

DAVID F. PETERSON, INC.

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Insurance Claim/Coverage/Bad Faith Expert/Consultant

EDUCATION

Bachelor of Arts, University of California, Santa Barbara (1963)

Juris Doctorate, University of San Fernando Valley (1978)

EMPLOYMENT

Aetna Casualty & Surety, Panorama City, California
1964 - 1978

Positions held in Claim Department: Claim Representative; Senior Claim Representative; Bodily Injury Specialist; Claim Supervisor in Liability, Workers' Compensation and Suit Supervisor for all litigation.

Types of Claims: Homeowners (First and Third Party); Automobile (First Party, UM and Liability); Commercial (First Party and Liability); Excess and Umbrella Policies; Workers' Compensation (Hearing Representative and Supervisor); Group Insurance (Life, Disability and Medical).

Specialization: All aspects of claim handling, including proper investigation, evaluation, claim denial, interpreting coverage for first and third party liability issues on homeowners, automobile, workers compensation, commercial liability policies, excess and umbrella policies, group policies, life, medical and disability policies and bonds.

Additionally, interfacing with insurance agents, marketing and underwriting department relating to various issues and coordinating joint training of claim and underwriting personnel.

Haight, Brown & Bonesteel, Santa Monica, California
April 1979 to December 31, 1995

Attorney -- Associate from April 1979 to January 1, 1985
Partner from January 1, 1985 to December 31, 1994

Of Counsel from January 1, 1995 to December 31, 1995

Trial Attorney and Lead Partner in 20-25 attorney department specializing in all areas of insurance related legal issues. This included analysis of insurance coverage issues including representation of insureds and insurance companies in insurance coverage litigation, involving first and third party bad faith lawsuits, significant involvement with firm and coverage department education process, and representation of insurance agents and brokers. Author of 1,000 coverage opinions and involvement in 500 coverage/bad faith lawsuits.

Brown and Peterson
January 1, 1996 to May 31, 2001

Brown, Peterson and Marks
June 1, 2001 to December 31, 2001

Partner -- Analysis of insurance coverage issues including representation of insureds and insurance companies in insurance coverage litigation, involving primary and excess/umbrella policies, first and third party bad faith lawsuits.

MEMBERSHIPS

State Bar of California

PUBLISHED DECISIONS

1. *Moradi-Shalal v. Fireman's Fund*, 46 Cal.3d 287 (1988). There is no private right to sue an insurer under *Insurance Code* Section 790.03.
2. *Aetna Casualty v. Centennial*, 838 F.2d 346 (1988). Insurance policies without "advertising" coverage do not insure unfair competition as "trade libel."
3. *Motolla v. R. L. Kautz*, 199 Cal. App.3d 98 (1988). Independent claim adjusters cannot be sued under *Insurance Code* Section 790.03 when working for self-insured employer.
4. *Aetna Casualty v. Aceves*, 233 Cal. App.3d 544 (1991). Superior Court can have concurrent jurisdiction of a declaratory relief lawsuit regarding an employer's policy with WCAB; waiver and estoppel; agent and insurer relationship.
5. *Tuchman v. Aetna Casualty*, 44 Cal. App.4th 1607 (1996). A neglect exclusion in a homeowner's policy does not apply to a theft.

6. *California Insurance Guarantee Association v. Superior Court*, 64 Cal. App. 4th 219 (1998). Where subrogation exists, CIGA is entitled to proceeds over the Insurance Commissioner if it paid, if it did not then it goes to the Insurance Commissioner.
7. *Truck Insurance Exchange v. Unigard Insurance Co.*, 79 Cal. App. 4th 966 (2000). An insurer seeking contribution from another insurer must give notice that it intends to seek contribution.

UNPUBLISHED DECISIONS

1. *Reynolds Investment v. WCAB*, Fourth Appellate District, Div. 3 (1984). An insurance policy to be in force must be delivered.
2. *Avery International Corporation v. Continental Casualty Company, Fireman's Fund Ins. Co.*, Second Appellate District, B 004558 (1984). There was no "occurrence" for losses known to the insured and estoppel to deny coverage for co-defendant.
3. *Aetna Casualty & Surety v. Velasco*, 194 Cal. App.3d 1441 (1987) (Decertified). The duty of an insurer is to give notice of exclusions in an insurance policy.
4. *Jacobs v. National Certified*, Second Appellate District, Div. 6, B019149 (1988). An injured person can sue an insurance broker with an assignment of that right of action.
5. *Metcalfe v. Fireman's Fund*, Second Appellate District, Div. 4, B025888 (1989). No private cause of action exists under *Insurance Code* Section 790.03 for settlement of an insurance claim.
6. *Prestige Hotels v. American Insurance Company*, Second Court of Appeal, Div. 7, B036584 (1989). An insurer cannot sue its insured in California when it has a lawsuit in Federal Court in Missouri.
7. *Aetna Casualty v. Centennial Insurance Company*, Ninth Circuit Court of Appeals No. 89-55811 D.C. No. CV-84-2995-WPG (1991). Proration of defense costs between two insurers is determined by the respective policy limits.
8. *Kinkelaar v. Maryland Casualty*, Second Court of Appeal, Div. 1, B055233 (1992). The pointing of a loaded gun and firing it was not covered under a homeowner's insurance policy.
9. *Jacobs v. National Certified*, Second Appellate District, Div. 6, B057426 (1992). An assignee of a cause of action against an insurance broker cannot sue the broker without a judgment.

10. *Geisler v. Fireman's Fund*, Second Appellate District, Div. 5, B054791 (1992). A "life underwriter" policy is ambiguous because it does not define what duties are covered.
11. *Insurance Company of the West v. RST Construction*, Second Appellate District, Div. 2, B039739 (1992). An insurer is not estopped or waived coverage defenses with a reservation of rights to obtain reimbursement of monies spent in settlement of a claim.
12. *Overland Mechanical v. Maryland Casualty*, Second Appellate District, Div. 4, B061467 (1994) (Decertified by Supreme Court). Primary and umbrella policies do not have a duty to defend or indemnify for alleged construction defects because there was no "accident," no "property damages" and exclusions applied.
13. *Carlos Paul Perez v. Moreno Del Sol Apartments*, Fourth Appellate District, Div. 2, E014872 (1997). By not filing a motion to vacate a default judgment under *C.C.P.* Section 663, the defaulting party and its insurer cannot raise the issue of retraxit.
14. *Bruin Insurance Services, et al. v. Bernard Paul Wiesen, et al.*, Second Appellate District, Div. 3, B101980 (1998). Under *Insurance Code* Section 678, an insurer must not only give notice of non-renewal to the Named Insured but also to a holder of a Certificate of Insurance.
15. *Northbrook Property & Casualty Ins. Co. v. Lawrence Gordon, et al.*, Second Appellate District, Div. 7, B109067 (1998). An insurer must provide a defense to a lawsuit involving a real estate sale where there is "bodily injury" and "property damage." Further, an insurer must defend a "potential" insured where there is a question of fact in proving he is not an insured.
16. *Corwin v. State Farm Fire & Casualty*, Second Appellate District, Div. 6, B155114 (2003). An insurer has no duty to defend a partnership whose function, according to the evidence, was to provide medical equipment and space for the doctors. The partnership was sued along with the treating doctor. The policy had a professional services exclusion with an exception that required that the partnership be in the business of providing medical treatment.
17. *Weissker v. Lexington Insurance Company*, Second Appellate District, Div. 5, B168031 (2004). An insurer has no duty to indemnify an insured under a commercial property policy for a first party loss based on the faulty workmanship exclusion.

LECTURES ON INSURANCE ISSUES

1. Annual Convention of California Association of Independent Insurance Adjusters, Los Angeles, California; Guest Lecturer on *Defense of Bad Faith Lawsuits* (1984).
2. West Valley Claim Association, Los Angeles, California; Guest Lecturer on *Prevention of Bad Faith* (1985).

3. Insurance Corporation of British Columbia, Vancouver, British Columbia; Guest Lecturer on *Bad Faith in Canada* (1986).
4. Claim Managers of Los Angeles County, Los Angeles, California; Guest Lecturer on the Effect of *Moradi-Shalal* (1988).
5. American Bar Association Forum on Health Law Program, New Orleans, Louisiana; Guest Lecturer on *Reservation of Rights, Conflicts, Coverage and Anticipating the Blockbuster Verdict* (1990).
6. Consumer Attorneys of California, 36th Annual Convention, San Francisco, California; Panelist and Expert Witness in a *Mock Bad Faith Trial* (1997).
7. Consumer Attorneys Association of Los Angeles, 16th Annual Las Vegas Convention, Las Vegas; Panelist on *Understanding the Claim File* (1998).
8. *Litigating the Insurance Bad Faith Case: Settlement, Trial, & Appeal*, Los Angeles, San Diego, Costa Mesa, Ontario and Ventura, Panelist on Use of Claim File and Experts (1999).
9. *Bad Faith In The Year 2000*, Southern California Defense Counsel Seminar, Panelist on Statutory Changes in Bad Faith and Use of Experts (1999).
10. *Getting Your Cases Resolved*, Consumer Attorneys Association of Los Angeles, Panelist on *How To Recognize & Preserve A Bad Faith Case In The Making* (2001).
11. Numerous lectures to insurance companies and attorneys on Duty to Defend, Reservation of Rights, Indemnity, Bad Faith, Wrongful Termination, Advertising Injury, *Cumis*, Conflicts, Worker's Compensation (from 1979 to 1997).

EXPERT EXPERIENCE

1985 to Present - Expert testimony for insureds, agents, brokers, attorneys, banks and insurance companies.

Expert issues included in deposition and trial testimony are:

1. Bad faith claim handling both for and against insurers, which includes first and third party policies and excess/umbrella policies, ;
2. Bad faith related to the duty to settle and/or indemnify for judgment creditors;
3. Coverage and bad faith issues on professional liability policies, directors and officers policies, warranty policies, general liability policies, first party policies, homeowner policies, automobile policies, excess and umbrella policies, disability policies, life

policies, group policies, title policies, workers compensation policies, bonds and employee dishonesty policies;

4. Insurance underwriting bad faith issues, including cancellation, reformation and rescission;
5. Agent/Broker/Insurer relationships and standards;
6. Attorney malpractice and/or standard of care in the community;
7. Advice of counsel as an affirmative defense;
8. Waiver and estoppel regarding coverage;
9. Windmill coverage;
10. Self-insurance and deductibles;
11. Pollution exclusions;
12. Insurable interest;
13. Stipulated judgments, assignments and covenants not to execute;
14. Retraxit;
15. Default judgments;
16. PUC;
17. Conflicts of interest;
18. Reasonableness of attorneys' fees;
19. Post-claim and policy conduct and bad faith during litigation;
20. Malicious prosecution and abuse of process; and
21. Various other issues related to all types of insurance policies.

Expert retention in over 900 lawsuits with qualified testimony in over 89 trials/arbitrations and deposition testimony in over 200 cases involving lawsuits in Alaska, Arizona, California, Georgia, Idaho, Illinois, Nebraska, Nevada, New York, Oregon, Texas, U. S. Virgin Islands and Saint Lucia, West Indies.

I have qualified and testified at trials in the following counties in California: San Diego, Orange, San Bernardino, Riverside, Los Angeles, Ventura, Santa Barbara, Fresno, San Francisco, Sacramento, Solano, Sonoma, Tulare and Contra Costa.

I have also qualified and testified in Federal Court, Central District and Southern District in California and Federal Court, Midwest District, Omaha, Nebraska. I have also qualified and testified in District Court, Clark County, Nevada; St Croix, U.S. Virgin Islands and Saint Lucia, West Indies.

I was also retained as an expert for federal court judge to be his expert for the jury and to determine which expert for the insurer or for the policyholder was correct in a bad faith lawsuit.

EXPERT RATES

CONSULTATION and REVIEW	--	\$265 per hour
DEPOSITIONS and TRIAL	--	\$350 per hour with four (4) hour minimum

REFERENCES

Upon request, references will be provided.