

An Update on the Application of Unfair Claims Settlement Practices and Bad Faith to the Fidelity Insurer

Antonio Trotta, III
Mark Oertel

I. Introduction

It is not unusual for fidelity claim professionals to handle claims in several different states. Most states have statutory requirements setting forth specific deadlines for acknowledging receipt of the claim, completing the investigation, and, ultimately, admitting or denying liability. The claim professionals will be held to a standard of care that requires familiarity with the codes, regulations, and common law duties of insurance adjusters for each state where they perform claims adjusting activities. In fact, in many states there are requirements that the claims handler certify that he or she has been trained in the fair claims handling practices of that state.¹ If the claim professional deals with claims in one particular state on a regular basis, he or she may be familiar with the statutory and common law requirements for claims within that state. However, in today's ever-changing environment, it is not unusual for a claim handler to investigate and resolve claims in a state where there is infrequent activity and, thus, have less familiarity with that particular state's regulatory requirements.

¹ See, e.g., CAL. CODE REGS. tit, 10 § 2695.6 :

1. The annual written certification shall be executed, under penalty of perjury, by a principal of the entity as follows:

A) that the licensee's claims adjusting manual contains a copy of these regulations and all amendments thereto; and,

B) that clear written instructions regarding the procedures to be followed to effect proper compliance with this subchapter were provided to all its claims agents;

C) where the licensee retains insurance adjusters as defined in California Insurance Code Section 14021, the licensee must provide training to the insurance adjusters regarding these regulations and annually certify, in a declaration executed under penalty of perjury, that such training is provided. Alternately, the insurance adjuster may annually certify in writing, under penalty of perjury, that he or she has read and understands these regulations and all amendments thereto or has successfully completed a training seminar which explains these regulations;

D) a copy of the certification required by subsections 2695.6(b)(1), (2) or (3) shall be maintained at all times at the principal place of business of the licensee, to be provided to the Commissioner only upon request.

E) The annual certification required by this subsection shall be completed on or before September 1 of each calendar year.

Antonio Trotta III is a Claims Specialist with CNA Insurance Company in Monmouth Junction, New Jersey. Mark Oertel is a partner with Lewis, Brisbois, Bisgaard and Smith LLP in Los Angeles, California.

The purpose of this article is to provide the claim handler with practical information regarding the general development of the codes, regulations, and common law governing the obligations of an insurance adjuster to handle claims fairly and in good faith; to generally review what the fair claims handling practices require; and to provide a ready reference for determining regulatory requirements within each of the states. This article does not obviate the need for the claim handler to verify that the statutes and regulations are accurate or that there have not been any recent changes. In most instances the most up-to-date information from each state may be obtained through the web site of the insurance regulatory office for that state.²

II. Historical Development of Statutory Duties to Handle Claims Fairly

The National Association of Insurance Commissioners Subcommittee on Unfair Trade Practices adopted a section on unfair claims settlement practices in 1971. These activities, when committed or performed “with such frequency as to indicate a general business practice,” constitute a violation of the Unfair Trade Practices Act.³ The subcommittee notes for this Model Act establish that the adoption of these standards of conduct was necessary due to the lack of specific guidelines for claims handling for insurance companies and insurance regulators. The absence of uniform principles made it difficult for insurance companies and regulators to determine what action constitutes improper or unfair claims handling.⁴

In order to remedy this confusion, specific activities were designated as prohibited claims conduct. Prohibited claims’ practices include the following:

- (1) misrepresentation of relevant facts or insurance policy provisions regarding coverage;
- (2) failure to acknowledge promptly and to act reasonably upon claims communications;
- (3) failure to adopt and to implement reasonable standards for the prompt investigation of claims communications;
- (4) refusal to pay claims without conducting a reasonable investigation based upon all available information;
- (5) failing to affirm or to deny coverage within a reasonable time after proof of loss statements have been submitted;

² See Appendix A.

³ NATIONAL ASS’N OF INS. COMM’RS MODEL LAWS, REGULATIONS & GUIDELINES 900-1, 900-10 (Jan. 1997) (citing 1972 proceedings of the NAIC, I 495).

⁴ *Id.* at 900-9 (citing 1972 proceedings of the NAIC, I 491-2, 495-6); Richard S. Bush & Elizabeth G. O’Donnell, *The Development and Application of the Unfair Claims Settlement Practices Act to Surety 5* (unpublished paper presented to the annual meeting of the Surety Claims Institute, June 1995).

(6) failure to affirm or to deny coverage within a reasonable period of time after completion of the investigation;

(7) compelling insureds to initiate litigation to recover under its insurance policy by offering substantially less than the amount(s) ultimately recovered by the insureds;

(8) failure to settle claims promptly where liability under one provision of the policy has become reasonably clear in order to influence settlements under other coverage provisions;

(9) failure to provide a prompt and reasonable explanation of the contractual and legal basis for coverage, denial or offer of a compromise settlement.

Section 8 of the Unfair Trade Practices Act provided the means for the Departments of Insurance of each state to promulgate regulations “as necessary or proper to carry out and effectuate the provisions of this action.”⁵ The Unfair Trade Practices Act included fidelity bonds by defining “policy” in very broad terms as “any contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued by any insurer.” Most states have adopted the Model Act or a modified version of the act.⁶

In 1990, the National Association of Insurance Commissioners removed the Unfair Claims Settlement Practices portion from the Unfair Trade Practices Act and created the Unfair Claims Settlement Practices Act. The 1990 Act expands the list of activities that constitute unfair trade practices by adding the following:

(1) failure to provide the insured with the forms necessary to submit claims within 15 calendar days of a request, along with reasonable explanations regarding their use; and

(2) failure to effectuate prompt, fair and equitable claim settlement once liability has become reasonably clear.⁷

The 1990 Unfair Claims Settlement Practices Act specifically excludes fidelity, and it is clear from its content that it was not intended to cover claims involving fidelity insurance. The Unfair Claims Settlement Practices Act, § 2(e) defines policy as: “‘Policy’ or ‘certificate’ for purpose of this Act, shall not mean contracts of worker’s compensation, fidelity, suretyship or boiler and machinery insurance.”⁸

Notwithstanding the clarity of this exclusion, most states do not exclude fidelity from insurance claim regulations. This probably is because the Unfair Trade Practices

⁵ UNFAIR CLAIMS SETTLEMENT PRACTICES ACT § 8, 5 MODEL LAWS, REGULATIONS & GUIDELINES, 900-1, 900-4 (National Ass’n of Ins. Cmm’rs, Jan. 1997).

⁶ See Appendix A.

⁷ UNFAIR CLAIMS SETTLEMENT PRACTICES Act § 4, *supra* note 5, at 900-2.

⁸ *Id.* § 2.

Act was used as a guideline for drafting insurance regulations for twenty years. Consequently, states that established regulations pertaining to fidelity bond claims adopted language that did not exclude fidelity. The only states to adopt the 1990 version of the Model Act, which include the above exclusion for fidelity bonds, are Georgia, Missouri, and Nebraska.⁹ Of these states, only one state, Missouri, excludes fidelity insurers from its unfair claims practices act.¹⁰

The Unfair Claims Settlement Practices Act also provided that it should not be construed to create or imply a private cause of action for violation of any of the provisions of the Act. The notes provide that a private cause of action is “inherently inconsistent with the act.”¹¹ Most states have enacted various forms of the Unfair Trade Practices Act.¹²

III. Unfair Claims Practices

The statutes and regulations from most states set forth basic claims handling requirements. These can be grouped into regulatory compliance issues and policyholder communications. The Department of Insurance for the State of California, in promulgating the California Code of Regulations, set forth an example of a regulatory requirement. The California regulations require an insurer to respond to a request from the Department of Insurance within twenty-one days.¹³ Failure to do so is a violation of the regulations and could subject the insurer to a penalty.¹⁴ Other states also require timely responses to inquiries from the department of insurance. Nebraska requires an adequate response or a request for additional reasonable time to respond within fifteen working days of a written inquiry.¹⁵

Similarly, California requires specific file and record documentation.¹⁶ Each file must contain the date each document within the file was received and the date each document was processed or transmitted by the claims handler.¹⁷ Another regulatory requirement is annual certification by the insurer that claims handling personnel have been trained in the proper handling of claims under the fair claims settlement regulations.¹⁸

Several states, through statute or regulation, have established standards for acknowledging and responding to new claims. Policyholder communications required by most states include acknowledging receipt of a new claim either promptly or within a reasonable period of time. Some states specifically require acknowledgment of a claim

⁹ Charles D. Thomas & Dirk E. Ehlers, *Bad-Faith: Trends in Statutory and Common Law Framework and Review of Recent Cases*, IV FID. L.J. IV 19 (1998).

¹⁰ MO. REV. STAT. § 375.1000 (2003).

¹¹ UNFAIR CLAIMS SETTLEMENT PRACTICES ACT § 1, *supra* note 5, at 900-1.

¹² See Appendix A.

¹³ CAL. CODE REGS. tit. 10, § 2695.5(a).

¹⁴ *Id.* § 2695.12.

¹⁵ NEB. REV. STAT. § 44-1525(11) (2004).

¹⁶ CAL. CODE REGS. tit. 10, § 2695.3.

¹⁷ *Id.*

¹⁸ *Id.* § 2695.6 (reprinted in note 1).

within a set number of days ranging from thirty business days, which is required in Oklahoma,¹⁹ to as few as ten days, such as the requirement in Wisconsin²⁰ or Washington.²¹

This initial communication with the insured may also include providing proof of claim forms, along with instructions on how to fill out the forms or otherwise notifying the insured of what information the insurer needs from the insured to investigate and evaluate the claim and make a coverage determination. In order to avoid collateral issues, it is important for the insurer to promptly respond to the claim in the time and manner prescribed by the state where the claim is made. Most states require that this acknowledgment be made in writing and for the documentation of this acknowledgment to be kept in the insurer's files in a readily accessible form.²²

It is a sound practice to acknowledge claims in writing or, where the original communication with the claimant has been verbal, to confirm such communication with a letter within the established time period. Some states require the insurer to reserve its rights to policy defenses in the initial acknowledgment letter. If rights are not reserved, the acknowledgment letter may waive these defenses. Similarly, the insurer may be estopped from asserting defenses that it has not specifically reserved in its communications with its insured. In situations where little is known about a new claim, it is suggested that a broad reservation of rights be included in the acknowledgment letter.

Additionally, some states may have other requirements, such as notifying the insured of any additional coverages it may have or notifying the insured of the potential expiration of any statutory or policy limitations on the time in which to file suit.²³

Finally, most states provide deadlines in which to either accept or deny a claim. Generally, this is promptly after receipt of the proof of loss forms or other proof of claim information and the completion of the investigation. Some states set a specific period of time, such as sixty days after submission of a proof of claim, in which to either admit or deny coverage.²⁴

Where the investigation has not been completed, the insurer must give its specific reasoning for not completing the investigation and advise the insurer of what information is still needed in order to complete the investigation and make a determination.²⁵ The reasoning behind such a requirement is to prevent the claims handler from delaying payment of a legitimate claim on the basis that additional documentation is needed when that documentation has already been obtained and reviewed. It is a good practice to be as specific as possible in requesting further information.

¹⁹ OKLA. STAT. tit. 36 § 1250.4(c).

²⁰ WIS. ADMIN. CODE § 6.11(3)(a)1.

²¹ WASH. ADMIN. CODE § 281-30-330(2).

²² See, e.g., CAL. CODE REGS. tit. 10, § 2695 et seq.

²³ See Appendix A.

²⁴ See Appendix A.

²⁵ See Appendix A.

IV. Extra-Contractual Claims

In addition to the fines and penalties that may be assessed by various states for failure to comply with insurance regulations or statutes, there is also potential exposure for breach of the implied covenant or duty of good faith and fair dealing. The law in most, although not all states, is that the covenant of good faith and fair dealing is implied by law in every contract.²⁶ The covenant of good faith and fair dealing has been interpreted to expand or clarify the language of a contract to effectuate the reasonable expectations of the party to the performance of that contract.²⁷

Recognition of the implied duty of good faith and fair dealing was the first step for many jurisdictions in the recognition of the tort of bad faith. A history of bad faith is easily traced by following the emergence of case law in California.

The first California cases to recognize bad faith arose out of suits by third parties to the insurance contract, such as in a situation where an injured party sues the property owner under the owner's premises liability coverage. These early cases arose from the failure of the insurer to settle the case within policy limits. Under a claim for breach of contract, the insurer could only be held liable for the contractual damages that would have been the policy limit and other foreseeable damages. Hence, the insurer theoretically could refuse to settle and expose the insured to damages in excess of the policy limits, while the insurer only faced exposure for the contractual policy limits.

In the case of *Communale v. Traders in General Insurance Co.*,²⁸ the court held the insurer liable for breach of the implied covenant and stated that "the implied obligation of good faith and fair dealing requires the insurer to settle in an appropriate case although the express terms of the policy do not impose such a duty."²⁹ The court further stated in dictum that such a refusal to settle has generally been treated as a tort.³⁰ Nevertheless, the recovery allowed was based on a contractual measure of damages.³¹

This led to the case of *Crisci v. Security Insurance Co.*,³² where the court, relying on the dictum of *Communale*, imposed tort liability for financial losses and emotional distress resulting from the wrongful refusal of the insurer to settle.³³ Just three years later, the court followed the same theory in first-party cases. A first-party case is one in which the insured directly sues the insurer for a loss personally suffered by the insured. In *Fletcher v. Western National Life Insurance Co.*,³⁴ the court stated that the disability

²⁶ RESTATEMENT (SECOND) CONTRACTS § 205 ("every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement").

²⁷ Thomas J. Casamassima et al., *Extra-Contractual Damages*, in THE LAW OF SURETYSHIP 393, 400 (Edward G. Gallagher, ed., 2d ed. 2000).

²⁸ 328 P.2d 198 (Cal. 1958).

²⁹ *Id.* at 200.

³⁰ *Id.* at 201.

³¹ *Id.* at 203.

³² 426 P.2d 173 (Cal. 1967).

³³ *Id.*

³⁴ 89 Cal. Rptr. 78 (Cal. Ct. App. 1970).

carrier's actions were "tortuous" as a breach of the implied covenant of good faith and fair dealing.³⁵

In *Gruenberg v. Aetna Insurance Co.*³⁶ the insurer wrongfully accused the insured of arson to avoid paying out on its fire insurance policy. The fire policy and payment was an obligation imposed by law. By failing to abide by the law, the breach gave rise to contractual damages or otherwise stated the coverage benefits under the policy, as well as extra-contractual damages, which are the consequential damages from the tortuous breach.³⁷

Finally, the ever-encroaching wave of bad faith cases in California receded with *Austero v. National Casualty Co.*³⁸ The court held that only insureds or beneficiaries of the insurance contract could bring suit for damages for the wrongful withholding of policy benefits.³⁹ This ruling eliminated a direct cause of action by a third party.

V. Common Law and Statutory Bad Faith

In most states, insurance bad faith has emerged through common law. However, in several states where the courts have refused to recognize a cause of action for insurance bad faith, the legislatures have passed statutes providing for insurance bad faith damages. In *D'Ambrosio v. Pennsylvania National Mutual Casualty Insurance Co.*,⁴⁰ the Pennsylvania court refused to recognize a common law cause of action for bad faith. In response, the Pennsylvania legislature created a statutory cause of action that permitted the recovery of damages in the amount of the claim, plus interest on the claim amount at prime rate plus three percent from the date the claim was made, plus court costs, attorneys' fees and punitive damages.⁴¹ Other legislatures have chosen to enact similar legislation to regulate recovery against insurers for failure to timely pay insurance benefits.⁴²

In states where there is a statute governing recovery for bad faith practices, the statute or regulation may also provide for penalties. Tennessee, for example, permits an insured to recover actual damages if the insured suffers a loss and the insurer refuses to pay the claim within sixty days after a demand is made.⁴³ In Tennessee the insured may only recover actual damages and not tort damages for emotional distress or punitive damages.⁴⁴ But in Tennessee the insured may also recover a penalty in an amount not to exceed twenty-five percent of the loss.⁴⁵ Georgia law similarly provides that only actual

³⁵ *Id.* at 401.

³⁶ 510 P.2d 1032 (Cal. 1973).

³⁷ *Id.* at 1040.

³⁸ 148 Cal. Rptr. 653 (Cal. Ct. App. 1978).

³⁹ *Seretti v. Superior Nat'l Ins. Co.*, 84 Cal. Rptr. 2d 315 (Cal. Ct. App. 1999).

⁴⁰ 431 A.2d 966 (Pa. 1981).

⁴¹ 42 PA. CONS. STAT. ANN. § 8371 (2004).

⁴² ARK. CODE ANN. § 23-79-208 (Michie 2002); GA. CODE ANN. § 33-4-6 (2002); IDAHO CODE § 41-1839 (Michie 2002); MICH. COMP. LAWS § 500.2006 (2002); N.C. GEN. STAT. § 6-21.1 (2002).

⁴³ TENN. CODE ANN. § 56-7-105 (2002).

⁴⁴ *Id.*

⁴⁵ *Id.*

damages may be recovered and does not provide for the recovery of consequential tort damages.⁴⁶ However, like Tennessee, Georgia also provides for a penalty not to exceed fifty percent of the loss or \$5000, whichever is greater.⁴⁷

As in Pennsylvania, some states permit the recovery of attorneys' fees in a tort action, which, under the American Rule, usually are not recoverable unless provided for by contract or statute.⁴⁸ Idaho law also provides that, if a claim is not paid within thirty days of the receipt of the proof of loss, the insured may recover attorneys' fees in a subsequent bad faith lawsuit.⁴⁹

VI. Bad Faith and the Unfair Claims Practices Act

In many jurisdictions, insureds may assert claims against fidelity insurers, both for causes of action for common law bad faith and for violations of the state's Unfair Claims Settlement Practices Act. The two causes of action often are separate and distinct.⁵⁰ Thus, it is theoretically possible in some states to pursue a bad faith action in the courts while simultaneously pursuing an administrative complaint and penalty with the state's insurance regulatory office. Similarly, in some states it is possible for the insured to assert a private cause of action, based on the violation of the fair claims settlement regulations, against the insurer. On the other hand, some states, like California, have made it clear that there is no private cause of action based on a violation of the insurance fair claims settlement regulations.⁵¹

A distinction to be drawn between a cause of action for bad faith and a violation of the Unfair Claims Settlement Practices Act is the nature of the acts themselves. An insurer may be liable for violation of the Unfair Claims Settlement Practices Act if it fails to timely acknowledge a claim or accept or deny coverage, if deadlines are not met after completion of investigation or a proof of loss is submitted.⁵² Thus, the Unfair Claims Settlement Practices Act may be violated through inadvertence or nonfeasance and does not require evidence of the mental state of the insurer. Bad faith is more concerned with whether the insurer was acting reasonably.⁵³ An action for bad faith requires the insured to prove the insurer acted recklessly or intentionally in handling the insured's claim.⁵⁴

Another important distinction to be drawn between bad faith and breach of the Unfair Claims Settlement Practices Act is that the violations of the Unfair Claims Practices Act focus on the process used by the claim handler in receiving, investigating,

⁴⁶ GA. CODE ANN. § 33-4-6 (2002).

⁴⁷ *Id.*

⁴⁸ 42 PA. CONS. STAT. ANN. § 8371 (2004).

⁴⁹ IDAHO CODE § 41-1839 (2002).

⁵⁰ *See* Appendix A.

⁵¹ *Moradi-Shalal v. Fireman's Fund Ins. Co.*, 46 Cal. 3d 287 (1988).

⁵² *See* Appendix A.

⁵³ *Pioneer Chlor. Alkali Co., Inc. v. Nat'l Union Fire Ins. Co.*, 863 F. Supp. 1237 (D. Nev. 1994).

⁵⁴ *William A. Downing & Sam H. Poteet, Jr., Bad Faith and Unfair Claim Handling Practice Issues*, IX FID. L.J. 51, 67 (2003).

and resolving or otherwise disposing of the case.⁵⁵ Practitioners in the insurance industry, recognizing this distinction, stated:

Bad faith does not focus on the reasonableness of the conduct but involves an absence of reason in handling the claim. [An] action for bad faith does not focus on the manner in which the insurer processes a claim. Different from an action for bad faith, an action for unfair claims practices focuses on the manner in which the insurer handled the claim and approached investigation and settlement.⁵⁶

To bring a cause of action for violation of the Unfair Claims Settlement Practices Act, the insured must show that the insurer violated one of the provisions. The Unfair Claims Settlement Practices Act requires a showing that the violation of the act by the insurer was committed “with such frequency as to indicate a general business practice.”⁵⁷ Thus, an action for violation of the Unfair Claims Settlement Practices Act must show that the insurer engaged in a pattern of conduct. If the activity only occurred one time, the insured may not have a successful cause of action under the Unfair Claims Settlement Practices Act. Unlike the Unfair Claims Settlement Practices Act cause of action, the bad faith cause of action only requires proof that the insurer acted in bad faith in handling a single claim.

VII. Overview of Judicial Precedent in the Arena of Bad Faith

This section addresses court decisions involving claims for bad faith, a common law tort, as well as the treatment given to claims made under various state Unfair Claims Settlement Practices⁵⁸ statutes. With respect to the treatment given fidelity bonds, it is worthy of note that the majority of jurisdictions treat fidelity insurers similarly to liability insurers in the application of their respective laws governing bad faith and UCSP statutes.⁵⁹ However, it is particularly important for both legal practitioners and claim handlers to research the particular jurisdiction in which the claim is brought, as some jurisdictions apply more stringent standards in determining alleged bad faith and UCSP violations against first-party insurers. For example, in New York punitive damages may only be recovered against a first-party insurer when an insurer “breaches its duty of good faith by refusing to pay, or delaying payment of, a claim only upon proof of such morally culpable conduct or wanton dishonesty as to imply criminal indifference to civil obligations.”⁶⁰ Moreover, at least one state, Tennessee, has enacted a statute that expressly applies to fidelity bonds and caps liability for claims asserted thereunder to not more than “25% on the liability for the loss.”⁶¹ Still, other states have enacted statutes

⁵⁵ See Appendix A.

⁵⁶ *Id.*

⁵⁷ UNFAIR CLAIMS SETTLEMENT PRACTICES Act § 4, *supra* note 5, at 900-2.

⁵⁸ Hereinafter UCSP.

⁵⁹ *Transamerica Premier Ins. Co. v. Brighton School Dist.* 27J, 940 P.2d 348, 352 (Colo. 1997); *Suver v. Personal Serv. Ins. Co.*, 462 N.E.2d 415, 417 (Ohio 1984). See also *Loyal Order of Moose Lodge 1392 v. Int’l Fid. Ins. Co.*, 797 P.2d 622, 628 (Alaska 1990); *Dodge v. Fid. & Dep. Co. of Md.*, 778 P.2d 1240, 1243 (Ariz. 1989).

⁶⁰ See generally 71 N.Y. JUR. 2d *Insurance* § 2140; see also *Rocanova v. Equitable Life Assur. Soc. of U.S.*, 634 N.E. 940 (N.Y. 1994).

⁶¹ TENN. CODE ANN. § 56-7-105(a).

limiting awards of punitive damages claims in insurance claims, including Arkansas and Georgia.⁶² Being mindful of the foregoing considerations, the overview of reported decisions in this article is intended to provide a “broad flavor” of the types of bad faith claims typically litigated.

**A. BAD FAITH WHERE THE COVERAGE DEFENSE IS ONE OF
FIRST IMPRESSION FOR THE COURT**

In *First National Bank of Louisville v. Lustig*,⁶³ the insurer appealed the federal district court’s order awarding the insured bank judgment on its claims for coverage under a fidelity bond, together with \$5.85 million for the insurer’s bad faith.⁶⁴ The underlying dispute involved over \$20 million in losses sustained by the bank due to the alleged fraudulent activities of a bank employee in extending loans on poor real estate financing risks.⁶⁵ The insured presented evidence that the bank employee had changed numbers in his credit analysis to make them conform to known accepted risk tolerances, while the insurer’s investigation revealed that one of the employee’s supervisors was aware, on at least one occasion, that the employee was engaged in such activity.⁶⁶ The insurer also presented evidence that the bank was also aware that the employee had closed two of the failed loans outside of approval guidelines, although he was never disciplined and subsequently given a bonus and a promotion.⁶⁷ After the employee had resigned from the bank, it was discovered that he had been receiving payments from the guarantor of the subject loans, Loretta Lustig, and that he had become Lustig’s business partner shortly after his resignation from the insured.⁶⁸

The insurer was not able to commence its claim investigation for some fifteen months after the insured provided notice due to an ongoing federal criminal investigation of the employee. After such time, the insurer conducted “a few interviews,” retained outside counsel, and eventually offered the insured \$5.5 million in settlement.⁶⁹ The bank refused the offer; the insurers formally denied the claim for, among other things, lack of manifest intent and prior knowledge of dishonesty; and the insured commenced legal action.⁷⁰

Applying Kentucky law, the *Lustig* court outlined the following elements that an insured must prove to succeed on a tort claim of bad faith: (1) the insurer is obligated to provide coverage under the terms of the policy; (2) the insurer had no reasonable basis for denying coverage for the claim; and (3) the insurer knew there was no reasonable basis to deny the claim or the insurer acted with reckless disregard for whether a basis to deny the claim existed.⁷¹ In reversing the district court’s bad faith award, the Fifth

⁶² ARK. CODE ANN. § 23-70-208 (Michie 2002); GA. CODE ANN. § 33-4-6 (2002).

⁶³ 96 F.3d 1554 (5th Cir. 1996).

⁶⁴ *Id.* at 1558.

⁶⁵ *Id.* at 1559.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 1560.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 1564 (citing *Wittmer v. State Farm Mut. Auto Ins. Co.*, 864 S.W.2d 885, 890 (Ky. 1993)).

Circuit noted that the definition of “manifest intent” was one of first impression for the Kentucky courts and that other legal precedent existed in support of the insurer’s position as to render the insurer’s denial reasonable.⁷²

Similarly, in *Stop & Shop Companies Inc. v. Federal Insurance Co.*,⁷³ after the insured submitted a claim for loss due to embezzlement by its tax service provider, its commercial crime insurer denied coverage on the basis that the insured’s loss was “indirect” and was excluded due to the act of an “authorized representative.” In the resulting bad faith action, the court found in favor of the insurer, noting the complexity of the transactions at issue and the insurer’s reliance on the court’s prior decision concerning a different form of policy containing language similar to that in the insured’s bond.⁷⁴

B. THE EFFECT OF BEING VINDICATED ON THE MERITS OF A COVERAGE DEFENSE

Most, if not all UCSP statutes, as well as the elements of a tort claim for bad faith, place a burden on the insured to demonstrate that the insurer’s refusal to pay the claim was “unreasonable.”⁷⁵ Therefore, it naturally follows in those instances that, where a court awards a declaratory judgment in favor of an insurer, any attendant bad faith or statutory claim under a UCSP will fail as well. In *Performance Autoplex II Ltd. v. Mid-Continent Cas. Co.*,⁷⁶ the insured submitted a claim to its commercial crime insurer after discovering an ongoing fraud in its automobile dealership. The insurer denied coverage under the policy’s “inventory” and “salary” exclusion and noted that the loss was not “direct” as required for coverage. The insured brought a bad faith action, alleging breach of contract claims and violations of the Texas Insurance Code.⁷⁷ After concluding that the insurer’s denial of the claim was proper in all respects, the court then focused on the insured’s claim under Article 21.21 of the Texas Insurance Code, Texas’ bad faith statute.⁷⁸ In dismissing the insured’s claim for statutory bad faith, the court emphasized that a cause of action only exists where there is “an absence of a reasonable basis to deny coverage.”⁷⁹

Notwithstanding the holding in *Performance*, claims handlers should pay particular attention to the time requirements imposed by the UCSP statutes in communicating with their insureds, as failure to follow these requirements may serve to waive legitimate coverage defenses.⁸⁰

⁷² *Id.* at 1567-68.

⁷³ 946 F. Supp. 99 (D. Mass. 1996), *rev’d on other grounds*, 136 F.3d 71 (1st Cir. 1998).

⁷⁴ *Id.*

⁷⁵ *See* Appendix A.

⁷⁶ 322 F.3d 847, 861 (5th Cir. 2003).

⁷⁷ *Id.* at 854.

⁷⁸ *Id.* at 861.

⁷⁹ *Id.*; *see also* Higginbotham v. State Farm Mut. Auto. Ins. Co., 103 F.3d 456, 459 (5th Cir. 1997).

⁸⁰ Hartford Ins. Co. v. County of Nassau, 389 N.E.2d 1061 (N.Y. 1979).

C. STATE CONSUMER PROTECTION STATUTES AND THEIR RELATIONSHIP TO BAD FAITH CLAIMS

It is often the case that an insurer will attempt to couple its claims for tortious and statutory bad faith with a cause of action under a state's consumer protection statute.⁸¹ However, courts have generally placed difficult hurdles on these types of claims where an insured attempts to side-step a state's bad faith statutes. In *Persian Galleries Inc. v. Transcontinental Insurance Co.*,⁸² the insured brought suit against its all-risk insurer for its denial to cover a claim arising from a burglary of the insured's business. After a trial, the United States District Court for the Eastern District of Tennessee entered judgment in favor of the insured. The insurer appealed, and the insured cross-appealed, claiming that the trial court's dismissal of its claim under the Tennessee Consumer Protection Statute⁸³ was in error. The Court of Appeals for the Sixth Circuit affirmed the trial court in all respects, holding, among other things, that the insured could not maintain a cause of action under the TCPA where all allegations against the insurer were actionable exclusively under Tennessee's bad faith statute.⁸⁴

The *Persian Galleries* court went on to recite the history of the TCPA's application to the insurance industry as follows:

In *Chandler v. Prudential Ins. Co.*, 715 S.W.2d 615 (Tenn. App. 1986), after plaintiff's disability benefits had been terminated, she charged the defendant insurance company with tortious bad faith and breach of the TCPA. The Tennessee Court of Appeals concluded that the tort of bad faith was not cognizable in Tennessee between an insurer and an insured, but rather that the bad faith claims against insurers by the Insured. *Chandler*, 715 S.W.2d at 621. The court in *Chandler* also found Plaintiff's TCPA claim to be inactionable because it was anchored in defendant's alleged bad faith termination of plaintiff's benefits and, as such, the exclusive remedy was the bad faith penalty statute contained within the insurance code. *Chandler*, 715 S.W.2d at 624-25.⁸⁵

However, it should be noted that Tennessee courts have distinguished deceptive practices of an insurance company in the marketing and sale of insurance products from bad faith refusals to process a claim, concluding that the former are actionable under the TCPA while the latter are not.⁸⁶

New York courts faced with claims under that state's consumer protection statute, General Business Law section 349, have reached conclusions similar to the holding in

⁸¹ *Persian Galleries, Inc. v. Transcontinental Ins. Co.*, 38 F.3d 253, 254 (6th Cir. 1994); *New York Univ. v. Continental Ins. Co.*, 662 N.E.2d 763 (N.Y.1995). See also *Rice v. Van Wagnoneer Co.*, 738 F. Supp. 252 (M.D. Tenn. 1990); *Rosenberg & Estis, P.C. v. Chicago Ins. Co.*, No. 600938-02, 2003 WL 2166580, *5 (N.Y. Sup. Ct. July 11, 2003).

⁸² 38 F.3d at 255.

⁸³ Hereinafter TCPA.

⁸⁴ *Id.* at 253.

⁸⁵ *Id.* at 259.

⁸⁶ *Id.* at 260 (citing *Skinner v. Steele*, 730 S.W.2d 335 (Tenn. Ct. App. 1987)).

Persian Galleries.⁸⁷ In *New York University*, the insured made a claim under its commercial crime policy for losses attributable to inventory thefts in its bookstore. The insurer subsequently denied under the policy's "inventory exclusion," and the insured commenced suit for, among other things, breach of the covenant of good faith and fair dealing and under section 349.⁸⁸

While the court also set forth standards for reviewing the insured's tort claim for bad faith,⁸⁹ it noted that the insured's claim did not meet the standard set forth in that statute of claiming wrongful conduct that was consumer oriented.⁹⁰ In so doing, the court placed particular emphasis on the parties' respective bargaining positions in negotiating the crime policy:

[We] stated that parties claiming the benefit of the section must, at the threshold, charge conduct that is consumer oriented. The conduct need not be repetitive or recurring but defendant's acts or practices must have a broad impact on consumers at large.

Plaintiff has not met the threshold requirement because defendant's acts in selling this policy and handling the claim under it do not constitute consumer-oriented conduct. The parties were a major university acting through its director of insurance, and a large national insurance company. The policy was not a standard policy, although it contained standard provisions, but was tailored to meet the purchaser's wishes and requirements.⁹¹

It is well known to legal practitioners and claims handlers that the claims presenting the greatest exposures are often presented by large corporations under policies that are specifically tailored after lengthy negotiations during the underwriting process. Therefore, decisions, such as that in *New York University* and its progeny, should be strongly emphasized by an insurer in those circumstances where an element of any legal claim by an insured has its genesis in the alleged disparate bargaining power between the parties to a contract of commercial insurance.

D. STANDARDS AND DECISIONS ON THE TORT OF BAD FAITH

In defending any action where the tort of bad faith is asserted, usually as a count for the breach of the covenant of good faith and fair dealing, states have long been divided in their treatment of such claims against insurers. The vast majority of states have adopted common law, allowing insureds to pursue traditional tort remedies, such as

⁸⁷ *New York Univ. v Continental Ins. Co.*, 662 N.E.2d 763, (N.Y. 1995); *see also* Rosenberg & Estis, P.C. v. Chicago Ins. Co., No. 600938-02, 2003 WL 2166580, *5 (N.Y. Sup. Ct. July 11, 2003).

⁸⁸ *New York Univ.*, 622 N.E. 2d at 770.

⁸⁹ *See* sources cited *supra* notes 41-44.

⁹⁰ *New York Univ.*, 662 N.E. 2d at 770.

⁹¹ *Id.* (citations omitted).

punitive damages and emotional distress.⁹² Other states, however, have indicated that their UCSP statute is the exclusive remedy for aggrieved insureds.⁹³

States allowing a tort cause of action for bad faith usually have done so under the impression that “a special relationship arises out of the parties’ unequal bargaining power . . . which would allow unscrupulous insurers to take advantage of their insureds’ misfortune in bargaining for settlement or resolution of claims.”⁹⁴ While the reasoning set forth by the court in *New York University* calls into question this premise for allowing a tort of bad faith against first-party insurers,⁹⁵ most states nonetheless allow fidelity insurers to be subject to tort claims, independent of any claims made under the UCSP statutes. In Texas, for example, an insured must demonstrate that (1) no reasonable basis existed for denying the claim; and (2) the insurer knew or should have known that there was no reasonable basis for denying coverage.⁹⁶

In applying the foregoing elements to a claim for bad faith, the *Pioneer* court was mindful that its decision should not be based on the insurer’s success or failure on the merits of the denial. Rather, the decision should focus whether there was a genuine controversy as to coverage on which reasonable persons could differ.⁹⁷ Ultimately, the *Pioneer* court held that the insurer was liable under its boiler machinery policy, although its denial was reasonable, based on the fact that Texas had not yet defined the policy language at issue and *Pioneer*’s denial was based on the construction of such language provided by other courts.⁹⁸

States such as New York do not allow private causes of action against an insurer for common law bad faith, absent a showing of egregious tortious conduct directed at the insured claimant.⁹⁹ The New York Court of Appeals has been very candid in noting that punitive damages are not recoverable for an ordinary breach of contract, as their purpose is not to remedy private wrongs but to vindicate public rights.¹⁰⁰ Moreover, an insured cannot convert a breach of contract claim into one of bad faith merely by alleging that the

⁹² See *Turner Constr. Co. v. First Indem. of Am. Ins. Co.*, 829 F. Supp. 752 (E.D. Pa. 1993); *Rowland v. Safeco Ins. Co. of Am.*, 634 F. Supp. 613 (M.D. Fla. 1986); *Pickett v. Lloyd’s*, 621 A.2d 455 (N.J. 1992); *Curry v. Fireman’s Fund Ins. Co.*, 784 S.W.2d 176 (Ky. 1989); *Aetna Cas. & Sur. Co. v. Broadway Arms Corp.*, 664 S.W.2d 463, 465 (Ark. 1984); *Chavers v. Nat’l Sec. Fire & Cas. Co.*, 405 So. 2d 1, 6 (Ala. 1981); *Noble v. Nat’l Am. Life Ins. Co.*, 624 P.2d 866 (Ariz. 1981); *Grand Sheet Metal Prod. Co. v. Protection Mut. Ins. Co.*, 375 A. 2d 428 (Conn. 1977); *Cirsci v. Security Ins. Co.*, 426 P.2d 173 (Cal. 1967).

⁹³ These states include Louisiana, Maine, Maryland, Michigan Minnesota, New Hampshire, New York, Oregon, and Utah.

⁹⁴ *Pioneer Chlor. Alkali Co., Inc. v. Royal Indem. Co.*, 879 S.W.2d 920, 931 (Tex. Ct. App. 1994) (quoting *Arnold v. Nat’l County Mut. Fire Ins. Co.*, 725 S.W.2d 165 (Tex.1987)).

⁹⁵ See *supra* text accompanying note 32.

⁹⁶ *Pioneer*, 879 S.W.2d at 939.

⁹⁷ *Id.* at 939-40; see also *Medical Care America, Inc. v. Nat’l Union Fire Ins. Co.*, 341 F.3d 415 (5th Cir. 2003) (holding that D&O insurer did not act in bad faith where there was a bona fide coverage dispute).

⁹⁸ *Pioneer* 879 S.W. 2d at 939.

⁹⁹ *Rocanova v. American Int’l Underwriters Ins. Co.*, 634 N.E.2d 940 (N.Y. 1994).

¹⁰⁰ *Id.* at 613.

insurer engaged in a pattern of bad faith conduct so as to suggest a public wrong.¹⁰¹ Finally, New York has also held that an insured has no private right of action under its Unfair Claims Practices Act.¹⁰² While New York is in the minority in its approach to the assertion bad faith claims by insureds, its application of the foregoing principals are indeed strict.¹⁰³

VIII. *The Changing Landscape of Punitive Damage Claims*

Insurers have long winced at the idea of being subject to extraordinarily high punitive damage awards. Such awards have become legendary in the insurance industry and have often presented viable threats to an insurer's profitability. In *Capstick v. Allstate Insurance Co.*,¹⁰⁴ the Tenth Circuit Court of Appeals, applying Oklahoma law, affirmed a \$2 million award for punitive damages over underlying contractual damages in the amount of \$1,500 after the insurer was found to have, among other things, treated the claim suspiciously from notice and required the insured to submit numerous documents having nothing to do with the loss.¹⁰⁵ A similar decision was rendered in *Dees v. American Fire Insurance Co.*,¹⁰⁶ where the Supreme Court of Montana affirmed a punitive damage award of \$300,000 on an underlying claim for \$12,679 under the belief that the award was "large enough to get the company's attention."

However, a recent decision by the United States Supreme Court, *State Farm Mutual Automobile Insurance Co. v. Campbell*,¹⁰⁷ calls into question the future of extraordinary punitive damage awards. In *Campbell*, the insured sued its automobile insurer after a wrongful death action was asserted against the insured and its insurer resulting from an automobile accident under which the insured was clearly liable.¹⁰⁸ After the insurer refused to accept a settlement offer for the policy limit of \$50,000, it advised the insured that he was duly represented in the resulting litigation, that there was no need to procure outside counsel, and that the insured's assets were safe.¹⁰⁹ The trial court returned judgment against the insured in the sum of \$185,549, and the plaintiffs in that action tolled their collection efforts against the insured during the pendency of the insured's bad faith action against its insurer.¹¹⁰ The ensuing bad faith litigation resulted in a \$1 million award for compensatory damages and an astounding \$145 million punitive damage award against State Farm.¹¹¹

¹⁰¹ *Id.* at 615.

¹⁰² *Id.* at 614-15.

¹⁰³ See generally *New York Univ. v. Continental Ins. Co.*, 622 N.E. 2d 763 (N.Y. 1995); *Rosenberg & Estis, P.C. v. Chicago Ins. Co.*, No. 600398/02, 2003 WL 21665680 (N.Y. Sup. Ct. July 11, 2003); *Carlisle Ins. Co. v. Twin County Recycling Corp.*, No. 11702/00, 2001 WL 856472 (N.Y. Sup. Ct. May 21, 2001).

¹⁰⁴ 998 F.2d 810 (10th Cir. 1993).

¹⁰⁵ *Id.* at 814-16.

¹⁰⁶ 861 P.2d 141 (Mont. 1993).

¹⁰⁷ 123 S. Ct. 1513 (2003).

¹⁰⁸ *Id.* at 1518.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 1519.

Both parties appealed, and the appellate court reduced the punitive damage award. On another appeal to the Utah Supreme Court, the punitive damage award was reinstated in full¹¹² after that court analyzed the punitive damage award under the principals espoused in *BMW of North America, Inc. v. Gore*.¹¹³ These principals are as follows: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.¹¹⁴

The Supreme Court went on to comment that State Farm's handling of the claim did not merit praise and that the most important consideration in awarding punitive damages would be the reprehensibility of the defendant's conduct.¹¹⁵ After reviewing the record concerning State Farm's conduct, the court refused the opportunity to provide a bright-line test for the reasonability of punitive damages awards but instead provided the following guideline that will likely have a significant impact on future punitive damages awards:

[W]e have consistently rejected the notion that the constitutional line [for punitive damage awards] is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive award"). We decline again to impose a bright-line ratio which a punitive damages award cannot exceed. Our jurisprudence and the principles it has now established demonstrates, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.¹¹⁶

As odd as it may seem to insurers, California courts have been quick to adopt the approach set forth by *Campbell*. Noting dicta from the *Campbell* decision, the court in *Diamond Woodworks, Inc. v. Argonaut Insurance Co.*¹¹⁷ suggested that punitive damages awards should not exceed a four-to-one ratio.¹¹⁸ In *Diamond*, the court reduced a \$5.5 million punitive damages award on an underlying claim of \$404,270 on a workers' compensation insurance policy to \$1 million.¹¹⁹ Similarly, in *Textron Financial Corp. v. National Union Fire Insurance Co. of Pittsburgh, Pa.*,¹²⁰ the California court, on its second remand from the United States Supreme Court, reduced a \$10 million punitive

¹¹² *Id.*

¹¹³ 517 U.S. 559 (1975).

¹¹⁴ *Campbell*, 538 U.S. at 1521.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 1524 (citation omitted).

¹¹⁷ 135 Cal. Rptr. 2d 736 (Cal. Ct. App. 2003).

¹¹⁸ *Id.* at 760-01.

¹¹⁹ *Id.* at 762.

¹²⁰ 118 Cal. App. 4th 1061 (Cal. Ct. App. 2004).

damages award that was some ten times greater than the compensatory verdict, to \$1.7 million to comport with the requirements of due process.¹²¹

However, in *Hollock v. Erie Insurance Exchange*¹²² the Superior Court of Pennsylvania, noting *Campbell*, held that a punitive damages award of \$2.8 million, some ten times the amount of compensatory damages, was appropriate. The *Hollock* decision arose from an underlying claim for uninsured motorist coverage under the plaintiff's auto insurance policy. The trial judge made 169 separate findings of fact, of which he highlighted the following five as "objective illustration[s] of [the insurer's] disingenuous attempt to handle": (1) the adjuster misled the insured's counsel for over a year regarding the correct amount of coverage; (2) the reserve set by the insured was an arbitrary without any rational basis; (3) the insurer failed to reconsider the value of the claim after receiving information that should have caused it to do so; (4) the insured failed to follow with the insured's employer concerning representations about the insured's limitations after the accident; and (5) the adjuster requested additional documents and information from the insured during the end of the investigation as a ruse to conduct private surveillance of the insured.¹²³ Moreover, the court allowed the jury to consider the insurer's conduct during the bad faith litigation itself in its punitive damages award—something which drew significant criticism from the dissenting justices and other legal scholars.¹²⁴

In harmonizing its decision with the requirements set forth in *Campbell*, the *Hollock* court distinguished the ratio between the punitive damages award and the jury's compensatory award as follows:

Unlike the compensatory award in *Campbell* which permitted recovery for emotional distress, the compensatory award in this case did not include any punitive element. The punitive damages here of \$2.8 million represent a 10 to 1 ratio over the compensatory award, which just barely exceeds the "single digit ratio" referred to in *Campbell*. Considering Erie's reprehensible conduct, its significant wealth, and the limited compensatory award, we conclude that due process is not violated in this case as a result of the disparity between actual or potential harm suffered by the plaintiff and the punitive damage award.¹²⁵

Notwithstanding the decision in *Hollock*, it certainly appears that *Campbell* will prove significant in curbing excessive punitive damages awards found in cases like

¹²¹ *Id.* at 1086; *see also* Hangarter v. Provident Life Acc. Ins. Co., 373 F.3d 998, 1015-16 (2004) (noting a punitive damages award ratio of 2.6 to 1 was well within the constitutional limits established in *Campbell*).

¹²² 842 A.2d 409 (Pa. Super. Ct. 2004).

¹²³ *Id.* at 413-14.

¹²⁴ *Id.* at 422-23 (Klein, J., dissenting); *see also* John J. Pappas & Andrew L. Patten, *Litigation Conduct as Evidence of Bad-faith and the Standard of Deceit*, MEALY'S LIT. REPORT, Vol. 17, Issue #22; *but see* Barefield v. DPIC Indus., Inc., 600 S.E.2d 256 (W.Va. 2000) (in addressing a certified question, court held that insurer could be held liable under the Unfair Trade Practices Act for insurer's own misconduct during bad faith litigation).

¹²⁵ *Hollock*, 842 A.2d at 421-22 (citations omitted).

Capstick and *Dees*. Insurers should be mindful, however, that claims presenting significant compensatory exposure may often expose them to large punitive damages awards in spite of the holding in *Campbell*.

IX. The Attorney-Client Privilege in Bad Faith Litigation

During the discovery phase of a bad faith lawsuit, many insurers and their defense counsel are requested to provide documents, correspondence, and information concerning their communications with counsel had both during the claims investigation and afterwards. In these circumstances, counsel and the insurer must decide whether to assert the attorney-client and/or work-product doctrine privilege. In those instances where the privilege is invoked, the insurer will ultimately bear the burden of proving its applicability.¹²⁶ Although the particular elements vary from state to state, the attorney-client privilege generally applies upon a showing that the communication originated in a confidence made to an attorney acting in his or her legal capacity for the purpose of securing legal advice or services.¹²⁷

However, the practitioner and claims handler should be mindful that many jurisdictions have adopted common law serving to modify the application of the attorney-client privilege in insurance bad faith suits.¹²⁸ One court addresses the public policy concerns necessitating such modifications as follows:

In the insurance context, to the extent that an attorney acts as a claims adjuster, claims process supervisor, or claims investigation monitor, and not as a legal advisor, the attorney-client privilege does not apply. . . . The public policy issue behind this result is that insurance companies, which are in the business of reviewing, processing and adjusting claims, should not be permitted to insulate the factual findings of a claims investigation by the involvement of an attorney to perform such work.¹²⁹

In light of the foregoing rule, some scholars have suggested that the best defense is where advice of counsel is given on a narrow legal issue, as opposed to factual investigation by the attorney, that is provided in a written opinion found in an insurer's claim file.¹³⁰

¹²⁶ *Consolidation Coal Co. v. Bucrys-Erie Co.*, 432 N.E. 2d 250 (Ill. 1982).

¹²⁷ *Continental Cas. Co v. Marsh*, No. 01 C 0160, 2004 WL 42364, *1 (N.D. Ill. Jan. 6, 2004); *see also* *Admiral Ins. v. United States Dist. Court*, 881 F.2d 1486 (9th Cir. 1989).

¹²⁸ *Continental*, 2004 WL 42364, at *2; *Boone v. Vanliner Ins. Co.*, 744 N.E.2d 154 (Ohio 2001); *but see* *State ex rel. Allstate Ins. Co. v. Madden*, No. 31392, 2004 WL 1144057 (W.Va. May 18, 2004) (noting that an insurer can use the protection of the attorney-client privilege if it can demonstrate requisite elements).

¹²⁹ *Continental*, 2004 WL 42364, at *2 (quoting *Chicago Meat Processors, Inc. v. Mid-Century Ins. Co.*, No. 95 C 4277, 1996 WL 17148, at *2 (N.D. Ill. Apr. 10, 1996)).

¹³⁰ *Id.* at 1559.

X. Conclusion

It should be obvious to the fidelity insurance practitioner that fair claims handling and good faith are required in resolving insurance claims. As may be equally obvious, the consequences of non-compliance with such standards may be severe. Therefore, it is important to the claim professional to be aware of the standards to be applied in the handling of each insurance claim.

APPENDIX A

State and Website	Number of Days to Acknowledge Claim	Number of Days to Pay/Deny Claim After Proof of Claim	Unfair Claims Settlement Practices
Alabama Department of Insurance http://aldoi.gov	No requirements	No requirements	ALA. CODE § 27-12-24 (2001)
Alaska Division of Insurance http://wwdced.state.ak.us/insurance	10 working days; ALASKA ADMIN. CODE tit. 3, § 26.040	30 working days; ALASKA ADMIN. CODE tit. 3, § 20.050	ALASKA ADMIN. CODE tit. 3, § 6.2.6.010
Arizona Department of Insurance http://www.id.state.az.us	10 working days; ARIZ. ADMIN. CODE § 20-801(E)(I)	15 days; ARIZ. ADMIN. CODE § 20-6-801(G)(1)(a)	ARIZ. REV. STAT. § 20-461
Arkansas Insurance Department http://www.Arkansas.gov/insurance	15 days; 20 days to send P.O.C. Form; ARK. RULES & REGS, tit. 43, § 7	45 days; ARK RULES & REGS, tit. 43, § 8	ARK. CODE ANN. §§ 23-66-206 & 23-63-107
California Division of Insurance http://www.insurance.ca.gov	15 days; CAL. CODE REGS. tit. 10, § 2695.5	CAL. CODE REGS. tit. 10, § 2695	CAL. CODE REGS. tit. 10, §§ 2695 & 790.03(h)
Colorado Division of Insurance http://www.dora.state.co.us/insurance	Promptly; COL. REV. STAT. § 10-3-1104(b)	Promptly; COL. REV. STAT. § 10-3-1104(b)	COL. REV. STAT. § 10-3-1104(1)(h)
Connecticut Insurance Department http://www.ct.gov/cid	Promptly; CONN. GEN. STAT. § 38a-816	Promptly; CONN. GEN. STAT. § 38a-816	CONN. GEN. STAT. § 38a-816(6) (1999)
Delaware Insurance Department http://www.state.de.us/inscom	15 days	30 days from P.O.C.	DEL. CODE ANN. tit. 18, § 2304(16)
District of Columbia	Promptly	Promptly	D.C. CODE ANN. § 31-2231.17

APPENDIX A

State and Website	Number of Days to Acknowledge Claim	Number of Days to Pay/Deny Claim After Proof of Claim	Unfair Claims Settlement Practices
Florida Department of Financial Services http://www.fldfs.com	Promptly; FLA. STAT. ch. 626.9541(1)(i)(3)(6)	Pay, deny, or notify invest is on-going within 30 days of POL; FLA. STAT. ch. 626.9541(1)(i)(3)(e)	FLA. STAT. ch. 626.9541(i)
Georgia Department of Insurance http://www.gainsurance.org	Promptly; GA. CODE ANN. § 33-6-34(2)	Reasonable time; GA. CODE ANN. § 33-6-34(7)	GA. CODE ANN. §§ 33-6-34 & 56-705a (1999)
Hawaii Division of Insurance http://www.state.hi.us/dcca/ins	15 working days; HAW. REV. STAT. § 431:13-103(a)(10)(B)	Promptly (30 days if coverage has been affirmed); HAW. REV. STAT. § 431:13-103(a)10F	HAW. REV. STAT. § 431:13-103
Idaho Department of Insurance http://www.doistate.id.us	Promptly; IDAHO CODE § 41-1329(2)	Promptly; IDAHO CODE § 41-1329(5)	IDAHO CODE § 41-1329
Illinois	Promptly; 215 ILCS § 5/154.6(b)	Promptly within reasonable period after POL submitted; 215 ILCS § 5/154.6(i)	215 ILCS § 5/154.6
Indiana	Promptly; IND. CODE § 27-4-1-4.5	Promptly; IND. CODE § 27-4-1-4.5	IND. CODE § 27-4-1-4.5

APPENDIX A

State and Website	Number of Days to Acknowledge Claim	Number of Days to Pay/Deny Claim After Proof of Claim	Unfair Claims Settlement Practices
Iowa Insurance Division http://www.iid.state.ia.us	Promptly; IOWA CODE ANN § 507B.4(9)(b)	Promptly within reasonable period after POL submitted; IOWA CODE ANN § 507B.4(9)(e)	IOWA CODE ANN. § 507B.4(9)
Kansas Insurance Department http://www.ksinsurance.org	10 days; KAN. ADMIN. REGS. 40-1-34(6) & Promptly; KAN. STAT. ANN. § 40-2404(a)b	15 days from POL; KAN. ADMIN. REGS. 40-134(6) & Promptly; KAN. STAT. ANN. § 40-2404(9)(e)	KAN. STAT. ANN. § 40-2404(9)
Kentucky Office of Insurance http://www.doistate.ky.us	15 days; 806 KY. ADMIN. REGS.12:095(5)(1)	Within 30 days of POL; 806 KY. ADMIN. REGS. KAR 12:095(6)(2)(a)	806 KY. ADMIN. REGS. 12:095; KY. REV. STAT. ANN. § 304.12-230
Louisiana Department of Insurance http://www.lidi.la.gov	LA. REV. STAT. ANN. § 22:1214(14)(b)	Promptly after POL; LA. REV. STAT. ANN. §§ 22:1214(14)(e) & 22-658(A)(1) (within 30 days of POL)	LA. REV. STAT. ANN. § 22:1214(14)
Maine Bureau of Insurance http://www.state.me.us/pfr/ins	Promptly; ME. REV. STAT. ANN. tit. 24-A, § 2164-D.3.B	Promptly; ME. REV. STAT. ANN. tit. 24-A, § 2164-D.3.F	ME. REV. STAT. ANN. tit. 24-A, § 2164-D
Maryland Insurance Administration http://www.mdinsurance.state.md.us	Promptly; MD. INS. CODE ANN. § 27-304	Promptly; MD. INS. CODE ANN. § 27-304	MD. INS. CODE ANN. § 27-303
Massachusetts Division of Insurance http://www.state.ma.us/doi	Promptly; MASS. GEN. LAWS ch.176D, § 3(9)(b)	Promptly; MASS. GEN. LAWS ch.176D, § 3(9)(f)	MASS. GEN. LAWS ch.176D, § 3(9)

APPENDIX A

State and Website	Number of Days to Acknowledge Claim	Number of Days to Pay/Deny Claim After Proof of Claim	Unfair Claims Settlement Practices
Michigan Office of Financial and Insurance Services http://www.michigan.gov/cis	30 days to send P.O.C.; MICH. COMP. LAWS ANN. § 500.2003(3)	60 days after proof of loss; MICH. COMP. LAWS ANN. § 500.2006(3)	MICH. COMP. LAWS ANN. § 500.2006
Minnesota Department of Insurance http://www.commerce.state.mn.us	10 business days; MINN. STAT. ANN. § 72A.201(4)(1)	30 days; MINN. STAT. ANN. § 72A.201 (4)(3)	MINN. STAT. ANN. § 72A.20
Mississippi Department of Insurance http://www.doi.state.ms.us	No requirements	No requirements	MISS. CODE ANN. § 83-35
Missouri Department of Insurance http://www.insurance.state.mo.us	No requirements	No requirements	MO. REV. STAT. § 375.1007 (2), (7)
Montana Insurance Division Http://www.sao.state.mt.us/sao/insurance/index-html	Promptly; MONT. CODE ANN. § 33-18-201(2)	Promptly after POL received MONT. CODE ANN. § 33-18-201(5) 30 working days from P.O.C.; <i>Id.</i> § 33-18-232(1)	MONT. CODE ANN. §§ 33-18-201 & 33-18-232
Nebraska Department of Insurance http://www.nol.org/home/ndoi	Reasonably promptly; NEB. REV. STAT. § 44-1540(2)	Reasonably promptly; NEB. REV. STAT. § 44-1540(8)	NEB. REV. STAT. § 44-1540
Nevada Division of Insurance http://www.doi.state.nv.us	Promptly	Promptly; NEV. REV. STAT. § 686A.301(b)	NEV. REV. STAT. § 686A.301(d)

APPENDIX A

State and Website	Number of Days to Acknowledge Claim	Number of Days to Pay/Deny Claim After Proof of Claim	Unfair Claims Settlement Practices
New Hampshire Insurance Department http://www.nh.gov/insurance	10 working days; N.H. ADMIN. R. ANN. INS. 1001.01	10 working days after claim approval; N.H. ADMIN. R. ANN. INS. 1001.02(c)	N. H. REV. STAT. § 417:4
New Jersey Department of Banking and Insurance http://www.state.nj.us/dobi/index/html	Promptly; N.J. STAT. ANN. § 17:29B-4(9)(b)	Promptly; N.J. STAT. ANN. § 17:29B-4(9)(e)	N.J. STAT. ANN. § 17:29B-4
New Mexico Insurance Division http://www.nmprc.state.nm.us/insurance	Promptly; N.M. STAT. ANN. § 59A-16-20(b)	Promptly after receipt of POL; N.M. STAT. ANN. § 59A.16-20(d); Within 45 days of POL; <i>Id.</i> § 59A.16-21(b)	N.M. STAT. ANN. § 59A.16-01
New York Insurance Department http://www.ins.state.ny.us	15 working days; N.Y. COMP. CODES R. & REGS. tit.11, § 216.4	Within 15 business days after properly executed POL; N.Y. COMP. CODES R. & REGS. tit.11, § 216.6-21(B)	N.Y. INS. LAW § 2601
North Carolina Department of Insurance http://www.ncdoi.com	30 days or face penalty; N.C. GEN. STAT. § 58-3-100(c)	Promptly after receipt of POL; N.C. GEN. STAT. § 58-3-100(b)	N.C. GEN. STAT. § 58-63-15(11)
North Dakota Insurance Department http://www.state.nd.us/ndins	Promptly; N.D. CENT. CODE § 26.1-04-03.9(b)	Reasonable time after POL; N.D. CENT. CODE § 26.1-04-03.9(d)(j)	N.D. CENT. CODE § 26.1-04-03
Ohio	///	///	///

APPENDIX A

State and Website	Number of Days to Acknowledge Claim	Number of Days to Pay/Deny Claim After Proof of Claim	Unfair Claims Settlement Practices
Oklahoma Insurance Department http://www.oid.state.ok.us	30 days; OKLA. STAT. tit. 36, § 1250.4(c)	60 days from receipt of POC; OKLA. STAT. tit. 36, § 1250.7(c)	OKLA. STAT. tit. 36, § 1250
Oregon Insurance Division http://www.cbs.state.or.us/external/ins/	Promptly; OR. REV. STAT. § 746.230(b)	Promptly; OR. REV. STAT. § 746.230(e)	OR. REV. STAT. § 46.230
Pennsylvania Insurance Department http://www.ins.state.pa.us/ins/site	Promptly; PA. STAT. ANN. tit. 40, § 1171.5(11)(ii)	Promptly after POL PA. STAT. ANN. tit. 40, § 1171.5(a)11(v)	PA. STAT. ANN. tit. 40, § 1171.5(a)(11)
Rhode Island Division of Insurance http://www.dbr.state.ri.us/insurace.html	Promptly; R.I. GEN. LAWS § 27-9.1-4(2); 10 days to send claim forms; <i>Id.</i> § 27-9.1-4(13)	Promptly; R.I. GEN. LAWS § 27-9.1-4(7)	R.I. GEN. LAWS § 27-9.1-4
South Carolina Department of Insurance http://www.doi.state.sc.us	20 days to send claimant POC or equivalent; S.C. CODE ANN. § 38-59-10	90 days from initial claim; S.C. CODE ANN. § 38-59-40(1)	S.C. CODE ANN. § 38-59-10
South Dakota Division of Insurance http://www.state.sd.us/drr2/reg/insurance	Within 30 days; S.D. CODIFIED LAWS § 58-33-67(1)	Promptly; S.D. CODIFIED LAWS § 58-33-67(4)	S.D. CODIFIED LAWS § 58-33-67
Tennessee Department of Commerce and Insurance http://www.state.tn.us/commerce/insurance/index.html	TENN. CODE. ANN. § 56-8-104 (8)(ii)	Promptly; TENN. CODE. ANN. § 56-8-104(8)(b)(iii)	TENN. CODE. ANN. § 56-8-103
Texas Department of Insurance http://www.tdi.state.tx.us	Within 15 business days; 28 TEX. ADMIN. CODE § 21.203(2)	Within reasonable time; 28 TEX. ADMIN. CODE § 21.203(2)(10)	28 TEX. ADMIN. CODE § 21.203

APPENDIX A

State and Website	Number of Days to Acknowledge Claim	Number of Days to Pay/Deny Claim After Proof of Claim	Unfair Claims Settlement Practices
Utah Insurance Department http://www.insurance.utah.gov	UTAH CODE ANN. § 31A-26-303(a)	Promptly; UTAH CODE ANN. § 31A-26-303(3)(e)	UTAH CODE ANN. § 31A-26-303
Vermont Department of Banking Insurance Securities and Healthcare Administration http://www.bishca.state.vt.us	Promptly; VT. STAT. ANN. tit. 8, § 4724(9)(b)	Promptly after POL; VT. STAT. ANN. tit. 8, § 4724(9)(e)	VT. STAT. ANN. tit. 8, § 4723
Virginia Bureau of Insurance	Promptly; VA. CODE ANN. § 38.2-510(2)(a)2	Promptly after POL ; VA. CODE ANN. § 38.2-5105	VA. CODE ANN. § 38.2-510
Washington State Department of Insurance	10 days; WASH. ADMIN. CODE § 284-30-330(2)	30 days after notice of claim; WASH. ADMIN. CODE § 284-30-370	WASH. ADMIN. CODE § 284-30-330
West Virginia Insurance Commission http://www.wvinsurance.gov/wviconline	Promptly; W. VA. CODE § 33-11-4(9)(b)	Promptly after POL; W. VA. CODE § 33-11-4(9)(e)	W. VA. CODE § 33-11-4
Wisconsin Department of Insurance http://www.oci.wi.gov/oci-home.htm	10 calendar days; WIS. ADMIN. CODE § 6.11(3)(a)1	30 days from determination; WIS. ADMIN. CODE § 6.11(3)(a)(7)	WIS. ADMIN. CODE § 6.11
Wyoming Insurance Department http://www.insurance.state.wi.us	Promptly; WYO. STAT. ANN. § 26-13-124(ii)	Promptly after POL; WYO. STAT. ANN. § 26-13-124(5)	WYO. STAT. ANN. § 26-13-124