

**13-1703B. Bad faith failure to defend.**

An insurer must act fairly, reasonably, honestly, and in good faith in determining whether it has a duty to defend a claim [against its insured]. An insurer acts in bad faith in refusing to defend a claim if it

[fails to conduct an investigation of the claim that is timely and reasonable under the circumstances;]

[fails to conduct a fair and honest evaluation of its duty to defend, giving the interests of its insured at least the same weight as its own interests;] [or]

[unreasonably delays notifying the insured of its decision about whether or not it will defend the claim.]

**USE NOTES**

This instruction is to be used in cases involving alleged bad faith conduct by an insurer in refusing to defend against a third-party claim. If the insurer's duty to defend is disputed and involves questions for resolution by the jury, UJI 13-1703A NMRA should be given together with this instruction.

The bracketed language in the instruction describing bad faith conduct should be used as appropriate, depending on the basis of the claim against the insurer and the issues presented by the case. The brackets around the phrase "against its insured" indicate that the phrase ordinarily should be given, but the phrase is intended to refer to the plaintiff claiming benefits under the insurance policy and should be modified (along with other references in the instruction to the "insured") if the use of "insured" would not be appropriate in the circumstances of the case. If the case presents a question whether the plaintiff is an "insured" or is otherwise eligible to claim a defense under the policy, this instruction may require supplementation with instructions framing that issue. [Adopted, effective November 1, 1991; UJI 13-1703 NMRA, amended and recompiled as UJI 13-1703B NMRA by Supreme Court Order No. S-1-RCR-2023-00028, effective for all cases pending or filed on or after December 31, 2023.]