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Establishing the Tort of Bad Faith in Wyoming

The past three decades have witnessed the development, in a number of jurisdictions, of what is termed the new tort of bad faith breach of contract.[1] This new tort developed initially with regard to disputes between an insured and his insurance company where the insurer unreasonably refused to accept an offer by a third party to settle a claim against its insured.[2] Subsequently, the tort of bad faith breach of contract was extended to first party insurance claims where the insurer wrongfully witheld payment of the claim asserted by the insured.[3] Current debate focuses on whether the tort of bad faith breach of contract should extend beyond the area of insurance law into a purely commerical setting.[4]

Although the tort of bad faith breach of contract is a relatively new cause of action, it is based on general principles of tort law: the existence of a duty and the breach of that duty.[5] Despite this apparent simplicity, the tort of bad faith has two unique characteristics which complicate its application. First, the duty which is the basis of the cause of action arises from a contract.[6] In the usual case, breach of a contractual duty gives rise to an action *ex contractu* enabling the plaintiff to recover compensatory damages. In bad faith litigation, the breach of the duty also gives rise to an action in tort.[7] The significance of this difference will be discussed in further detail.[8] The second unique feature of bad faith litigation is that the duty which gives rise to the cause of action does not arise out of the contract itself. Instead, the duty was created by the courts by imposing

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1. Note, *The New Tort of Bad Faith Breach of Contract: Christian v. American Home Assurance Corp.*, 13 TULSA L.J. 605 (1978).
2. Comunale v. Traders and General Ins. Co., 50 Cal. 2d 564, 328 P.2d 198 (1958).
3. Richardson v. Employers Liability Assur. Corp., 25 Cal. App. 3d 232, 102 Cal. Rptr. 547 (Cal. Ct. App. 1972).
4. *See, e.g.*, Louderback & Jurika, *Standards for Limiting The Tort of Bad Faith Breach of Contract*, 16 U.S.F. L. REV. 187 (1982). The extention of the tort of bad faith breach of contract beyond the insurance context to purely commercial contracts has been met with "judicial hesitation." Boorhis, *Recognition and Recovery for Bad Faith Torts*, TRIAL, Dec. 1982, at 48. This reluctance to extend the tort of bad faith to commercial contracts is due in part to a perceived necessity to keep tort law and contract law separate and distinct. The argument put forth is that within the commercial setting, there should be no need for tort damages since the contract parties would be deemed to have adequately protected their interests in the contract. *Id.*

   Most recently the California Supreme Court, in Seaman's Direct Buying Service v. Standard Oil Co., 36 Cal. 3d 752, 686 P.2d 1158, 206 Cal. Rptr. 354 (1984), declined to extend the tort of bad faith breach of contract to govern a dispute between the parties regarding a distributorship agreement. The court's decision exemplified the judicial response to whether the tort of bad faith should extend to purely commercial contracts by disposal of the case on alternative grounds. While the court did not expressly preclude application of the tort of bad faith outside of the insurance setting, it noted the reluctance of the court to provide a tort remedy where the parties were of equal bargaining strength and could adequately protect their interests in the contract.
5. W. PROSSER, LAW OF TORTS 143 (4th ed. 1971).
6. Louderback, *supra* note 4, at 197.
7. *Id.* at 187.
8. *See infra* notes 48-66 and accompanying text.

on all contracts a covenant of good faith and fair dealing.[9] Conseqently, a breach of this implied covenant gives rise to an action sounding in tort.

Despite the widespread recognition of the tort of bad faith in other states, Wyoming has not yet allowed recovery based on this new cause of action. Legal precedent currently recognized under Wyoming law provides a strong basis from which the tort of bad faith can be established. This comment will provide a brief history of the development of bad faith litigation, its underlying policy considerations, and explore the existing legal principles in Wyoming which support the recognition of this new cause of action.

HISTORY OF BAD FAITH INSURANCE LITIGATION

In order to understand the tort of bad faith, a review of the nature of insurance policies will be helpful. An insurance policy is a contract, and as any other other contract, it imposes certain duties and obligations on the insured and insurer.[10] The two fundamental obligations imposed on an insurer by an insurance policy are the duty to indemnify and the duty to defend. The duty to indemnify arises when the insured becomes legally obligated to pay a sum of money as the result of an occurrence which is covered by the insurance policy.[11] The duty to defend is broader than the duty to indemnify.[12] It requires the insurer to tender a defense of any claim brought against the insured, even if the event giving rise to the asserted claim may not be within the coverage of the policy.[13]

The duty to defend also gives the insurer the right to control the defense of any claims asserted against its insured.[14] The insurer, therefore, reserves the exclusive right to make the final decision as to whether to settle or compromise a claim.[15] This exclusive right creates a potential conflict of interest between the insurer and insured. The insurer's liability is limited to the amount of coverage provided by its policy. From the insured's standpoint, no liability accrues until the claim against her exceeds the amount of insurance she has purchased. Therefore, it is always in the insured's best interest to settle a claim within the policy limits. As long as the settlement is within policy limits, the insured has little concern about the amount paid. The insurer, however, is in the opposite position. As the proposed settlement amount approaches the amount of coverage provided by its policy, the insurer has little incentive to settle the claim. Regardless of the outcome of the claim against the insured, the insurer's liability will be approximately the same, and certainly no more than the policy limits. Furthermore, the insurer may successfully defend

9. Louderback, *supra* note 4, at 197.
10. Hursh Agency, Inc. v. Wigwam Homes, Inc., 664 P.2d 27, 31 (Wyo. 1983).
11. R. KEETON, BASIC TEXT ON INSURANCE LAW § 1.2(a), at 2-3 (2d ed. 1971).
12. Aetna Ins. Co. v. Lythgoe, 618 P.2d 1057, 1061 (Wyo. 1980).
13. *Id.*
14. W. SHERNOFF, S. GAGE & H. LEVINE, INSURANCE BAD FAITH LITIGATION § 3.01, at 3-3 (1984).
15. *Id.*

against the asserted claim. This potential conflict of interest in the settlement of claims is the basis from which the courts first imposed a duty of good faith and fair dealing.[16]

The pioneering case in bad faith insurance litigation is *Comunale v. Traders & General Insurance Co.,*[17] which involved a suit by the insured against his insurer for failing to settle a claim within the policy limits. A claim had been filed against the insured and the claimant had offered to settle within the policy limits, but the insurer refused.[18] The subsequent lawsuit resulted in a verdict against the insured in an amount in excess of the policy limits. As a result of the insurer's refusal to settle, the insured became liable for the amount of the verdict which exceeded the policy limits.

The important aspect of the *Comunale* decision is that the California Supreme Court imposed a duty of good faith and fair dealing on all contracts.[19] As applied to an insurance policy, this implied covenant of good faith "requires an insurer to settle in an appropriate case although the express terms of the policy do not impose such a duty" and to give the interests of the insured at least as much weight as its own when evaluating a settlement offer.[20] The court further held that a breach of this duty, in addition to giving rise to an action for breach of contract, also gave rise to an action sounding in tort.[21] These two principles, the implied duty of good faith and tort recovery for the breach of that duty, are the basic elements of all bad faith litigation.

Subsequent decisions involving a refusal to settle within policy limits have refined the requirements of a bad faith action. The implied duty of good faith has been defined as requiring an insurer to refrain from doing anything which would injure the rights of the insured to receive the benefits of his insurance policy.[22] The courts have also attempted to clarify the test to be applied in determining whether the insurer has breached this duty of good faith. The California court has suggested that the test to be applied is "whether a prudent insurer without policy limits would

16. *Id.* § 3.01, at 3-3, 3-4.

17. 50 Cal. 2d 654, 328 P.2d 198 (1958).

18. In *Comunale,* the plaintiffs were injured in an accident when a truck driven by the insured struck them. The insured's policy with Traders provided that the coverage of the policy would be limited to $10,000 for each person injured with an aggregate coverage of $20,000 for any single accident. The insurance company refused to defend the action despite a settlement offer of $4,000 tendered by the plaintiff—well within the policy limits. At trial a verdict was reached in favor of the plaintiffs. The California Supreme Court held that the insurer could be found liable for an amount in excess of the policy limits. *Id.*

19. *Id.* at 658, 328 P.2d at 200. The court never clearly delineated the basis for implying such a duty, stating merely that "the rights of an insured go deeper than the mere surface of the contract written for him by the [insurer]," and that the implied duty is "based on those principles of fair dealing which enter into every contract." *Id.* at 658-59, 328 P.2d at 200-01.

20. *Id.* at 659, 328 P.2d at 201.

21. *Id.*

22. Egan v. Mutual of Omaha Ins., 24 Cal. 3d 809, 818, 598 P.2d 452, 456, 157 Cal. Rptr. 482, 486, (1979), *cert. denied,* 445 U.S. 912 (1980).

have accepted the settlement offer."[23] Bad faith has been defined as acts by the insurer amounting to dishonesty, fraud, concealment, or an unwarranted or unreasonable refusal to settle the claim.[24]

These cases are important because they set forth a negligence standard. This standard provides greater protection to the insured than the subjective "honesty in fact" standard of good faith generally imposed on contracts.[25] The insured is not required to prove that his insurer intentionally failed to settle the claim or acted with subjective bad faith. Instead, the insured need only show that his insurer failed to act as a reasonable insurer would have. This standard has been applied not only to instances where the insured seeks protection from claims by third parties, but also when the insured is seeking the policy benefits.[26]

POLICY CONSIDERATIONS UNDERLYING THE TORT OF BAD FAITH

The preceding discussion provides a brief explanation of *how* the tort of bad faith developed. In order to establish the tort of bad faith in Wyoming, it may be more beneficial to focus on *why* other courts have felt it was necessary to create this new cause of action. The following discussion will focus on policy considerations underlying the two important aspects of bad faith litigation: the duty of good faith, and tort recovery for the breach of that duty.

The Implied Duty of Good Faith

Almost every bad faith insurance case starts with the premise that there is an implied covenant of good faith and fair dealing in every contract.[27] The primary rationale for imposing this duty on insurance polices is the special relation existing between an insured and his insurance company.[28] This special relationship arises from the inequality in bargaining power between an insured and insurer, the public interest in regulating the insurance industry, and the insured's reliance on the expertise of the insurer. Each of these bases has been utilized by the courts in providing protection to persons purchasing insurance and have played a role in the development of the tort of bad faith.

Superior Bargaining Power

The overwhelmingly superior bargaining power of insurance companies has caused the courts to consider insurance policies as adhesion contracts.[29] The typical insurance coverage purchased by an insured con-

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23. Crisci v. Security Ins. Co., 66 Cal. 2d 425, 429, 426 P.2d 173, 176, 58 Cal. Rptr. 13, 16 (1967).

24. *Id.* at 429, 426 P.2d at 176, 58 Cal. Rptr. at 16.

25. *See infra* notes 79-83 and accompanying text.

26. Louderback, *supra* note 4, at 198 n.52. In order to prevent unfair practices by insurers, many courts have relied on the tort of bad faith breach of contract to allow recovery by policyholders in various situations. *See, e.g.*, W. SHERNOFF, *supra* note 14, § 1.01, at 1-2 n.3.

27. Louderback, *supra* note 4, at 197.

28. W. SHERNOFF, *supra* note 14, § 1.02, at 1-3.

29. *Id.* § 1.03, at 1-5 to 1-9.

sists of a standardized policy supplied by the insurance company. The typical insured lacks both the power and the necessary knowledge to modify the standard form so provided.[30] In recognition of the usual method in which insurance policies are issued, the courts have created special rules of interpretation, such as resolving ambiguities in favor of the insured,[31] interpreting policies in light of the reasonable expectations of the insured,[32] and construing exclusions from coverage narrowly.[33]

The superior bargaining position of insurance companies is one important reason for imposing tort liability for failing to act in good faith.[34] As one commentator explained, "[i]n a sense, the imposition of such liability may be seen as an effort to equalize the parties' dealings with one another and to assure that the policyholder gets the benefits he or she bargained for."[35]

Public Interest Aspect of Insurance

A second important aspect of the relationship between the insurer and insured is the public interest in the insurance industry.[36] This public interest imposes additional obligations on insurance companies. As the California Supreme Court noted:

> The insurers' obligations are . . . rooted in their status as purveyors of a vital service labeled quasi-public in nature. Suppliers of services affected with a public interest must take the public's interest seriously, where necessary placing it before their interest in maximizing gains and limiting disbursements. . . . [A]s a supplier of a public service rather than a manufactured product, the obligations of insurers go beyond meeting the reasonable expectations of coverage.[37]

As shown by the California Supreme Court's reasoning, insurance companies are not treated as ordinary commercial businesses. The additional obligations imposed on insurance companies by the public service function of insurance coverage provide a basis from which the implied covenant of good faith and fair dealing arises.[38]

30. *See, e.g.*, Wilson v. Hawkeye Casualty Co., 67 Wyo. 141, 162, 215 P.2d 867, 875 (Wyo. 1950), *citing* Rice Oil Co. v. Atlas Assur. Co., 102 F.2d 561 (9th Cir. 1939).

31. *Id.* at 161, 215 P.2d at 874 (citation omitted).

32. *Id.*

33. Beaugureau v. Equitable Life Assur. Soc'y, 132 Ariz. 596, 598, 647 P.2d 1194, 1196 (Ariz. Ct. App. 1982).

34. W. SHERNOFF, *supra* note 14, § 1.04, at 1-9.

35. *Id.*

36. *Id.* § 1.04, at 1-9, 1-10.

37. Egan v. Mutual of Omaha Ins. Co., 24 Cal. 3d 809, 820, 598 P.2d 452, 457, 157 Cal. Rptr. 482, 487 (1979), *cert. denied*, 445 U.S. 912 (1980), *quoting* Goodman & Seaton, *Forward: Ripe for Decision, Internal Workings and Current Concerns of the California Supreme Court*, 62 CAL. L. REV. 309, 346-47 (1974).

38. *See, e.g.*, Note, *Good Faith and Fair Dealing in Insurance Contracts: Gruenberg v. Aetna Ins. Co.*, 25 HASTINGS L.J., 699, 707-08 (1974).

The Insurer's Status as a Fiduciary

The concept of a fiduciary relation between an insurer and insured has also played an important role in the recognition of an implied duty of good faith. This fiduciary relation arises from "the fact that people purchase insurance because they anticipate a need for assistance if certain contingencies arise."[39] Assistance can be either payment of the proceeds of a policy upon the happening of some event or or the insurer's assistance in defending a claim.[40] As laymen, insureds place great trust and reliance on the insurer's expertise in providing these services. This trust is the very essence of a fiduciary relation.[41] The insurer's status as a fiduciary, as with any other fiduciary, carries with it the obligation to act in good faith.[42]

The adhesionary nature of an insurance policy, the public interest in the services provided by an insured, and the fiduciary nature of the relation between the insured and insurer make an insurance policy particularly susceptible to governmental regulation.[43] Each state, therefore, is in a sense a party to the insurance contract, and it is the state which imposes the duty of good faith and fair dealing.[44] This duty "attaches over and above the terms of the contract,"[45] and is owed to both the public and the insured.[46] When either duty is breached, it is only reasonable to impose liability on the insurer.

REMEDY FOR BREACH OF THE DUTY OF GOOD FAITH

Imposing a duty on the part of the insurer to act in good faith is only the first step in establishing the tort of bad faith. The second step is to convince the court to allow recovery in tort in addition to contract remedies when the duty of good faith is breached. In those jurisdictions allowing bad faith causes of action, the duty of good faith is superimposed on all contracts and therefore becomes part of the contractual obligations.[47] As a general rule, breach of an obligation found in a contract gives rise only to contract remedies. In bad faith litigation, however, breach of the implied covenant of good faith also gives rise to an action in tort.[48] The reason the courts have allowed tort recovery is the lack of protection afforded to an insured by contract remedies and the inherent advantages of tort recovery.

39. W. SHERNOFF, *supra* note 14, § 1.05, at 1-13.
40. *Id.*
41. *Id.*
42. *Id.* § 1.05, at 1-10.
43. Note, *supra* note 38, at 708. Furthermore, because the scope of this duty is prescribed by law, the customs of insurance companies are not dispositive of the extent of the insurer's duty. Louderback, *supra* note 4, at 198.
44. Note, *supra* note 1, at 615.
45. *Id.*
46. Note, *supra* note 38, at 708.
47. Louderback, *supra* note 4, at 196.
48. Note, *supra* note 38, at 701.

The Inadequacy of Contract Remedies

Understanding why contract remedies are inadequate when applied to insurance policies requires a brief review of the principles of contract law. The purpose of contract law is to ensure that the promises made in a contract are honored.[49] In the context of an insurance policy, these promises include the insurer's promise to pay the proceeds of the policy, and to aid the insured in the defense of claims asserted against him.[50] When contractual promises such as these are breached, the principles of contract law attempt to place the wronged party in the same position as if the contract had been performed.[51] This is accomplished by awarding damages which are the equivalent of his benefit of the bargain.[52] The limitations on the protection so provided arise from the restrictions placed on recovery for breach of contract. These restrictions were first laid down in the landmark English decision of *Hadley v. Baxendale.*[53]

Hadley v. Baxendale established the rule that an award of consequential damages for breach of contract is limited to those damages which were within the contemplation of the parties at the time of contracting.[54] As applied to an insurance policy, this rule has limited an insured's recovery for the insurer's failure to pay the proceeds of a policy to the amount of the policy, plus interest.[55] The courts have made an exception when the insurer refuses to accept the settlement of third-party claims. In such cases, the courts have held that the amount by which a judgment exceeds the limits of a policy is recoverable as consequential damages.[56] However, the courts continue to limit contract recovery for first-party claims to the amount of the policy plus interest. Furthermore, the courts have not allowed recovery of consequential damages for inconvenience, economic loss, emotional distress, or legal fees in either type of claim.[57]

One effect of these limitations on breach of contract recovery is that they fail to deter bad faith actions by insurers. In fact, treating the failure to pay the proceeds as a breach of contract may give the insurer an incentive to delay payment as long as possible. When the insured's recovery is limited to the amount of the policy plus interest, the insurer has little reason to pay.[58] The insurer is being paid interest on the funds it holds in an amount which is at least as high as the interest penalty a court may impose. In many instances, the commercial interest rate received by insurers is even higher, allowing the insurer to profit by withholding payment. While the insurer is taking this delaying action, the insured is faced

49. W. SHERNOFF, *supra* note 14, § 7.02[1], at 7-5.
50. *See supra* notes 10-13 and accompanying text.
51. W. SHERNOFF, *supra* note 14, § 7.01[1], at 7-6.
52. *Id.*
53. 9 Ex. 341, 156 ENG. REP. 145 (1854).
54. *Id.*
55. W. SHERNOFF, *supra* note 14, § 7.03[1], at 7-8.
56. *Id.* § 7.03[2][a], at 7-10.
57. *Id.*
58. *Id.* § 7.01, at 7-3. It is left up to the reader to determine whether the potential loss of business by the insurer as a result of bad faith conduct provides a deterrent to such behavior.

with the prospect of years of litigation and burdensome legal fees.[59] Faced with this unenviable prospect, the insured may be forced to settle for an amount which is far less than what he is entitled to under the policy.

A second drawback of recovery based on breach of contract is that it fails to take into consideration the dual aspects of an insurance policy. An insurance policy is not purchased solely for payment of money upon the occurrence of a specified event. Providing peace of mind and security is another important function of insurance coverage. "The very risks insured against presuppose that if and when a claim is made, the insured will be disabled and in strait financial circumstances. . . ."[60] An action based on contract fails to protect these interests because it only compensates for financial losses.

Advantages of Allowing Tort Recovery

The tort of bad faith developed from the recognition by many courts of the special relation between insurer and insured and the need to provide additional protection from unfair practices by insurers. This additional protection has been provided by allowing an insured to recover in tort as well as in contract. An action in tort allows an insured to recover greater consequential damages as well as, in certain circumstances, punitive damages.

The major advantages of tort recovery arise from the basic principles of tort law. Tort law protects the public from unreasonable conduct by imposing obligations independent of any consensual agreement.[61] When such duties are breached, tort law seeks to restore the injured party, through the award of damages, to a position he would have been in had the tort not been committed.[62] Thus, in contrast to contract law, tort law compensates the injured party for the loss incurred, rather than giving him the benefit of the bargain.[63]

The basic difference in the underlying interests sought to be protected by contract and tort law provides many advantages to a plaintiff bringing an action in tort. In the area of insurance, the most important advantage is the wide variety of damages which may be recovered. Instead of being limited to recovery for those damages contemplated by the parties, tort recovery will include all damages proximately caused by the breach of the duty of good faith.[64] In the context of the implied duty of good faith, tort recovery has allowed the insured to recover a wide arrray of compen-

59. Under the American rule, each party must pay his own legal fees regardless of the outcome of the litigation. Downing v. Stiles, 635 P.2d 808, 817 (Wyo. 1981). When the amount an insured seeks is small, the costs incurred in receiving payment under the policy may even exceed the potential recovery.

60. Fletcher v. Western Nat'l Life Ins. Co., 10 Cal. App. 3d 376, 89 Cal. Rptr. 78, 95 (Cal. Ct. App. 1970).

61. W. SHERNOFF, *supra* note 14, § 7.02[1], at 7-5.

62. *Id.* § 7.02[1], at 7-6.

63. *Id.*

64. Endresen v. Allen, 574 P.2d 1219, 1222 (Wyo. 1978).

satory damages. One commentator has composed the following illustrative, though not exhaustive, list of items which may be recovered:

> (1) Interest on the amount of benefits unreasonably withheld by the insurer. (2) Interest paid on money the insurer had to borrow because his policy benefits were withheld. (3) Legal fees and costs incurred in securing payment of the claim. . . . (4) Damages resulting from the insured's bankruptcy or inability to pay creditors, such as damage to the insured's credit standing and costs of defending lawsuits brought by the insured's creditors, if caused by the insurer's failure to pay policy benefits (as distinguished from the underlying loss itself). (5) Additional loss of earnings, rental expenses, replacement expenses, or other business losses suffered if the insurer unreasonably withholds or delays payment of benefits. (6) Lost employment opportunities. (7) The decrease in value of the insured's claim as a result of inflation.[65]

The additional types of financial loss which may be recovered are not the only advantages of allowing tort recovery. Another advantage of a tort action is the potential recovery of punitive damages. If the breach of implied duty of good faith is intentional, malicious, or oppressive, punitive damages are recoverable.[66] The potential recovery of punitive damages provides greater protection to persons purchasing insurance policies. As noted above, limiting recovery to the proceeds of the policy plus interest allows an insurer to profit from withholding payment on the policy. The prospect of an award of punitive damages, however, provides a greater incentive for insurers to act fairly. The recovery of punitive damages may also allow an attorney to work on a contingency basis, thus allowing persons with limited resources the opportunity to bring a suit against an insurer who has acted improperly.

Summary of the Tort of Bad Faith

A growing number of jurisdictions have recognized the special relation between an insured and insurer. This relation gives rise to an implied duty of good of faith and fair dealing. In addition, the limitations of contract remedies have prompted the courts to allow tort recovery for breach of this duty. The creation of this new tort has required insurers to faithfully carry out their obligations as purveyors of an important public service and provides added protection both to the public and to the insured.

PRESENT BASIS FOR ESTABLISHING THE TORT OF BAD FAITH IN WYOMING

Despite the widespread recogniton of the advantages of this new cause of action, the Wyoming Supreme Court has not yet allowed recovery for bad faith breach of contract. There is, however, a legal framework which

65. W. SHERNOFF, *supra* note 14, § 7.04[1], at 7-17 to 7-18.
66. *See*, Harris v. American Gen. Life Ins. Co. of Dela., ____ Mont. ____, 658 P.2d 1089 (1983).

provides support for establishing the tort of bad faith in Wyoming. The Wyoming Supreme Court has already recognized that the breach of an obligation imposed by law on a contract will give rise to an action sounding both in tort and in contract. The Wyoming Supreme Court has recognized "certain classes of contracts which create a relation out of which certain duties arise as implied by law independently of the express term of the contract. If negligent breach of contract is also a breach of such duty, the remedy is ex contractu as well as ex delicto."[67] There is, therefore, already support for one aspect of bad faith litigation: tort recovery for the breach of contractual obligations imposed by law. The remainder of this comment will focus on establishing the second aspect of the tort of bad faith: the imposition of an implied duty of good faith.

Case Law Supporting the Imposition of the Duty of Good Faith

One Wyoming case, *Western Casualty & Surety Co. v. Fowler*,[68] has allowed recovery for an insurer's bad faith refusal to settle within the policy limits. An employee of the insured had been injured in a fall from the insured's ladder. The insured had a $10,000 insurance policy from Western Casualty. The employee offered to settle the claim for $2,813.80. When Western Casualty refused to settle for this amount, the employee brought suit and received a jury verdict for $18,102.50. In order to avert a possible appeal, the employee settled for $15,000. Of this amount, the insurer paid $10,000, the policy limit, and the insured paid the additional $5,000. The insured then brought a suit against Western Casualty for bad faith in refusing to accept the employee's offer to settle. The insured prevailed, with the jury awarding damages of $5,000.

The insurer raised two issues on appeal: (1) whether there was sufficient evidence to support the jury's finding of bad faith in refusing to accept the proposed settlement, and (2) whether the trial court erred in refusing to give the insurer's proposed jury instruction defining *bad* faith.[69] The Wyoming Supreme Court affirmed the jury's verdict, dismissing both of the insurer's contentions. As to the first issue, the court held that the record contained a clear showing of the employer's negligence which, in conjunction with the employee's modest settlment offer, was sufficient to support the jury's verdict.[70] The court then held that it was unnecessary to pass on the correctness of the defendant's proposed jury instruction because the jury had been adequately instructed as to the insurer's duty of good faith.[71] The trial court had instructed the jury that this duty requires an insurer "to exercise intelligence, good faith, and honest and con-

67. Tate v. Mountain States Tel. & Tel. Co., 647 P.2d 58, 63 (Wyo. 1982). This special relation has been found in public service contracts. *Id.* This special relation also exists in construction contracts. Cline v. Sawyer, 600 P.2d 725 (Wyo. 1979). Although no guidelines have been set in determining which contracts fall within this class, the special relation between insurers and insureds argues strongly for the inclusion of insurance policies in this category. *See supra* notes 28-46 and accompanying text.
68. 390 P.2d 602 (Wyo. 1964).
69. *Id.* at 603.
70. *Id.* at 604-06.
71. *Id.* at 606.

scientious fidelity to the common interest of the [insured]," and "if it fails to do so, it acts in bad faith."[72] The court further noted that the trial court was correct in instructing the jury that bad faith "must be determined as of the time the offer was made and that good faith meant a bona fide belief that the insurer had a good possibility of winning the lawsuit or that the claimant's recovery would not exceed the limits of the insurance policy."[73]

The *Fowler* decision supports, but is of limited value in establishing the tort of bad faith in Wyoming. In *Fowler,* the supreme court merely held a duty of good faith exists in the settlement context, and that this duty may be breached by failing to accept a reasonable settlement offer. The holding supports the tort of bad faith because it shows that the Wyoming Supreme Court recognizes there are instances when an insurer will be required to act in good faith. The court's holding is of limited value for several reasons. First, the court did not establish a general duty of good faith which would apply to all actions by insurers. Furthermore, the court failed to provide any reasons for imposing this duty. Therefore, the *Fowler* decision cannot be used to predict the other contexts where the duty of good faith applies, if any.[74]

Second, the court never stated whether the suit for the failure to act in good faith sounded in tort or in contract. As noted above, the tort of bad faith recognized in other jurisdictions requires an implied covenant of good faith *and* recognition of a tort action when that duty is breached.[75] Since the *Fowler* decision did not specifically allow tort recovery, the decision does not support the establishment of a bad faith tort action in Wyoming, even where the insurer unreasonably refuses to settle a claim against its insured.

The *Fowler* decision not only fails to support bad faith litigation, but it also actually impedes recogniton of this cause of action by requiring insurers to adhere to a low standard of care. The standard of care generally imposed by courts allowing bad faith recovery requires an insurer to act as a reasonably prudent insurer.[76] The court *appears* to have imposed a standard of good faith requiring only honesty in fact. The court stated that it is the insurer's "duty to exercise intelligence, good faith, and honest and conscientious fidelity . . ." and with "a bona fide belief" that a claimant's recovery would be within the policy limits.[77] Therefore, an insurer who acts negligently would not be liable for breach of the duty of good faith so long as he acted with an honest intent.

The *Fowler* decision, however, may not preclude the Wyoming courts from imposing the objective negligence standard. In *Fowler,* it was the

72. *Id.*
73. *Id.*
74. The tort of bad faith has been employed by the courts of other jurisdictions to allow an insured to recover for a wide variety of improper actions by insurers. *See supra* note 26.
75. *See supra* notes 5-9 and accompanying text.
76. *See supra* note 23 and accompanying text.
77. *Fowler,* 390 P.2d at 606.

insurer who complained about the trial court's instruction, even though it contained the subjective standard of good faith.[78] Because the supreme court held that the insurer was liable under the subjective definition, it did not have to decide whether the insurer was required to act in accordance with the less favorable objective standard. If the insured had objected to the instruction, the court might have held that the insurer was required to act with reasonable care. Therefore, the *Fowler* decision should not be read as preventing the court from adopting the objective standard in a future decision.

The negligence standard of care would also be consistent with the general principles of good faith recognized in Wyoming. In *Wendling v. Cundall,*[79] the Wyoming Supreme Court was faced with the question of the proper definition of the term of good faith as used in a contract for the sale of real estate. Although this transaction did not come within the scope of the Uniform Commercial Code (U.C.C.), the court held that the U.C.C. definition of good faith was nonetheless applicable.[80] The court's reasoning was that the Wyoming Legislature, by adopting the U.C.C., had defined the term "good faith" in terms which "would apply to most commercial transactions conducted by persons owing no fiduciary or other special obligations to one another."[81] This statement is important for two reasons. First, it suggests that the Wyoming Supreme Court is willing to impose a good faith requirement on all commercial transactions. Second, it suggests that there are two standards of good faith: one for the usual commercial transaction, and a second for transactions involving "persons owing fiduciary or other special obligations to one another."

It is this second aspect of the court's statement which is important to insurance bad faith litigation. The standard of good faith imposed by the U.C.C. is only "honesty in fact" rather than "diligence or nonnegligence."[82] This standard conflicts with the negligence standard established by the courts which presently allow recovery for the tort of bad faith. Those courts require an insurer to act as a reasonably prudent insurer.[83] As noted above, however, there appears to be a higher standard of good faith when a fiduciary or special relationship exists. Therefore, in order to advance bad faith insurance litigation in Wyoming, it will be necessay to establish a special or fiduciary relationship between an insurer and its insured, and a corresponding obligation of good faith which approaches a negligence standard. In other jurisdictions, this special relationship and the accompanying standard of care have been found from the nature of the relationship existing between an insurer and its insured. Although Wyoming has not recognized this special relation between an insurer and insured, a special relationship has been recognized in other contexts.

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78. *Id.*
79. 568 P.2d 888 (Wyo. 1977).
80. *Id.* at 890.
81. *Id.*
82. *Id.* WYO. STAT. § 34-21-120(xix) (1977) requires "honesty in fact in the conduct or transaction concerned."
83. *See supra* note 23 and accompanying text.

Agency Theory as a Basis for Creating a Special Relation

In *Hursh Agency, Inc. v. Wigwam Homes, Inc.*,[84] a special relationship was found to exist between an insurance broker and his customer. In addition to the finding of a special relation, this decision is important because the rationale for allowing recovery closely parallels the tort of bad faith. The dispute in *Hursh* arose when a modular home was destroyed while being placed on a foundation. The plaintiff alleged that he had entered into an oral contract whereby the defendant agreed to procure an insurance policy on behalf of the plaintiff covering the installation and transportation of two modular homes. Despite this agreement, no such policy was obtained by the defendant. During the installation of the modular home, a beam broke and the modular home collapsed into the foundation. The trial court held that had the defendant obtained the insurance policy requested by the plaintiff, this loss would have been covered.[85]

In affirming the judge's verdict in favor of the plaintiff, the court stated that "a broker or agent who, with a view toward compensation for his services, undertakes to procure insurance for another and through fault or neglect fails to do so, will be held liable for any damages resulting."[86] The basis of this liability was founded on an agency concept.[87] Once the principal-agent relationship is created, "the agent owes a duty to his principal to exercise reasonable skill, care and diligence in causing the issuance of a policy."[88] A breach of this duty gives rise to an action "either for a breach of contract or negligent default. . . ."[89]

Although the *Hursh* decision does not specifically involve an action against an insurer, the court's reasoning and basis for recovery closely parallels the tort of bad faith. The court first established a duty between the insurance broker and his customer. Although not defined in the terms of good faith, this special relationship gave rise to a duty of reasonable care, the standard recognized in the tort of bad faith.[90] Secondly, and most importantly, this duty appears to have been imposed by law. The contract in *Hursh* giving rise to the defendant's liability was oral, created by a telephone conversation between the plaintiff and defendant.[91] It seems highly unlikely that the parties expressly imposed a duty of reasonable care on the defendant during the course of that conversation.[92] The third important aspect of the *Hursh* decision is that it recognized both a tort and contract action for breach of the broker's duty of reasonable care.

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84. 664 P.2d 27 (Wyo. 1983).
85. *Id.* at 29.
86. *Id.* at 32.
87. *Id.*
88. *Id.*
89. *Id.*
90. *See supra* note 23 and accompanying text.
91. *Hursh*, 664 P.2d at 33.
92. It should be noted that the authorities cited by the court as establishing the broker's liability held that the duty of reasonable care was imposed by law. *See* Annot., 64 A.L.R.3d 398, 404-13 (1975).

These grounds for recovery are the same as those found in the tort of bad faith breach of contract.[93]

The *Hursh* decision follows the general rule that an *agent* occupies a position of a fiduciary and owes his principal a duty of the utmost good faith.[94] Under certain circumstances, an agency relationship and the accompanying obligation of good faith can be established between an insurer and its insured. As noted above,[95] an insurer reserves the exclusive right to negotiate settlement of claims made against its insured, but it is doing so on behalf the insured. This relationship suggests that the insurer, under such circumstances, is actually the insured's agent. The problem is that this relationship does not fit the definition of an agency: "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."[96] Since an agency relationship can be implied by the conduct of the parties, it is not necessary that the insured and insurer expressly agree that an agency relationship exists.[97] The actual assumption of the negotiating process should be sufficient to create an implied agency. The difficulty in applying this definition to the settlement of claims is the lack of control by the insured. "[T]he most essential test in determining the existence of an implied agency is the right of the principal to control the conduct of the agent. . . ."[98] As noted above, the insured retains no control over his insurer's actions.

This lack of control, however, should not be grounds for refusing to find a special relation in this context. The purpose of the control requirement is to prevent the principal's liability for acts of an "agent" who is not under his control.[99] This consideration is not present in the insurer-insured relation. Furthermore, if the obligation to act in "the utmost good faith"[100] is owed to a principal asserting control over the agent, an agent should be under a similar obligation when he acts on behalf of a principal who exercises no control. If anything, an agent acting under such circumstances should be under an even more stringent obligation of good faith. Therefore, even if the classical agency relationship does not exist in the insurance context, the standard applicable to an agent, that of a fiduciary, should still apply.

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93. *See supra* notes 5-9 and accompanying text.
94. Hager v. Mobley, 638 P.2d 127, 138 n.6 (Wyo. 1981).
95. *See supra* text accompanying note 15.
96. True v. Hi-Plains Elevator Machinery, Inc., 577 P.2d 991, 999 (Wyo. 1978), *quoting* 1 RESTATEMENT OF THE LAW 2D *Agency* § 1, at 7 (1957).
97. *Id.* at 998.
98. *Id.* at 999.
99. *Id.* at 998.
100. Hager v. Mobley, 638 P.2d 137, 138 n.6 (Wyo. 1981). One commentator has observed that at least one court has recognized that the insurer's right to handle all aspects of a claim against an insured creates a fiduciary relation. The insurer's position as a fiduciary carries with it the concomitant duty to act in good faith and with due care. The Tenth Circuit has reached a similar result by employing an agency concept to establish a fiduciary relation where the insurer has the exclusive power to accept an offer to settle. Note, *supra* note 1, at 615.

The agency theory works best in connection with the insurer's right to settle claims on behalf of the insured. In such instances the insurer is negotiating with funds belonging to the insured. The tort of bad faith has not, however, been limited solely to such instances.[101] When the insurer denies coverage of some claim brought against the insured, it is harder to establish an agency relationship. But it may not be necessary to establish an agency or fiduciary relationship in order to give rise to an action in tort.

Reliance as a Basis for Creating a Special Relation

A separate rationale for recognizing a special relation between insured and insurer is the insured's reliance on the insurer's expertise. This reliance has been used in other jurisdictions to impose on insurers a duty to act in accordance with the generally accepted standards of insurers.[102] In *Hagar v. Mobley,*[103] the Wyoming Supreme Court employed similar reasoning in the context of the duties of real estate brokers. The court recognized that:

> Realtors, just like doctors, lawyers, engineering consultants, and builders, hold themselves out as professionals; it is their job to know their profession. People rely on and trust them. Failure to comply with either the accepted standards in the field or the standards society is willing to recognize as acceptable, is actionable.[104]

The court's reference to "standards society is willing to recognize" is a reference to the requirements imposed by statute, the violation of which may lead to suspension of the broker's license.[105] Because of the statutory regulation of the real estate industry, the court held that real estate brokers are under a high standard of care, and owe a fiduciary duty to the general public.[106] Breach of this duty is negligence.[107] It should be noted that this decision was reached without the existence of an agency relationship between the the broker and the plaintiff.[108]

Similar statutory regulation of insurers exists. For example, an insurer who has frequently refused to pay or has delayed payment of claims

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101. *See supra* note 25 and accompanying text.
102. *See supra* notes 39-42 and accompanying text.
103. 638 P.2d 127 (Wyo. 1981).
104. *Id.* at 137-38.
105. *Id.*
106. *Id.*
107. *Id., quoting* Tennent v. Lawton, 26 Wash. App. 701, 708, 615 P.2d 1305, 1309-10 (1978).
108. *Hagar,* 638 P.2d at 138 n.6. In a footnote, the court noted that there was a question of whether an agency relationship existed. The court stated that "[i]n addition to the duties a realtor owes to the public at large, duties may arise based upon the realtor's relationship to a particular individual or organization." These separate duties, if applied to insurers, would suggest that an obligation at least similar to that of good faith exists even where the insurer is not acting as an agent for the insured. It should be further noted that the duty to the general public has been used by courts in other jurisdictions as a basis for finding a special relation between the insured and insurer. *See supra* text accompanying note 46.

of its insureds may have its certificate of authority revoked.[109] A certificate of authority is the equivalent of a license, and without this certificate, an insurer may not do business in Wyoming.[110] In light of the similarity in the the statutory requirements imposed on real estate brokers and insurers, the reasoning used by the court in *Hagar* should be applicable to impose a similar standard of conduct on insurers.

The reliance of the public on the expertise of persons holding themselves out as experts has also been recognized in the construction setting. The Wyoming Supreme Court has held that every construction contract contains an implied warranty of merchantability and fitness for intended use.[111] The policy behind this duty is that "[c]onsumer protection demands that those who buy homes are entitled to rely on the skill of the builder . . ." because "[t]he average purchaser is without adequate knowledge or opportunity to make a meaningful inspection of the component parts of a residential structure."[112] When this implied warranty is breached, recovery may be based on an action sounding both in contract and in tort.[113]

The insured's reliance on an insurer's expertise is part of the rationale for imposing a duty of good faith on insurance policies.[114] As in the inspection of houses, an insured lacks the necessary knowledge to ensure that he is receiving the proper insurance coverage and services from an insurer. If the court is willing to impose an implied duty and allow tort recovery in the context of construction contracts, the same rationale should be available to reach a similar result in the context of insurance policies.

The cases allowing recovery where an agency relation exists, or where there is public reliance on persons holding themselves out as experts, suggest that Wyoming is very close to recognizing the tort of bad faith. The policy considerations employed in these cases are equally applicable to the insurer-insured relationship and have been employed by courts in other jurisdictions to establish the tort of bad faith. In addition to the support provided by these decisions, regulation of the insurance industry may provide an additional basis for establishing the tort of bad faith in Wyoming.

Statutory Basis for Imposing the Duty of Good Faith

In response to the difficulties encountered by an insured in enforcing his legal rights under an insurance policy, the Wyoming Legislature enacted Wyoming statute section 26-15-124.[115] This statute in its relevant portion provides:

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109. WYO. STAT. § 26-3-116 (1983).
110. *Id.* § 26-3-102.
111. Cline v. Sawyer, 600 P.2d 725, 732 (Wyo. 1979). *See also* Moxley v. Laramie Builders, Inc., 600 P.2d 733, 735 (Wyo. 1979) (those who hold themselves as builders must be accountable for their workmanship).
112. *Moxley*, 600 P.2d at 735.
113. *Id.* at 736.
114. *See supra* text accompanying notes 39-42.
115. WYO. STAT. § 26-15-124 (1983).

> (c) In any actions or proceedings commenced against any insurance company on any insurance policy or certificate of any type or kind of insurance, or in any case where an insurer is obligated by a liability insurance policy to defend any suit or claim or pay any judgment on behalf of a named insured, if it is determined that the company refuses to pay the full amount of a loss covered by the policy and that the refusal is unreasonable or without cause, any court in which judgment is rendered for a claimant may also award a reasonable sum as an attorney's fee and interest at ten percent (10%) per year.

By allowing an insured to recover attorney fees and interest, the legislature intended to protect an insured from annoying and expensive litigation and "chill any tendencies upon the part of insurance companies to unreasonably reject claims."[116]

By enacting section 26-15-124(c), the Wyoming Legislature has recognized that an insurer owes a duty to its insured to exercise reasonable care in deciding whether to pay the proceeds of the policy. In determining when this duty has been breached, the test to be applied is whether "a reasonable and prudent man would have refused to pay the claim."[117] In order to escape a finding that its actions were unreasonable, an insurer cannot reflexively refuse to pay. At the very least, an insurer is under a duty to investigate the insured's claim as the mere existence of a dispute over coverage does not justify a refusal to pay.[118]

The obligation imposed on insurers by section 26-15-124(c) is the same as the standard applied by those courts allowing recovery for bad faith breach of contract. Although this statute appears to support bad faith litigation by establishing the necessary duty of good faith, there are two aspects of the section which may limit its usefulness. First, the scope of section 26-15-124(c) is not clear, thus limiting the instances where the duty may exist. Second, the creation of this duty does not, by itself, necessarily give rise to an independent tort action. In fact, this section may even be read as precluding recovery for bad faith breach of contract.

The Scope of Section 26-15-124(c)

Section 26-15-124(c) is not a model of proper statutory drafting. While it is clear that an insured may recover attorney fees and interest in a suit on the breach of the duty to indemnify, it is unclear whether such a recovery is allowable in other types of suits on the policy. The initial language of section 26-15-124(c) refers to "any actions or proceedings against any insurance company or any insurance policy."[119] The main thrust of the section appears to be directed to instances where the insurer has refused to pay the proceeds of the policy. The key phrase is "if it is

116. State Surety Co. v. Lamb Const. Co., 625 P.2d 184, 188 (Wyo. 1981).
117. *Id.* at 191.
118. *Id.* at 190.
119. WYO. STAT. § 26-15-124 (1983).

determined that the [insurance] company refuses to pay the full amount of a loss covered by a policy. . . ."[120] If this phrase is interpreted as modifying all the preceding language, recovery of attorney fees and interest is limited to those actions brought on the insurer's duty to indemnify. The broad initial language would then be interpreted as extending the scope of the section to all types of insurance, such as health, life, and property insurance. The reported cases involving section 26-15-124(c) are consistent with this construction.[121]

There is one troubling aspect to this interpretation. If recovery of attorney fees is limited only to actions on the duty to indemnify, attorney fees could not be awarded in a suit based solely on the duty to defend. If this was the result intended by the legislature, why does section 26-15-124(c) expressly refer to cases "where any insurer is obligated by a liability policy to defend any suit or claim . . . ?"[122] To treat this language as surplusage would be contrary to established rules of statutory interpretation.[123] Furthermore, if the purpose of this section is to protect insureds from annoying and expensive litigation, the scope of this section should be extended to suits based solely on the duty to defend. For instance, suppose an insured is faced with long and expensive litigation arising from an incident which may or may not be covered by his insurance policy. If the insurer refuses to defend, the insured may not be able to afford to defend himself. To require him also to bear the costs of enforcing his right to a defense by the insured may result in severe financial hardship. If such a circumstance was caused by an unreasonable refusal by the insurer to defend, the protections of section 26-15-124(c) should be available to the insured.

It is unclear whether this section and its corresponding obligation to act reasonably is applicable to all improper actions by insurers. Therefore, section 26-15-124(c) may provide only limited support for establishing the tort of bad faith in Wyoming. However, the potentially limited scope of section 26-15-124(c) emphasizes the need for a basis of recovery applicable to all bad faith actions by insurers. The strength of this latter argument depends, however, upon whether section 26-15-124(c) is intended to provide the sole basis of additional recovery against an insurer.

Section 26-15-124(c): The Sole Basis of Recovery?

The court may decide that by enacting this provision, the legislature has considered the problems existing in the area of insurance litigation

120. *Id.*

121. *See*, Smith v. Equitable Life Assur. Soc'y, 614 F.2d 720 (10th Cir. 1980) (failure to pay proceeds of life insurance policy); State Surety Co. v. Lamb Const. Co., 625 P.2d 184 (Wyo. 1981) (surety's failure to pay bond); Tadday v. National Aviation Underwriters, 660 P.2d 1148 (Wyo. 1983) (failure to pay proceeds of liability policy). There are no reported decisions addressing the application of section 26-15-124(c) to cases involving a suit against an insurer involving an action other than a duty to indemnify.

122. WYO. STAT. §26-15-124(c) (1983).

123. *See* Thompson v. In-Stream Flow Comm., 651 P.2d 778 (Wyo. 1982) (every word, clause, and sentence must be contrued so that no part is superfluous).

and has determined that the award of attorney fees is sufficient protection for insureds.[124] The statutory award of attorney fees and interest may be construed as preventing tort actions for bad faith breach of contract. Any attempt to allow recovery on an independent tort action may be held to be improper judicial legislation. The resolution of this issue depends upon the statute's purpose and the legislature's intent in its enactment. The Wyoming Supreme Court has held that the purpose of this section is to prevent unfair practices by insurers.[125] The unanswered question is whether the legislature intended section 26-15-124(c) to provide the sole basis for additional recovery in an action against an insurer. The lack of legislative history and the ambiguity in section 26-15-124(c) make this determination very difficult.

One method of resolving this issue is based on the the two distinct theories of recovery against an insurer. As noted above, an insured may recover on either a contract or tort theory.[126] If section 26-15-124(c) only addresses recovery on the insurance contract, it should not be construed to prevent recovery in tort for breach of the implied duty of good faith.[127] However, if the statutory award of attorney fees is intended to provide the sole recovery against insurers, an independent tort action may be prohibited.

The authors of this comment argue that section 26-15-124(c) should not be construed to preclude bad faith recovery. The award of attorney fees alone fails to provide the protection afforded by the tort of bad faith. As noted above, allowing an action in tort provides two major advantages: recovery for a greater variety of financial loss, and, in some circumstances, the recovery of punitive damages.[128] If an insured's recovery is limited to damages within the reasonable expectations of the parties at the time of contracting,[129] the additional award of attorney fees alone would not be sufficient compensation to the insured. Furthermore, allowing the recovery of punitive damages, when malice or oppression is present, would greatly deter wrongful acts by insurers. In light of the advantages of the tort of bad faith, the Wyoming Supreme Court should be reluctant to hold that the legislature intended section 26-15-124(c) to be sole basis of recovery. Finally, allowing recovery under the tort of bad faith would be consistent with the policy behind section 26-15-124(c). Both this statute and the tort of bad faith serve to protect the insured from wrongful actions by insurers. Recognition of the tort of bad faith should not be seen as conflicting with the legislature's intent, but merely as supplementing that intent.

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124. The possibility that statutory awards of attorney fees may prohibit recognition of a common law tort action is discussed in W. SHERNOFF, *supra* note 14, § 6.05[1][b], at 6-44. This commentator noted that there is a split in authority on this issue, with some courts holding that common law actions are precluded (citing cases from Illinois, Kansas, Louisiana and Missouri) and other courts holding that such statutes do not intend to limit such actions (citing an Illinois case).

125. State Surety Co. v. Lamb Const. Co., 625 P.2d 184, 188 (Wyo. 1981).

126. *See supra* note 21 and accompanying text.

127. Kelly v. Stratton, 552 F. Supp. 641, 646 (N.D. Ill. 1982).

128. *See supra* notes 60-65 and accompanying text.

129. *See supra* notes 46-59 and accompanying text.

CONCLUSION

In light of the widespread recognition of the tort of bad faith in other jurisdictions and its partial recognition in Wyoming, the Wyoming Supreme Court or the Wyoming Legislature should allow recovery under this new cause of action. There are a number of cases which have employed reasoning which would support recognition of bad faith insurance litigation. The advantages provided by the tort of bad faith argue for the extension of the obligation of reasonable care imposed by the Wyoming statutes to all misconduct by insurers. When the issue presents itself, one can only hope that the court will recognize the merits of bad faith insurance litigation and align with those jurisdictions allowing recovery for bad faith breach of contract.

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