

## TOP 10 WAYS TO COMMIT BAD FAITH

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An article in the Bad Faith Reporter contained a list of 10 things insurance companies do to mess up their files. I've modified the list somewhat and present it to you in a Top Ten "Letterman" format with explanations. Although hopefully humorous, it is meant to be a reminder of conduct to avoid lest you be deposed on the file someday.

- 10. Forms** The public loves them. Never mind that many of them have nothing to do with the claim at hand. If you have a form, ask that it be filled out, preferably twice. For the best results, send out all the forms one by one spaced 2-3 weeks apart.
- 9. Disparagement** Never miss an opportunity to insult the insured or the insured's lawyer with notes in the file. Brainstorming with co-workers at lunchtime and making entries later is the best way to come up with the funniest insults.
- 8. Inconsistency** Life can sometimes be boring. Why miss the opportunity at work to treat similar claims or insureds differently? Make every effort to interpret coverages differently or value similar claims differently. If possible, enter incorrect figures into a computer program that evaluates claims and never waver from what the computer tells you. Computers are always right.
- 7. Alzheimer's** Why make an effort to write down important information in the claim file? Rely on your superior intellect and ability to re-create the file years later under the pressure of a deposition.
- 6. Savings** Try to make the underwriting department look good by underpaying claims or making low-ball offers to improve the loss ratio of the Company. The CEO will be impressed and give you a big raise and stock options.
- 5. Surprise** Don't inquire as to the experience of defense counsel. I mean, we all started somewhere. It's much more fun to find out after an adverse result that the attorney for the insured never tried this type of case before.
- 4. Bias** Make it appear that the insurance company is looking for a way not to pay the claim. Later you can convince the jury that it was just a coincidence that everything you highlighted or underlined in the file was adverse to the insured's interest.
- 3. Prejudgment** (see also bias) This one is so good I had to bring it up again. Investigations will go quicker and you will save time if you first come up with a theory and then do only the investigation necessary to support your theory (i.e., fire = arson).
- 2. Reservation of Rights** Do it early and often. More is better. The longer you can string cite provisions of the policy, the stronger your basis for denial. *Damron* and *Morris* agreements should not be feared...so what if the insured stipulates to a \$1 million judgment on a \$15,000 policy?!

### 1. Delay

Everyone knows that if you wear down the insured you pay less on the claim. The jury will not hold it against you in a bad faith trial. They simply see this as a game. Call the insured at lunchtime. Call them at home when you know they are at work. Whenever possible, mail letters. This gives you additional time which will help in accomplishing the objectives set forth in number 6 above.

I hope you enjoyed my attempt to put a little humor into reminding us all what obligations exist in complying with the duties of good faith and fair dealing. Although rephrased to be funny, all of these scenarios are taken from actual cases. Needless to say, such conduct can produce significant hurdles in defending a bad faith case. It can also prove to be detrimental to an adjuster's health and overall longevity.

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### ABOUT THE AUTHOR



**Don Myles** leads the firm's Professional Liability, Bad Faith & Complex Litigation Group. He has tried over 50 cases to verdict and concentrates his practice in the areas of insurance coverage, bad faith, and professional liability. In addition, he provides mediation services in all types of tort claims.

In 2019 and 2020, Don was recognized by Chambers USA as a Band 1 lawyer in Insurance Law. He is a Fellow in the International Academy of Trial Lawyers (IATL), an Advocate member of the American Board of Trial Advocates (ABOTA), and a Fellow in the American Academy of Coverage Counsel (AACC). Don is a Past President of the Federation of Defense and Corporate Counsel (FDCC), Arizona Association of Defense Counsel (AADC), and USLAW Network.

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