

Chapter 17. Bad Faith.

Introduction.

The last two decades have seen a steady development by New Mexico appellate courts of the common law action for bad faith by an insured against the insured's insurance company. The legislature has enacted statutes addressing the remedies available to an insured and comprehensive codes of behavior which create private causes of action. Quite naturally this judicial and statutory development of substantive law has increased the volume of civil actions and justified the drafting of pattern instructions for this lawsuit.

This new chapter of Uniform Jury Instructions - Civil is devoted exclusively to the bad faith claim against an insurance company. It includes the common law cause of action, UJI 13-1701 to 13-1704 NMRA as well as private actions under the Insurance Practices Act, UJI 13-1706 NMRA, and the Unfair Practices Act, UJI 13-1707 NMRA. The Chapter is self-contained with instructions on causation, affirmative defenses and damages. With the addition of instructions for Statement of Issues, Burden of Proof, Duties of Jurors and Verdict Forms, jury instructions for this case should be complete.

The Committee recognizes that the obligation of good faith may create causes of action for bad faith in contexts other than the relationship between an insurer and the policyholder; this chapter, however, is limited to the insurance contract relationship.

An insured's lawsuit against an insurer will generally give rise to a cause of action for breach of contract. Chapter 17 provides instructions only for the tort of bad faith and related private statutory actions. Instructions for breach of contract actions brought either by the insured or the insurer are to be drawn from Chapter 8, Contracts and UCC Sales. The absence of an instruction from this Chapter or Chapter 8 does not imply the unavailability of a claim or defense, merely that New Mexico case law is not sufficiently developed to justify the instruction.