

Appendix B-7

The following instructions are complements to CACI Nos. 2300, 2303, 2304, 2306, 2330, 2331, 2332, and 2337. These instructions were drafted for use in most claim types. Instruction No. 1 is intended solely for homeowner policy claims.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 1
[insert name of insurer]’s Homeowners Insurance Policy
is an All-Risk Policy with Specified Exclusions

[insert name of insurer]’s homeowners insurance policy is an “all-risk” policy. Under an “all-risk” homeowners insurance policy, all risks are covered except loss caused by those specifically excluded by the policy.

Authority: See [insert name of insurer]’s Homeowner’s Insurance Policy, [p. 3 (Section I – PROPERTY), and pp. 4-7 (exclusions)]; *Freedman v. State Farm Ins. Co.* (2009) 173 Cal. App. 4th 957, 965 fn. 1; *State Farm Fire & Casualty Co. v. Von Der Lieth* (1991) 54 Cal.3d 1123, 1131; *Garvey v. State Farm Fire & Casualty Co.* (1989) 48 Cal.3d 395, 406-407; *Strubble v. United States Auto. Assn.* (1973) 35 Cal.App.3d 498, 504.

Notes: This instruction is a prefatory instruction to CACI Nos. 2300 and 2306 and entirely explanatory in nature. It is a simple, informative statement of the law generally endorsed by both parties.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 2
Purpose of Insurance

The nature of an insurance contract is unique. An insured does not enter into an insurance contract seeking profit but seeks security and peace of mind through protection against misfortune and accidental loss. Insureds pay premiums in advance for this protection. Thus, insurance companies have a “special relationship” with their insureds. Insurers are held to a higher standard in contract performance than other contracting parties, and the law imposes duties on insurers not found in other contracts. Above all, an insurer has a duty to treat the insured with fairness, decency, and honesty.

Authority: *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720-721; *Love v. Fire Ins. Exch.* (1990) 221 Cal.App.3d 1136, 1151; *Egan v. Mutual of Omaha* (1979) 24 Cal.3d 809, 819; *Mariscal v. Old Republic Life Insurance* (1996) 42 Cal.App.4th 1617, 1623; *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1209.

Notes: This instruction is a prefatory instruction to CACI Nos. 2330, 2331, and 2332, and is fundamental to understanding insurance policies and the reason for the insurer’s duty of good faith and fair dealing, as well as setting up the insured’s general duty of good faith and fair dealing and the more specific duties in the instructions that follow.

“An insured does not enter into an insurance contract seeking profit, but instead seeks security and peace of mind through protection against calamity.” (*Love, supra*, at 1151; see also *Egan, supra*, at p. 819; *Mariscal, supra*, at p. 1623.) Insureds pay premiums in advance for an intangible right: protection against misfortune. Even those insured who never suffer a loss receive the benefit of having peace of mind and security in the event misfortune occurs. The duty of good faith and fair dealing is predicated on this intangible, along with the perceived disparate bargaining power and the nature of insurance policies (which potentially allow predatory or unscrupulous insurers to exploit their insureds’ misfortune when resolving claims). This instruction succinctly captures the unique nature of the insurance policy. The following is a similar instruction adopted in the Nevada Civil Jury Instructions that captures the foregoing:

“The relationship of an insured to an insurer is one of special confidence and akin to that of a fiduciary. A fiduciary relationship exists when one has the right to expect trust and confidence in the integrity and fidelity of another. This special relationship exists in part because consumers contract for insurance to gain protection, peace of mind, and security against calamity. To fulfill its implied obligation of good faith and fair dealing, an insurance company must give at least as much consideration to the interests of the insured as it gives to its own interests.”

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 3
Insurance Company’s Duties Once a Claim is Made

[insert name of insurer] has a duty under the law to promptly commence and diligently conduct a thorough, fair, objective, and unbiased investigation of a claim. When investigating [insert name of Plaintiff]’ claim, it was essential for [insert name of insurer] to fully and fairly inquire into possible bases that might support [insert name of Plaintiff]’s claim, not just those facts, claims, or coverage theories advanced by [insert name of Plaintiff]. In determining whether [insert name of insurer] acted unreasonably, you may consider whether [insert name of insurer] failed to fully and fairly inquire into possible bases that might support [insert name of Plaintiff]’s claim.

Authority: *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720; *Frommoethelydo v. Fire Ins. Exchange* (1986) 42 Cal.3d 208, 215-220; *Egan v. Mutual of Omaha* (1979) 24 Cal.3d 809, 817-19; *Mariscal v. Old Republic Life Insurance* (1996) 42 Cal.App.4th 1617, 1623; *Jordan v. Allstate Ins. Co.* (2007) 148 Cal.App.4th 1062, 1072; Cal. Admin. Code tit. 10, § 2695.7, subs. (d); Cal. Ins. Code § 790.03(h)(3).

Notes: As an example of the disparate treatment in the enumerated duties of the insurer and policyholder, the industry-standard homeowner’s insurance policy (e.g., the ISO HO-3 form) describes the insured’s duties after loss in detail. These duties are also found in the statutory form of California Insurance Code § 2071, and every California homeowner policy must incorporate terms that are no less favorable than those found in § 2071. The insured’s duties include:

- (1) giving notice to [insert name of insurer] without unreasonable delay;
- (2) protecting the property covered by the policy from further damage;
- (3) not destroying the property covered by the policy;
- (3) maintaining accurate records of repair costs;
- (4) making a list of all damaged personal property (with specific details on quantity, cash value, replacement cost and amount of loss);
- (5) showing the property upon request;
- (6) providing upon request all records and documents relating to the damaged property;
- (7) providing testimony at an examination under oath; and
- (8) submitting a proof of loss upon request.

(see e.g., ISO HO-3 form, Section entitled “Conditions”, subsection “2. Duties After Loss”, pp. 8-9

of the policy form; see *also* Cal. Ins. Code § 2071)

A violation of these duties gives rise to forfeiture of benefits and the right to sue under the policy. On the other hand, the policy is silent as to the insurer's duties, and thus statutes, regulations, and judicial decisions have filled in the missing duties. The duty to conduct a *thorough, fair, objective, and unbiased investigation* of a claim is one of the preeminent duties of an insurer and the most critical to evaluating expert bias.

While breach of this duty has generally been found to constitute unreasonable conduct and bad faith as a matter of law (see *e.g.*, *Wilson, supra*, at p. 729); *Frommoethelydo, supra*, at pp. 215-220; *Egan, supra*, at pp. 817-19; *Mariscal, supra*, at p. 1623; and *Jordan, supra*, at p. 1072), the last sentence of this instruction is modeled after CACI No. 2337, acknowledging that the breach is a factor for the factfinder to consider in evaluating unreasonable conduct.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 4
Insurance Company’s Duty to Interview Percipient Witnesses

[insert name of insurer] has a duty under the law to diligently search for evidence that favors coverage under the insurance policy and evidence that disfavors coverage under the insurance policy. Once [insert name of insurer] was advised of the existence of witnesses who had knowledge of disputed facts that were material to [insert name of Plaintiff]’s claim, [insert name of insurer] had a duty to investigate those witnesses.

In determining whether [insert name of insurer] acted unreasonably, you may consider whether [insert name of insurer] failed to investigate witnesses who had knowledge of disputed facts material to [insert name of Plaintiff]’s claim.

Authority: *Frommoethelydo v. Fire Ins. Exchange* (1986) 42 Cal.3d 208, 219-220; *Mariscal v. Old Republic Life Insurance* (1996) 42 Cal.App.4th 1617, 1624; *Hughes v. Blue Cross of Northern California* (1989) 215 Cal.App.3d 832, 846

Notes: Please refer to instruction No. 3 for support for this instruction.

While a breach of the duty to interview the percipient witnesses has generally been found to constitute unreasonable conduct and bad faith as a matter of law (see e.g., *Frommoethelydo, supra*, at pp. 219-220; *Mariscal, supra*, at p. 1624; and *Hughes, supra*, at p. 846), the last sentence of this instruction is modeled after CACI No. 2337, thus eliminating any suggestion that the breach is bad faith as a matter of law. Rather, it is a factor for the factfinder to consider in evaluating unreasonable conduct.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 5
Insurer’s Duty Not to Mislead or Conceal Material Information

[*insert name of insurer*] has a duty under the law not to mislead or conceal material information from [*insert name of Plaintiff*].

Authority: Cal. Ins. Code § 790.03(h)(1). *See also generally*, Cal. Ins. Code §§ 330, 332 (West’s 2023); Cal. Admin. Code, Tit. 10, § 2695.7(b)(1) ; CACI No. 2308.

Notes: Please refer to instruction No. 3 for support for this instruction. The failure to communicate that which a party knows and ought to communicate is concealment. Insurers often successfully invoke this duty against insureds to rescind a policy — often after a claim is made — based on a material misrepresentation in the application process. *See e.g., Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 75; *TIG Ins. Co. of Michigan v. Homestore, Inc.* (2006) 137 Cal.App.4th 749, 755-756. While the statute is reciprocal, and insurers have routinely used the statute to rescind policies, very few insureds have successfully used the statute against insurers, and never against an insurer based on the material misrepresentation or concealment concerning its claim handling practices (*e.g.*, the systemic use of biased experts).

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 6
Insurer’s Duty to Give Equal Consideration to the Interests of the Insured

To fulfill its implied obligation of good faith and fair dealing, an insurance company must give at least as much consideration to the interests of the insured as it gives to its own interests. When evaluating valid claims that are potentially covered by the insurance policy, an insurer may not consider the interests of its other policyholders or shareholders, its profitability, or the impact of the claim on its financial condition. When evaluating invalid claims not covered by the insurance policy, an insurer is not required to disregard the interests of its shareholders and other policyholders.

Authority: *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1148-1149

Notes: Please refer to instruction No. 3 for support for this instruction. This instruction should be offered only if an insurer puts forth a jury instruction that it may consider the interests of its own shareholders. It’s generally unnecessary and already covered in CACI No. 2330, which recites:

“To fulfill its implied obligation of good faith and fair dealing, an insurance company must give at least as much consideration to the interests of the insured as it gives to its own interests.”

The CACI instruction captures the import of the California Supreme Court in *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720–723, which recites in relevant part:

“The law implies in every contract, including insurance policies, a covenant of good faith and fair dealing. "The implied promise requires each contracting party to refrain from doing anything to injure the right of the other to receive the agreement’s benefits. To fulfill its implied obligation, ***an insurer must give at least as much consideration to the interests of the insured as it gives to its own interests.*** When the insurer unreasonably and in bad faith withholds payment of the claim of its insured, it is subject to liability in tort." ” (*Id.*, at p. 720, citing *Frommoethelydo v. Fire Ins. Exchange* (1986) 42 Cal.3d 208, 214–215, [emphasis added].)

Yet, insurers attempt to mislead the courts over this instruction by mis-citing *Love v. Fire Ins. Exchange*, which opined as follows:

“Unique obligations are imposed upon true fiduciaries which are not found in the insurance relationship. For example, a true fiduciary must first consider and always act in the best interests of its trust and not allow self-interest to overpower its duty to act in the trust’s best interests. An insurer, however, may give its own interests consideration equal to that it gives the interests of its insured; it is not required to

disregard the interests of its shareholders and other policyholders when evaluating claims; and ***it is not required to pay noncovered claims, even though payment would be in the best interests of its insured.*** (Love, *supra*, at p. 1148–1149 [citations omitted, emphasis added].)

An insurer's shareholders have no interest in a claim, except as it relates to the company's profitability.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 7
Insurance Company’s Duty to Provide the Claim-Related
Documents to a Policyholder Upon Request

[insert name of insurer] has a duty under the law to notify *[insert name of Plaintiff]* that they may obtain, upon request, copies of all claim-related documents. *[insert name of insurer]* has a further duty to provide all claim-related documents to *[insert name of Plaintiff]* within 15 calendar days after receiving a request. The “claim-related documents” are all documents that relate to the evaluation of damages. They include *[insert name of insurer]*’s *[insert specific documents withheld from production upon request]*.

In determining whether *[insert name of insurer]* acted unreasonably, you may consider whether *[insert name of insurer]* failed to timely provide the claim-related documents to *[insert name of Plaintiff]* upon request.

Authority: California Insurance Code § 2071

Notes: Please refer to instruction No. 3 for support for this instruction.

This instruction reflects the lone statutory duty imposed on insurers. The duty is found in Cal. Ins. Code § 2071, section entitled “Requirements in case loss occurs,” which also describes the policyholder’s duties. Yet, while all of the policyholder’s duties identified in this provision were incorporated into the standard homeowner’s policy, the insurer’s only duty was omitted.

The last sentence of this instruction is modeled after CACI No. 2337, thus eliminating any suggestion that the breach is bad faith as a matter of law. Rather, it is a factor for the factfinder to consider in evaluating unreasonable conduct.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 8
Insurance Company’s Duty to Respond Completely
to a Policyholder’s Request for Information

After receiving a request for information from a policyholder about a claim, [*insert name of insurer*] has a duty under the law to furnish the policyholder a complete response based on the facts as then known by [*insert name of insurer*]. [*insert name of insurer*] must furnish the response no later than 15 days after receiving the request.

In determining whether [*insert name of insurer*] acted unreasonably, you may consider whether [*insert name of insurer*] failed to furnish [*insert name of Plaintiff*] with complete responses to their requests based on the facts as then known by [*insert name of insurer*].

Authority: Cal. Admin. Code tit. 10, § 2695.5, subs. (b); [*insert name of insurer*]’s Claims Manual (which incorporates and recites Cal. Admin. Code tit. 10, § 2695.5, subs. (b) verbatim)

Notes: Please refer to instruction No. 3 for support for this instruction.

This instruction is used when Plaintiffs make inquiries from their insurer for information and the insurer withholds that information. An insurer’s failure to respond within 15 days fully and completely based on the facts then known is a violation of Cal. Admin. Code tit. 10, § 2695.5, subs. (b).

The last sentence of this instruction is modeled after CACI No. 2337, thus eliminating any suggestion that the breach is bad faith as a matter of law. Rather, it is a factor for the factfinder to consider in evaluating unreasonable conduct.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 9
Insurance Company’s Duty to Use Impartial Experts

In determining whether *[insert name of insurer]* acted unreasonably by failing to perform a full and fair investigation, you may also consider whether *[insert name of insurer]*’s use of experts was unreasonable. You may conclude *[insert name of insurer]* acted unreasonably from any of the following:

- (a) *[insert name of insurer]* failed to conduct a thorough and unbiased investigation;
- (b) *[insert name of insurer]* dishonestly selected its experts;
- (c) *[insert name of insurer]*’s experts were unreasonable;
- (d) *[insert name of insurer]* was guilty of misrepresenting the purpose and nature of its investigation; and
- (e) *[insert name of insurer]* misrepresented to or concealed material information about its investigation from *[insert name of Plaintiff]*.

This list is not intended to be an exhaustive or exclusive list of unreasonable conduct, and you may conclude *[name of insurer]* acted unreasonably based on other conduct.

Authority: *Fadeeff v. State Farm Gen. Ins. Co.* (2020) 50 Cal.App.5th 94, 101-104; *Brehm v. 21st Century Ins. Co.* (2008) 166 Cal.App.4th 1225, 1237-1240; *Chateau Chamberay Homeowners Assn. v. Associated Internat. Ins. Co.* (2001) 90 Cal.App.4th 335, 348-349, n. 8; *Hangarter v. Provident Life and Acc. Ins. Co.* (9th Cir. 2004) 373 F.3d 998, 1010-1011.

Notes: Please refer to instruction No. 3 for support for this instruction.

The cornerstone of a “fair” investigation is the *lack of bias*. (See *Fadeeff, supra*, at pp. 101-104; *Brehm, supra*, at pp. 1237-1240; *Chateau Chamberay, supra*, at pp. 348-349; *Hangarter, supra*, at pp. 1010-1011.) Guidance is generally lacking on what constitutes bias in the claims-handling arena. The above instruction is the only direct guidance the courts have issued to date. Hence, the instruction is critical to the juror’s evaluation of *[insert name of insurer]*’s bad faith conduct.

While it could be argued that the use of biased experts constitutes bad faith as a matter of law, this instruction is modeled after CACI No. 2337, thus eliminating any suggestion that the breach is bad faith as a matter of law. Rather, it is a factor for the factfinder to consider in evaluating unreasonable conduct.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 10
Definition of Bias and Factors to Consider

“Bias” means a strong feeling in favor of or against one side in an argument, often not based on fair judgment. You may conclude that *[insert name of expert]* has a substantial likelihood of bias in favor of *[insert name of insurer]* based on any circumstance concerning the *[insert name of expert]*’s relationship with *[insert name of insurer]* or otherwise, including one or more of the following:

- (a) whether *[insert name of expert]* receives substantial compensation for their work on *[insert name of insurer]*’s claims, and whether *[insert name of expert]* works on a substantial number of *[insert name of insurer]*’s claims;
- (b) whether *[insert name of expert]* has a pattern and practice of offering favorable opinions that support *[insert name of insurer]* denying some or all of a claim;
- (c) whether *[insert name of expert]* failed to use reliable principles, theories, and methodologies in reaching their opinions, or whether *[insert name of expert]* failed to properly apply the facts of this case to those principles and theories; or
- (d) whether *[insert name of insurer]* failed to take reasonable measures to ensure *[insert name of expert]*’s impartiality and the accuracy of the *[insert name of expert]*’s opinions.

You may not consider facts that show only a social acquaintance, such as common membership in the same social club, without any substantial business relationship.

Authority: *Demer v. IBM Corp. LTD Plan* (9th Cir. 2016) 835 F.3d 893 *Haworth v. Superior Court* (2010) 50 Cal.4th 372; *Natarajan v. Dignity Health* (2021) 11 Cal.5th 1095); *Haas Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1025; *Michael v. Aetna Life & Casualty Ins. Co.* (2001) 88 Cal.App.4th 925, 938-940;
https://www.oxfordlearnersdictionaries.com/us/definition/english/bias_1?q=bias

Notes: The duty of good faith and fair dealing requires the insurance company to conduct a full, fair, and thorough investigation of a claim. The cornerstone of a “fair” investigation is the *lack of bias*. This instruction is critical to introducing the *Demer* factors and the conduct that may give rise to a rebuttable presumption of bias.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 11
Obligation to Prove – Inference of Expert Bias

In the context of an insurer’s use of biased experts, *[name of Plaintiff]* has the initial burden to show a weak inference of bias, which may be implied from facts indicating a likelihood of bias. Once *[name of Plaintiff]* shows a weak inference of bias on the part of *[insert name of expert]*, the burden then shifts to *[name of insurer]* to show by a preponderance of evidence that *[name of expert]* is unbiased.

Authority: *Demer v. IBM Corp. LTD Plan* (9th Cir. 2016) 835 F.3d 893, 902-903; Evidence Code § 500; see also CACI Nos. 200, 2304.

Notes: A defendant bears the burden of proving affirmative defenses.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 12
Insurance Company’s Continuing Duty of Good Faith and Fair Dealing

An insurance company’s duty of good faith and fair dealing to the insured is a contractual duty that does not cease when litigation begins. The duty is a continuing obligation that persists throughout litigation until the claim is fully and finally resolved. Thus, any investigation of the claim performed by *[insert name of insurer]* during the litigation must be full, fair, thorough, and unbiased.

In determining whether *[insert name of insurer]* acted unreasonably, you may consider whether *[insert name of insurer]*’s investigation of the claim after the litigation commenced was full, fair, thorough, and unbiased.

Authority: *White v. Western Title Ins. Co.* (1985) 40 Cal.3d 870; see also Insurance Code § 790.03(h)(6); *Jordan v. Allstate Ins. Co.* (2007) 148 Cal.App.4th 1062, 1072, n.7; *Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269; Insurance Code § 790.03(h)(6); Croskey et al., *Cal. Practice Guide: Insurance Litigation* (TRG 2022) ¶¶ 12:985-12:987

Notes: It’s axiomatic that an insurance company’s duty of good faith and fair dealing to the policyholder is a contractual duty that does not cease when litigation begins. The duty is a continuing obligation that persists throughout. (See *White, supra*; *Jordan, supra*, at p. 1072, n.7; *Tomaselli v. Transamerica Ins. Co., supra*, at p. 1281 (insurer may violate the duty of good faith and fair dealing by employees lying during deposition); see also Insurance Code § 790.03(h)(6) (insurance company prohibited from forcing insureds to institute litigation to recover benefits due). In literature, the insurance company’s duty is frequently referred to as the “doctrine of continuing duty of good faith and fair dealing” or “continuing bad faith.” (See e.g., Croskey et al., *Cal. Practice Guide: Insurance Litigation* (TRG 2022) ¶¶ 12:985-12:987.)

Thus, while an insurer arguably may not be held liable for much of its litigation conduct, it may not act in contravention of its pre-litigation duties, including the duty to investigate with unbiased experts fairly. Hence, any expert the insurer uses post-claim denial may be evaluated using the same standards as pre-claim denial experts.

POLICYHOLDER’S SPECIAL JURY INSTRUCTION NO. 13
Policyholder’s Duties End Once a Claim is Denied

Under the [insert name of insurer] homeowners insurance policy, after the appearance of observable physical damage to property covered by the policy, an insured is required to perform certain duties, including giving notice without unreasonable delay, not destroying the property, and protecting it from further damage, and showing the property. A policyholder’s unreasonable failure to comply with their duties after loss is grounds for denying a claim, and the policyholder may lose their right to sue the insurer for their benefits.

After [insert name of insurer] denied the claim, [insert name of Plaintiff] was not required to comply any further with their duties and they were not required to show the property to [insert name of insurer] or its experts. In determining whether [insert name of insurer] acted unreasonably, you may consider whether [insert name of insurer] required [insert name of Plaintiff] to show the property after the claim was denied, or whether [insert name of insurer] informed [insert name of Plaintiff] that they were not in compliance with the policy because they failed to show the property.

Authority: [insert name of insurer]’s Homeowners Insurance Policy, Section entitled “Conditions”, subsections “2. Duties After Loss” and “13. Suit Against Us” (pp. 8-10 of the policy); Insurance Code § 2071; *Prudential-LMI Commercial Ins. v. Superior Court* (1990) 51 Cal.3d 674, 684 (*Prudential-LMI*); *Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672-673; *Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1147-1149; *Marselis v. Allstate Ins. Co.* (2004) 121 Cal.App.4th 122, 125; *Aliberti v. Allstate Ins. Co.* (1999) 74 Cal.App.4th 138, 142-148; *Prieto v. State Farm Fire & Casualty Co.* (1990) 225 Cal.App.3d 1188, 1192-1997; *Campbell v. Allstate Ins. Co.* (1963) 60 Cal.2d 303, 305-307; *Brizuela v. CalFarm Ins. Co.* (2004) 116 Cal.App.4th 578, 587-91; see also *Henderson v. Farmers Group, Inc.* (2012) 210 Cal.App.4th 459, 471-474; *Abdelhamid v. Fire Ins. Exchange* (2010) 182 Cal.App.4th 990, 999-1001; *Robinson v. National Auto. Etc. Ins. Co.* (1955) 132 Cal.App.2d 709, 714-716; *Hickman v. London Assurance Corp.* (1920) 184 Cal. 524, 532-535; *Shell Oil Co. v. Winterthur Swiss Ins. Co.* (1993) 12 Cal.App.4th 715, 759-764; *Xebec Development Partners, Ltd. v. National Union Fire Ins. Co.* (1993) 12 Cal.App.4th 501, 532-534; *Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co.* (1987) 189 Cal.App.3d 1072, 1089; *Martinez v. Infinity Ins. Co.* (C.D.Cal. 2010) 714 F.Supp.2d 1057, 1063.

Notes: This instruction is essential when an insurer attempts to force the insured to permit a reinspection post-denial. Unlike the insurer, the insured’s duties cease after the claim is denied. This instruction is derived from the ISO HO-3 form, Section entitled “Conditions”, subsections “2. Duties After Loss” and “13. Suit Against Us” (pp. 8-10 of the policy).

These policy provisions – required by statute – are valid as a matter of law. “When a clause in an insurance policy is authorized by statute, it is deemed consistent with public policy established by the Legislature ... In addition, the statute must be construed to implement the intent of the

Legislature and should not be construed strictly against the insurance company (unlike ambiguous or uncertain policy language).” (*Prudential-LMI, supra*, at p. 699; see also *Home Ins. Co., supra*, at p. 1392; *Doheny Park, supra*, at p. 1089 fn. 10; *Blue Shield, supra*, at pp. 735-736 (policy provisions more favorable to the insured are valid).)

The courts have also uniformly upheld the limitations and compliance provision of Insurance Code 2071 for suits on claims, albeit often with due consideration of other legal principles and caselaw, such as the delayed discovery rule, estoppel, and equitable tolling. (See *Kapsimallis, supra*, at pp. 672-673; *Vu, supra*, at pp. 1147-1149; *Marselis, supra*, at p. 125; *Aliberti, supra*, at pp. 142-148; *Prieto, supra.*, at pp. 1192-1997)

Similarly, the courts have also upheld the forfeiture of the insured’s rights for failing to comply with the duties after loss provision in the policy. (See *Abdelhamid, supra*, at pp. 999-1001; *Brizuela, supra*; *Robinson, supra*, at pp. 587-91; and *Hickman, supra*, at pp. 532-535.) But in each instance, the Court upheld the forfeiture because the insurance company was prejudiced *pre-denial* in their “full, fair and thorough” investigation.

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