A ROADMAP FOR 50 STATES:
Navigating Differing State Laws for Fair Claims Handling

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I. INTRODUCTION

Almost all states have statutory or regulatory provisions governing fair claims handling. These laws are mostly a product of the model legislation drafted by the National Association of Insurance Commissioners ("NAIC"). The NAIC adopted the Unfair Claims Settlement Practices Act ("Model Act") in June 1990 in an effort to insure enactment of uniform insurance laws for claims investigating and handling. Prior to this free-standing act, the NAIC had incorporated claims settlement practices within the Unfair Trade Practices Act in 1972. "The purpose of this [Model Act] is to set forth standards for the investigation and disposition of claims arising under policies or certificates of insurances." UNFAIR CLAIMS SETTLEMENT PRACTICES ACT § 1 (1997). "It is not intended to cover claims involving workers' compensation, fidelity, suretyship or boiler and machinery insurance." *Id*. The Model Act was not drafted to be construed to create a private cause of action; rather, the Model Act includes proposed language providing for state insurance commissioners to investigate conduct of insurance carriers and issue sanctions if warranted. While most states have adopted the Model Act, there is a split between the states as to whether a particular state's laws permit a private cause of action as opposed to simply implementing administrative penalties.

The Model Act provides the following unfair claims practices when such is committed "flagrantly and in conscious disregard of [the Act] or any rules promulgated hereunder" or "with such frequency to indicate a general business practice to engage in that type of conduct":

A. Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverage at issue;
B. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;
C. Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

D. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
E. Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;
F. Refusing to pay claims without conducting a reasonable investigation;
G. Failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims;
H. Attempting to settle or settling claims for less than the amount that is reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;
I. Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;
J. Making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made;
K. Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form;
L. Failing in the case of claims denials or offers of compromise settlement to promptly provide a reasonable and accurate explanation of the basis for such actions;
M. Failing to provide forms necessary to present claims within fifteen (15) calendar days of a request with reasonable explanations regarding their use;
N. Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or required to be used by the insurer are performed in a workmanlike manner.

Id. at §§ 3-4.

If the insurance commissioner has knowledge of a carrier acting in violation of the unfair claims practices and if it would be in the public's interest, the commissioner is to serve a statement of charge to the insurance carrier identifying the unfair claims practices and giving notice of a hearing that is to be held not less than 30 days of the date of notice. *Id*. at § 5. If the commissioner determines after the hearing that an insurance carrier has engaged in unfair claims practices, then the commissioner must issue his or her findings in writing, along with a cease and desist order and order any penalties. *Id*. at § 6. The Model Act provides for such penalties varying from $1,000 for each violation to revocation of the insurer's license. *Id*. Should a carrier violate the cease and desist order, then the commissioner may implement additional monetary penalties for each violation and/or suspend or revoke the insurer's license after a properly noticed hearing. *Id*. at § 7.

While most states have adopted the Unfair Claims Settlement Practices Act, many states have varying statutory and regulatory laws to govern fair claims practices. *See* EAGLE INT'L

ASSOC., INC., FAIR CLAIMS HANDLING STATUTES A 50 STATE SURVEY (Sept. 2015). As of the second quarter of 2015, the following states and territories have adopted the most recent version of the NAIC Model Act in a substantially similar manner: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Marianas, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. While District of Columbia, Iowa, and Nevada have not adopted the Model Code, these states and territories have enacted statutory and regulatory provisions to govern unfair practices. *See* D.C. St. § 31-2231.17; Iowa Code § 507B.4(9); N.R.S. 686A.310; NAC 686A.600-690. While Alabama has not adopted any statutory law, it has regulatory law providing for fair claims practices. *See* ALA. ADMIN. CODE. r. 482-1-124-482-1-125 (2003/2014); 482-12-24 (1971). The only state that does not have any statutory or regulatory provisions governing fair claims handling is Mississippi.

II. FIRST PARTY CLAIMS

A first party insurance claim is one where the policyholder makes a claim to its insurance company for damages that are covered by the insurance company's policy. An example of such first party claim would be where a homeowner suffers from a fire at his residence and submits a claim for the fire damage to its carrier under his homeowner's insurance policy. In responding to such first party claim, the carrier should be cognizant of the governing state's laws and regulations in handling the claim and investigation and any pertinent timeframes that must be complied with.

The clock starts ticking when the carrier gets notice of the claim. It is key for the adjuster handling the claim to be aware of any deadlines set by the governing state laws. The following provides a chart summarizing each state's timeframes for initial response to the claim and issuance of any disclaimer of coverage or reservation of rights:

State (Statute/ Regulation)	**Contacting Insured Upon Initial Receipt of Claim**	**Issuing Disclaimer of Coverage from Proof of Loss**	**Issuing Reservation of Rights from Proof of Loss**
Alabama (Ala. Admin. Code r. 482-1-125)	15 days, unless payment is made prior	30 days or number of days set forth in policy	30 days or number of days set forth in policy

State (Statute/ Regulation)	**Contacting Insured Upon Initial Receipt of Claim**	**Issuing Disclaimer of Coverage from Proof of Loss**	**Issuing Reservation of Rights from Proof of Loss**
Alaska (Alaska Stat. § 21.36.125; Alaska Admin. Code tit. 3 § 26.040, § 26.070)	10 days	15 days	15 days
Arizona (Ariz. Rev. Stat. § 20-461, Ariz. Admin. Code R20-6-801)	10 working days	15 working days	15 days
Arkansas (Ark. Code Ann. § 23-66-201; 054-00-043 Ark. Code R. § 1)	15 days	15 days	15 days
California (Cal. Ins. Code § 790.03(h); Cal. Code Regs., tit. 10, § 2695)	15 days	40 days; 80 days if fraud suspected; N/A for certain policies	40 days
Colorado (C.R.S. § 10-3-1101-1116)	Reasonably promptly	60 days	60 days
Connecticut (Conn. Gen. Stat. Ann. §§ 38a-815 to 38a-832)	Reasonable time	Reasonable time	Reasonable time
Delaware (Del. Code Ann. Tit. 18, § 2304, 18-900-902 Del. Code Regs. 1.2.1.2-1.2.1.5)	15 days; Must investigate claim within 10 days of notice of loss	30 days	30 days
District of Columbia (D.C. ST § 31-2231.17)	Reasonably Promptly	Reasonable Time	
Florida (F.S. 624.155, 627.426 & 626.9541; Fl. Admin. Code Ann. r. 690-166.024)	14 calendar days; Must investigate claim within 10 working days of proof of loss	60 days of giving reservation of rights or of receipt of summons & complaint	30 days from knowing or should have known of coverage defense
Georgia (Ga. Code Ann. 33-6-34, R. of Comp. Gen. Office of Comm. Of Ins. 120-2-52-.03)	15 days	15 days; 30 days after receiving notice if proof of loss form not required	Timely notice
Hawaii (Haw. Rev. Stat. § 431:13-103(11))	15 days	Reasonable time after investigation completed	Reasonable time after investigation completed
Idaho (Idaho Code § 41-1329)	Promptly	None	None

State (Statute/ Regulation)	**Contacting Insured Upon Initial Receipt of Claim**	**Issuing Disclaimer of Coverage from Proof of Loss**	**Issuing Reservation of Rights from Proof of Loss**
Illinois (215 Ill. Comp. Stat. Ann. 5/154.6; Ill. Admin. Code tit. 50, § 919.50)	Reasonable promptness	Reasonable time to determine coverage and notify insured within 30 days of determination	Reasonable time to determine coverage and notify insured within 30 days of determination
Indiana (Ind. Code § 27-4-1-4.5)	Reasonable promptness	Promptly	Promptly
Iowa (Iowa Code § 507B.4; Iowa Admin. Code 191 – Ch. 15)	15 days	30 days	30 days
Kansas (Kan. Stat. Ann. § 40-2404)	Reasonably promptly	Promptly	Promptly
Kentucky (K.R.S. 304-12-230; 806 Ky. Admin. Regs. 12:095)	15 days	Reasonable time	Reasonable time
Louisiana (Louisiana Rev. Stat. 22:1892)	Initiate loss adjustment within 14 days after notification; 30 days for catastrophic losses	30 days (*lawsuit can be considered a proof of loss*)	30 days
Maine (Me. Rev. Stat. 24-A, §2164-D)	Reasonably promptly	Reasonable time after investigation completed	Reasonable time after investigation completed
Maryland (Md. Code Ann. §27-303, § 27-1001; Md. Code Regs. 31.15.07.03, .04)	15 days	15 working days or policy	15 working days or policy
Massachusetts (Mass. Gen. Laws, ch. 176D)	Reasonably promptly	Reasonable time; Promptly	Reasonably promptly
Michigan (Michigan's Uniform Trade Practices Act, MCL 500.2001, et. seq.)	30 days to provide materials that constitute a satisfactory proof of loss	None. ***Caution*** of waiving disclaimer of coverage when defending without ROR within reasonable time.	Reasonable time
Minnesota (Minn. Stat. § 72A.201)	10 business days	60 days; 30 days after investigation is completed	60 days; 30 days after investigation is completed
Mississippi (None)			
Missouri (Mo. Ann. Stat. § 375.1000; Mo. Code Regs. Ann. tit. 20, §100-1.030, 1.050)	10 days	15 days following all necessary forms	15 days following all necessary forms

State (Statute/ Regulation)	Contacting Insured Upon Initial Receipt of Claim	Issuing Disclaimer of Coverage from Proof of Loss	Issuing Reservation of Rights from Proof of Loss
Montana (Mont. Code Ann. § 33-18-101)	Reasonably promptly	30 days to request add'l info. If request made, 60 days to pay or deny	None
Nebraska (Neb. Rev. Stat. Ann. § 44-1540; Neb. Admin. Code Title 210, Ch. 60 §6-006 to -008)	15 days	15 days	15 days
Nevada (N.R.S. 686A.310; NAC 686A.600-690)	20 working days	30 working days	30 working days
New Hampshire (N.H. Rev. Stat. Ann. 417:4 XV; N.H. Admin. Rules, Ins. §1001.01)	10 days	10 working days; 30 days for health insurance claims	10 working days
New Jersey (NJSA 17:29B-4; NJSA 17B:30-13.1; NJ Admin Code 11:2-17)	10 days	Reasonable period of time	Reasonable period of time
New Mexico (N.M. Stat. Ann. §59A-16-20)	Reasonably promptly	Reasonable time	Reasonable time
New York (11 New Code of Rules & Regulations § 216; Insurance Law § 3420)	15 days	15 days	15 days
North Carolina (N.C. Gen. Stat. Ann. § 58-63 et. seq.)	Reasonably promptly	Reasonable time	Reasonable time
North Dakota (ND Cent. Code. § 26.1-04-03)	Reasonable promptness	Reasonable time without unnecessary delay	Reasonable time
Ohio (Ohio Admin. Code § 3901-1-54, Ohio Rev. Code §§ 3901.19-3901.26)	15 days, but no time limit if suit is filed	21 days	21 days
Oklahoma (36 O.S. §§ 1250.1 et. seq.; Okla. Admin. Code 365:15-3-5, -7)	30 days	45 days; 60 days for investigation for property & casualty to be completed	45 days
Oregon (Or. Rev. Stat. § 746.230; Or. Admin. R. § 836-080-0225 to 235)	30 days	30 days	30 days
Pennsylvania (31 Pa. Code §§ 146.1-146.9; 40 Pa. Stat. Ann. § 1171.5)	10 days	15 days	15 days

State (Statute/ Regulation)	Contacting Insured Upon Initial Receipt of Claim	Issuing Disclaimer of Coverage from Proof of Loss	Issuing Reservation of Rights from Proof of Loss
Rhode Island (R.I. Gen. Laws §§ 27-9.1-1 et. seq.; 02-030-013 R.I. Code R. § 4; 02-030-073 R.I. Code R. §§ 5-6; Insurance Reg. 78, § 7.B)	10 days (property/ casualty); 15 days (accident, health & life); 30 days	15 days (property / casualty); 21 days / Reasonable Time	15 days (property / casualty) Reasonable Time
South Carolina (S.C. Code Ann. § 38-59-20)	Reasonable promptness	Prompt investigation	Prompt investigation
South Dakota (S.D.C.L. § 58-33 et. seq.)	At least 30 days	30 days	Not specific, but 30 days could be interpreted from statute
Tennessee (Tenn. Code Ann § 56-8-105)	Reasonably promptly	Reasonable time	Reasonable time
Texas (Tex. Ins. Code Chapters 541, 542)	15 days; 30 days if insurer is an eligible surplus-lines insurer	15 days	Reasonable time
Utah (Utah Admin. Code R590-190-9 & 10; UCA 31A-26-303)	Promptly acknowledge – within 15 calendar days	Promptly – 30 calendar days	Promptly – 30 calendar days
Vermont (8 V.S.A. § 4724; 21-020-008 Vt. Code R. §§ 5-6)	10 days	15 days	15 days
Virginia (Va. Code Ann. § 38.2-510; 14 Va. Admin. Code § 5-400-50, -60, -70)	10 working days	15 working days	15 working days
Washington (Wash. Rev. Code § 48.30.010 et. seq.; Wash. Admin. Code § 284-30-360, -380)	10 days; 15 days (group insurance)	15 days	15 days
West Virginia (W. Va. Code § 33-11-1, et. seq.; W. Va. Code R. § 114-14-5, -6)	15 days	15 days; 10 days after completion of investigation; investigation to be commenced within 15 days of claim; reasonable time to complete investigation	10 days after completion of investigation; investigation to be commenced within 15 days of claim; reasonable time to complete investigation
Wisconsin (Wis. Admin. Code Ins. § 6.11)	10 consecutive days	Reasonable time	Reasonable time

State (Statute/ Regulation)	Contacting Insured Upon Initial Receipt of Claim	Issuing Disclaimer of Coverage from Proof of Loss	Issuing Reservation of Rights from Proof of Loss
Wyoming (Wyo. Stat. 26-13-124, 26-25-124)	Reasonably promptly	Reasonable time; 45 days (UIM, property, casualty, life, accident or health)	Reasonable time

See EAGLE INT'L ASSOC., INC., FAIR CLAIMS HANDLING STATUTES A 50 STATE SURVEY (Sept. 2015).

While the above chart is intended to provide a quick resource, it is strongly recommended that the policy and the governing state's statutes and regulations are reviewed for more information pertaining to these timeframes, as well as other pertinent timelines (e.g. providing response to written request, providing forms, tendering payment). Also, various states provide differing timeframes to communicate with the insured when additional time is needed to investigate the claim. These timeframes vary from 15 days to 45 days, with specific timeframes for additional communications to be sent setting forth that there is an ongoing investigation and justification for the additional time needed to evaluate the claim.

Numerous states have statutory provisions setting forth timelines that are "reasonable" or "prompt" for the insurer to communicate to the insured. Some states provide regulations to define a period of time that is "reasonable" or "prompt." The Model Act provides the following unfair claims practice: "Failing to acknowledge with ***reasonable promptness*** pertinent communications with respect to claims arising under its policies" when done so "flagrantly and in conscious disregard of [the Act] or any rules promulgated [thereunder]" or "with such frequency to indicate a general business practice to engage in that type of conduct." (emphasis supplied). This unfair claims practice was explicitly adopted by New Jersey. S*ee* N.J.S.A. 17B:30-13.1(b) (1975). Since "reasonable promptness" was not defined, regulations were promulgated setting forth a specific timeframe for the insurer to respond. Specifically, N.J.A.C. 11:2-17.6(b) provides that "Every insurer, upon receiving notification of claim shall, ***within 10 working days***, acknowledge receipt of such notice unless payment is made within such period of time." (emphasis supplied). Several states have similar regulations that provide specific timeframes to comport with the terminology of the adopted Model Act's defined unfair claims practices: "reasonable time" or "reasonable promptness." *See e.g*. Alaska Stat. § 21.36.125; Alaska Admin. Code tit. 3 § 26.040, § 26.070;

Ariz. Rev. Stat. § 20-461; Ariz. Admin. Code R20-6-801; Ga. Code Ann. 33-6-34; R. of Comp. Gen. Office of Comm. of Ins. 120-2-52-.03(2)-(3); UCA 31A-26-303; UAC r. 590-190-9 and -10.

Michigan's adoption of the Model Act does not provide for any regulatory framework for specified time periods for the insurance carriers to provide denial of coverage or to provide the insured with a letter setting forth its reservation of rights. The Michigan Supreme Court has held that an insurer who has knowledge of facts which may preclude coverage must give notice of potential defenses within a "reasonable time;" otherwise, the insurer may be estopped from later denying coverage. *Kirschner v. Process Design Assoc., Inc*., 459 Mich. 587, 592 N.W.2d 707 (1999). In determining what "reasonable time" is, the Michigan courts have held that waiting two years to issue a reservation of rights letter is unreasonable, while a reservation of rights letter issued four months after the carrier has provided a defense to the insured is reasonable. *See Meirthew v. Last*, 376 Mich. 33, 135 N.W.2d 353 (1965); *Fire Insurance Exchange v. Fox*., 167 Mich. App. 710, 423 N.W.2d 325 (1988).

Flagrant or repetitive failure of the insurer to meet the statutory or regulatory deadlines or to properly handle the claim could constitute in (1) administrative penalties and (2) private cause of action.

Most states adopting the Model Act have adopted substantially similar procedures for the state administrative agency overseeing insurance carriers in enforcing the Act through administrative penalties. *See* UNFAIR CLAIMS SETTLEMENT PRACTICES ACT §§ 5-7. Like the Model Act, the adopted statutory or regulatory law provides for notice of a hearing, a hearing, and a ruling. *See e.g.* Cal. Ins. Code § 790.04-.06; Ohio Rev. Code § 3901.22(A)-(D) (also providing for any person to intervene in the proceeding); H.B. 1054, 2014 Leg. Assem., 89th Session (S.D. 2014) at §§ 5-6. In addition to the issuance of an order for the carrier to cease and desist from engaging in conduct that violates the unfair claims act, states have set forth varying penalties beyond those specified in the Model Act (e.g. revocation of license or imposition of fines). *See e.g.* Cal. Ins. Code § 790.035(a), §790.08; H.B. 1054, 2014 Leg. Assem., 89th Session (S.D. 2014) at § 6. Ohio, for example, has adopted the following penalties for violation of its Unfair and Deceptive Acts or Practices in Business of Insurance:

> (1) The superintendent may suspend or revoke the person's license to engage in the business of insurance;
> (2) The superintendent may order that an insurance company or insurance agency not employ the person or permit the person to

> serve as a director, consultant, or in any other capacity for such time as the superintendent determines would serve the public interest. No application for termination of such an order for an indefinite time shall be filed within two years of its effective date.
> (3) The superintendent may order the person to return any payments received by the person as a result of the violation;
> (4) If the superintendent issues an order pursuant to division (D)(3) of this section, the superintendent shall order the person to pay statutory interest on such payments.
> If the superintendent does not issue orders pursuant to divisions (D)(3) and (4) of this section, the superintendent shall expressly state in the cease-and-desist order the reasons for not issuing such orders.
> (5) The superintendent may order the person to pay to the state treasury for credit to the department's operating fund an amount, not in excess of one hundred thousand dollars, equal to one-half of the expenses reasonably incurred by the superintendent to retain attorneys, actuaries, accountants, and other experts not otherwise a part of the superintendent's staff to assist directly in the conduct of any investigations and hearings conducted with respect to violations committed by the person.

Ohio Rev. Code § 3901.22(D) (2002). What is interesting about the Ohio penalties is that if the superintendent does not order the return of any payments received or statutory interest, then the superintendent has to express in its order the reason for not ordering such. *Id*. at (D)(4).

While the Model Act explicitly provides that it is not intended to create a private cause of action, some states have either statutorily provided for a private cause of action or the state courts have interpreted the act to provide for a private cause of action. Nevada's unfair practices in settling claims act explicitly provides for a private cause of action by providing:

> In addition to any rights or remedies available to the Commissioner, an insurer is liable to its insured for any damages sustained by the insured as a result of the commission of any act set forth in subsection 1 as an unfair practice.

NRS 686A.310(2) (1991). *See also, Pioneer Chlor Alkali Co., Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Penn.*, 863 F. Supp. 1237 (D. Nev. 1994) (recognizing two different causes of action for actions arising under NRS 686A.310 and for bad faith). The Arizona Supreme Court has concluded that ARS § 20-443(C), which provides that "no order of the director pursuant to this section or order of court to enforce it, or holding of a hearing, may in any manner relieve or absolve any person affected by the order or hearing from any other liability, penalty or forfeiture under

law," "contemplates a private suit to impose civil liability irrespective of governmental action against the insurer." *Sparks v. Republic Nat. Life Ins. Co*., 132 Ariz. 529, 541, 647 P.2d 1127, 1139 (1982). *See also, Farmer's Union Cent. Exch. v. Reliance Ins. Co*., 626 F. Supp. 583, 590 (D.N.D. 1985) (providing that N.D. Cent. Code § 26.1-04 may be the basis for an action sounding in tort); *Jenkins v. J.C. Penney Casualty Ins. Co*., 280 S.E.2d 252, 255-56, 167 W. Va. 597, 601-02 (W.Va. 1981), *overruled on other grounds by State ex. rel. State Farm Fire & Cas. Co. v. Madden*, 192 W.Va. 155, 158-59, 451 S.E.2d 721, 724-25 (W. Va. 1994). On the other hand, California overturned prior case law finding a private cause of action arising under Cal. Ins. Code §§ 790.03(h) and 790.09 in favor of the insured by following the majority approach holding that the Model Act does not provide a private cause of action. *See Moradi-Shalal v. Fireman's Fund Ins. Companies*, 46 Cal.3d 287, 298, 758 P.2d 58, 64 (1988) (providing that 17 out of 19 states having been faced with the issue of whether the Model Act created a private cause of action rejected such interpretation).

While some states' laws provide for a private right of action for an insurance carrier's violation of the Act, numerous states that have adopted the Model Act do not provide for such private cause of action. *Compare* 215 Ill. Comp. Stat. Ann. 5/155 (providing that an insured may recover damages, including extracontractual damages and attorney's fees, for the insurer's unreasonable and vexatious delay in the handling and settling a claim); Mass. Gen. Laws. Ch. 93A, § 9(1) (providing that any person whose rights are affected by another person violating Ch. 176D, §3(9) governing unfair claim settlement practices may bring an action for damages and such equitable relief) *with* Ga. Code. Ann. § 33-6-37 (providing for no private cause of action for violation of the Fair Claims Settlement Act); *Bates v. Allied Mut. Ins. Co*., 467 N.W.2d 255, 259-60 (Iowa 1991) (Iowa does not recognize private cause of action under its statute governing fair claims practices). Some states do allow violations of the Act to be admissible in insurance bad faith cases. *See e.g. Weinstein v. Prudential Property and Cas. Ins. Co.*, 149 Idaho 299, 233 P.3d 1221 (2010). For those states where the Act does not provide for a private cause of action, the insured still may maintain a cause of action for bad faith against the carrier for failing to treat its policyholders fairly during its investigation of the claim. *See e.g. Klepper v. ACE American Ins. Co*., 999 N.E.2d 86 (Ind. Ct. App. 2013). *See also*, Hamilton Mut. Ins. Co. of Cincinnati v. Buttery, 220 S.W.3d 287, (Ken. Ct. App. 2007) (providing that "a cause of action for violation of [Kentucky's Unfair Claims Settlement Practices Act] may be maintained only where there is proof

of bad faith of an outrageous nature").

III. THIRD PARTY CLAIMS

A third party insurance claim is made by a person who is not the policyholder. The most common example of a third party claim would be a car accident caused by the policyholder; whereby, the third party suffered damages as a result of the accident.

Similar to first party claims, adjusters should be aware of pertinent timeframes surrounding the investigation and handling of the claim. The following chart provides a summary of deadlines for initial response, denial of coverage and reservations of rights for third party claims:

State (Unfair Claims Statute/ Regulation)	**Contacting Insured Upon Initial Receipt of Claim**	**Issuing Disclaimer of Coverage from Proof of Loss**	**Issuing Reservation of Rights from Proof of Loss**
Alabama (Ala. Admin. Code r. 482-1-125)	No time limit	No time limit	No time limit
Alaska (Alaska Stat. § 21.36.125; Alaska Admin. Code tit. 3 § 26.040)	10 days	15 days	15 days
Arizona (Ariz. Rev. Stat. § 20-461)	N/A	N/A	N/A
Arkansas (Ark. Code Ann. § 23-66-201; 054-00-043 Ark. Code R. § 1)	N/A	N/A	N/A
California (Cal. Ins. Code § 790.03(h); Cal. Code Regs., tit. 10, § 2695)	15 days	40 days; 80 days if fraud; N/A for certain policies	40 days
Colorado (C.R.S. § 10-3-1101-1116)	Reasonably promptly	60 days after a valid & complete claim	Reasonably promptly
Connecticut (Conn. Gen. Stat. Ann. §§ 38a-815 to 38a-832)	Reasonable time	Reasonable time	Reasonable time
Delaware (Del. Code Ann. Tit. 18, § 2304, 18-900-902 Del. Code Regs. 1.2.1.2-1.2.1.5)	15 days; Must investigate claims within 10 days of notice of loss	30 days	30 days
District of Columbia (D.C. ST § 31-2231.17)	Reasonably promptly	Reasonable time	
Florida (F.S. 624.155, 627.426 & 626.9541; Fl. Admin. Code Ann. r. 690-166.024)	14 calendar days; Must begin investigation within 10 working days of proof of loss	60 days of giving reservation of rights or of receipt of summons & complaint	30 days from knowing or should have known of coverage defense

State (Unfair Claims Statute/ Regulation)	**Contacting Insured Upon Initial Receipt of Claim**	**Issuing Disclaimer of Coverage from Proof of Loss**	**Issuing Reservation of Rights from Proof of Loss**
Georgia (Ga. Code Ann. 33-6-34, 33-4-7; R. of Comp. Gen. Office of Comm. Of Ins. 120-2-52-.03)	60 days of receiving written request	None	None but must give its insured timely notice
Hawaii (Haw. Rev. Stat. § 431:13-103(11))	15 days	Reasonable time after investigation completed	Reasonable time after investigation completed
Idaho (Idaho Code § 41-1329)	None	None	None
Illinois (215 Ill. Comp. Stat. Ann. 5/154.6; Ill. Admin. Code tit. 50, § 919.50)	Reasonable promptness	Reasonable time	Reasonable time
Indiana (Ind. Code § 27-4-1-4.5)	Reasonable promptness	Promptly	Promptly
Iowa (Iowa Code § 507B.4)	Reasonably promptly	Reasonable time	Reasonable time
Kansas (Kan. Stat. Ann. § 40-2404)	Reasonably promptly	Promptly	Promptly
Kentucky (K.R.S. 304-12-230; 806 Ky. Admin. Regs. 12:095)	15 days	Reasonable time	Reasonable time
Louisiana (Louisiana Rev. Stat. 22:1892)	None, 30 days suggested	30 days to settle property damage claim	30 days recommended
Maine (Me. Rev. Stat. 24-A, §2164-D)	Reasonably Promptly	Promptly	Reasonable time after investigation complete
Maryland (Md. Code Ann. §27-303; Md. Code Regs. 31.15.07.03, .04)	15 days	15 working days or policy	15 working days or policy
Massachusetts (Mass. Gen. Laws, ch. 176D)	Reasonably promptly	Reasonable time; Promptly	Reasonably promptly; Reasonable time; Promptly; Reasonable time after completion of investigation

State (Unfair Claims Statute/ Regulation)	**Contacting Insured Upon Initial Receipt of Claim**	**Issuing Disclaimer of Coverage from Proof of Loss**	**Issuing Reservation of Rights from Proof of Loss**
Michigan (Michigan's Uniform Trade Practices Act, MCL 500.2001, et. seq.)	30 days to provide materials that constitute a satisfactory proof of loss	None.	Reasonable time to policyholder and not to claimant. ***Caution*** of waiving disclaimer of coverage when defending without ROR within reasonable time
Minnesota (Minn. Stat. § 72A.201)	10 business days	60 days; 30 days after investigation is completed	60 days; 30 days after investigation is completed
Mississippi (None)	N/A	N/A	N/A
Missouri (Mo. Ann. Stat. § 375.1000; Mo. Code Regs. Ann. tit. 20, §100-1.030, 1.050)	10 days	15 days following all necessary forms	15 days following all necessary forms
Montana (Mont. Code Ann. § 33-18-101)	Reasonable time	Reasonable time	
Nebraska (Neb. Rev. Stat. Ann. § 44-1540; Neb. Admin. Code Title 210, Ch. 60 §6-006 to -008)	15 days	15 days	15 days
Nevada (N.R.S. 686A.310; NAC 686A.600-690)	20 working days	30 working days	30 working days
New Hampshire (N.H. Rev. Stat. Ann. 417:4 XV; N.H. Admin. Rules, Ins. §1001.01)	10 days	10 working days	10 working days
New Jersey (NJSA 17:29B-4; NJSA 17B:30-13.1; NJ Admin Code 11:2-17)	10 days	Reasonable period of time	Reasonable period of time; ***Caution*** waives coverage defense if defend lawsuit without ROR
New Mexico (N.M. Stat. Ann. §59A-16-20)	Reasonably promptly	Reasonable time	Reasonable time
New York (11 New Code of Rules & Regulations § 216; Insurance Law § 3420)	15 days	15 days	15 days
North Carolina (N.C. Gen. Stat. Ann. § 58-63 et. seq.)	Reasonably promptly	Reasonably promptly	Reasonably promptly
North Dakota (ND Cent. Code. § 26.1-04-03)	Reasonable promptness	Reasonable time	Reasonable time

State (Unfair Claims Statute/ Regulation)	**Contacting Insured Upon Initial Receipt of Claim**	**Issuing Disclaimer of Coverage from Proof of Loss**	**Issuing Reservation of Rights from Proof of Loss**
Ohio (Ohio Admin. Code § 3901-1-54, Ohio Rev. Code §§ 3901.19-3901.26)	15 days, but no time limit if suit is filed	21 days	21 days
Oklahoma (36 O.S. §§ 1250.1 et. seq.; Okla. Admin. Code 365:15-3-5, -7)	30 days	45 days; 60 days for investigation for property & casualty to be completed	No specific time, but presumed 45 days
Oregon (Or. Rev. Stat. § 746.230; Or. Admin. R. § 836-080-0225 to 235)	30 days	30 days	30 days
Pennsylvania (31 Pa. Code §§ 146.1-146.9; 40 Pa. Stat. Ann. § 1171.5)	10 days	15 days	15 days
Rhode Island (R.I. Gen. Laws §§ 27-9.1-1 et. seq.; 02-030-013 R.I. Code R. § 4; 02-030-073 R.I. Code R. §§ 5-6; Insurance Reg. 78, § 7.B)	10 days (property/ casualty); 15 days (accident, health & life); 30 days	15 days (property / casualty); 21 days / Reasonable time	15 days (property / casualty) / Reasonable time
South Carolina (S.C. Code Ann. § 38-59-20)	Reasonable promptness	Prompt investigation	Prompt investigation
South Dakota (S.D.C.L. § 58-33 et. seq.)	None specified, but 30 days per S.D.C.L. would be appropriate	None specified, but 30 days per S.D.C.L. would be appropriate	None specified, but 30 days per S.D.C.L. would be appropriate
Tennessee (Tenn. Code Ann § 56-8-105)	Reasonably promptly	Reasonable time	Reasonable time
Texas (Tex. Ins. Code Chapter 541)	Reasonable promptly	Reasonable time	Reasonable time
Utah (Utah Admin. Code R590-190-9 & 10; UCA 31A-26-303)	Promptly acknowledge – within 15 calendar days	Promptly – 30 calendar days	Promptly – 30 calendar days
Vermont (8 V.S.A. § 4724; 21-020-008 Vt. Code R. §§ 5-6)	10 days	30 days	30 days
Virginia (Va. Code Ann. § 38.2-510; 14 Va. Admin. Code § 5-400-50, -60, -70)	10 working days	None	None
Washington (Wash. Rev. Code § 48.30.010 et. seq.; Wash. Admin. Code § 284-30-360, -380)	10 days	15 days	15 days

State (Unfair Claims Statute/ Regulation)	Contacting Insured Upon Initial Receipt of Claim	Issuing Disclaimer of Coverage from Proof of Loss	Issuing Reservation of Rights from Proof of Loss
West Virginia (W. Va. Code § 33-11-1, et. seq.; W. Va. Code R. § 114-14-5, -6)	15 days	10 days after completion of investigation; investigation to be commenced within 15 days of claim; reasonable time to complete investigation	10 days after completion of investigation; investigation to be commenced within 15 days of claim; reasonable time to complete investigation
Wisconsin (Wis. Admin. Code Ins. § 6.11)	10 consecutive days	Reasonable time	Reasonable time
Wyoming (Wyo. Stat. 26-13-124, 26-25-124)	Reasonably promptly	Reasonable time	Reasonable time

See EAGLE INT'L ASSOC., INC., FAIR CLAIMS HANDLING STATUTES A 50 STATE SURVEY (Sept. 2015). While this chart is intended to provide a quick resource, it is strongly recommended that the policy and the governing state's statutes and regulations are reviewed for more information pertaining to these timeframes, as well as other pertinent timelines (e.g. providing response to written request, providing forms, tendering payment, communicating about ongoing investigation).

Similar to first party claims, a carrier's frequent or flagrant failure to timely and properly handle the claim could constitute in (1) administrative penalties, (2) private cause of action or (3) waiver of disclaimer of coverage.

While most states do not recognize a third party's private cause of action arising under the governing unfair claims act, some states do recognize a private cause of action by third-parties against carriers. While Massachusetts has enacted legislation specifically providing a private cause of action by third-parties, West Virginia has enacted legislation specifically prohibiting a third-party claimant from pursuing a private cause of action and only permitting a third-party claimant to file an administrative complaint. *Compare* Mass. Gen. Laws. Ch. 93A, § 9(1) (providing that any person whose rights are affected by another person violating Ch. 176D, §3(9) governing unfair claim settlement practices may bring an action for damages and such equitable relief) *with* W. Va. Code Ann. § 33-11-4a(a), 33-11-4a(b). *But see, Goff v. Penn. Mut. Life Ins. Co.*, 729 S.E.2d 890 (2012) (holding that upon the death of the insured, a primary beneficiary to a life insurance policy has standing to bring a statutory bad faith claim against the insurer pursuant

to the unfair claim settlement practices section). In New Mexico, a private cause of action against an insurer for unfair and deceptive practices is available to third-party claimants in some circumstances (e.g. failure to settle) but not in other circumstances (e.g. declination of providing non-mandatory excess liability insurance coverage). *Hovet v. Allstate Ins. Co*., 89 P.3d 69, 73 (N.M. 2004); *Jolley v. Associated Elec. & Gas Ins. Servs*., 237 P.3d 738, 739 (N.M. 2010). However, the third-party claimant cannot bring an action against the insurance carrier until the underlying action between the claimant and the insured is concluded. *Hovet*, 89 P.3d at 76-77. The Kentucky Supreme Court has concluded that its unfair claims provision provides for a private cause of action by third-parties by reasoning that "KRS 446.070 and KRS 304.12–230 read together create a statutory bad faith cause of action" and "that private citizens are not specifically excluded by the statute from maintaining a private right of action against an insurer by third party claimants." *State Farm Mutual Automobile Insurance Company v. Reeder*, 763 S.W.2d 116, 118 (Ky. 1988).

Delays in informing the insured that there may be no coverage under the policy while providing a defense may later result in waiver of the carrier's right to disclaim coverage under the policy. *See Centennial Ins. Co. v. Tom Gustafson Industries, Inc*., 401 So.2d 1143, 1144 (Fl. Ct. App. 4th dist. 1981) (providing that "a delay in informing the insured of a dispute as to coverage may result in estoppels of the insurer from contesting coverage if the insured can show that he has been prejudiced"); *Merchants Indemnity Corp. of New York v. Eggleston*, 37 N.J. 114, 179 A.2d 5050 (1962) (holding that an insurer waiting nine months to issue a reservation of rights after having knowledge of all facts giving rise to possible right of disclaimer after defending the insured constituted a waiver of its right to disclaim). *See also, World Harvest Church, Inc. v. GuideOne Mut. Ins. Co.*, 287 Ga. 149, 10 F.D.C.R. 1528 (2010) (holding that insurer was estopped from asserting defense of noncoverage regardless of whether insured could show prejudice).

IV. INDEPENDENT COUNSEL

The jurisdictions are split as to whether a carrier has to retain independent counsel for the insured when coverage is at issue.

The California Court of Appeals held in *San Diego Navy Federal Credit Union, et al. v. Cumis Ins. Society, Inc.*, 162 Cal.App.3d 358 (1984), that when there is a potential conflict of interest between an insurer and its insured requiring the insured to retain independent counsel, the insurer is to pay for the independent counsel. *See* Cal. Civ. Code § 2860. *See also, Nandorf, Inc.*

v. CNA Ins. Companies, 134 Ill. App.3d 134, 479 N.E.2d 988 (1985); *Belanger v. Gabriel Chemicals, Inc*., 787 So.2d 559 (La.App. 1 Cir. 2001); *Parker v. Agricultural Insurance Co.* 109 Misc.2d 678, 440 N.Y.S.2d 964 (1981).

Nevada recently held that an insurer was required to satisfy its duty to defend by permitting insured to select and pay reasonable costs for independent counsel when an actual conflict of interest exists; however, the Court noted that an insurer sending its insured a reservation of rights letter did not create a per se conflict of interest. *State Farm Mutual Automobile Insurance Company*, 131 Nev. Adv. Op. 74, 357 P.3d 338 (2015). Consistent with Nevada, Minnesota has made it clear that there must be an actual conflict of interest as opposed to an appearance of a conflict, including an insured requesting to be informed of the insured's litigation while maintaining a declaratory judgment action against the insured. *See Mutual Service Cas. Ins. Co. v. Luetmer*, 474 N.W.2d 365, 368-69 (Minn. App. 1991). Other jurisdictions have applied a per se rule that defending under a reservation of rights is a conflict of interest. *See* Alaska Stat. Ann. § 21.96.100(c) (2014); *Pueblo Santa Fe Townhomes Owners' Ass'n v. Transcon. Ins. Co.,* 218 Ariz. 13, 178 P.3d 485, 491 (App.2008); *Herbert A. Sullivan, Inc. v. Utica Mut. Ins. Co.,* 439 Mass. 387, 788 N.E.2d 522, 539 (2003); *Patrons Oxford Ins. Co. v. Harris,* 905 A.2d 819, 825–26 (Me. 2006).

Other states have rejected the *Cumis* rule by reasoning that the insured is the sole client. *See e.g. L & S Roofing Supply Co. v. St. Paul Fire & Marine Ins. Co.*, 521 So.2d 1298, 1303–04 (Ala.1987); *Higgins v. Karp,* 239 Conn. 802, 687 A.2d 539, 543 (1997); *Finley v. Home Ins. Co*., 90 Hawai'I 25, 975 P.2d 1145, 1152-53 (1998); *Point Pleasant Canoe Rental Inc. v. Tinicum Twp*., 110 F.R.D. 166, 170 (E.D. Pa. 1986); *In re Youngblood,* 895 S.W.2d 322, 328 (Tenn.1995); *Tank v. State Farm Fire & Cas. Co.,* 105 Wash.2d 381, 715 P.2d 1133, 1137 (1986).

The California Supreme Court recently ruled that an insurance carrier could bring an action against its insured's independent counsel under unjust enrichment for reimbursement of unreasonable and unnecessary fees that it had paid to the *cumis* counsel. *Hartford Casualty Ins. Co. v. J.R. Marketing, L.L.C.,* 61 Cal.4th 988, 353 P.3d 319 (2015). In *Hartford Casualty Ins. Co*., the trial court issued an order, which was drafted by *cumis* counsel, requiring "the insurer to pay all 'reasonable and necessary defense costs,' but expressly preserved the insurer's right to later challenge and recover payments for 'unreasonable and unnecessary' charges by counsel" in a case where Hartford was defending the insured against covered and non-covered claims. *Id*. at 321-

22. Due to Hartford being in breach of its duty to defend prior to this court order, Hartford was not able to benefit from California civil code limiting the rates charged by independent counsel to be limited to that actually paid by the insurer to attorneys retained in the defense of similar suits. *Id*. at 323 (citing Cal. Civ. Code § 2860). Hartford incurred $15 million in defense fees and costs. *Id*. In California, where the doctrine of unjust enrichment applies, "the law implies a restitutionary obligation, even if no contract between the parties itself expresses or implies such duty." *Id*. at 326 (citation omitted). In prior case law, the California Supreme Court allowed a carrier to restitution from the insurer for fees paid to independent counsel to defend non-covered claims. *Id*. While the California Supreme Court "emphasiz[ed] that [its] conclusion hinges on the particular facts and procedural history of [the underlying litigation]," including the order providing that Hartford could pursue anyone for the overpayments, the Court held that the carrier was entitled to seek reimbursement directly from *cumis* counsel. *Id*. at 327, 331-32.

V. BEST SETTLEMENT PRACTICES

Most states require that insurers "devise a litigation strategy (and make settlement offers within the policy limits) as if the insurer bore the full exposure." *Transport Ins. Co. v. Post Express Co.,* 138 F.3d 1189, 1192 (7th Cir. 1998). An insurer must give its insured's interests "at least equal consideration with its own when the insured is a defendant in a suit in which the recovery may exceed the policy limits." *Adduci v. Vigilant Ins. Co.,* 424 N.E.2d 645, 648 (Ill. App. 1981), *Kavanaugh v. Interstate Fire & Casualty Co.,* 342 N.E.2d 116, 120 (Ill. App. 1975), ***McKinley v. Guar. Nat'l Ins. Co.,*** 159 P.3d 884 (Idaho 2007). Negligent failure to settle typically requires the insured establish (1) the claim is within the scope of coverage, (2) a demand was made that was within policy limits, and (3) the demand was such that an ordinary prudent insurer would have accepted it, considering the likelihood and degree of the insured's potential exposure. *Yorkshire Ins. Co. v. Seger,* 279 S.W.3d 755, 768 (Tex. App. 2007), *G.A. Stowers Furniture Co. v. Am. Indem. Co.,* 15 S.W.2d 544, 547 (Tex. Comm'n App. 1929), *Twin City Fire Ins. Co. v. Country Mut'l Ins. Co.,* 23 F.3d 1175 (7th Cir. 1994). An insurer must settle, if possible, "where a reasonably prudent person faced with the prospect of paying the total recovery would do so." *Robinson v. State Farm Fire & Casualty Co.,* 583 So.2d 1063, 1067 (Fla. App. 1991).

Various factors are considered in determining whether a failure to settle a case was "reasonable." *Brown v. Guarantee Insurance Co.,* 319 P.2d 69 (Cal. App. 1958), *Commercial Union Insurance Co. v. Liberty Mutual Insurance Co.,* 393 N.W.2d 161 (Mich. 1986). California

courts have weighed the following: (1) the strength of the claimant's case on both liability and damages; (2) the attempts by the insurer to induce the insured to contribute to the settlement (in third-party claims); (3) the failure of the insurer to properly investigate so as to fully consider the evidence that exists against the insured; (4) any rejection of settlement advice from the insurer's own attorney or agent; (5) the failure of an insurer to inform its insured of a demand or offer; (6) a failure to consider the amount of financial risk to which each party is exposed if there is a refusal to settle; (7) the fault of the insured in inducing the insurer to reject a demand by misleading the insurer as to the facts; and (8) other evidence that would establish or negate bad faith on the part of the insurer. *Brown*, 329 P.2d 69. Michigan considers additional procedural items such as: (1) a failure to inform the insured of any relevant litigation developments; (2) a failure to keep the insured informed of all demands outside of policy limits; (3) a failure to solicit a demand or extend an offer when the facts warrant; (4) a failure to accept a reasonable compromise when the liability is evident and the damages are high; (5) a rejection of a reasonable settlement offer that is within policy limits; (6) an attempt to coerce the insured into contributing to a settlement that is within policy limits; and (7) creating undue delay in accepting a settlement demand that is within policy limits where a potential verdict is high. *Commercial Union Insurance Co.,* 393 N.W.2d 161. Failing to inexcusably meet a deadline placed on a policy limit demand or failing to timely pay policy limits where liability is extreme and damages are high may also result in a finding of bad faith. *Berges v. Infinity Ins. Co.,* 896 So.2d 665 (Fla. 2004).

A claim for bad faith based on an alleged wrongful refusal to settle for an amount within policy limits generally requires a reasonable offer where (1) the terms have been made clear enough to have created an enforceable contract resolving all claims at issue, *Coe v. State Farm Mut. Auto. Ins. Co.,* 66 Cal. App.3d 981, 992-993 (Cal. App. 1977), (2) all third party claimants (if any) have joined in the demand (*ibid.*), (3) the demand provides for a complete release of all insureds; *Strauss v. Farmers Ins. Exchange,* 26 Cal. App. 4th 1017 (Cal. App. 1994); (4) and the time provided for acceptance did not deprive the insurer of an adequate opportunity to investigate and evaluate the insured's exposure. *Critz v. Farmers Ins. Group,* 230 Cal.App.2d 788, 798 (Cal. App. 1964).

In handling demands, whether within policy limits or above, the insurer must do more than just act reasonably—it must be able to prove that all steps taken in either negotiating a settlement or denying settlement was done reasonably. Documenting the claim file and keeping accurate and

complete records of all communications and decisions within the claim analysis is essential. All materials should be date stamped in order for the file to be reconstructed at a later date. Bad faith claims with regard to settlement decisions are often determined by looking at all of the evidence and conducting an analysis of what was available at the time the settlement decisions were made. In addition to file stamping documents, all phone communications should be documented in writing and in as much detail as possible, including attempts to contact an insured or others integral to an investigation, even where the person called is not reached. All activity including investigations in to damages should be noted by date within the file. Dilatory behavior on behalf of an insurer can be the foundation upon which a bad faith claim is structured.

Notwithstanding the requirement to fully and completely document the claim file, the insurer must assume that everything within that file will be discovered by the party making a bad faith claim. *Brown v. Superior Court In and For Maricopa County*, 670 P.2d 725, 734 (Ariz. 1983). Gratuitous comments in correspondence or memoranda should be avoided. This is true for both those handling the claim on behalf of the insurance company as well as any counsel or experts retained by the insurance company. Comments such as "this lady is such a liar" or "I'm sick of this guy" should never be included in any portion of the claim file. However, it is important to document any difficulties that arise in dealing with the insured or claimant. For example, an insured's failure to timely respond to a demand for proof of loss, an unreasonable restriction on medical authorizations or failure to timely provide medical authorizations, a claimant or insured's dishonesty relaying essential facts or where the claimant has otherwise delayed the investigation should all be things noted in detail within the file.

VI. TIPS TO AVOID THE PITFALLS OF VIOLATIONS OF THE UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

The following highlights some pointers that adjusters can do to avoid violating the Unfair Claims Settlement Practices Act:

- ✓ Understand the governing law's requirements for investigating and handling claims
- ✓ Maintain diligent log notes
- ✓ Manage the massive onslaught of daily activities
- ✓ Accurately represent relevant facts and policy provisions
- ✓ Timely affirm or deny coverage

- Provide adequate explanations for claim denials

- ✓ Review of Settlement Values
- ✓ Update evaluations regularly
- ✓ Monitor cases appropriately
- ✓ Single point of contact with the State Agency