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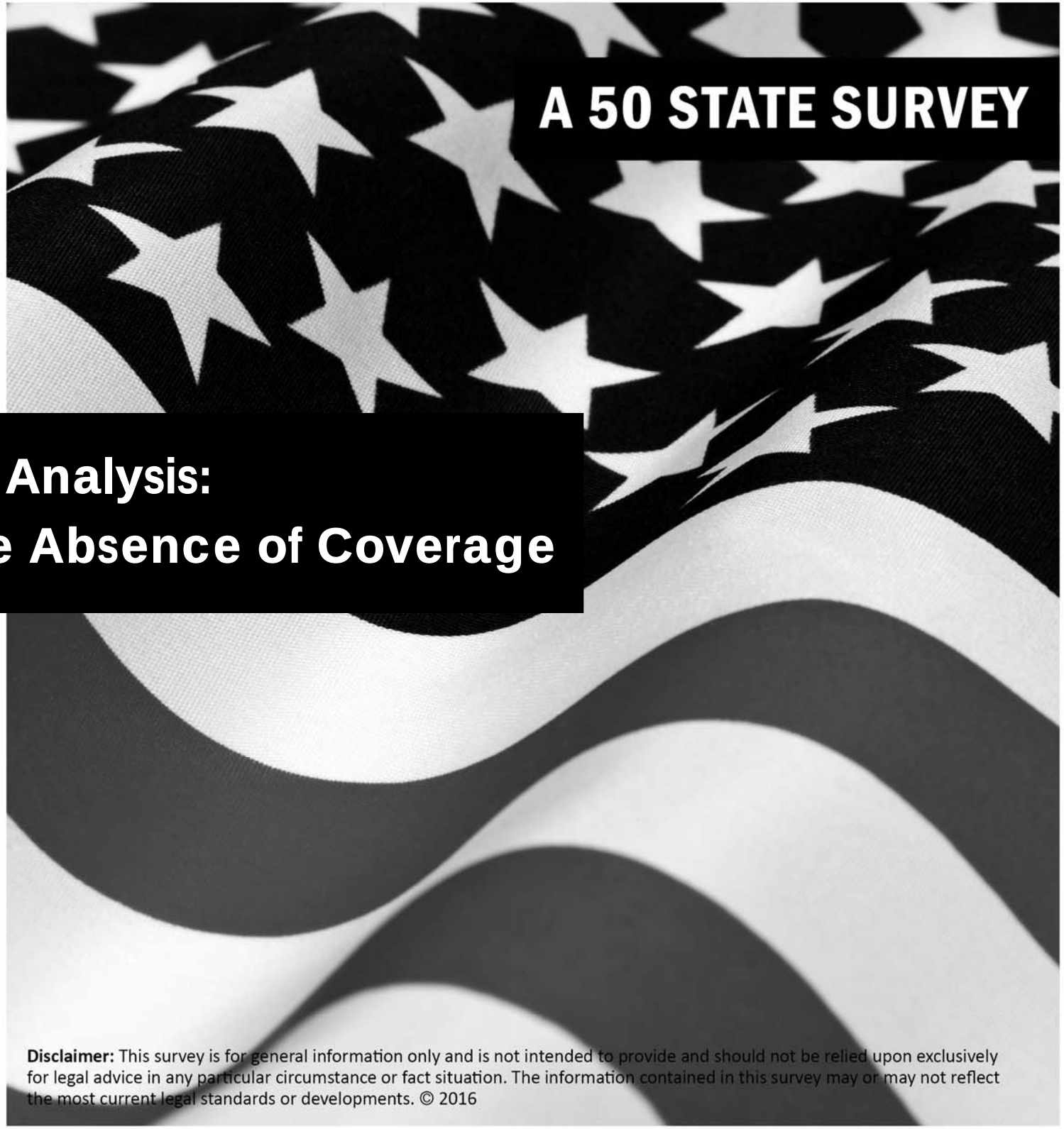

A 50 STATE SURVEY

State-by-State Analysis: Bad Faith in the Absence of Coverage

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STATE	Can bad faith be found if no coverage exists?	Summary	Case Law Overview
Alabama	No	An insurer must first breach the insurance policy before being found liable in a bad faith action. Because the policy governs the insurer's duties, contractual liability through coverage is a prerequisite for bad faith.	Contractual liability is a prerequisite for bad faith. *Acceptance Ins. Co. v. Brown*, 832 So. 2d 1, 16 (Ala. 2001). "In order to find for the plaintiff on his/her bad-faith count, [a jury] must have found for the plaintiff on his/her breach-of-contract count." *Ex parte Alfa Mut. Ins. Co.*, 799 So. 2d 957, 964 (Ala. 2001). "Alabama law require[s] insurance coverage as a prerequisite for liability for a bad faith failure to settle a claim with the insurance company's money…." *Twin City Fire Ins. Co. v. Colonial Life & Acc. Ins. Co.*, 375 F.3d 1097, 1101 (11th Cir. 2004).
Alaska	Unclear		"The covenant of good faith and fair dealing is implicit within every insurance contract; it requires 'that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.'"*Jackson v. Am. Equity Ins. Co.*, 90 P.3d 136, 142 (Alaska 2004). "An insurance policy is essentially contractual in nature. Thus, "the liability of an insurer and the extent of the loss under a policy of liability or indemnity insurance must be determined, measured, and limited by the terms of the contract." *Guin v. Ha*, 591 P.2d 1281, 1285 (Alaska 1979). An insurance policy defines an insurer's duties, as interpreted by the parties' reasonable expectations from the language of the policy, extrinsic evidence, and relevant case law where law and fact provides that an insured may incur liability as covered under the policy, an insurer has a duty to defend. *Williams v. GEICO Cas. Co.*, 301 P.3d 1220, 1225 (Alaska 2013), *reh'g denied* (May 23, 2013).

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Arizona	Yes	Arizona courts have found insurers liable for bad faith in instances where no coverage existed, if the insurer's conduct was unreasonable and unduly harmed an insured or third party.	"[B]reach of an express covenant is not a necessary prerequisite to an action for bad faith…. We hold that a plaintiff … need not prevail on the contract claim in order to prevail on the bad faith claim…." *Deese v. State Farm Mut. Auto. Ins. Co.*, 838 P.2d 1265, 1270 (Az. 1992). The covenant of good faith and fair dealing can be breached where an insurer's conduct damages the very protection or security which the insured sought to gain by buying insurance, even if an insurance policy does not provide coverage. *Lloyd v. State Farm Mut. Auto. Ins. Co.*, 189 Ariz. 369, 377 (Ct. App. 1996). If an insurer acts unreasonably when processing a claim, it will be held liable for bad faith despite the claim's merits. *Zilisch v. State Farm Mut. Auto. Ins. Co.*, 196 Ariz. 234, 238 (2000).
Arkansas	Unclear	While Arkansas courts have not directly confronted the issue of whether a bad faith claim may be brought against an insurer where there is no coverage, Arkansas law recognizes three elements in bringing a bad faith claim: 1) The insured sustained damages; 2) the insurer acted in bad faith in an attempt to avoid liability under its policy; and 3) the bad faith proximately caused damage to the insured. This formulation of bad faith leaves open the possibility of a bad faith action in the absence of coverage, as long as the insurer's bad faith took place in an attempt to avoid coverage.	"This court has stated that an insurance company may incur liability for the first-party tort of bad faith when it affirmatively engages in dishonest, malicious, or oppressive conduct in order to avoid a just obligation to its insured." *Parker v. S. Farm Bureau Cas. Ins. Co.*, 326 Ark. 1073, 1084 (1996). "…[T]o constitute bad faith, the insurer's "misconduct must be dishonest, malicious, or oppressive in an attempt to avoid its liability under an insurance policy." *Aetna Cas. & Sur. Co.*, 281 Ark. at 133 (1984). Ark. Model Jury Instr., Civil AMI 2304.

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California	Unclear, but probably not	Generally speaking, in order for an insured to bring a bad faith action against an insurer, there must be insurance coverage. However, some California courts have hypothesized that, in some "special circumstances," an insured may bring suit for bad faith when no coverage exists. One example of such a situation is where an insurer unreasonably delayed its investigation, and then finds no coverage, but the delay caused the insured harm. Another situation would be an insurer who fails to make an investigation into a claim that is not covered, but instead intimidates the insured into settling the claim. However, there are no reported decisions where an insured has actually succeeded on a bad faith claim under these "special circumstances." Furthermore, federal courts, interpreting California law, have recently found that an action for bad faith cannot exist where no policy benefits are due.	The scope of the duty of good faith relies upon the intent of the parties as evidenced by a particular contract; the terms of an insurance policy naturally define the insured's entitlements. *Kransco v. Am. Empire Surplus Lines Ins. Co.*, 23 Cal. 4th 390, 400 (2000), *as modified* (July 26, 2000). "[T]here may be unusual circumstances in which an insurance company could be liable to its insured for tortious bad faith despite the fact that the insurance contract did not provide for coverage…." *Murray v. State Farm Fire & Cas. Co.*, 219 Cal. App. 3d 58, 65-66 (Ct. App. 1990). Some authorities have suggested hypothetical circumstances in which an insurance company might be liable for bad faith despite the insured's lack of a contract right to benefits under the insurance policy. *Brizuela v. Calfarm Ins. Co.*, 116 Cal. App. 4th 578, 594 (2004). "[I]t appears that courts which have found that coverage does not exist under an insurance policy have uniformly rejected the insureds' claims of bad faith." *Allstate Ins. Co. v. Salahutdin*, 815 F. Supp. 1309, 1313 (N.D. Cal. 1992). "[A]n action for bad faith may not be maintained where no policy benefits are due." *Bell Gardens Bicycle Casino v. Great Am. Ins. Co.*, 124 F. App'x 551, 553 (9th Cir. 2005).

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Colorado	No	Colorado case law suggests that a bad faith action cannot be brought against an insurer absent coverage under an insurance policy. Still, there is some case law suggesting that an insurer can act in bad faith by failing to disclose characteristics of a policy at time of issuance, which may allow an insured to bring suit in the absence of coverage. However, there are no reported cases where such argument was actually made and prevailed.	"[T]he insurance company is not called upon to perform [the duty of good faith] until some contractual duty imposed by the insurance policy has arisen." *Daugherty v. Allstate Ins. Co.*, 55 P.3d 224, 228 (Colo. App. 2002) An insurer's failure to inform insured of certain characteristics of the policy at the time of issuance could be bad faith. *Mullen v. Allstate Ins.*, 232 P.3d 168 (Colo.App.), cert. dism'd (2009).
Connecticut	No	To state a valid claim for bad faith, the plaintiff must allege and show breach of an express duty to defend or indemnify under the policy.	"[I]n the absence of a breach of an express duty under the insurance policy, there is no independent cause of action for deficiencies in the insurer's investigation." *Capstone Building Corp. v. American Motorists Inc. Co.*, 67 A.3d 961, 987 (Conn. 2013). "To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff's right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith.... Bad faith in general implies … a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive." *De La Concha of Hartford, Inc. v. Aetna Life Ins. Co.*, 269 Conn. 424, 432–33 (2004).

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Delaware	No	In Delaware, a claim of bad faith requires proof that the insurer refused to honor a contractual obligation.	"In order to establish a claim of bad faith, plaintiff must show that the insurer's refusal to honor its contractual obligation was clearly without any reasonable justification." *Bryant v. Fed. Kemper Ins. Co.*, 542 A.2d 347, 352 (Del. Super. 1988) "Existing contract terms control, however, such that implied good faith cannot be used to circumvent the parties' bargain, or to create a 'free-floating duty ... unattached to the underlying legal document…." *Dunlap v. State Farm Fire & Cas. Co.,* 878 A.2d 434, 441-42 (Del. 2005) citing *Glenfed Fin. Corp., Commercial Fin. Div. v. Penick Corp.*, 276 N.J. Super. 163, 175 (App. Div. 1994).
District of Columbia	No	Claims alleging bad faith are solely contract claims and, for this reason, an actual contract must exist and be breached in order for a bad faith claim to be brought against an insurer.	"An insured's claim of bad faith breach of contract against its insurer fails if coverage for the underlying claim does not exist." *Am. Nat. Red Cross v. Travelers Indem. Co. of Rhode Island*, 896 F. Supp. 8, 11 (D.D.C. 1995). Because an insurance policy establishes a contractual relationship between the company and its policyholder, including an implied covenant of both parties to act in good faith, D.C. only recognizes a contractual claim of bad faith and not tort claims. *Choharis v. State Farm Fire & Cas. Co.*, 961 A.2d 1080, 1087 (D.C. 2008). Even where an insurer offers a complementary defense to an insured, a bad faith action for failure to settle cannot be levied against the insurer where no coverage actually exists. *Athridge v. Aetna Cas. & Sur. Co.*, 351 F.3d 1166, 1175 (D.C. Cir. 2003).

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Florida	No	Under Florida law, a determination of coverage is a prerequisite to a bad faith action.	There must first be a determination that coverage is warranted under an insurance policy before one can bring an action for bad faith against an insurer. *Hartford Ins. Co. v. Mainstream Const. Grp., Inc.*, 864 So. 2d 1270, 1272 (Fla. Dist. Ct. App. 2004). "[B]ringing a cause of action in court for [an insurer's alleged failure to settle] is premature until there is a determination of liability and extent of damages owed on the first-party insurance contract." *Vest v. Travelers Ins. Co.*, 753 So. 2d 1270, 1276 (Fla. 2000).
Georgia	No	Where the insurance policy does not provide coverage, no bad faith claim may be asserted.	"To prevail on a claim for an insurer's bad faith under OCGA §33-4-6, the insured must prove: (1) that the claim is covered under the policy…." *BayRock Mortgage Corp. v. Chicago Title Ins. Co*., 648 S.E.2d 433 (Ga. Ct. App. 2007). "[P]enalties for bad faith are not available where … the insurance contract does not provide the coverage demanded. *Anderson v. Georgia Farm Bureau Mut. Ins. Co.*, 255 Ga. App. 734, 737 (2002). "The insured bears the burden of proving bad faith, which is defined as 'any frivolous and unfounded refusal in law or in fact to comply with the demand of the policyholder to pay according to the terms of the policy.'" *Fortson v. Cotton States Mut. Ins. Co.*, 168 Ga. App. 155, 157 (1983) citing ***Royal Ins. Co. v. Cohen,*** 105 Ga.App. 746, 747 (1962).

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Hawaii	Yes	Hawaii does allow parties to bring bad faith actions against insurers, but under very limited circumstances. For example, where a policy clearly excludes a claim, an insurer does not have a duty to investigate the claim, so a bad faith action cannot be brought against an insurer for a defective investigation in those circumstances. However, Hawaii has found that, even where a policy clearly excludes a claim, an insurer may nonetheless act in bad faith by mishandling the claim. Similarly, if an insurer conducts itself improperly in defending its insured, the insurer can be found to have acted in bad faith, even where no coverage ultimately existed.	"An insurer may be liable for the improper conduct of the defense of its insured even though it is ultimately determined that the insurer had no duty to defend or indemnify under the terms of the policy." *Delmonte v. State Farm Fire & Cas. Co.*, 90 Haw. 39, 55, 975 P.2d 1159, 1175 (1999), *as amended* (Mar. 15, 1999) (internal citations omitted). "[T]here is a legal duty, implied in a first- and third-party insurance contract, that the insurer must act in good faith in dealing with its insured, and a breach of that duty of good faith gives rise to an independent tort cause of action. The breach of the express covenant to pay claims, however, is not the *sine qua non* for an action for breach of the implied covenant of good faith and fair dealing. The implied covenant is breached, whether the carrier pays the claim or not, when its conduct damages the very protection or security which the insured sought to gain by buying insurance." *Best Place, Inc. v. Penn Am. Ins. Co.,* 82 Hawai'i 120, 920 P.2d 334 (1996). The insured could not recover for the tort of a bad faith failure to investigate where the policy clearly and unambiguously excluded coverage. *Enoka v. AIG Hawaii Ins. Co.*, 109 Haw. 537, 552 (2006), *as corrected* (Feb. 28, 2006).

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Idaho	No	Both contractual and tort claims of bad faith require proof of actual coverage under the policy. However, the Idaho Supreme Court has suggested that there may be a tort remedy, other than bad faith, where the insurer's conduct constitutes some independent tort, such as fraud.	"Although the tort of bad faith is not a breach of contract claim, to find that [an insurer] committed bad faith … there must also have been a duty under the contract that was breached. Thus, both the breach of contract claim and the bad faith claim depend upon the provisions of the insurance policy." *Weinstein v. Prudential Prop. & Cas. Ins. Co.*, 233 P.3d 1221 (Id. 2010) (internal citation omitted). A plaintiff bringing a bad faith suit for unreasonable denial or unreasonable delay must show that coverage existed under an insurance policy. *Robinson v. State Farm Mut. Auto. Ins. Co.*, 137 Idaho 173, 178 (2002). "[I]t might be shown that in denying [a] claim [an insurer] committed some independently tortious act, which would give rise in itself to an award of punitive damages." *White v. Unigard Mut. Ins. Co.*, 112 Idaho 94, 97 (1986).
Illinois	No	Illinois courts have stated on numerous occasions that a claim for violation of Section 155 of the Illinois Insurance Code is not available in the absence of coverage under the policy.	"Where the policy is not triggered, there can be no finding that the insurer acted vexatiously and unreasonably in denying the claim." *Rhone v. First Am. Title Ins. Co.*, 401 Ill. App. 3d 802, 815 (2010). "Section 155 of the Illinois Insurance Code provides a remedy for an insured who encounters unnecessary difficulties when an insurer withholds policy benefits. However, a defendant cannot be liable for section 155 relief where no benefits are owed. *Martin v. Illinois Farmers Ins.*, 318 Ill. App. 3d 751, 764 (2000) (internal citations omitted).

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Indiana	Unclear, but possibly yes in limited circumstances	An insurer does not act in bad faith merely by failing to conduct a diligent investigation, and a good faith dispute over coverage defeats a claim for bad faith denial of policy benefits However, an insurer might be held liable for bad faith conduct leading up to the denial of coverage.	"[T]he lack of diligent investigation alone is not sufficient to support [a bad faith claim against an insurer.]" *Erie Ins. Co. v. Hickman by Smith*, 622 N.E.2d 515, 520 (Ind. 1993). "Here, apart from Monroe Guaranty's denial of Magwerks' claim based on a good faith dispute over whether coverage did or did not exist, the question is whether Monroe Guaranty's conduct leading up to and including the issuance of the denial letter rose to the level of bad faith. …[A] good faith dispute concerning insurance coverage does not automatically preclude a punitive damages claims for bad faith when coverage is denied." *Monroe Guar. Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005).
Iowa	Unclear, but probably no	Iowa courts have held that, while failure to investigate a claim may be an element of bad faith, neglectful investigation in itself does not constitute bad faith. And because an insurer with a "reasonably debatable" coverage position does not commit bad faith, an insurer who does not, in fact, owe coverage would most likely not be subject to a bad faith claim.	"When coverage is 'reasonably debatable' the insurer has the right to have its rights adjudicated without being subject to tort claims." *Johnson v. Farm Bureau Mut. Ins. Co.*, 533 N.W.2d 203, 207 (Iowa 1995). "[A]n imperfect investigation, standing alone, is not sufficient cause for recovery if the insurer in fact has an objectively reasonable basis for denying the claim." *Sampson v. Am. Standard Ins. Co.*, 582 N.W.2d 146, 152 (Iowa 1998)(citing *Reuter v. State Farm Mut. Auto. Ins. Co.,* 469 N.W.2d 250, 254-55 (Iowa 1991). "[A}n insurer's intentional, reckless, or negligent failure to investigate or evaluate a claim is only an element by which the insured may prove that no lawful basis for refusal existed." *Reuter v. State Farm Mut. Auto. Ins. Co.*, 469 N.W.2d 250, 254 (Iowa 1991).

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Kansas	No	Kansas case law establishes that there must be coverage in order to bring a bad faith claim against an insurer.	Where there is no coverage an insurer does not have a duty to settle on behalf of a customer. *Snodgrass v. State Farm Mut. Auto Ins. Co.*, 804 P.2d 1012 (Kan. Ct. App. 1991). Proof that an insured has no coverage under a policy will provide reasonable grounds for an insurer to decline liability and exempt itself for insured's attorney fees for unreasonable denial of liability. *Koch v. Prudential Ins. Co. of Am.*, 205 Kan. 561, 565 (1970).
Kentucky	No	Kentucky case law clearly establishes there is no claim for bad faith in the absence of coverage.	Absent a contractual obligation, there simply is no bad faith cause of action, either at common law or by statute. *Davidson v. Am. Freightways, Inc.*, 25 S.W.3d 94, 100 (Ky. 2000). "[I]n the absence of a contractual obligation in an insurance policy for coverage, there can be no claim for bad faith." *Kentucky Nat'l Ins. Co. v. Shaffer*, 155 S.W.3d 738, 742 (Ky. Ct. App. 2005)
Louisiana	No	Louisiana case law explicitly provides that there must be coverage prior to recovery on a bad faith claim.	"Breach of contract is a condition precedent to recovery for the breach of the duty of good faith…." *Bayle v. Allstate Ins. Co.*, 615 F.3d 350, 363 (5th Cir. 2010). "In order to recover statutory penalties against an insurer [for bad faith], an insured 'must first have a valid, underlying, substantive claim upon which insurance coverage is based.'" *Matthews v. Allstate Ins. Co.*, 731 F. Supp. 2d 552, 566 (E.D. La. 2010) (citing *Moffett v. Allstate Indem. Co.,* 2008 WL 5082902, at *4 (E.D.La. Nov. 25, 2008)).

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Maine	No	Generally speaking, Maine courts have not recognized a cause of action for bad faith independent of a cause of action for breach for contract.	An independent tort of bad faith resulting from an insurer's breach of its duty to act in good faith and deal fairly with the insured is not available under Maine Law. *Weaver v. New England Mut. Life. Ins. Co.*, 52 F. Supp.2d 127 (D. Maine 1999).
Maryland	No	Generally speaking, Maryland does not recognize a cause of action for bad faith against an insurer for failure to pay an insurance claim.	"Maryland does not recognize a specific tort action against an insurer for bad faith failure to pay the insurance claim." *Johnson v. Federal Kemper Ins. Co.*, 536 A.2d 1211, 1213 (Md. App. 1988), *cert denied*, 542 A.2d 844 (Md. 1988).
Massachusetts	Unclear, but probably no	While Massachusetts case law suggests that a bad faith action against an insurer is most likely to fail absent a showing of coverage, courts have suggested that "extortionate tactics" may be enough to support a bad faith action, even in the absence of coverage.	A consumer may not bring a claim under the Massachusetts Consumer Protection Act for non-covered claims because one element of such a statutory claim is "loss to the claimant." *Alan Corp. v. ISLIC*, 22 F.3d 339, 343 (1st Cir. 1994). "Lack of coverage or limited coverage could be a ground for such a denial [of a bad faith claim]." *Van Dyke v. St. Paul Fire & Marine Ins. Co.*, 388 Mass. 671, 676 (1983). "An absence of good faith and the presence of extortionate tactics generally characterize the basis for a c. 93A-176D action based on unfair settlement practice." *Guity v. Commerce Ins. Co.*, 36 Mass. App. Ct. 339, 344 (1994).

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Michigan	Unclear, but possibly yes	Michigan courts have intimated that an insurer can be liable for bad faith for conducting improper investigations (without determining whether coverage must ultimately exist), and have listed factors in determining bad faith, some of which do not imply the existence of coverage.	"[A] failure to properly investigate an insurance claim can constitute bad faith…." *Murphy v. Cincinnati Ins. Co.*, 576 F. Supp. 542, 543 (E.D. Mich. 1983) aff'd, 772 F.2d 273 (6th Cir. 1985). "Michigan law does recognize an implied contractual duty on the part of the insurer to act in good faith when investigating an insurance claim …." *Michigan Mun. Risk Mgmt. Auth. v. State Farm Fire & Cas. Co.*, 559 F. Supp. 2d 794, 809 (E.D. Mich. 2008). Factors to consider when determining whether insurer acted in bad faith include failure to keep insured fully informed of all developments, failure to initiate settlement negotiations when warranted, rejection of reasonable offer of settlement within policy limits, undue delay in accepting reasonable offer to settle potentially dangerous case within policy limits, attempt by insurer to coerce or obtain involuntary contribution from insured, failure to make proper investigation of claim prior to refusing settlement offer, disregarding advice or recommendations of adjuster or attorney, serious and recurrent negligence, refusal to settle case within policy limits following excessive verdict, and failure to take appeal following verdict in excess of policy limits. *Commercial Union Ins. Co. v. Liberty Mut. Ins. Co.*, 426 Mich. 127, 393 N.W.2d 161 (1986).

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Minnesota	Unclear, but most likely no	Although there is a statutory cause of action for bad faith denial of claims, it appears that a prerequisite of such a cause of action is coverage under the policy.	Minnesota historically did not recognize a common law cause of action for bad faith denial of insurance benefits when the alleged bad faith conduct is the same as the alleged breach of contract. *Medtronic, Inc. v. ConvaCare, Inc.*, 17 F.3d 252, 256 (8th Cir. 1994). In 2008, Minnesota enacted Section 604.18 to create a statutory cause of action for bad faith denial of claims, but only if there is an "absence of a reasonable basis for denying the benefits of an insurance policy" and the insurer "knew" or acted in "reckless disregard" of the lack of a reasonable basis. "In Minnesota, the implied covenant of good faith and fair dealing does not extend to actions beyond the scope of the underlying contact." *In re Hennepin County 1986 Recycling Bond Lit.*, 540 N.W.2d 494 (Minn. 1995) (decided in context of municipal bonds).
Mississippi	No	In Mississippi, one of the prerequisites in bringing a bad faith action against an insurer is that there must actually be coverage under an insurance policy.	"Under Mississippi law, a finding of coverage is a necessary predicate to bringing a punitive damages claim." *Sobley v. S. Nat. Gas Co.*, 210 F.3d 561, 564 (5th Cir. 2000). "In order to recover punitive damages against an insurance company for bad-faith refusal to pay a claim, or refusal to honor an obligation under an insurance policy, the insured must first demonstrate that the claim or obligation was in fact owed .... Second, the insured must demonstrate that the insurer has no arguable reason to refuse to pay the claim or to perform its contractual obligation. Finally, in order to recover punitive damages from the insurer for bad faith, the insured must demonstrate that the insurer's breach of the insurance contract 'results from an intentional wrong, insult, or abuse as well as from such gross negligence as constitutes an intentional tort.'" *Essinger v. Liberty Mut. Fire Ins. Co.*, 529 F.3d 264, 271 (5th Cir. 2008).

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Missouri	Unclear	While Missouri case law seems to suggest that coverage is a prerequisite for a bad faith action, courts have also found that an insurer can be liable for "vexatiousness" through an inadequate investigation. However, it is unclear whether an inadequate investigation is vexatious where an adequate investigation would have established the absence of coverage.	"A refusal to pay based on a suspicion that is unsupported by substantial facts is vexatious. The adequacy of an insurer's investigation of a claim may be considered evidence of vexatiousness. The denial of liability without stating any ground for denial is sufficient to warrant the submission of vexatious damages. *Allen v. State Farm Mut. Auto. Ins. Co.*, 753 S.W.2d 616, 620 (Mo. Ct. App. 1988)(internal citations omitted).
Montana	No	Montana is explicit in requiring insurance coverage as a prerequisite to a bad faith action.	Claims of bad faith against insurers are premised upon the existence of a contract between an insurer and the insured; where a policy excludes coverage, a plaintiff's bad faith action against an insurer fail as "a matter of law." *Truck Ins. Exch. v. Waller*, 252 Mont. 328, 334-35 (1992).
Nebraska	Yes, in limited circumstances		Where the facts supporting the bad faith claim differ from those supporting the breach of contract claim, an insured need not prevail on the breach of contract claim in order to prevail on the bad faith claim. Nor does ultimate payment of the claim defeat a bad faith claim. *LeRette v. American Medical Security*, Inc. 705 N.W.2d 41, 48-49 (Neb. 2005).
Nevada	No	Nevada law dictates that an insured must have "legal entitlement" under an insurance policy prior to bringing an action in bad faith.	"Until the insured has established 'legal entitlement,' no claim for bad faith will lie." *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 796-97 (1993).

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New Hampshire	No	An insured's failure to establish its entitlement to coverage is fatal to its claim for bad faith.	"If it is determined in the declaratory judgment action that the plaintiffs' policy did cover the services [in dispute], the plaintiffs will then, and only then, be able to assert their claim that the defendant's denial of benefits was in bad faith. *Jarvis v. Prudential Ins. Co.,* 448 A.2d 407 (N.H. 1982). An insured may bring a claim for bad faith at the same time as a claim for declaratory judgment. However, "[l]ogic dictates that if an insured is not entitled to the coverage in dispute, then the insured cannot maintain an action for breach of contract—in bad faith or otherwise—for failure to provide said coverage." *Lister v. Bankers Life & Cas. Co.*, 218 F. Supp. 2d 49, 52 (D.N.H. 2002).
New Jersey	Yes, but only under very unique circumstances	While New Jersey courts generally require proof of actual coverage in order to assert a claim of bad faith claim against an insurer, there seems to be a very narrow exception to this rule where a claim becomes time-barred due to an insurer's unreasonable delay in investigating that claim and "stringing along" the insured.	An insurer acts in bad faith when "stringing along" an insured for long periods of time in order to render a claim stale that would have otherwise been covered under a policy. *Price v. New Jersey Mfrs. Ins. Co.*, 368 N.J. Super. 356, 365 (App. Div. 2004) *aff'd,* 182 N.J. 519, 867 A.2d 1181 (2005). In order for an insurer to have acted in bad faith, coverage must exist for the insured's loss. *Hudson Universal, Ltd. v. Aetna Ins. Co.*, 987 F. Supp. 337, 342 (D.N.J. 1997).

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New Mexico	No	Coverage is a prerequisite to a bad faith action under New Mexico law.	"[T]he concept of bad faith failure to pay in the insurance context does not arise unless there is a contractual duty to pay under the policy." *Charter Servs., Inc. v. Principal Mut. Life Ins. Co.*, 1994-NMCA-007, 117 N.M. 82, 88. "Thus, if the insurer fails to meet 'basic standards of competency' in investigating a claim or researching the applicable law, such conduct is 'strong evidence' of bad faith, but is not in itself sufficient to support the plaintiff's bad-faith failure-to-settle claim." *Sloan v. State Farm Mut. Auto. Ins. Co.*, 2004-NMSC-004, 135 N.M. 106, 114.
New York	No	Under New York law, coverage is a prerequisite to a bad faith claim against an insurer.	"It has been recognized that bad faith cannot be established when the insurer has an arguable basis for denying coverage." *Redcross v. Aetna Cas. & Sur. Co.*, 260 A.D.2d 908, 913 (1999) "That [bad faith] claim should have been dismissed as a matter of law, since a claim of bad faith must be predicated on the existence of coverage of the loss in question." *Zurich Ins. Co. v. Texasgulf, Inc.*, 233 A.D.2d 180, 180 (1996).

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North Carolina	Yes	North Carolina courts state that bad faith may exist whether or not a contract has been breached. Furthermore, courts have stated that if an insurance company "rightly denies an insured's claim," they still must act in good faith.	"[N]othing in the case law… *requires* that the tortious conduct be accompanied by a breach of the contract, even though most, if not all, of the cases have as a factual background the insurance company's refusal to pay. We do not believe an action for punitive damages from tortious conduct is precluded when the company eventually pays, if bad faith delay and aggravating conduct is present." *Robinson v. N. Carolina Farm Bureau Ins. Co.*, 86 N.C. App. 44, 49-50 (1987). "Thus, even if an insurance company rightly denies an insured's claim, and therefore does not breach its contract, as here, the insurance company nevertheless must employ good business practices which are neither unfair nor deceptive." *Nelson v. Hartford Underwriters Ins. Co.*, 177 N.C. App. 595, 609 (2006).
North Dakota	Unclear, but most likely no	Since North Dakota courts have defined an insurer's unreasonable conduct as including the failure to compensate an insured for a covered loss, it may be implied that coverage is a prerequisite to a bad faith action.	"An insurer has a duty to act fairly and in good faith in dealing with its insured, including a duty of fair dealing in paying claims, providing defenses to claims, negotiating settlements, and fulfilling all other contractual obligations…. The gravamen of the test for bad faith is whether the insurer acts unreasonably in handling an insured's claim. An insurer acts unreasonably by failing to compensate an insured for a loss covered by a policy, unless the insurer has a proper cause for refusing payment. *Hartman v. Estate of Miller*, 2003 ND 24, ¶ 12 (internal citations omitted).

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Ohio	Unclear, but most likely no	Ohio courts have generally held that a finding of coverage is a necessary prerequisite to a finding of bad faith. However, there is a conflict among some Ohio appellate courts on this point.	"Having found … in our discussion of [the insured's] second assignment of error no coverage exists under the Medical Payments Coverage section of the Policy, we find the trial court properly granted Motorists' summary judgment on [the insured's] bad faith claim. *Brunn v. Motorists Mut. Ins. Co.*, 2006 WL 29116 (Ohio Ct. App. Jan. 5, 2006). A Plaintiff's claim that an insurer failed to pay under a policy is dependent upon a showing that Plaintiff's claim was covered under the policy. *Skinner v. Guarantee Trust Life Ins. Co.*, 813 F. Supp. 2d 865, 870 (S.D. Ohio 2011). Although insured's claim was time-barred, "a cause of action for the tort of bad faith may exist irrespective of any liability arising from a breach of contract …." *Bullet Trucking, Inc. v. Glen Falls Ins. Co.*, 616 N.E.2d 1123 (Ohio. Ct. App. 1992). But see *Pasco v. State Auto. Mut. Ins. Co.*, 1999 WL 1221633 (Ohio. Ct. App. Dec. 21, 1999) (rejecting *Bullet Trucking* as dicta and incorrect); *Hahn's Electric Co. v. Cochran*, 2002 WL 31111850 (Ohio. Ct. App. Sept. 23, 2002) (rejecting *Bullet Trucking*, and granting judgment in favor of insurer of bad faith failure to investigate claim where there was no coverage).

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Oklahoma	Unclear, but most likely no	The Oklahoma Supreme Court has held that coverage under the policy is a prerequisite to a bad faith claim. The Tenth Circuit subsequently created some uncertainty, however, by refusing to grant judgment in favor of an insurer who did not even have a contract with the insured.	"[A] determination of liability under the contract is a prerequisite to a recovery for bad faith breach of an insurance contract…. [G]enerally, when coverage has not been determined through the administrative process, an action in district court for bad faith breach of the insurance contract, would be precluded." *Davis v. GHS Health Maint. Org., Inc.*, 22 P.3d 1204, 1210 (Okla. 2001). Without discussing *Davis*, the Tenth Circuit in *Eaves v. Fireman's Fund Ins. Cos.*, 148 Fed. Appx. 696, 701 (10th Cir. 2005), held that an insurer who had no contract with the insured, but rather merely procured for the insured a policy with another insurer, might still be held liable for bad faith if its conduct was "unreasonable" because "ther are some situations where a duty of good faith exists despite the absence of an express contractual relationship."
Oregon	Yes	Oregon courts have explicitly stated that breaches of the duty of good faith may occur independently of, or even without, any breach of contract.	A party may violate its duty of good faith without also breaching the express provisions of the contract. *Elliot v. Tektronix, Inc.,* 102 Or.App. 388, 796 P.2d 361, *rev. den.* 311 Or. 13, 803 P.2d 731 (1990). Accordingly, we conclude that a claim for breach of the duty of good faith may be pursued independently of a claim for breach of the express terms of the contract. *McKenzie v. Pac. Health & Life Ins. Co.*, 118 Or. App. 377, 380-81 (1993).
Pennsylvania	No	Pennsylvania courts have required coverage as a prerequisite to bringing a bad faith action. While certain Pennsylvania courts have allowed claims for bad faith failure to investigate, these claims have proceeded only where the denial of coverage was found to be wrongful.	"Because this Court has determined that there was no coverage, a bad faith claim cannot survive summary judgment." *Green Mach. Corp. v. Zurich Am. Ins. Grp.*, 2001 WL 1003217, at *7 (E.D. Pa. Aug. 24, 2001) *aff'd sub nom. Green Mach. Corp. v. Zurich-Am. Ins. Grp.*, 313 F.3d 837 (3d Cir. 2002). "An action for bad faith may extend to the insurer's investigative practices." *O'Donnell v. Allstate Insurance Company,* 734 A.2d, 901, 906 (Pa. Super. Ct. 1999).

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Rhode Island	No	The Rhode Island Supreme Court has stated that the insured must first establish coverage prior to bringing a bad faith action.	"Under Rhode Island law, however, a plaintiff first must show that he or she is entitled to recover on the contract before he or she can prove that the insurer dealt with him or her in bad faith." *Zarrella v. Minnesota Mut. Life Ins. Co.*, 824 A.2d 1249, 1261 (R.I. 2003) "Before a bad-faith claim can even be considered, a plaintiff must prove that the insurer breached its obligation under the insurance contract." *Lewis v. Nationwide Mutual Insurance Co.,* 742 A.2d 1207, 1209 (R.I.2000).
South Carolina	Unclear, but most likely no	South Carolina courts have held that coverage is a prerequisite to a claim for bad faith refusal to pay. Also, more broadly, courts have noted that one element of a bad faith claim is a refusal to pay benefits due. While the South Carolina Supreme Court has held that breach of an insurance policy is not a prerequisite to a bad faith action, that ruling came in a unique fact pattern, where the insurer acted in bad faith prior to ultimately paying the claim (and essentially admitting coverage).	An insured cannot successfully claim that an insurer has refused to pay a claim in bad faith where no coverage exists. *BMW of N. Am., LLC v. Complete Auto Recon Servs., Inc.*, 399 S.C. 444, 453 (S.C. Ct. App. 2012). "To demonstrate bad faith, plaintiff must present evidence of 1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; 2) a refusal by the insurer to pay benefits due under the contract; 3) resulting from the insurer's bad faith or unreasonable action in breach of the implied covenant of good faith and fair dealing arising under the contract; 4) causing damage to the insured." *Lewis v. Omni Indem. Co.*, 970 F. Supp. 2d 437, 454-55 (D.S.C. 2013)(internal citation omitted). "[W]e decline to make breach of an express contractual provision a prerequisite to bringing the action." *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 504 (S.C. 1996). Because insurer did not owe coverage, its conduct during settlement negotiations in the underlying lawsuit could not even potentially have constituted bad faith. *Twin City Fire Ins. Co. v. Colonial Life & Acc. Ins. Co.*, 375 F.3d 1097 (11th Cir. 2004).

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South Dakota	Unclear, but most likely no	While South Dakota courts have ruled that an insurer may act in bad faith by conducting an inadequate investigation, these rulings seem limited to cases where the inadequate investigation led the insurer to wrongfully deny coverage. Also, the South Dakota Supreme Court has stated that, in order for an insurer to act in bad faith, it must knowingly breach a duty under the policy.	"Bad faith conduct may include the failure to conduct a reasonable investigation concerning the claim." *Dakota, Minnesota & E. R.R. Corp. v. Acuity*, 2009 S.D. 69, ¶ 19. "[A] frivolous or unfounded refusal to comply with a duty under an insurance contract constitutes bad faith." *Hein v. Acuity*, 2007 S.D. 40, ¶ 10. "[F]or proof of bad faith, there must be an absence of a reasonable basis for denial of policy benefits [or failure to comply with a duty under the insurance contract] *and* the knowledge or reckless disregard [of the lack] of a reasonable basis for denial…" *Walz v. Fireman's Fund Ins. Co.*, 1996 S.D. 135, ¶ 6.
Tennessee	No	The existence of coverage is an element of a statutory bad faith claim.	"To prevail on a claim for statutory bad faith, the Plaintiff must show: (1) the policy of insurance must, by its terms, have become due and payable…." *Lindenberg v. Jackson Nat. Life Ins. Co.*, 98 F. Supp. 3d 934, 939 (W.D. Tenn. 2014).

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Texas	Possibly, but even then only in very unique circumstances	Generally, coverage is a prerequisite to bringing a bad faith claim against an insurer. However, the Texas Supreme Court has speculated that, under extreme circumstances where the insurer's conduct causes injury independent of the contract claim, a bad faith claim might exist in the absence of coverage.	"An argument has been made that because a policy claim is independent of a bad faith claim, an insured may recover for a bad faith denial of a claim even if the claim is not covered by the policy. We accept the premise of the argument—that a policy claim is independent of a bad faith claim. The asserted conclusion, however, does not necessarily follow…. We do not exclude, however, the possibility that in denying the claim, the insurer may commit some act, so extreme, that would cause injury independent of the policy claim." *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 340-41 (Tex. 1995) (internal citations omitted). "[I]n most circumstances, an insured may not prevail on a bad faith claim without first showing that the insurer breached the contract." *Liberty Nat. Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996). Although it is possible to maintain a bad faith claim in the absence of coverage, such an extra-contractual obligation can arise only if the insurer's conduct was extreme and caused damages unrelated to and independent of the policy claim. *Progressive County Mut. Ins. Co. v. Boyd*, 177 S.W.3d 919 (Tex. 2005).
Utah	Possibly	Although the Utah Supreme Court has stated that breach of contract is not necessary for a bad faith claim, it did so where the insurer had paid the claim, albeit belatedly, thereby essentially admitting coverage. Further, in that case, the Utah Supreme Court found in favor of the insurer on the bad faith claim, as a matter of law, anyway.	"[A] breach of contract is not necessary for a claim of bad faith to arise." *Colony Ins. Co. v. Human Ensemble, LLC*, 299 P.3d 1149, 1153 (Utah 2013). Insurer was not entitled to a stay of bad faith discovery until the insured had established a right to coverage under the policy. *Christiansen v. Farmers Ins. Exchange*, 116 P.3d 259 (Utah 2005).

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Vermont	No	Vermont courts have found that there must be coverage prior to a plaintiff bringing a bad faith action against an insurer.	A claim for bad faith requires proof that the "insurer not only errs in denying coverage," but that the denial was unreasonable. *Peerless Ins. Co. v. Frederick*, 869 A.2d 112 (Vt. 2004).
Virginia	No	Only Virginia's lower courts and federal courts have directly addressed this issue, but they have uniformly held that breach of contract is a prerequisite to a bad faith claim.	"Nonetheless, State Farm's argument that a claim for bad faith is not ripe until an insured has established coverage finds support in the relevant case law." *Wilson v. State Farm Fire & Cas. Co.*, 2009 WL 741654 (Vir. Cir. Ct. Dec. 14, 2009) citing *US Airways, Inc. v. Commonwealth Ins. Co.*, 2004 WL 1094684 (Va. Cir. Ct. May 14, 2004). "We hold that in a first-party Virginia insurance relationship, liability for bad faith conduct is a matter of contract rather than tort law. The obligation arises from the agreement and extends only to situations connected with the agreement." *A&E Supply Co. v. Nationwide Mut. Fire Ins. Co.*, 798 F.2d 669 (4th Cir. 1986), citing Reisen v. Aetna Life & Cas. Co., 302 S.E.2d 529, 533 (Va. 1983) ("the existence of the duty [of good faith] wholly depended upon a condition precedent, that is, coverage under the policy").

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Washington	Yes	Washington courts allow claims for bad faith in the absence of coverage where the insurer mishandles the claim, but the insured is not entitled to a presumption of damages as it might be in other claims for bad faith.	"[A]n insured may maintain an action against its insurer for bad faith investigation of the insured's claim … regardless of whether the insurer was ultimately correct in determining coverage did not exist…." *Coventry Associates v. Am. States Ins. Co.*, 136 Wash. 2d 269, 279 (1998). "[E]ven where there would be no coverage or right to a defense under the policy terms, if an insurer mishandles a claim in bad faith, a cause of action based on this conduct remains viable. Where coverage or a duty to defend would not be available under the policy terms, however, a rebuttable presumption of harm and coverage by estoppel are not available with respect to a cause of action for bad faith claims handling." *Absher Const. Co. v. N. Pac. Ins. Co.*, 861 F. Supp. 2d 1236, 1243-44 (W.D. Wash. 2012)(internal citations omitted).
West Virginia	Yes	West Virginia allows a statutory, but not a common law, bad faith claim in the absence of coverage.	In order for an insured to bring a common law bad faith action or a punitive damages claim against an insurer, the policyholder must first substantially prevail on the breach of contract claim; although if a bad faith claim is brought under the Unfair Trade Practices Act , no such prerequisite exists. *Jordache Enterprises, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 204 W. Va. 465, 484 (1998).
Wisconsin	No	In the absence of some breach of contract by the insurer, there is no claim for bad faith in Wisconsin.	"The fact that a first-party bad faith claim is a separate tort and may be brought without also bringing a breach of contract claim, does not change the fact that first-party bad faith cannot exist without some wrongful denial of benefit of the insurance contract." *Brethorst v. Allstate Prop. & Cas. Ins. Co.*, 798 N.W.2d 467, 480 (Wis. 2011). Trial of bad faith claims should generally be bifurcated from trial of the contract claims. *Dahmen v. American Family Mut. Ins. Co.*, 635 N.W.2d 1 (Wis. Ct. App. 2001).

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Wyoming	Yes	Even if the insurer has rightfully denied a claim, it may be liable for bad faith investigation or handling of the claim.	"While an insured may state claims for breach of contract and breach of the duty of good faith and fair dealing, the insured does not need to prevail on the contract claim to pursue the claim for bad faith." *Ahrenholtz v. Time Ins. Co.*, 968 P.2d 946, 951 (Wyo. 1998). Even where a claim is fairly debatable, an insurer may be subject to liability if the manner that it investigated, handled or denied a claim violated the implied covenant of good faith, even if the policy contract is honored by the insurer. *Hatch v. State Farm Fire & Cas. Co.*, 842 P.2d 1089, 1099 (Wyo. 1992).
Puerto Rico	No	The limited case law suggests that a claim of bad faith requires a breach of a contractual obligation, which would suggest bad faith does not exist in the absence of coverage.	"[A] party acts with bad faith ('dolo') if it (1) 'knowingly and intentionally, through deceitful means,' (2) avoids complying with its contractual obligation. Accordingly, a finding of bad faith ('dolo') must be based on evidence that a party avoided compliance with its contractual obligation and that it did so through deceitful means." *Oriental Fin. Grp., Inc. v. Fed. Ins. Co.*, 598 F. Supp. 2d 199, 221 (D.P.R. 2008).