

American Conference Institute's 19th National Advanced Forum on

BAD FAITH LITIGATION

The essential forum that shapes the future of bad faith litigation strategies for leading outside counsel, in-house counsel and claims examiners in the insurance industry

APRIL 29-30, 2009 – GRAND HYATT SAN FRANCISCO – SAN FRANCISCO, CA

HEAR FROM THESE RENOWNED JURISTS:



Hon. Catharina Haynes
U.S. Ct. of App., 5th Cir



Hon. Ralph E. Tyson
U.S. Dist. Ct., M.D. La.



Hon. W. Royal Furgeson, Jr.
U.S. Dist. Ct., W.D. Tex.



Hon. Lloyd George
U.S. Dist. Ct., D. Nev.



Hon. Ann Montgomery
U.S. Dist. Ct., D. Minn.



Hon. Mark Davidson
11th Civ. D. Ct., Harris Co.



Hon. Arthur Boylan
U.S. Dist. Ct., D. Minn.



Hon. Robert B. Collings
U.S. Dist. Ct., D. Mass.



Hon. F.A. Gossett III
U.S. Dist Ct., D. Neb.

EXPERIENCED INSURANCE SPECIALISTS FROM:

Travelers • Infinity Property and Casualty • Lancer Insurance • MedMarc...and many others

...will help you:

- MANEUVER your way through the bad faith litigation process and ESTABLISH claims handling and litigation parameters
- ANALYZE the newest claims, defenses and decisions, including in **hotbeds like California, Florida, and Pennsylvania**
- EVALUATE **which cases to settle** and which to prepare for trial
- AVOID and DEFEND against “**bad faith set-ups**”
- STRENGTHEN your case by narrowing the scope of **discovery** and preserving **attorney-client privilege**
- DETERMINE when **mediation** is the best option for your case
- UTILIZE the pleadings stage to glean an advantage in the development of evidence and structuring of dispositive motions
- USE the pre-trial phase to implement credible, winnable **themes**
- DETERMINE whether there is **fraudulent joinder** and OVERCOME **removal** obstacles
- MINIMIZE the risk of **punitive damages**
- AVOID voir dire mistakes and PERSUADE **jurors** to see your client's point of view

DON'T MISS THE INTERACTIVE WORKSHOPS

A | **Fundamentals of Bad Faith Litigation**
April 29, 2009 – 8 a.m.-10 a.m.

B | **The Bad Faith Trial – Winning Approaches to Implement into Your Trial Strategies**
April 30, 2009 – 2:30 p.m.-5:30 p.m.

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The risk of **BAD FAITH CLAIMS** devastating your company are evident:

- ✓ Las Vegas jury returns \$60 million verdict in bad faith insurance case
- ✓ Arbitrators assess \$8.4 million in punitive damages against health insurer
- ✓ As the economy declines, bad faith litigation claims are increasing. The past 12 months have seen a large boost in the number of claims being filed against insurance companies.

With courts continuing to return record breaking judgments against insurance companies and the increase in litigation, there has **never been a more important time to adequately maneuver your way through the bad faith litigation process**, including learning how to utilizing the pleadings stage to glean an advantage in the development of evidence and structuring of dispositive motions, implement credible case themes, and properly manage the discovery phase, among others.

At **American Conference Institute's 19th National Advanced Forum on Bad Faith Litigation**, the best and the brightest in the bad faith industry will share their insight and winning strategies on these and other critical issues. Through an exceptional faculty of in-house counsel and claims examiners, outside defense and plaintiff's counsel, as well as **nine renowned jurists**, this conference will provide even the most seasoned professionals with confidence and clarity on today's paramount bad faith issues facing the insurance industry.

Whether your case ends with a jury verdict or in settlement, this forum will provide you with up-to-date information and strategies on how to get the most favorable result for your client. **Featuring two judicial panels from jurisdictions around the country and an in-house counsel and claims examiner panel**, *no other conference in the industry allows you to interact and benchmark with the leaders in the industry while hearing the theories and defenses that are most effective, how to weigh evidence, and which arguments turn cases one way or another.* Come prepared with your most important and pressing questions and concerns to get the most out of these interactive 2-days!

Plus, add value to your attendance by also registering for one or both of the conference workshops:

- Fundamentals of Bad Faith Litigation**
April 29, 2009 – 8 a.m.-10 a.m.
- The Bad Faith Trial – Winning Approaches to Implement into Your Trial Strategies**
April 30, 2009 – 2:30 p.m.-5:30 p.m.

Register now by calling **888-224-2480**, faxing your registration form to **877-927-1563** or registering online at **www.AmericanConference.com/BadFaith**

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For more information about this program or our global portfolio of events, please contact:

Wendy Tyler

Group Leader & Business Development Executive
American Conference Institute

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ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of 13.0 hours. An additional 2.0 credit hours will apply to workshop A and an additional 3.5 credit hours will apply to participation in workshop B.

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A | PRE-CONFERENCE WORKSHOP

Wednesday, April 29, 2009

8:00 a.m. to 10:00 a.m. (Registration Opens at 7:30 a.m.)

Fundamentals of Bad Faith Litigation



Charles E. Haddick, Jr.

Shareholder

Dickie, McCamey & Chilcote, P.C.

(Harrisburg, PA)



Douglas deVries

Partner

deVries Law Firm

(Sacramento, CA)

This workshop will give you an overview of what typically happens from when a bad faith claim is first brought, through to its eventual resolution. The workshop leaders will take you through the litigation process, giving you insight into the roles of the various players, and the processes and legal procedures followed, right through to the conclusion of the action, including discussion of damages and settlements. Topics will include:

- Claims handling practices and procedures that create bad faith claims
- The bad faith file
 - What information could eventually be used in litigation?
 - Handling and setting up files
- Bad faith claims as a result of underlying coverage dispute between insurers
- Third party bad faith claims
- Defense to bad faith allegations
- Understanding the discovery process:
 - What are the nuances of bad faith cases
 - Deposition and Interrogatories: What you need to know to get the most out of these discovery devices?
- The strategic use of expert witnesses in the bad faith case
- Damages and penalties: a primer on calculation, proof and assessment
- Practical strategies for settling the bad faith case

Whether you are new to this area, have only limited experience with bad faith claims or just need a comprehensive refresher, this workshop will give you the tools you need to get the most out of this conference.

DAY ONE | WEDNESDAY, APRIL 29, 2009

9:30 Conference Registration

10:10 Co-Chairs' Opening Remarks

Mike Cunningham

Vice President, Corporate Litigation

Infinity Insurance Company

(Birmingham, AL)



Charles E. Haddick, Jr.

Shareholder

Dickie, McCamey & Chilcote, P.C.

(Harrisburg, PA)



Robert K. Scott

Partner

Law Offices of Robert K. Scott

(Irvine, CA)

10:25 2009 Mid-Year Update: Emerging Trends and Assessment of Bad Faith Litigation Exposures



Lori S. Nugent

Member

Cozen O'Connor

(Chicago, IL)



Douglas deVries

Partner

deVries Law Firm

(Sacramento, CA)

Due to the rapidly changing landscape, we have reserved the opening session for an analysis of the newest claims, defenses, decisions and parties in bad faith litigation. With ample time for questions, this session will set the tone for an interactive, insightful two days.

- Recent court decisions that are affecting bad faith litigation
- Current trends:
 - Examining the viability of alternative theories of liability
 - Determining where class actions are heading
 - Assessing the impact of adverse economic conditions on life insurance
- Excess judgments: are they here to stay?
- Damages
 - How to use recent decisions to your clients' advantage
 - What to tell the jury, and how
 - Seeking and defending against punitive damage claims
- Implications of the new Congress and Administration on the insurance and bad faith landscape

11:10 **Manufactured Claims: Strategically Avoiding and Properly Defending Against “Bad Faith Set-ups”**

Mike Cunningham
Vice President, Corporate Litigation
Infinity Insurance Company
(Birmingham, AL)



Paul Berne
Senior Vice President, Claims
Lancer Insurance Company
(Long Beach, NY)



Steve Plitt
Shareholder
Kunz, Plitt, Hyland, Demlong & Kleifield
(Phoenix, AZ)

- How plaintiff attorneys are creating 3rd party bad faith claims
- Adequately recognizing the set-up
- Knowing the red flags: How to identify and negate a “bad faith set-up”
 - What claims adjustors need to look out for
 - What practices need to be avoided in order to avoid set-ups
- Frequent trouble spots leading to bad faith litigation
- Instituting uniformity in company-wide policies to avoid common traps
- Failure to settle a claim: what you now need to know
- Adequately responding to a bad faith set-up letter
- What works? Successful defenses to bad faith set-up

12:30 **Networking Luncheon for Speakers and Delegates**



1:40 **Innovative Pre-Trial Theme Building Strategies for Defending Against Bad Faith Claims: Procedural Considerations, Pleadings/Motion Practice, Discovery and Beyond**



Julia Molander
Partner
Sedgwick, Detert, Moran & Arnold LLP
(San Francisco, CA)



Tony Zelle
Partner
Zelle McDonough & Cohen LLP
(Boston, MA)



Robert Marshall
Partner
Bates & Carey LLP
(Chicago, IL)

Choice of Law and Forum

- Knowing where you can win: Which forums are best for your case?
 - A review of which jurisdictions are more favorable to Plaintiff or Defense

- Overcoming the battle: techniques for arguing why another jurisdiction's laws would be utilized in your case
- Diversity: How to defeat the common diversity arguments

Pleadings and Summary Judgment

- Effectively utilizing the pleadings stage of the litigation process to glean an advantage in the development of evidence and structuring of dispositive motions
- Using pleadings to implement credible, winnable defense themes
- Winning at the pleading stage and effective motion practices to avoid devastating pre-trial rulings
 - Strategic arguments for crafting motions to dismiss or strike
 - How to get your motion for summary judgment granted
 - Motions in limine: tips for eliminating irrelevant or prejudicial evidence

Fraudulent Joinder

- Determining whether there is fraudulent joinder
- Options available to a defense attorney faced with the joinder of a claims adjustor to keep a case venued in state court – successfully removing a case naming a non-diverse adjustor as a defendant
- Overcoming obstacles to successfully remove to federal court and dealing with federal courts differing in their treatment of this issue
- Liability of individual claims’ handlers and fraudulent joinder
 - Destroying diversity: successful arguments for fraudulent joinder
 - Causes of action that can be brought against a claims representative
 - Duties owed by a claims representative to an insured
 - Recent decisions: What constitutes a misrepresentation by a claims representative?

Discovery

- Best practices for limiting discovery — key components of a successful discovery plan
 - Recent developments in attorney-client privilege and work product
 - Responding to requests for claims files and claim information
 - Knowing what to produce and what not to produce
 - Shifting the burden: How to get the other side to pay for the discovery process
 - Impact of E-Discovery on bad faith litigation
- Preparing for depositions

3:25 **Afternoon Refreshment Break**

3:40 **Tips and Techniques on Successfully Mediating Bad Faith Cases**



Linda Bondi Morrison
Partner
Tressler, Soderstrom, Maloney & Priess, LLP
(Costa Mesa, CA)

Krista Horn-Watkins
Extra-Contractual Litigation Management
Travelers
(San Francisco, CA)

Jeff Kitchaven
Mediator
Professional Mediation
(Los Angeles, CA)

- Knowing when mediating your case is the best option
- Checklist: The elements required for a successful bad faith mediation
- What are the mediators looking for?
- Assessing when it's time to adjust your settlement amount
- Solving common mediation problems:
 - Adjusters lack full authority to settle
 - New medical evidence being presented during mediation

4:45 **Avoiding Bad Faith Landmines Involving ERISA Claims**



Daniel Feinberg
Shareholder
Lewis, Feinberg, Lee, Renaker & Jackson, P.C.
(Oakland, CA)

- Jurisdictional review: ERISA pre-emption and state law bad faith claims
- Pleading mistakes to avoid
- Is it an ERISA plan?
- Motion practice: Removal and Remand
- Attorney's fees: Determining when it is worth it to go after fees on remand

5:30 **Conference Adjourns**

Who You Will Meet

- ✓ Insurance Industry Professionals including:
 - Corporate Counsel
 - Defense Counsel
 - Claims Managers
 - Adjusters
 - Compliance Officers
 - Risk Managers
- ✓ Attorneys Specializing in:
 - Insurance Bad Faith
 - Extra-Contractual Damages
 - Insurance Defense
 - Litigation
 - Personal Injury
 - Life, Health and Disability
 - ERISA

7:30 **Continental Breakfast**

8:00 **A View from the Bench: Judicial Views on Effective Theories and Evidentiary Approaches**



The Honorable Catharina Haynes
U.S. Court of Appeals Judge
Fifth Circuit



The Honorable Ralph E. Tyson
U.S. Chief Judge
Middle District of Louisiana



The Honorable W. Royal Furgeson, Jr.
U.S. District Judge
Western District of Texas



The Honorable Lloyd George
U.S. District Judge
District of Nevada



The Honorable Ann Montgomery
U.S. District Judge
District of Minnesota



The Honorable Mark Davidson
11th Civil District Court of Texas
Harris County

Moderator:



Julia Molander
Partner
Sedgwick Detert Moran & Arnold LLP
(San Francisco, CA)

Renowned federal and state jurists who have presided over bad faith and other insurance litigation matters will provide attendees with highly sought after insight on:

- Survey of the bad faith landscape and what is to come in the near future
- Methods and processes utilized in deciding cases early
- The class action complaint and certification
- Avoiding the common mistakes made by litigators
- Novel approaches to trial and case management
- Conveying messages to fact-finders and explaining complex theory to laypersons
- Judicial "pet peeves"

You cannot afford to miss this unique opportunity to hear the theories and defenses that are most effective, how to weigh evidence, and which arguments turn cases one way or another. Come prepared with your most important and pressing questions and concerns to get the most out of this interactive session!

9:40 **A View from the Bench (Part II):
Federal Magistrate Judges Speak Out on Paper
and E-Discovery and More**



The Honorable Arthur Boylan
U.S. Magistrate Judge
District of Minnesota



The Honorable Robert B. Collings
U.S. Magistrate Judge
District of Massachusetts



The Honorable Judge F.A. Gossett, III
U.S. Magistrate Judge
District of Nebraska

In this panel, federal magistrate judges will discuss what their expectations of counsel are during the discovery process, including the e-discovery rules.

- What are the expectations of counsel when dealing with a case involving voluminous discovery requests?
- How should you work with the judges to limit the scope and forms of discoverable information without over-stepping your bounds?
- How are judges treating privilege and what's the latest on discovery requirements trumping attorney-client privilege?
- Overcoming hurdles relative to new disclosure and early conference mandates under Rule 26
- Expectation of courts regarding admissibility of electronic records
- Avoiding sanctions for spoliation or other alleged discovery misconduct

10:50 **Coffee Break**

11:00 **California, Florida, and Pennsylvania:
Up-to-the-Minute Survey of Key Hotbeds**

Leading litigators in three of the most active bad faith states will provide a critical analysis of the latest case law and statutory developments in their states.

CALIFORNIA



Joyce Wang
Partner
Carlson, Calladine & Peterson LLP
(Sacramento, CA)



Arnold R. Levinson
Partner
Pillsbury & Levinson, LLP
(San Francisco, CA)

- Updates on recent case law, legislation and trends in bad faith litigation
- Post-claim underwriting
- First party bad faith claims and third party bad faith claims
 - Failure to settle
- Attorney-Client privilege
 - Waiving privilege

- Surveying the landscape on: Wildfires, Water Intrusion and Mold litigation
- Duty to defend cases: How are the courts ruling and what do you need to be aware of
- Failure to place proper coverage: Duties and responsibilities of agents and brokers

FLORIDA



Brenton VerPloeg
Partner
VerPloeg & Lumpkin, P.A.
(Miami, FL)

- Updates on recent law
 - How *Farinas, Berges & Powell* are impacting the bad faith arena
- Assessing the Florida courts
 - Which jurisdictions are most favorable to insurers
 - Why federal court may not be the best option for your case
- First party v. third party bad faith
 - What works best: A review of strategies and techniques that can help you prevail in either situation

PENNSYLVANIA



Charles E. Haddick, Jr.
Shareholder
Dickie, McCamey & Chilcote, P.C.
(Harrisburg, PA)

- Updates on recent case law
 - Common law v. statutory bad faith
 - Who has the burden of proof
- Discovery
 - Protecting claims manuals and reserve information
 - Communication with third party vendors and independent medical examiners
- Forum selection
 - Motion practice strategies for changing venue
 - Which counties are favorable to which side

12:20 **In-House Counsel and Claims Examiner Insights
on Preventing and Managing Bad Faith Litigation**

William Kobokovich
VP & Associate Group General Counsel
Travelers
(Baltimore, MD)

Mike Cunningham
Vice President
Infinity Property & Casualty
(Birmingham, AL)

Krista Horn-Watkins
Extra-Contractual Litigation Management
Travelers
(San Francisco, CA)



Cindy Khin
Chief Claims Officer
Medmarc Insurance Group
(Chantilly, VA)

Bad faith litigation claims are on the rise and showing no signs of slowing down. Numerous actions are being filed under the guise of being bad faith claims and attorneys and claims examiners are finding it more and more challenging to determine what cases are bad faith litigation claims and what cases are not. This session will provide “in the trenches” insight from leading in-house counsel and claims examiners on these and other issues related to maneuvering your way through the bad faith litigation process. Points of discussion include:

Improving companywide policies and practices

- Claims investigation: How to create uniformity in the investigation process?
- Claims practices that should be avoided
- Tailoring your process to adapt to E-Discovery rules

Litigation Management

- Cost reduction: How to keep cost down while still getting all of the information you need
- Scope of discovery in bad faith cases and how it affects internal processes/procedures
- How should in-house counsel respond to discovery and trial evidence about an insurer’s “character”?

1:20 **Conference Ends -
Lunch for Workshop B Participants**

**“Fabulous speakers, timely topics,
thoughtful analysis”**

**“Extremely good seminar...
quality speakers and quality materials.”**

**“Very good; high quality presenters as well
as audience members”**

B | POST-CONFERENCE WORKSHOP

Thursday, April 30, 2009

2:30 p.m. to 5:30 p.m. (Registration Opens at 2:15 p.m.)

The Bad Faith Trial: Winning Approaches to Implement into Your Trial Strategies

William Kobokovich

VP & Associate Group General Counsel
Travelers
(Baltimore, MD)



Anthony Zelle

Partner
Zelle McDonough & Cohen LLP
(Boston, MA)



Robert K. Scott

Partner
Law Offices of Robert K. Scott
(Irvine, CA)

- Voir Dire: tips and techniques for favorable jury selection
 - Strategic approaches for preparation
 - Effectively evaluating potential jurors
 - Questions to identify “bad” jurors for the insurance company
 - Techniques for achieving cause challenges
 - Selecting appropriate jurors for liability v. damages
- Preparing and delivering effective opening statements and closing arguments for bad faith claims
- Direct and cross-examination strategies
 - Company witnesses: when should they be called and innovative strategies for preparation
 - Best approaches for handling a sympathetic plaintiff
- Exhibits:
 - What works best before judges?
 - Keeping the jury interested and avoiding confusion
- Drafting favorable jury instructions and ensuring they get to the jury
- Utilizing bad faith experts: when is it necessary and cost-effective?



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ACI understands that gaining perspectives from – and building relationships with – your fellow delegates during the breaks can be just as valuable as the structured conference sessions. ACI strives to make both the formal and informal aspects of your conference as productive as possible.

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APRIL 29-30, 2009 – GRAND HYATT SAN FRANCISCO – SAN FRANCISCO, CA

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A Fundamentals of Bad Faith Litigation

B The Bad Faith Trial – Winning Approaches to Implement into Your Trial Strategies

Hear from these renowned jurists:

Honorable Catharina Haynes
Honorable Ralph E. Tyson
Honorable W. Royal Furgeson, Jr.
Honorable Lloyd George
Honorable Ann Montgomery
Honorable Mark Davidson
Honorable Arthur Boylan
Honorable Robert B. Collings
Honorable F.A. Gossett III

Registration Fee

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Address: 345 Stockton Street, San Francisco, CA 94108
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