BAD FAITH COMPRENDIUM
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INTRODUCTION

In disputes with insurers, policyholders frequently raise bad faith claims. The use of these types of claims by policyholders is on the rise in the United States in both litigated and non-litigated matters. Bad faith claims are claims outside of the policy and may expose the insurer to punitive, statutory or treble damages, as well as attorneys’ fees and costs, well beyond the policy limits.

In this survey, we have endeavored to identify the law in each of the fifty states regarding bad faith in the context of first-party and third-party claims. We have done so by identifying whether a state recognizes a direct claim against an insurer for breach of the duty of good faith and fair dealing and whether each state recognizes a claim against an insurer for failing to settle a claim within the limits of a third-party policy. We have also identified whether each state recognizes any obligations between primary and excess insurers such as to extend a primary insurer’s duty of good faith to an excess insurer and, finally, whether there are any statutory provisions relevant to bad faith claims. Before looking at each state, we will briefly discuss the history and development of bad faith in the United States.

All contracts include a duty of good faith and fair dealing on the part of the contracting parties. This duty implies that “neither party will do anything which will injure the right of the other to receive the benefits of the agreement.” Communale v. Traders & Gen. Ins. Co., 328 P.2d 198, 200 (Cal. 1958). This principle holds true in the insurance context. Pavia v. State Farm Mut. Auto Ins. Co., 626 N.E.2d 24, 27 (N.Y. 1993); Edwards v. Prudential Prop. & Cas. Co., 814 A.2d 1115, 1119, certif. denied, 822 A.2d 608 (2003). Insurers, therefore, are bound to deal fairly with their insureds. When the actions of an insurer are found to have breached this duty, the insurer may be held liable for its bad faith, and the remedies available under the insurance contract may be insufficient to compensate the insured. See Steven Plitt, The Elastic Contours of Attorney-Client Privilege and Waiver in the Context of Insurance Company Bad Faith: There’s a Chill in the Air, 34 Seton Hall L. Rev. 513, 524 (2004).

American courts did not concentrate on the bargaining power between insurance companies and their policyholders until the 20th Century. James A. McGuire, Kristin Dodge McMahon, Issues For Excess Insurer Counsel in Bad Faith and Excess Liability Cases, 62 Def. Couns. J. 337, 337 (1995). Until then, contract law provided the exclusive remedy under which a policyholder could recover from an insurer for the bad faith handling of claims. Ibid. Although a policyholder may have successfully argued that its insurer had wrongfully denied benefits, damages usually could not exceed the amount due under the policy with interest.

In a landmark decision in 1930, the Wisconsin Supreme Court merged the concepts of negligence and bad faith with breach of the implied covenant of good faith and fair dealing in the insurance context. See Hilker v. Western Automobile Insurance Co., 231 N.W. 257 (Wis. 1930), aff’d on reh’g, 235 N.W. 413 (Wis. 1931). The court found that where an injury occurs for which a recovery may be had in an amount exceeding the insured’s policy, a duty on the part of the insurer to settle within limits arises with respect to its insured because the insured
bartered to the insurance company all rights it had to protect itself from the consequences of the injury. Therefore, the court determined that insurers could be liable for contractual damages caused by their failure to consider the interests of their policyholders when evaluating settlement offers from third parties.

Beginning in the 1950’s, courts more commonly recognized a duty of good faith owed by insurers to policyholders independent of the insurance contract in the third-party context. See, e.g., Communale v. Traders & Gen. Ins. Co., 328 P.2d 198 (Cal. 1958). This duty arises out of the special relationship shared by the insurer and the policyholder stemming from the perceived unequal bargaining power in the negotiation of policies of insurance and the resolution of claims.

In order to bridge this gap between insurer and policyholder, courts began to acknowledge that a breach of the insurer’s duty yielded a remedy in tort, not contract, and awarded damages that were not tied to policy limits in order to restore the insured to the place it was before its injury. Bibeault v. Hanover Ins. Co., 417 A.2d 313, 318 (R.I. 1980). In addition to the obligation to pay for any judgment exceeding policy limits, such extracontractual damages include awards for emotional distress, loss of income and even punitive damages, each of which are traditionally unavailable in breach of contract actions.

Bad faith has been described as an “amorphous concept” that “varies with the context” and thus has “no generally accepted correct definition.” Plitt, supra, 34 Seton Hall L. Rev. at 524. Bad faith must be considered in a specific context because it has no definite independent meaning. In fact, one commentator has described the concept of bad faith as “having no definite meaning of its own,” but is commonly illustrated in a negative fashion, “by explaining what it is not.” Eileen A. Scallen, Sailing the Uncharted Seas of Bad Faith: Seaman’s Direct Buying Service, Inc. v. Standard Oil Co., 69 Minn.L.Rev. 1161, 1165-66 (1985).

Courts have been unable to establish a uniform definition of bad faith. See Walbrook Ins. Co., Ltd. v. Liberty Mut. Ins. Co., 7 Cal. Rptr. 2d 513, 518 (Ct. App. 1992). Different courts have developed checklists or key factors over the years that they believe are illustrative of an insurer’s bad faith. Regardless of the factors applied, it is significant to note that it is inappropriate to review an insurer’s conduct using “20-20 hindsight.” Commercial Union Ins. Co. v. Liberty Mut. Ins. Co., 393 N.W.2d 161, 166 (Mich. 1986). Rather, [the conduct under scrutiny must be considered in light of the circumstances existing at the time. A microscopic examination, years after the fact, made with the luxury of actually knowing the outcome of the original proceeding is not appropriate. It must be remembered that if bad faith exists in a given situation, it arose upon the occurrence of the acts in question; bad faith does not arise at some later date as a result of an unsuccessful day in court. [Ibid.]

There is also a divergence of opinion about whether an insurer can be liable for bad faith even if it turns out that the claim is not covered by the policy. Ostrager & Newman, Handbook on Insurance Coverage Disputes § 12.01 (12th ed. 2004) (hereinafter “Ostrager”). Some courts find that the insurer’s actions in processing the claim and, for example, its wrongful denial of a defense may trigger bad faith liability even if the insurer properly denies indemnity. See Judah v. State Farm Fire & Cas. Co., 266 Cal. Rptr. 455, 465 (Cal. Ct. App. 1990); Safeco Ins. Co. of Am. v. Butler, 823 P.2d 499 (Wash. 1992).

As noted at the outset, we have identified for each state whether that state recognizes a claim against an insurer for breach of the duty of good faith and fair dealing and also whether that state imposes liability on an insurer for failure to settle a claim within the limits of a third-party policy. We have also looked to see if each state recognizes any obligations running from a primary insurer to an excess insurer and, finally, whether there are any statutory provisions that may relate to an insurer’s conduct.

Bad faith may involve either first-party or third-party claims. Both of these categories of bad faith derive from the same duty - the duty of good faith and fair dealing. Plitt, supra, 34 Seton Hall L. Rev. 522-523, 525. However, they each involve different factual circumstances and distinct considerations for the insurance company. Ibid. For example, bad faith can arise in the first-party context when an insurer fails to pay a claim and also in the third-party context where an insurer fails to settle a claim against the insured or wrongfully denies coverage for a claim. Before reviewing each state’s law, we will first briefly address first-party bad faith and, then, third-party bad faith.
First-party bad faith actions are brought by insureds to recover for their own losses and are typically premised upon the insurer’s wrongful denial of coverage. Examples of first-party coverage include health and accident, life, disability, homeowner’s, fire, title, and property damage insurance.

Courts have been less willing to recognize an action for first-party bad faith than third-party bad faith because the insurer and the policyholder do not share the same special relationship as they do in the third-party context. See Bob Puelz, The Effect of Bad-Faith Laws on First-Party Insurance Claims Decisions, 33 J. Legal Stud. 355, 360 (2004). In the third-party situation the insurer and the policyholder cooperate in the policyholder’s defense. In the first-party context, the insurer and the policyholder are generally in an adversarial position. Missouri ex re. Safeco Nat’l Ins. Co. of Am. v. Rauch, 849 S.W.2d 632, 634 (Mo. Ct. App. 1993). Thus, the reasoning goes, contract damages are sufficient to reimburse the first-party insured because the contract of insurance already requires that the insurer pay the insured for covered claims.

California was the first state to provide redress for first-party bad faith. See Fletcher v. Western National Life Ins. Co., 89 Cal. Rptr. 78 (Ct. App. 1970); Gruenberg v. Aetna Insurance Co., 510 P.2d 1032 (Cal. 1973). In Gruenberg v. Aetna Insurance Co., 510 P.2d 1032 (Cal. 1973), California’s highest court stated:

[Id. at 1037.]


Not every first-party bad faith claim can be neatly categorized, but generally, the primary areas in which first-party bad faith claims arise relate to the following circumstances: (1) inadequate investigation; (2) deliberate misrepresentation of policy language to avoid coverage; (3) unreasonable or coercive litigation conduct; and (4) unreasonable delay in resolving claims. It is significant to note here that an insurer’s filing of a declaratory judgment action to clarify a coverage issue will not constitute bad faith, so long as the suit is not frivolous. See Edward Zampino, M. Jarrett Coleman, Turning the Other Cheek: Can Insurer’s Defense of Coverage Suits Constitute Grounds for Bad Faith Litigation, 38 Tort Trial & Ins. Prac. L.J. 103 (2002); Betsy Ellwanger Gallagher, Revisiting the Use of Declaratory Judgment Actions to Determine Insurance Coverage Issues, 24 No. 3 Trial Advoc. Q. 24 (2005).

Third-party bad faith actions typically arise out of the insurer’s duties under a liability policy. Third-party claims, unlike first-party claims, include the risk of subjecting the insured to liability in excess of the policy limits because of the insurance company’s refusal to settle within the policy limits.

The earliest bad faith cases arose in the third-party context and it is in this context that courts recognized the fiduciary duty that exists between the insurer and the policyholder. Douglas R. Richmond, An Overview of Insurance Bad Faith Law and Litigation, 25 Seton Hall L. Rev. 74, 82 (1994). Under third-party policies, an insurer typically owes the policyholder a duty of defense and indemnification, the breach of which may lead to a claim of bad faith. There are several scenarios in which third-party bad faith claims can arise, the most common of which involves the insurer’s alleged wrongful denial of a defense or indemnity. Often, such a claim is appended to a declaratory judgment action in addition to a breach of contract claim. Of the two claims for wrongful denial of defense and wrongful denial of indemnity, the allegation of bad faith refusal to defend creates the greatest exposure to bad faith liability.
The duty to defend creates a special relationship between the insurer and the policyholder. This relationship is triggered once a claim is made, while the insurer is processing the claim. Because the duty to defend is so broadly construed, such that the mere potential that the claim is covered triggers the duty, the insurer must be conservative in deciding whether to deny the policyholder a defense. A denial leaves the policyholder exposed in the underlying action, forces the policyholder to fund its own defense, and puts the insurer and the policyholder in an adverse position from the start. A denial also opens the door for bad faith liability because courts tend to strictly construe such a denial, as the duty to defend is so broadly construed. See generally Douglas R. Richmond, Truly “Extracontractual” Liability: Insurer Bad Faith in the Absence of Coverage, 29 Tort & Insurance Law 740, 746 (1994).

The foregoing does not necessarily hold true for the duty to indemnify. The insurer is on much firmer ground when denying indemnity. First, if the insurer is already providing a defense under a reservation of rights, it can wait until more information is developed before deciding whether it owes indemnity to the policyholder. Defending an insured subject to a reservation of rights is one way to minimize the likelihood of a bad faith claim. Second, the insurer has wider latitude in denying indemnity, as long as the decision was reasonable; even if it is ultimately shown to be wrong, a court will not likely find bad faith.

Another common bad faith claim is the alleged failure or refusal to settle within policy limits. The insurer’s obligations in settlement negotiations may not specifically implicate the duty to defend or the duty to indemnify if no suit has been filed, as this latter duty does not arise until the insured has incurred liability. Thus, some courts have recognized a separate “duty to settle” under liability policies. Jordan v. United States Fidelity & Guar. Co., 843 F. Supp. 164, 171 (S.D. Miss. 1993); Continental Cas. Co. v. Kinsey, 513 N.W.2d 66, 69 (N.D. 1994); Am. Physicians Ins. Exch. v. Garcia, 876 S.W.2d 842, 848 (Tex. 1994).

Many states have enacted unfair claims practices statutes to provide standards for the investigation and disposition of claims arising under policies or certificates of insurance. In most states, these statutes do not create a private right of action against an insurer.

With this background and history in mind, we now present the law in each of the fifty states, to the extent it exists, with regard to the duty of good faith and fair dealing, failure to settle claims against the insured, obligations of primary insurers and excess insurers, and relevant statutory provisions.
ALABAMA

Good Faith And Fair Dealing

Alabama holds that an insurer breaches its duty of good faith and fair dealing to an insured if it intentionally fails to pay a first-party claim when it lacks a legitimate or arguable reason for doing so. See, e.g., National Security Fire & Cas. Co. v. Bowen, 417 So.2d 179 (Ala. 1982); Chavers v. Nat’l Security Fire & Cas. Co., 405 So.2d 1 (Ala. 1981).

Failure To Settle

Alabama holds that an insurer can be liable for failure to settle a claim within limits if it either negligently failed to settle the claim within policy limits or acted in bad faith in failing to settle the claim. Waters v. American Cas. Co. of Redding, PA, 73 So.2d 524 (Ala. 1953). An insurer is negligent in failing to settle a claim if it does not use ordinary care to learn the facts of the claim before rejecting a settlement. State Farm Mut. Auto. Ins. Co. v. Hollis, 554 So.2d 387 (Ala. 1989).

Primary/Excess Obligations

Alabama holds that a primary insurer does not owe a duty of good faith to an excess insurer with regard to settling an action in the absence of a specific contractual obligation running from the primary to the excess insurer. Federal Ins. Co. v. Travelers Cas. & Sur. Co., 843 So.2d 140 (Ala. 2002).

Statutory

Ala. Code § 27-12-24 states that “[n]o insurer shall, without just cause, refuse to pay or settle claims arising under coverages provided by its policies...” but the Eleventh Circuit has held that this statute does not create a private cause of action against an insurer. Farlow v. Union Cent. Life Ins. Co., 874 F.2d 791 (11th Cir. 1989) overruled on other grounds by Morstein v. Nat’l Ins. Servs., 93 F.3d 715 (11th Cir. 1996).

ALASKA

Good Faith And Fair Dealing


Failure To Settle

Alaska holds that an insurer can be held liable for failure to settle a claim within limits if there exists a substantial likelihood of a verdict against the insured in excess of the policy limits and the insurer fails to offer the policy limits to settle. Schultz v. Travelers Indem. Co., 754 P.2d 265 (Alaska 1988).

Primary/Excess Obligations

No Alaska state court has addressed the issue of whether a primary insurer owes a duty to an excess insurer, but the Ninth Circuit has predicted that Alaska would follow California law and allow an excess insurer to pursue bad faith claims against a primary insurer for failure to settle within its limits under equitable subrogation principles. R.W. Beck & Assoc. v. City & Borough of Sitka, 27 F.3d 1475 (9th Cir. 1994).

Statutory

ALASKA STAT. § 21.36.125 requires an insurer to act reasonably with regard to payment of claims of its insured, but explicitly states that it does not create a private cause of action against an insurer. ALASKA STAT. § 21.36.125(b).
ARIZONA

Good Faith And Fair Dealing


Failure To Settle

Arizona holds that an insured can be liable for failure to settle a claim within limits if it fails to settle within policy limits when it defends the insured, and thus has the sole power and opportunity to effect a settlement and in good faith protect the insured from excess exposure. Farmers Ins. Exch. v. Henderson, 313 P.2d 404 (Ariz. 1957).

Primary/Excess Obligations

Arizona holds that an excess insurer is subrogated to the rights of an insured, and thus has a cause of action against a primary insurer for bad faith failure to settle within policy limits. Hartford Accident & Indem. v. Aetna Cas. & Sur. Co., 792 P.2d 749 (Ariz. 1990).

Statutory

ARIZ. REV. STAT. ANN. § 20-461 requires an insurer to act reasonably with regard to the payment of an insured’s claim, but states that it does not create a private cause of action against an insurer.

ARKANSAS

Good Faith And Fair Dealing

Arkansas holds that an insurer breaches its duty of good faith and fair dealing to an insured when it attempts to avoid its liability under a policy when there is no reasonable basis to do so. Aetna Cas. & Sur. Co. v. Broadway Arms Corp., 664 S.W.2d 463 (Ark. 1984).

Failure To Settle

Arkansas holds that an insurer can be liable for failure to settle a claim within limits if it either negligently failed to settle a claim within policy limits or acted in bad faith in failing to do so. S. Farm Bureau Cas. Ins. Co. v. Parker, 341 S.W.2d 36 (Ark. 1961).

Primary/Excess Obligations

Arkansas courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

Statutory

ARK. CODE ANN. § 23-66-206 states that it is an unfair or deceptive act for an insurer to fail to exercise good faith to effect a prompt, fair and equitable settlement of a claim in which liability has become reasonably clear, but at least one Arkansas court has held that this statute does not create a private cause of action against an insurer. Columbia Mut. Ins. Co. v. Home Mut. Fire Ins. Co., 47 S.W.3d 909 (Ark. Ct. App. 2001)(citing to Ark. Code Ann. § 23-66-202(b)).
CALIFORNIA

**Good Faith And Fair Dealing**

California holds that an insurer breaches its duty of good faith and fair dealing to an insured if it refuses without proper cause to fairly and in good faith compensate an insured for a loss covered by the policy. *Gruenberg v. Aetna Ins. Co.*, 510 P.2d 1032 (Cal. 1973).

**Failure To Settle**

California holds that an insurer can be liable for failure to settle a claim within limits if there is a great risk of recovery beyond the policy limits and the most reasonable manner of resolving the claim is a settlement within limits. The test for liability is whether a prudent insurer would have accepted a settlement offer irrespective of the insurer's limits. *See, e.g., Crisci v. Security Ins. Co. of New Haven*, 426 P.2d 173 (Cal. 1967); *Comunale v. Traders & Gen. Ins. Co.*, 328 P.2d 198 (Cal. 1958).

**Primary/Excess Obligations**

California holds that an excess insurer stands in the shoes of the insured and can recover from the primary insurer a judgment in excess of policy limits caused by the primary insurer's wrongful refusal to settle. This rule is based on the theory of equitable subrogation, and not upon a separate duty owed to an excess insurer. *Nw. Mut. Ins. Co. v. Farmers Ins. Group*, 143 Cal. Rptr. 415 (Cal. App. 4th Dist. 1978).

**Statutory**

CAL. INS. CODE § 790.03(h)(5) states that an insurer commits an unfair claims settlement practice if it knowingly, and with sufficient frequency to indicate a general business practice, fails to attempt in good faith to effectuate prompt, fair and equitable settlements of claims for which liability is reasonably clear, but no private cause of action against an insurer exists under the statute. *Moradi-Shalal v. Fireman's Fund Ins. Co.*, 758 P.2d 58 (Cal. 1988).

COLORADO

**Good Faith And Fair Dealing**

Colorado holds that an insurer can be held liable to an insured if it refuses to deal fairly and in good faith with the insured without proper cause in respect to claims. *Rederscheid v. Comprecare, Inc.*, 667 P.2d 766 (Colo. Ct. App. 1983).

**Failure To Settle**

Colorado holds that an insurer can be liable for failure to settle a claim within limits if the proofs show that the insurer had no reasonable basis for denying the claim or failing to settle it. *Farmers Group, Inc. v. Trimble*, 691 P.2d 1138 (Colo. 1984) overruled on other grounds by *Goodson v. Am. Std. Ins. Co.*, 89 P.3d 409 (Colo. 2004).

**Primary/Excess Obligations**

Colorado courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

**Statutory**

**CONNECTICUT**

**Good Faith And Fair Dealing**


**Failure To Settle**

Connecticut holds that an insurer can be liable for failure to settle a claim within limits when it either negligently or in bad faith fails to settle a claim and exposes the insured to an excess judgment. *Knudsen v. Hartford Acc. & Indem. Co.*, 222 A.2d 811 (Conn. Ct. Common Plesa 1966); see also, *Bourjet v. Gov’t Employees Ins. Co.*, 456 F.2d 282 (2d Cir. 1972).

**Primary/Excess Obligations**

Connecticut courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

**Statutory**

CONN. GEN. STAT. § 38a-816(6)(f) states that an insurer commits an unfair claim settlement practice when it fails in good faith to attempt to effect a prompt, fair and equitable settlement of a claim for which liability has become clear, but no private cause of action against an insurer exists. *Martin v. American Equity Ins. Co.*, 185 F. Supp.2d 162 (D. Conn. 2002).

**DELAWARE**

**Good Faith And Fair Dealing**

Delaware holds that an insurer breaches its duty of good faith and fair dealing to an insured when it denies benefits under a policy without any reasonable justification, and that a claim for bad faith in these circumstances is a contractual claim. *Tackett v. State Farm Fire & Cas. Ins. Co.*, 653 A.2d 254 (Del. 1995).

**Failure To Settle**

Delaware holds that an insurer can be liable for failure to settle a claim within limits when it fails to use good faith or due care in deciding whether to settle a claim for an amount within the policy limits. *Stilwell v. Parson*, 145 A.2d 397 (Del. 1958); *McNally v. Nationwide Ins. Co.*, 815 F.2d 254 (3d Cir. 1987).

**Primary/Excess Obligations**

Delaware courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

**Statutory**

DEL. CODE ANN. TIT. 18 §2304(b) requires insurers to act reasonably with regard to settling claims against insureds, but there is no private cause of action under the statute against an insurer. *Yardley v. U.S. Health Care Inc.*, 698 A.2d 979 (Del. Super. Ct.), aff’d, 693 A.2d 1083 (Del. 1996).
**FLORIDA**

**Good Faith And Fair Dealing**

Florida holds that claims against an insurer for breach of the duty of good faith and fair dealing are actionable only under Florida statutes, including FLA. STAT. ANN. § 626.9541(i) and 624.155(1)(a)1. State Farm Mut. Auto. Ins. Co. v. LaForet, 658 So.2d 55 (Fla. 1995). An insured need not prove that the allegedly actionable conduct of the insurer was performed with such frequency as to constitute a general business practice in order to recover. Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins. Co., 945 So.2d 1216 (Fla. 2006).

**Failure To Settle**

Florida holds that an insurer has a duty to advise the insured of settlement opportunities. Boston Old Colony Ins. Co. v. Gutierrez, 386 So.2d 783, 785 (Fla. 1980). The insurer must give fair consideration to a settlement offer that is not unreasonable, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. Ibid. Failure to settle a claim within policy limits is evidence of bad faith. Ibid.

**Primary/Excess Obligations**


**Statutory**

FLA. STAT. ANN. § 626.9541(i) states that an insurer must reasonably investigate claims made against its policy and FLA. STAT. ANN. § 624.155(1)(a) states that any person may bring a civil action against an insurer if the person suffers damage because of an insurer’s violation of the statute.

**GEORGIA**

**Good Faith And Fair Dealing**

Georgia holds that an insurer may be liable for damages to its insured for failing to adjust or compromise the claim where the insurer is guilty of negligence or fraud or bad faith in failing to adjust or compromise the claim and the insured is injured as a result. S. Gen. Ins. Co. v. Holt, 416 S.E.2d 274 (Ga. 1992).

**Failure To Settle**

Georgia holds that an insurer owes a duty of good faith to its insured when considering settlement offers and, to fulfill that duty, must exercise the same care that an ordinarily prudent insurer with no policy limits would exercise in evaluating the claim and is liable to the insured if it fails to do so. U. S. Fid. & Guar. Co. v. Evans, 156 S.E.2d 809 (Ga. Ct. App.), aff’d, 158 S.E.2d 243 (Ga. 1967).

**Primary/Excess Obligations**

Georgia holds that an excess insurer may pursue a claim against a primary insurer for bad faith under subrogation principles when the primary insurer fails to settle a claim within the policy limits. Home Ins. Co. v. N. River Ins. Co., 385 S.E.2d 736 (Ga. 1989).

**Statutory**

GA. CODE ANN. § 33-6-34 states that an insurer engages in an unfair claims settlement practice when it does not attempt in good faith to effect a prompt, fair and equitable settlement of a claim for which liability has become reasonably clear, but the statute does not create a private cause of action against an insurer. Rodgers v. St. Paul Fire & Marine Ins. Co., 492 S.E.2d 268 (Ga. Ct. App. 1998).
HAWAII

Good Faith And Fair Dealing

Hawaii holds that an insurer has a duty of good faith and fair dealing to an insured which is an implied legal duty and that a cause of action in tort exists for a breach of that duty. Best Place, Inc. v. Penn Am. Ins. Co., 920 P.2d 334 (Haw. 1996).

Failure To Settle

Hawaii holds that an insurer can be liable to an insured for failure to settle a claim within limits when it acts in bad faith and fails to settle the claim within limits if an opportunity existed to do so. Tran v. State Farm Mut. Auto. Ins. Co., 999 F. Supp. 1369 (D. Haw. 1998).

Primary/Excess Obligations

Hawaii courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

Statutory


IDAHO

Good Faith And Fair Dealing

Idaho holds that an insurer breaches its duty of good faith and fair dealing to an insured when it intentionally and unreasonably denies or delays payment of a claim and an insured can pursue a tort claim against the insurer for extra-contractual damages in the event of a breach of that duty. White v. Unigard Mut. Ins. Co., 730 P.2d 1014 (Idaho 1986).

Failure To Settle

Idaho holds that an insurer can be liable for failure to settle a claim within limits if it fails to exercise good faith or due care in defending an insured and considering settlement offers that would resolve the claim within policy limits. Openshaw v. Allstate Ins. Co., 484 P.2d 1032 (Idaho 1971).

Primary/Excess Obligations

Idaho courts decline to recognize the covenant of good faith and fair dealing between insurers because the factors which gave rise to the duty between an insurer and the insured, i.e., adhesion, honesty, and fiduciary responsibility, are not present in the relationship between insurers. Stonewall Surplus Lines Ins. Co. v. Farmers Ins. Co., 971 P.2d 1142 (Idaho 1998).

Statutory

IDAHO CODE ANN. § 41-1329 states that an insurer is required to effect prompt, fair and equitable settlements of claims in good faith where the liability for the claim has become reasonably clear, but the statute does not create a private cause of action against an insurer. White v. Unigard Mut. Ins. Co., 730 P.2d 1014 (Idaho 1986).
ILLINOIS

Good Faith And Fair Dealing

Illinois recognizes a statutory cause of action under 215 ILL. COMP. STAT. 5/155 that allows an insured to bring an action against an insurer for attorney’s fees, costs and additional penalties if the insurer’s refusal to recognize liability and pay a claim under a policy is vexatious and unreasonable, Cramer v. Ins. Exch. Agency, 675 N.E.2d 897, 900 (Ill. 1997), and the insured may bring an additional independent tort action against the insurer for misconduct that rises above the level of misconduct contemplated by the statute, i.e., mere allegations of bad faith or unreasonable and vexatious conduct. Ibid.

Failure To Settle

Illinois holds that an insurer can be liable for the full amount of the judgment against the insured for failure to settle a claim within limits when the insurer undertakes the defense of the insured and arbitrarily refuses a settlement within policy limits. Cramer v. Ins. Exch. Agency, 675 N.E.2d 897 (Ill. 1996).

Primary/Excess Obligations

There exists a circuit split in Illinois with one panel recognizing a cause of action by the excess carrier against the primary carrier for bad faith refusal to settle, Schal Bovis, Inc. v. Cas. Ins. Co., 732 N.E.2d 1082 (Ill. App. 1 Dist. 1999), and another panel holding that Illinois does not impose a duty by the primary insurer to the excess carrier, U. S. Fire Ins. Co. v. Zurich Ins. Co., 768 N.E.2d 288 (Ill. App. 1 Dist. 2002).

Statutory

215 ILL. COMP. STAT. 5/154.6 identifies improper claims practices that are prohibited and allows for a public remedy to be pursued against a violating insurer by the Director of Insurance, but the statute does not create a private cause of action against an insurer. Am. Serv. Ins. Co. v. Passarelli, 752 N.E.2d 635 (Ill. App. 1 Dist. 2001).

INDIANA

Good Faith And Fair Dealing

Indiana holds that an insurer breaches its duty of good faith and fair dealing to an insured if it fails to pay a claim when there is no rational, principled reason for doing so and when the insurer has knowledge that there is no legitimate basis to deny the claim. Freidline v. Shelby Ins. Co., 774 N.E.2d 37 (Ind. 2002). The obligation of good faith and fair dealing with respect to the discharge of the insurer’s contractual obligation includes the obligation to refrain from (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising any unfair advantage to pressure an insured into a settlement of his claim. Erie Ins. Co. v. Hickman, 622 N.E.2d 515, 519 (Ind. 1993).

Failure To Settle

Indiana holds that an insurer can be liable for failure to settle a claim within limits if it engages in bad faith while failing to settle a claim, and the insurer’s liability is not limited only to sums that could have been collected from the insured. Econ. Fire & Cas. Co. v. Collins, 643 N.E.2d 382 (Ind. Ct. App. 1994).

Primary/Excess Obligations

Indiana has adopted the judgment rule, which “provides that an insurer may be held liable for the entire excess judgment in instances of bad faith.” Econ. Fire & Cas. Co. v. Collins, 643 N.E.2d 382, 385 (Ind. Ct. App. 1994); Allstate Ins. Co. v. Axsom, 696 N.E.2d 482, 485 (Ind. Ct. App. 1998). However, “[a]n excess insurer may not bring an action for legal malpractice against the insured’s attorneys.” Querrey & Harrow, Ltd. v. Transcon. Ins. Co., 885 N.E.2d 1235, 1236 (Ind. 2008).

Statutory

IND. CODE § 27-4-1-4.5 identifies unfair claims settlement practices that are prohibited, but § 27-4-1-6 states that any action for violation must be brought by the Commissioner of Insurance and that all fines are state funds.
IOWA

Good Faith And Fair Dealing

The duty of good faith and fair dealing "includes a duty to settle claims without litigation in appropriate cases . . . It is bad faith for an insurance company to act irresponsibly in settlement negotiations with respect to the insured’s risk in that part of the claim in excess of coverage. It is bad faith for the company to factor in its consideration of settlement offers the limited amount between an offer and the policy limits.” Kelly v. Iowa Mut. Ins. Co., 620 N.W.2d 637, 643 (Iowa 2000) (internal citations omitted). The duty of good faith and fair dealing also includes “a duty not to threaten to withhold or actually withhold payments, maliciously and without probable cause, for the purpose of injuring its insured by depriving him of the benefits of the policy.” Amsden v. Grinnell Mut. Reinsurance Co., 203 N.W.2d 252, 254 (Iowa 1972).

Failure To Settle

Iowa holds that an insurer can be liable for failure to settle a claim within limits if the insurer irresponsibly exposes the insured to an unreasonable risk through its rejection of a settlement up to the policy limits when there is no reasonable basis to reject the settlement. Wierck v. Grinnell Mut. Reinsurance Co., 456 N.W.2d 191 (Iowa 1990).

Primary/Excess Obligations

Iowa courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

Statutory

IOWA CODE ANN. §507B identifies certain acts of an insurer that are considered unfair methods of competition or unfair or deceptive acts, but the statute does not create a private cause of action against an insurer. Bates v. Allied Mut. Ins. Co., 467 N.W.2d 255 (Iowa 1991).

KANSAS

Good Faith And Fair Dealing

Kansas holds that an insurer can be held liable to an insured for bad faith in the third-party context, but does not allow an insurer to be held liable to an insured for bad faith in the first-party context. Where a bad faith claims exists, an insured’s exclusive remedy is a contractual claim against the insurer for the benefits of the policy together with costs, interest and attorney’s fees when appropriate. Spencer v. Aetna Life & Cas. Ins. Co., 611 P.2d 149 (Kan. 1980).

Failure To Settle

Kansas holds that an insurer may be held liable for failure to settle a claim within limits if it either negligently or in bad faith fails to settle within limits a claim when there was no reasonable basis to refuse to settle. Bollinger v. Nuss, 449 P.2d 502 (Kan. 1969).

Primary/Excess Obligations

Kansas holds that an excess insurer can pursue a primary insurer if the primary insurer fails to settle within limits if the proofs show that settlement within limits was possible, the primary insurer’s refusal to settle was unreasonable and the excess insurer suffered a loss as a result of the primary insurer’s failure to settle. Pac. Employers Ins. Co. v. P.B. Hoidale Co., Inc., 796 F. Supp. 1428 (D. Kan. 1992).

Statutory

KAN. STAT. ANN. § 40-2404 identifies certain acts of an insurer that are considered unfair methods of competition or unfair and deceptive acts or practices; however, the Commissioner of Insurance has the sole authority to enforce the statute and no private cause of action against an insurer is permitted. Earth Scientists Ltd. v. U. S. Fid. & Guar. Co., 619 F. Supp. 1464 (D. Kan. 1985).
KENTUCKY

Good Faith And Fair Dealing

Kentucky holds that an insurer breaches its duty of good faith and fair dealing to an insured when it fails to pay a claim if the insurer was obligated to pay the claim under the policy, there was no reasonable basis in law and fact for denying the claim, and the insurer knew there was no reasonable basis for denying the claim or acted with reckless disregard as to whether such a basis existed.  Wittmer v. Jones, 864 S.W.2d 885 (Ky. 1993).

Failure To Settle

Kentucky holds that an insurer can be liable for failure to settle a claim within limits if the insurer refuses a settlement offer that is within limits and there is a probability of recovery and of a jury verdict against the insured that would exceed the policy limits.  Motorists Mut. Ins. Co. v. Glass, 996 S.W.2d 437 (Ky. 1997).

Primary/Excess Obligations


Statutory

KY. REV. STAT. ANN. § 304.12-230 identifies unfair claims settlement practices that are prohibited in Kentucky and a private cause of action exists for a violation of the statute in favor of both an insured and a third-party claimant, State Farm Mut. Auto. Ins. Co. v. Reeder, 763 S.W.2d 116 (Ky. 1989), and it is not necessary to prove that an insurer’s conduct constituted a general business practice in order to recover under § 304.12-230.  Simpson v. Travelers Ins. Co., 812 S.W.2d 510 (Ky. App. 1991).

LOUISIANA

Good Faith And Fair Dealing

Louisiana holds that claims against an insurer for breach of the duty of good faith and fair dealing are actionable under Louisiana statutes, including La. Rev. Stat. Ann. § 22:1973 and § 22:1821, and that an insurer has an affirmative duty to adjust claims fairly and promptly and to make reasonable efforts to settle a claim with the insured or the claimant, or both, and both the insured and a third-party claimant can seek damages against an insurer that fails to do so.  Manuel v. La. Sheriff’s Risk Mgmt. Fund, 664 So.2d 81 (La. 1995); Sultana Corp. v. Jewelers Mut. Ins. Co., 860 So.2d 1112 (La. 2003).

Failure To Settle

Louisiana holds that an insurer may be held liable for failure to settle a claim within limits when it exposes an insured to an excess judgment through a bad faith refusal to settle within policy limits.  Great Sw. Fire Ins. Co. v. CNA Ins. Cos., 557 So.2d 966 (La. 1990).

Primary/Excess Obligations

Louisiana holds that a primary insurer does not owe a duty of due care or good faith performance to an excess insurer, but nonetheless will allow an excess insurer to recover from a primary insurer if it obtains rights from the insured through assignment or under subrogation principles.  Great Sw. Fire Ins. Co. v. CNA Ins. Cos., 557 So.2d 966 (La. 1990).

Statutory

MAINE

Good Faith And Fair Dealing

Maine holds that an insurer cannot be held liable for an independent tort of bad faith if it breaches its duty of good faith and fair dealing to an insured, Marquis v. Farm Family Mut. Ins. Co., 628 A.2d 644 (Me. 1993), but an insurer can still be liable to an insured in tort if it engages in conduct and actions that are separable from an actual breach of contract. Stull v. First Am. Title Ins. Co., 745 A.2d 975 (Me. 2000).

Failure To Settle

Maine holds that an insurer can be liable to an insured for failure to settle a claim within limits if the insurer undertakes the insured’s defense and then negligently or in bad faith fails to accept a settlement offer within limits. Wilson v. Aetna Cas. & Sur. Co., 76 A.2d 111 (Me. 1950).

Primary/Excess Obligations

Maine courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

Statutory

ME. REV. STAT. ANN. TIT. 24-A § 2436-A identifies certain practices of an insurer that constitute unfair claims settlement practices and a private cause of action exists under the statute for the recovery of interest and attorney’s fees on claims that are not timely paid. Marquis v. Farm Family Mut. Ins. Co., 628 A.2d 644 (Me. 1993).

MARYLAND

Good Faith And Fair Dealing

Maryland holds that there is no independent tort cause of action against an insurer that breaches its duty of good faith and fair dealing and the only claim an insured can bring against an insurer for failure to pay the insured’s claim is a breach of contract claim. Johnson v. Fed. Kemper Ins. Co., 536 A.2d 1211 (Md. App.), cert. denied, 542 A.2d 844 (Md. 1988).

Failure To Settle

Maryland holds that an insurer can be liable for failure to settle a claim within limits when it has an opportunity to settle the claim and fails to make an informed judgment based on honesty and diligence to do so. State Farm Mut. Auto. Ins. Co. v. White, 236 A.2d 269 (Md. 1967).

Primary/Excess Obligations

Maryland holds that an excess insurer may have a cause of action under the doctrine of equitable subrogation against a primary insurer for the negligent and bad faith failure to settle a claim within the primary policy limits. Fireman’s Fund Ins. Co. v. Cont’l Ins. Co., 519 A.2d 202 (Md. 1987).

Statutory

MASSACHUSETTS

Good Faith And Fair Dealing

Massachusetts holds that claims against an insurer for breach of the duty of good faith and fair dealing are actionable under MASS. GEN. LAWS ANN. CH. 176D § 3(9), governing unfair and deceptive insurance acts and practices, and MASS. GEN. LAWS ANN. CH. 93A §§ 9 and 11, governing consumer protection, for failing to effectuate prompt, fair and equitable settlements of claims for which liability has become reasonably clear and both an insured and a claimant against an insured can pursue such claims. Clegg v. Butler, 676 N.E.2d 1134 (Mass. 1997); Jet Line Servs., Inc. v. Am. Employers Ins. Co., 537 N.E.2d 107 (Mass. 1989).

Failure To Settle

Massachusetts holds that an insurer can be liable for failure to settle a claim within limits if the underlying claim could have been settled and, assuming the insurer had limited exposure, no reasonable insurer would have refused to settle. Hartford Cas. Ins. Co. v. N. H. Ins. Co., 628 N.E.2d 14 (Mass. 1994).

Primary/Excess Obligations

Massachusetts holds that an excess insurer can pursue a claim against a primary insurer for the primary insurer’s failure to settle within limits on equitable subrogation principles if the claim could have been settled by the primary insurer within policy limits and can establish that no reasonable primary insurer would have refused to settle within limits. Hartford Cas. Ins. Co. v. N. H. Ins. Co., 628 N.E.2d 14 (Mass. 1994).

Statutory

MASS. GEN. LAWS ANN. CH. 176D § 3(9) and CH. 93A §§ 9 and 11 allow both insureds and claimants against insureds to pursue claims against insurers that do not effect prompt, fair and equitable settlements of claims for which liability has become reasonably clear. Jet Line Servs., Inc. v. Am. Employers Ins. Co., 537 N.E.2d 107 (Mass. 1989).

MICHIGAN

Good Faith And Fair Dealing

Michigan holds that there is no independent tort claim that can be brought against an insurer for breach of the duty of good faith and fair dealing and that an insured’s rights are limited to pursuing damages for breach of contract, Kewin v. Mass. Mut. Life Ins. Co., 295 N.W.2d 50 (Mich. 1980), but an insurer that fails to defend an insured in violation of its contract obligations can be liable for all foreseeable damages flowing from a breach of those contractual obligations. Stockdale v. Jamison, 330 N.W.2d 389 (Mich. 1982).

Failure To Settle

Michigan holds that an insurer can be liable for failure to settle a claim within limits if the insurer has exhibited bad faith in failing to settle within limits, irrespective of the insured’s ability to pay the excess judgment. Frankenmuth Mut. Ins. Co. v. Keeley, 461 N.W.2d 666 (Mich. 1990).

Primary/Excess Obligations

Michigan holds that an excess insurer can pursue a bad faith claim against a primary insurer under equitable subrogation principles but that its rights are no lesser or greater than those held by the insured against the primary insurer. Commercial Union Ins. Co. v. Med. Protective Co., 393 N.W.2d 479 (Mich. 1986).

Statutory

MINNESOTA

Good Faith And Fair Dealing

Minnesota holds that an insurer cannot be held liable for a breach of the duty of good faith and fair dealing unless that breach is accompanied by an independent tort committed against the insured and the insured’s remedy, in the absence of an independent tort, is limited to contract damages. Wild v. Rarig, 234 N.W.2d 775 (Minn.1975); Hawkins, Inc. v. Am. Int’l Specialty Lines Ins. Co., 2008 Minn. App. Unpub. LEXIS 1218 (Minn. Ct. App., Oct. 14, 2008).

Failure To Settle

Minnesota holds that an insurer can be held liable for failure to settle a claim within limits when it assumes control of settlement through its control of the insured’s defense and fails to exercise good faith in considering settlement offers within policy limits. Short v. Dairyland Ins. Co., 334 N.W.2d 384 (Minn. 1983).

Primary/Excess Obligations

Minnesota holds that an excess insurer can pursue a bad faith claim against a primary insurer for failure to settle if it is able to establish both bad faith on the part of the primary insurer and that the insured was liable in the main action. Cont’l Cas. Co. v. Reserve Ins. Co., 238 N.W.2d 862 (Minn. 1976).

Statutory

MINN. STAT. § 72A.20 identifies unfair claim practices that an insurer is prohibited from engaging in, but the statute does not create a private cause of action against an insurer. Morris v. Am. Family Mut. Ins. Co., 386 N.W.2d 233 (Minn. 1986).

MISSISSIPPI

Good Faith And Fair Dealing

Mississippi holds that an insurer owes a duty of good faith and fair dealing to an insured and a breach of that duty is cognizable under Mississippi law. Baker, Donelson, Bearman & Caldwell, P.C. v. Muirhead, 920 So.2d 440, 451 (Miss. 2006).

Failure To Settle

Mississippi holds that an insurer can be liable for failure to settle a claim within limits when it fails to fulfill its fiduciary duty to look after the insured’s interest and fails to make a knowledgeable, honest and intelligent evaluation of a claim and, because of that failure, does not settle within limits. Home Ins. Co. v. Mississippi Ins. Guar. Ass’n, 904 So.2d 95 (Miss. 2004).

Primary/Excess Obligations

Mississippi courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

Statutory

MISS. CODE ANN. § 83-5-35 identifies certain acts and practices of insurers that are considered to be acts of unfair competition and thus prohibited. The statute provides regulatory authority over insurers to the Mississippi Insurance Commission, but the statute does not create a private cause of action against insurers. Burley v. Homeowners Warranty Corp., 773 F. Supp. 844 (S.D. Miss. 1990), aff’d, 936 F.2d 569 (5th Cir. 1991).
MISSOURI

Good Faith And Fair Dealing

Missouri holds that there is no cause of action for breach of the duty of good faith and fair dealing in favor of an insured against an insurer in the first-party context as there is no fiduciary relationship between the insurer and the insured in such a context like there is in a liability context where the insurer has assumed the defense of an insured. Duncan v. Andrew County Mut. Ins. Co., 665 S.W.2d 13 (Mo. Ct. App. 1983).

Failure To Settle

Missouri holds that an insurer can be liable for failure to settle a claim within limits if it acted in bad faith or was guilty of fraud in refusing to settle a claim against an insured, but such liability cannot be based on negligence. Zumwalt v. Utilities Ins. Co., 228 S.W.2d 750 (Mo. 1950).

Primary/Excess Obligations

The Missouri state courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer, but the Eighth Circuit has noted that Missouri courts have not recognized a direct duty of the primary insurer to the excess insurer. See Reliance Ins. Co. in Liquidation v. Chitwood, 433 F.3d 660 (8th Cir. 2006).

Statutory

MO. REV. STAT. § 375.936 does not allow for a private cause of action in favor of an insured against an insurer but does allow for an increase in damages as well as interest and attorney’s fees in an action against an insurer to recover the amount of a loss under a policy. Tufts v. Madesco Inv. Corp., 524 F. Supp. 484 (E.D. Mo. 1981).

MONTANA

Good Faith And Fair Dealing

Montana holds that there is no common law cause of action for bad faith that an insured can bring against an insurer and the only remedy available to an insured is that provided by MONT. CODE ANN. § 33-18-242(3), which creates a cause of action against insurers for actual damages caused by unfair claims settlement practices; however, the Montana courts have held that the common law bad faith tort in favor of a third-party claimant against an insurer survived enactment of the statute. Brewington v. Employers Fire Ins. Co., 992 P.2d 237 (Mont. 1999).

Failure To Settle

Montana holds that a primary insurer can be liable for failure to settle a claim within limits if an insurer acted in bad faith in failing to settle a claim within limits when there was a likelihood of a verdict in excess of the limits and the proofs show that the insurer did not give the insured’s interest the same consideration it gave its own. Gibson v. W. Fire Ins. Co., 682 P.2d 725 (Mont. 1984).

Primary/Excess Obligations

The Montana courts have not directly addressed the duty of a primary insurer to an excess insurer. However, in a dispute between an uninsured motorist insurer and a primary insurer for failure to make a prompt and reasonable settlement, the Montana Supreme Court, in dicta, stated that a subrogation-based bad faith action by an excess insurer against a primary insurer had merit. St. Paul Fire & Marine Ins. Co. v. Allstate Ins. Co., 847 P.2d 705 (Mont. 1993).

Statutory

MONT. CODE ANN. § 33-18-242 allows for claims by insureds and third-party claimants against insurers who engage in certain prohibited conduct, ranging from failing to promptly settle claims once liability has become reasonably clear to failing to affirm or deny coverage within a reasonable time.
NEBRASKA

Good Faith And Fair Dealing

Nebraska holds that an insurer breaches its duty of good faith and fair dealing to an insured if there was no reasonable basis to deny the insured the benefits of the policy and the insurer knew there was no reasonable basis or acted in reckless disregard that there was none. Weatherly v. Blue Cross Blue Shield Ins. Co., 513 N.W.2d 347 (Neb. App. 1994).

Failure To Settle

Nebraska holds that an insurer can be liable for failure to settle a claim within limits if an insurer acted in bad faith in failing to settle, but an insurer cannot be held liable for failing to correctly predict the outcome of an action. Olson v. Union Fire Ins. Co., 118 N.W.2d 318 (Neb. 1962).

Primary/Excess Obligations

The Nebraska courts have not addressed the issue of a primary insurer’s duty to an excess insurer.

Statutory

NEB. REV. STAT. § 44-1539 identifies seventeen acts that are prohibited, including the failure to effectuate prompt, fair and equitable settlement of claims for which liability has become clear, but there has been no determination by a court as to whether the statute creates a private cause of action against an insurer.

NEVADA

Good Faith And Fair Dealing

Nevada holds that an insurer breaches its duty of good faith and fair dealing when it refuses, without proper cause, to pay a claim covered by the policy and the breach creates a cause of action in tort, U. S. Fid. & Guar. Co. v. Peterson, 540 P.2d 1070 (Nev. 1975), or where the insurer acts unreasonably and with knowledge that there is no reasonable basis for its conduct. Guaranty Nat’l Ins. Co. v. Potter, 912 P.2d 267 (Nev. 1996).

Failure To Settle

Nevada holds that an insurer may be held liable for failure to settle a claim, even when the settlement demands exceed policy limits, if the insured is willing and able to pay the amount that exceeds the policy limits. Allstate Ins. Co. v. Miller, 212 P.2d 318 (Nev. 2009).

Primary/Excess Obligations

The Nevada courts have not addressed the issue of a primary insurer’s duty to an excess insurer.

Statutory

NEV. REV. STAT. § 686A.310 sets forth sixteen activities that constitute unfair practices in settling claims, including the failure to effectuate prompt, fair and equitable settlements of claims in which the liability of the insurer has been made clear, and makes the insurer liable to the insured for any damages sustained.
NEW HAMPSHIRE

**Good Faith And Fair Dealing**

New Hampshire holds that an insurer breaches its duty of good faith and fair dealing when it is established that the insurer’s failure to make prompt payment of a claim was in bad faith and the damages flowing from the delay or failure to pay were foreseeable. *Lawton v. Great Sw. Fire Ins. Co.*, 392 A.2d 576 (N.H. 1978).

**Failure To Settle**

New Hampshire holds that an insurer can be liable for failure to settle a claim within limits if it failed to exercise due care in evaluating a case and failed to make a decision to settle the case within limits on a reasonable basis. *Dumas v. State Farm Mut. Auto. Ins. Co.*, 274 A.2d 781 (N.H. 1971).

**Primary/Excess Obligations**

New Hampshire holds that there is no independent cause of action in favor of an excess insurer against a primary insurer for failure to settle, but an excess insurer can proceed against a primary insurer if it obtains an assignment of the insured’s rights. *Allstate Ins. Co. v. Reserve Ins. Co.*, 373 A.2d 339 (N.H. 1977).

**Statutory**

N.H. REV. STAT. § 417.1, et seq., identifies certain unfair or deceptive acts that are prohibited, including the failure to promptly, fairly and equitably settle a claim for which liability has become reasonably clear, and a private cause of action exists if the Insurance Commissioner first finds a violation of the statute or serves a cease and desist order on the insurer pursuant to § 417:19I.

NEW JERSEY

**Good Faith And Fair Dealing**

New Jersey holds that an insurer breaches it duty of good faith and fair dealing to an insured if it acts unreasonably towards its insured with knowing or reckless disregard as to the reasonableness of its actions and this breach can occur in both the first-party and third-party context. *Pickett v. Lloyds*, 621 A.2d 445 (N.J. 1993); *Hudson Universal, Ltd. v. Aetna Ins. Co.*, 987 F. Supp. 337 (D.N.J. 1997).

**Failure To Settle**

New Jersey holds that an insurer can be liable for failure to settle a claim within limits if it fails to take the initiative and attempt to negotiate a settlement when good faith, and an analysis of all interests including the insured’s interest, indicates that a settlement is appropriate. *Rova Farms Resort v. Investors Ins. Co.*, 323 A.2d 495 (1974).

**Primary/Excess Obligations**

New Jersey holds that a primary insurer owes a direct duty of good faith and fair dealing to an excess insurer and that this duty includes an obligation to try to settle within limits if the facts of the claim warrant settlement. *W. World Ins. Co. v. Allstate Ins. Co.*, 376 A.2d 177 (N.J. App. Div. 1977).

**Statutory**

NEW MEXICO

Good Faith And Fair Dealing

New Mexico holds that an insurer breaches its duty of good faith and fair dealing when an insurer, acting in bad faith, defined as a decision that is frivolous or unfounded, fails to pay a claim that has become due and a cause of action in tort exists for such breach. *State Farm Gen. Ins. Co. v. Clifton*, 527 P.2d 798 (N.M. 1974).

Failure To Settle

New Mexico holds that an insurer can be liable for failure to settle a claim within limits when a strong possibility exists of an excess judgment and the insurer has not given the insured’s interests equal consideration as its own interests in deciding to refuse to settle. *Lujan v. Gonzales*, 501 P.2d 673 (N.M. 1972).

Primary/Excess Obligations

New Mexico holds that an excess insurer can pursue a primary insurer for failing to settle within limits when the primary insurer has placed its interests above those of the excess insurer or insured in deciding not to settle. *Ambassador Ins. Co. v. St. Paul Fire & Marine Ins. Co.*, 690 P.2d 1022 (N.M. 1984).

Statutory

N.M. STAT. ANN. § 59A-16-1, et seq., identifies unfair claim practices that are prohibited and creates a private right of action in favor of an insured or a third-party claimant against an insurer, separate from any common law bad faith claims that may exist, if an insurer has failed to settle a claim when liability for that claim has become reasonably clear, § 59A-16-30, but a cause of action in favor of a third-party claimant under the statute does not arise until after the underlying action against the insured has been resolved. *Hovet v. Allstate Ins. Co.*, 89 P.3d 69 (N.M. 2004); but see *Jolley v. Assoc. Elec. & Gas Ins. Servs. Ltd.*, 237 P.3d 738 (N.M. 2010) (third-party cause of action against an insurer exists only where explicitly provided for by statute).

NEW YORK

Good Faith And Fair Dealing

New York holds that an insured may seek consequential damages resulting from an insurer’s breach of the covenant of good faith and fair dealing, as long as the damages are within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting. *Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, 886 N.E.2d 127 (N.Y. 2008); *Panasia Estates, Inc. v. Hudson Ins. Co.*, 886 N.E.2d 135 (N.Y. 2008). In addition, a tort claim can be brought against an insurer if the insured establishes that the insurer’s conduct was of an egregious nature, was directed to plaintiff, and was part of a pattern or practice directed to the public generally. *New York Univ. v. Continental Ins. Co.*, 662 N.E.2d 763 (N.Y. 1995).

Failure To Settle

New York holds that an insurer can be liable for failure to settle a claim within limits if the insured lost an actual opportunity to settle the action at a time when all serious doubts about liability were removed, and the insurer acted in gross disregard of the insured’s interests by engaging in a pattern of behavior indicating a conscious or knowing indifference to the probability that the insured would be exposed to an excess judgment. In this regard, ordinary negligence is not sufficient to establish liability. *Pavia v. State Farm Mut. Auto. Ins. Co.*, 626 N.E.2d 24 (N.Y. 1993); see also *Doherty v. Merchants Mut. Ins. Co.*, 74 A.D.3d 1870 (N.Y. App. Div. 2010).

Primary/Excess Obligations


Statutory

N.Y. INS. LAW § 2601 identifies numerous acts of insurers as constituting unfair claim settlement practices if performed with sufficient frequency to constitute a general practice, but the statute does not create a private cause of action against an insurer. *N.Y. Univ. v. Cont’l Ins. Co.*, 662 N.E.2d 763 (N.Y. 1995).
NORTH CAROLINA

Good Faith And Fair Dealing

North Carolina holds that an insurer breaches its duty of good faith and fair dealing and can face liability in tort to an insured if in denying a claim it commits a tortious act accompanied by some element of aggravation. Dailey v. Integon Gen. Ins. Corp., 291 S.E.2d 331 (N.C. App. 1982).

Failure To Settle

North Carolina holds that an insurer can be liable for a failure to settle a claim within limits when it controls the defense of an insured and it is either negligent or fails to exercise reasonable care in failing to settle a claim within limits. Wynnewood Lumber Co. v. Travelers Ins. Co., 91 S.E. 946 (N.C. 1917).

Primary/Excess Obligations

North Carolina courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

Statutory

N.C. GEN. STAT. § 58-63-10 prohibits unfair and deceptive trade practices and § 58-63-15(11) prohibits unfair and deceptive claim settlement practices; a private cause of action exists in favor of an insured for violations of these statutes pursuant to § 75-16, as well as in favor of a third-party claimant, but to avail itself of this private cause of action, a third-party claimant must first obtain a judgment against an insured. Craven v. Demidovich, 615 S.E.2d 722 (N.C. App. 2005).

NORTH DAKOTA

Good Faith And Fair Dealing

North Dakota holds that an insurer breaches its duty of good faith and fair dealing to an insured when it acts in bad faith in refusing to pay amounts claimed that are reasonably due. Corwin Chrysler-Plymouth, Inc. v. Westchester Fire Ins. Co., 279 N.W.2d 638 (N.D. 1979).

Failure To Settle

North Dakota holds that an insurer can be liable for failure to settle a claim within limits if it acts in bad faith in failing to settle a claim within policy limits when the insured has an exposure to liability in excess of the limits. Cont’l Cas. Co. v. Kinsey, 513 N.W.2d 66 (N.D. 1994).

Primary/Excess Obligations

North Dakota courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

Statutory

N.D. CENT. CODE § 26.1-04-03 prohibits unfair claim settlement practices by insurers, and it has been suggested that no private right of action exists under the statute unless a plaintiff can establish that the insurer’s actions were so persistent as to indicate a general business practice. Volk v. Wisconsin Mortgage Assurance Co., 474 N.W.2d 40 (N.D. 1991).
**OHIO**

**Good Faith And Fair Dealing**

Ohio holds that an insurer breaches its duty of good faith and fair dealing to an insured when, acting in bad faith, the insurer fails to handle and pay claims without reasonable justification for same. *Hoskins v. Aetna Life Ins. Co.*, 452 N.E.2d 1315 (Ohio 1983).

**Failure To Settle**

Ohio holds that an insurer can be liable for failure to settle a claim within limits if its decision not to settle was arbitrary or capricious and there was no reasonable justification for the decision. *Hart v. Republic Mut. Ins. Co.*, 87 N.E.2d 347 (Ohio 1949).

**Primary/Excess Obligations**

Ohio holds that an excess insurer can proceed against a primary insurer for the primary insurer’s failure to settle within limits on equitable subrogation principles if it can establish that the primary insurer’s failure to settle was based on a failure to exercise good faith. *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 404 N.E.2d 759 (Ohio 1980).

**Statutory**

OHIO REV. CODE ANN. § 3901.21 identifies what are considered unfair or deceptive trade practices by insurers, but the statute does not create a private cause of action against an insurer. *Strack v. Westfield Co.*, 515 N.E.2d 1005 (Ohio App. 1986).

**OKLAHOMA**

**Good Faith And Fair Dealing**

Oklahoma holds that an insurer breaches its duty of good faith and fair dealing where it unreasonably and in bad faith withholds payment of a claim that it owes, and that the breach gives rise to an independent tort action against the insurer. *Christian v. Am. Home Ass. Co.*, 577 P.2d 899 (Okla. 1977).

**Failure To Settle**

Oklahoma holds that an insurer is liable for failure to settle a claim within limits when it acts in bad faith and without consideration of the interests of the insured in deciding not to accept a settlement within limits, and thus exposes an insured to excess liability. *Nat’l Mut. Cas. Co. v. Britt*, 200 P.2d 407 (Okla. 1948).

**Primary/Excess Obligations**

Oklahoma holds that an excess insurer can pursue a claim for bad faith failure to settle against a primary insurer when the excess insurer pays a judgment and is subrogated to the insured’s rights, *Am. Fid. & Cas. Co. v. All Am. Bus Lines*, 190 F.2d 234 (10th Cir. 1951), but Oklahoma does not recognize an independent bad faith action against a primary insurer. *Steadfast Ins. Co. v. Agric. Ins. Co.*, 2010 U.S. Dist. LEXIS 86609 (D. Okla., Aug. 23, 2010).

**Statutory**

OREGON

Good Faith And Fair Dealing

Oregon holds that there is no independent cause of action in tort for breach of the duty of good faith and fair dealing in a first-party context because the same unique factors that create a special duty of a liability insurer to an insured in the third-party context do not exist in the first-party context. *Farris v. U.S. Fid. & Guar. Co.*, 587 P.2d 1015 (Or. 1978).

Failure To Settle

Oregon holds that an insurer can be held liable for failure to settle a claim within limits unless its decision not to settle a claim is an honest one made in good faith and with due consideration for the insured’s interests. *Radcliffe v. Franklin Nat’l Ins. Co. of N.Y.*, 298 P.2d 1002 (Or. 1956).

Primary/Excess Obligations

Oregon holds that a primary insurer owes an excess insurer the same duty of good faith in negotiating and settling claims within limits that it owes to its insured and that a breach of that duty gives rise to a cause of action for failure to settle within limits. *Maine Bonding & Cas. Co. v. Centennial Ins. Co.*, 693 P.2d 1296 (Or. 1985).

Statutory


PENNSYLVANIA

Good Faith And Fair Dealing


Failure To Settle

Pennsylvania holds that an insurer can be held liable for failure to settle a claim within limits unless the decision not to settle was based on a bona fide and reasonable decision that there was a real and substantial chance that the insured would not be liable. *Cowden v. Aetna Cas. & Sur. Co.*, 389 Pa. 459 (Pa. 1957).

Primary/Excess Obligations

Pennsylvania courts have not addressed the issue of whether a primary insurer owes a duty to an excess insurer, but the Third Circuit has predicted that Pennsylvania would allow an excess insurer to pursue a claim against a primary insurer on equitable subrogation principles. *U. S. Fire Ins. Co. v. Royal Ins. Co.*, 759 F.2d 306 (3d Cir. 1985).

Statutory

42 PA. CONS. STAT. ANN. § 8371 creates a statutory claim for bad faith in the first-party context; liability under the statute requires a showing of a dishonest purpose and breach of a known duty through some motive of self interest or ill will, and mere negligence is not enough to establish liability. *Terletsky v. Prudential Prop. & Ins. Cas. Co.*, 649 A.2d 680 (Pa. Super. 1995).
RHODE ISLAND

Good Faith And Fair Dealing

Rhode Island holds that an insurer breaches its duty of good faith and fair dealing to an insured if it denies benefits under the policy without a reasonable basis for doing so and if it knows that it has no reasonable basis or acts in reckless disregard of that knowledge and the breach creates a common law cause of action in tort. Bibeault v. Hanover Ins. Co., 417 A.2d 313 (R.I. 1980).

Failure To Settle

Rhode Island holds that an insurer can be liable for failure to settle a claim within limits if a reasonable offer to settle within limits is made and the insurer does not seriously consider it, thus exposing the insured to a judgment in excess of the limits. Asermely v. Allstate Ins. Co., 728 A.2d 461 (R.I. 1999).

Primary/Excess Obligations

Rhode Island holds that a primary insurer does not owe a duty of good faith to an excess insurer and that its obligations with respect to dealing in good faith with settlement offers extends only to the insured. Auclair v. Nationwide Mut. Ins. Co., 505 A.2d 431 (R.I. 1986).

Statutory

R.I. GEN. LAWS § 9-1-33 recognizes a private cause of action in favor of an insured against an insurer if the insurer has either wrongfully and in bad faith refused to pay or settle a claim, or wrongfully and in bad faith failed to timely perform its obligations; § 27-7-2.2 establishes a private cause of action in favor of a third-party claimant that has made an offer to settle in an amount equal to or less than the policy limits that was rejected by the insurer and the damages that are recoverable are the interest on the entire judgment.

SOUTH CAROLINA

Good Faith And Fair Dealing

South Carolina holds that an insurer breaches its duty of good faith and fair dealing when it refuses to pay benefits owed under a policy in bad faith, which is defined as a knowing failure on the part of an insurer to exercise an honest and informed judgment in processing a claim. Doe v. S.C. Med. Mal. Liab. Joint Underwriting Ass’n, 557 S.E.2d 670 (S.C. 2001).

Failure To Settle

South Carolina holds that an insurer can be liable for failure to settle a claim within limits if it unreasonably refuses to accept an offer of settlement equal to or less than the limits, thus exposing the insurer to an excess judgment. Miles v. State Farm Ins. Co., 120 S.E.2d 217 (S.C. 1961).

Primary/Excess Obligations

South Carolina holds that a primary insurer does not owe a duty of good faith to any third party who is not an insured unless there is a derivative relationship between the third party and the insured. Kleckley v. Nw. Nat’l Cas. Co., 526 S.E.2d 218 (S.C. 2000). While generally South Carolina imposes a duty upon insurers to diligently and in good faith investigate, evaluate, adjust, settle and/or defend claims, “it seems improbable that the doctrine would find application in a suit by an excess insurer against a primary insurer in the absence of a contract otherwise providing.” Royal Ins. Co. of Am. v. Reliance Ins. Co., 140 F. Supp. 2d 609, 617 (D.S.C. 2001). On the other hand, South Carolina seems inclined to not allow a cause of action for an excess insurer against a primary insurer in such a case. Ibid.

Statutory

SOUTH DAKOTA

**Good Faith And Fair Dealing**

South Dakota holds that an insurer breaches its duty of good faith and fair dealing if it intentionally denies coverage without any reasonable basis for doing so. Champion v. U. S. Fid. & Guar. Co., 399 N.W.2d 320 (S.D. 1987).

**Failure To Settle**

South Dakota holds that an insurer can be held liable for failure to settle a claim within limits unless its decision not to settle was a realistic and objectively reasonable one that was made honestly, intelligently and with equal consideration of the insured’s interests. Kunkel v. United Sec. Ins. Co. of N.J.S.D., 168 N.W.2d 723 (S.D. 1969).

**Primary/Excess Obligations**

South Dakota courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

**Statutory**

S.D. CODIFIED LAWS § 58-33-67 identifies seven prohibitive practices, including the failure to promptly settle claims for which liability has become reasonably clear, however, § 58-33-69 states that nothing in the related statutes creates a private cause of action against the insurer.

TENNESSEE

**Good Faith And Fair Dealing**

Tennessee holds that there is no fiduciary relationship between an insurer and its insured in the first-party context like that which governs the insurer’s duty to settle a claim, but suggests that there could be some duties owed to an insured outside of the context of the policy. MFA Mut. Ins. Co. v. Flint, 574 S.W.2d 718 (Tenn. 1978).

**Failure To Settle**

Tennessee holds that an insurer can be liable for failure to settle a claim within limits if it assumes control of the insured’s defense and fails to take affirmative steps to try to settle the claim within limits or decides in bad faith not to settle within limits, thus exposing the insured to an excess judgment. State Auto Ins. Co. of Columbus v. Rowland, 427 S.W.2d 30 (Tenn. 1968).

**Primary/Excess Obligations**

Tennessee courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

**Statutory**

TENN. CODE ANN. § 47-18-101, creates a private cause of action against an insurer for unfair and deceptive claim practices. In addition, § 56-7-105, allows an insured to recover the loss and interest on the loss together with 25% of the loss from the insurer in the event of bad faith on the part of the insurer.
**TEXAS**

**Good Faith And Fair Dealing**

Texas holds that an insurer breaches its duty of good faith and fair dealing when it denies or delays payment of a claim and knows or should know that it is reasonably clear that the claim is covered. *Universe Life Ins. Co. v. Giles*, 950 S.W.2d 48 (Tex. 1997). But evidence establishing only a bona fide coverage dispute does not demonstrate bad faith. *State Farm Lloyds v. Nicolau*, 951 S.W.2d 444 (Tex. 1997).

**Failure To Settle**

Texas holds that an insurer can be liable for failure to settle a claim within limits if it negligently refuses to settle in an amount equal to or less than the policy limits and the proofs show that the claim was within the coverage, that there was an unconditional demand to settle within limits and the demand would have been accepted by an ordinarily prudent insurer. *G.A. Stowers Furniture Co. v. Am. Indem. Co.*, 15 S.W.2d 544 (Tex. Comm’n App. 1929).

**Primary/Excess Obligations**

Texas holds that an excess insurer can pursue a primary insurer for failure to settle within limits under equitable subrogation principles and that the primary insurer has an obligation to involve the excess insurer if it appears likely that the verdict will exceed the primary insurer’s limits. *Am. Centennial Ins. Co. v. Canal Ins. Co.*, 843 S.W.2d 480 (Tex. 1992); *Employees Nat’l Ins. Co. v. Gen. Acc. Ins. Co.*, 857 F. Supp. 549 (S.D. Tex. 1994).

**Statutory**

TEX. INS. CODE ANN. § 21.21 prohibits unfair claim settlement practices and, while the statute does not expressly allow a private cause of action, Texas courts have suggested that conduct violating the statute is actionable. *Vail v. Tex. Farm Bureau Mut. Ins. Co.*, 754 S.W.2d 129 (Tex. 1988). In addition, TEX. BUS. & COMM. CODE ANN. § 17.50(a)(4) creates a private cause of action for violations of INS. CODE § 21.21 in favor of consumers.

**UTAH**

**Good Faith And Fair Dealing**

Utah holds that an insurer breaches it duty of good faith and fair dealing to an insured and can be held liable under a breach of contract cause of action if it fails to diligently investigate, fairly evaluate, and act promptly and reasonably in paying a claim, although conduct that amounts to an intentional tort could conceivably give rise to additional tort liability. *Beck v. Farms Ins. Exch.*, 701 P.2d 795 (Utah 1985).

**Failure To Settle**

Utah holds that an insurer can be liable for failure to settle a claim within limits if it fails in good faith to settle a claim, thus exposing an insured to excess liability. *Ammerman v. Farmers Ins. Exch.*, 430 P.2d 576 (Utah 1967).

**Primary/Excess Obligations**

Utah courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

**Statutory**

UTAH CODE ANN. § 31A-26-303 identifies unfair claim settlement practices that are prohibited, but expressly does not create a private cause of action, § 31A-26-303(5). In addition, § 31A-26-301 governs timely payment of claims, but no private cause of action exists under the statute. *Machan v. UNUM Life Ins. Co.*, 116 P.3d 342 (Utah 2005).
**VIRGINIA**

**Good Faith And Fair Dealing**

Virginia holds that an insurer breaches its duty of good faith and fair dealing, giving rise to a cause of action for breach of contract, if its decision regarding settlement of a claim was unreasonable or there was an unreasonable delay in issuing payment or deciding on coverage. A&E Supply Co., Inc. v. Nationwide Mut. Fire Ins. Co., 798 F.2d 669 (4th Cir. 1986); CUNA Mut. Ins. Society v. Norman, 375 S.E.2d 724 (Va. 1989).

**Failure To Settle**

Virginia holds that an insurer can be held liable for failure to settle a claim within limits if it acted in bad faith in failing to settle within limits or if there was no reasonable and probable cause for its decision not to settle. Aetna Cas. & Sur. Co. v. Price, 146 S.E.2d 220 (Va. 1966).

**Primary/Excess Obligations**

Virginia has not explicitly decided that a primary insurer owes a duty to an excess insurer with regard to settling within limits, although the Virginia Supreme Court has suggested that the principles governing a primary insurer’s duty to settle within limits applies to an excess insurer if the facts warrant same. Horace Mann Ins. Co. v. Government Employees Ins. Co., 344 S.E.2d 906 (Va. 1986).

**Statutory**

VA. CODE ANN. § 38.2-510 identifies prohibited unfair claim practices, but the statute does not create a private cause of action against an insurer, A&E Supply Co. v. Nationwide Mut. Fire Ins. Co., 798 F.2d 669 (4th Cir. 1986). In addition, § 8.01-66.1(A) imposes liability on an insurer that denies a claim in bad faith when the value of the claim is $3,500 or less and the insurer’s liability is double the amount of the claim plus attorney’s fees and expenses.

**VERMONT**

**Good Faith And Fair Dealing**

Vermont holds that an insurer breaches its duty of good faith and fair dealing if it intentionally denies a claim without a reasonable basis for doing so. Bushey v. Allstate Ins. Co., 670 A.2d 807 (Vt. 1995).

**Failure To Settle**

Vermont holds that an insurer can be liable for failure to settle a claim within limits if it controls the defense of the insured and fails in good faith to assess settlement offers within limits, thus exposing the insured to excess liability. Myers v. Ambassador Ins. Co., 508 A.2d 689 (Vt. 1986).

**Primary/Excess Obligations**

Vermont courts have discussed the issue of whether a primary insurer owes a duty to an excess insurer but have not reached any decision on the issue. Goodrich v. U. S. Fid. & Guar. Co., 568 A.2d 385 (Vt. 1989).

**Statutory**

VT. STAT. ANN. TIT. 8, § 4724(9) identifies unfair claim settlement practices that are prohibited in Vermont, but the statute does not create a private cause of action against an insurer. Larocque v. State Farm Ins. Co., 660 A.2d 286 (Vt. 1995).
WASHINGTON

Good Faith And Fair Dealing
Washington holds that an insurer breaches its duty of good faith and fair dealing when it fails to deal fairly with the insured and give equal consideration to the insured's interests. Smith v. Safeco Ins. Co., 78 P.3d 1274 (Wash. 2003).

Failure To Settle
Washington holds that an insurer can be held liable for failure to settle a claim within limits if it either negligently or in bad faith fails to settle a claim and exposes the insured to an excess judgment. Burnham v. Commercial Cas. Ins. Co., 117 P.2d 644 (Wash. 1941).

Primary/Excess Obligations

Statutory

WEST VIRGINIA

Good Faith And Fair Dealing
West Virginia holds that an insurer breaches its duty of good faith and fair dealing if it fails to conduct a reasonable investigation and fails to make a prompt, fair and equitable settlement offer if it has become reasonably clear that liability exists, and the cause of action is based on breach of contract. Miller v. Fluharty, 500 S.E.2d 310 (W. Va. 1997); Hayseeds, Inc. v. State Farm Fire and Cas. Co., 352 S.E.2d 73 (W.Va. 1986).

Failure To Settle
West Virginia holds that an insurer can be liable for failure to settle a claim within limits if its decision not to settle was in bad faith and was not reasonable from the perspective of a reasonably prudent insurer. Shamblin v. Nationwide Mut. Ins. Co., 396 S.E.2d 766 (W.Va. 1990).

Primary/Excess Obligations

Statutory
W. VA. CODE § 33-11-4 identifies unfair claim settlement practices that are prohibited, including the failure to effect prompt, fair and equitable settlement of claims for which liability has become clear. A private cause of action exists in favor of both insureds and third-party claimants. State ex rel. State Farm Fire & Cas. Co. v. Madden, 451 S.E.2d 721 (W.Va. 1994); Mutafis v. Erie Ins. Exch., 328 S.E.2d 675 (W.Va. 1985).
WISCONSIN

Good Faith And Fair Dealing

Wisconsin holds that an insurer breaches its duty of good faith and fair dealing to an insured, and that a cause of action in tort exists for the breach, if an insurer has no reasonable basis for denying benefits under the policy and knows that there is no reasonable basis or acts in reckless disregard of that knowledge. Anderson v. Cont’l Ins. Co., 271 N.W.2d 368 (Wis. 1978).

Failure To Settle

Wisconsin holds that an insurer can be held liable for failure to settle a claim within limits if it fails to exercise the degree of care and diligence that an ordinarily prudent person would in deciding to settle. Hilker v. W. Auto. Ins. Co., 231 N.W. 257, adhered to on rehearing, 235 N.W. 413 (Wis. 1931).

Primary/Excess Obligations

Wisconsin holds that there is no direct duty of good faith owed by a primary insurer to an excess insurer, but an excess insurer can proceed under equitable subrogation principles against the primary insurer when the primary insurer has committed bad faith. Teigen v. Jelco of Wisconsin, Inc., 367 N.W.2d 806 (Wis. 1985).

Statutory


WYOMING

Good Faith And Fair Dealing

Wyoming holds that an insurer breaches its duty of good faith and fair dealing to an insured if there was no reasonable basis for denying benefits and the insurer knew or recklessly disregarded the lack of a reasonable basis for the denial and the breach creates an independent tort action. McCullough v. Golden Rule Ins. Co., 789 P.2d 855 (Wyo. 1990). Wyoming also recognizes a bad faith claim for “oppressive or intimidating claims practices.” Hatch v. State Farm Fire & Cas. Co., 842 P.2d 1089 (Wyo. 1992).

Failure To Settle

Wyoming holds that an insurer can be liable for failure to settle a claim within limits if it fails to exercise intelligence, good faith and honest and conscientious fidelity in assessing settlement offers, thus exposing an insured to an excess judgment. W. Cas. & Sur. Co. v. Fowler, 390 P.2d 602 (Wyo. 1964).

Primary/Excess Obligations

Wyoming courts have not addressed the issue of whether a primary insurer owes a duty of good faith to an excess insurer.

Statutory

WYO. STAT. ANN. § 26-13-124 identifies unfair claim settlement practices that are prohibited, including the failure to effect a prompt and equitable settlement when liability has become reasonably clear, but the statute does not create a private cause of action against an insurer. Herrig v. Herrig, 844 P.2d 487 (Wyo. 1992). Section 31-10-101 allows a direct action against the insurer. State Farm Mut. Auto Ins. Co. v. Shrader, 882 P.2d 813 (Wyo. 1994.)