

Bad Faith

Extracontractual claims pose a unique set of risks to insurers, implicating their business operations and opening potentially vast exposures. Today, it is not enough to have good coverage counsel. Insurers need counsel with deep and specific bad faith and extracontractual experience. Cozen O'Connor's team of dedicated extracontractual/bad faith attorneys have been practicing in this field for decades.

Our bad faith attorneys defend insurance clients in litigation alleging first- or third-party extracontractual claims related to all lines of business, including property, general liability, professional liability and D&O, life/health/disability and automobile policies. We handle litigation arising from claims handling, underwriting, excess verdicts, uninsured or under-insured motorist coverage, consent judgments, default judgments and garnishment actions. Our attorneys have successfully defeated individual and class claims seeking actual and consequential damages, statutory penalties, punitive damages, attorneys' fees and policy benefits.

Because Cozen O'Connor is a global leader in the area of insurance coverage and claims litigation, we are often able to defeat breach of contract assertions at the outset, thereby mitigating any extracontractual claims. When appropriate, our attorneys are able to negotiate quick and quiet resolutions to bad faith claims. Because they involve questions of honor, duty and essential fairness, these cases are qualitatively different from other coverage disputes. Our lawyers are able to create practical frameworks for discussion, incentivize reasonable conduct and mutuality, and find solutions that limit insurer exposure.

When bad faith and extracontractual disputes must be tried, our attorneys have the proven ability to go to court—and win. We regularly and successfully defend major insurers in multi-million bad faith matters in state, federal and appellate courts throughout the U.S. Success is not defined simply by getting a defense verdict, but by winning in way that protects clients' bottom lines and brands.

SERVICE AREAS

- Successfully defend bad faith litigation from inception through trial
- Design strategies to defeat institutional bad faith cases
- Respond to policy limit and time limit demands and analyze potential exposures
- Assist in the withdrawal of a defense while avoiding bad faith, waiver and estoppel claims
- Respond to unreasonable discovery requests and consent judgments
- Bifurcate bad faith claims for discovery and trial, when necessary
- Avoid or limit impact of policyholder's assignment of rights
- Negotiate settlements in bad faith cases with multiple insureds/claimants, multiple insurers, limited insurance; avoid or defend against collusive settlements
- Monitor underlying litigation and assess impact on coverage issues and potential exposure

Experience

Secured dismissal on summary judgment of a plaintiff's attempted "claw back" of millions of dollars in defense costs paid by our client to the plaintiff's former defense counsel, as well as an attempt to collect damages based on alleged claims of emotional distress and insurer bad faith. At issue was the management of the plaintiff's criminal defense of a complex nursing home and tax fraud case. The court dismissed all claims against our client, including breach of contract, vicarious liability, breach of fiduciary duty, and bad faith. Significantly, the court ruled that the client's claims handling guidelines



Alicia G. Curran
Member

acurran@cozen.com
Phone (214) 462-3021
Fax (866) 248-5742



Irene K. Yesowitch
Member

iyesowitch@cozen.com
Phone (415) 593-9633
Fax (415) 692-3835



Michael W. Melendez
Member

mmelendez@cozen.com
Phone (415) 593-9610
Fax (415) 692-3688

Related Practice Areas

- Casualty & Specialty Lines Coverage
- Insurance Coverage
- Professional Liability Insurance Coverage
- Property Insurance
- Reinsurance
- Strategic Risk & Complex Litigation

Industry Sectors

- Insurance

did not support any cause of action for failure to adhere strictly to their terms, and re-affirmed the rule that insurers engaging defense counsel on their insured's behalf do not have a fiduciary duty to the insured regarding the day-to-day handling of the defense.

Won dismissal of coverage and bad faith claims by a policyholder under a fiduciary liability policy filed in the U.S. District Court for the District of Nevada. The policyholder -- a non-profit employee benefit trust -- sued two former officers alleging that they violated fiduciary duties in managing the trusts investment. The trust also sued the fiduciary insurer for refusing to pay the claim. The Court granted the insurer's motion to dismiss the complaint on the grounds that the policy did not cover the trust's first-party claim for coverage of the unadjudicated underlying claim against the former officers; the claim against the insurer was an impermissible direct action not recognized by Nevada law, was barred by the policy's No-Action clause, and failed to state a claim for bad faith.

Won summary judgment in a case filed against our professional liability carrier client to enforce an arbitration award under which the client faced exposure of more than \$3 million. In granting summary judgment, the court found that the client had no duty to defend or indemnify the plaintiff insurance agency in light of both an insured v. insured exclusion in the policy and the agency owner's prior knowledge of the facts underlying the claim, which rendered it untimely reported.

Won summary judgment in an insurance coverage dispute centered on claims and losses arising from the installation of defective drywall in a luxury condominium complex in Florida. The general contractor and drywall subcontractor sought several million dollars in compensatory and bad faith damages, alleging that our client delayed resolution of the claims. In granting summary judgment, the court accepted our argument that the client had no duty to indemnify under controlling California law because the underlying claims had been settled, and therefore there was no court-ordered judgment triggering an indemnity obligation under the policies at issue. The court further agreed that the confession of judgment doctrine was inapplicable in this case.

Won summary judgment, which was affirmed by the U.S. Court of Appeals for the Seventh Circuit, in a declaratory judgment action filed on behalf of an insurer, and defeated the insured's cross-motion on claims of estoppel, waiver, and bad faith failure to settle. The dispute arose when a previously vacated \$1.35 million default judgment against the insured was reinstated after our client defended the insured for several years post-vacatur. In granting our motion for summary judgment, the district court accepted all of our arguments that the insurer had no duty to indemnify the judgment on the basis that it was not a claim first made during the policy period. The court also rejected the insured's estoppel, waiver, and bad faith claims, finding no evidence that the insured would have handled the case differently if our client had not been involved, and that the insured had not completely surrendered control of the defense to our client and therefore suffered no prejudice.

Won summary judgment in a coverage and bad faith action filed against our client by its insured, an IT consulting company that was hired to implement a new financial management system for the Hawaii Department of Transportation (HDOT). When the system failed to work, HDOT sued the insured for more than \$20 million, for which the insured sought coverage under a series of commercial general liability and umbrella liability policies. In granting our motion for summary judgment, the court agreed that our client owed no duty of coverage because the claims in the underlying lawsuit, for damage to computer software, did not allege "property damage" as that term was defined under the policies at issue.

Obtained a writ of pre-judgment attachment for \$2.5 million, plus interest, which represented the amount our insurance company client paid to its insured as clean-up costs (under a full reservation of rights) pending an investigation into the cause of a chemical spill, explosion, and fire at a wastewater treatment facility. After we filed a declaratory relief action, seeking resolution of the coverage issues,

several employees of the insured, including its upper management, were indicted for crimes relating to the operations of the facility, further impacting the coverage disputes. Then, upon learning the insured was negotiating the sale of the company, we sought a Pre-Judgment Attachment in an effort to protect our client's assets and guarantee repayment if we succeed in the declaratory relief action. In granting the Application for Pre-Judgment Attachment, the trial court found that we established the probable viability of our client's underlying claims that the loss at issue was not covered, and for rescission on the grounds of misrepresentation. This Pre-Judgment attachment order was affirmed on appeal.

Won summary judgment on behalf of our insurance company client in a case in which the plaintiff brought claims of breach of contract, bad faith, and insurance code violations. In granting summary judgment, the court accepted our arguments that the client's policy endorsement unambiguously precluded coverage for automobiles that were floor planned, and that the exclusion did not constitute an "other insurance" provision.

Obtained early dismissal of a lawsuit filed in 2016 alleging breach of contract, breach of duty to defend, bad faith, violation of the Insurance Fair Conduct Act, and violation of the Consumer Protection Act. In granting the motion to dismiss, the court accepted our argument that the insured's professional liability policy did not cover claims against her husband and their marital community, even in a community property state, and that all claims against the insurer were without merit.

Secured voluntary dismissal, with prejudice, of a multimillion dollar bad-faith claim brought under Colorado law for an insurer's alleged unreasonable delay in the payment of a hail damage claim. The insured voluntarily dismissed the lawsuit after we presented evidence to its counsel showing that the insured's appraiser was not a disinterested party, that the umpire should have been disqualified, that there was possible post-appraisal misconduct by the insured or its representatives, and that there were good-faith reasons for any alleged delay by the insurer.

Won a jury verdict in favor of the insurer in a case centering on property damage that we proved was caused by a landslide and thus excluded from coverage. Contending that the exclusion did not apply, the plaintiffs sought \$6 million under claims for breach of contract, failure to adjust the claim, violations of the Tennessee Consumer Protection Act, and bad-faith refusal to pay. The court granted our motion to bifurcate the trial, and after 10 days the jury found for our client on the breach of contract claim. This result was affirmed by the U.S. Court of Appeals for the Sixth Circuit.

U.S. District Court for the Eastern District of Pennsylvania verdict in 2013 in favor of national workers' compensation insurer following a week-long jury trial, and against insured on counterclaim for bad faith. The jury found that the insured committed fraud in the application, entitling the insurer to recover from the insured its attorney's fees and amounts paid on a claim valued at more than \$4 million.

Texas State Fort Bend County District Court grants excess insurer's motion to compel appraisal after denying primary carrier's motion leading to resolution of case, including bad faith.

U.S. District Court for the District of New Jersey summary judgment on auto manufacturer spoliation claim against insurer which disposed of vehicle involved in rollover accident.

U.S. District Court in the Virgin Islands collusive consent judgment and bad faith claim defeated.

Recovery for insurer with excess verdict exposure over \$25 million from E&O insurer.

Pennsylvania summary judgment upheld in bad faith UIM case alleging unreasonable failure to make settlement offer prior to arbitration.

Philadelphia County Common Pleas Court defense jury verdict in trial over allegations of bad faith delay of payment and “low balling” covered damages amounts

U.S. District Court for the Southern District of Ohio summary judgment in bad faith arson case.

U.S. District Court in Tennessee dismissal of bad faith claim in first party apartment roof failure because insured failed to make timely demand under requirements of statutory notice under Tennessee law.

Favorable settlements on four “med pay” class actions in Madison County, Illinois and Arkansas.

Affirmance of Delaware U.S. District Court’s grant of summary judgment to insurer on \$4 million plus fire/fraud and bad faith case based upon false loss of rents claim and ongoing tenancy misrepresentations in proof of loss to avoid the vacancy exclusion by of U.S. Court of Appeals - Third Circuit.

Affirmance of pre-discovery dismissal of medical service provider class action complaint alleging improper use of Ingenix data base in determining reasonable reimbursement rates under policy by U.S. Court of Appeals - Third Circuit.

U.S. District Court for Northern District of Texas grants summary judgment holding that notice after all appeals in underlying lawsuit are final constitutes late notice leading to no indemnification for underlying judgment and no extra-contractual damages for non-payment of judgment.

U.S. District Court for the Eastern District of Pennsylvania judgment on the pleadings regarding no coverage for “blast fax” claims, concluding that there is no coverage for the underlying allegations alleging violations of the Telephone Consumer Protection Act 47 U.S.C. Section 227 (“TCPA”) precluding any subsequent bad faith causes of action.
