Alabama

By Walter J. Price III and R. Bruce Barze, Jr.

Causes of Action

Is there a statutory basis for an insured to bring a bad faith claim?

No. Although new regulations have been passed by the Alabama Department of Insurance regarding the handling of insurance claims, they are not to be used for civil or criminal purposes to presume any standard of care, and they are not the basis for a cause of action. *See* Ala. Admin. Code r. 482-1-125-.02. Nevertheless, in two decisions Ala. Code §27-12-24, *preempted on other grounds*, *Gilbert v. Alta Health & Life Ins. Co.*, 276 F.3d 1292 (11th Cir. 2001), has been described as the "codification" of Alabama's bad faith law. *Hilley v. Allstate Ins. Co.*, 562 So. 2d 184, 185 n.1 (Ala. 1990); *Gilbert v. Alta Health & Life Ins. Co.*, 276 F.3d 1292, 1296 (11th Cir. 2001). The statute provides:

> No insurer shall, without just cause, refuse to pay or settle claims arising under coverages provided by its policies in this state and with such frequency as to indicate a general business practice in this state, which general business practices evidenced by:
>
> (1) A substantial increase in the number of the complaints against the insurer received by the Insurance Department;
>
> (2) A substantial increase in the number of lawsuits against the insurer or insureds by claimants; and
>
> (3) Other relevant evidence.

Ala. Code §27-12-24.

Can a third party bring a statutory action for bad faith?

No, though *see* citations and discussion above.

Is there a common law action for bad faith?

Yes. The Alabama Supreme Court first recognized the common law cause of action for bad faith in *Chavers v. Nat'l Sec. Fire & Cas. Co.*, 405 So. 2d 1 (Ala. 1981). *White v. State Farm Fire & Cas. Co.*, 953 So. 2d 340 (Ala. 2006) contains a more recent treatment of the tort of bad faith in Alabama.

What cause of action exists for an excess carrier to bring a claim against a primary carrier?

An excess carrier cannot bring a bad faith claim against the primary insurer either directly or based on principles of equitable subrogation. *Fed. Ins. Co. & Pearce Constr. Co., Inc. v. Travelers Cas. & Sur. Co.*, 843 So. 2d 140, 143 (Ala. 2002) (holding that "in the absence of contrary contractual obligations, a primary insurer owes no duty of good faith to an excess insurer with respect to the settlement of a lawsuit against an insured. The reasons which undergird Alabama's tort of bad faith, currently available to insureds against their insurers… are simply not present in the primary-insurer/excess-insurer scenario where, as here, contractual duties with regard to settlement of a claim are absent").

What causes of action for extracontractual liability have been recognized outside the claim handling context?

An insured may sue an insurer for fraud if the insurer has no intent to pay a claim at the time the policy was sold. *Old Southern Life Ins. Co. v. Woodall*, 348 So. 2d 1377, 1380 (Ala. 1977).

An insured may sue an insurer for misrepresentation or suppression if an insurer's agent persuades an insured to switch to a policy that costs more and offers less benefits. *Boswell v. Liberty Nat'l Life Ins.*

Co., 643 So. 2d 580, 582 (Ala. 1994); *Donoghue v. Am. Nat'l Ins. Co.*, 838 So. 2d 1032, 1038 (Ala. 2002).

An insured may be able to maintain a claim for wrongful cancellation of a policy if the cancellation involved misfeasance rather than simple nonfeasance. *See Ex parte Certain Underwriters of Lloyd's of London*, 815 So. 2d 558, 563 (Ala. 2001).

Alabama has recognized a claim for negligence against an insurer arising out of the processing, issuing, and later attempted cancellation of an insurance policy. *Reliance Ins. Co. v. Substation Prods. Corp.*, 404 So. 2d 598, 608 (Ala. 1981). Alabama has recognized fraud in the inducement where a person is induced to purchase a policy that is materially different from that represented. *See Williamson v. Indianapolis Life Ins. Co.*, 741 So. 2d 1057, 1065 (Ala. 1999); *Mass. Mut. Life Ins. Co. v. Collins*, 575 So. 2d 1005 (Ala. 1990).

An insurer in Alabama can be liable for negligent underwriting. *Reliance Ins. Co. v. Substation Prods. Corp.*, 404 So. 2d 598, 609 (Ala. 1981).

While Alabama does not recognize a cause of action for negligent claims adjustment, one may allege negligent failure to settle a third-party claim. *Mut. Assur. Co., Inc. v. Schulte*, 970 So. 2d 292 (Ala. 2007).

Damages

Are punitive damages available?

Yes; however, the recognition of the tort of bad faith does not, though affiliated with contractual obligation of good faith and fair dealing, give a unilateral right to plaintiffs to pursue a claim for punitive damages against an insurer for an alleged breach of contract. *Intercontinental Life Ins. Co. v. Lindblom*, 598 So. 2d 886, 890–91 (Ala. 1992); *Affiliated FM Ins. Co. v. Stephens Enters.*, 641 So. 2d 780, 784 (Ala. 1994); *Gulf Atl. Life Ins. Co. v. Barnes*, 405 So. 2d 916, 925 (Ala. 1981).

Are attorneys' fees recoverable?

No. Without a statute authorizing attorneys' fees, a contract providing for attorneys' fees, or some special equity, attorneys' fees are not recoverable. *Green v. Standard Fire Ins. Co. of Ala.*, 477 So. 2d 333, 334 (Ala. 1985); *Cincinnati Ins. Co. v. City of Talladega*, 342 So. 2d 331, 338–39 (Ala. 1977); *Alliance Ins. Co. v. Reynolds*, 504 So. 2d 1215, 1216–17 (Ala. Civ. App. 1987).

Are consequential damages recoverable?

Yes. Alabama courts have recognized consequential damages arising out of bad faith claims. Specifically, the Alabama Supreme Court has stated that "[r]ecoverable damages may include mental distress and economic loss." *Chavers v. Nat'l Sec. Fire & Cas. Co.*, 405 So. 2d 1, 7 (Ala. 1981); *Gulf Atl. Life Ins. Co. v. Barnes*, 405 So. 2d 916, 925 (Ala. 1981); *see also* Jenelle M. Marsh and Charles W. Gamble, Alabama Law of Damages §27:6(b) (6th ed. 2015).

Can a plaintiff recover damages for emotional distress?

Yes. "Recoverable damages may include mental distress and economic loss." *Chavers v. Nat'l Sec. Fire & Cas. Co.*, 405 So. 2d 1, 7 (Ala. 1981); *Gulf Atl. Life Ins. Co. v. Barnes*, 405 So. 2d 916, 925 (Ala. 1981).

> The tort of bad faith had as its genesis the very idea of providing a plaintiff who had been victimized by the intentional, wrongful handling of a claim by the insurer, the right to recover not only contract damages but for the loss occasioned by emotional suffering, humiliation, and embarrassment in addition to punitive damages.

Aetna Life Ins. Co. v. Lavoie, 470 So. 2d 1060, 1073–74 (Ala. 1984).

Elements of Proof

What is the legal standard required to prove bad faith in a first-party case?

To receive an award of compensatory damages, a plaintiff must prove each of the elements of bad faith by substantial evidence. Ala. Code §12-21-12(a) (1975). "Substantial evidence" is defined as "evidence of such quality and weight that reasonable and fair-minded persons in the exercise of impartial judgment might reach different conclusions as to the existence of the fact sought to be proven." Ala. Code §12-21-12(d) (1975).

An action alleging bad faith must be supported by evidence showing that the insurer had no reasonably

arguable ground for disputing the insured's claim or that it acted with intent to injure. *Aplin v. Am. Sec. Ins. Co.*, 568 So. 2d 757, 760 (Ala. 1990).

> This tort has four elements plus a conditional fifth element, as follows:
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> "(a) an insurance contract between the parties and a breach thereof by the defendant;
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> "(b) an intentional refusal to pay the insured's claim;
>
> "(c) the absence of any reasonably legitimate or arguable reason for that refusal (the absence of a debatable reason);
>
> "(d) the insurer's actual knowledge of the absence of any legitimate or arguable reason;
>
> "(e) if the intentional failure to determine the existence of a lawful basis is relied upon, the plaintiff must prove the insurer's intentional failure to determine whether there is a legitimate or arguable reason to refuse to pay the claim."

State Farm Fire & Cas. Co. v. Brechbill, 144 So. 3d 248, 258 (Ala. 2013) (quoting *Nat'l Sec. Fire & Cas. Co. v. Bowen*, 417 So. 2d 179, 183 (Ala. 1982)). "In short, plaintiff must go beyond a mere showing of nonpayment and prove a bad faith nonpayment, a nonpayment without any reasonable ground for dispute. Or, stated differently, the plaintiff must show that the insurance company had no legal or factual defense to the insurance claim." *Nat'l Sec. Fire & Cas. Co. v. Bowen*, 417 So. 2d 179, 183 (Ala. 1982) (emphasis omitted).

Theories of bad faith have developed along two lines: "normal" or "ordinary" bad faith, and "abnormal" or "extraordinary" bad faith. According to the Alabama Supreme Court, "for the tort of bad-faith refusal to pay, '[r]equirements (a) through (d) represent the "normal" case. Requirement (e) represents the "abnormal" case.'" *Brechbill*, 144 So. 3d at 258 (quoting *Employees' Benefit Ass'n v. Grissett*, 732 So. 2d 968, 976 (Ala. 1998)). However, the Alabama Supreme Court recently clarified that "there is only one tort of bad-faith refusal to pay a claim, not two 'types' of bad faith or two separate torts." *Id.* at 257–58. Instead, "normal" and "abnormal" bad faith are merely "different options for proof" of a claim of bad faith. *Id.*

Under either theory, one who cannot prove that he or she is entitled to benefits under an insurance policy cannot recover on a bad faith claim. *Congress Life Ins. Co. v. Barstow*, 799 So. 2d 931, 937 (Ala. 2001); *see also State Farm Fire & Cas. Co. v. Slade*, 747 So. 2d 293, 319–20 (Ala. 1999); *Ex parte Alfa Mut. Ins. Co.*, 799 So. 2d 957, 962–63 (Ala. 2001); *but see Jones v. Alfa Mut. Ins. Co.*, 1 So. 3d 23, 36–37 (Ala. 2008) (allowing claim for bad faith failure to investigate to proceed to jury, even where genuine issue of material fact existed on underlying contract claim, because evidence for insurer's denial was gathered *after* denial was made).

In a "normal" bad faith claim, which centers around the reasonable, but conflicting, inferences that may be drawn concerning coverage, to prove bad faith, a plaintiff must be entitled to a directed verdict on the underlying contract claim. *Hilley v. Allstate Ins. Co.*, 562 So. 2d 184, 190 (Ala. 1990); *Shelter Mut. Ins. Co. v. Barton*, 822 So. 2d 1149, 1154–55 (Ala. 2001); *Nat'l Sav. Life Ins. Co. v. Dutton*, 419 So. 2d 1357, 1362 (Ala. 1982). If evidence produced by either the insured or the insurer creates a fact issue with regard to a breach of contract insurance claim, a bad faith claim by the insured against the insurer must ordinarily fail. *Kizziah v. Golden Rule Ins. Co.*, 536 So. 2d 943, 946 (Ala. 1988); *Brechbill*, 144 So. 3d 259.

The "abnormal" or "extraordinary" cases involve instances in which the plaintiff produced substantial evidence showing that the insurer (1) intentionally or recklessly failed to investigate the plaintiff's claim; (2) intentionally or recklessly failed to properly subject the plaintiff's claim to a cognitive evaluation or review; (3) created its own debatable reason for denying plaintiff's claim; or (4) relied upon an ambiguous portion of the policy as a lawful basis to deny the plaintiff's claim. *State Farm Fire & Cas. Co. v. Slade*, 747 So. 2d 293, 306–07 (Ala. 1999). The insured must show (1) that the insurer failed to properly investigate the claim or to subject the results of the investigation to a cognitive evaluation and review, and (2) that the insurer breached the policy when it refused to pay the insured's claim. *Congress Life Ins. Co. v. Barstow*, 799 So. 2d 931, 936–37 (Ala. 2001).

The ability to recover in an "abnormal" bad faith case was complicated by a 2008 plurality opinion of the Alabama Supreme Court. *Jones v. Alfa Mut. Ins. Co.*, 1 So. 3d 23 (Ala. 2008). In *Jones*, even though the court recognized that a question of material facts precluded the insured's "normal" bad faith claim since they were not entitled to a pre-verdict judgment as a matter of law (the "directed verdict test"), the "abnormal" bad faith case was allowed to proceed given an issue of whether the insurer met its duty to "marshal all facts" necessary to make a determination as to coverage. *Id.* at 36–37. Subsequently, in *Brechbill*, the Alabama Supreme Court explained that *Jones* merely stood for the proposition that a plaintiff may state a claim for bad faith failure to investigate if the insurer does not obtain the evidence for its coverage denial until *after* the denial has already been made. *Brechbill*, 144 So. 3d at 259. In other words, if there is no evidence that creates a debatable reason for denying the claim *at the time the claim was denied*, then the insured may state a claim. The court was cautious to reiterate, however, that "'Alabama law is clear:… regardless of the imperfections of [the insurer's] investigation, the existence of a debatable reason for denying the claim at the time the claim was denied defeats a bad faith failure to pay the claim.'" *Id.* (quoting *Weaver v. Allstate Ins. Co.*, 574 So. 2d 771, 775 (Ala. 1990)).

"[I]n order to prove a bad-faith-failure-to-investigate claim, the insured must prove that a proper investigation would have revealed that the insured's loss was covered under the terms of the contract." *State Farm Fire & Cas. Co. v. Slade*, 747 So. 2d 293, 318 (Ala. 1999). A proper investigation can be a claim representative's personal observation and subsequent phone call to an independent contractor on a property claim. *Singleton v. State Farm Fire & Cas. Co.*, 928 So. 2d 280, 284–85 (Ala. 2005). "The [life] insurer is not under any duty to investigate the mental competency of the insured to change the beneficiary unless it knows of circumstances reasonably suggesting the probability of his or her mental incompetency." *Fortis Benefits Ins. Co. v. Pinkley*, 926 So. 2d 981, 984 (Ala. 2005) (citation omitted).

An insurer cannot selectively consider only favorable information and discount unfavorable information as a part of its investigation. *Cont'l Assurance Co. v. Kountz*, 461 So. 2d 802 (Ala. 1984). Moreover, an insurer may not deny a claim in hopes that it can later gather information to support the denial. The decision to deny will be based upon the information available to the insurer at the time the decision is made. *Nat'l Sav. Life Ins. Co. v. Dutton*, 419 So. 2d 1357 (Ala. 1982). There is, however, no duty to investigate until the claim is submitted. *Huff v. United Ins. Co. of Am.*, 674 So. 2d 21 (Ala. 1995); *United Ins. Co. of Am. v. Cope*, 630 So. 2d 407, 412 (Ala. 1993).

The insurer's investigation must be concluded in a reasonable time. The failure to do so may result in a constructive denial. *Livingston v. Auto Owners Ins. Co.*, 582 So. 2d 1038, 1041–42 (Ala. 1991); *Ins. Co. of N. Am. v. Citizensbank of Thomasville*, 491 So. 2d 880 (Ala. 1986).

What is the legal standard required to prove bad faith in a third-party failure to settle a claim?

Alabama does not recognize the tort of bad faith in the handling of a third-party insurance claim. *See Stewart v. State Farm Ins. Co.*, 454 So. 2d 513, 514 (Ala. 1984). Once an injured party has recovered a judgment against the insured, the injured party may compel the insurer to pay the judgment. The injured party can bring an action against the insurer only after he or she has recovered a judgment against the insured, and only if the insured was covered against the loss or damage at the time the injured party's right of action arose against the insured tortfeasor. *Maness v. Ala. Farm Bureau Mut. Cas. Ins. Co.*, 416 So. 2d 979, 981–82 (Ala. 1982).

Is there a separate legal standard that must be met to recover punitive damages?

Yes. In order for a jury to award punitive damages, it must find by "clear and convincing evidence" that the defendant engaged in "fraud," "oppression," "wantonness," or "malice" with regard to the plaintiff. Ala. Code §6-11-20(a). Alabama law commonly refers to bad faith as a species of fraud. *See Dumas v. S. Guar. Ins. Co.*, 408 So. 2d 86, 89 (Ala. 1981).

Does a bad faith claim require evidence of a pattern or practice of unfair or deceptive conduct?

No; however, because Alabama recognizes bad faith as a species of fraud, an allegation of bad faith opens the door for plaintiff to discover other instances of an insurer's conduct. *See Ex parte O'Neal*, 713 So. 2d 956, 959 (Ala. 1998) ("[W]ider latitude is given to a bad faith plaintiff in the discovery process."); *Ex parte Finkbohner*, 682 So. 2d 409, 413 (Ala. 1996) (because intent is element of bad faith and because bad faith is so difficult to prove, other bad faith actions are discoverable).

On what issues is expert evidence required to establish bad faith?

None. Although there is no requirement that a plaintiff present expert testimony in order to proceed on a bad faith claim, it is not uncommon for a plaintiff to utilize an expert in order to meet the heavy burden of proof. *See Acceptance Ins. Co. v. Brown*, 832 So. 2d 1 (Ala. 2001) (two experts testified in support of plaintiff's bad faith action).

On what issues is expert evidence precluded?

In 2011, Alabama codified the requirements of *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993) as the threshold test for admissibility of expert testimony. Ala. Code §12-21-160.

Is a bad faith claim viable if a coverage decision has been determined to be correct?

No, coverage of the underlying claim is a prerequisite to a claim for bad faith. *See State Farm Fire & Cas. Co. v. Slade*, 747 So. 2d 293, 319–20 (Ala. 1999); *Ex parte Alfa Mut. Ins. Co.*, 799 So. 2d 957, 962–63 (Ala. 2001); *Congress Life Ins. Co. v. Barstow*, 799 So. 2d 931, 937 (Ala. 2001); *but see Jones v. Alfa Mut. Ins. Co.*, 1 So. 3d 23, 36–37 (Ala. 2008) (allowing claim for bad faith failure to investigate to proceed to jury, even where genuine issue of material fact existed on underlying contract claim, because evidence for insurer's denial was gathered *after* denial was made).

In the uninsured/underinsured motorist context, a plaintiff must "first establish the fault of the phantom motorist before he may seek damages… for bad-faith failure to pay." *Ex parte Safeway Ins. Co. of Alabama, Inc.*, 148 So. 3d 39, 43 (Ala. 2013). However, the court clarified that this requirement does not deprive the trial court of subject matter jurisdiction over the bad faith claim until the underlying liability is established. *Id.* Instead, the court noted that "[i]f [the plaintiff] cannot establish the fault of the phantom driver, then he cannot prove bad faith and, accordingly, [the insurer] may prevail on a Rule 12(b)(6) motion to dismiss." *Id.*

Is a third-party bad faith claim viable if the plaintiff does not prevail in the underlying claim?

Alabama does not recognize the tort of bad faith in the handling of a third-party insurance claim. *See Stewart v. State Farm Ins. Co.*, 454 So. 2d 513, 514 (Ala. 1984); *Maness v. Ala. Farm Bureau Mut. Cas. Co.*, 416 So. 2d 979, 981–82 (Ala. 1982).

Practice and Procedure

Statute of limitations

Bad faith claims in Alabama have a statute of limitations of two years. *See* Ala. Code §6-2-38(*l*); *Alfa Mut. Ins. Co. v. Smith*, 540 So. 2d 691, 692–93 (Ala. 1988). A claim for bad faith accrues at the time the party bringing the action knew facts that would put a reasonable person on notice of the possible bad faith. *Id.*; *see also* Bibb Allen, Alabama Liability Insurance Handbook §14-6 (1996). The time at which a reasonable person would be on notice of bad faith is a question of fact, not law. *Jones v. Alfa Mut. Ins. Co.*, 875 So. 2d 1189, 1193 (Ala. 2003).

Under what circumstances will bad faith claims be dismissed or stayed pending the resolution of the underlying claims?

Alabama decisions have not delineated under what circumstances a bad faith claim will be dismissed or stayed pending the resolution of an underlying claim. As a practical matter, although this occurs, it is generally left to the discretion of the trial judge.

Under what circumstances will bad faith claims be severed for trial from the underlying claim?

A bad faith claim may be bifurcated from the trial of the underlying claim based on Alabama Rule of Civil Procedure 42(b), which governs bifurcation generally.

Alabama Rule of Civil Procedure 18, which permits the joinder of liability coverage claims with the underlying dispute, provides: "In no event shall this or any other rule be construed to permit a jury trial of a liability insurance coverage question jointly with the trial of a related damage claim against an insured." Ala. R. Civ. P. 18(c); *see also Univ. Underwriters Ins. Co. v. E. Cent. Ala. Ford-Mercury, Inc.*, 574 So. 2d 716, 723–24 (Ala. 1990). Where a coverage action is joined (irrespective of whether there are attendant bad faith claims) during the first phase, neither the jury nor the judge would consider the insurer's participation or the coverage issue. *Id.* The jury would become aware of the insurer and the coverage issue only in the event that it rendered a verdict in the plaintiff's favor in the first phase. *Id.* The judge would consider the coverage issue only if he or she rendered a judgment for the plaintiff in the first phase. *Id.* In the second phase, the same jury or judge would hear and decide the coverage issue between the defendant insured and the insurer. *Id.*

Under what circumstances will the compensatory and punitive damages claims be bifurcated?

No criteria have been set forth for the bifurcation of compensatory and punitive damages in a strictly bad faith context. Instead, it would be the same as for any other case involving punitive damages.

Defenses and Counterclaims

Is evidence regarding the reasonableness of the conduct of the insured or third-party claimant admissible?

This issue has not been considered in any reported decision.

Is "advice of counsel" a recognized defense?

"While advice of counsel, along with all the other relevant factors, may be considered by the trial judge in his determination whether the strongest tendencies of the evidence, if believed, make out a case for the jury on the 'lawful basis for refusal' issue, it is not necessarily an absolute defense." *Chavers v. Nat'l Sec. Fire & Cas. Co.*, 405 So. 2d 1, 8 (Ala. 1981).

> Where, as here, the advice of insurer's counsel is not founded on professional evaluation of the credibility of admissible evidence, but instead is confined totally to inadmissible and unproved hearsay evidence, absent any ongoing investigation relative thereto, such advice cannot serve, as a matter of law, to insulate the insurer client from bad faith liability.

Id.; *see also Davis v. Cotton States Mut. Ins. Co.*, 604 So. 2d 354, 359 (Ala. 1992) ("Crucial to the insurers' showing that they did not act in bad faith is their employment of a lawyer in private practice to research the coverage of the motor vehicle.").

What other defenses are available?

Any claim of bad faith for wrongful refusal to pay will fail if the evidence demonstrates that the coverage claim was "fairly debatable." *Gulf Atl. Life Ins. Co. v. Barnes*, 405 So. 2d 916, 924 (Ala. 1981); *Nat'l Ins. Ass'n v. Sockwell*, 829 So. 2d 111, 126–27 (Ala. 2002); *Nat'l Sec. Fire & Cas. Co. v. Bowen*, 417 So. 2d 179, 183 (Ala. 1982).

When the bad faith claim is predicated on the investigation of the claim:

> The relevant question before the trier of fact would be whether a claim was properly investigated and whether the results of the investigation were subjected to a cognitive evaluation and review. Implicit in that test is the conclusion that the knowledge or reckless disregard of the lack of a legitimate or reasonable basis may be inferred and imputed to an insurance company when there is a reckless indifference to facts or to proof submitted by the insured…. [However a bad faith claim] cannot follow when an insurance company in the exercise of ordinary care makes an investigation of the facts and law and concludes

> on a reasonable basis that the claim is at least debatable.

Gulf Atl. Life Ins. Co., 405 So. 2d at 924 (citation and internal quotation marks omitted).

Other defenses are available in certain cases. In a fire case, an insurer can assert arson or concealment. *S & W Props., Inc. v. Am. Motorists Ins. Co.*, 668 So. 2d 529, 531 (Ala. 1995). Misrepresentation on an application by an insured also is a defense. *Am. Gen. Life & Accident Ins. Co. v. Lyles*, 540 So. 2d 696, 699 (Ala. 1988).

Is there a cause of action for reverse bad faith?

No.

Other Significant Cases Involving Bad Faith and Extracontractual Claims

Alabama does not recognize a claim for the negligent or wanton handling of first-party insurance claims. *Kervin v. S. Guar. Ins. Co.*, 667 So. 2d 704, 706 (Ala. 1995).

Through dicta, the Alabama Supreme Court has stated that it may recognize a third-party claim in contract (and thus possibly for bad faith) directly against an insurer when there is a "new and independent obligation," such as a set of promises arising from a contract exchanged between a third party and insurer. *See Williams v. State Farm Mut. Auto. Ins. Co.*, 886 So. 2d 72, 74–75 (Ala. 2003).

It is proper for an insurer to rely upon the fact that the insured misrepresented material facts (such as bankruptcy filings, litigation history) to outright deny a claim under a casualty policy. *Nationwide Mut. Fire Ins. Co. v. Pabon*, 903 So. 2d 759, 767–68 (Ala. 2004).

AUTHORS

Walter J. Price III | Huie, Fernambucq & Stewart LLP | 205.297.8832 | wprice@huielaw.com

R. Bruce Barze, Jr. | Balch & Bingham LLP | 205.226.8716 | bbarze@balch.com