

PERSONAL INSURANCE COVERAGE AND BAD FAITH

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› *Your Complete Primer to Individual Policyholder
Insurance Disputes*

SEATTLE, WASHINGTON
July 16, 2010

PRESENTED BY

Scott Bowen

Heather L. Carr

Christopher L. Neal

William C. Smart

Gail Ann Y. Stargardter

Patrick A. Trudell

CONTINUING EDUCATION

CLE - 6.0

Insurance - 6.0

See inside for details!

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SEMINAR OVERVIEW

ABOUT THIS SEMINAR

Practical Legal Strategies for Resolving Individual Insurance Policyholder Disputes

Get a comprehensive overview of the key insurance law principles and strategies from seasoned attorneys in one day of engaging study. The morning session will begin with a detailed analysis of coverage review strategies, followed by the review of claim filing procedures and negotiation tactics. The afternoon session is dedicated to the most hotly contested subjects in insurance law: bad faith. Explore the specifics of insurance litigation involving individual policyholders and get time-tested strategies from experienced attorneys. If you're just entering insurance law practice or need a legal refresher, this course is for you. **Register today!**

8 BENEFITS OF ATTENDING

- Get an overview of the common types of individual policies and causes of action you're likely to encounter and find out which are the most – and least – likely to succeed.
- Review sample policy language and hear experienced attorneys analyze what qualifies as "clear and unambiguous."
- Explore the most common reasons a claim is denied and learn what remedies work best in contesting the decision.
- Find out how the courts have ruled on key subrogation and bad faith issues with the latest case law update.
- Clarify how standard rules of ethics and professionalism are translated and applied in everyday insurance law practice and uphold your stellar reputation.
- Learn to identify all extra-contractual liability causes of action in every specific case.
- Build stronger negotiating skills for direct communication with insurance carriers – and save money on costly litigation.
- Walk through the key steps of a bad faith action and gain practical tips for maximizing your chances of success.

WHO SHOULD ATTEND

This **basic-to-intermediate level seminar** is designed for:

- Attorneys
- Paralegals
- In-House Counsel
- Claims Adjusters and Administrators

CREDIT INFORMATION

The specific continuing education credit(s) listed are for attending the live seminar. The credits may or may not apply for the audio version of this seminar. Please check with your credit board for details.

For additional questions regarding continuing education credits, please contact us at **866-240-1890**.

CLE - 6.0 - Approved for 6.0 hours of Washington continuing legal education credit, which includes 1.0 hour of ethics. Self-study credit is available.

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SEMINAR OUTLINE

MORNING SESSION – BASIC INSURANCE DISPUTE RULES AND PROCEDURES

I. TYPES OF COVERAGE AND POLICY LANGUAGE

9:00 - 9:45, Gail Ann Y. Stargardter

- A. Types of Personal Insurance Coverage
(Homeowners: Property and Liability and Auto: Liability, Personal Injury Protection; Underinsured Motorist Coverage and Property Coverage)
- B. Common Claims and Causes of Action
- C. Reviewing Policies to Determine Coverage and Prepare for Claim/Litigation
 1. Rules of Interpretation of Insurance Contracts
 2. Common Terms
(Defining "Clear and Unambiguous"; Giving Words Their Plain and Ordinary Meaning; Ambiguities and Interpreting Intent)
 3. Researching Applicable Limits of Coverage
 4. Determining Who is Covered Under the Policy
 5. Determining Priority When Multiple Policies are Involved
 6. Triggers of Coverage
 7. Writing a Coverage Opinion

II. THE MECHANICS OF FILING THE CLAIM AND ITS PROCESSING BY THE INSURER

9:45 - 10:30, William C. Smart

- A. Filing a Claim on Behalf of the Insured
 1. Notice of Loss
 2. Proof of Loss
 3. Timelines for Filing Actions
 4. Appraisal
- B. What Documents Should be Included
- C. The Rules of Claims Investigation and Administration
- D. Colossus and Other Software Used in Claims Processing
- E. Common Bases for Denial

III. NEGOTIATIONS AND SETTLEMENT TACTICS

10:45 - 11:30, Gail Ann Y. Stargardter

- A. The Risks and Benefits of Mediation
- B. Tactics for Direct Insurer-Insured Negotiations to Prevent Litigation
- C. Maintaining the Record of Communications
- D. Pre-Litigation Considerations

*If needed, the above agenda may be changed to best accommodate all of our attendees.

AFTERNOON SESSION – BAD FAITH AND OTHER SOPHISTICATED INSURANCE LAW ISSUES

IV. EXTRA-CONTRACTUAL LIABILITY AND BAD FAITH CLAIMS

12:30 - 1:30, Heather L. Carr

- A. Bad Faith Causes of Action – Criteria for Determining Bad Faith
- B. Insurer's Duty to Investigate, Defend and Indemnify
- C. Insurer's Duty of Prompt Payment
- D. Choice of Venue
- E. Statutes of Limitations
- F. Standard of Proof
- G. Discovery
 1. Specific Documents to Obtain and Examine
 2. Preservation and Spoliation of Evidence
 3. Experts
- H. Strategic Motions and Pleadings
- I. Damages Determination
- J. Reverse Bad Faith and Other Defense Strategies
- K. Countering Abusive Litigation Tactics
- L. Bifurcation Issues

V. ETHICS

1:30 - 2:30, Scott Bowen

- A. Who is the Client (Defending UM Actions)
- B. Multiple Representation (Conflict of Permissible)
- C. Lawyers From Different Firms Representing Plaintiff on Contingent Fee (Attorneys' Fees)
- D. Practical Application of Rules of Professional Conduct

VI. INSURANCE COVERAGE CASE LAW UPDATE

2:45 - 3:30, Christopher L. Neal

VII. MECHANICS OF BAD FAITH CAUSE OF ACTION AGAINST THIRD-PARTY CARRIER

3:30 - 4:30, Patrick A. Trudell

- A. Two Common Bad Faith Causes of Action Against Third-Party Carrier
 1. Failure to Pay Policy Limits
 2. Improper Denial of Coverage
- B. *Besel v. Viking Ins. Co.*, and Judgments Against Third-Party Carrier Exceeding Policy Limits
- C. Steps of Following Mandate of *Besel*
 1. Third-Party Judgment (Default Judgment of Stipulated Judgment)
 2. Motion for Entry of Stipulated Judgment
 3. Covenant Not to Execute and Assignment of Rights
 4. Motion for Reasonableness Determination of Covenant Judgment
 5. Complaint Against Third-Party Carrier

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Video webcasts offer attendees the opportunity to gain continuing education training through streaming audio and video.

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- April 28** **Effective Medicaid and Long-Term Care Strategies** (53710ER)
- May 4** **Complex Bankruptcy Issues** (52521ER)
- May 5** **The Anatomy of Title Insurance** (52511ER)
- May 12** **Employment Law: Working Through Common Issues** (52517ER)
- May 13** **Dealing With Troubled Real Estate Loans** (52522ER)
- May 18** **Fundamentals of Elder Law** (52510ER)

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- April 29** **Business Succession and Exit Strategies** (52995ER)
- May 3** **Business Valuation: Methods and Approaches** (53342ER)
- May 5** **Core Topics in Medicaid and Estate Recovery** (53002ER)
- May 11** **Understanding Estate Administration Tax Procedures** (53016ER)
- May 13** **Using Business Entities to Shield Assets** (53094ER)
- May 18** **Tax Consequences of Divorce** (53005ER)

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manual — \$99 cd and manual — \$199

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INSURANCE COVERAGE LITIGATION

© June 2009 - 133 Pages (FP49729)

By: Thomas F. Ahearne, Bradley W. Hoff, Peter J. Mintzer and Bruce Winchell.

BAD FAITH INSURANCE CLAIMS IN WASHINGTON

© November 2009 - 214 Pages (FP50018)

By: Patrick S. Brady, Curt H. Feig, Carl E. Forsberg, Michael R. Wrenn and Daniel A. Zariski.

REAL-LIFE RESOLUTION STRATEGIES OF BAD FAITH CLAIMS

© August 2009 - 379 Pages (FP49442)

By: Franklin D. Cordell, Alfred E. Donohue, Gail Ann Y. Stargardter and Bruce Winchell.

UNINSURED/UNDERINSURED MOTORIST LAW 101

© December 2009 - 216 Pages (FP51267)

By: Ian S. Birk, Molly F. Kosten, Thomas G. Richards and Patrick A. Trudell.

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OUR DISTINGUISHED FACULTY

SCOTT BOWEN is a partner in the law firm of Kornfeld, Trudell, Bowen & Lingenbrink, PLLC. He is a graduate of Gonzaga Law School. While attending law school, Mr. Bowen was an intern at Division III of the Washington Court of Appeals. He subsequently was a Deputy Prosecuting Attorney in Snohomish County and then was engaged in insurance defense work with the Seattle law firm of William Kastner & Gibbs before beginning his own practice in 1986 representing plaintiffs in personal injury claims.

HEATHER L. CARR is a litigation shareholder with Stafford Frey Cooper. While generally hired to assist in defense, she represents both plaintiffs and defendants in complex commercial cases and single-party litigation. Ms. Carr has obtained significant damage awards and settlements for plaintiffs, as well as de minimis settlements and defense verdicts for defense clients. She also advises small to medium size companies on general business matters, including formation and employment issues. Ms. Carr efficiently and aggressively litigates a wide variety of construction, insurance coverage, employment, product liability, civil rights, contract, tort and other disputes. She has successfully represented the city of Seattle in some of its most significant cases over the million dollar class actions alleging profiling and constitutional violations. Ms. Carr also has represented the city of Seattle and Seattle police officers in cases arising from officer-involved fatalities and abatement actions, and the city of Des Moines in the highly publicized case, *Fualaau v. Highline School District*. She also successfully represents a multitude of corporations in complex products liability and premises liability cases, including Alcoa, Inc., Tree Top, Metalclad Industries Corporation, P-G Industries, Inc., Yarway, Tyco Valves & Controls, Seco-Warwick Corporation, Selas Corporation, and CH Murphy/Clark Ullman Inc. Ms. Carr has appeared before various trial courts, as well as the 9th Circuit Court of Appeals, the Washington State Court of Appeals, and the Washington State Supreme Court.

CHRISTOPHER L. NEAL is of counsel with Mills Meyers Swartling in Seattle, where he provides insurers with the guidance and litigation assistance necessary to avoid or resolve complex coverage and bad faith questions. Before joining Mills Meyers Swartling in May 2009, Mr. Neal spent 12 years in Cozen O'Connor's Seattle office as a member in the Global Insurance Group, where he litigated bad faith and third-party coverage claims for major insurers against some of the most aggressive policyholders' counsel in the northwest.

WILLIAM C. SMART is a senior partner with Keller Rohrback Law Offices, where he practices in the areas of personal injury, products liability, medical malpractice litigation, employment law, securities fraud, commercial litigation and environmental litigation. Mr. Smart leads Keller Rohrback's section for plaintiff's tort litigation. He is an accomplished trial lawyer with 28 years of experience. Mr. Smart has received the designation of "Super Lawyer" by his peers. His recent cases have included those involving insurance bad faith, traumatic brain injury, medical malpractice and securities fraud. Mr. Smart

handles cases for individuals or groups, corporations or professionals. He has litigated matters in the courts of Washington, as well as Alaska, Oregon, Montana, Ohio, the Shorelines Hearings Board, and the Board of Industrial Insurance Appeals, as well as various tribal courts. Mr. Smart earned his B.A. degree, cum laude, from Princeton University and his J.D. degree from Willamette University. He is admitted to practice before the U.S. District Court for the Western District of Washington, the U.S. Court of Appeals for the 9th Circuit and the U.S. District Court for the Eastern District of Washington. Mr. Smart is a member of the King County Bar Association, the Washington State Bar Association, the American Bar Association, the Washington State Trial Lawyers Association, the American Trial Lawyers Association and the Defense Trial Lawyers Association, past trustee. He was nominated by his peers as a "Super Lawyer" in 2001, 2002, 2003, 2004, 2005 and 2006. Mr. Smart has written many publications on his areas of expertise.

GAIL ANN Y. STARGARDTER is of counsel in the law firm of Archer Norris, where she practices in the areas of bad faith litigation and coverage. She has spoken to the Washington State Trial Lawyers Association and the King County Bar Association on topics relating to insurance fraud, and to the Washington Defense Trial Lawyers Association on litigation and coverage issues. Ms. Stargardter earned her B.A. degree from Muhlenberg College, her M.A. degree from Boston College and her J.D. degree, cum laude, from Suffolk University Law School. She is a member of the Washington State Bar Association and the Washington Defense Trial Lawyers. Ms. Stargardter is admitted to practice in Oregon, Washington and California.

PATRICK A. TRUDELL is a personal injury attorney practicing at Kornfeld, Trudell, Bowen & Lingenbrink, PLLC in Kirkland, Washington. He is licensed to practice law in Washington and Alaska. Mr. Trudell earned his undergraduate degree from the University of Washington and he graduated, with honors, from Gonzaga School of Law. At Gonzaga, he was editor-in-chief of the *Gonzaga Law Review*. Mr. Trudell's first law job was working as a law clerk for Chief Judge James A. von der Heydt of the U.S. Federal District Court for the District of Alaska. He then returned to Washington, where he worked as an associate for the law firm of Livengood, Silvernale, Carter and Tjossem for three years. In 1986, Mr. Trudell and Scott Bowen started the law firm of Trudell & Bowen in Kirkland. This law firm evolved to Trudell, Bowen, & Lingenbrink, PLLC and it is now the firm of Kornfeld, Trudell, Bowen & Lingenbrink, PLLC. He is an Eagle member of the Washington State Trial Lawyer's Association, American Trial Lawyers Association, board member of the Kirkland Arts Center, and co-editor-in-chief of the *Washington State Bar Association Automobile Accident Desk Book*. Mr. Trudell's prior legal publications include "Federal Practice in Alaska: Local Rules and Related Matters," 11 *UCLA - Alaska Law Review* 1 (1981), and the "Dead Man's Statute in Washington" 15 *Gonzaga Law Review* 501 (1980). He is now working on an article titled "10 Fundamentals of Yang Style Tai Chi Chuan applied to Golf."

SEATTLE — JULY 16

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SCHEDULE

Registration 8:30 — 9:00 am

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