

# Table of Contents

---

See also Summary of Contents beginning on page xi.

## Chapter One

<b>Recent Developments, Insurance Bad Faith in Pennsylvania</b> .....	1
<i>Richard L. McMonigle, Esq., and Lindsay Andreuzzi, Esq.</i>	
I. Pennsylvania’s Common Law Bad Faith Action .....	3
A. History .....	3
B. Recent Cases .....	6
II. The Bad Faith Statute – 42 Pa.C.S.A. §8371 .....	9
III. Parties to a Bad Faith Action Under §8371 .....	10
A. Who May Bring a Bad Faith Action .....	10
B. Who May Be Sued for Bad Faith? .....	13
IV. The Nature of Scope of a § 8371 Action .....	15
A. Section 8371 as an Independent Cause of Action .....	15
B. The Scope of Conduct Covered Under §8371 .....	16
C. Continued Debate Over Scope of Common Law Bad Faith Cause of Action .....	18
V. Defining Bad Faith .....	18
A. <i>Terletsky v. Prudential Prop. &amp; Cas. Ins. Co.</i> .....	19
B. <i>Berg v. Nationwide Mut. Ins. Co., Inc.</i> .....	19
C. <i>Klinger v. State Farm Mutual Auto. Ins. Co.</i> .....	19
D. <i>Greene v. United Services Auto. Ass’n.</i> , .....	19
E. <i>Smith v. State Farm Mut. Auto. Ins. Co.</i> , .....	20
F. <i>Cacciavillano v. Nationwide Ins. Co. of Am.</i> .....	20
VI. Procedural Issues in Bad Faith Actions .....	20
A. Pleading Bad Faith .....	20
B. Who Decides if Bad Faith Exists .....	21
C. Applicable Burden of Proof .....	23
D. Statute of Limitations .....	24
E. Bifurcation/Severance .....	25
F. Cases Not Allowing Bifurcation .....	33
VII. Proving Bad Faith .....	39
A. Alleged Statutory Violations .....	39
B. Using Experts To Prove Bad Faith .....	40
VIII. Examples Where Courts Have Found Bad Faith May Exists .....	42
A. Unreasonable Delay in Handling Claims .....	42
B. Inadequate Investigation or Legal Research .....	43
C. Unreasonable Reliance on Independent Experts .....	44

D.	Unreasonable Interpretation or Application of Policy Provisions .....	44
E.	Failure to Make Reasonable Offer of Settlement.....	45
F.	Unreasonable Handling of UM/UIM Claims .....	46
G.	Misrepresentation of Material Facts .....	48
H.	Unreasonable Refusal to Defend Third Party Suit .....	49
I.	Unreasonable Conduct During Litigation? .....	49
J.	Improper Use of Releases? .....	49
IX.	Examples Where Bad Faith Has Been Found Not To Exist.....	50
A.	No Bad Faith Where Insurer Correctly Applies Policy Provisions.....	50
B.	No Bad Faith Where Insurer’s Interpretation of Policy, Though Wrong, was Reasonable.....	51
C.	No Bad Faith Where Insurer’s Investigation and Claims Decision was Reasonable.....	52
D.	No Bad Faith Where Insurer Reasonably Relies Upon Independent Expert.....	52
E.	No Bad Faith Where Claim Handled in Reasonably Timely Manner .....	53
F.	No Bad Faith Where there Is Reasonable Belief that the Insured Commits Misrepresentation or Fraud .....	54
G.	No Bad Faith Where Insurer Reasonably Handles UM/UIM Case .....	54
H.	No Bad Faith Where Insurer Takes Reasonable Position Regarding Settlement.....	55
I.	“Post-Litigation” Conduct May Not Constitute Bad Faith .....	55
J.	Insurer’s Request for Release of Bad Faith Claim Not Necessarily Bad Faith .....	56
X.	Damages Recoverable: The Issue of Compensatory Damages .....	56
A.	<i>Wolfe v. Allstate Prop. &amp; Cas. Inc. Co.</i> .....	56
B.	<i>Birth Center v. St. Paul Cos., Inc.</i> .....	56
C.	<i>Ash v. Continental Ins. Co.</i> .....	56
D.	<i>Pavlick v. Encompass Indem. Ins. Co.</i> .....	57
E.	<i>Tippett v. Ameriprise Ins. Co.</i> .....	57
F.	<i>Smalanskas v. Indian Harbor Ins. Co.</i> .....	57
G.	<i>Schmitt v. State Farm Ins. Co.</i> .....	57
H.	<i>Davis v. Fidelity Nat’l Ins.</i> .....	57
I.	<i>Ferguson v. Kemper</i> .....	57
J.	<i>Getz v. State Farm Ins. Co.</i> .....	58
XI.	Recovery of Interest, Attorneys’ Fees & Costs .....	58
A.	Discussion.....	58
B.	Recent Cases .....	59
XII.	Damages Recoverable: Punitive Damages .....	60
A.	<i>W.V. Realty, Inc. v. Northern Insurance Co. of New York</i> .....	60
B.	<i>Klinger v. State Farm Mutual Auto. Ins. Co.</i> .....	60
C.	<i>Hollock v. Erie Ins. Exchange</i> .....	61
D.	<i>BMW of North America, Inc. v. Gore</i> .....	61
E.	<i>State Farm Mut. Life Ins. Co. v. Campbell</i> .....	61
F.	<i>Jurinko v. Medical Protective Co.</i> .....	61
G.	<i>Philip Morris U.S.A. v. Williams</i> , 549 U.S. 346 (2007) .....	61
H.	<i>Davis v. Fidelity Nat’l Ins.</i> .....	61
I.	<i>Smith v. Allstate Ins. Co.</i> .....	62
J.	<i>Grossi v. Travelers Personal Ins. Co.</i> , Beaver County CCP .....	62

K.	<i>Berg v. Nationwide Mutual Insurance</i> .....	62
XIII.	Application of Section 8371 to Claims Arising Under Motor Vehicle Financial Responsibility Law .....	62
A.	Courts Holding that the MVFRL Provides the Exclusive Remedy under an Auto Policy .....	63
B.	Courts Holding that the MVFRL Does Not Provide the Exclusive Remedy for Bad Faith under an Auto Policy Where Complaint Alleges Abuse of PRO Process .....	64
Chapter Two		
	<b>Three Trials: Some Lessons Learned</b> .....	65
	<i>Carl J. Guagliardo, Esq., Patricia A. Monahan, Esq., Kelly M. Tocci, Esq. and Lindsay B. Andreuzzi, Esq.</i>	
	<i>Davis v. Fidelity Nat'l Ins.</i> , No. 2009-cv-6154, Slip Op. (Lackawanna, Aug. 15, 2013) (Minora, J.) .....	67
	Practical Suggestions Based Upon <i>Davis v. Fidelity Nat'l Ins.</i> by Carl J. Guagliardo, Esquire .....	70
	<i>Rhodes v. USAA Cas. Ins. Co.</i> , No. 2004-GN-2279, PICS Case No. 13-2322 (C.P. Blair July 18, 2013) (Brown, S.J.).....	81
	Practice Tips for Defending Delay Claims by Patricia A. Monahan Esquire .....	84
	<i>Grossi v. Travelers Personal Ins. Co.</i> , Beaver County CCP, Civ. Action 12646-2009 (2012) (Kwidis, J.), <i>affirmed in part</i> , 79 A.3d 1141 (Pa. Super. 2013).....	89
	<i>Gross v. Travelers: Analysis and Practice Tips</i> by Kelly M. Tocci, Esquire.....	95
Chapter Three		
	<b>Procedural and Evidentiary Issues in Bad Faith Actions</b> .....	103
	<i>Robert E. Dapper, Jr., Esq. and Daniel J. Twilla, Esq.</i>	
	Removal – Generally .....	105
	Removal – Recent Cases .....	106
	Severance, Stay of Discovery, and/or Bifurcation of Trial.....	108
	Federal Court.....	110
	Pleading Bad Faith .....	112
	Statute of Limitations.....	113
	Motions In Limine.....	113

Chapter Four

**Rebutting Claims for Consequential and Punitive Damages**..... 115  
*Pamela A. Carlos, Esq.*

Power Point Slides..... 117

*Corner Pocket, Inc. v. Travelers Insurance*, Civil Action No. 12-288  
(2013 U.S. Dist.) .....129

*The Babcock & Wilcox Company, et al v. The Babcock &  
Wilcox Company et. al* 2013 PA Super 174; 76 A.3d 1..... 137

Chapter Five

**Severance and Bifurcation in the UM/UIM Case**..... 155  
*Richard L. McMonigle, Esq. and Jaclyn D. Levash, Esq.*

I.	Federal Law on Severance/Bifurcation.....	157
A.	FRCP 42(b) .....	157
II.	Pennsylvania State Law on Severance/Bifurcation .....	157
A.	Pa.R.C.P. 213(b).....	157
III.	Severance to Promote Fairness in the Post- <i>Koken</i> Era .....	157
IV.	Cases Allowing Bifurcation .....	159
A.	USDC Eastern District of Pennsylvania .....	159
B.	USDC Western District of Pennsylvania .....	161
C.	Adams County.....	161
D.	Allegheny County.....	161
E.	Beaver County.....	163
F.	Bucks County .....	163
G.	Butler County.....	163
H.	Cumberland County.....	164
I.	Delaware County.....	164
J.	Erie County .....	164
K.	Forest/Warren Counties (37 Judicial District Combined).....	165
L.	Lackawanna County.....	165
M.	Lancaster County .....	166
N.	Lebanon County.....	166
O.	Lehigh County.....	166
P.	Mercer County .....	167
Q.	Monroe County .....	167
R.	Montgomery County .....	167
S.	Philadelphia County .....	167
T.	Schuylkill County.....	170
U.	Susquehanna County .....	171
V.	Venango County.....	171
W.	Washington County .....	171
X.	York County .....	171
V.	Cases Not Allowing Bifurcation .....	172
A.	USDC Eastern District of Pennsylvania .....	172

B.	USDC Middle District of Pennsylvania .....	174
C.	USDC Western District of Pennsylvania .....	176
D.	Allegheny County .....	177
E.	Beaver County .....	179
F.	Cambria County .....	180
G.	Clinton County .....	180
H.	Centre County .....	180
I.	Dauphin County .....	180
J.	Erie County .....	181
K.	Lackawanna County .....	181
L.	Lawrence County .....	183
M.	Lehigh County .....	183
N.	Luzerne County .....	183
O.	Monroe County .....	185
P.	Montgomery County .....	185
Q.	Montour County .....	186
R.	Northampton County .....	186
S.	Philadelphia County .....	186
T.	Pike County .....	187
U.	Schuylkill County .....	187
V.	Washington County .....	188

Chapter Six

**Discovery Issues in Pennsylvania Bad Faith Litigation** .....189

*Richard L. McMonigle, Esq. and Lindsay Andreuzzi, Esq.*

A.	Introduction .....	191
B.	Production of the Insurer’s Claim File .....	192
C.	Attorney Communications and Work Product .....	196
D.	Requests for Company “Claims Manuals” and Training Materials. ....	212
E.	Requests for Company Underwriting Policies and Guidelines .....	214
F.	Requests for Information Pertaining to Other Claims or Actions Brought Against the Insurer .....	215
G.	Requests for Reserve Information .....	220
H.	Requests for Private Information Concerning Company Employees .....	223
I.	Requests for Insurer Corporate and Financial Information .....	227
J.	Miscellaneous Discovery Topics .....	228
K.	Final Thoughts .....	230

Chapter Seven

**Plaintiff’s Discovery in Bad Faith Cases: Samples** ..... 233

*Submitted by: David S. Senoff, Esq.*

	Discovery in a Commercial Property Bad Faith Case .....	235
	Discovery in an Excess Verdict Bad Faith Case .....	247

Discovery in a UIM Bad Faith Case .....	258
Chapter Eight	
<b>Expert Evidence in the Bad Faith Case</b> .....	269
<i>Richard L. McMonigle, Esq. and Bryan M. Shay, Esq.</i>	
I. Introduction .....	271
II. Standards for Expert Testimony .....	271
III. Using Expert Testimony.....	272
A. Expert Testimony is Not Required in All Bad Faith Cases.....	273
B. Subjects on Which Expert Testimony May Be Permitted .....	274
C. Subjects on Which Expert Testimony May Not Be Permitted .....	279
IV. Conclusion.....	284