

CONTENTS

Volume 1

Note: A summary table of contents is provided here. Detailed tables of contents precede each chapter.

About the Author

Glossary

Acronyms

Introduction

A.	History of Insurance	Intro 1
B.	Structure of an Insurance Company.....	Intro 5
C.	State Departments of Insurance—Contact Information.....	Intro 13
D.	How to Use This Guide	Intro 25

PART I THE POLICY

Chapter I-1 Kinds of Insurance Policies

A.	Introduction.....	I-1 1
1.	Property.....	I-1 1
2.	The Contract of Personal Indemnity	I-1 1
3.	Liability.....	I-1 3
4.	Differences Between Property and Liability Policies.....	I-1 4

B. Rules of Contract Interpretation.....I-1 5

- 1. Contract Interpretation and the Reasonable Expectations of the Insured I-1 8b
- 2. The Reasonable Expectations Test I-1 10c
- 3. Investigation Required..... I-1 10h

C. The Property PolicyI-1 11

- 1. Open and Valued Policies I-1 11
- 2. The Declarations Page I-1 13
- 3. The Policy Limitations..... I-1 13
- 4. The Perils Insured Against..... I-1 13
- 5. Coinsurance or Average..... I-1 20b
- 6. Specific of Blanket Coverage I-1 23
- 7. Reporting Endorsements I-1 25
- 8. The Standard Mortgage Clause..... I-1 26
- 9. Insurable Interest I-1 40
- 10. Business Interruption I-1 43

D. The Liability Policy.....I-1 47

- 1. Casualty Insurance I-1 47
- 2. Liability Insurance I-1 48
- 3. Legal Liability..... I-1 50
- 4. Types of Liability Insurance I-1 56
- 5. Liability Policy Format I-1 58
- 6. The Commercial General Liability Policy I-1 66
- 7. The Additional Insured Endorsements I-1 86
- 8. Non Cumulation Clauses I-1 97
- 9. The Vendor’s Endorsement and Sole Negligence I-1 103
- 10. The Certificate of Insurance I-1 112

Checklists

Appendices

Chapter I-2 Other Insurance Clauses

A. Types of Other Insurance ClausesI-2 3

1. Pro Rata Clauses I-2 3

2. Excess Clauses I-2 5

3. Escape Clauses..... I-2 6

4. Contingent Escape Clauses I-2 10

5. Other “Other Insurance” Clauses..... I-2 10

B. Resolution of Conflicts Involving “Other Insurance” Clauses.....I-2 13

1. No Other Insurance Clause I-2 14

2. An Other Insurance Clause in Only One Policy I-2 14

3. Similar Other Insurances Clauses in Two Primary Policies I-2 15

4. Dissimilar Other Insurance Clauses in Two Primary Policies..... I-2 17

5. Conflicting Other Insurance Clauses in Secondary
or Excess Policies I-2 23

6. Conflicting Other Insurance Clauses in “Specific”
Secondary Policies I-2 27

7. Conflicting Other Insurance Clauses in General
or Umbrella/Catastrophe Excess Policies I-2 28

8. Statutory Involvement..... I-2 29

C. Formulae For Apportioning Losses Between Co-Insuring PoliciesI-2 31

1. Proration Method I-2 31

2. Equal Share Method..... I-2 31

3. Maximum Loss Method..... I-2 32

D. Allocating the Duty to Defend Between Co-InsurersI-2 32

1. When the Insurers Provide Coverage on a Pro Rata Basis I-2 33

2. When One Insurer Is Primary and the Other Is Excess I-2 34

3. Duty of Primary Insurer to Excess Insurer I-2 39

Checklist

Chapter I-3 Underwriting

A. The Nature of UnderwritingI-3 1

1. Moral Hazard I-3 2

2. Underwriting Against Moral Hazards..... I-3 7

3. Morale Hazard I-3 12b

4.	Physical Hazard	I-3 15
5.	Unacceptable Risks	I-3 17
6.	Cancellation by Premium Finance Agency.....	I-3 17
7.	“Post Loss Underwriting”	I-3 19
8.	Policy Expiration by Its Terms	I-3 21
9.	Certificates of Insurance	I-3 21

Chapter I-4 Conditions, Warranties, and Exclusions

A.	Property	I-4 1
1.	Conditions	I-4 1
2.	Warranties	I-4 2g
3.	Coinsurance and Deductibles.....	I-4 8f
4.	Exclusions	I-4 19
B.	Liability	I-4 43
1.	Assault and Battery	I-4 43
2.	Losses Arising From Possession of Controlled Substances	I-4 45
3.	Losses Arising From Professional Services.....	I-4 46
4.	Resident Relatives	I-4 48
5.	Total Pollution Exclusion	I-4 49
6.	The “Montrose” Exclusion	I-4 50

Checklist

Chapter I-5 Duties of the Insured and the Insurer

A.	Good Faith.....	I-5 1
B.	Property	I-5 3
1.	Duties of the Insured.....	I-5 3
2.	Duties of the Adjuster	I-5 4
3.	Excellence in Claims Handling.....	I-5 4a
C.	Required Continuing Education	I-5 4e
1.	Continuing Education Requirement.....	I-5 4e
2.	Fraud Training Requirement.....	I-5 4f
3.	Duties of the Public Adjuster.....	I-5 4h
D.	Liability.....	I-5 5
1.	Duties of the Insured.....	I-5 5

2.	Duties of the Adjuster	I-5 5
3.	Duty to Defend.....	I-5 7
4.	No Tort Remedy for Non Claims Bad Faith.....	I-5 23
5.	Discovery of Evidence of Claims Bad Faith.....	I-5 25
E.	Duties and Liabilities of Insurance Brokers.....	I-5 27

Chapter I-6 Declaring a Policy Void

A.	When a Policy Is Void	I-6 1
1.	The Burden of Proof	I-6 2
2.	An Arizona Divergence	I-6 4
3.	The Majority Rule – Preponderance of the Evidence.....	I-6 11
4.	When “Clear and Convincing” Evidence Is Required.....	I-6 12
5.	The Concealment/Fraud Clause.....	I-6 14
6.	Waiver and Estoppel.....	I-6 20
7.	Notice to the Insured.....	I-6 21
B.	Grounds for Declaring Void	I-6 23
C.	Rescission.....	I-6 24
D.	Returning the Premium.....	I-6 26

PART II THE CLAIM

Chapter II-1 Processing a Claim

A.	Property	II-1 1
1.	Read the Policy	II-1 1
2.	Read the Loss Notice	II-1 2
3.	Meet With the Insured and Witnesses	II-1 3
4.	Establish the Amount of the Loss and Claim.....	II-1 8
5.	Write the Captioned Report	II-1 12
6.	Supplemental Reports	II-1 22
7.	The Statement of Loss	II-1 22
8.	Adjusting the Commercial Loss.....	II-1 23
9.	The Public Adjuster	II-1 24a
10.	Common Mistakes and Omissions to Avoid	II-1 33

B. Liability..... II-1 42

- 1. The Loss Notice II-1 42
- 2. Read the Policy II-1 43
- 3. Meet the Parties Involved II-1 43
- 4. Visit the Scene II-1 46
- 5. Contact Authorities II-1 46
- 6. Write the Captioned Report II-1 47
- 7. Supplemental Reports II-1 53
- 8. Resolve the Claim II-1 54

Checklists

Appendices

Chapter II-2 Investigation

A. Property II-2 1

- 1. Determine Whether Property Damage Occurred..... II-2 1
- 2. Determine if the Policy Is Valid II-2 23
- 3. Determine if Coverage Exists II-2 55
- 4. Determine the Amount of the Loss II-2 79
- 5. The Claim File II-2 107
- 6. The Release of All Claims II-2 108
- 5

Volume 2

B. Liability..... II-2.B 1

- 1. Determine if Coverage Exists II-2.B 1
- 2. The Claim File II-2.B 51
- 3. What the File Should Not Contain..... II-2.B 68
- 4. Setting Reserves..... II-2.B 68
- 5. Discoverability of Insurance Claims Files..... II-2.B 69
- 6. Duty to Defend..... II-2.B 72
- 7. Single Promise Policies II-2.C 41

Checklists

Appendices

Chapter II-3 Subrogation and Salvage

A. SubrogationII-3 1

1. The Tort RemedyII-3 2c

2. The Contract Remedy II-3 2d

3. The Equitable Remedy..... II-3 2d

4. Cases with Subrogation Potential II-3 3

5. Retaining an Attorney II-3 7

B. SalvageII-3 8d

1. Equitable Salvage II-3 9

2. Priority of Rights to Salvage..... II-3 11

3. Recovery From Third Party Tortfeasors II-3 14

4. Analogy to Marine Insurance Policies..... II-3 16

Checklist

Appendix

Chapter II-4 Bad Faith

A. PropertyII-4 1

1. Common Law Bad Faith..... II-4 1

2. Development of the Tort of Bad Faith..... II-4 5

3. Adoption of the Tort of Bad Faith in First Party Cases II-4 18d

4. [reserved]

5. Courts That Do Not Accept the Tort of Bad Faith II-4 22

6. Duties of the Insurer II-4 23

7. Grounds for Finding Bad Faith..... II-4 24

8. Avoiding Charges of Bad Faith II-4 30

9. Punitive Damages II-4 33

10. Statutory Bad Faith II-4 37

11. The Duty of the Insured II-4 38

12. Suspending the Duty of Good Faith II-4 39

13. Abuses of the Tort of Bad Faith.....II-4 40a

B. Liability.....II-4 40b

1. Third Party Bad Faith II-4 40b

C. Washington State Enacts Easy to Prove Bad Faith Statute..... II-4 41

1. Avoiding Charges of Bad Faith II-4 43

D. Defenses to the Tort of Bad Faith..... II-4 54

1. Genuine Dispute Doctrine II-4 54

2. The Bad Faith “Set-Up” II-4 74

3. Advice of Counsel..... II-4 77

4. Payment of Indemnity Based on Reasonable Evidence..... II-4 83

5. Has the Tort of Bad Faith Run Its Course?..... II-4 83

Checklist

Appendix

Chapter II-5 The Interview

A. Introduction..... II-5 1

1. General Principles II-5 2

2. Examination Under Oath II-5 4

3. Obtaining the Truth..... II-5 6j

B. The Interviewer II-5 7

1. Remain Objective..... II-5 7

2. Establish Rapport II-5 8

3. Control Emotions II-5 8

4. Be Confident II-5 8

5. Maintain Perspective..... II-5 8

6. Be a Performer II-5 8a

7. Be Prepared..... II-5 8a

8. The Importance of Body Language II-5 9

9. Practice..... II-5 9

C.	Interviewing a Fraud Suspect.....	II-5 11
1.	Introduction.....	II-5 11
2.	Preparing for the Interview.....	II-5 11
3.	Conducting the Interview.....	II-5 16
4.	The Length of the Interview.....	II-5 28
5.	Evaluating the Interview.....	II-5 30
D.	Interview Techniques and Approaches.....	II-5 37
1.	Introduction.....	II-5 37
2.	Questioning Techniques.....	II-5 38
3.	Interview Approaches.....	II-5 47
4.	What to Avoid in an Interview.....	II-5 78
5.	Conclusion.....	II-5 79
E.	The Psychology of Interviewing.....	II-5 81
1.	The Danger of Relying on Memory.....	II-5 81

Checklists

Appendix

Chapter II-6 Preparing a Case for Trial

A.	Counsel.....	II-6 1
1.	Retaining a Lawyer.....	II-6 1
2.	Relationship With the Defense Lawyer.....	II-6 2
3.	Reporting Requirements.....	II-6 4
4.	Involvement of the Adjuster.....	II-6 4a
B.	Early Investigation.....	II-6 5
1.	Initial Evaluation.....	II-6 5
2.	Litigation Plan.....	II-6 6
3.	General Discovery.....	II-6 10
4.	The Claim File.....	II-6 11
5.	Trial Preparation.....	II-6 13
6.	Conflicts of Interest.....	II-6 14d

C. The Right to Independent Counsel..... II-6 17

- 1. The *Cumis* Doctrine II-6 17
- 2. Reservation of Rights..... II-6 23
- 3. Restraint on Independent Counsel II-6 24
- 4. Adjustment of a Potential *Cumis* Case II-6 29
- 5. When Retained Defense Counsel Provides an Incompetent Defense II-6 39

D. Need to Prove the Policy..... II-6 42

- 1. Lost or Destroyed Policy of Insurance II-6 42

Checklist

Chapter II-7 Evaluation and Settlement

A. Property II-7 1

- 1. Structure Losses II-7 1
- 2. Contents Losses II-7 3
- 3. The Proof of Loss..... II-7 5

B. Liability..... II-7 6b

- 1. Damages..... II-7 7
- 2. Liability..... II-7 12
- 3. Considerations for Early Settlement II-7 19
- 4. Settlement Negotiations II-7 26f
- 5. When a Claim Should Not Be Settled..... II-7 30
- 6. Dispute or Denial of a Claim II-7 34
- 7. Model Regulations of the NAIC to Enforce the Fair Claims Practices Act II-7 37
- 8. Settlements and the Ethical Burden on Attorneys II-7 38
- 9. Attempts at States to Impose State Liabilities on Insurers II-7 39

Checklist

Appendix

PART III FRAUD

Chapter III-1 Identifying Insurance Fraud

A. Introduction..... III-1 1

B. Types of Insurance Fraud III-1 6

1. Soft Fraud..... III-1 6

2. Hard Fraud III-1 18a

3. Professional Conspiracies III-1 27

4. The False Claims Act and the Qui Tam Suit III-1 30

5. Fraud in Low Speed Rear End Accidents III-1 35

6. Insurer Fraud..... III-1 37

7. Broker Fraud III-1 39

8. Catastrophe Fraud III-1 39

9. How to Join the Fraud Fight III-1 41

10. Summary III-1 42

C. Investigating Fraud..... III-1 43

1. Training the Investigators III-1 43

2. Red Flags of Fraud..... III-1 44

3. Investigation Methods..... III-1 46

4. Case Studies of Successful Fraud Investigations..... III-1 52

5. Specialized Investigations..... III-1 53

Checklists

Appendices

Chapter III-2 Responses to Fraud

A. Denying a Claim..... III-2 1

1. Grounds for Denying a Claim..... III-2 2

2. Grounds for Rescission III-2 9

3. The Denial Letter III-2 24f

4. Settlements III-2 31

5. Taking a Fraud Case to Trial III-2 32

B. The Fight Against Fraud III-2 65

- 1. Battling Public Opinion III-2 66
- 2. Insurance Industry Weapons..... III-2 67
- 3. The Legislative Arsenal III-2 83
- 4. One State’s Fight Against Fraud..... III-2 95
- 5. The Role of Victims in Criminal Investigation
and Prosecutions III-2 109
- 6. Is the Fight Against Fraud Being Lost? III-2 118
- 7. Summary III-2 128

Checklists

Appendices