

**WEBINAR**

**Insurance Coverage Master Class**

# King of the Hill



**Thursday, May 5, 2022**

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Insurance Coverage Master Class 



## King of the Hill

Presenters:  
Dale Dobuler, Florida | Jennifer Martin, Texas | Daniel Tranen, Missouri | Paul White, California

Moderator: Lisa Wilson

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The Keys to Bad Faith - California 

- No statutory bad faith for violation of insurance regulations or Insurance Code § 790.03
- Bad faith where insurer's tortious conduct causes damage to the insured.
- Tort remedies may include economic loss, emotional distress, attorney's fees incurred to obtain the policy benefits, and punitive damages.

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The Keys to Bad Faith - Florida 

- First-party bad faith a creature of statute, Florida Statute § 624.155 (prior to statute, no common law first-party bad faith)
- Attorney's fees available under bad faith statute and under § 627.428
- CRNs easy to file in Florida, require little support and are rarely rejected by DFS
- Gateway to consequential and punitive (i.e. extra contractual) damages, but do not carry the same elevated burdens of proving willful, wanton conduct

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**The Keys to Bad Faith - Missouri** Insurance Coverage Master Class

- First party insurance claims are treated as breach of contract claims with breach of contract damages.
- Missouri allows policyholders to supplement those damages by statute – principally the Vexatious Refusal to Pay statute (375.420). It provides that if an insurer refuses to pay a loss without reasonable cause or excuse the court or jury may award (1) interest; (2) attorneys’ fees; and (3) a premium equal to 20% of the first \$1,500 and 10% on any amount thereafter.
- Missouri does not permit punitive damages to be awarded in first party insurance claims.



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**The Keys to Bad Faith - Texas** Insurance Coverage Master Class

- Texas enforces the Prompt Pay Act on a strict liability basis and allows recovery of attorney’s fees plus either a 10% or 18% penalty per year depending on the type of claim.
- Texas has both common law and statutory bad faith and allows for extra-contractual damages for violations of the common law duty, Texas Insurance Code, or DTPA.
- Knowing or intentional violations of the Texas Insurance Code or DTPA are subject to treble damages; grossly negligent, willful, or malicious violation of the common law duty of good faith and fair dealing is subject to punitive damages.



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**Common and Uncommon Mistakes that Lead to Bad Faith Exposure** Insurance Coverage Master Class

- Failed Communication during the claim
- Misrepresentations of the Policy
- Bias in Consultants
- Rubber Stamping Consultants



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**Common Misperceptions of Safe Harbors** Insurance Coverage Master Class

- Institutional interpretation of policies versus the actual language/law
- All reasonable decisions are protected
- Guidelines/No Guidelines

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**Exploited Vulnerabilities by the Insured's Counsel** Insurance Coverage Master Class

- Lack of documentation, poor documentation, "did you really put that in writing" documentation
- Delays
- Ghost writing of letters
- Failure to follow plan of action that is in the notes
- Little to no evidence of the investigation

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**Florida** Insurance Coverage Master Class



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**California** Insurance Coverage Master Class



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The slide features a blue header with the word "California" in white. Below the header is a photograph of a grassy hill with a black flagpole on top. The flag is the California state flag, which includes a grizzly bear, a star, and the words "CALIFORNIA REPUBLIC". The background shows a clear blue sky and some trees in the distance. In the bottom right corner, there is a logo for "WILSON ELSER" with the tagline "INSURANCE COVERAGE EXPERTS".

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**Missouri** Insurance Coverage Master Class



WILSON ELSER

The slide features a blue header with the word "Missouri" in white. Below the header is a photograph of a grassy hill with a black flagpole on top. The flag is the Missouri state flag, which has three horizontal stripes of red, white, and blue, with a central emblem. The background shows a clear blue sky and some trees in the distance. In the bottom right corner, there is a logo for "WILSON ELSER" with the tagline "INSURANCE COVERAGE EXPERTS".

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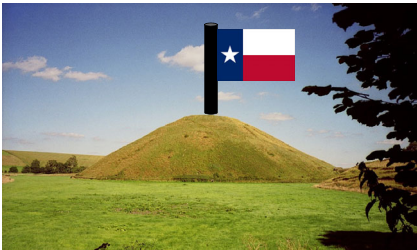
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**Texas** Insurance Coverage Master Class



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The slide features a blue header with the word "Texas" in white. Below the header is a photograph of a grassy hill with a black flagpole on top. The flag is the Texas state flag, which has three horizontal stripes of white, blue, and red, with a white star in the center. The background shows a clear blue sky and some trees in the distance. In the bottom right corner, there is a logo for "WILSON ELSER" with the tagline "INSURANCE COVERAGE EXPERTS".

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### National Footprint

Insurance Coverage Master Class

41 Offices located throughout the United States

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### Contacts

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