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### Sessions include:

- Review of this year's key cases, emerging trends, and hotbed jurisdictions including Florida, Texas, Kentucky, Pennsylvania, New Jersey and others
- Views from in-house counsel and claims professionals on the latest approaches by insurers and retained counsel in promoting strong yet flexible settlement approaches; novel methods of communication and disclosures to insureds; conflicts with defendants; and other key litigation decisions
- Good faith best practices: appropriately adjusting claims with a thorough investigation, avoiding lowball settlements, keeping the insured advised, and properly training adjusters and claims handlers
- The latest on discovery disputes and requests: claims files associated with institutional bad faith/class action litigation; attorneys utilized as experts; and how other jurisdictions will respond to the erosion of attorney/client privilege given the court's decision in *Cedell v. Farmers*
- Procedural issues in bad faith litigation: removal from state to federal court, low limit policies in UIM and UM cases, choice of law, and jurisdictional differences for establishing bad faith
- Recognizing the red flags in demand letters to avoid bad faith set ups and how insurers can use the bad faith set up defense to their advantage
- Understanding the scope and limits of duty to defend, duty to settle, and initiating settlement
- Asserting bad faith claims as an additional insured
- How policyholders use consumer fraud statutes and unfair trade practices acts to their advantage to recover extra contractual damages

## Here's just some of the companies and firms already participating:

The Progressive Group of Insurance Companies	Butler Pappas Weihmuller Katz Craig LLP	White and Williams LLP
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Johnson & Bell, Ltd.	Marcus & Myers, P.A.	

## The 29th installment of ACI's renowned Bad Faith Claims and Litigation forum converges in Orlando with revamped topics developed through extensive research with the industry and expert insights from seasoned in-house professionals, top law firms and experienced jurists from across the nation.

In addition to unparalleled networking opportunities, ACI's 29th **Bad Faith Claims and Litigation** conference will provide attendees with the latest insights and expert advice from our exceptional faculty on new litigation trends, emerging theories of liability, and the most effective defense and settlement strategies. Sessions include:

- Review of this year's key cases, emerging trends, and hotbed jurisdictions including Florida, Texas, Kentucky, Pennsylvania, New Jersey and others
- Views from in-house counsel and claims professionals on the latest approaches by insurers and retained counsel in promoting strong yet flexible settlement approaches; novel methods of communication and disclosures to insureds; conflicts with defendants; and other key litigation decisions
- Good faith best practices: appropriately adjusting claims with a thorough investigation, avoiding lowball settlements, keeping the insured advised, and properly training adjusters and claims handlers
- Procedural issues in bad faith litigation: removal from state to federal court, low limits policies in UIM and UM cases, choice of law, and jurisdictional differences for establishing bad faith
- Recognizing the red flags in demand letters to avoid bad faith set ups and how insurers can use the bad faith set up defense to their advantage
- Understanding the scope and limits of duty to defend, duty to settle, and initiating settlement
- The latest on discovery disputes and requests: claims files associated with institutional bad faith/class action litigation; attorneys utilized as experts; and how other jurisdictions will respond to the erosion of attorney/client privilege given the court's decision in *Cedell v. Farmers*
- Asserting bad faith claims as an additional insured
- How policyholders Use Consumer Fraud Statutes and Unfair Trade Practices Act to Their Advantage to Recover Extra Contractual Damages

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7:20 **Registration and Continental Breakfast**

8:00 **Co-Chairs' Welcoming Remarks**

*Jennifer Arnett Roeblich*  
Chief Litigation Officer  
Arch Insurance Group

*Christopher D. Brown*  
Partner  
Beasley, Demos & Brown, LLC

8:05 **Review of This Year's Key Cases, Emerging Trends, Hotbed Jurisdictions (Including Florida, Texas, Kentucky, Pennsylvania, New Jersey and Others) and What to Expect for 2015**

*William J. Kobokovich, Jr.*  
Associate Group General Counsel  
Claim Legal Extra Contractual & Reinsurance  
Travelers

*Robert D. Allen*  
Law Offices of Robert D. Allen, PLLC

*Lee W. Marcus*  
Founding Member  
Marcus & Myers, P.A.

*Wesley R. Payne, IV*  
Partner  
White and Williams LLP

*Jeanine D. Clark*  
Partner  
Margolis Edelstein

*Robert L. Steinmetz*  
Member  
Gwin Steinmetz & Baird, PLLC

- Examining bad faith suits in direct action states
- How a large self-insured retention affects bad faith suits
- State distinctions on the reasonable expectation doctrine and how this affects bad faith: Using the reasonable expectations doctrine to resolve issues in the insurance contract; Recognizing the issues with ambiguous language, technical issues, number of occurrence, etc.
- Institutional bad faith claims in the class action context: Class certification on institutional bad faith policies and procedures
- Bad faith allegations in the pre-contract stage
- Bad faith allegations even after the insurer has paid out the policy limits: Insurer impeding claims against another party
- Insurers who have been liable for bad faith when taking additional action such as adjustments or additional payment

- Payment of attorney's fees when the insurer picks up the defense of the insured: Question of reasonable fees of the attorney retained by the insured when there is a coverage question

Florida

- Recent case law in Florida regarding appraisal awards (favorable to the insured) that opens the door for bad faith claims: Complying with Florida's civil remedy period; Questioning the efficacy of appraisals when it can open the door for bad faith claims; Affirmative duty to investigate the claim and make settlement offers
- Legislative updates

New Jersey

- The insured adding in a bad faith claim in a declaratory action in first party property damage claim in cases arising out of coverage disputes
- Examining case law that severs bad faith claim: Protecting attorney client communication
- Excess verdicts

Texas

- Interpreting the court's decision in *Lennar Corp. v. Markel American Insurance Co.*: Establishing prejudice; Trigger/allocation clauses
- Construction defect cases: Extra contractual liability exclusion; Establishing liability in the underlying suit

Kentucky

- Sizable verdicts
- First party and third party bad faith claims
- Using bad faith claim to create coverage – *Pryor v. Colony Insurance*

Pennsylvania

- UIM and UM cases with low limits that mushroom into excess verdicts

9:50 **Morning Break**

10:05 **Views From In-House Counsel and Claims Professionals on the Latest Approaches by Insurers and Retained Counsel in Promoting Strong Yet Flexible Settlement Approaches; Novel Methods of Communication and Disclosures to Insureds; Conflicts With Defendants; and Other Key Litigation Decisions**

*Richard Vavra (ret.)*  
Corporate Counsel  
Allstate Insurance Company

*Petrina Johns*  
Liability Unit Manager  
The Hanover Insurance Group

*Kevin J. Willging*  
Executive Counsel  
Claim Legal Extracontractual  
Travelers

*Jerry Iwler*  
Corporate Claims Counsel  
The Progressive Group of Insurance Companies

*Cheri K. Trites, Esq.*  
Senior Litigation Specialist  
EMC Insurance Companies

#### Moderator

*David A. Strauss*  
Member  
King, Krebs & Jurgens, PLLC

#### Settling Bad Faith Claims and Working with Outside Counsel

- Recognizing when and why to settle; Best practices for reducing the settlement amount
- Tips for managing high-risk/"must win" cases
- Selecting, supporting and managing outside counsel: policyholder objection; How are billable hours/rates determined and can these be negotiated?

#### Dealing with the Insured

- Best practices for dealing with your insured after the court determines coverage exists
- How to encourage and negotiate settlement; what to do when your insured won't settle
- Risks of settling over the insured's objection, especially in the case of a large deductible or SIR

#### Dealing with Conflict

- Types of conflicts that arises when providing a defense in a liability policy when two parties have adverse interests
- Insured/insurer conflict; splitting the file between coverage and defense counsel; Best practices for claims investigations
- Analyzing and evaluating the insured's liability

#### Litigation Decisions

- Crafting a properly documented claims decision
- Allocation of covered and non-covered claims
- The role of the broker in bad faith claims
- How to handle an ongoing claim while in litigation

11:30 **Good Faith Best Practices: Appropriately Adjusting Claims With a Thorough Investigation, Avoiding Lowball Settlements, Keeping the Insured Advised, and Properly Training Adjusters and Claims Handlers**

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*Paul R Berne*  
Senior Vice President Claims  
Lancer Insurance Company

*David J. Raszeja*  
Home Office Casualty Manager  
MetLife

*Dan Brunson*  
Director of Litigation & Large Loss  
The General

*Krista Horn-Watkins*  
Director  
Travelers

#### Moderator

*Rick Hammond*  
Shareholder  
Johnson & Bell, Ltd.

- What constitutes a competent review of the policy
- Steps to take to avoid future questions of reasonableness and good faith
- Proper claims handler training
- Investing in ongoing good faith training and refreshers
- Implementing procedures for thorough investigation of claims
- Avoiding lowball settlements
- Keeping the insured advised of all aspects of the case from start to finish
- Training to avoid bad faith: Adjusters and use of guidelines; SIU; Underwriters
- Avoiding personal bias of claims adjusters – outcome determinative bias
- Proper use of red flags: Not all red flags justify claim not being paid; Using red flags as a means for further review of the claim
- Proper use of experts
- Supervisory review of adjusters
- How to deal with a new adjuster

#### 12:55 **Networking Lunch for Speakers and Attendees**

2:00 **View From the Policyholder's Bar: How Insurers Can Avoid Bad Faith Claims and Tailoring Your Litigation Strategies to the Latest Waive of First-Party and Third-Party Claims Being Asserted**

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*Terrence J. Coleman*  
Partner  
Pillsbury & Coleman, LLP

*Jason S. Mazer*  
Shareholder  
Ver Ploeg & Lumpkin, P.A.

*Darin J. McMullen*  
Shareholder  
Anderson Kill

- First party v. third party bad faith suits: Third-party bad faith without any wrongful failure to defend or indemnify; First-party bad faith in the absence of coverage

- Insights on putting together a bad faith claim from soup to nuts
- Reviewing common bad faith claims
- Facts supporting bad faith awards
- Current bad faith trends
- Using mediation as a tool to illustrate bad faith exposure to the insurer
- Exploring statutory and common law bad faith

### 3:00 **Afternoon Break**

### 3:15 **Procedural Issues in Bad Faith Litigation: Removal from State to Federal Court, Low Limit Policies in UIM and UM Cases, Choice of Law, and Jurisdictional Differences for Establishing Bad Faith**

*Jamie R. Carsey*

Partner

Thompson, Coe, Cousins & Irons, L.L.P.

*Rory Eric Jurman*

Shareholder

Fowler White Burnett, P.A.

*Peter J. Barrett, Jr.*

Zelle McDonough & Cohen LLP

*Gregory D. Miller*

Managing Shareholder

Podvey, Meanor, Catenacci, Hildner,  
Cocoziello & Chattman

#### Low Limit Policies in UIM and UM Cases

- Figuring out a way to go beyond the policy contract to recover more for low limit policies in UIM and UM cases
- How TPA should understand and handle low limit policies and be aware of bad faith set traps

#### Removal

- Under what circumstances can cases be removed from state to federal court
- Time limit of removing a case from state to federal court
- How removal is used as a tool to get out of an unfavorable jurisdiction
- Fraudulent joinder and manipulation issues
- How plaintiffs seek abatement once an insurer files a motion to dismiss in premature bad faith suits
- How delays in the litigation ultimately lead to the suit being time barred and removal from state to federal court is prevented

#### Choice of Law

- Examining choice of law clauses: Using choice of law clauses to steer disputes away from laws of certain jurisdictions
- Examining jurisdictions such as Florida and Georgia that automatically enforce choice of law clauses versus New Jersey that will not enforce choice of law clauses

### Jurisdictional Differences for Establishing Bad Faith and Trial by Jury/Judge

- Variety of standards among jurisdictions for establishing bad faith: Establishing bad faith without proving breach of contract; Establishing bad faith by winning summary judgment
- Jurisdictional differences in recovery of damages
- Statutory bad faith v. common law bad faith
- Jurisdictional differences of bad faith trials by jury and judge: Differences between juries and non juries; How will the judge look at the bad faith cases? Will the Judge look at the bad faith cases in a similar way as the fact finder?

4:40

### Recognizing the Red Flags in Demand Letters to Avoid Bad Faith Set Ups and How Insurers Can Use the Bad Faith Set Up Defense to Their Advantage

*Larry R. Levine, Esq., CPCU*

Assistant Vice President Litigation &

Senior Claims Counsel

Infinity Insurance Company

*Christopher D. Brown*

Partner

Beasley, Demos & Brown, LLC

*Erik Sikorski*

Claims Executive

Builders Insurance Group

#### Time Limits and Demands, and Bad Faith Set Ups

- Developing and implementing an early warning system for set-up prevention
- Recognizing the set-up: now what?
- Handling and responding to the set-up time demand letter
- Investigation and evaluation
- Communicate with claimant's counsel and the insured – recent case law
- What is the time to respond?; Missing a deadline – what do you do?; Does this lead to potential bad faith claims?
- Inoculation by providing effective communication to the insured: Requesting documents; Advising on investigation;

#### Seeking Input

- Traps of time limit demands
- Reviewing recent trend of Federal courts requiring plaintiffs to prove “good faith” in third party claims
- Placing the onus on plaintiffs rather than insurers to show they pursued their claim in good faith and communicated with the insurer
- Time limit settlement demands

## Demand Letters

- Properly responding to demand letters
  - Responding to allegations that investigation was improper
  - Recognizing the cooperation of the insured to provide information in order for the insurer to effectively respond to a claim
  - Appropriately training adjusters to read between the lines and subtle context
- What are the gray areas?
  - What types of demand letters are unclear on how/when an insurer should respond?
  - Dealing with situations where the insurer has to respond/ make an offer without a demand letter
- How some courts are requiring plaintiffs to show good faith in the third party context
  - Plaintiffs must show communication with insurer and follow up for status of investigation
  - Using the plaintiff's failure to provide information to your advantage to negate the duty to defend
- Mixed coverage (property, bodily, and other types of coverage) for time limit demands

## Bad Faith Set Up Defense

- The argument that insurers were not given enough time to appropriately evaluate a case before tendering limits
- Placing critical importance on the claim file

## 6:00 Conference Adjourns

# Day Two: Wednesday, November 19, 2014

## 7:30 Continental Breakfast

## 8:00 View From the Bench: Judicial Insight on the Latest Claims, Theories and Discovery Issues

*The Honorable Ruben Castillo*  
U.S. Dist. Ct., N.D. Ill.

*The Honorable Donetta W. Ambrose*  
U.D. Dist. Ct., W.D. Pa.

*The Honorable Leslie E. Kobayashi*  
U.S. Dist. Ct., D. Hawaii

*The Honorable Lisa P. Lenihan*  
U.S. Dist. Ct., W.D. Pa.

*The Honorable Lorenzo F. Garcia*  
U.S. Dist. Ct., D.N.M.

*The Honorable Paul Warner*  
U.S. Dist. Ct., D. Utah

### Moderator

*David A. Mercer*  
Partner  
Butler Pappas Weihmuller Katz Craig LLP

## 9:40 Morning Break

## 9:50 Asserting a Bad Faith Claim as an Additional Insured

*Susan Byron*  
Corporate Counsel, Litigation  
FCCI Insurance Group

*Harry M. Baumgartner*  
Member  
Bressler, Amery & Ross, P.C.

*Paul Koepff*  
Partner  
Clyde & Co LLP

- How and why carriers are looking to limit additional insured coverage
- Owners and general contractors asking subcontractors to obtain broader coverage
- Understanding the impact and ramifications of the ISO's additional insured endorsement
- What are the policyholder's objections?
- Examining the trend in the industry of issuing narrower additional insured coverage which results in limited coverage
- What is the impact to lower tiered subcontractors who are required to obtain additional insured coverage and fail to comply with its contractual obligations?
- Can a third party claimant assert a bad faith claim? What circumstances would allow a third party claimant to assert a bad faith claim?
- Issues related to additional insureds and their status via indemnity contracts: Duty to indemnify; Duty to defend

## 11:00 The Latest on Discovery Disputes and Requests: Claims Files Associated with Institutional Bad Faith/Class Action Litigation; Attorneys Utilized as Experts; and How Other Jurisdictions Will Respond to the Erosion of Attorney/Client Privilege Given the Court's Decision in *Cedell v. Farmers*

*Jennifer Arnett Roeblich*  
Chief Litigation Officer  
Arch Insurance Group

*P. Ted Colquett*  
Attorney  
Wilson & Berryhill, P.C.

### Discovery

- Volume of document production
- Challenge of knowing which documents are relevant
- Protecting attorney client privileged communication: Advice of counsel regarding denial of coverage
- Narrowly tailoring discovery requests
- Challenges with E-Discovery document production
- Bifurcation of discovery for bad faith claim and breach of contract claim

- How to prepare a burdensome affidavit to prevent overly broad discovery requests

### Attorneys Utilized as Experts in Bad Faith Cases

- Can an attorney serve as an expert in bad faith cases?: Prior knowledge/experience of claims handling; Does and attorney have the same/similar perspective of a claims handler?

### Erosion of Attorney Client Privilege

- Interpreting the court's decision in *Cedell v. Farmers*: Examining decisions in Montana and Idaho; Determining whether other jurisdictions will follow the *Cedell* decision in Washington
- Policyholder's "common interest" in defeating plaintiff in order to attack attorney client privilege between coverage counsel and insurer

### Institutional Bad Faith Claims

- How the files of other claimants can shed light on the claimant's file in question
- Reviewing a company's overall practices and not just a single claim
- Class Action Claims

## 11:50 **Networking Lunch for Speakers and Attendees**

## 12:50 **Understanding the Scope and Limits of Duty to Defend, Duty to Settle, and Initiating Settlement Negotiations**

*John B. Drummy*  
Partner  
Kightlinger & Gray, LLP

*Diane L. Polscer*  
Managing Partner  
Gordon & Polscer, L.L.C.

*Robert M. Forni, Jr., Esq.*  
Partner  
Ropers Majeski Kohn & Bentley PC

*Laura Foggan*  
Partner  
Wiley Rein LLP

- Duty to defend – *Post v. St. Paul Travelers* (3rd Cir.)
  - o Denying coverage based on what is covered as defined in the policy
  - o Reviewing exclusions in the policy
  - o Assessing whether "dishonest purpose" is bad faith
  - o What is the current scope of duty to defend?
  - o What is the obligation of the insured?
  - o What rights does the insured have to select counsel?
  - o What are the conflicts, if any?
- Duty to settle claims – *Du v. Allstate Insurance Company*, et al. (9th Cir.)
  - o Genuine dispute doctrine to third-party claims
  - o Insurer's obligation to proactively initiate settlement discussions when liability is reasonably clear
  - o Determining whether this is an undue burden

- Liability for failure to settle within policy limits
  - o Realizing potential bad faith claims for failing to settle
  - o Hiring an independent law firm to review whether settlement is appropriate
  - o Establishing a defense to policyholder's argument that settlement should have been occurred within policy limits
- How some courts are expanding the carrier's obligation and now include an obligation to initiate settlement negotiations:
  - Examining the impact of initiating settlement negotiations on wasted policies
  - *Johansen v. California State Auto Association*: Determining whether there is a duty to settle when there is valid coverage defense, exclusion
  - *Howard v. American National Fire*: Duty to settle with multiple insurers; Failure to defend
  - Examining the role of excess insurers in settlement
  - Determining whether there is an affirmative obligation to negotiate, initiate or pursue settlement: Role of insurer, coverage lawyers, defense lawyers, policyholders
  - Role of captive insurers: What are the obligations of captive insurers? What are the contractual obligations of the captive insurers? What are the risks?
  - Examining the reinsurance implications of failing to settle
  - Interpreting the court's opinion in *Liberty Mutual Fire Insurance Co. v. JT Walker Industries, Inc*
  - Interpretation of the Stowers doctrine and duty to settle within limits – *Patterson v. Home State County Mutual Insurance Company*

## 2:10 **How Policyholders Use Consumer Fraud Statutes and Unfair Trade Practices Acts to Recover Extra Contractual Damages**

*Matthew M. Haar*  
Partner  
Saul Ewing LLP

*Michael Stevens*  
Martin & Seibert, L.C.

- Comparing Consumer Fraud Statutes to common law bad faith claims; how are they similar and what are the objectives?
- Recovering attorney's fees
- Using the Unfair Trade Practices Act in bad faith claims: Failure to pay; failure to represent

## 3:10 **Main Conference Ends**

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w.tyler@AmericanConference.com

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# BAD FAITH

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