



INSURANCE COVERAGE REVIEW: BAD FAITH UNDER NEW YORK LAW

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INTRODUCTION

The law of insurer bad faith differs dramatically among the various state jurisdictions. It is therefore important, as an initial matter, to conduct a choice of law analysis. With that in mind, there are some general principles that are the foundation for this significant remedy.

THE COVENANT OF GOOD FAITH AND FAIR DEALING

Inherent and presumed in all insurance contracts is a covenant of good faith and fair dealing on the part of the insurer.

The covenant of good faith and fair dealing requires an insurer to refrain from: (i) making an unfounded refusal to pay policy proceeds, (ii) causing an unreasonable delay in making payment, (iii) deceiving the insured, and (iv) exercising any unfair advantage to pressure an insured into settlement of a claim.

Bad faith alleges an insurer's deliberate or reckless failure to place on equal footing the interests of its insured with its own interests.

There are substantial differences among the jurisdictions when evaluating: (i) whether an insurer has engaged in conduct equivalent to bad faith, (ii) whether a cause of action for bad faith sounds in tort or in contract, (iii) defenses to a bad faith claim, and (iv) available damages.

Generally, an insurer may be liable for the tort of "bad faith" whenever it: (i) unreasonably denies an insured's claim, (ii) fails to conduct a reasonable investigation, (iii) wrongfully refuses to defend an insured sued by a third-party, (iv) fails to provide an adequate defense to an insured sued by a third-party, or (v) fails to settle, without a reasonable basis, a third-party's suit against an insured.

In New York, the standard for evaluating an insurer's conduct differs in the context of first-party and third-party claims, and an insurer's failure to act in good faith and fair dealing in either of these two situations may give rise to a claim for bad faith.

DISTINCTIONS

COMMON LAW v. STATUTORY

Claims of bad faith will allege that an insurer either breached its common law duty of good faith and fair dealing or violated a statutorily created duty. Generally, under New York law, there is no statutory basis for an insured to bring a bad faith claim. An insurer's conduct is regulated under New York Insurance Law §2601: Unfair Claims Settlement Practices.

CONTRACT v. TORT

A contract based bad faith claim arises out of the breach of implied provisions in the policy. Some jurisdictions permit policyholders to bring tort claims against their insurers, particularly first-party insurers.

A bad faith action based in tort must be founded on conduct of the insurer that is independent of its contractual duty to provide coverage. However, a substantial majority of states have refused to recognize a tort cause of action, and have limited the insured's recovery to contract claims.

New York is acknowledged as a contract based state; however, certain decisions have sought to expand the scope of recovery in certain circumstances, as discussed below.

FIRST-PARTY

Courts generally permit policyholders to bring bad faith claims against first-party insurers. First-party claims are typically brought by the policyholder against the insurer for allegedly wrongful conduct exhibited by the insurer in the adjustment and handling of the insured's claim under a fire, property, health, disability or life insurance policy. Typically, the insurer denies all or part of the insured's claim and the insured sues the insurer for contractual and extra-contractual damages.

THIRD-PARTY

Bad faith may also arise in the third-party context when an insurer allegedly fails to act in good faith and with due care in defending its policyholder against a third-party's claims. Third-party claims involve conduct on the part of the insurer regarding the investigation, defense, handling and settlement of a claim brought by the third-party against the insured, as well as the protection of the rights of the insured in the process. Third-party bad faith claims generally arise in one of two situations: (1) where an insurer refuses or fails to defend a claim brought against its insured, the allegations of which arguably fell within the scope of coverage, and (2) when an insurer wrongfully refuses to settle a claim brought against its insured, for an amount within the policy limits, which then leads to a judgment against the insured in excess of the policy limits.

NEW YORK LAW ON BAD FAITH

HISTORY

The implied covenant of good faith and fair dealing in insurance contracts traces its origin to the early part of the twentieth century. See *Brassil v. Maryland Cas. Co.*, 210 N.Y. 235 (1914) (finding that it was the obligation of the insurer to "deal fairly and in good faith" with its insured).

In 1928, the New York Court of Appeals expressly rejected application of a negligence standard for determining whether an insurer acted in bad faith, and articulated a standard requiring that an insurer consider the insured's interests as well as its own, when determining whether to settle a particular claim. *Best Bldg. Co., Inc. v. Employers' Liab. Assurance Corp.*, 247 N.Y. 451 (1928)

THE NEW YORK STANDARD FOR THIRD-PARTY BAD FAITH CLAIMS

Thereafter, the law in New York continued to develop and in 1972 the Court of Appeals set forth a more stringent standard in the seminal decision of *Gordon v. Nationwide Mut. Ins. Co.*, 30 N.Y.2d 427 (1972), when called upon to determine whether an insurer's refusal to defend, as opposed to settle, constituted bad faith. The *Gordon* Court held that an action for bad faith required "an extraordinary showing of disingenuous or dishonest failure to carry out a contract" on the part of the insurer.

The *Gordon* standard remained applicable until the New York Court of Appeals, in *Pavia v. State Farm Mut. Auto. Ins. Co.*, 82 N.Y.2d 445 (1993), modified the standard set forth in *Gordon*, when an injured passenger, as assignee of the insured, brought an action against the insurer, alleging bad faith by the insurer in failing to accept a settlement offer made by the plaintiff in an underlying personal injury action. In sum, the *Pavia* Court held:

[I]n order to establish a prima facie case of bad faith, the plaintiff must establish that the insurer's conduct constituted a "gross disregard" of the insured's interests – that is, a deliberate or reckless failure to place on equal footing the interests of its insured with its own interests when considering a settlement offer. In other words, a bad-faith plaintiff must establish that the defendant insurer engaged in a pattern of behavior evincing a conscious or knowing indifference to the probability that an insured would be held personally accountable for a large judgment if a settlement offer within the policy limits were not accepted.

The gross disregard standard...strikes a fair balance between two extremes by requiring more than ordinary negligence and less than a showing of dishonest motives. The former would remove the latitude that the insurers must be accorded in investigating and resisting unfounded claims, while the latter would be all but impossible to satisfy and would effectively insulate insurance carriers from conduct that, while not motivated by malice, has the potential to severely prejudice the rights of the insured. The intermediate standard accomplishes the two-fold goal of protecting both the insured's and the insurer's financial interests.

Pavia, 82 N.Y.2d at 453-54; see also, *New England Ins. Co. v. Healthcare Underwriters Mut. Ins. Co.*, 295 F.3d 232 (2d Cir. 2002) (New York law); *Schwartz v. Twin City Fire Ins. Co.*, 492 F.Supp.2d 308 (S.D.N.Y. 2007).

BURDEN OF PROOF FOR ESTABLISHING THIRD-PARTY BAD FAITH CLAIMS

Once establishing the legal standard, the Court of Appeals then went on to address the sufficiency of the plaintiff's proof when alleging a bad faith claim and provided, in sum, that the plaintiff in a bad faith action must show that the insured lost an actual opportunity to settle a claim at a time when all serious doubts about the insured's liability were removed. According to the *Pavia* Court, this is established only where the liability is clear and the potential recovery against the insured far exceeds the insurance coverage. However, it does not follow that an insurer is always obligated to accept a settlement offer where injury is severe and the policy limits are significantly lower than a potential recovery. "The bad-faith equation must include consideration of all of the facts

and circumstances relating to whether the insurer's investigatory efforts prevented it from making an informed evaluation of the risks of refusing settlement." *Pavia*, 82 N.Y.2d at 454; *see also*, *Lavaud v. Country-Wide Ins. Co.*, 29 A.D.3d 745 (2d Dep't 2006); *Kumar v. American Transit Ins. Co.*, 57 A.D.3d 1449 (4th Dep't 2008).

FACTORS FOR THIRD-PARTY BAD FAITH CLAIMS

When making a determination regarding allegations of bad faith against an insurer in failing to settle, New York law has enumerated the following factors:

- (a) **Proper Investigation and/or Evaluation:** It is the obligation of the insurer to properly and thoroughly investigate the facts and circumstances of a claim in order to be able to ascertain the potential liability and the amount of the damages faced by the insured, which continues throughout the course of the litigation. *See Brown v. United States Fidelity & Guar Co.*, 314 F.2d 675 (2d Cir. 1963).
- (b) **Timely Negotiation of a Settlement or Failure to Negotiate:** New York courts will evaluate whether an insurer negotiated a settlement in a timely fashion, including assessment of whether, when a demand is within policy limits, the insurer made a fair and reasonable counter-proposal in a timely manner. *See State v. Merchants Ins. Co. of New Hampshire*, 109 A.D.2d 935 (3d Dep't 1985).
- (c) **Failure to Foresee a Verdict in Excess of the Policy Limits:** When an insurer has adequately and diligently investigated the circumstances surrounding a claim, and has assessed both liability and injury, the insurer may nevertheless be found to have acted in bad faith, if based on such knowledge, it should have recognized the danger of a substantial excess verdict being rendered against the insured. *See Knobloch v. Royal Globe Ins. Co.*, 38 N.Y.2d 471 (1976).
- (d) **Failure to Inform the Insured of Settlement Negotiations:** Although an insurer has the right to conduct settlement negotiations on behalf of its insured without consulting the insured where there is no "consent to settle" provision in the policy, the insurer is still obligated in most circumstances to respond accurately to requests from its insured as to the progress of negotiations and as to settlement developments, and a failure to do so may lead to a finding of bad faith against the insurer. *See Knobloch*, 38 N.Y.2d 471.
- (e) **Attempts to Obtain Contribution to Settlement From the Insured:** It is improper for an insurer to insist upon contribution from the insured to settle a claim, however, an insurer is permitted to discuss with its insured that contribution to settlement is possible, especially when the settlement amount is high compared to what the insurer is willing to pay. *See Brockstein v. Nationwide Mut. Ins. Co.*, 417 F.2d 703 (2d Cir. 1969)
- (f) **Belief in Non-Coverage:** An insurer should not be held liable for an excess judgment rendered against its insured where an insurer's refusal to settle is on the reasonable belief that there is no coverage under the applicable policy. *See Dawn Frosted Meats, Inc. v. Ins. Co. of North American*, 99 A.D.2d 448 (1st Dep't 1984).
- (g) **Comparative Financial Risks:** Insurers should evaluate the potential magnitude of damages and the financial burden each party may be exposed to as a result of a refusal to settle. Bad faith may be found where an insurer takes a financial risk by not settling within policy limits, where that risk is considerably greater for the insured than for the insurer. *See Brown*, 314 F.2d at 678-79.
- (h) **The Insured's Conduct:** According to the *Pavia* Court, the insured's fault in delaying or ceasing settlement negotiations by misrepresenting the facts may also be taken into consideration. *See Pavia*, 82 N.Y.2d at 455.

When determining if an insurer acted in bad faith in failing to defend, an insurer should not be held to have acted in bad faith if the insurer has an "arguable case" for having denied a defense; the exception, however, is where the insurer acted in gross disregard of its policy obligations in issuing such a denial. *Gordon*, 334 N.Y.S.2d at 603-04. In addition, it has been held that a plaintiff-insured cannot recover its legal fees and expenses in a bad faith action, even if the insurer loses and is held responsible, unless the insurer is guilty of such bad faith in its refusal to defend - that no reasonable insurer would have asserted non-coverage on the facts of the case. *Sukup v. State*, 19 N.Y.2d 519 (1967) [However, when an insurer commences a declaratory judgment action regarding its duty to defend, casting the insured in a defensive posture, the insured may recover the legal fees and expenses incurred in the coverage dispute. *See Mighty Midgets, Inc. v. Centennial Ins. Co.*, 47 N.Y.2d 12 (1979).]

Following *Pavia*, the Court of Appeals decided *Soto v. State Farm, Ins. Co.*, 83 N.Y.2d 718 (1994) and *Rocanova v. Equitable Life Assurance Soc'y*, 83 N.Y.2d 603 (1994), further refining the law of bad faith in New York.

In *Soto*, the Court held if an insurer fails to settle an underlying claim, resulting in an excess judgment against the insured, the insurer cannot be held liable for any punitive damages awarded against the insured. In this regard, the Court concluded that such a rule would be unsound public policy. As such, *Soto* suggests that an insurer is not liable to an insured for third-party excess damages arising from a bad faith refusal to settle, when the excess judgment against the insured reflects an award for punitive damages. See also *Hartford Accid. & Indem. Co. v. Village of Hempstead*, 48 N.Y.2d 218 (1979).

On the same day the Court of Appeals decided *Soto*, it also decided the consolidated first party case *Rocanova v. Equitable Life Assurance Soc’y and Marsel Mirror and Glass Prod. v. American Int’l Underwriters Ins.*, 83 N.Y.2d 603 (1994).

NEW YORK STANDARD FOR FIRST-PARTY BAD FAITH CLAIMS

By way of background, in *Gordon*, although the Court of Appeals recognized that the standard for actionable bad faith does not apply to actions involving first-party claims, it did not set forth a standard other than to merely assert that such first-party actions are generally grounded in breach of contract claims, under which theory an insurer’s liability is limited to the face amount of the policy limits. In addition, New York courts have recognized that punitive damages cannot be recovered in a claim directly against an insurance company unless there is a showing of morally reprehensible conduct directed at the general public, as opposed to a mere private wrong suffered by the insured. *DiBlasi v. Blue Cross of Western New York, Inc.*, 156 A.D.2d 986 (4th Dep’t 1989); *Royal Globe Ins. Co. v. Chock Full O’Nuts Corp.*, 86 A.D.2d 315 (1st Dep’t 1982).

The issue before the Court of Appeals in *Rocanova* was whether an insurer is required to compensate an insured for punitive damages where the insured alleges that the insurer engaged in unfair settlement practices and whether Insurance Law §2601 creates a private cause of action. The Court concluded that (1) a pattern of misconduct aimed at the public cannot, without more, constitute an independent basis for punitive damages; (2) there was no private cause of action for punitive damages for an insurer’s alleged violation of Insurance Law §2601; (3) that the mere allegation that an insurer engaged in a pattern of bad faith is insufficient to support a claim for punitive damages (or for compensatory damages) without demonstration that the insured was personally aggrieved by the tortious conduct arising out of its contractual relationship with the insurer (*i.e.* punitive damages are not recoverable against an insurer unless the wrongdoing is aimed at both the public at large and the insured).

Thereafter, in 1995, the Court of Appeals further addressed the applicable standard for extra-contractual damages in first-party insurance actions in *New York Univ. v. Continental Ins. Co.*, 87 N.Y.2d 308 (1995). Relying upon *Rocanova*, the Court reiterated the principle that “damages arising from a breach of contract will ordinarily be limited to contract damages as necessary to redress the private wrong, but that punitive damages may be recovered if necessary to vindicate a public right.” To this extent, the Court provided that “punitive damages will only be available in those limited circumstances where it is necessary to deter defendant and others like it from engaging in conduct that may be characterized as ‘gross’ and ‘morally reprehensible’ and of such ‘wanton dishonesty as to imply criminal indifference to civil obligations’.”

Specifically, the Court of Appeals recognized that a party seeking punitive damages as an additional remedy when a claim arises from a breach of contract must establish that: (1) the insurer’s conduct is actionable as an independent tort; (2) the tortious conduct is of an egregious nature; (3) the egregious conduct is directed at the insured; and (4) the egregious conduct is part of a pattern directed at the public generally. According to the Court, “where a lawsuit has its genesis in the contractual relationship between parties, the threshold task for a court considering defendant’s motion to dismiss a cause of action for punitive damages is to identify a tort independent of the contract.” See *New York Univ.*, 87 N.Y.2d at 316. With regard to the insurer’s conduct being actionable as an independent tort, the Court explained that “the very nature of the contractual obligation, and the public interest in seeing it performed with reasonable care, may give rise to a duty of reasonable care in performance of the contract obligations, and the breach of that independent duty will give rise to a tort claim.” *Id.*

Relying upon *New York University* and *Rocanova*, New York courts have held that, although allegations of bad faith in denying insurance coverage do not give rise to an independent tort action, where the insured demonstrates “egregious tortious conduct” by the insurer against the insured and the public at large, punitive damages may be awarded. See, *e.g.*, *Continental Cas. Co. v. Nationwide Indem. Co.*, 16 A.D.3d 353, 355 (1st Dep’t 2005)(dismissing counterclaim since there is no separate cause of action in tort for an insurer’s bad faith failure to perform its obligations under a policy); *Polidoro v. Chubb Corp.*, 386 F.Supp.2d 334 (S.D.N.Y. 2005); *Royal Indem. Co. v. Salomon Smith Barney, Inc.*, 308 A.D.2d 349 (1st Dep’t 2003).

CONSEQUENTIAL DAMAGES IN FIRST PARTY BAD FAITH CLAIMS

In 2008, a divided New York Court of Appeals held that an insured was permitted to seek consequential damages against its insurer in an action alleging a breach of the covenant of good faith and fair dealing. *Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of New York*, 10 N.Y.3d 187 (2008) (The Court also rendered a parallel decision that same day in *Panasia Estates, Inc. v. Hudson Ins. Co.*, 10 N.Y.3d 200 (2008), relying upon its analysis in *Bi-Economy*.)

In *Bi-Economy*, the insured, Bi-Economy Market, Inc. (“Bi-Economy”), commenced an action against Harleystown Insurance Company of New York (“Harleystown”), which issued a “Deluxe Business Owner’s policy”, asserting “bad faith claims handling, tortious interference with business relations and breach of contract,” and seeking consequential damages above and beyond the policy’s limits for the “complete demise of its business operation in an amount to be proved at trial.” In sum, Bi-Economy alleged that Harleystown improperly delayed payment for its building and contents damage caused by a major fire and failed to timely pay the full amount of its lost business income claim, causing Bi-Economy’s business to collapse, for which it sought recovery. In response, Harleystown argued that its policy excluded coverage for consequential damages and, in support, cited several contractual provisions excluding coverage for “consequential loss.” The majority, rejecting Harleystown’s arguments, held that Bi-Economy was permitted to seek such consequential damages.

According to the *Bi-Economy* dissent, the majority sought to abandon the rule set forth in *Rocanova* and *New York Univ.*, which rejected the argument that a bad faith failure by an insurer to pay a claim could, without a showing of egregious tortious conduct directed at the insured and a pattern of similar conduct directed at the public generally, justify a punitive damages award. The dissent claimed that the majority was “simply changing labels: punitive damages are now called ‘consequential’ damages and bad faith failure to pay a claim is called a ‘breach of covenant of good faith and fair dealing.’”

The majority opinion contended, however, that the dissent “blurs the significant distinction between consequential and punitive damages.” According to the majority, consequential damages are designed to compensate a party for reasonably foreseeable damages, must be proximately caused by the breach and must be proven by the party seeking them. In contrast, punitive damages, are assessed by way of punishment and, unlike consequential damages, are “unquantifiable.” According to the majority, “[l]imiting an insured’s damages to the amount of the policy, *i.e.*, money which should have been paid by the insurer in the first place, plus interest, does not place the insured in the position it would have been in had the contract been performed.”

In addition, the *Bi-Economy* majority stated: “[C]ontrary to the dissent’s view, the purpose of the contract was not just to receive money, but to receive it promptly so that in the aftermath of a calamitous event...the business could avoid collapse and get back on its feet as soon as possible. Thus, the insurance contract included an additional performance based component: the insurer agreed to evaluate the claim, and to do so honestly, adequately, and most importantly—promptly...When an insured...suffers additional damages as a result of an insurer’s excessive delay or improper denial, the insurance company should stand liable for these damages. This is not to punish the insurer, but to give the insured its bargained-for-benefit.”

The majority did not read the contractual liability exclusions for certain consequential “losses” as demonstrating that the parties contemplated, and rejected, the recoverability of consequential “damages”. According to the majority, consequential “losses” refer to delay caused by third-party actors or by the “suspension, lapse or cancellation of any license, lease or contract,” and consequential “damages” are in addition to those losses caused by a calamitous event, and include additional damages caused by a carrier’s injurious conduct – in this case, the insurer’s failure to timely investigate, adjust and pay the claim.

In *Panasia Estates, Inc. v. Hudson Ins. Co.* (decided with *Bi-Economy*), the Court, relying upon its reasoning in *Bi-Economy*, again held that a claim for consequential damages resulting from a breach of the covenant of good faith and fair dealing may be asserted against an insurer, so long as the damages were “within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting.”

DEFENSES TO BAD FAITH CLAIMS

The “No Coverage” Defense to Bad Faith: Most jurisdictions will not allow bad faith claims where no coverage exists. The duty of good faith and fair dealing is inherent and presumed in the parties’ contractual relationship. The implied duty essentially prohibits an insurer from doing anything to impair the insured’s right to receive the benefits due it under the policy. In order to proceed with a bad faith claim in New York, a plaintiff must demonstrate that coverage existed for the loss in question and, as such, insurers may assert as a defense non-coverage. *See Zurich Ins. Co. v. Texasgulf, Inc.*, 233 A.D.2d 180 (1st Dep’t 1996)

Advice of Counsel: The advice of counsel defense essentially provides that when an insurer’s actions are within the conformity with the advice given to it by counsel, the insurer’s actions are taken in good faith, and thus the essential element that an aggrieved insured must demonstrate in establishing the insurer’s bad faith is nullified. *See Gordon*, 334 N.Y.S.2d at 605; *Vicinanzo v. Brunswick & Fils, Inc.*, 739 F.Supp. 891 (S.D.N.Y. 1990); *Decker v. Amalgamated Mut. Cas. Ins. Co.*, 35 N.Y.2d 950 (1974); *Zurich Ins. Co. v. State Farm Mut. Auto Ins. Co.*, 137 A.D.2d 401 (1st Dep’t 1988). Among the draw backs of asserting this defense, however, is the potential waiver of the attorney-client privilege.

INSURANCE LAW §2601: UNFAIR CLAIMS SETTLEMENT PRACTICES

As a result of the *Rocanova* decision, it was clear that there was no private right of action for an individual under New York Insurance Law §2601. See Appendix “A”, as well as Appendix “B”, Section 216.0-216.6 of the New York State Insurance Department’s Compilation of Codes, Rules and Regulations, annotating §2601.

Enacted in 1939, §2601, formerly known as §40-d, provides that no insurer doing business in New York shall engage in unfair claim settlement practices, which includes the following, if committed without just cause and performed with such frequency as to indicate a general business practice:

- (1) knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
- (2) failing to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;
- (3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;
- (4) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear;
- (5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them; or
- (6) failing to promptly disclose coverage pursuant to subsection(d) or subparagraph (a) of paragraph two of subsection (f) of section three thousand four hundred twenty of this chapter.

See Kantrowitz v. Allstate Indem. Co., 48 A.D.3d 753 (2d Dep’t 2008); *Klinger v. Allstate Ins. Co.*, 268 A.D.2d 562 (2d Dep’t 2000); *Aetna Cas. & Sur. Co. v. ITT Hartford Ins. Co.*, 249 A.D.2d 241 (1st Dep’t 1998).

GENERAL BUSINESS LAW §349 – DECEPTIVE BUSINESS PRACTICES

In addition to bringing claim against insurers under Insurance Law §2601, plaintiffs may also assert a claim under New York General Obligations Law §349 (“GBL §349”)(See Appendix “C”), which provides a private right of action to recover damages resulting from deceptive business practices. In pertinent part, GBL §349 provides as follows:

- (a) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

* * *

- (g) This section shall apply to all deceptive acts or practices declared to be unlawful, whether or not subject to any other law of this state, and shall not supersede, amend or repeal any other law of this state under which the attorney general is authorized to take any action or conduct any inquiry.
- (h) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase an award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney’s fees to a prevailing plaintiff.

* * *

Although GBL §349 provides for a private cause of action, a plaintiff asserting a claim under GBL §349 must, at the threshold, demonstrate that the conduct is consumer oriented. In this regard, the conduct need not be repetitive or recurring, but the insurer’s acts or practices must have a broad impact on consumers at large. According to the Court of Appeals, private contract disputes unique to the parties do not fall within the ambit of the statute. *See New York University*, 87 N.Y.2d at 320; *Continental Cas. Co.*, 16 A.D.3d 353.

In sum, in New York, plaintiffs may often include various allegations against defendant-insurers in bad faith actions, including, but not limited to, claims for breach of contract, breach of the covenant of good faith and fair dealing, violation of Insurance Law §2601, violation of GBL §349 and/or fraud.