
- 6.2.4 summary

### 6.3 By the Insured

- 6.3.1 summary

### 6.4 Excess Insurer

### 6.5 By the Insurer

- 6.5.1 investigate
- 6.5.2 accept or deny coverage
- 6.5.3 assess liability and damages
- 6.5.4 make the offer
- 6.5.5 defend
- 6.5.6 advance payment
- 6.5.7 do not delay
- 6.5.8 involve the insured
- 6.5.9 avoid unnecessary conflicts

## 7.0 CONCLUSION