PROGRAM MATERIALS
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Advance Depositions: Strategies for Taking Depositions in Insurance Bad Faith Cases

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Non-Expert Depositions

Insurance Bad Faith Cases – Advanced Strategy

Advanced Strategy

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September 12, 2023

Our

Topics for Today

- Lay Depositions From Plaintiff Perspective
- Selection And Timing
- Importance Of Order
- Using The Claims File
- Reaching Outside The Claims File
- Using Rule 30(b)(6) Depos

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Kornblum “Basics”

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Overview From Plaintiff's Perspective

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Bad Faith Basics: Themes & Strategies

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The Plaintiff's Primary Goal

- Assess the merits of the case
- Establish the basis for your claims
- Present the claims consistent with standards that are applicable

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You are off

And Running

To challenge the insurer’s way of treating its insureds

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The Analytical Framework

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The Mission

- How do we translate the legal rules into a structure the jury can understand?

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Keep the Emotional Themes in Mind

- For the plaintiff – they control the issues and lead to a positive result

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The Three Tiers

- Breach of contract
- Bad faith / tort
- Punitive damages

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The First Tier

- Breach of contract:
- Contract damages only
- No tort recovery

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The Second Tier

- Bad faith / tort:
- Expanded damages – “extra contract” (i.e. beyond the contract)

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The Third Tier
Punitive Damages

Based on three factors

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The Third Tier

Punitive Damages

- Reprehensibility of conduct
- Wealth of defendant
- Relationship to compensatory damages

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The Third Tier
Punitive Damages

DON’T MAKE IT A CRAP SHOOT!

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Organize

The Issues

- The legal issues
- The emotional issues
- The institutional issues

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Back to Depositions

- Whom to “depose”
- Timing
- Key areas of inquiry
- Using the claims file

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Considerations For Policyholders: Think About How To Build Your Case

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Whom to Depose

- Decisionmakers (representatives, adjusters, etc.)
  - Supervisors (involved, not involved, management)
- Consider conformity with policies and procedure, ratification
- Insurance Agents
- Underwriting Personnel
- Non-insurance Company Witnesses
- Expert witnesses
  - Do you actually need to depose?

Timing

- In general, work your way up the organizational ladder
- Non-insurance company personnel depends on the details of the case

Senior Personnel/Officers

Involved Adjuster

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Key Areas Of Inquiry

- What they did and didn't do
- The decision-making process
- Information and resources available to the decisionmaker
- Policies and procedures
  - Standards for claim handling
  - Timeline for the process

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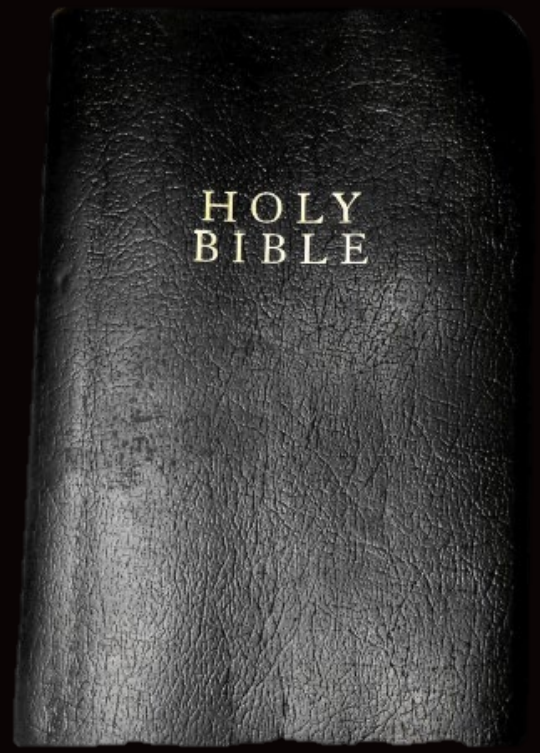
Using the Claims File

- The claims file is the Bible when it comes to these depositions.
- 95% of the time should be spent going through it.



Quick Hits

- Whom to “depose”
- Timing
- Key areas of inquiry
- Using the claims file

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30(b)(6) Depositions

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Plaintiff's Perspective re Rule 30(b)(6)

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Useful to Plaintiffs

- Yes
- Substitute for interrogatories
- Background information
- Admissions
- Information outside of the claims file
  - Getting data from an extraneous place
- Narrowly-tailored

Topics that may be Useful to Plaintiffs

- Basic information pertinent to the claim
  - Who was involved
  - How it was handled
  - Helpful for more complex types of claims
- Policies, procedures, and guidelines

Privleges:

How to Handle

- Seminal question: Is the defense asserting reliance on advice of counsel?
- Work product: Under whose direction were documents prepared, and was it in anticipation of litigation?
- Upjohn

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Drafting
Effective Notices

- Format. The formats used by practitioners vary widely. Some can be elaborate and look like a discovery request, with extensive definitions and numbered paragraphs for each topic. However, this is not required.
- Reasonable Particularity. The notice must set forth the "matters for examination" in sufficient detail that the entity can determine whom to designate and ensure that witness(es) can speak to those topics.
- Document Requests. Notice or subpoena can include a request for the production of documents pursuant to Rules 34 and 45, respectively.

Drafting
Effective Notices

- Additional Requirements for Subpoenas. A subpoena to a third party must also notify the deponent of meet and confer requirement and must also comply with Rule 45.
- Considerations. How detailed do you need to be? What topics do you specifically need to include in bad faith litigation?
- Deponent's Objections. The deponent can (and should) further define or limit scope through objections to the notice. These objections should be resolved through the normal meet and confer process. If there is no agreement, the matter can be resolved by the Court through either a motion to compel or a motion for a protective order.

30(b)(6) Witnesses

- Multiple Witnesses?
- Rule 30(b)(6) specifically allows for one or more witnesses, so the entity is not limited to one witness to testify about all topics.
- There are practical considerations – sometimes the greater the number of witnesses, the greater the burden. However, that may not be true if it will take a longer to educate one witness on matters beyond his or her purview. It also may be difficult for one witness to recall a very large amount of information.
- Are there any strategic considerations? Do multiple witnesses expand the total time allowed for the deposition or the total number of depositions a party may take?

30(b)(6) Witnesses

- Identity of Witness(es)
- "Deposing the Janitor" – There is no limitation regarding who may be designated and, technically, it does not even need to be a company employee.
- From a practical standpoint, it is more difficult to educate a witness than to name one who already has knowledge. However, it is often the case that the most knowledgeable person is no longer with the company.
- There may also be strategic considerations in terms of naming someone who will be a "better" witness. However, it is unlikely that you will keep a "bad" witness from being deposed by failing to designate them as the company witness.

30(b)(6) Witnesses

Questions:

If the insurer designates someone other than the claims handler for a 30(b)(6) deposition, what are the policyholder's options?

30(b)(6) Witnesses

- The entity can designate a specific fact witness as its 30(b)(6) witness (ex. in the case of an insurer, the claim handler).
- The entity can request that this be done in a single deposition. However, this can be tricky both for the party taking the deposition and the entity.
- As a practical matter, any witness who is an employee or former employee of the company who was involved in the transactions at issue is effectively testifying on behalf of the company and should be treated as such.

30(b)(6) Depositions

Scope of Questions and Testimony

- Scope of Questions. A 30(b)(6) deposition is different than a fact witness deposition because you know the topics in advance. Additionally, the deposition limited to "information known or reasonably available to the organization."
- Scope of Testimony. The entity can define the topics upon which a particular witness may testify and will not be bound if the witness testifies outside the scope of authority – at least in theory.

30(b)(6) Depositions

Scope of Questions and Testimony

- Other Limitations. Deposition topics are still subject to the scope and limits of Rule 26, including privilege and relevancy, although the latter is a fairly broad standard. The other provisions of Rule 30 also apply and, in the case of third-party depositions, Rule 45 may limit the scope further.
- Meet and Confer. Parties must meet and confer before the deposition regarding any disagreements as to the scope of testimony. The rule actually says "[b]efore or promptly after the notice or subpoena is served."

30(b)(6) Depositions
Scope of Questions and Testimony

Objections

Objections during the deposition are the same as in any other deposition. See Rule 30(c)(2). You can't instruct a witness not to answer except on the basis of privilege. Id. Accordingly, where a witness is asked to testify on a subject that is clearly beyond the scope of what has been noticed or for which the witness was designated, the witness may answer, but you will want a record that the witness does not speak for the company.

Privilege Issues

Questions:

If the insurer designates someone other than the claims handler for a 30(b)(6) deposition, what are the policyholder's options?

Use of 30(b)(6)

Testimony at Trial

- Fed R. Civ. P. 32(a)(3). "An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6)."
- Contrast with Non-Party Fact Witnesses. This is different than the rule for the use of depositions of non-party fact witnesses, which is limited to certain circumstances, primarily for: (1) impeachment; or (2) where witness is unavailable.

Use of 30(b)(6)

Testimony at Trial

Live Testimony at Trial

Rule 30(b)(6) specifically concerns depositions. There is no rule expressly authorizing live trial testimony by a corporate representative. Further, Federal Rule of Evidence 602 limits the scope of a witness's testimony to matters that are within his or her personal knowledge, which would seem to rule it out in the event of a corporate witness who lacks such knowledge.

Use of 30(b)(6)

Testimony at Trial

Personal Knowledge

The scope of "personal knowledge" has been defined somewhat broadly for corporate representatives. The witness will generally be permitted to testify as to matters learned by the witness through working for the company of from company records. Generally, this involves an inquiry into the quality of the information upon which a witnesses' knowledge is based. Fed. R. Evid. 701 also allows certain opinion testimony.

Use of 30(b)(6)
Testimony at Trial

Implications for Selecting a 30(b)(6) Witness

Because the limitations are generally greater for witnesses testifying at trial than for those appearing for a 30(b)(6) deposition, you should consider whether you will need to use the corporate witness' testimony at trial. Generally, you want to select a 30(b)(6) witness with a sufficient involvement in the relevant aspects of company operations to have or develop the requisite "personal knowledge." You should also be sure to provide the 30(b)(6) witness with access to reliable information.

A Final Comment On Privileges

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Thank You

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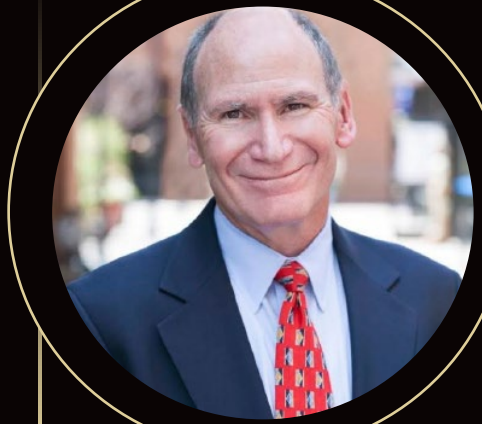

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Preparation of Your Client for Deposition

By Guy O. Kornblum

From what I can tell in my many years of taking depositions, not all lawyers do what is necessary for preparing a client for deposition. That deposition is the key to allowing your client to tell the story of the case and to set the case up for potential resolution. If thorough preparation is not done, the client is essentially left alone to figure out how to approach the process. So, let's go over what needs to be done to fully prepare your client for deposition testimony – to make sure we are doing our job to get our client ready for the process.

From a plaintiff's perspective, your client needs to be prepared to talk about issues relating to liability and damages. Truth is the goal, but sometimes clients do not understand how to talk about the truth. They can get confused, forget the question, and often fail to answer the question asked and thus become non-responsive. Obviously, that does not work.

The goal of client preparation for deposition is not to teach that client *what* to say, but *how* to respond to the question-and-answer process – which is far from the ordinary conversation process that is the day-to-day experience of anyone.

In my experience most clients are unfamiliar with the deposition process. Even if they have given a deposition before, you cannot trust that experience as being prepared for a deposition regarding the issues your client is facing now. My recommendation is that you simply start from scratch to be sure your client is fully prepared to tell the story of the case.

So, let's go over the preparation process.

Introduction to the Process

The deposition is not a "water fountain" conversation. Most likely, it is a very unfamiliar one to your client. So, you need to explain how it works. Topics to be discussed should include:

- Describe the process of a question posed with an answer to that question to follow.
- Consider showing your client what a transcript looks like after it is transcribed. This will give your client a visual picture and a better understanding of what a transcript of the testimony looks like.
- Note that your client will have an opportunity to review the transcript after it is transcribed. Explain that this is an opportunity to make sure the answers are correct.
- Stress that time should be set aside to complete this process, so your client commits to making sure the transcript is accurate.
- Explain how changes are to be made and the consequences of making them – i.e., that opposing counsel may inquire about the changes and the reasons. However, if the transcript is inaccurate, your client should not hesitate in correcting inaccuracies. See also my comment below.
- Explain how the transcript will be received, so it can be reviewed.
- Explain the need to sign the deposition and that this means the transcript is verified as accurate.
-

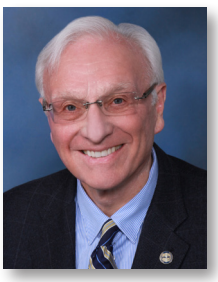
Prior Deposition Testimony

You should already know what your client's history is with litigation including any testimony at deposition. However, past experience does not necessarily mean your client knows how the process works. So, it is important that you cover the basics yourself as I have stressed.

The Deposition Process: The Guidelines for Testifying

The oath effect

Even though the deposition is being taken in a relatively informal setting, remind your client the testimony is under oath which requires "truth telling." I also tell my clients that this process is the same as if the testimony was in court. Not all clients understand this, so it is important



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to explain this.

Audible answers

Remind your client to answer audibly and only after the examiner has finished speaking, so the court reporter can take down each person's words with only one person speaking at a time.

Don't answer until you hear full question

In a normal conversation setting, my experience is that most participants do not wait for the other person to finish a thought; there are many interruptions and overlapping statements. Nothing frustrates a court reporter more than to have the questioner and witness talking at the same time. Only one person's comments can be recorded at a time, so the court reporter is likely to interrupt. So, explain the importance of waiting for the full question to be stated. Similarly, if the examiner cuts the witness off before a full answer is given, the witness should state as so.

Clear questions

Tell your client to advise the examining attorney if any question is unclear in any way, after which the examining attorney will reword the question. Stress the importance of making sure the full question is before your client and fully understood by your client before an answer is given.

No guessing

Tell your client not to guess when providing responses but, if appropriate, provide estimates based on their best recollection.

Use words, not gestures

If a question calls for a yes or no answer, tell the deponent to answer "yes" or "no" rather than with a nod or a shake of the head. But if that answer does not provide complete information about the subject matter, your client should be told to say so, and add any additional information to provide a complete answer to the question.

Right to break

Advise your client that they are entitled to request a break at any time to confer with counsel, to use the restroom, or for any other reason.

Heads up on objections

Explain that you or other attorneys may make objections to questions or move to strike responses to questions – which are objections for the judge to consider later. Advise your client that they are required to answer unless there is an instruction to not answer.

The Objection/Instruction Process

Review this process with your client. I tell my clients that if I (or another attorney present) objects, they are not to answer the question until I give the "OK." I also explain that if I give an instruction not to answer a question, nothing further needs to be said. We move on to the next question.

Recording rules

Explain that the court reporter is recording all the questions, answers, and objections and will reduce that information to booklet form after the deposition ends, at which point your client will have the opportunity to read the transcript and correct any inaccuracies.

Explain the post deposition review process

Go over the process of reviewing the transcript during the post-deposition process, and how you chose to complete that process. You should review the rules on changing and finalizing the deposition transcript. (See Cal. Code Civ. Proc. § 2025, 520; Rule 30(e), Fed. Rule Civ. Proc.)

Changing testimony

Explain that if your client makes changes in their testimony that are inconsistent with the answers given during the deposition, the examining attorney will be entitled to comment on those discrepancies at trial to possibly question the deponent's veracity.

Conclusion

Good and thorough preparation means a quality deposition that allows your client to tell what happened and allows you to describe the impact on your client's life. ■

DEPOSITION PRELIMINARIES

BACKGROUND

A. Name /formal/use/nickname
B. Where lives
C. Occupation
D. Where employd currently
   a. How long employed.
   b. Job title/position.
E. Alternate contact information.

INTRODUCTION TO PROCESS

- Describe process.
- Q and A.
- Booklet
- Have an opportunity to review after.
- CR will arrange
- Review and sign
- Provide any changes in testimony

PRIOR DEPOSITION TESTIMONY

A. Been deposed before –
B. Particulars
   - How many times? Last time?
   - Ho..
   w many times while employed at State Farm?
C. 00Familiar with how deposition works and the ground rules
D 3.. Ever testified in trial concerning claims you worked on
   - Particulars
   - How many times? Last time?

DEPOSITION ADMONITIONS

1. **Prior depositions.** Ask whether the deponent has ever been deposed before and, if so, the specifics about that lawsuit, the role of the deponent in the lawsuit, and its conclusion. This will show the deponent's familiarity with the requirements of testifying and will determine whether the deponent has been involved in related litigation or proceedings
2. **The oath effect.** Even though the deposition is being taken in a relatively informal setting, remind the deponent that he or she is under oath, has sworn to tell the truth, and the effect of that oath is the same as if he or she was testifying in court.

3. **Audible answers.** Tell the deponent to answer audibly and only after the examiner has finished speaking, so the court reporter can take down each person's words with only one person speaking at a time.
4. **Don't answer until you hear full question.** Wait until completed before you begin answer.
5. **Clear questions.** Ask the deponent to advise the examining attorney if any question is unclear in any way, after which the examining attorney will reword the question.
6. **No guessing.** Tell the deponent not to guess when providing responses but, if appropriate, provide estimates based on his or her best recollection.
7. **Use words, not gestures.** If a question calls for a yes or no answer, tell the deponent to answer "yes" or "no" rather than with a nod or a shake of the head.
8. **Right to break.** Advise the deponent that he or she is entitled to request a break anytime to confer with counsel, to use the restroom, or for any other reason.
9. **Heads up on objections.** Explain that other attorneys may make objections to questions or answers; they are objections for the judge to consider later. Advise the deponent that he or she is required to answer unless, as a party, he or she is told not to by counsel.
10. **Recording rules.** Tell the deponent that the court reporter is recording all the questions, answers, and objections and will reduce that information to booklet form after the deposition ends, at which point the deponent will have the opportunity to read the transcript and correct any inaccuracies.
11. **Changing testimony.** Explain that if the deponent makes changes in his or her testimony that are inconsistent with the answers given during the deposition, the examining attorney will be entitled to comment on those discrepancies at trial to question the deponent's veracity.

INSTITUTIONAL BAD FAITH, INDUSTRY STANDARDS, CARRIER COMPENSATION, ETC.: A COMMENT OR THREE

By: Guy O. Kornblum[1]

I. INTRODUCTION.

Evidence, evidence, evidence, where do I find the evidence in a case seeking contract and extra-contract damages against an insurer? More important is the question: when I talk about "evidence", what do I mean? For me this means that which is admissible and serves as proof of misconduct by an insurer given the standards for the jurisdiction in which the matter is being litigated or tried.

This paper and my presentation will focus on some areas where "evidence" can be found to support your case.[2] Bear in mind, there are many articles available online or otherwise on these topics, so I have only cited to a few who represent the

[1] Mr. Kornblum is the principal in the law firm of Guy O. Kornblum, A Professional Law Corporation, with offices in San Francisco, California. He is certified in Civil Trial Advocacy by the National Board of Trial Advocacy. He has handled all types of civil litigation over his career with an emphasis personal injury, insurance and professional liability cases. He is a member of both the California and Indiana bars, and practices in all court in those jurisdictions. He has been handling insurance claims of all kinds, among other types of cases, his whole career. His website is www.kornblumlaw.com.

[2] A comprehensive article on this whole topic is: Insurance Bad Faith: *Strategies for Avoiding or Pursuing Claim*s, American Law Institute Continuing Legal Education Webinar, May 28, 2015, http://www.alvarezfirm.com/uploads/Insurance%20Bad%20Faith%20-%20Strategies%20for%20Avoiding%20or%20Pursuing%20Claims%20(rev.).pdf. See also: *Insurance 'Bad Faith' Basics, Part II*, California Business Law Practitioner, California Continuing Education of the Bar), Volume 24, Number 4, Fall 2009; *Insurance 'Bad Faith' Basics, Part I,* California Business Law Practitioner, California Continuing Education of the Bar, Volume 24, Number 3, Summer 2009. For those handling third party failure to settle cases, they must be aware of *Pinto v. Farmers Ins. Exch.*, ___ Cal. App. 5th ___ (2021), which held that plaintiff must not only present evidence that the offer to settle a liability case was reasonable but the failure to do so was unreasonable.

body of literature available. Certainly what I have cited as written or virtual materials is not comprehensive.

II. USE OF INDUSTRY STANDARDS.

"Industry standards" is a mixed bag. If the company follows what is identified as an industry standard, does not mean the company has acted in compliance with any "good faith" requirements so that extra contractual damages are not supported by that evidence? Or, can it be argued that the "industry standards" are themselves a violation of the "good faith" requirements? This would require expert testimony regarding the standard that complies with the "good faith" requirements.

This sometimes comes out as evidence of "custom and practice" – that is, the insurer will argue that the "custom and practice" in the industry is to follow the course that the insurer did, so that means that it acted in "good faith" and not "badly". But what if the "custom and practice" is contrary to what is required to comply with appropriate claims practices? Does the fact that the insurer does what other insurers do insulate it from being in "bad faith"? Can it be argued that "institutional bad faith" claims practices make the conduct even more egregious and thus subject to punitive damages? Why not?[3]

III. POLICIES, PROCEDURES, GUIDELINES AND CLAIMS STANDARDS.

[3] *Larsen v. One Beacon Ins. Co*., 2013 WL 5366401 (Dist. Colo. 9/25/13). Here, the court held hat to succeed on a bad faith claim a plaintiff must show that an insurer's conduct was unreasonable, which is determined objectively according to standards generally applicable to the insurance indu8styr. Since neither party had produced such evidence from experts or other sources establishing the relevant industry practice, summary judgment could not be granted. It held that such evidence was essential for it to rule on the emotions.

In my experience most insurers have "claims procedures" which are written and treated only as "guidelines" rather than absolute rules. If they do not they have to explain how there is consistency in their claims handling process.

Written guidelines are of three types. First the "short list" of guidelines/procedures which are so loose and flexible they are subject to considerable interpretation in their application. They are there to make it appear that the insurer has claims guidelines to satisfy any requirements for such.[4]

Second, in my experience, most insurers make san attempt to provide claims handling guidelines, but they are very general, repeat any general statutory requirements, or are broadly worded. While these may set standards, they are often just a recitation of what the claims guidelines are for a particular jurisdiction.

Third, there are some insurers that have more specific guidelines for some types of claims, but perhaps not all. This usually happens if an insurer is in a specialty market involving insurance for a particular type of risk, *e.g.* certain risks by industry (auto retail, grocery chains, etc.)

Nonetheless, a fertile field for discovery is to examine the development these claims guidelines and how and why they were adopted. Certainl8y an insurer does not want to set itself up for a checklist of violations by creating a detailed a list of what a claims examiner should do in various types of claims simply because a departure from these guidelines results in an explanation for why the departure or exception from the standard.

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[4] See*, e.g.* California Ins. Code §790.03(h)(3) which states that it is an unfair claims practice for an insurer to fail "to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies." See also Cal. Admin. Code §2695.2(k) re the definition of "investigation" as "all activities of an insurer or its claims agent related to the determination of coverage, liabilities, or nature and extent o floss or damage for which benefits are offered by an insurance policy…." See also, Cal. Admin. Code 2695.7(d) which requires an insurer to "conduct and pursue a thorough, fair and objective investigation. . ." of a claim.

IV. COMPENSATION PROGRAMS.

Compensation programs tied to performance may be a fertile field –at least they were at one time. Now insurers are smarter and do not tie compensation to any sum related to the number of claims paid or average claims "cost" per claims handler. These types of programs encourage claims handlers to deny or limit claims payments for reasons other than the merits of the claims.

V. CLAIMS DEPAERTMENT STRUCTURES.

This is still a fertile field for "institutional bad faith". This opportunity appears in several situations. For example, the authority for the first line adjuster may be low, and so that adjuster must seek authority from another to pay a claim over the limit. This process may be cumbersome and require memos, conferences or other procedural hurdles. Or, the process may be quite "loose" to avoid making a record of that process, which may be fodder for an insured's counsel to pursue. Instead, the insurer may chose to simply make a record of only the result or final decision.

Even if the claims handler has sufficient authority, the next level above may have sufficient control over the claims process or unit in which the claims handler functions that the latter knows he/she has to be very careful in paying a claim up to his/her authority. This is "benign intimidation" by the supervisor.

Another scenario results when the there is a "committee" structure which requires the claims handler to seek "permission" from a "group" to pay at a certain level. The Committee may or may meet officially to discuss the merits of the claims. Sometimes, this is just "cosmetic" – that is a formal meeting does not take place, but there is an email circulated with the facts of the claim outlined and the "members" of the committee then cast a vote of the authority granted.

Since these committee members are all employed by the same insurer, you can be sure there are "water fountain" conversations about the claims or informal discussions that take place. A review by a co-worker who is supposedly conducting an independent review of the claim is not "independent" and can be challenged on its face.

VI. "PATTERN AND PRACTICE" DISCOVERY[5]

Pattern and practice discovery means, of course, that you conduct discovery into the common claims operations of the insurer which is i) a one sided effort to discourage claims, ii) a pattern of denials which is based on a course that is deemed a violation of the "good faith" claims rules for investigation, evaluation and assessment of a claim. The focus pf this discovery is to establish that the company repeatedly conducts it claims handling in an adversarial manner so as to develop claims facts which support a denial.

Under California law, evidence demonstrating that the defendant insurance company has engaged in a widespread illegal practice or a practice that has been harmful to its insureds is directly relevant to not only proving bad faith, but also to establishing a punitive damage claim.[6]

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[5] A leading case in this area is *Colonial Life & Accident Ins. Co. v. Superior Court* (1982} 31 Cal.3d 785, in which the court found that evidence of discovery of the names and records of the claimants with whom the insurer's claims adjuster attempted settlements was relevant to the subject matter of the action and might lead to admissible evidence. Many cases since have dealt with this topic since this case was decided. See

[6] As noted, there is a good deal of material written on this topic. One article I found worth reviewing is: *Pattern and Practice Evidence in Bad Faith Cases.*, ADVOCATE (June 2011). https://scottglovsky.com/wp-content/uploads/2011/07/AdvocateJune2011article1.pdf.

It is often difficult to develop this evidence because most companies, even if they engage in this process, are clever at hiding this corporate practice by using the different claims facts to argue that "each claim, is handled on its own merits, etc."

So how to do you make this inquiry in a way that is likely to lead to something that is useful (that is "admissible") to support your argument that the insurer use its claims mechanism in this adversarial manner?

The first thing that comes to mind is the use of claims evaluation tools such as computer based mechanisms as Colossus.[7] This is basically a "soft tissue" evaluation tool but it is often used beyond its original design. Nonetheless, claims handlers are often 'fixed" on what these computer based evaluation tools "spit out" and are stuck to remain within the "values" they obtain. This leads to a dead end by the claimant's counsel since it is hard to break through the computers value range without a higher authority to override those values.

Second, look for referrals of claims to particular units or "shifting assignments" which could indicate that the claim is sent to a special (disguised) unit that has the implicit assignment of declining certain types of claims (particularly soft tissue or accidents with no eye witnesses), and giving these claims a more "thorough" investigation than what might be anticipated. This includes special

[7] Colossus is an "artificial intelligence" software program used by insurance companies to lower the amount they pay out on auto accident insurance claims. Colossus and similar programs evaluate nearly all auto accident cases..
https://www.google.com/search?rlz=1C1CHZL_enUS735US735&sxsrf=AOaemvIjYBY_JbYkCDE35QKfu9IwKBULAQ%3A1638143434402&lei=yhWkYc75F5Hs9AOfjpr4BQ&q=colossus%20claims%20software&ved=2ahUKEwjOhv7rn7z0AhURNn0KHR-HBl8QsKwBKAB6BAg7EAE&biw=1177&bih=609&dpr=1.56.
It has its detractors. https://accidentvalues.com/info/insurance/beat-colossus/.

units which are designed to investigate suspected fraud claims, sometimes referred to as the "SIU" ("Special Investigation Unit").[8]

VII. ADVERTISING AND MARKETING MATERIALS

Advertising and slogans can be used to pump up the expectations of insureds as to what they believe their carrier will do for them if a claim is made. However, it is unlikely that such slogans such as the familiar "Good Hands" of "Good Neighbor" do little to confirm a representation on which a customer can rely to support a bad faith claim. There needs to be more, such as specific statements in materials, brochures of other information supplied to the prospective insured to develop support for a "bad faith" claim or possibly fraud.

These slogans and materials may very well be admissible just to develop the insured's expectations of how claims will be handled. Oral statements of an sales agent can also be helpful in supporting the basic "bad faith" claim rather than getting into the proof and standards for relying on fraud.

VIII. CLAIM AUDITS

Claims audits are highly protected from discovery by insurers. They will fight hard to protect any audits or reviews of claims handling from discovery. To have a hope of accessing this information you need to assess the basis for such and

[8] https://www.geico.com/claims/claimsprocess/special-investigations-unit/. See also. 10 Cal. Admin. Code § 2698.36. {"Investigating Suspected Insurance Fraud").

be prepared to present that the court on the motion that will be required to force the carrier to allow discovery in this area.

IX. INGRAINED POLICIES AND REPITITION OF "BAD FATIH" CLAIMS PRACTICES

An important question in your case is: Is this about an individual claim and a violation of the rules regarding claims in that contest or is this about a company that has an established process of not meeting the good faith claims handling rules that apply for the investigation.

However, you first have to establish that the claims handling process violated the standards applicable – which can depend on the basic rules of insurance company claims handling for your jurisdiction. Nonetheless, and despite some variation in the language of the principles as reflected in statutes and administrative rules for governing insurance company conduct, the basic principles that emerge are not too different:

I subscribe to the notion that "bad faith" cases are very first claim specific. You need to first establish a basis for wrongdoing in the claims handling itself, and then proceed to go outside that claim to develop a pattern and practice or ongoing system of an "adversarial" claims process rather than one that is insured friend.[9]

[9] "Proving Institutional Bad Faith" https://www.vpm-legal.com/Proving-Institutional-Bad-Faith.pdf . "Defending Institutional Bad Faith Claims, Part I – a Primer on Institutional Bad Faith<' (November 19, 2019). https://www.jdsupra.com/legalnews/defending-institutional-bad-faith-46575/.