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What is the Law of Bad Faith in New York Two Years after *Bi-Economy* and *Panasia*—Have The Questions Been Answered?

By Charles Platto, Joseph Grasso, Rachel Lebejko Priester and Alison Weir[1]

On February 19, 2008, the New York Court of Appeals issued decisions in *Bi-Economy Market Inc. v. Harleysville Ins. Co. of New York*, 10 N.Y.3d 187 (Ct. App. 2008) and *Panasia Estates, Inc. v. Hudson Ins. Co.*, 10 N.Y.3d 200 (Ct. App. 2008), holding that in certain cases involving first party business interruption and property claims, insurers could be liable for consequential damages – without regard to policy limits – for breach of contractual obligations. These decisions were remarkable because they did not address decades of New York precedent that had established and shaped the law of "bad faith" and extra-contractual damages, based on "gross disregard" directed toward the insured.[2] In articles we wrote shortly after the decisions were issued, we observed, "The rules were clear. Now, it's a whole new ball game and there aren't any rules."[3] (Other articles have raised similar and additional questions.[4])

Bi-Economy and *Panasia* involved the narrow question of whether policyholders could recover damages in excess of policy limits under first party business interruption and property policies. In both cases, the insurer delayed in investigating and processing the claim, and in making payments, and the insured incurred additional damages beyond policy limits. The Court found that the insurers breached their contractual obligations and that they were liable for the foreseeable consequential damages that resulted. However, these decisions left many questions unanswered. These included, first and foremost, is a finding of bad faith or a breach of the covenant of good faith and fair dealing necessary for damages in excess of policy limits to be recoverable by an insured? If so, what standards govern an insurer's conduct and any finding of bad faith? Do these apparently new principles (which may or may not require a finding of bad faith) apply to third party claims such as those resulting from failure to defend or settle, which have always required a finding of bad faith? Are the rules on punitive damages implicated or affected?

The purpose of this article is to survey the decisions that have been issued in New York (and elsewhere) in the wake of *Bi-Economy* and *Panasia*, to evaluate how the *Bi-Economy* and *Panasia* decisions have been applied and interpreted, and determine whether the above questions and others have been answered and whether any clarity as to the applicable standards now has been provided.

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2. *See, e.g.*, *Pavia v. State Farm Mutual Auto. Ins. Co.*, 82 N.Y.2d 445 (1993) (setting bad faith standard of "gross disregard"); *Rocanova v. Equitable Life Assurance Soc.*, 83 N.Y.2d 718 (1994) (holding that "punitive damages awarded against an insured in a civil suit are not a proper element of the compensatory damages recoverable in a suit against an insurer for a bad-faith refusal to settle"); *New York Univ. v. Continental Ins. Co.*, 83 N.Y.2d 603, 615 (1994) ("A complaint does not state a claim for compensatory or punitive damages by alleging merely that the insurer engaged in a pattern of bad-faith conduct. The complaint must first state a claim of egregious tortious conduct directed at the insured claimant.").

3. Charles Platto, Rachel Lebejko Preister, and Sujuta Gadkar-Wilcox, "New York's 'Good Faith' Standard—What Does it Mean for 'Bad Faith'?," 30-6 Ins. Litigation R. 165, 165 (Apr. 23, 2008); Charles Platto, Rachel Lebejko Preister, and Sujuta Gadkar-Wilcox, "New Developments in the New York Law of Good Faith and Bad Faith," ABA Insurance Coverage Litigation Committee Newsletter, 8 (Summer 2008).

4. *See, e.g.*, Howard B. Epstein and Theodore A. Keyes, "Consequential Damages: Only if Foreseen at Time of Pact," 239-89 New York L. J. (May 8, 2008); Note, "Contract Law—Consequential Damages—New York Court of Appeals Holds that Insurers May be Liable for Consequential Damages," 122 Harv. L. Rev. 998 (2009); William Barker, Justin Kattan and Rachel Balaban, "Sonnenchein Nath & Rosenthal LLP on Bad Faith Claims In New York," LexisNexis Emerging Issues Analyses, 2008 Emerging Issues 266 (Apr. 2009).

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Survey of Decisions

As we approach the two-year anniversary of the *Bi-Economy* and *Panasia* decisions, they have been cited a number of times by courts in New York and other jurisdictions and have been discussed in numerous secondary sources.[5] Somewhat surprisingly, however, most of these cases merely refer to the existence of the decisions, and do not interpret or substantively apply the decisions. Perhaps this is because most of the decisions have arisen in early stages of the cases (such as on motion practice) and more time will be required to see applications of the decisions in different factual contexts after evidence has been developed. Or perhaps the lower courts have been reluctant to set, or had difficulty in setting, new standards in the absence of further guidance from the Court of Appeals. What is becoming clear is that an allegation for a breach of the covenant of good faith and fair dealing is necessary to support a consequential damages claim. However, what showing will be necessary to support such a claim has yet to be determined.

We summarize below the limited number of decisions that have addressed substantive aspects of *Bi-Economy* and *Panasia*.

The most significant development occurred just recently in the *Panasia* case itself. Following the 2008 Court of Appeals decision, Panasia moved to amend its complaint to add a separate cause of action for consequential damages based on breach of contract. The trial court granted the motion, and both sides appealed. In *Panasia Estates, Inc. v. Hudson Ins. Co.*, 2009 N.Y. Slip Op. 09284 (App. Div. 1st Dep't Dec. 15, 2009), the Appellate Division agreed with Panasia that "the motion court erred by stating that consequential damages do not lie for breach of an insurance contract absent bad faith, since the determinative issue is whether such damages were 'within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting'" but held that the motion to amend should not have been granted "since the breach of contract claim that plaintiff sought to add was duplicative of its existing claim for breach of the implied covenant of good faith." The court took the opportunity to correct the defendant's misperception that the claim was insufficiently pled, noting that "[t]he reference to such damages as 'special' in *Bi-Economy Mkt.* (10 N.Y.3d at 192) was not intended to establish a requirement for specificity in pleading." *Id.* It should be emphasized that this decision confirms that while a separate cause of action is not necessary to support a claim for consequential damages, an allegation of the breach of the covenant of good faith and fair dealing does appear to be necessary.[6] *Cf. Simon v. Unum Group*, 2009 WL 2596618 (S.D.N.Y. Aug. 21, 2009), discussed below, where the court denied a consequential damage claim absent a finding of bad faith

Earlier, in *Hoffman v. Unionmutual Stock Life Ins. Co. of New York*, 51 A.D.3d 633, 857 N.Y.S.2d 680 (App. Div. 2d Dep't 2008), the Appellate Division upheld the order of the court below allowing plaintiff to amend his complaint to incorporate allegations of bad faith into the first cause of action for breach of contract. The defendant's motion to dismiss the complaint as time-barred was denied because the defendant had not made a prima facie case that it had denied the plaintiff's claim for disability benefits under the insurance policy for more than six years prior to the commencement of the action.

In *Handy & Harman v. American International Insurance Group, Inc.*, 2008 N.Y. Slip Op. 32366(U), 2008 WL 3999964 (Sup. Ct. New York Co. Aug. 25, 2008), the court affirmed the trial court's order granting plaintiff permission to amend its complaint to add a claim for consequential damages resulting from defendants' alleged breach of their duty to investigate, bargain for, and settle third-party claims in good faith. The plaintiff had purchased an insurance policy to insure certain risks associated with environmental remediation at the site of plaintiff's closed precious metals manufacturing facility. The policy covered third party claims "for clean-up costs resulting from pollution conditions on or under the Insured Property . . . provided that such Claims are first made against the insured and reported

5. Lexis Shepards' Report for 10 N.Y.3d 187, 886 N.E.2d 127 (Ct. App. 2008) and 10 N.Y.3d 200, 886 N.E.2d 135 (Ct.App. 2008) run on January 26, 2010.

6. *See* Brian Green, Victoria Anderson, Jeanne Kohler, M. Machua Millett, "NY Court: Insured May Recover Consequential Damages Absent Insurer Bad Faith," Lexology, Dec. 23, 2009, available at

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to the Company in writing." During the course of cleanup activities, certain previously unknown underground contamination conditions were discovered and reported to the Connecticut Department of Environmental Protection ("CTDEP"), which directed by letter that the newly discovered contamination be remediated. Plaintiff sent a copy of the letter to the insurer as notice of its claim, which denied that the letter from the CTDEP was a claim because it did not constitute a demand. For more than a year following the initial disclaimer of coverage, plaintiff protested the disclaimer while two additional adjusters affirmed that the CTDEP was not a claim until the insurer sent a letter accusing plaintiff of refusing to cooperate and provide the requested documents regarding its claim. The court held that the plaintiff had sufficiently alleged a basis for consequential damages as a result of breach of the covenant of good faith, and that the consequential damages "were within the contemplation of the parties as a probable result of the breach at the time of, or prior to, contracting." The court opined that because of the nature of the insurance—to cover the cost of pollution remediation—"[a]n insurer in these circumstances may fairly be supposed to have assumed, . . . that if it breached its obligations under the contract to timely investigate in good faith and pay covered claims it would have to respond in damages for damages to plaintiff's business."

In *Silverman v. State Farm Fire & Cas. Co.*, 22 Misc.3d 591, 867 N.Y.S.2d 881 (Oct. 8, 2008), plaintiffs, who had been issued various insurance policies, including a homeowner's liability policy, a business owner's liability policy, and two general commercial liability policies and were the defendants in an action alleging sexual assault, sued for a declaratory judgment that the insurance companies were obligated to defend and indemnify them in the sexual assault action. Plaintiffs also sought "punitive damages and statutorily mandated damages." 22 Misc.3d at 593; 867 N.Y.S.2d at 882. The court dismissed the punitive damages and statutorily mandated damages claims, stating that "punitive damages would be available in this case only where the plaintiffs could demonstrate that they were the victims of a tort independent of the insurance contract even if denial of benefits could be deemed made in bad faith." 22 Misc.3d at 594; 867 NY.S.2d. at 883. The plaintiffs argued that, pursuant to *Bi-Economy*, they may sue for consequential damages resulting from the insurance companies' failure to provide coverage. The court observed that while "[s]uch failure may indeed support [a claim for consequential damages] if it flows from a breach of the covenant of good faith and fair dealing," *Bi-Economy* does not permit a claim for consequential damages to bolster a claim for punitive damages. *Id.* at 595, 867 N.Y.S.2d. at 883. The court dismissed the punitive damages claim, but granted plaintiffs leave to file an amended complaint alleging consequential damages.

In *Flynn v. Allstate Indem. Co.*, 22 Misc.3d. 1138(A), 2209 WL 782520 (Watertown, N.Y. City Ct. Mar. 24, 2009) the court rejected the defendant's reliance on *Bi-Economy* to support its proposition that it did not owe the plaintiff the value of a repair of flooring damaged by a plumbing leak just because the workman did not charge plaintiff. Quoting *Bi-Economy*, the defendant argued that because "proof of consequential damages cannot be speculative or conjectural," it did not owe the plaintiff the value of the repair because, while the workman invoiced the repair, he never sent the bill to the plaintiff. 2009 WL 782520, at *17 (quoting *Bi-Economy*, 10 N.Y.3d at 193). The court rejected the argument, finding that the plaintiff had demonstrated that the damages claimed were directly related to the water escaping from a split in the water pipe.

In *Chernish v. Massachusetts Mut. Life Ins. Co.*, 2009 WL 385418 (N.D.N.Y. Feb. 10, 2009), Massachusetts Mutual Life Insurance Company ("Mass Mutual") sold the plaintiff a disability income insurance policy. The plaintiff, who developed a chronic condition that was diagnosed as a variety of ailments until it was finally diagnosed as Crohn's disease, alleged as her second cause of action that Mass Mutual, after initially paying benefits under the policy, breached the covenant of good faith and fair dealing when it "delay[ed] the payment of claims; require[ed] unreasonable and repeated production of documents; ma[de] unreasonable settlement offers before engagement of counsel; engage[ed] in unlawful surveillance; den[ied] coverage of legitimate claims; and otherwise act[ed] in bad faith." *Id.* at *1. The court, countering Mass Mutual's argument that New York law does not recognize a breach of the covenant of good faith and fair dealing as cause of action separate from a contract claim, observed that since *Bi-Economy* and *Panasia* New York does recognize that

"consequential damages resulting from a breach of the covenant of good faith and fair dealing may be asserted in a contract context, so long as the damages were 'within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting.'" *Id.* at *3. The court then paraphrased *Bi-Economy* to note that "the very purpose of [disability income insurance] would have made [Mass Mutual] aware that if it breached its obligations under the contract to investigate in good faith and pay covered claims it would have to respond in damages to [Plaintiff] for [the damages alleged in paragraph '26']" *Id.* at *4 (bracketed material in original). The court continued that recovery of consequential damages for emotional injury "might not be 'an extraordinary expansion of governing law.'" *Id.*

In *Woodworth v. Erie Ins. Co.*, 2009 WL 1652258 (W.D.N.Y. June 12, 2009), a magistrate judge recommended that the court permit amendment of plaintiffs' remaining breach of contract claim for failure to pay damages to included extra-contractual consequential damages based on the insurer's alleged breach of the policy's implied covenant of good faith and fair dealing. In response to insurer's protest that *Bi-Economy* should be limited to commercial property insurance claims, the magistrate judge observed that "nothing in the [*Bi-Economy*] decision itself suggests that it applies only to cases involving business interruption insurance policies or commercial insurance policies." 2009 WL 1652258, *4. She bolstered this observation by quoting from *Panasia*, for the proposition that "consequential damages resulting from the breach of the covenant of good faith and fair dealing may be asserted in an insurance contract context, so long as the damages were with the contemplation of the parties as the probable result of the breach at the time of or prior to contracting." *Id.* at *4 (quoting 10 N.Y. 3d 200, 203 (2008)). She did recommend denial of the request to include a claim for attorney's fees, stating that "[n]othing in *Bi-Economy* or any post-*Bi-Economy* authority cited by the parties suggests that the Court of Appeals intended through its *Bi-Economy* decision to alter in the insurance context the traditional American rule that each party should bear its own attorneys' fees." *Id.* at * 5. While the court did not disagree with the magistrate judge's determination that *Bi-Economy* applied to noncommercial property insurance claims, the court ultimately denied the motion to amend, stating that because plaintiffs waited until eleven months after *Bi-Economy* to move to amend, they had not established "that they acted with the requisite diligence." *Woodworth v. Erie Ins. Co.*, 2009 WL 3671930, at *3 (W.D.N.Y. Oct. 29, 2009).

In *Simon v. Unum Group*, 2009 WL 2596618 (S.D.N.Y. Aug. 21, 2009), the plaintiff, an obstetrician/gynecologist ("OB/GYN") who suffered an injury that rendered him unable to perform deliveries, cesarean sections and surgery, was issued a disability income protection policy contract which covered loss of income of greater than 20% as a result an injury. The plaintiff, in addition to his practice as an OB/GYN, provided medical examination services for INS applicants for temporary and permanent U.S. residence status which were not affected by his injury. The plaintiff provided annual statements of his income, but he did not provide monthly statements. The court held that the policy did not require monthly income statements in order to for the insurance company to calculate the average monthly income, and dismissed the defendants' motion for summary judgment on the breach of contract claim. The court denied the plaintiff's consequential damages claim, however, because he failed to show that defendants acted in bad faith when they denied his claim, finding instead that his failure to produce monthly records was the cause of any delay in processing his claim. *Id.* at *7.

In *Chaffee v. Farmers New Century Ins. Co.*, 2008 WL 4426620 (N.D.N.Y. Sep. 24, 2008), homeowners sued their insurer following a fire which burned their house and its contents. The homeowners alleged that the insurer failed to pay their claims in accordance with the policy; refused to pay the amounts due under the policy; unreasonably delayed review of their claims; and misrepresented the benefits of the policy. *Id.* at *2. The homeowners sought not only contractual damages, but also extracontractual damages resulting from the insurance company's alleged frustration of their efforts to mitigate damages and consequential damages for distress, aggravation, and inconvenience. *Id.* The court quoted the Court of Appeals' determination in *Bi-Economy* that consequential damages are available in a breach-of-contract action where "they are brought within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting." *Id.* at *4 (quoting *Bi-Economy*, 10 N.Y. 3d at 192). Without

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deciding the merits of the claims, the court found that the extra-contractual consequential damages claims were properly part of plaintiffs' breach of contract claims. *Id.* at *5.

In an ERISA claim for failure to pay claims pursuant to employment disability insurance, the court in *Fershtadt v. Verizon Communications Inc.*, 550 F. Supp. 2d 447 (S.D.N.Y. 2008) held that New York insurance law is preempted by ERISA. The court further noted that *Bi-Economy* does not apply to the ERISA savings clause because the decision does not "regulate[] insurance." 550 F. Supp. 2d at 453. The court observed that *Bi-Economy* "held that, as a general rule of contract law, reasonably foreseeable consequential damages are available in certain circumstances, and that this general rule of contract law applies to any contract to pay a sum of money—including an insurance contract." *Id.*

We also note a few decisions in other jurisdictions construing or applying relevant New York law in this area.

In *U.S. Fire Ins. Co. v. Bunge North America, Inc.*, 2008 WL 3077074 (D. Kan. Aug. 4, 2008), the U.S. District Court for the District of Kansas, applying New York law as the law of the contract of insurance, held that a claim for consequential damages may proceed. In the underlying claim, the assured sought coverage of a liability claim against it following the detection of groundwater contamination at its grain elevator sites. The defendant denied the claim on the basis of the insurance policies' pollution exclusion provision. The court dismissed the assured's bad faith claim as unsupported by an independent tort, but allowed the claim for consequential damages as a result of the breach of the covenant of good faith and fair dealing to proceed. *Id.* at *16. Applying the law of recently decided *Bi-Economy,* the Court noted that plaintiff sufficiently alleged a claim for consequential damages when it alleged defendant committed various acts, including failure to pay plaintiff's coverage claims, and failure to investigate adequately. *Id.* at 16 n.13. The court determined, however, that claims of breach of separate agreements regarding defense costs and allegations concerning litigation tactics do "not provide a proper basis for a claim" of breach of the duty of good faith. *Id.*

The court in *Great Lakes Reinsurance, PLC v. SEA CAT I, LLC*, __ F.Supp. 2d __, 2009 WL 2778754 (W.D. Okla.) applied *Bi-Economy* to those marine insurance contracts containing a New York choice of law clause. In an action in which the insurer sought a declaratory judgment that New York law applied, the court dismissed the yacht owner's counterclaim of tortious bad faith against the insurer for denying his claim, observing that New York law does not recognize an independent tort of bad faith. 2009 WL 2778754, *6. The court did permit, however, the yacht owner to claim consequential damages resulting from any bad faith conduct by the insurer in denying any insured loss. *Id.* at *6.

Answers To Questions

Based on the decisions to date, the analyses provided by other authors, and a thorough analysis of the original decisions and dissents, we offer the following answers and commentary to the questions raised by *Bi-Economy* and *Panasia.*

1. Is a finding of bad faith required for extra contractual, consequential damages in excess of policy limits? The question can best be answered as follows. The majority in *Bi-Economy* and *Panasia* essentially held in the context of first party property and business interruption coverage that a breach by the carrier of its implied contractual obligations of good faith and fair dealing would give rise to a claim for foreseeable consequential damages without regard to policy limits. An express requirement of that decision is a breach of the covenant of good faith and fair dealing by the insurer. Thus, a mere breach of an express contractual or policy provision, without more, should not be enough to support such a claim. In other words, there must be a finding of a breach of the duty of good faith and fair dealing. This seems clear, but immediately gives rise to a second question: Is a breach of the duty of good faith the same as bad faith? We do not know, although we think the answer should be yes. The only decision following *Bi-Economy* and *Panasia* we have found which appears to address this issue is *Simon*, in which the court held that absent bad faith, a delay in processing did not give rise to a claim for consequential damages. 2009 WL 2596618, at *7. While the recent appellate division

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decision in *Panasia* confirms that consequential damages may lie for a breach of the covenant of good faith, it does not reach the question of what is the standard for measuring good faith.

2. To the extent it appears that at a minimum, a breach of the duty of good faith and fair dealing is required under *Bi-Economy* and *Panasia* in order to support an award of extra-contractual damages, how is this measured? What is the standard? Is it different from the traditional rules in New York relating to bad faith? As discussed in our original articles, in a series of cases in the mid nineties, beginning with *Pavia* and including *Soto, Rocanova* and *NYU v. Continental*,[7] the New York Court of Appeals established a clear standard for bad faith, based on a finding of "gross disregard" of the insured's interests. The question is whether under *Bi-Economy* and *Panasia* a finding of breach of the covenant of good faith and fair dealing will also be measured by this standard, or some lesser or different standard. The answer, again, remains unclear. However, while there is no guidance or answer to this question in the *Bi-Economy* and *Panasia* decisions or the cases that have followed over the last two years, we think the traditional "gross disregard" standard should apply.

3. Do the *Bi-Economy* and *Panasia* decisions apply to third party coverage, where there was already an established bad faith standard? In our ABA article in August 2008[8], we said there was no apparent difference between first party and third party contexts. But upon reflection, we would argue that there is. In *Bi-Economy* and *Panasia*, the Court struggled to establish a remedy for extra contractual consequential damages in first party coverage situations, where no such remedy previously existed. The Court made clear that it was limiting its decision to the circumstances of those cases. A remedy has long existed under the law of bad faith in the third party coverage context. *Bi-Economy* and *Panasia* did not address that issue. The courts that have considered *Bi-Economy/Panasia* in the context of third-party claims, however, do not distinguish the decisions' application to third-party claims as compared to first party claims. In *Bunge North America*, the court dismissed the plaintiff's bad faith claim as unsupported by an independent tort, but allowed the claim for consequential damages as a result of the breach of the covenant of good faith and fair dealing to proceed. 2008 WL 3077074, at *16. Likewise, in *Handy & Hartman*, the court found that the consequential damages "were within the contemplation of the parties as a probable result of the breach at the time of, or prior to, contracting" for liability coverage. The court opined "[a]n insurer in these circumstances fairly may be supposed to have assumed, when the insurance contract was made, that if it breached its obligations under the contract to make timely investigations in good faith and pay covered claims it would have to respond in damages for damages to plaintiff's business."

4. Have the rules on punitive damages been affected? We believe that this is the one question that can be clearly answered, and the answer is "no." The dissent in *Bi-Economy* and *Panasia* expressed concern that the rules for punitive damages established in *Rocanova* and *New York Univ. v Continental* were being abandoned.[9] However, the

7. *Pavia v. State Farm Mutual Auto. Ins. Co.*, 82 N.Y.2d 445 (1993); *Rocanova v. Equitable Life Assurance Soc.*, 83 N.Y.2d 718 (1994); *New York Univ. v. Continental Ins. Co.*, 83 N.Y.2d 603, 615 (1994); Platto, *et al* "New Developments in the New York Law of Good Faith and Bad Faith," ABA Insurance Coverage Litigation Committee Newsletter, 8 (Summer 2008); Platto, *et al.* "New York's 'Good Faith' Standard—What Does it Mean for 'Bad Faith'?," 30-6 Ins. Litigation R. 165, 165 (Apr. 23, 2008).

8. Platto, *et al* "New Developments in the New York Law of Good Faith and Bad Faith," ABA Insurance Coverage Litigation Committee Newsletter, 12.

9. 10 N.Y.3d at 196-97; 10 N.Y.3d at 204.

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majority made clear that it intended its ruling to afford compensatory, not punitive, damages and that the standards for punitive damages remained intact.[10]

Conclusion

We felt that with the approach of the two-year anniversary of the *Bi-Economy* and *Panasia* decisions, it was timely and appropriate to evaluate what has happened in the wake of those seemingly revolutionary decisions. The answer is not much. It appears that New York, like many other jurisdictions[11], now has provided a remedy to policyholders for breach of the covenant of good faith and fair dealing in first party coverage disputes—but whether New York has abandoned or limited the long established principles of bad faith and the applicable requirements and standards for awarding punitive damages remains to be seen. We would urge that the courts in New York carefully consider this issue and the questions above in resolving future cases.

10. 10 N.Y.3d at 194; *see also Silverman v. State Farm Fire & Cas. Co.*, 22 Misc.3d 591, 867 N.Y.S.2d 881

11. *See* William T. Barker and Paul E.B. Glad, "Use of Summary Judgment in Defense of Bad Faith Actions Involving First-Party Insurance," 30 Tort & Ins. L. J. 49-102 (1994).

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Publications

See Platto cv for list of pre-2008 international litigation/arbitration and insurance books, chapters and articles

Recent Publications (attached)

1. New York's New "Good Faith" Standard – What does it Mean for "Bad Faith"?: Bi-Economy Market, Inc. v. Harleysville Ins. Co. (N.Y.); Panasia Estates, Inc. v. Hudson Ins. Co. (N.Y.), Insurance Litigation Reporter, Vol. 30, No. 6 (April 2008) (with Rachel Lebejko Priester and Sujata Gadkar-Wilcox).
2. New Developments in The New York Law of Good Faith and Bad Faith. Tort Trial Insurance Coverage Litigation Committee News, American Bar Association (Summer 2008) (with Rachel Lebejko Priester and Sujata Gadkar-Wilcox).
3. What Is The Law of Bad Faith in New York Two Years After Bi-Economy and Panasia – Have The Questions Been Answered? Insurance Litigation Reporter, Vol. 32, No. 3 (Mar. 2010) (with Joseph Grasso, Rachel Lebejko Priester and Alison Weir).
4. Gulf Oil Catastrophe – Round 1, Transocean Insurers vs. BP Additional Insured Claim. Insurance Litigation Reporter, Vol. 32, No. 9 (July, 2010) (with Joseph Grasso)

Publications in Process

Books

Co-Editior, Additional Insured Handboook, American Bar Association (to be published in 2010)

Chapters

Chapter 24, Addressing Insurance Coverage Issues Specific to Products Liability, Products Liability in New York, New York State Bar Association (to be published in 2010)

Commercial General Liability Policy Exclusions, Commercial General Liability Policy Handbook, ABA TIPS ICLC (to be published in 2010)

Articles

What Is The Law of Bad Faith in New York Two Years After Bi-Economy and Panasia – Have The Questions Been Answered? Updated. ABA TIPS ICLC News (to be published in summer 2010)

Resolving Catastrophic Multi-Party Construction Insurance Cases – Is Mega Million Dollar Litigation The only Solution? ABA Annual Meeting paper (August, 2010)