# TABLE OF CONTENTS

## Chapter 1: INTRODUCTION TO INSURANCE BAD FAITH IN NEW JERSEY

| §1:01  | Introduction                                                                 | 1 |
| §1:02  | Historical Development of Insurance Bad Faith in Other Jurisdictions          | 2 |
| §1:03  | Common Law Development of Insurance Bad Faith Law in New Jersey               | 3 |
| §1:04  | Statutory Law Applicable to Insurance Claims in New Jersey                   | 4 |
| §1:05  | Procedural Issues Arising in Bad Faith Actions                               | 5 |
| §1:06  | Court Decisions Concerning What May Be, And What is Not, Bad Faith           | 5 |
| §1:07  | Damages Recoverable in a Bad Faith Action                                    | 9 |
| §1:08  | Discovery in Bad Faith Litigation                                            | 10 |
| §1:09  | Preemption Issues                                                           | 11 |

## Chapter 2: HISTORICAL DEVELOPMENT OF BAD FAITH

| §2:01  | Overview                                                                    | 13 |
| §2:02  | Third Party Insurance Claims                                                | 14 |
| §2:03  | First Party Insurance Claims                                                | 15 |
| §2:04  | Development of the Law of Third Party Bad Faith in Other Jurisdictions       | 17 |
| §2:05  | Development of the Law of Third Party Bad Faith in New Jersey               | 20 |
| §2:06  | Development of the Law of First Party Bad Faith in Other Jurisdictions       | 25 |
| §2:07  | Development of the Law of First Party Bad Faith in New Jersey               | 30 |

## Chapter 3: ROVA FARMS AND PICKETT: THE SEMINAL CASES

| §3:01  | Overview                                                                    | 33 |
| §3:02  | Insurer’s Failure to Settle Third Party Claim Against Its Insured:          | |
|        | Rova Farms Resort, Inc. v. Investors Insurance Company of                   | |

Insurance Bad Faith in Pennsylvania
TABLE OF CONTENTS

*America*, 65 N.J. 474 (1974) ............................................ 34


§3:04 Analysis ........................................................................... 52

**Chapter 4: INSURED’S COMMON LAW RIGHTS AND REMEDIES ARISING FROM INSURER’S BAD FAITH CONDUCT**

§4:01 Introduction .......................................................................... 56

§4:02 Cause of Action for Insurer’s Unreasonable Failure to Settle Third Party Claim Against Its Insured (*Rova Farms*) .......... 57

§4:03 Cause of Action for Insurer’s Failure to Process Insured’s First Party Claim in Good Faith (*Pickett*) ........................................ 60

§4:04 Cause of Action for Insurer’s Failure to Process Insured’s Third Party Claim in Good Faith ................................................ 63

§4:05 Cause of Action for Insurer’s Bad Faith Denial of Coverage in First Party Claim .............................................................. 63

§4:06 Cause of Action for Insurer’s Bad Faith Denial of Coverage in Third Party Claim .............................................................. 65

§4:07 Estoppel Resulting From Insurer’s Failure to Timely Investigate and Communicate With Its Insured Regarding Third Party Claim ................................................................. 67

§4:08 Estoppel Resulting From Insurer’s Failure to Timely Investigate and Communicate With Its Insured Regarding First Party Claim ........................................................................ 71

§4:09 Analysis ........................................................................... 72

**Chapter 5: NEW JERSEY STATUTES APPLICABLE TO INSURANCE CLAIMS**

§5:01 Introduction .......................................................................... 76

§5:02 The Insurance Trade Practices Act, Unfair Claims Settlement Practices Act, and Related Regulations ......................... 76

§5:03 —Cases Holding that the Insurance Trade Practices and Unfair Claims Settlement Practices Acts Do Not Provide an
TABLE OF CONTENTS

Insured With a Private Right of Action ........................................ 84
§5:04 — Cases Discussing Whether a Violation of the Insurance Trade Practices and Unfair Claims Settlement Practices Acts or Related Regulations is Relevant to a Bad Faith Action .......... 89
§5:05 The New Jersey Consumer Fraud Act .................................. 99
§5:06 — Cases Discussing Whether Insurers May Be Liable Under the Consumer Fraud Act ................................................ 100
§5:07 A Statutory Bad Faith Remedy? ............................................ 115
§5:08 Summary ............................................................................ 117

Chapter 6: PARTIES TO A BAD FAITH ACTION

§6:01 Introduction .......................................................................... 121
§6:02 Who May Bring a Bad Faith Action ..................................... 122
§6:03 — Cases, Assignee's Right to Bring Bad Faith Action ................................................ 124
§6:04 — Cases, Excess Insurer's Right to Bring Bad Faith Action ................................................ 136
§6:05 Who May be Sued for Bad Faith .......................................... 144
§6:06 — Cases ............................................................................. 146

Chapter 7: DEFINING INSURER BAD FAITH: APPLICABLE STANDARDS AND LIMITATION OF SCOPE

§7:01 Introduction .......................................................................... 158
§7:02 Standard Applicable In Cases Alleging the Unreasonable Failure to Settle a Third Party Claim ........................................ 159
§7:03 — Cases ............................................................................. 160
§7:04 The “Fairly Debatable” Standard Applicable to Claims Alleging Bad Faith Denial of Policy Benefits ................................ 164
§7:05 — Cases ............................................................................. 168
§7:06 The Standard Applicable to Alleged Bad Faith Claims Processing: No Reasonable Basis and the Knowledge or Reckless Disregard of Same ........................................ 175
§7:07 — Cases ............................................................................. 177
TABLE OF CONTENTS

§7:08 Negligence or Bad Judgment Is Not Bad Faith .................. 180
§7:09 — Cases................................................................. 180
§7:10 Limitations on the Scope of a Bad Faith Action ....... 183
§7:11 — Cases................................................................. 184
§7:12 Analysis................................................................. 192

Chapter 8: PROCEDURAL ISSUES IN BAD FAITH ACTIONS
§8:01 Pleading Bad Faith......................................................... 200
§8:02 Who Decides if Bad Faith Exists? ................................. 202
§8:03 Statute of Limitations Issues........................................ 206
§8:04 Motions to Dismiss ...................................................... 212
§8:05 Motions for Summary Judgment.................................... 218
§8:06 Miscellaneous Procedural Issues................................. 225
  — §8:06(a) Bad Faith and the Entire Controversy Doctrine .... 225
  — §8:06(b) Removal of Bad Faith Actions to Federal Court .... 228
  — §8:06(c) Class Certification Unlikely in Bad Faith Cases .... 232
  — §8:06(d) Posting Supersedeas Bond After Third Party Excess
    Verdict ........................................................................ 233
  — §8:06(e) Appeal of Trial Court Decision on Policy Coverage
    Generally Not Permitted Until Disposition of Bad Faith Claim .................................................................... 235
  — §8:06(f) Contribution and Indemnity Not Available to Insurers in
    Bad Faith Actions.......................................................... 236

Chapter 9: EXAMPLES WHERE COURTS HAVE FOUND BAD FAITH MAY EXIST
§9:01 Overview........................................................................ 240
§9:02 Unreasonable Failure to Settle Third Party Claim Within Policy
  Limits (Rova Farms).......................................................... 242
§9:03 — Cases......................................................................... 245
§9:04 Bad Faith Delay in Processing First Party Claim
  (Pickett)........................................................................... 285
§9:05 — Cases ......................................................................... 289
§9:06 Bad Faith Delay in Processing Third Party Claim ............ 297
§9:07 — Cases ......................................................................... 299
TABLE OF CONTENTS

§9:08 Unreasonable Denial of Coverage for First Party Claim ................................................................. 304
§9:09 — Cases ................................................................................................................................. 307
§9:10 Unreasonable Denial of Coverage for Third Party Claim .............................................................. 321
§9:11 — Cases ................................................................................................................................. 323
§9:12 Estoppel Resulting From Insurer’s Failure to Timely Investigate and Communicate With Its Insured Regarding First or Third Party Claim .............................................................. 325
§9:13 — Cases ................................................................................................................................... 328

Chapter 10: EXAMPLES WHERE BAD FAITH HAS BEEN FOUND NOT TO EXIST

§10:01 Introduction .......................................................................................................................... 350
§10:02 Insurer Takes Reasonable Position Regarding Settlement of Third Party Claim ......................... 352
§10:03 — Cases ................................................................................................................................. 355
§10:04 No Bad Faith Delay by Insurer in Processing First Party Claim .................................................... 366
§10:05 — Cases .................................................................................................................................. 368
§10:06 No Bad Faith Denial of Benefits by Insurer in First Party Claim .................................................... 380
§10:07 — Cases, Court Finds No Benefits Due Under Applicable Policy .................................................. 387
§10:08 — Cases, Court Finds Insurer’s Denial of Benefits Wrong, But Reasonable ..................................... 405
§10:09 — Cases, Court Finds Insurer’s Claims Decision Reasonably Based Upon Suspected Fraud or Misrepresentation by Insured ...................................................................................... 411
§10:10 — Cases, Court Finds Insurer’s Claims Investigation Reasonable .................................................. 417
§10:11 —Cases, Court Finds Questions of Fact Regarding Insurer’s Coverage Decision .......................... 420
§10:12 No Bad Faith in Denial of Benefits by Insurer in Third Party Claim .................................................. 436
§10:13 — Cases, Court Finds No Benefits Due Under Applicable Policy .................................................. 440
§10:14 — Cases, Court Finds Insurer’s Denial of Benefits Wrong, But
# Table of Contents

### Reasonable

§10:15 Alleged Improper Conduct by Insurer Held to Not Rise to the Level of Bad Faith ................................................................. 456

§10:16 — Cases ........................................................................ 458

§10:17 Court Rejects Insured’s First or Third Party Bad Faith Estoppel Claim ............................................................................. 470

§10:18 — Cases ........................................................................ 470

### Chapter 11: Amounts Recoverable from an Insurance Company for Bad Faith Conduct

§11:01 Overview ........................................................................ 476

§11:02 Recovery of Amount of Verdict in Excess of Liability Policy Limits ..................................................................................... 478

§11:03 — Cases ........................................................................ 479

§11:04 Other Compensatory Damages for Insurer Bad Faith Conduct .............................................................................................. 487

§11:05 — Cases ........................................................................ 488

§11:06 Recovery of Attorneys’ Fees — N.J. Court Rule 4:42-9(a)(6) ................................................................................................. 497

§11:07 — Fee Awards for Claims Under a Liability or Indemnity Policy .......................................................................................... 503

§11:08 — Rule 4:42-9(a)(6) Held Inapplicable to First Party Claims ...................................................................................................... 510

§11:09 — Fee Awards for PIP Claims ............................................. 513

§11:10 — Fee Awards in Bad Faith Cases ....................................... 517

§11:11 Recovery of Pre-Judgment Interest ....................................... 520

§11:12 — Cases ........................................................................ 522

§11:13 Analysis ........................................................................... 528

### Chapter 12: Claims for Punitive Damages in Bad Faith Actions

§12:01 Introduction ....................................................................... 533

§12:02 New Jersey Law Regarding Imposition of Punitive Damages,
# Table of Contents

- **Generally** ........................................................................................................ 536
- **§12:03** Constitutional Limitations on Punitive Damages Awards .................................................. 538
- **§12:04** Requirement of “Egregious Circumstances” in Addition to Bad Faith for Imposition of Punitive Damages ........................................................................ 544
- **§12:05** New Jersey Court Decisions Discussing Punitive Damages in the Context of Insurance Bad Faith Allegations ........................................................................ 546
- **§12:06** — Cases Suggesting that a Punitive Damages Claim May Proceed ............................................. 550
- **§12:07** — Cases Not Allowing Punitive Damages Claim to Proceed ....................................................... 559
- **§12:08** Analysis ........................................................................................................... 578

## Chapter 13: DISCOVERY IN BAD FAITH LITIGATION

- **§13:01** Overview ................................................................................................. 581
- **§13:02** Discovery Issues in Other Jurisdictions ......................................................... 582
- **§13:03** Discovery Issues in New Jersey ........................................................................ 588
- **§13:04** — Cases, Attorney Communications and Work Product .............................................. 593
- **§13:05** — Cases, Other Discovery Issues ...................................................................... 603

## Chapter 14: PREEMPTION OF BAD FAITH CLAIMS

- **§14:01** ERISA and Bad Faith .................................................................................. 615
- **§14:02** — U.S. Supreme Court Decisions Regarding ERISA Preemption ......................... 616
- **§14:03** — Decisions Within the Third Circuit Regarding ERISA Preemption ...................... 620
- **§14:04** — Recent District Court Cases .......................................................................... 622
- **§14:05** Other Federal and State Statutes and Bad Faith .................................................. 633
- **§14:06** — Cases ........................................................................................................ 634

APPENDIX OF REGULATIONS .................................................................................. 641

TABLE OF AUTHORITIES ......................................................................................... 657

TOPICAL INDEX ........................................................................................................ 669

SELECTED BIBLIOGRAPHY ..................................................................................... 677

Insurance Bad Faith in Pennsylvania

TOC-vii