Bad Faith Litigation in Alabama

Faculty List

August 19, 1999 - Mobile

Orrin (Skip) K. Ames III
Hand Arendall, L.L.C.
3000 Amsouth Bank Building
107 Saint Francis Street
PO Box 123
Mobile, AL 36602
334-432-5511
FAX: 334-694-6375

Steven L. Nicholas
Olen & Nicholas P.C.
Riverview Plaza Office Tower
63 South Royal Street, Suite 710
PO Box 1826
Mobile, AL 36633
334-438-6957
FAX: 334-438-6964

August 20, 1999 - Montgomery

Orrin (Skip) K. Ames III
Hand Arendall, L.L.C.
3000 Amsouth Bank Building
107 Saint Francis Street
PO Box 123
Mobile, AL 36602
334-432-5511
FAX: 334-694-6375

David Bryson Byrne III
Beck & Byrne P.C.
22 Scott Street
PO Box 5019
Montgomery, AL 36103-5019
334-832-4878
FAX: 334-832-4704

All manual materials are due in our office no later than **JULY 13TH**.

08Q3605

III

PRE-SUIT INVESTIGATION

Introduction

With perhaps the exception of medical malpractice, no tort action consistently requires as much pre-suit investigation and screening as a potential bad faith case. Most people would never consider investing their savings in a stock without knowing something about the background of the company. Yet, many lawyers think nothing of investing their scarce time and resources into bad faith cases that have no hope of being successful. In most instances, problems can be avoided by simply conducting an adequate pre-suit investigation into the client's claims. Adequate pre-suit investigation also serves as the cornerstone of any highly successful bad faith case.

When evaluating a potential claim, it is extremely important for an attorney to be mindful of the fact that a bad experience with an insurance company does not necessarily equate to bad faith. Not every denial of benefits by an insurance company gives rise to an action for bad faith. The reason for this is simple. An insurance policy is really nothing more than a contract between the company and the insured. Insurance companies, in the exercise of their rights, are entitled to read and interpret their insurance contracts and, where no coverage exists, to deny claims. Thus, breach of contract is not necessarily synonymous with bad faith. A plaintiff must go beyond a mere showing of non-payment and prove a bad faith, non payment without any reasonable ground for dispute. To put it another way, the plaintiff must demonstrate that the insurance company had no legal or factual basis to deny the claim.

Given this demanding burden of proof, an attorney owes it to his client and to himself to do his homework well before filing suit.

A. Gathering Information From the Client

Almost every new case begins with a phone call. The prospective client will anxiously explain their predicament and will usually finish their story about their fifteen-round fight with an insurance company by saying, "Can they do that?" Of course, some times an attorney will know right away that the answer to that question is, "Yes." If the potential client indicates that their policy was not in force at the time the claim was incurred or that a particular condition is truly preexisting and was subjected to underwriting, then no matter how badly a claims handler has treated the insured, they will simply never have an actionable claim for bad faith. However, in most cases, it is almost impossible to evaluate the nature and value of a potential claim without a full and complete investigation into the claim, the claims file and the policy of insurance. Therefore, an attorney should try to set up a meeting with the potential client as soon as possible.

Prior to the initial client interview, it is important for the attorney to give the potential client a number of pre-meeting homework assignments. Generally speaking, the potential client should be asked to produce the following (as best they can) prior to the initial meeting:

1. ***The Insurance Policy(s)*** - A lawyer simply cannot evaluate whether it is possible to obtain a directed verdict on the contract claim as required by *National Savings Life Insurance Company vs. Dutton*, without first analyzing the insurance contract itself.

2. ***Correspondence and Other Documents*** - Letters and documents regarding the claim whether drafted by a potential client or the insurance carrier are critical. Letters and documents between the potential client and the insurance carrier are the best source for ascertaining the exact basis for the carrier's refusal to pay. If your potential client has made the mistake of throwing these letters away, you must direct them to carefully reconstruct the date, time and content of each letter for future discovery purposes.

3. ***Prepare a Time Line*** - Direct the potential client to reduce his or her entire claims experience to a written time line. Such a time line should include dates of injuries, medical treatment, claim letters, phone calls from adjusters and the dates on which the claims were denied. A well constructed time line is invaluable. The attorney will use this time line when evaluating the complaint, drafting the complaint and when deposing insurance company employees. Finally, a well constructed time line will serve as the key demonstrative exhibit in the case.

4. ***Witness List*** - Have the potential client list the name, address and telephone number (if possible) of every single individual they have dealt with in the claims handling process. This will make any discussion of the case simpler and your personal discovery plan easier to develop.

If your potential client completes even half of your pre-meeting homework assignments, then the two of you will have plenty to talk about during the initial meeting. A lawyer would be well-advised to set aside at least one or two hours of unhurried time to discuss the case.

First, listen to the client tell his or her story from beginning to end, without interruption. What does your gut instinct tell you? Is this person credible? Will they make a good witness? These are both important initial considerations.

Next, quickly scan the insurance policy for unusual language and then set it aside for review on your own. Go through each of the documents provided by the client being careful to note missing correspondence, gaps and phone correspondence that either preceded or followed letters. Next, review the client's initial witness list, being careful to include the names of family members, physicians or employers who may have become involved in the claims handling process. Lastly, review the clients time line, being careful to note the amount of time that elapsed between the filing of the claim and the ultimate denial of benefits. Often times, the time line provides objective proof that claims handlers did not subject the claim to a cognitive evaluation and review.

As you review the time line, it is important to keep in mind that in determining whether an insurer's conduct amounted to bad faith, the trial court will ultimately instruct the jury that their inquiry should be limited to the evidence that was before the insurer at the time of its denial of the claim. In other words, the law will not allow the insurance carrier to expand the time line beyond the initial denial of the claim. *Nationwide Mutual Insurance Company vs. Clay*, 525 So.2d 1339, 1342 (Ala. 1987). The Alabama Supreme Court has indicated that this rule must be followed regardless of how good the subsequently discovered reasons allowing denial might be. *King vs. National Foundation Life Insurance Company*, 541 So.2d 502,505 (Ala. 1989).

During the initial meeting with a potential client, one additional, but all important question should be discussed. Is the client's bad faith claim "ripe"? In most every jurisdiction, no claim for bad faith can be made until an actual denial has taken place. It is imperative that you make sure that the insurance company has taken a firm position before instituting suit. Very often, an insurance company will simply cut-off communication with its insured in the hopes that the claim will simply disappear. With smaller claims, this strategy often works for the insurance company. To combat this, you and the client must carefully discuss a plan for further communications with the insurance carrier. If additional information needs to be sent to the insurer before a denial would honestly constitute bad faith, then, by all means, send that information. However, if the carrier has all of the information that is needed to evaluate the claim and has simply remained silent in order to avoid an outright denial, then the client must again take action. Have the client write a simple letter that asks the insurance company to pay the claim, and "if the claim is not paid within three weeks, I'll assume you

have denied it." Also, the client's letter should make an equally simple request for an explanation as to, "Why the insurance company won't pay the claim." Above all, the client's letter should make no reference to the fact that he or she has sought legal counsel regarding the claim. First, that is not the insurance company's business. Second, the client has a right to see if the insurance company will honor it's obligation under the insurance contract without the threat of litigation.

After the initial client interview, the attorney should take the time to sit down and quietly go through all of the information that the client has provided. If after a review of all of these materials and notes, the attorney is satisfied that a cause of action for bad faith is present, then by all means, move forward.

B. Dealing With the State Insurance Department

Information that is regularly maintained by the Alabama State Department of Insurance can be an extremely valuable resource in any insurance fraud or bad faith case. The Consumer Division of our State Department of Insurance is required to keep complaint files on all insurance carriers that do business within the State of Alabama. The Insurance Department also maintains files on each policy or contract for insurance that is written by various carriers throughout the state. While the Insurance Department does not maintain records regarding civil complaints filed against a particular agent, it does monitor the licensing status of insurance agents throughout the state.

A proper request for information is generally initiated by a phone call or, preferably, a letter to the Consumer Division of the State Department of Insurance. In that letter, the attorney should request that the consumer division make available for inspection the complaint

files for a given number of years against your target insurance company. If the consumer division is given this type of advance notice, they will be more than happy to have these materials available for your personal inspection.

The importance of utilizing our State Department of Insurance in bad faith cases cannot be overemphasized. By obtaining the "Complaint File" against a particular company, it is often possible to find potential witnesses who will be more than happy to enlighten a jury about their similarly unpleasant claims experience. In some cases, complaints filed by Alabama consumers will involve some of the same claims handling personnel that were involved in your client's claim. The impact of this kind of testimony by non party witnesses, can be astonishing. Where several "pattern and practice" witnesses can be obtained, the attorney can show a wide-spread course of conduct that the company appears to have ignored, and in some cases, endorsed. This is the stuff that good punitive damage awards are made of.

Lastly, it is also a good idea to contact the insurance departments of other states to see if similar complaints have been filed against the same insurance company. Also, keep in mind that some states do maintain complaint files against individual agents. Obviously, such evidence further bolsters the argument that the insurance company's wrongful claims handling policies are "nationwide" in scope. While searches of this kind can be tedious, they can pay big dividends for your client.

C. Contacting the Insurance Agent

Rule 4.2 of the *Alabama Rules of Professional Responsibility*, effectively prohibits an attorney from contacting insurance agents or adjusters when the attorney has sued the insurance company. Rule 4.2 provides as follows:

> Communication With Persons Represented by Counsel. In representing a client, a lawyer should not communicate about the subject of the representation with the party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

This rule has been interpreted, however, to allow an attorney to contact a **former** agent or employee of an insurance company. However, before an attorney attempts to do so, he or she should keep several things in mind.

First, Alabama Bar Opinions RO-93-95 and RO-92-12, state that Rule 4.2 does allow an attorney to contact former employees of a defendant corporation. However, these opinions prohibit such contact under certain limited exceptions. RO-93-05 states that contact with the former employees of a corporation after the institution of a suit is impermissible with "those employees who occupied a managerial level position and were involved in the underlying transaction and being privy to privileged information, including a work product, which would prohibit plaintiff's counsel from accessing said information without a valid waiver by the organization and/or discovery in evidence rules.

RO-92-12 also provides the following exceptions to the general rule permitting contact with former employees of a corporation:

> Contact with a former employee is ethically permissible, unless the ex-parte contact in intended to deal with a privileged matter, i.e., the enquiring counsel is asking the former

> employee to divulge prior communications with the legal counsel for the adverse party and these communications were conducted for purposes of advising the adverse party in the litigation or claim.

The ABA Committee on Ethics and Professional Responsibility also issued a formal opinion on these matters in 1991. ABA Formal Opinion, 91-359 (March 21, 1991). While this opinion also held that a lawyer representing a client in a matter adverse to a corporate party could contact one of their unrepresented former employees, the following exceptions applied:

> With respect to any unrepresented former employee, of course, the potentially communicating adversary attorney must be careful not to seem to induce the former employee to violate the privilege attaching to the attorney/client communications to the extent his or her communications with former employer's counsel are protected by the privilege. (A privilege not belonging to or for the benefit of the former employee, by the former employer.) Such an attempt could violate Rule 4.4 (requiring respect for the rights of third persons).
>
> The lawyer should also punctiliously comply with the requirements of Rule 4.3, which addresses a lawyers dealings with unrepresented persons. That rule, in so far as pertinent here, requires that the lawyer contacting a former employee of

> an opposing corporate party make clear the nature of the lawyer's role in the matter, give an occasion for the contact, including the identity of the lawyer's client, and the fact that the witness' former employer is an adverse party.

Based on these opinions by the Alabama State Bar and the American Bar Association, it continues to appear necessary that if plaintiff's counsel should communicate with a former agent before filing suit and then names the agent as a defendant, the attorney may risk the appearance of ethical impropriety. Therefore, out of an abundance of caution, when communicating with a former agent before the filing of a lawsuit, the attorney should be careful to disclose his interest in the matter, the potential for litigation against his former employer, and the fact that he is being interviewed as a potential witness against the corporation.

D. Recent Decisions

Ex-parte Clarke, 728 So.2d 135 (Ala. 1998).

> Allstate Insurance Company refused to pay a property claim, based in part, on the allegation that the insurers did not cooperate in the claims handling process as required by their policy. Summary judgement was entered on behalf of Allstate. Justice Almon, writing for the court, held that Allstate was not entitled to a summary judgement based on its assertion that the plaintiffs had failed to comply with the "cooperation" clause of the policy. Justice Almon wrote: "What constitutes a failure of

cooperation by the insured is usually a question of fact, and the burden of proof to establish non-cooperation rests upon the insurer." Justice Almon went further and stated that, "An insurer cannot avoid its obligations on this ground unless the insured's failure to cooperate is both material and substantial."

Safeway Insurance Company of Alabama, Inc., vs. Hambrick, 723 So.2d 93 (Ala. Civ. App. 1998)

Section 32-7-23, Code of Alabama, 1975, makes the provision of uninsured/underinsured coverage mandatory in automobile liability polices unless specifically rejected by the insured. Safeway Insurance Company denied coverage for loss or damage arising from an accident involving an unlisted driver under the age of 25 who was residing in the named insured's household. The Court of Civil Appeals determined that the exclusion of coverage in this instance did not violate Section 32-7-23 (a). Thus, an action for bad faith would not lie under these facts.

State Farm Fire and Casualty Company vs. Owen, 729 So.2d 834 (Ala. 1999)

The Alabama Supreme Court held that a property insurer owed no duty to disclose to its insured that her premiums would be

based on her appraisal value of her diamond ring although it would pay no more than the replacement cost, and, thus, the insurer was not liable for fraudulent suppression at the point of sale. The court found that the insured was educated and did not ask about rates or replacement services, and the application indicated that options under the policy were limited to a replacement item or a replacement cost. This case is in lock step with recent Supreme Court cases that have held that where fraudulent suppression is at issue, the determination of whether a duty to speak arose is based on the following considerations:

1. The relationship of the parties;
2. The relative knowledge of the parties;
3. The value of the particular facts;
4. The insured's opportunity to ascertain the facts;
5. The customs of the trade; and
6. Other relevant circumstances.

Brown vs. Alpha Mutual Insurance Company, 727 So.2d 95 (Ala. Civ. App. 1998)

In this case, the insured brought a bad faith action against his automobile insurer based on a delay in paying medical expenses. During its oral instructions to the jury, the court explained the requirement of clear and convincing evidence to

recover punitive damages for bad faith by stating to the jury that the plaintiff's burden of proof was not met, if jurors had to ask themselves whether the plaintiff had met his burden. The Court of Civil Appeals held that the trial court did not error in charging the jury as it did on the burden of proof.

National Business Institute for Continuing Legal Education

THE INS & OUTS OF DISCOVERY

Plaintiff's View

IV

THE INS & OUTS OF DISCOVERY

A. Plaintiff's View

1 & 2. The Importance of Interrogatories and Examining the Insurance Claim File - Don't Leave Out the Request for Materials Beyond the Claims File

Once you have made the decision to move forward with a lawsuit against an insurance company the first order of business is to put together a discovery plan. If you are in the habit of keeping a trial notebook, your discovery plan should be maintained as a separate section of the notebook.

The plan should include the people, both known and unknown, that you want deposed and what you expect to gain from taking those depositions. Also, you should make a list of special documents, notes or memos that you are interested in obtaining prior to the deposition. This "wish list" will be of great value to you when you begin to prepare interrogatories and requests for production.

When filing your complaint, a set of interrogatories and requests for production should accompany the complaint. The plaintiff's attorney should always take advantage of the "rule of primacy" which allows the plaintiff to fire the first shot at almost every stage of the

litigation. Most every court follows this rule with respect to discovery. The court will usually require the defendant to respond to the plaintiff's discovery request (if it is filed first) before forcing the plaintiff to respond to the defendant's request. If discovery documents are not filed with the initial pleadings, the plaintiff's attorney has lost a definite advantage.

Once filed, the plaintiff's attorney must be diligent to obtain adequate and timely responses to interrogatories and requests for production. Defense attorney's are certainly not encouraged by their corporate clients to give away damaging information and documents unless they are pushed to do so. If you get into the habit of accepting inadequate responses to discovery requests then you will be certain to get them every time. Therefore, persistence is the key.

When you receive inadequate or untimely responses, notify opposing counsel of these failings in writing immediately. Encourage written responses to these inquiries in every letter that you send. At the very least, this strategy will help you negotiate more favorable responses. If that proves unsuccessful, then you have laid the ground work (through a chain of correspondence) for a good motion to compel.

Although this list is not exhaustive by any means, an attorney should make an effort in every bad faith case to request the following information or documents through interrogatories and requests for production:

1. **The Claims File** - Counsel should vigorously pursue the entire claims file pertaining to the insured and the policy in question.
2. **The "Hidden" Claims File** - Materials designated as

the "claims file" are usually a fairly sterile assortment of documents. However, in almost every case, there is a separate file that includes internal memoranda, recordings or writings of one type or another growing out of the handling of the claim involved and/or the decision to deny the claim. Most insurance companies have requirements that their claims people record or make written documentation of each and every conversation they have with the insured regarding the claim and its denial. Documents of this kind must be pursued with great persistence. In some cases, internal memoranda are found that indicate that someone in the claims department actually recommended that the claim be paid or felt that the failure to pay was wrong.

3. **Prior Lawsuits** - Request a list of all current and prior lawsuits against the insurance company alleging bad faith or fraud. Your request should direct the company to specify the jurisdiction where the lawsuit was filed, the name of the plaintiff, and the date the lawsuit was filed. It is probably not a bad idea to limit your request to a finite number of years. Because there is a strong chance that you will eventually be forced to file a

motion to compel, it is important that your request seem fairly reasonable. Again, be persistent. This kind of discovery is liberally allowed, especially when your case also involves an allegation of fraud.

4. **Customer Complaints** - Request copies of all complaints against the insurance carrier that have been sent directly to the carrier through the Alabama Department of Insurance. Make sure that you limit your request to the particular type of policy or contract involved in your case. Again, do not take no for an answer. Carriers do keep these complaints on file. Complaints of this kind demonstrate a pattern and practice of wrongful conduct. They also may be useful to impute "knowledge" of bad practices by agents and claims handlers to the company.

5. **Claims Handlers, Managers and Staff** - Be sure to make a very broad request for the names of all persons involved in any way in the decision to deny your client's claim. You should request the full name, title, physical address, and dates of service of each such employee.

6. **Agents** - Also be sure to obtain the name, address and

dates of service of all selling agents involved in the sale of your client's policy.

7. **Policy History** - The attorney should try to obtain information regarding whether the policy or contract involved has ever been declined by the insurance department or governing body of any state.

8. **Actuarial Memos** - Insurance companies are required to file actuarial memorandums along with their premium/rate information. These memos are compiled initially to properly set premiums and ensure that a policy or contract will be profitable.

9. **Loss Experience Ratios** - Try to obtain a copy of the loss experience records for the carrier with regard to the particular type of contract involved for the years preceding the sale of the policy in your case. Every insurance company is required to keep records of their loss experience (i.e., the ratio between premiums received and benefits paid), and turn these experience records into various state departments of insurance. These records can prove quite valuable during discovery and trial. Loss experience records can demonstrate that the carrier does not pay its claims or

that the policy value versus policy cost is minimal.

10. **Corporate Identity** - Often times, it can be quite difficult to determine exactly who owns an insurance company. Therefore, you should endeavor to uncover the corporate history of the insurance carrier in question. Be sure to request the legal name and identity of all sister and parent companies of the organization. The Internet can be a useful tool when conducting these searches and inquiries.

11. **Reprimands and Discipline** - Be sure to request any and all written reprimands or written evidence of disciplinary actions taken against the carrier or its agents from state insurance boards, attorney's general, etc.

12. **The Underwriting File** - The underwriting file must be reviewed in detail because it generally holds the key to the insurance company's defense theory. Very often the defense will contend that a particular client's problem is pre-existing. You should use the underwriting file to your advantage by demonstrating that the insurance carrier has not fairly investigated the claim, but has instead, engaged in "post-claim

underwriting."

13. **Policies, Procedures and Manuals** - Last but certainly not least, an attorney should zealously pursue any and all training materials utilized by the carrier in both its sales office and claims office. This should include all procedure manuals which carriers use to dictate the methods in which claims are to be handled. Do not, under any circumstances, allow an insurance company to get away with an inadequate response to this request. In fact, because most companies place someone in charge of maintaining and updating these manuals, you would do well to depose that person to make sure you have a full understanding of what materials were actually available inside the company during the time of your client's claim. Excerpts from claims manuals almost always become primary exhibits in bad faith cases. If you are into blow-up exhibits, these manuals generally give you all the blow-up exhibits you need.

2. Narrowing the Issues With Requests for Admissions

Unfortunately, attorneys are not propounding requests for admissions as often as they once did. For whatever reason, this discovery tool has been discarded as a primary weapon in the plaintiff attorney's arsenal. Yet requests for admissions are enormously useful in that

when used properly, they can substantially reduce the amount of work required of the plaintiff's attorney. Requests for admissions can be used to authenticate your client's policy, medical records, medical bills, and correspondence. Also, carefully constructed requests can produce stipulations regarding your client's injuries, involvement in the claims process and the claim denial.

Keep in mind that under Rule 36 (a), each matter for which an admission is requested, is deemed admitted unless a response is served within 30 to 45 days. By filing requests for admissions along with the complaint, the insurance company is forced to begin crafting serious discovery responses right away. Naturally, this is something that neither they nor their attorneys enjoy. If an appropriate response is not filed within the applicable time period, or if a response is inadequate, plaintiff's counsel should move to have the responses deemed insufficient or otherwise admitted.

III

Coming to Court with "Clean Hands" When Responding to Paper Discovery

If you have properly drafted your discovery requests, then you will invariably receive objections and inadequate responses. In theory, the rules of discovery contemplate that you should receive full and complete responses to each and every legitimate discovery request that you make. In the real world though that simply doesn't happen. You will have to put your foot down and go to the courthouse as many times as it takes to get accurate and adequate responses to your discovery requests. If you successfully drag your opponent into the courthouse every time he or she fails to abide by the discovery rules, sooner or late they and their clients will get the message.

This strategy is only effective though when you can consistently come before the court with "clean hands." In short, coming to court with clean hands means that you have been following the discovery rules and your opponent has not. You cannot expect the court to hold your opponent's feet to the fire unless you yourself have followed the rules. This means, that if answers to discovery are due within a certain period of time then by all means, respond or make a timely request for an extension. Comply with production requests accompanying subpoenas or move for a protective order. But above all, do not delay or give inadequate responses to discovery requests simply because defense counsel has done so. Remember that it is the plaintiff's attorney who is forced to compel discovery more often than not in fraud and bad faith cases. If the court is not confident that you are a "by the book" kind of lawyer, you will lose more discovery fights than you will win.

IV

Depositions - Typical Witnesses That Need to be Deposed

In any bad faith case, an attorney should plan to depose every person involved in the claims handling process, particularly those who were involved in the ultimate decision to deny the claim. If correspondence obtained from your client or through discovery does not provide you with a clear road map to the ultimate decision makers in the claims process then the plaintiff's attorney should begin with a Rule 30(b)(6) subpoena requiring the corporate defendant to designate someone to testify regarding the topics set out and requested in the notice. Rule 30(b)(5) also allows the plaintiff's attorney to request that the designated corporate representative produce documents for purposes of the deposition.

By directing the corporation to designate an individual who is conversant in several

key areas and by requiring the production of documents on or before the deposition, the plaintiff's attorney can obtain the names and titles of other persons having relevant information. Of course, the corporate representative by definition, must be knowledgeable about all of the matters requested. When taking these initial depositions the plaintiff's attorney should also keep in mind the goal of obtaining documents that have not already been produced. If these initial depositions are taken in the corporate headquarters of the insurance carrier then the plaintiff's attorney is in a better position to demand that documents mentioned during the deposition be retrieved on the spot for inspection. This, of course, would be impossible to do if the plaintiff took these initial depositions on his own turf. At least initially, one should go where the documents are located.

Also keep in mind that when deposing the "chain of command" in the claims process, one should start at the bottom and work their way up. The reason for this is simple. Every now and then, a lower level employee will admit that when they initially examined the claim, they recommended payment but the decision was later over ruled by a supervisor. By starting at the bottom, the information gained from this low level employee can be used in a subsequent deposition with the supervisor who order a denial of the claim or the supervisor's superior.

You should consider deposing the agent who sold your client the underlying policy if your complaint charges that the policy itself was fraudulent in some way. Also consider taking the deposition of the president of the company. A corporate officer on that level will usually have no insight into your client's claim or the process that went into denying the claim. That fact in and of itself may prove helpful. If the president of the company claims to know

little or nothing about claims procedures then he or she is too busy making money for the company to worry about the manner in which benefits are provided to their customers. If the president claims to be very knowledgeable about the day to day operations of its claims division, then counsel can effectively argue that the head of the company was aware of the activities going on in the company and did nothing to stop it.

On a final note, be certain to prepare your own client well for his or her deposition. You should thoroughly discuss case theory and the law governing bad faith cases. Naturally, you will want to discuss all of these concepts in layman's terms. However, if your client is not thoroughly educated on these subjects, he or she may make an admission or omission during the course of the deposition that may bring about a summary judgement. Careful preparation with your client before their deposition, will allow your client to appear confident, in control and deserving of a substantial verdict.