

**UNFAIR CLAIMS PRACTICES
AND BAD FAITH:
A GUIDE FOR INSURERS**

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THE WEST — ALASKA

I. OVERVIEW

A. Unfair Claims Settlement Practices Statutes and/or Regulations

Alaska has adopted unfair claims settlement practices statutes and regulations. Alaska Stat. § 21.36.125; Alaska Admin. Code tit. 3, ch 26.

There is no private cause of action under the statute. *State Farm Mut. Auto. Ins. Co. v. Weiford*, 831 P.2d 1264, 1269 (Alaska 1992); *O.K. Lumber Co. v. Providence Wash. Ins. Co.*, 759 P.2d 523 (Alaska 1988).

Time Limits/Diarying Requirements

1. Time Limits Regarding Communications From Claimants

TIME LIMITS	ACTION REQUIRED	CITATION
Within 10 working days after receiving notice of claim (exc. legal action).	Acknowledge receipt of the notice of claim and begin any necessary investigation of the claim and provide forms and reasonable assistance and claims file information.	3 A.A.C. § 26.040
Within 15 working days after receiving any communication indicating response is required.	Reply to any communication from a claimant regarding a claim that reasonably suggests a response is requested. This period does not apply where a legal action has been initiated.	3 A.A.C. § 26.040
Within 30 working days after notice of claim.	Complete investigation or give written notification of additional time and specify time required.	3 A.A.C. § 26.050
Within 15 working days after receipt of proof of loss.	Accept or reject the claim, in whole or in part, and affirm or deny liability and give reasons unless fraudulent. Specify time to complete investigation.	3 A.A.C. § 26.050
Every 45 working days after 15 working day notification period within which to accept or reject claims.	Notify claimant of insurer's inability to make determination regarding acceptance or settlement.	3 A.A.C. § 26.070
At least 60 calendar days before expiration of the statute of limitations applicable to the claim.	An insurer must notify the claimant of the expiration of the statute of limitations in writing at least 60 calendar days before the expiration of the period.	3 A.A.C. § 26.080(c)

2. Time Limits Regarding Settlement Payments

TIME LIMITS	ACTION REQUIRED	CITATION
Within 30 working days after receipt of proof of loss	Pay undisputed portion of claim.	3 A.A.C. (a)(2)

B. Bad Faith in First-Party Insurance Cases

Alaska has a cause of action for bad faith in first-party cases. *O.K. Lumber Co., supra*, 759 P.2d 523.

C. Bad Faith in Third-Party Insurance Cases

Outside of surety law, there is a no cause of action for bad faith in third-party cases. *O.K. Lumber Co., supra*, 759 P.2d 523.

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. Unfair Claims Settlement Practices Statutes and/or Regulations

Alaska has adopted unfair claims settlement practices statutes and regulations. Alaska Stat. § 21.36.125; Alaska Admin. Code tit. 3, ch. 26.

The unfair claims settlement standards are applicable to “all persons transacting a business of insurance who participate in the investigation, adjustment, negotiation, or settlement of a claim under all types of insurance.” Alaska Admin. Code tit. 3, ch. 26, §26.020.

Although the regulations do not specifically mention suretyship, they do cover “all types of insurance.” “Surety Insurance” is defined in the Insurance Code to include both traditional contracts of suretyship *and* fidelity insurance. Alaska Stat. § 21.12.80. Thus, the regulations arguably apply to both fidelity and surety bonds.

There is no private cause of action under the statute. *O.K. Lumber Co., supra*, 759 P.2d 523.

B. Bad Faith

Alaska recognizes a common law cause of action for tortious breach of the covenant of good faith and fair dealing, and has held that a surety insurer may be liable for tort damages for such “bad faith.” *Loyal Order of Moose, Lodge 1392 v. International Fidelity Insurance Co.*, 797 P.2d 622 (1990).

III. PUNITIVE DAMAGES

Generally recoverable. Alaska Stat. § 09.17.020 (1986). There are several statutory exceptions.

Conduct worse than gross negligence, but less than actual malice, must be proven. *Sturm, Ruger & Co. v. Day*, 594 P.2d 38 (Alaska 1979), *modified*, 615 P.2d 621 (Alaska 1980), *on reh’g*, 627 P.2d 204 (Alaska 1981), *cert. denied* 454 U.S. 894, 70 L.Ed.2d 209, overruled on other grounds by *Dura Corp. v. Harned*, 703 P.2d 396 (Alaska 1985). Standard of proof is clear and convincing evidence. Alaska Stat. § 09.17.020 (1991).

Defendant must have participated in or authorized the conduct. *Clary Ins. Agency v. Doyle*, 620 P.2d 194 (Alaska 1980).

Alaska does not limit the amount of punitive damages, or claim any part of an award.

Defendant's financial condition is a relevant factor in an award of punitive damages. *Sturm, supra*, 594 P.2d 38; *Alaskan Village, Inc. v. Smalley*, 720 P.2d 945 (Alaska 1986).

THE WEST— ARIZONA

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Arizona has adopted unfair claims settlement practices statutes and regulations. Ariz. Rev. Stat. Ann. § 20-461; Ariz. Comp. Admin R. & Regs R20-6-801.

A private cause of action was recognized by the state supreme court, but later abolished by statute. *Sparks v. Republic Nat'l Life Ins. Co.*, 132 Ariz. 529, 647 P.2d 1127, *cert. denied*, 459 U.S. 1070, 103 S. Ct. 490, 74 L. Ed. 2d 632 (1982); Ariz. Rev. Stat. Ann. § 20-461(D).

Time Limits/Diarying Requirements: None

B. *Bad Faith in First Party Insurance Cases*

Arizona recognizes a first-party cause of action for bad faith, but the insurer's conduct must be close to an intentional act standard. *Sparks, supra*, 647 P.2d 1127, *Rawlings v. Apodoca*, 151 Ariz. 149, 726 P.2d 565 (1986).

C. *Bad Faith in Third-Party Insurance Cases*

A third-party cause of action for bad faith was recognized in *Farmers Ins. Exchange v. Henderson*, 82 Ariz. 335, 313 P.2d 404 (1957), but this remedy may be limited by *Rawlings, supra*, 726 P.2d 565.

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Arizona has adopted both unfair claims settlement practices statute and regulations. Ariz. Rev. Stat. § 20-461; Ariz. Admin. Code R20-6-801. The unfair claims settlement standards are applicable to "all insurance policies, insurance contracts and subscription contracts *except* policies of workers compensation and title insurance." Ariz. Admin. Code R20-6-801A.

Although the regulations do not specifically discuss surety or fidelity bonds, they do appear to fall within the broad scope of the statute's coverage of "all insurance contracts." In addition, the fact that fidelity and surety bonds have not been excluded from coverage, as have worker's compensation and title insurance policies, provides additional support for the position that the statute governs both fidelity and surety bonds.

"Surety Insurance" is included within the "Kinds of Insurance" listed in article 2 of Ariz. Rev. Stat. tit. 20, ch. 2. Specifically, Section 20-257(2) defines "Surety Insurance" as "insurance guaranteeing the performance of

contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings and contracts of suretyship.”

Also, Ariz. Rev. Stat. § 20-106(B)(2) provides that “[t]he transaction of insurance business in this state includes: The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

Finally, in *Dodge v. Fidelity and Deposit Company of Maryland*, 161 Ariz. 334, 778 P.2d 1240 (1989), the Supreme Court of Arizona discussed with approval, “our legislature’s intent to include sureties within the coverage of the insurance statutes.”

There is no private cause of action under the statute. Ariz. Rev. Stat. § 20-461(d). Although a private cause of action under the statute was previously recognized by the Arizona Supreme Court in *Sparks v. Republic Nat’l Life Ins. Co.*, 132 Ariz. 529, 647 P.2d 1127 (1982), the cause of action was subsequently abolished by statute. Ariz. Rev. Stat. §20-461(d).

B. Bad Faith

Arizona has held that a surety has a duty to act in good faith in responding to its obligee’s claims and that breach of that duty entitles the obligee to maintain a tort action against the surety for “bad faith.” *Dodge v. Fidelity and Deposit Company of Maryland*, 161 Ariz. 334, 778 P.2d 1240 (1989).

III. PUNITIVE DAMAGES

Recoverable under “evil mind,” not just for bad faith. *Gurule v. Illinois Mut. Life and Casualty Co.*, 152 Ariz. 600, 734 P.2d 85 (1987). Certain specific situations are addressed by statute.

Stringent restrictions, proof of evil mind is required. Burden of proof is by clear and convincing evidence. *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 723 P.2d 675 (1986).

Defendant must have participated or authorized the conduct. *Wiper v. Downtown Dev. Corp.*, 152 Ariz. 309, 732 P.2d 200 (1987), *Wilson v. Riley Whittle, Inc.*, 145 Ariz. 317, 701 P.2d 575 (App. 1984).

Arizona generally does not limit punitive damage awards Ariz. Const. Art. XVIII § 6; Ariz. Const. Art. II § 31. The state does not claim any portion of a punitive damage award.

Evidence of the defendant’s financial condition is one factor in determining size of a punitive damage award. *Grant v. Arizona Public Service Co.*, 133 Ariz. 434, 652 P.2d 507 (1982).

THE WEST — CALIFORNIA

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

California Insurance Code section 790.03, subdivision (h) sets forth 16 separate claims settlement practices which are prohibited when knowingly or regularly committed by an insurer. California Code of Regulations Title 10, Chapter 5, subchapter 7.5, Section 2695.1 et seq. sets forth minimum standards by which unfair claims practices could be measured.

Only the Insurance Commissioner is expressly authorized to enforce the statute. A private cause of action was recognized in *Royal Globe Ins. Co. v. Superior Court*, 23 Cal.3d 880, 153 Cal.Rptr. 842 (1979), but overruled prospectively in *Moradi-Shalal v. Firemen's Fund Ins. Co.*, 46 Cal.3d 287 (1988).

1. Time Limits Regarding Communications From Claimants

TIME LIMITS	ACTION REQUIRED	CITATION
Within 15 calendar days after receiving notice of claim (exc. legal action).	Acknowledge receipt of the notice of claim, begin any necessary investigation of the claim and provide reasonable assistance and forms.	§ 2695.5 (o)§ 2695.5 (a)§ 2695.5 (h)
Within 15 calendar days after receiving any communication indicating response is required.	Reply to any communication from a claimant regarding a claim that reasonably suggests a response is requested. This period does not apply where a legal action has been initiated.	§ 2695.5(h)
Within 40 calendar days after receipt of proof of claim.	Accept or reject the claim, in whole or in part, and affirm or deny liability unless fraudulent.	§ 2695.5(b)
Every 30 days after 30-day extension of period within which to accept or reject claims.	Notify claimant that insurer's inability to make determination regarding acceptance or settlement cannot be made.	§ 2695.7(c)(1)
At least 60 days before expiration of the statute of limitations applicable to the claim.	An insurer must notify the claimant of the expiration of the statute of limitations in writing at least 60 days before the expiration of the period.	§ 2695.7(f)

2. Time Limits Regarding Settlement Payments

TIME LIMITS	ACTION REQUIRED	CITATION
Within 30 days after settlement agreement and provision of release, if necessary.	Tender settlement payment after affirmation of coverage (first-party) and after affirmation of coverage and liability (third-party).	§ 2695.7 (h)

3. Time Limits Regarding Commissioner Communications and Regulations

TIME LIMITS	ACTION REQUIRED	CITATION
21 calendar days of receipt of inquiry re claim from Department of Insurance (DOI).	Furnish DOI with written response to inquiry.	§ 2695.5 (f)
Annually.	Certification under penalty of perjury by principal of insurer that (1) claims adjusting manual contains a copy of the regulations and all amendments, and (2) clear written instructions regarding proper compliance with regulations were provided to all employees who have involvement in claims handling, (3) if independent adjusters used, training provided to them.	§ 2695.6(c)(2)§ 2695.6(c)(3)

B. Bad Faith in First-Party Insurance Cases

California allows a first-party cause of action for bad faith *Gruenberg v. Aetna Ins. Co.*, 9 Cal.3d 566, 108 Cal.Rptr. 480 (1973). Basic cause of action is for breach of implied covenant.

C. Bad Faith in Third-Party Insurance Cases

California no longer recognizes a third-party cause of action, however, the insured may assign its rights to the third-party plaintiff.

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. Unfair Claims Settlement Practices Statutes and/or Regulations

California has adopted both an unfair claims settlement practices statute and regulations. Cal. Ins. Code § 790.03, subdivision h; Cal. Code of Regs, Title 10, Chapter 5, subchapter 7.5, § 2695.1 et seq. Both sureties and fidelity carriers are governed by the statutory provisions.

The regulations expressly acknowledge the “unique” nature of suretyship, as distinct from other forms of insurance. Cal. Code of Regs, Title 10, § 2695.1(c). Accordingly, the only parts of the regulations applicable to sureties are sections 2695.1 through 2695.6, inclusive, section 2695.10, and sections 2695.14 through 2695.17, inclusive. *Id.*

Although there is no statutory declaration or judicial opinion on point, based on the definition of “surety” in the California Insurance Code, it is arguable that fidelity carriers are governed by the same parts of the regulations applicable to sureties.

In *General Insurance Company v. Mammoth Vista Owners’ Association*, 174 Cal.App.3d 810 (1985), the California court of appeal held that

Insurance Code § 790.03 created a private right of action for unfair claims settlement practices in favor of a bond obligee against a surety. Three years later, the California Supreme Court, in *Moradi-Shalal v. Fireman's Fund Insurance Companies*, 46 Cal.3d 287 (1988), eliminated any insurance claimant's right to bring a tort action under Insurance Code § 790.03. Accordingly, *Moradi-Shalal* effectively overruled *Mammoth Vista*. See, e.g., *Schmitt v. Insurance Company of North America*, 230 Cal.App.3d 245, footnote 14 (1991). ("In light of *Moradi-Shalal*, the underlying rationale of *Mammoth Vista*, is no longer valid.")

B. Bad Faith

California courts have permitted fidelity insurers to be sued under the common law for tortious breach of the implied covenant of good faith and fair dealing. *Downey Savings & Loan Assn. v. The Ohio Casualty Ins. Co.*, 189 Cal.App.3d 1072 (1987); *Pacific-Southern Mortgage Trust v. Insurance Co. of North America*, 166 Cal.App.3d 703 (1985).

No California appellate court has yet permitted a bond claimant to sue a surety for tortious breach of the implied covenant of good faith and fair dealing or "bad faith" under the common law.

The California Court of Appeal for the Fourth Appellate District, in *Halterman v. United States Fidelity and Guaranty Company*, 219 Cal.App.3d 1495 (1990), *rev. denied*, held that a bond obligee could *not* state a cause of action against a surety for tortious breach of the implied covenant of good faith and fair dealing. However, *Halterman* was subsequently ordered depublished by the California Supreme Court. Accordingly, it may not be cited as precedent in any California court.

In *Ehmcke Sheet Metal Works v. Wausau Insurance Companies*, 755 F.Supp. 906 (E.D.Cal. 1991), the United States District Court for the Eastern District of California similarly concluded that, after *Moradi-Shalal*, the California Supreme Court *would not permit* a surety bond claimant to state a cause of action against the surety for tortious breach of the implied covenant of good faith and fair dealing. *Id.*, at 911, 913. Although not binding precedent, no California court has expressly rejected *Ehmcke's* holding in the four years since that decision was published. Accordingly, *Ehmcke* may be viewed as the current state of the law in California.

III. PUNITIVE DAMAGES

Generally recoverable, by statute, in actions for breach of obligation not arising from contract. Cal.Civ. Code § 3294. *Freeman & Mills v. Belcher Oil Co.*, 95 C.D.O.S. 6935 (SO42831 8/31/95 Cal.) Additionally, there are numerous provisions allowing punitive damages, as well as precluding them in specific situations.

Conduct constituting malice, oppression or fraud must be proven by clear and convincing evidence. Cal.Civ. Code § 3294(a).

Defendant must have participated in or authorized the conduct. *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal.3d 809, 169 Cal.Rptr. 691 (1979), *appeal dismissed, cert. denied*, 445 U.S. 912, 63 L. Ed.2d 597 (1980); *Hobbs v. Bakman*, 164 Cal.App.3d 174, 210 Cal.Rptr. 387 (1985); *Siva v. General Tire and Rubber Co., Inc.*, 146 Cal.App.3d 152, 194 Cal.Rptr 51 (1983).

California does not limit the amount of punitive damages, or require any contribution to the state.

Evidence of defendant's financial condition must be presented by plaintiff in order to show that award is sufficiently large to deter, but not excessive in relation to defendant's wealth. *Adams v. Murakami*, 54 Cal.3d 105, 284 Cal.Rptr. 318 (1991).

THE WEST — COLORADO

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Colorado has adopted an unfair claims practices statute. Colo. Rev. Stat. § 10-3-1104(1)(h).

There is no private cause of action under the statute. Colo. Rev. Stat. § 10-3-1114; *Farmers Group, Inc. v. Trimble*, 658 P.2d 1370, 1377-1378 (Colo.Ct.App. 1982), *aff'd en banc*, 691 P.2d 1138 (Colo. 1984).

Time Limits/Diarying Requirements: None

Insurers are subject to promptness and reasonableness standards. § 10-3-1104(h). Certain insurers are subject to penalty provisions. Colo.App. 4-2-7.

B. *Bad Faith in First-Party Insurance Cases*

Colorado recognizes a first-party cause of action in bad faith. *Savio v. Travelers Ins. Co.*, 678 P.2d 549 (Colo. Ct. App. 1983)

C. *Bad Faith in Third-Party Insurance Cases*

There is a third-party cause of action based in negligence. *Farmers Group, Inc. v. Trimble*, *supra*, 658 P.2d 1370.

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Colorado has adopted both an unfair claims settlement practices statute and regulations. Colo. Rev. Stat. § 10-3-1104(1)(h); Colo. Reg. 4-2-7. The unfair claims settlement practices are a subsection of the larger Unfair Competition - Deceptive Practices part of the Insurance Code. § 10-3-1101. The stated purpose of the statute is “to regulate trade practices in the business of insurance.” Colo. Rev. Stat. §10-3-1101.

“Insurance Policy” and “Insurance Contract” are defined within the same statute as “any contract of insurance, indemnity, medical or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person.” Colo. Rev. Stat. § 10-3-1102(2).

The Colorado courts have previously defined “surety” to include an insurer on a fidelity policy known as a “blanket position bond.” *Western Surety Co. v. May Mercantile Assn.*, 131 Colo. 547; 283 P.2d 959 (1955). Thus, Colorado does not appear to recognize any distinction between sureties and fidelity insurers. Thus, the statute arguably covers both surety and fidelity insurance.

There is no private cause of action under the statute. Colo. Rev. Stat. § 10-13-1114; *Lyle Schnacker v. State Farm Mutual Automobile Ins. Co.*, 843 P.2d 102 (1992).

B. Bad Faith

Colorado has not yet decided whether there is a common law cause of action against a surety for tortious breach of the covenant of good faith and fair dealing. However, in *Riva Ridge Apartments v. Fisher* (1987) 745 P.2d 1034, the Colorado Court of Appeal held that a surety could be liable to its bond obligee for *punitive damages* where “the facts alleged and proved establish willful and wanton conduct and reckless disregard for the rights of the plaintiff” [i.e. obligee].

III. PUNITIVE DAMAGES

Recoverable only when specifically authorized by statute. Colo. Rev. Stat. 13-21-102, *Kaitz v. District Court*, 650 P.2d 553 (Colo. 1982). Punitive damages are not available in breach of contract actions, actions for wrongful death, and medical malpractice resulting in death. Colo. Rev. Stat. § 13-021-102; § 13-21-203; § 13-21-202.

Conduct worse than gross negligence, but not as bad as malice, must be proven. *Higgs v. District Court in and for Douglas County*, 713 P.2d 840 (Colo. 1985). Required conduct must be proven beyond a reasonable doubt. Colo. Rev. Stat. 13-25-127(2).

Defendant must have participated in or authorized the conduct. *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979), *Holland Furnace Co. v. Robson*, 157 Colo. 347, 402 P.2d 628 (1965).

In Colorado, an award of punitive damages may not exceed the amount of actual damages, subject to the discretion of the court. Colo. Rev. Stat. § 13-21-102. In addition, non-economic damages in medical malpractice actions may not exceed \$250,000. Colo. Rev. Stat. § 13-64-302. Colorado formerly required that one-third of any award be paid to the state, but this was held unconstitutional in *Kirk v. Denver Publishing Co.*, 818 P.2d 262 (Colo. 1991).

Evidence of defendant’s financial condition is one factor to be considered when awarding punitive damages. *Francis v. Steve Johnson Pontiac-GMC-Jeep, Inc.*, 724 P.2d 84 (Colo.App. 1986); *Soneff v. Harlan*, 712 P.2d 1084 (Colo.App. 1985). A recently amended statute, however, provides that evidence of defendant’s financial condition shall not be considered when awarding punitive damages. Colo. Rev. Stat. § 13-21-102(5).

THE MIDWEST — ILLINOIS

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Illinois has adopted unfair claims settlement practices statutes and regulations. Ill. Ann. Stat. ch 215, ¶ 5/154.6; Ill. Admin. Code tit. 50 part 919.

There is no private cause of action under the statute. *Langendorf v. Travelers State Ins. Co.*, 625 F.Supp. 1103, 1105-1106 (N.D. Ill. 1985); *Van Vleck v. Ohio Casualty Ins. Co.*, 128 Ill. App. 3d 959, 471 N.E.2d 925 (1984).

Time Limits/Diarying Requirements

1. Time Limits Regarding Communications From Claimants

TIME LIMITS	ACTION REQUIRED	CITATION
15 working days after receipt of communication	Respond to communications.	A.C. Tit. 50, part 19

2. Time Limits Regarding Settlement Payments

TIME LIMITS	ACTION REQUIRED	CITATION
30 days after completed investigation and liability determination.	For undisputed claims, tender payment. Otherwise, specify reasons.	A.C. Tit. 50, part 919.50(1)

3. Other Time Limits

TIME LIMITS	ACTION REQUIRED	CITATION
Certain insurers are subject to additional time requirements.	As specified.	A.C. Tit. 50, part 919.70

B. *Bad Faith in First-Party Insurance Cases*

The question is undecided by the state supreme court, but Illinois appellate courts have found that section 155 of the Illinois Insurance Code preempts such a cause of action. *Kush v. American States Ins. Co.*, 853 F.2d 1380 (7th Cir. 1988), *Combs v. Ins. Co. of Illinois*, 100 Ill. Dec. 525, 497 N.E.2d 503 (1986).

C. Bad Faith in Third-Party Insurance Cases

Edwins v. General Casualty Co., 78 Ill.App.3d 965, 397 N.E.2d 1231 (1979), recognized a third-party cause of action based in both bad faith and negligence. This case may no longer be the law since the subsequent enactment of section 155. *Kush, supra*, 853 F.2d 1380.

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. Unfair Claims Settlement Practices Statutes and/or Regulations

Fidelities are expressly excluded from Illinois' unfair claims settlement practice regulations. Ill. Admin. Code tit. 50, § 919.20. Sureties are also expressly excluded from the unfair claims settlement practice regulations. Ill. Admin. Code tit. 50, § 919.20.

B. Bad Faith

There is no cause of action for bad faith under a fidelity bond because the issuer of the fidelity bond is not obligated to defend or to settle the claim against its insured. *Mortell v. Insurance Company of North America*, 120 Ill. App. 3d 1016, 1028, 458 N.E.2d 922 (1983).

In adopting section 155 of the Illinois Insurance Code, the legislature preempted the field for recovery of punitive damages for refusal to pay, which bars a common law action for such remedies. *Fisher v. Fidelity & Deposit Company of Maryland*, 125 Ill. App. 3d 632, 887 (1984).

However, the Illinois courts have held that a cause of action for bad faith against a surety can be established if facts are alleged to show that the conduct by the surety is willful, wanton, malicious, reckless, intentional or in bad faith. *Fisher v. Fidelity & Deposit Company of Maryland*, 125 Ill. App. 3d 632, 887 (1984).

III. PUNITIVE DAMAGES

Generally recoverable under Ill. Ann. Stat. ch 110 ¶ 2-604.1, with several few statutory exceptions. Not available against insurers for breach of insurance policy, because preempted by statutory remedies for bad faith under Ill. Ann. Stat. ch 73 ¶ 767.

Conduct constituting gross negligence must be proven to support an award of punitive damages. *Kelsay v. Motorola, Inc.*, 74 Ill.2d 172 (1978). The burden of proof appears to be preponderance of the evidence, as in civil cases generally. *In re Arya*, 226 Ill.App.3d 848, 589 N.E.2d 832 (1992), but the stricter standard of clear and convincing evidence may have been imposed by the legislature in new ch 110, ¶ 2-1207.1.

Defendant must have participated in or authorized the conduct. *Mattyasovszky v. West Towns Bus Co.*, 61 Ill.2d 31, 330 N.E.2d 509 (1975).

Unless preempted by Insurance Code section 152, there is no limit on the amount of punitive damages, but the court may reduce award if determined to be excessive. The trial court also has discretion to apportion the award among plaintiff, plaintiff's attorney and the Department of Rehabilitation Services. Ill. Ann. Stat. ch 110, ¶ 2-1207.

Evidence of defendant's financial condition is a relevant factor in assessing punitive damages. *Black v. Iovino*, 219 Ill.App.3d 378 (1991), *appeal denied*, 143 Ill.2d 636.

THE MIDWEST — MICHIGAN

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Michigan has adopted an unfair claims practices statute. Mich. Comp. Laws § 500.2026.

There is no private cause of action under the statute, except for an interest penalty. *Robertson v. State Farm Fire and Casualty Co.*, (E.D.Mich. 1995), *Bell v. League Life Ins. Co.*, 149 Mich.App. 481, 387 N.W.2d 154 (1986). *Crossley v. Allstate Ins. Co.* 155 Mich.App. 694, 696-697 (1986).

Time Limits/Diarying Requirements

1. Time Limits Regarding Communications From Claimants

TIME LIMITS	ACTION REQUIRED	CITATION
Within 30 days of receipt of claim.	Specify in writing what materials constitute a proof of loss or pay claim.	MCL § 500.2006(3)

2. Time Limits Regarding Settlement Payments

TIME LIMITS	ACTION REQUIRED	CITATION
Within 60 days of proof of loss.	Pay claim or portion thereof supported by proof of loss. Failure to pay may result in 12% interest.	MCL § 500.2006(3) & (4)

B. *Bad Faith in First-Party Insurance Cases*

There is no first-party cause of action for bad faith. *Kewin v. Massachusetts Mut. Life Ins. Co.*, 409 Mich. 401, 295 N.W.2d 50 (1980).

C. *Bad Faith in Third-Party Insurance Cases*

There is a third-party cause of action based in bad faith. *Commercial Union Ins. Co. v. Liberty Mut. Ins. Co.*, 137 Mich.App. 381, 357 N.W.2d 861 (1984), *aff'd*, 426 Mich. 401, 295 N.W.2d 50 (1980).

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Michigan law is silent regarding a distinction between fidelity and surety law. There is no reference to fidelity bonds in the Michigan Insurance Code.

Sureties are specifically included in the Unfair Claims Settlement Practices Act. Mich. Comp. Laws § 500.2003(3).

No private cause of action exists. *Bell, supra*, 387 N.W.2d 154.

B. Bad Faith

Although Michigan authorities do not specifically reference fidelity bonds, the courts recognize a cause of action for bad faith asserted by a third party against an insurance company for breach of the duty to settle a claim that exposes the insured to excess liability. *Commercial Union Ins. Co. v. Liberty Mutual Ins. Co.*, 137 Mich. App. 381 (1984).

Michigan courts decline to recognize a private cause of action where (1) alleged bad faith actions do not expose the insured to excess liability, or (2) where the claim is by an insured against the insurance company. *Young v. Michigan Mutual Ins. Co.*, 139 Mich. App. 600, 607 (1984). Michigan authorities are silent regarding whether a party can maintain a common law cause of action for bad faith against a surety.

III. PUNITIVE DAMAGES

Generally not recoverable. Allowed only under specific statutes, and then compensatory in nature. *Peisner v. Detroit Free Press, Inc.*, 104 Mich.App.59, 304 N.W.2d 814 (1981), *aff'd, modified on other grounds*, 421 Mich. 125, 364 N.W.2d 600 (1984).

In contract cases, conduct more egregious than gross negligence but not as bad as malice must be proved. *Kewin, supra*, 295 N.W.2d 50. In other cases, required conduct is set out in statutory provision. Michigan courts have not specifically addressed the burden of proof; most likely it is preponderance of the evidence, as in civil cases generally.

Michigan limits punitive damages to the amount necessary to compensate the plaintiff. *Peisner, supra*, 304 N.W.2d 814. Michigan does not require contribution to the state.

The defendant's financial condition is not relevant in Michigan because punitive damages are compensatory in nature. *Peisner, supra*, 304 N.W.2d 600.

THE MIDWEST — OHIO

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Ohio has adopted regulations governing unfair claims settlement practices. Ohio Admin. Code § 3901-1-07.

There is no private cause of action under the regulations. *Strack v. Westfield Cos.*, 33 Ohio.App.3d 336, 515 N.E.2d 1005 (1986).

Time Limits/Diarying Requirements

1. Time Limits Regarding Communications From Claimants

TIME LIMITS	ACTION REQUIRED	CITATION
Within 10 calendar days after receiving claim.	Acknowledge receipt of the claim and provide forms.	OAC § 3901-1-54 (F)(2)
Within 10 calendar days after receiving any communication indicating response is required.	Reply to any communication from a claimant regarding a claim that reasonably suggests a response is requested. This period does not apply where a legal action has been initiated.	OAC § 3901-1-54 (F)(3)
Within 21 calendar days after receipt of proof of loss.	Accept or reject the claim.	OAC § 3901-1-54 (G)(1)
Every 45 calendar days after 21-day period within which to accept or reject claims.	Notify claimant that insurer's inability to make determination regarding acceptance or settlement cannot be made.	OAC § 3901-1-54 (G)(1)
At least 60 calendar days before expiration of the statute of limitations applicable to the claim.	An insurer must notify the claimant of the expiration of the statute of limitations in writing at least 60 calendar days before the expiration of the period.	OAC § 3901-1-54 (G)(5)

2. Time Limits Regarding Settlement Payments

TIME LIMITS	ACTION REQUIRED	CITATION
Within 10 calendar days after acceptance of claim.	Tender settlement payment.	OAC § 3901-1-54 (G)(6)

3. Time Limits Regarding Commissioner Communications and Regulations

TIME LIMITS	ACTION REQUIRED	CITATION
21 calendar days of receipt of inquiry re claim from Department.	Furnish Dept. with written response to inquiry in duplicate.	OAC § 3901-1-54 (F)(4)

B. Bad Faith in First-Party Insurance Cases

Ohio recognizes a first-party cause of action for bad faith. *Hoskins v. Aetna Life Ins. Co.*, 6 Ohio.St.3d 272, 452 N.E.2d 315 (1983).

C. Bad Faith in Third-Party Insurance Cases

There is a third-party cause of action for bad faith. *Slater v. Motorists Mut. Ins. Co.*, 174 Ohio.St.148, 187 N.E.2d 45 (1962).

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. Unfair Claims Settlement Practices Statutes and/or Regulations

Fidelity insurers are expressly excluded from the unfair claims settlement practice regulations. Ohio Admin. Code § 3901-1-54(B). Sureties are also expressly excluded from the unfair claims settlement practice regulations. Ohio Admin. Code § 3901-1-54(B).

B. Bad Faith

Fidelity insurers are likely considered under the penumbra of insurers for purposes of bad faith. A cause of action for bad faith may be maintained against the issuer of a bond upon a showing of actual malice, fraud, or oppression. *Suver v. Personal Service Insurance Co.*, 11 Ohio St. 3d 6 (1984).

The Ohio courts has also held that although a surety may be discharged from the underlying bond obligation once its principal is discharged, the surety is not discharged from liability for its independent tortious acts of bad faith. *St. Clair Builders, Inc. v. Aetna Casualty and Surety Company*, 81 Ohio.App.3d 675 (1992).

III. PUNITIVE DAMAGES

Generally recoverable in contract or in tort. Fla. Stat. Ann §§ 768.21

Actual malice must be proven. *Columbus Finance, Inc. v. Howard*, 42 Ohio.St.2d 178, 327 N.E.2d 654 (1975). Burden is clear and convincing evidence. Ohio Rev. Code § 2315.21.

Defendant must have participated in or authorized the conduct.

Ohio Rev. Code § 2315.21.

Ohio does not limit the amount of punitive damages, nor does it require any part to paid to the state. Prior to 1991, the cap on non-economic damages served to limit punitive damage awards in medical malpractice cases, but the cap was held unconstitutional by *Morris v. Savoy*, 61 Ohio.St.3d 684, 576 N.E.2d 765 (1991).

Ohio does require that the court, rather than the jury, set the amount of punitive damages. Ohio Rev. Code Ann. § 2315.18, § 2315.21.

The defendant's financial condition is a relevant factor to be considered when assessing punitive damages. *General Envtl. Science Corp. v. Horsfall*, 800 F.Supp. 1497 (N.D. Ohio 1992).

THE SOUTH & SOUTHEAST – FLORIDA

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Florida has adopted unfair claims settlement practices statutes and regulations. Fla. Stat. Ann. § 626.9541; Fla. Admin. Code Ann. R. 4-166.020 et seq.

A private cause of action is provided by statute. Fla. Stat. Ann. § 624.155(1).

Time Limits/Diarying Requirements

1. Time Limits Regarding

TIME LIMITS	ACTION REQUIRED	CITATION
Within 14 calendar days after receiving notice of claim (exc. legal action).	Acknowledge receipt of notice of claim and provide forms.	F.S.A. § 4-166.024(1)
Within 10 working days after receipt of proof of loss.	Begin investigation.	F.S.A. § 4-166.024(3)
All insurers within 30 days after proof of loss completed, upon written request of insured.	Accept or reject claim or provide insured with written statement re investigation and explain reasons for rejection promptly.	F.S.A. 626.9541(1)(i)(3)(e)-(h)

2. Time Limits Regarding Commissioners Communications and Regulations For Property and Casualty Insurers

TIME LIMITS	ACTION REQUIRED	CITATION
21 calendar days of receipt of inquiry re claim from Department.	Furnish Department with written response to inquiry.	F.S.A. § 4-166.025

B. *Bad Faith in First-Party Insurance Cases*

There is no first-party cause of action for bad faith. *Rowland v. Safeco Ins. Co. of America*, 634 F.Supp. 613 (M.D.Fla. 1986).

C. *Bad Faith in Third-Party Insurance Cases*

Third-party cause of action is based in both bad faith and negligence. *Boston Old Colony Ins. Co. v. Gutierrez*, 386 So.2d 783 (Fla. 1980).

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

The Florida Unfair Claims Practices Regulations expressly exempt fidelity bonds. Fla. Admin. Code Ann. R 4-166.020(3).

The Florida Unfair Claims Practices Regulations also expressly exempt surety bonds. Fla. Admin. Code Ann. R 4-166.020(3).

B. *Bad Faith*

Florida allows a third-party common law cause of action for bad faith. Fla. Stat. Ann. § 624.155. *Industrial Fire & Casualty Insurance Company v. Romer*, 432 So.2d 66 (Fla. 1983). However, it does not allow a first party common law cause of action. Fidelity insurance is first party coverage as between the insured and the carrier.

With respect to sureties, a federal court construing Florida law, *Reliance Insurance Company v. Barile Excavating & Pipeline Co.*, 685 F.Supp. 839 (1988), ruled that the obligee's common law bad faith cause of action was precluded because the obligee's claim was considered a first-party claim. Accordingly, there is no common law cause of action for bad faith in the surety context in Florida.

III. PUNITIVE DAMAGES

Generally recoverable in contract or in tort. Fla. Stat. Ann §§ 768.21, 768.72, 768.73. Additionally, punitive damages are allowed by statute in certain situations, and are precluded by statute in others.

Gross negligence must be proven. *White Constr. Co. v. Dupont*, 455 So.2d 1026 (Fla. 1984), appeal after remand, 478 So.2d 485 (Fla.App. 1985). However, a higher standard is required by the standard jury instruction on punitive damages. Fla. Std. Jury Instructions and Civil Cases No. 6.12 (1988). Burden of proof is unclear, but clear and convincing evidence has been required in some types of cases such as fraud. *Urling v. Helms Exterminators, Inc.*, 468 So.2d 451 (Fla.App. 1985).

Proof of defendant's participation in or authorization of the conduct is required. *Mercury Motors Exp., Inc. v. Smith*, 393 So.2d 545 (Fla. 1981), *on remand* 394 So.2d 1109 (Fla.App. 1981).

Florida limits the amount of punitive damages to three times the amount of compensatory damages, unless shown by clear and convincing evidence that a larger award is not excessive. Fla. Stat § 768.73. Florida requires that thirty-five percent of a punitive damage award be paid to the state. Fla. Stat § 768.79.

Defendant's financial condition is a relevant factor in assessing punitive damages. *Batlemento v. Dove Fountain, Inc.*, 593 So.2d 234 (Fla.App. 1991).

THE SOUTH & SOUTHEAST — LOUISIANA

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Louisiana has adopted unfair claims settlement practices statute. La. Rev. Stat. Ann. §§ 658, 22:1212 et seq.

There is a private cause of action under the statute for double damages, attorneys fees and interest. La. Rev. Stat. Ann. § 22:2020.

Time Limits/Diarying Requirements

1. Time Limits Regarding Settlement Payments

TIME LIMITS	ACTION REQUIRED	CITATION
Within 30 days of execution of written settlement agreement.	Pay settlement.	L.R.S.A. § 1220(B)(2)
Within 60 days after satisfactory proof of loss.	Pay amount due.	L.R.S.A. § 1220(B)(5)

B. *Bad Faith in First-Party Insurance Cases*

Common law and statutory duties to insureds are owed. *Smith v. Audubon Ins. Co.*, 656 So.2d 11 (1995). Insurers are subject to penalties and attorneys' fees under certain circumstances. La.Rev.Stat.Ann. §§ 22:658 and 22:1220.

C. *Bad Faith in Third-Party Insurance Cases*

Insurers owe a statutory duty to third parties which may be actionable. *Smith, supra*, 656 So.2d 11.

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

The Louisiana Unfair Claims Practices Act applies to fidelity carriers by virtue of the Act's broad application to those engaged in the business of insurance. La. Rev. Stat. Ann. § 22:1212 C and La. Rev. State. Ann. § 22:2020 A. The penalty for failing to comply with the Act is either two times the damages sustained for the failure to comply, or \$5,000, whichever is greater. La. Rev. Stat. Ann § 22:2020. A fidelity carrier can also be subject to a 10% penalty if its failure to pay is determined to be arbitrary and capricious. La. Rev. Stat. Ann § 22:658. *National Bank of Commerce in New Orleans v. Fidelity & Casualty Co. of New York*, 312 F.Supp. 71 (D.C. 1970), *aff'd* 437 F.2d 96, *cert. den'd.*, 403 U.S. 906, 91 S.Ct. 2209, 29 L.Ed.2d 682.

The Louisiana Unfair Claims Practices Act also appears to apply to sureties and the penalty for failing to comply with the Act is either two times the damages sustained for the failure to comply or \$5,000, whichever is greater. La. Rev. Stat. Ann § 22:1212 and § 22:2020. Additionally, Louisiana imposes a 10% penalty if the failure to pay is determined to be arbitrary and capricious. La. Rev. Stat. Ann § 22:658.

Notwithstanding the application of the Unfair Claims Practices Act, in *Metro Builders Hardware, Inc. v. Burko Construction, Inc.*, 633 So.2d 838 (La. 1994), the Louisiana court of appeals found that Louisiana's Public Works Act provides exclusive remedies to parties in public construction work. The Public Works Act contains a prompt payment provision. La. Rev. Stat. Ann. § 38:2246. The penalty for failing to comply is a 10% attorney's fee on the amount recovered. There is a similar prompt payment provision for private works bonds. La. Rev. Stat. Ann. § 9:3902. Thus, arguably, this private contract statute is the exclusive remedy against a private works surety.

B. Bad Faith

Louisiana does not allow a common law cause of action for bad faith against fidelity insurers or sureties.

III. PUNITIVE DAMAGES

Recoverable only when authorized by statute. *International Harvester Credit Corp. v. Seale*, 518 So.2d 1039 (La. 1988).

Conduct required is governed by authorizing statute, and ranges from gross negligence to malice. In absence of specific statement, burden of proof is most likely preponderance of the evidence, as in civil actions generally.

Proof of defendant's participation or authorization of the conduct is not required in Louisiana. *Swindle v. Houghton Wood Co.*, 458 So.2d 992 (La.App. 1984).

Louisiana does not limit the amount of punitive damages or claim any part of award.

Evidence of financial condition of the defendant must be considered. *Jordan v. Intercontinental Bulktank Corp.*, 621 So. 2d 1141 (La.App.), *cert. denied*, 623 So.2d 1335 (La. 1993).

THE SOUTH & SOUTHEAST -- TEXAS

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Unfair claims settlement practices are regulated by Tex. Ins. Code Ann. Art. 21.55 and Tex. Admin Code tit. 28, § 21.203.

Texas courts have recognized a private cause of action. *Stewart Title Guar. Co. v. Sterling*, 772 S.W.2d 242 (Tex. Ct. App. 1989); *Vail v. Texas Farm Bureau Mut. Ins. Co.*, 754 S.W.2d 129 (Tex. 1988)

Time Limits/Diarying Requirements

1. Time Limits Regarding Communications From Claimants

TIME LIMITS	ACTION REQUIRED	CITATION
Within 15 calendar days after receiving notice of claim (exc. legal action).	Acknowledge receipt of the notice of claim and begin any necessary investigation of the claim and request all necessary documents from claimant.	Tex.Ins. Code Art. 21.55, Sec. 2(a)
Within 15 business days after receipt of final proof of loss.	Accept or reject the claim, setting forth the reasons for rejection, or advise claimant of insurer's inability to make determination regarding acceptance or settlement, setting forth reasons as to why insurer requires additional time.	Tex.Ins. Code Art. 21.55 Sec. 3(a), (c)-(d)
Within 45 calendar days of 15 business-day period.	Final date to accept or reject a claim.	Tex.Ins. Code Art. 21.55, Sec. 3(e)

2. Time Limits Regarding Settlement Payments

TIME LIMITS	ACTION REQUIRED	CITATION
Within 5 business days after notification of payment of claim	Tender settlement payment.	Tex.Ins. Code Art. 21.55, Sec.4

B. *Bad Faith in First-Party Insurance Cases*

Texas first recognized an insurer's duty of good faith and fair dealing to its insured in *Arnold v. National County Mutual Fire Ins. Co.*, 725 S.W.2d 165 (Tex. 1987). In *Aranda v. Insurance Co. of North America*, 748 S.W.2d 210, 213 (Tex. 1988), the Texas Supreme Court held that to establish the tort of bad faith against an insurer, an insured must prove: (1) the absence of a reasonable basis for denying or delaying payment of the benefits of the policy, and (2) that the carrier knew or should have known that there was not a reasonable basis for denying the claim or delaying payment of the claim. In *Vail, supra*, 754 S.W. 2d at 135, the Texas Supreme Court found

that an insurer's lack of good faith in processing a claim is an unfair or deceptive act for which an insured could bring an action.

C. BAD FAITH IN THIRD-PARTY INSURANCE CASES

Third-party claimants have no standing to bring a bad faith action against insurers as such claimants are not owed a duty of good faith and fair dealing. *Allstate Ins.*, 876 S.W.2d at 150.

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

Fidelity carriers appear to be subject to the DTPA which considers a violation of Article 21.21 of the Texas Insurance Code to be a deceptive act. Tex.Bus. & Comm.Code Ann. § 17.50(a)(4). The DTPA provides for a private right of action and, in certain cases, double or treble damages. Tex.Bus. & Comm.Code Ann. § 17.50(b).

In a not yet final decision, the Texas Supreme Court has determined that a commercial surety is not subject to Tex.Ins. Code Ann. art. 21.21. *Great American Ins. Co. v. North Austin Municipal Utility District No. 1*, 1995 WL 35834 (Tex. 1995).

The Texas Deceptive Practices Act does not, however, apply to sureties. *Great American, supra*, 1995 WL 358834.

B. *Bad Faith*

Texas allows a common law cause of action against insurers, which arguably includes fidelity carriers. However, in order to recover punitive damages, the claimant must establish malicious, intentional, fraudulent or grossly negligent conduct. *Transportation Insurance Co. v. Moriel*, 879 S.W.2d 10 (1994).

Texas does not allow a common law cause of action for bad faith against a surety. *Great American, supra*, 38 Tex.Sup.Ct.J. 817 (1995).

III. PUNITIVE DAMAGES

Generally recoverable. Tex. Const. Art. XVI § 26. Punitive damages in certain situations are governed by statute.

Gross negligence, fraud or malice must be proven. Texas Civ. Prac. & Rem. Code Ann. § 41.003. Burden of proof is preponderance of the evidence. *Ford Motor Co. v. Durrill*, 714 S.W.2d 329 (Tex.App. 1986), *judgment vacated*, 754 S.W.2d 646 (Tex. 1988).

Defendant must have participated in or authorized the conduct. *Purvis v. Prattco, Inc.*, 595 S.W.2d 103 (Tex. 1980).

Punitive damages are limited by statute to four times the amount of actual damages, or \$200,000, whichever is greater. However, there is no limit on punitive damages in the case of malice or intentional tort. Texas Civ. Prac. & Rem. Code Ann. §§ 41.007, 41.008.

Defendant's financial condition is a relevant factor in award of punitive damages. *Wenco of El Paso/Las Cruces, Inc. v. Nazario*, 783 S.W.2d 663 (Tex.App. (El Paso) 1989); *K-mart Corp. v. Pearson*, 818 S.W.2d 410, (Tex.App. (Houston 1st Dist.) 1991).

THE EAST — NEW JERSEY

I. OVERVIEW

A. Unfair Claims Settlement Practices Statutes and/or Regulations

New Jersey has adopted unfair claims settlement practices statutes and regulations. N.J. Rev. Stat. § 17:29B-4(9), 17B:30-13.1; N.J. Admin. Code tit. 11, subch. 17.

There is no private cause of action under the statute. *Pierzga v. Ohio Cas. Group of Ins. Cos.*, 208 N.J. Super. 40, 47, 48, 504 A.2d 1200, 1204 (1986); *Garden State Community Hosp. v. Watson*, 191 N.J. Super. 225, 465 A.2d 1225 (1982).

Time Limits/Diarying Requirements

1. Time Limits Regarding Communications From Claimants

TIME LIMITS	ACTION REQUIRED	CITATION
Within 10 working days after receiving notice of claim.	Acknowledge receipt of the notice of claim and begin any necessary investigation of the claim and provide reasonable assistance and forms.	N.J.R. 11:2-17.6 (b) & (c), 11:2-17.7(a)
Within 15 working days after receiving any communication indicating response is required.	Reply to any communication from a claimant regarding a claim that reasonably suggests a response is requested.	N.J.R. 11:2-17.6 (e)
Within various calendar days after receipt of proof of loss.	Accept or reject the claim, in whole or in part, and affirm or deny liability.	N.J.R. 11:2-17.7 (c)(1)-(3)
Every 45 days after notification of claim within which to accept or reject claims.	Notify claimant that in writing of insurer's inability to make determination regarding acceptance or settlement and provide reasons.	N.J.R. 11:2-17.7 (f)
At least 60 days before expiration of the statute of limitations applicable to the claim.	An insurer must notify the claimant of the expiration of the statute of limitations in writing at least 60 days before the expiration of the period.	N.J.R. 11:2-17.8 (e)

2. Time Limits Regarding Settlement Payments

TIME LIMITS	ACTION REQUIRED	CITATION
Within 10 working days after agreement.	Tender Settlement payment.	N.J.R. 11:2-17.7(g)

3. Time Limits Regarding Commissioner Communications and Regulations

TIME LIMITS	ACTION REQUIRED	CITATION
Within 10 working days of receipt inquiry re claim from Insurance Department.	Furnish ID with written response to inquiry.	N.J.R. 11:2-17.6

B. Bad Faith in First-Party Insurance Cases

There is a first-party cause of action for bad faith. *Pickett v. Lloyds*, 131 N.J. 457, 621 A.2d 445 (1943).

C. Bad Faith in Third-Party Insurance Cases

No Third-Party cause of action based in bad faith is allowed. *Id.*

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. Unfair Claims Settlement Practices Statutes and/or Regulations

Unfair claim settlement practices are specifically set forth in N.J.S.A. 17:29B-4(9). It is uncertain whether N.J.S.A. 17:29B-4 is applicable to sureties. The statute states that it is applicable to acts or practices “in the business of insurance.”

There clearly exists no private cause of action seeking punitive damages against insurers for unfair claim settlement practices under N.J.S.A. 17:29B-4. *Pierzga, supra*, 504 A.2d 1200.

New Jersey has promulgated Unfair Claims Settlement Practices Regulations. They specifically exclude their applicability to surety and fidelity. N.J. Admin. Code § 11:2-17.2. *But cf. In re Midland Ins. Co.*, 167 N.J.Super. 237, 400 A.2d 813 (1979).

B. Bad Faith

There does exist in New Jersey a cause of action by a first-party insured against an insurer for the insurer’s bad-faith refusal to pay first-party claims or benefits. *Pickett, supra*, 621 A.2d 445. There is no bad faith, however, where the insurer’s liability is “fairly debatable.” *Id.* Accordingly, it is likely that there is a bad faith cause of action against fidelity carriers. It is uncertain whether there exists a common law bad faith cause of action against a surety in New Jersey.

III. PUNITIVE DAMAGES

Generally recoverable. N.J. Stat. Ann. § 2A:15-3 (1968). Additionally, a number of statutes authorize punitive damages in specific situations.

Malice or a wanton and willful act must be proven. *Anastasio v. Planning Board of the Township of West Orange*, 197 N.J. Super. 457, 484 A.2d 1358 (1984). Burden of proof is preponderance of the evidence in products liability cases, N.J. Stat. Ann. § 2A:58-5a (1991), and probably the same in other actions.

Defendant must have participated in or authorized the conduct. *De Angelis v. Jamesway Dept. Store*, 205 N.J. Super. 519, 501 A.2d 561 (1985).

Punitive damages are not limited in New Jersey. N.J. Stat. Ann. 2A:58C-5a (1991). No part of an award is payable to the state.

Defendant's financial condition is a relevant factor that must be considered. *Horn v. Village Supermarkets, Inc.*, 260 N.J.Super. 165, 615 A.2d 663 (1992); *Brotherton v. Celotex Corp.*, 202 N.J.Super. 148, 493 A.2d 1337 (1985).

THE EAST — NEW YORK

I. OVERVIEW

A. *Unfair Claims Settlement Practices Statutes and/or Regulations*

New York has adopted unfair claims settlement practices statutes and regulations. N.Y. Ins. Law § 2601; N.Y. Comp. Codes R. & Regs. tit. 10 part 216.

There is no private cause of action under the statute. *Rocanova v. Equitable Life Ass. Soc. of U.S.*, 83 N.Y.2d 603, 612 N.Y.S.2d 339 (1994), *Royal Globe Ins. Co. v. Chock Full O’Nuts Corp.*, 86 App.Div.2d 315, 449 N.Y.S.2d 740 (1982), *appeal dismissed*, 58 N.Y.2d 800, 459 N.Y.S.2d 266, 445 N.E.2d 649 (1983); *Mavroudis v. State Wide Ins. Co.*, 121 App.Div.2d 433, 503 N.Y.S.2d 133 (1986), *appeal dismissed*, 68 N.Y.2d 997, 510 N.Y.S.2d 1028 (1986).

Time Limits/Diarying Requirements

1. Time Limits Regarding Communications From Claimants

TIME LIMITS	ACTION REQUIRED	CITATION
Within 15 working days after receiving notice of claim.	Acknowledge receipt of the notice of claim and begin any necessary investigation of the claim and reasonable assistance, excluding fraud.	N.Y.R. Tit. 10 §§ 216.4(a), 216.5(a)&(b)
Promptly after receiving any communication indicating response is required.	Reply to any communication.	N.Y.R. Tit. 10 §§ 216.0(e)(5), 216.4(b)
Within 15 business days after receipt of proof of loss.	Accept or reject the claim, in whole or in part, and affirm or deny liability and provide reasons or provide notification of needed additional time.	N.Y.R. Tit. 10 §§ 216.6(c)
Every 40 days.	Notify claimant of insurer’s inability to make determination regarding acceptance or settlement.	N.Y.R. Tit. 10 §§ 216.6(c)

2. Time Limits Regarding Settlement Payments

TIME LIMITS	ACTION REQUIRED	CITATION
Within five business days after settlement agreement receipt.	Tender settlement payment.	N.Y.R. Tit. 10 § 216.6(g)

3. Time Limits Regarding Commissioner Communications and Regulations.

TIME LIMITS	ACTION REQUIRED	CITATION
Within 10 business days of receipt of inquiry re claim from Insurance Dept.	Furnish ID with written response to inquiry.	N.Y.R. Tit. 10 §§ 216.4(d)

B. Bad Faith in First-Party Insurance Cases

Absent egregious, tortious conduct directed towards the insured, coupled with a pattern of tortious conduct directed at the public, no first-party cause of action for bad faith can be maintained. *Rocanova, supra*, 83 N.Y.2d 603, *Pavia v. State Farm Mut. Auto. Ins. Co.*, 82 N.Y.2d 445, 453-454, 626 N.E.2d 24, 27-28 (1993).

C. Bad Faith in Third-Party Insurance Cases

There appears to be no third-party cause of action for bad faith.

Gordon v. Nationwide Mut. Ins. Co., 30 N.Y.2d 427, 334 N.Y.S.2d 601 (1972), *cert. denied*, 410 U.S. 942 (1973).

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. Unfair Claims Settlement Practices Statutes and/or Regulations

The New York Unfair Claim Settlement Practices Act is contained in Insurance Law section 2601. Insurance Law section 2601 is applicable to insurers and appears to be applicable to sureties. *Durham Industries, Inc. v. North River Insurance Co.*, 673 F.2d 37 (2nd Cir. 1982), *cert. denied* 459 U.S. 827, 103 S.Ct. 61, *Morse/Diesel, Inc. v. Fidelity and Deposit Co. of Md.*, 715 F.Supp. 578 (S.D.N.Y. 1989).

There is no private cause of action against insurers for unfair claim settlement practices as defined within section 2601. *Rocanova, supra*, 83 N.Y.2d 603, *G. Kurrus v. CNA Insurance Co.*, 115 A.D.2d 593, 496 N.Y.S.2d 255 (1985).

New York has also promulgated regulations related to unfair claims settlement practices. N.Y. Regulation 64, Part 216. All insurers doing business in New York are governed by the regulations. The regulations are silent as to their applicability to fidelity carriers and sureties. § 216.2.

B. Bad Faith

“Bad Faith” causes of action are available to first parties in guise of contractual breach of the covenant of good faith and fair dealing arising from insurance contracts in order to recover punitive damages. The components of contractual breach of the covenant of good faith and fair dealing arising out of insurance contract are as follows:

Egregious tortious conduct, i.e., fraud, by which plaintiff was aggrieved; and

Such conduct of insurer was part of a pattern and practice of similar conduct directed at the public generally.

“[W]here the breach of a contract also involves a fraud evincing a ‘high degree of moral turpitude’ and demonstrating ‘such wanton dishonesty as to imply a criminal indifference to civil obligations’, punitive damages are recoverable if the conduct was ‘aimed at the public generally.’” *Rocanova, supra*, 83 N.Y.2d 603. The standard for awarding punitive damages in first party insurance actions is strict and the extraordinary remedy is available only in limited instances.

The cause of action exists against sureties also. *Spancrete Northeast, Inc. v. Travelers Indemnity Co.*, 112 A.D.2d 571, 491 N.Y.S.2d 848 (1985); *Durham Industries, Inc. v. North River Insurance Co.*, 673 F.2d 37 (2nd Cir. 1982); *Morse/Diesel, Inc. v. T. Frederick Jackson, Inc.*, 715 F.Supp. 578 (S.D.N.Y. 1989)

III. PUNITIVE DAMAGES

Generally recoverable. Claim must vindicate a public right, otherwise it is subject to dismissal. *Eccobay Sportswear, Inc. v. Providence Washington Ins. Co.*, 585 F.Supp. 1343 (S.D.N.Y. 1984); N.Y. Civ. Prac. L. & R. § 3017.

Conduct constituting more than gross negligence, but not malice, must be proven. *Welch v. Mr. Christmas, Inc.*, 57 N.Y.2d 143, 454 N.Y.S.2d 971 (1982).

Defendant must have participated in or authorized the conduct. *Rose v. Imperial Engine Co.*, 127 App.Div. 885, 112 N.Y.S. 8 (1908), *aff'd*, 195 N.Y. 515, 88 N.E. 1130 (1909). Burden of proof is preponderance of the evidence. *Simpson v. Pittsburgh Corning Corp.*, 901 F.2d 277 (2d Cir. 1990), *cert. dismiss'd*, 497 U.S. 1057, 111 S.Ct. 27 (1990).

New York does not limit the amount of punitive damages, but it requires that twenty percent of award be paid to the state. 1992 N.Y.Laws 393.

Defendant's financial condition is a relevant factor that must be considered. *Thoreson v. Penthouse Int'l, Ltd.*, 149 Misc. 2d 150, 563 N.Y.S.2d 968 (1990), *modified on other grounds*, (1st Dept) 179 App.Div.2d 29, 583 N.Y.S.2d 213; *O'Donnell v. K-mart Corp.*, 100 App.Div.2d 488, 474 N.Y.S.2d 344 (1984).

THE EAST — PENNSYLVANIA

I. OVERVIEW

A. Unfair Claims Settlement Practices Statutes and/or Regulations

Pennsylvania has adopted unfair claims settlement practices statutes and regulations. Pa. Stat. Ann. tit. 40, § 29-101 et seq. tit. 42, § 8371, 31 Pa. Code § 146.1 et seq.

No private cause of action is available under title 40. *MacFarland v. United States Fid. & Guar. Co.*, 818 F.Supp. 108 (E.D.Pa. 1993).

Title 42 authorizes an independent cause of action against an insurer its section 8371. See *Kaufman v. Aetna Cas. & Sur. Co.*, 794 F.Supp. 137 (E.D.Pa. 1992).

Time Limits/Diarying Requirements

1. Time Limits Regarding Communications From Claimants

TIME LIMITS	ACTION REQUIRED	CITATION
Within 10 working days after receiving notice of claim.	Acknowledge receipt of the notice of claim, begin any necessary investigation of the claim and provide reasonable assistance and forms.	Pa. Code § 146.5 (a)&(b)
Within 10 working days after receiving any communication indicating response is required.	Reply to any communication from a claimant regarding a claim that reasonably suggests a response is requested.	Pa. Code § 146.5(c)
Within 15 working days after receipt of proof of loss.	Accept or reject the claim, in whole or in part, and affirm or deny liability unless illegal activity.	Pa. Code § 146.7 (a)(1)&(2)
Every 45 days after 30 day extension of period within which to accept or reject claims.	Notify claimant of insurer's inability to settle. Complete investigation or accept claim.	Pa. Code §§ 146.6, 146.7(c)(1)
At least 30 days for first-party claimants and at least 60 days for third-party claimants before expiration of the statute of limitations applicable to the claim.	An insurer must notify the claimants of the expiration of the statute of limitations in writing.	Pa. Code § 146.7(a)

2. Time Limits Regarding Commissioner Communications and Regulations

TIME LIMITS	ACTION REQUIRED	CITATION
Within 10 working days of receipt of inquiry re claim from Department.	Furnish Dept. with written response to inquiry.	Pa. Code § 146.5(b)

B. Bad Faith in First-Party Insurance Cases

Section 8371 provides the only basis for the assertion of a bad faith claim. 42 Pa.C.S.A. § 8371.

C. Bad Faith in Third-Party Insurance Cases

No case has reached the issue of whether a third party may sue an insurer for bad faith since the enactment of section 8371.

II. LAW APPLICABLE TO FIDELITY INSURERS AND SURETIES

A. Unfair Claims Settlement Practices Statutes and/or Regulations

Pennsylvania's 40 P.S. section 29-104 sets forth the general prohibition against unfair or deceptive practices in the business of insurance. 40 P.S. § 29-105(a)(10) enumerates unfair/deceptive claim settlement or compromise practices by any "person." "'Person' is defined as, among other things, 'any individual, corporation, association, partnership, . . . Lloyds insurer . . . and any other legal entity engaged in the business of insurance...'" 40 Pa. C.S.A. § 1171.3.

No private cause of action exists for violations of either the UIPA or insurance regulations. *MacFarland v. U.S. Fidelity & Guar. Co.*, 818 F.Supp. 108 (E.D.Pa. 1993); *Romano v. Nationwide Mut. Fire Ins. Co.*, 435 Pa.Super. 545, 646 A.2d 1228 (1994).

Pennsylvania has also promulgated regulations. The Unfair Claims Settlement Practices Regulations specifically exclude applicability to sureties and fidelity insurers. 31 Pa. Code § 146.1.

B. Bad Faith

There exists no common law bad faith cause of action against a surety in Pennsylvania. *Terletsky v. Prudential Property and Cas. Ins. Co.*, 437 Pa.Super. 108, 649 A.2d 680 (1994); *Romano v. Nationwide Mut. Fire Ins. Co.*, 435 Pa.Super. 545, 646 A.2d 1228 (1994); *Kauffman v. Aetna Cas. & Sur. Co.*, 794 F.Supp. 137 (E.D.Pa. 1992); *Tudor Dev. Group, Inc. v. United States Fid. & Guar.*, 692 F.Supp. 461 (M.D.Pa. 1988).

There exists a statutory bad faith cause of action in Pennsylvania under Pa. Stat. Ann. tit. 42, § 8371 which provides that, in the event a court determines that an insurer acted in bad faith towards the insured, the court may (1) award interest from the date the claim was made, (2) award the claimant punitive damages, and/or (3) assess court costs and attorneys fees against the insurer. Pa. Stat. Ann. tit. 42, § 8371 applies to sureties. *Turner Const. Co. v. First Indem. of America Ins. Co.*, 829 F.Supp. 752 (E.D.Pa. 1993), *aff'd* 22 F.3d 303.

III. PUNITIVE DAMAGES

Title 42, section 8371 authorizes a court to award punitive damages against an insurer who acts in bad faith. 42 Pa. C.S.A. § 8371. *Martin v. Johns-Manville Corp.*, 508 Pa. 154, 494 A.2d 1088 (1985), *on remand* 349 Pa.Super. 46, 502 A.2d 1264 (1985). Punitive damages are also authorized by statute in specific situations.

“Generally, under Pennsylvania law, a court may impose punitive damages even without demonstrating outrageous conduct with clear and convincing evidence. However, in the context of a bad faith insurance claim under Pennsylvania law, the plaintiff must prove that the insurer acted in bad faith by clear and convincing evidence.” *Polselli v. Nationwide Mut. Fire Ins. Co.*, 23 F.3d 747, 750 (3d Cir. 1994).

“Although mere negligence cannot support a claim for punitive damages, an insurer’s recklessness is sufficient for a punitive award.” *Polselli, supra*, 23 F.3d at 751-52.