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Clock Keeps Running On Insurers' Good Faith And Fair Dealing Obligations In California

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Imagine this: Your insurer denied coverage, forcing you to file a lawsuit to secure policy benefits. The insurer retains litigation counsel and begins engaging in unreasonable litigation conduct to attempt to force you to abandon the case and to justify the insurer's prior denial of coverage. What should you do? Don't ignore the ongoing bad faith conduct that may be occurring during litigation. In fact, under California law, the implied covenant of good faith and fair dealing in every insurance policy does not cease upon the filing of litigation and instead continues unabated. The standard dates back to 1985, when, in *White v. Western Title Ins. Co.*, the California Supreme Court held "[i]t is clear that the contractual relationship between insurer and the insured does not terminate with commencement of litigation…. It could not reasonably be argued under such circumstances either that the insurer no longer owes any contractual duties to the insured, or that it need not perform those duties fairly and in good faith." (Emphasis added). Accordingly, when faced with ongoing insurer bad faith conduct in litigation, insureds should consider documenting such conduct, notifying insurers that such conduct is improper, and using evidence of ongoing bad faith at trial. The duty to deal fairly with the insured does not stop, meaning insurers may not act with impunity in engaging in unreasonable, bad faith conduct when defending coverage litigation.

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