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INSURANCE BAD FAITH CLAIMS:

A 50 STATE SURVEY

It is generally accepted that insurance bad faith claims, across most every line of coverage, are increasing. In fact, the *Insurance Journal* reports that in the state of Florida alone, third-party/bad-faith claims resulted in potentially more than \$800 million in additional auto liability claim payments during the year 2013, equating to roughly \$79.00 in additional claim costs for every insured vehicle in the state of Florida. [This information is based upon a separate study from the Insurance Research Council (IRC).]

The following survey is not intended as a treatise on the Law of Bad Faith, whether in the context of first-party or third-party claims. Rather, the exercise is intended simply to identify the various supporting law within the various state jurisdictions on the issues of first-party and third-party bad faith claims.



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## 50 State Survey – Claims for Insurance Bad Faith

State	Statute Providing Basis for Private Cause of Action	Leading Case(s) on First Party Bad Faith Claims	Essential Elements of First Party Bad Faith Claim	3 <sup>rd</sup> Party Claims Allowed?	Essential Elements of 3 <sup>rd</sup> Party Bad Faith Claim
Alabama	No	National Sec. Fire & Casualty Co. v. Bowen, 417 So.2d 179 (1982)	<p>An insured must establish:</p> <p>(a) an insurance contract between the parties and a breach thereof by the defendant;</p> <p>(b) an intentional refusal to pay the insured's claim;</p> <p>(c) the absence of any reasonably legitimate reason for that refusal;</p> <p>(d) the insurer's actual knowledge of the absence of any legitimate or arguable reason;</p> <p>(e) if intentional failure to determine the existence of a lawful basis is relied upon, the plaintiff must prove the insurer's intentional failure to determine whether there is a legitimate or arguable reason to refuse to pay the claim.</p>	Yes	<p>In third party actions involving liability coverage the courts have consistently allowed recovery against the insurer in situations where the insurer wrongfully refuses, either negligently or intentionally, to settle the third party claim within policy limits and where, as a result, the insured incurs a judgment against him in an amount in excess of the policy.</p> <p>Chavers v. Nat'l Sec. Fire, 405 So.2d 1(1981)</p>



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Alaska	No	Hillman v. Nationwide, 855 P.2d 1321 (1993)  Lockwood v. Geico, 323 P.3d 691 (2014)	While the tort of bad faith in first-party insurance cases may or may not require conduct which is fraudulent or deceptive, it necessarily requires that the insurance company's refusal to honor a claim be made without a reasonable basis.	No	N/A



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Arizona	No	Noble v. Nat'l Am. Life, 624 P.2d 866 (1981)  Callies v. United Heritage, 2014 WL 1048846	To show a claim for bad faith, a plaintiff must show:  (1) The absence of a reasonable basis for denying benefits of the policy;  (2) The defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim; and  (3) Intent.	Yes	In third-party cases, we have held that the duty of good faith and fair dealing requires that an insurer give "equal consideration" to the interests of its insured in deciding whether to accept an offer of settlement.  Clearwater v. State Farm Mut. Auto. Ins. Co., 164 Ariz. 256, 259, 792 P.2d 719, 722 (1990) (citing Farmers Ins. Exch. v. Henderson, 82 Ariz. 335, 313 P.2d 404 (1957))



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Arkansas	ACA 23-79-208(a)	<p>Aetna v. Broadway, 664 S.W.2d 463 (1983)</p> <p>Columbia v. Freeman, 64 S.W.3d 720 (2002)</p> <p>Selmon v. MetLife, 277 S.W.3d 196 (2008)</p>	<p>In order to be successful, a claim based on the tort of bad faith must include:</p> <p>(1) affirmative misconduct by the insurance company;</p> <p>(2) without a good faith defense; and</p> <p>(3) the misconduct must be dishonest, malicious, or oppressive in an attempt to avoid its liability under an insurance policy</p>	No	N/A



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California	CIC 790.03	<p>Gruenberg v. Aetna, 510 P.2d 1032 (1973)</p> <p>Love v. Fire Ins., 221 Cal.App.3d 1136 (1990)</p> <p>Chateau v. Associated, 90 Cal.App.4th 335 (2001)</p> <p>Zhang v. Superior Court, 304 P.3d 163 (2013)</p>	<p>Predicated upon alleged breach of common law duty of good faith and fair dealing.</p> <p>The implied-in-law duty of good faith and fair dealing imposes upon an insurer a duty not to:</p> <p>(1) Threaten to withhold or actually withhold payments, maliciously and without probable cause;</p> <p>(2) For the purpose of injuring its insured by depriving him of the benefits of the policy.</p> <p>The insured must show the delay or refusal to pay claim was "unreasonable".</p>	No	N/A



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Colorado	No	<p>Dale v. Guaranty, 948 P.2d 545 (1997)</p> <p>Cary v. United, 68 P.3d 462 (2003)</p>	<p>A plaintiff must prove:</p> <p>(1) That the conduct of the insurer is unreasonable; and</p> <p>(2) That the insurer knew that its conduct was unreasonable or acted in reckless disregard of whether it was unreasonable.</p>	No	N/A



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Connecticut	CGS 42-110a-110q CGS 38a-815 CGS 38a-816(6)	PSE v. Frank Mercede, 838 A.2d 135 (2004)  Capstone v. American, 67 A.3d 961 (2013)	An insured must establish that the insurer denied policy benefits with an “improper motive” or “dishonest purpose” in order to maintain a claim for bad faith.	No	N/A





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Delaware	No	<p>Casson v. Nationwide, 455 A.2d 361 (1982)</p> <p>Tackett v. State Farm, 653 A.2d 254 (1995)</p> <p>Dunlap v. State Farm, 878 A.2d 434 (2005)</p>	<p>Where an insurer fails to investigate or process a claim or delays payment in bad faith, it is in breach of the implied obligations of good faith and fair dealing underlying all contractual obligations. A lack of good faith, or the presence of bad faith, is actionable where the insured can show that the insurer's denial of benefits is clearly without any reasonable justification.</p>	No	N/A



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Florida	Fla.Stat. 624.155	State Farm v. Laforet, 658 So.2d 55 (1995)	The determination of whether the insurer acted fairly and honestly towards its insured with due regard for the insured's interest is made by applying the "totality of the circumstances" test which requires consideration of all pertinent facts and circumstances.	Yes	A third-party claimant may bring a third-party bad faith claim when an insurer has breached its duty of good faith and that breach results in an excess judgment being entered against its insured.  Berges v. Infinity, 896 So.2d 665 (2004)



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Georgia	Ga. Code § 33-34-1	S. Gen. Ins. Co. v. Holt, 416 S.E.2d 274 (1992) (citing McCall v. Allstate Ins, 310 S.E.2d 513 (1984))	An insurance company may be liable for damages to its insured for failing to settle the claim of an injured person where the insurer is guilty of negligence, fraud, or bad faith in failing to compromise the claim.	No	N/A



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Hawaii	<p>Haw.Rev.Stat. §431:13-103</p> <p>Haw.Rev.Stat. §431:10C-403</p>	<p>Best Place v. Penn Am., 920 P.2d 334 (1996)</p> <p>Willis v. Swain, 304 P.3d 619 (2013)</p>	<p>We believe that the appropriate test to determine bad faith is the general standard set forth in <i>Gruenberg</i> and its progeny. Under the <i>Gruenberg</i> test, the insured need not show a conscious awareness of wrongdoing or unjustifiable conduct, nor an evil motive or intent to harm the insured. An unreasonable delay in payment of benefits will warrant recovery for compensatory damages under the <i>Gruenberg</i> test. However, conduct based on an interpretation of the insurance contract that is reasonable does not constitute bad faith.</p>	<p>Yes</p> <p>Best Place v. Penn Am., 920 P.2d 334 (1996)(citing <i>Rawlings v. Apodaca</i>, 151 Ariz. 149, 726 P.2d 565, 573 (Ariz. 1986))</p>	<p>Accordingly, we hold that ... the insurer must act in good faith in dealing with its insured, and a breach of that duty of good faith gives rise to an independent tort cause of action. The breach of the express covenant to pay claims, however, is not the sine qua non for an action for breach of the implied covenant of good faith and fair dealing. <i>Rawlings</i>, 726 P.2d at 573. "The implied covenant is breached, whether the carrier pays the claim or not, when its conduct damages the very protection or security which the insured sought to gain by buying insurance."</p>



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Idaho	No	<p>White v. Unigard Mut., 730 P.2d 1014 (1986)(citing <i>Rawlings v. Apodaca</i>, 151 Ariz. 149, 726 P.2d 565, 572 (Ariz. 1986))</p> <p>Egan v. Mut. of Omaha, 620 P.2d 141 (1979)</p>	<p>Where an insurer</p> <p>(1) "Intentionally and unreasonably denies or delays payment" on a claim, and in the process;</p> <p>(2) Harms the claimant in such a way not fully compensable at contract, the claimant can bring an action in tort to recover for the harm done.</p>	No	N/A



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Illinois	215 ILCS §5/155	<p>Cramer v. Ins. Exch., 675 N.E.2d 897 (1996)</p> <p>Geisler v. Everest, 980 N.E.2d 1170 (2012)</p>	<p>Illinois does not recognize a common law cause of action for bad faith.</p> <p>"We hesitate to recognize a new tort where the legislature has constantly acted to remedy a perceived evil in a certain area."</p>	Yes	The statute provides an extra contractual remedy to policyholders whose insurer's refusal to recognize liability and pay a claim under a policy is vexatious and unreasonable.



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Indiana	No	<p>Johnston v. State Farm, 667 N.E.2d 802 (1996)</p> <p>Patel v. United Fire, 80 F.Supp.2d 948 (2000)</p>	<p>An insured injured by the bad faith conduct of an insurer, that is conduct which evidences a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will, is entitled to recover damages based upon traditional tort principles of compensation for resultant injuries actually suffered, including emotional distress.</p> <p>A showing of conscious wrongdoing is necessary.</p>	No	N/A



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Iowa	No	<p>Dolan v. Aid Ins. Co., 431 N.W.2d 790 (1988)</p> <p>Sampson v. Am. Std., 582 N.W.2d 146 (1998)</p> <p>Villarreal v. United Fire, 873 N.W.2d 714 (2016)</p>	<p>To be successful in a first-party bad-faith claim, a plaintiff must prove by substantial evidence:</p> <p>(1) The absence of a reasonable basis for denying the claim; and</p> <p>(2) That the defendant knew or had reason to know that its denial was without reasonable basis.</p>	No	N/A





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Kansas	KSA 40-256	Spencer v. Aetna Life, 611 P.2d 149 (1980)	Kansas does not recognize a common law cause of action for bad faith.	No	N/A



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Kentucky	Ky. Rev. Stat. Ann. §§304.12-230	<i>Feathers v. State Farm Fire &amp; Casualty Co.</i> , Ky. App., 667 S.W.2d 693 (1983)  <i>Curry v. Fireman's Fund</i> , 784 S.W.2d 176 (1989)	An insured must prove that:  (1) the insurer is obligated to pay under the policy;  (2) that the insurer lacks a reasonable basis for denying the claim; and  (3) that the insurer either knew there was no reasonable basis to deny the claim or acted with reckless disregard for whether such a basis existed.  An insurer's refusal to pay on a claim, alone, should not be sufficient to trigger the firing of this new tort.	Yes  <i>Motorists v. Glass</i> , 996 S.W.2d 437 (1997)(citing <i>Manchester Ins. &amp; Indem. Co. v. Grundy</i> , 531 S.W.2d 493, 501 (Ky. 1975))	The "various factors" to be considered in determining the existence of bad faith are:  (1) whether the plaintiff offered to settle for the policy limits or less;  (2) whether the insured made a demand for settlement on the insurer; and  (3) the probability of recovery and of a jury verdict which would exceed the policy limits.



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Louisiana	LRSA 22:1973(A)	None	Louisiana does not recognize a common law cause of action for bad faith.	Yes	LRSA 22:1973(A)



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Maine	Me. Rev. Stat. Tit. 24-A §2436-A.	<p>Chiapetta v. Lumbermans, 583 A.2d 198 (1990)</p> <p>Marquis v. Farm Family, 628 A.2d 644 (1993)</p> <p>Maine Farms v. Peerless, 853 A.2d 767 (2004)</p>	<p>Maine does not recognize a common law cause of action for bad faith in tort.</p> <p>The action for bad faith lies in contract law (breach of the implied covenant of good faith and fair dealing).</p>	No	N/A



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Maryland	MCA (Courts and Judicial Procedure) 3-1701(e)	Fireman's v. Continental, 519 A.2d 202 (1987)  Johnson v. Federal, 536 A.2d 1211 (1988)	An insured has a cause of action against its insurer for bad faith refusal to settle third-party claims against the insured which result in judgment exceeding the policy limits.	No	N/A



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Massachusetts	<p>Mass. Gen. Laws Ch. 176D § 3(9)</p> <p>Mass. Gen. Laws Ch. 93A §9</p>	<p>Green v. Blue Cross, 713 N.E.2d 992(citing Murach v. Massachusetts Bonding and Ins. Co., 339 Mass. 184, 187, 158 N.E.2d 338 (1959))</p>	<p>An insurer has a duty to act in good faith, to exercise common prudence to discover the facts as to liability and damages upon which an intelligent decision may be based.</p>	Yes	<p>Mass. Gen. Laws Ch. 93A §9</p>



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Michigan	No	<p>Roberts v. Auto–Owners, 374 N.W.2d 905 (1985)</p> <p>Murphy v. Cincinnati, 772 F.2d 273 (1985)</p> <p>Commercial v. Liberty, 393 N.W.2d 161 (1986)</p> <p>J&amp;J v. Citizens, 696 N.W.2d 681 (2005)</p>	<p>Michigan does not recognize a common law cause of action for bad faith in tort.</p> <p>The action for bad faith lies in contract law.</p>	No	N/A



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Minnesota	Minn. Stat. §604.18, subd. 2(a)	Pillsbury v. National, 425 N.W.2d 244 (1988)	Minnesota recognizes a statutory cause of action for first-party bad faith in tort, absent "exceptional circumstances".	Yes  Short v. Dairyland, 334 N.W.2d 384 (1983)  Kissoondath v. U.S. Fire, 620 N.W.2d 909 (2001)	The insurer's duty of good faith is breached in situations in which the insured is clearly liable and the insurer refuses to settle within the policy limits and the decision not to settle within the policy limits is not made in good faith and is not based upon reasonable grounds to believe that the amount demanded is excessive.  In a determination of good faith, an important question is whether the insurer informed the insured of all proceedings, including communication of settlement offers.





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Mississippi	No	<p>Universal v. Veasley, 610 So.2d 290 (1992)</p> <p>Kendrick v. Miss. Farm, 996 So. 2d 132 (2008)</p>	<p>The insured must prove by a preponderance of evidence that the insurer acted with (1) malice, or (2) gross negligence or reckless disregard for the rights of others.</p>	No	N/A



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Missouri	MAS 375.296 MAS 375.420	Duncan v. Andrew, 665 S.W.2d 13 (1983)  Scottsdale v. Addison, 448 S.W.3d 818 (2014)	<p>Missouri does not recognize a common law cause of action for bad faith in tort.</p> <p>However, a bad faith refusal to settle action will lie when a liability insurer:</p> <p>(1) Reserves the exclusive right to contest or settle any claim;</p> <p>(2) Prohibits the insured from voluntarily assuming any liability or settling any claims without consent; and</p> <p>(3) Is guilty of fraud or bad faith in refusing to settle a claim within the limits of the policy.</p>	No	N/A



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Montana	MCA 33-18-242 MCA 33-18-201	Story v. Bozeman, 791 P.2d 767 (1990)  Thomas v. Northwestern, 973 P.2d 804 (1998)	<p>An insured may only bring a common law bad faith claim when it is for pre-claim conduct and when there is a "special relationship" between the parties.</p> <p>A "special relationship" exists if:</p> <p>(1) The parties are in inherently unequal bargaining positions;</p> <p>(2) Ordinary contract damages are not adequate because they do not require the insurer to account for its actions and they do not make the insured whole;</p> <p>(3) The insured is especially vulnerable because of the type of harm it may suffer and, because of necessity, it places trust in the insurer to perform; and</p> <p>(4) The insurer is aware of this vulnerability</p>	Yes	<p>Brewington v. Employer, 992 P.2d 237 (1999)</p> <p>A third party claimant may not file an action under MCA 33-18-242 until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.</p> <p>A third party has a common law claim for bad faith against an insurer when the insurer breaches its duty of good faith and fair dealing to the third party.</p>



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Nebraska	No	<p>Braesch v. Union Ins., 464 N.W.2d 769 (1991)</p> <p>LaRette v. American Medical Sec., Inc., 705 N.W.2d 41 (2005)</p>	<p>A plaintiff must show:</p> <p>(1) The absence of a reasonable basis for denying the benefits of the insurance policy; and</p> <p>(2) The insurer's knowledge or reckless disregard of said absence.</p>	Generally No	<p>Braesch at 772, 776:</p> <p>In general, the covenant of good faith and fair dealing (basis of bad faith) is dependent upon a contractual relationship between the insured and the insurer. However, a third party may bring a claim for bad faith if the third party is:</p> <p>(1) An injured policyholder who is also a "covered person" under the policy; or</p> <p>(2) A policyholder who is also a policy beneficiary</p>



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Nevada	Nev. Rev. Stat. Ann. 686A.310	US Fidelity v. Peterson, 540 P.2d 1070 (1975)  Schumacher v. S. Farm, 467 F.Supp.2d 1090 (2006).	A plaintiff must show:  (1) The insurer's denial of a claim;  (2) The insurer had no reasonable basis for denying the claim; and  (3) The insurer knew or recklessly disregarded the fact that there was no reasonable basis for denying the claim.	No	Gunny v. Allstate, 820 P.2d 1335 (1992):  A third party has no cause of action under 686A.310.  Tweet v. Webster, 614 F. Supp. 1190 (1985):  Third parties (not an insured under the policy) do not have the right to sue an insured's liability insurer for failure to settle the third party's claim against the insured.



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New Hampshire	NHRSA 417  But not until after the Commissioner has found a violation.	Lawton v. Great Southwest Fire Ins. Co., 392 A.2d 576 (1978)	New Hampshire does not recognize a common law cause of action for bad faith in tort.  The action for breach of the covenant of good faith and fair dealing is implied in contract law.	No	N/A



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New Jersey	NJSA 17:29B-4 NJSA 17B:30-13.1	Pickett v. Lloyd's, 621 A.2d 445 (1993)	<p>A plaintiff must show:</p> <p>(1) The absence of a reasonable ("fairly debatable") basis for denying benefits of the policy; and</p> <p>(2) The defendant insurer's knowledge or reckless disregard of said absence.</p>	No	N/A



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New Mexico	NMSA 59A-16-20 NMSA 59A-16-30	State Farm v. Clifton, 527 P.2d 798 (1974)  Sloan v. State Farm, 85 P.3d 230 (2004)	A plaintiff must show:  (1) A frivolous or unfounded failure by the insurer to pay a claim; or  (2) A frivolous or unfounded reason by the insurer for denying the claim or delaying payment of the claim.	Yes	** Cause of action through NMSA 59A-16-30, not common law **  Hovet v. Allstate, 89 P.3d 69 (2004):  Third party may file an action only after the conclusion of the underlying claim of the insured and a judicial determination of fault in favor of the third party.





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New York	No	<p>Continental v. Nationwide Indemnity, 792 N.Y.S.2d 434 (2005)</p> <p>Bi-Economy v. Harleysville, 856 N.Y.S.2d 505 (2008)</p>	<p>New York does not recognize a common law cause of action for bad faith in tort.</p> <p>The action for bad faith lies in contract law.</p>	Tort: No Contract: Yes	<p>Pavia v. State Farm, 82 N.Y.2d 445 (1993):</p> <p>To be liable for bad faith in a third party matter, the insurer's conduct must constitute a "gross disregard" of the insured's interests.</p>



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North Carolina	NCGS 75-1.1 NCGS 58-63-15(11)	Dailey v. Integon, 331 S.E.2d 148 (1985)  Von Hagel v. Blue Cross, 370 S.E.2d 695 (1988)  Lowell v. Nationwide, 424 S.E.2d 181 (1993)	An action for bad faith may be brought as a breach of contract action or action in tort.  If bringing the action in tort, one must demonstrate:  (1) A refusal to pay after recognition of a valid claim;  (2) The refusal was not based on honest disagreement or innocent mistake (thereby constituting "bad faith"); and  (3) Aggravating or outrageous conduct.	No	N/A



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North Dakota	Unsettled. If so, NDCC 26.1-04-03	Seifert v. Farmers, 497 N.W.2d 694 (1993)  Fetch v. Quam, 623 N.W.2d 357 (2001)	A plaintiff must show:  (1) The insurer acted unreasonably in handling the insured's claim (claim not "fairly debatable");  (2) By failing to compensate the insured, without proper cause, for a loss covered by the policy.	No	N/A



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Ohio	No	<p>Hoskins v. Aetna, 452 N.E.2d 1315 (1983)</p> <p>Zoppo v. Homestead, 644 N.E.2d 397 (1994)</p> <p>Ohio Nat'l v. Satterfield, 956 N.E.2d 866 (2011)</p>	<p>An insured must show:</p> <p>(1) The insurer refuses to pay the claim;</p> <p>(2) The refusal to pay the claim was not predicated upon circumstances that furnish reasonable justification therefore.</p>	No	N/A



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Oklahoma	No	<p>Christian v. American, 577 P.2d 899 (1977)</p> <p>Hale v. A.G. Ins., 138 P.3d 567 (2006)</p>	<p>An insured must prove:</p> <p>(1) He was covered under the insurance policy;</p> <p>(2) The actions of the insurer were unreasonable under the circumstances;</p> <p>(3) The insurer failed to deal fairly and act in good faith toward him in its handling of the claim;</p> <p>(4) The breach or violation of the duty of good faith and fair dealing was the direct cause of the insured's damages.</p>	Generally, No.	<p>Allstate v. Amick, 680 P.2d 362 (1984):</p> <p>Generally, there is no third-party bad faith. A true third party lacks standing to sue for bad faith.</p>



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Oregon	No	Employers' v. Love It, 670 P.2d 160 (1983)  Georgetown v. Home, 831 P.2d 7 (1992)	<p>Oregon recognizes a tort action in bad faith for <u>liability</u> policies.</p> <p>Specifically, when a liability insurer agrees to defend the insured, a relationship is created wherein the insured relinquishes control over the defense of the claim asserted. This relationship carries an independent standard of care, and the insured can bring a claim in <u>negligence</u> for the insurer's failure to meet that standard of care.</p> <p>However, actions in bad faith for <u>non-liability</u> policies lie in contract law.</p>	No	N/A



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Pennsylvania	42 Pa. C.S. 8371	<p>D'Ambrosio v. Pennsylvania, 431 A.2d 966 (1981)</p> <p>American v. Galati, 776 F.Supp. 1054 (1991)</p> <p>Birth Center v. St. Paul, 787 A.2d 376 (2001)</p>	<p>Pennsylvania does not recognize a common law cause of action for bad faith in tort.</p> <p>The action for bad faith lies in contract law.</p> <p>But, see 42 Pa. C.S, 8371, which grants courts authority to assess tort-like damages for "bad faith".</p> <p>To establish "bad faith", an insured must show:</p> <p>(1) The insurer did not have a reasonable basis for denying policy benefits;</p> <p>(2) The insurer knew or recklessly disregarded its lack of reasonable basis in denying the claim.</p>	Generally No	<p>Johnson v. Beane, 664 A.2d 96 (1995):</p> <p>42 PCS 8371 only applies to insureds, so a third party cannot sue for bad faith without an assignment from the insured.</p>



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Rhode Island	R.I. Gen. Law Ann. 9-1-33	Bibeault v. Hanover, 417 A.2d 313 (1980)  (quoting <u>Anderson v. Continental Insurance Co.</u> , 85 Wis.2d 675, 691, 693, 271 N.W.2d 368, 376-77 (1978))	To demonstrate a claim for bad faith, a plaintiff must show:  (1) The absence of a reasonable basis for denying benefits of the policy; and  (2) The defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the benefits of the policy.	No	Canavan v. Lovett, 745 A.2d 173 (2000):  There is an adversarial relationship between an insurer and third parties, so there is no fiduciary duty owed to third parties.





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South Carolina	<p>Ocean Winds v. Auto-Owners, 241 F.Supp.2d 572 (2002):</p> <p>Likely no under SCC 38-59-20.</p>	<p>Tyger v. Maryland, 170 S.E. 346 (1933)</p> <p>Nichols v. State Farm, 306 S.E.2d 616 (1983)</p> <p>Cock-N-Bull v. Generali, 466 S.E.2d 727 (1996)</p>	<p>To establish bad faith, an insured must prove:</p> <p>(1) The existence of an insurance policy between the insured and the insurer;</p> <p>(2) The insurer's refusal to pay benefits due under the policy;</p> <p>(3) That the insurer's refusal to pay benefits due under the policy was in bad faith or an unreasonable action in breach of an implied covenant of good faith and fair dealing;</p> <p>(4) Damage to the insured.</p>	No	N/A



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South Dakota	No	<p>Champion v. US Fidelity, 399 N.W.2d 320 (1987)</p> <p>Phen v. Progressive, 672 N.W.2d 52 (2003)</p>	<p>To demonstrate bad faith, there must be:</p> <p>(1) An absence of a reasonable basis for denial of policy benefits or failing to comply with the insurance contract;</p> <p>(2) Knowledge or reckless disregard of the lack of a reasonable basis for the denial; and</p> <p>(3) The insured incurred damages.</p>	No	N/A



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Tennessee	TCA 47-18-104 TCA 56-7-105 TCA 56-8-104	Johnson v. Farmers, 205 S.W.3d 365 (2006)  Williamson v. Aetna, 481 F.3d 369 (2007)  Cracker Barrel v. Cincinnati Ins., 590 F.Supp.2d (2008)	<p>Tennessee does not recognize a common law cause of action for bad faith.</p> <p>But, see 56-7-105(a), which creates a statutory cause of action for "bad faith":</p> <p>A plaintiff must demonstrate:</p> <p>(1) That the insurance policy, by its terms, became due and payable;</p> <p>(2) That a formal demand for payment was made;</p> <p>(3) That the insured waited sixty days after making demand before filing suit; and</p> <p>(4) That the insurer's refusal to pay was not in good faith.</p>	No	N/A



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Texas	<p>Tex. Bus. &amp; Com. Code 17.41</p> <p>Texas Insurance Code 541.151</p>	<p>Arnold v. National, 725 S.W.2d 165 (1987)</p> <p>Viles v. Sec. Nat'l, 788 S.W.2d 566 (1990)</p> <p>Republic v. Stoker, 903 S.W.2d 338 (1995)</p> <p>Universal Life v. Giles, 950 S.W.2d 48 (1997)</p>	<p>A cause of action for breach of the duty of good faith and fair dealing is alleged when:</p> <p>(1) It is alleged that there is no reasonable basis for denial of a claim or delay in payment of benefits under a policy; and</p> <p>2) It is alleged the insurer knew or should have known that there was no reasonable basis for the denial or delay.</p>	No	N/A



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Utah	No	<p>Beck v. Farmers, 701 P.2d 795 (1985)</p> <p>Saleh v. Farmers, 133 P.3d 428 (2006)</p>	<p>Utah does not recognize an independent common law cause of action in tort for bad faith against an insurer.</p> <p>The action for bad faith lies in contract law, where there is an implied covenant of good faith and fair dealing.</p> <p>"The good faith duty to bargain or settle under an insurance contract is only one aspect of the duty of good faith and fair dealing implied in all contracts and a violation of that duty gives rise to a claim for breach of contract."</p>	No	<p>Pixton v. State Farm, 809 P.2d 746 (1991):</p> <p>There is no duty of good faith and fair dealing imposed upon an insurer running to a third-party claimant seeking to recover against the company's insured.</p>



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Vermont	No:  Wilder v. Aetna, 433 A.2d 309 (1981)	Bushey v. Allstate, 670 A.2d 807 (1995)  Peerless v. Frederick, 869 A.2d 112 (2004)	An insured must prove:  (1) The insurer had no reasonable basis to deny the insured the benefits of the policy;  (2) The insurer knew or recklessly disregarded the fact that it had no reasonable basis for denying the insured's claim.	No	N/A



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Virginia	VCA 38.2-209 VCA 8.01-66.1	Aetna v. Price, 146 S.E.2d 220 (1966)  A&E v. Nationwide, 798 F.2d 669 (1986)  Nationwide v. St. John, 524 S.E.2d 649 (2000)  Carolina v. Draper, 369 F.Supp.2d 667 (2004)	Virginia does not recognize an independent common law cause of action against an insurer in tort, as liability for bad faith conduct is a matter of contract rather than tort law.  A reasonableness test is applied when determining whether an insurer has committed bad faith.	Yes	Fireman's v. St. Asaph, 213 BR 482 (1997):  A third-party beneficiary theoretically can bring a common law bad faith cause of action upon the showing that at the time of contracting, the parties to the policy expressed a clear and definite intent to confer a benefit upon the third-party.



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Washington	ARCW 48.30.010 ARCW 19.86.020 WAC 284-30-300	Coventry v. American, 961 P.2d 933 (1998)  Smith v. Safeco Ins., 78 P.3d 1274 (2003)  Am. States v. Symes, 78 P.3d 1266 (2003)	To succeed on a bad faith claim, a policyholder must show the insurer's breach of the insurance contract was unreasonable, frivolous, or unfounded.	Generally No	Tank v. State Farm, 715 P.2d 1133 (1986):  A third-party claimant may not sue an insurer directly for breach of the insurer's duty of good faith under the liability policy, the IFCA, or the CPA.  However, the first-party may assign their rights to a third-party claimant and the third-party claimant assumes all the claims in the same standing that the first-party had.





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West Virginia	WVC 33-11-4(9)	<p>McCormick v. Allstate, 475 S.E.2d 507 (1996)</p> <p>Elmore v. State Farm, 504 S.E.2d 892 (1998)</p> <p>Light v. Allstate, 506 S.E.2d 64 (1998)</p> <p>Michael v. Appalachian, 2010 W. Va. LEXIS 69 (2010)</p> <p>Loudin v. National, 716 S.E.2d 696 (2011)</p>	<p>To bring a claim for bad faith under WVC 33-11-4(9), an insured must establish that:</p> <p>(1) There has been a violation or that there have been multiple violations of that subsection in the management of the plaintiff's claim;</p> <p>(2) The violation or violations entailed "a general business practice" on the part of the insurer.</p>	<p>Generally No</p> <p>(Exception for discrimination)</p>	N/A



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Wisconsin	No	Anderson v. Continental, 271 N.W.2d 368 (1978)	<p>An insured must establish:</p> <p>(1) An absence of a reasonable basis for denial of policy benefits;</p> <p>(2) The insurer's knowledge or reckless disregard of a reasonable basis for a denial.</p>	Generally No	<p>Plautz v. Time Ins., 525 N.W.2d 342 (1994):</p> <p>Exception for a beneficiary's right to sue an insurer for benefits due under a life insurance policy when the insured owner of the policy has passed away.</p>



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Wyoming	No	<p>McCullough v. Golden, 789 P.2d 855 (1990)</p> <p>Ahrenholtz v. Time Ins., 968 P.2d 946 (1998)</p>	<p>An insured must establish:</p> <p>(1) The absence of any reasonable basis for denying the claim;</p> <p>(2) The insurer's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim.</p>	Generally No	<p>Herrig v. Herrig, 844 P.2d 487 (1992):</p> <p>No basis is present for extending an insurers' duty of good faith and fair dealing to third party claimants.</p>



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