

I. Introduction to Bad Faith

The tort of bad faith failure to pay was first recognized by the Alabama Supreme Court in 1981. In *Chavers v. National Security & Casualty Co.*, the Supreme Court reversed the lower court's ruling and for the plaintiff effectively establishing the claim of bad faith failure to pay. 405 So. 2d 1 (Ala. 1981).

A. Elements

In *Chavers*, the court addressed what "proof an insured is required to meet in order to recover on a claim for bad faith." 405 So. 2d at 7. The actionable tort of bad faith arises when there is either "(1) no lawful basis for the refusal coupled with actual knowledge of that fact or (2) intentional failure to determine whether or not there was any lawful basis for such refusal." *Id.*

Since *Chavers*, the elements necessary to impose liability against an insurer for bad faith have become more detailed:

- (a) an insurance contract between the parties and a breach thereof by the defendant;
- (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.

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.

The 'debatable reason' under (c) above means an arguable reason, one that is open to dispute or question.

Liberty National Life Ins. Co. v. Allen, 699 So. 2d 138, 142 (Ala. 1997) (quoting *National Sec. Fire & Cas. Co. v. Bowen*, 417 So. 2d 179, 183 (Ala. 1982)). Elements of bad faith may be proved by circumstantial

evidence as well as direct evidence. *Chavers*, 405 So. 2d at 7.

B. Insurance Contracts

The tort of bad faith “arises exclusively out of the existence of an insurer/insured relationship based upon an insurance contract.” Mark D. Hess, *London & Yancey, LLC; Select Procedural, Discovery and evidence Issues in Fraud and Bad Faith Litigation*, p. 2 (2003). See *Employees’ Benefit Ass’n v. Grissett*, 732 So. 2d 968 (Ala. 1998); *Metmor Financial, Inc. v. Common Wealth Land Title Ins. Co.*, 645 So. 2d 295 (Ala. 1993); *Schoepflin v. Tender Loving Care Corp.*, 631 So. 2d 909 (Ala. 1993); *Grant v. Butler*, 590 So. 2d 254 (Ala. 1991); *Peninsular Life Ins. Co. v. Blackmon*, 476 So. 2d 87 (Ala. 1985). The existence of an insurance contract requires “the payment of premiums to the insurer by or on behalf of the insured and the placement of the premiums into a central fund that of which claims are paid.” *Id.* See *Metmor Financial, Inc. v. Common Wealth Land Title Ins. Co.*, 645 So. 2d 295.

C. Intentional Tort

The tort of bad faith is an intentional tort and negligence or mistake is not sufficient to support a claim of bad faith against the insurer. There must be a refusal to pay coupled with a “conscious intent to injure” the claimant. Mark D. Hess, *London & Yancey, LLC; Select Procedural, Discovery and evidence Issues in Fraud and Bad Faith Litigation*, p. 2 (citing *Davis v. Cotton States Mut. Ins. Co.*, 604 So. 2d 354 (Ala. 1992)). “Conscious intent” is required under both the “refusal to pay” and the “failure to investigate” theories of bad faith. *Id.* *Harrington v. Guaranty Nat. Ins. Co.*, 628 So. 2d 323 (Ala. 1993). The Alabama Supreme Court has preserved bad faith as an intentional tort by consistently refusing to recognize causes of action for negligent or even wanton claims handling. *Id.* at 4. See *Kervin v. Souther Guaranty Ins. Co.*, 667 So. 2d 704 (Ala. 1995); *Pate v. Rollison Logging Equipment Co. Inc.*, 628 So. 2d 338 (Ala. 1993).

D. Damages

Under the tort of bad faith, the insured may recover damages for mental anguish and economic losses as well as contract damages. In *Gulf Atlantic Life Ins. Co. v. Barnes*, the court noted that punitive damages are potentially available in bad faith cases. 405 So. 2d 916 (Ala. 1981). To recover punitive damages, “there must be a breach of the duty of good faith (the intentional tort), and the insurer must have committed that act with malice, willfulness, or wanton and reckless for the rights of others.” Walter J. Price, III, Huie, Fernambucq & Stewart, LLP; *Insurance Bad Faith Claims*, p. 48 (2004).

II. Normal/Abnormal Distinction

In the “normal” case, in order for a plaintiff to establish a prima facie case of bad faith refusal to pay an insurance claim, the proof offered must show that the plaintiff is entitled to a directed verdict on the contract claim and entitled to recover as a matter of law. National Savings Life Ins. Co. v. Dutton, 419 So. 2d 1357, 1362 (Ala. 1982). Further, the plaintiff has to “demonstrate entitlement to a directed verdict (now judgment as a matter of law ‘JML’) on the breach of contract claim.” Mark D. Hess, London & Yancey, LLC; Select Procedural, Discovery and Evidence Issues in Fraud and Bad Faith Litigation, p. 4. Because of this requirement, the Alabama Supreme Court established the “directed verdict standard” in bad faith cases. See Burkett v. Burkett, 542 So. 2d 1215, 1218 (Ala. 1989).

However, later cases noted that the “directed verdict standard” is not required nor is that standard appropriate in every bad faith case.

This ‘directed verdict on the contract claim’ test is not to be read as requiring, in every case and under all circumstances, that the tort claim be barred unless the trial court has literally granted plaintiff’s motion for directed verdict on the contract. ... this test is intended as an objective standard by which to measure plaintiff’s compliance with his burden of proving that defendant’s denial of payment was without any reasonable basis either in fact or law; i.e., that defendant’s defense to the contract claim is devoid of any triable issue of fact or reasonably arguable question of law.

Safeco Ins. Co. of America v. Sims, 435 So. 2d 1219, 1224 (Ala. 1983) (J. Jones, concurring opinion). Thus, exceptions to the “directed verdict” rule exist and are known as “abnormal” bad faith cases.

“Abnormal” bad faith is understood where the facts were so egregious or unusual that the unavailability of a JML on the contract claim did not prevent submission of the bad faith claim to the jury. These examples include cases in which the evidence showed the insurer “intentionally or recklessly failed to properly investigate the claim or to subject the results of the investigation to a cognitive evaluation and review.” Thomas v. Principal Financial Group, 566 So. 2d 735, 744 (Ala. 1990). See, e.g., Aetna Life Ins. Co. v. Lavoie, 505 So. 2d 1050 (Ala. 1987); Continental Assurance Co. v. Kountz, 461 So. 2d 802 (Ala. 1984). Other examples include cases in which the insurer “created” a factual issue that could have defeated the insured’s tort claim under the “directed-verdict-on-the-contract-claim” standard. See, e.g., United American Ins.

Co. v. Brumley, 542 So. 2d 1231 (Ala. 1989); *Jones v. Alabama Farm Bureau Mut. Cas. Co.*, 507 So. 2d 396 (Ala. 1986).

The Alabama Supreme Court also noted that the “directed verdict standard” did not apply when an insurer attempted to defeat the insured’s preverdict motion for a JML by relying on its own subjective belief that a portion of its insurance contract precluded coverage. Said exception was necessary to prevent insurers from relying on ambiguous portions of a policy as an absolute defense to a claim of bad faith. *State Farm Fire & Cas. Co. v. Slade*, 747 So. 2d 293, 306 (Ala. 1999) (citing *Blackburn v. Fidelity & Deposit Co.*, 667 So. 2d 661, 669 (Ala. 1995).

An abnormal case of bad faith can be found where there is substantial evidence 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 the plaintiff’s claim; or
- (4) relied on an ambiguous portion of the policy as a lawful basis to deny the plaintiff’s claim.

Slade, 747 So. 2d 306-307. The *Slade* court went on to note that:

[W]e make it clear that in order to recover under a theory of an abnormal case of bad-faith failure to investigate an insurance claim, 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 contract for insurance coverage with the insured when it refused to pay the insured’s claim.

* * *

*Practically, the effect is that in 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. This result preserves the length between contractual liability and bad-faith liability required by *Chavers, supra*, and *Dutton, supra*.*

Mark D. Hess, London & Yancey, LLC; *Select Procedural, Discovery and Evidence Issues in Fraud and Bad Faith Litigation*, p. 5 (quoting *Slade*, 747 So. 2d at 318).

Therefore, a plaintiff has two methods by which to establish a bad-faith refusal to pay an insurance claim: (1) he/she can “prove the requirements necessary to establish a ‘normal’ case, or, (2) he/she can “prove the insurer’s failure to investigate the claim at the time presented was intentional or reckless.” *Employees’ Benefit Association v. Grissett*, 732 So. 2d 968, 976 (Ala. 1998).¹ Further, in a “normal” case, the insurer cannot use ambiguity in the contract as a basis that there exists a debatable reason not to pay the claim. Reason being, an insurer would have an incentive to write ambiguous policies in order to create built-in defenses against potential bad faith claims. *Id.* at 976-77; *Blackburn v. Fidelity & Deposit Co. of Maryland*, 667 So. 2d 661, 669 (Ala. 1995).

III. Cases of Bad Faith

A. Bad Faith Failure to Pay

To prove a bad faith claim against an insurer, a plaintiff must go beyond merely showing nonpayment. *Turner v. Liberty National Fire Ins. Co.*, 681 So. 2d 589 (Ala. Civ. App. 1996) (citing *National Security Fire & Casualty Co. v. Bowen*, 417 So. 2d 179. The plaintiff must show that the insurance company had no legal or factual defense to the insurance claim. *Bowen*, 417 So. 2d at 183. Further, “if the evidence produced by either side creates a fact issue with regard to the validity of the claim and, thus, the legitimacy of the denial thereof, the tort claim must fail and should not be submitted to the jury.” *National Savings Life Ins. Co. v. Dutton*, 419 So. 2d 1357, 1362 (Ala. 1982). However, as mentioned, the factual issue presented cannot be based on an ambiguity in the contract for insurance. *Id.*

In *Alfa Mut. Fire Ins. Co. v. Thomas*, the plaintiff obtained insurance on her house from Alfa. 738 So. 2d 815, 817 (Ala. 1999). The insurance included coverage for wind damage. After obtaining coverage, Hurricane Opal hit southeast Alabama and, wind from the hurricane blew the outbuilding in plaintiff’s yard off of its foundation, damaged a satellite dish, and damaged the roof, siding, and television antenna on her house. As a result of the damage, plaintiff made a claim with her insurance company. *Id.* Alfa sent an adjuster to the plaintiff’s residence, but no one from Alfa told the plaintiff an adjuster was coming. Alfa denied the claim stating the damage claimed by the insured was not covered under her policy.

At trial, evidence was presented indicating that the adjuster stayed at the home for only a few minutes; made no attempt to see if the plaintiff was at home or to discuss with her the reported damage; took some pictures of

¹For two other more recent case discussing the dichotomy between “normal” and “abnormal” bad faith claims, see *National Ins. Assoc. v. Sockwell*, 829 So. 2d 111 (Ala. 2002) and *Acceptance Ins. Co. v. Brown*, 832 So. 2d 1 (Ala. 2001).

the residence; did not walk around the entire house; and made no attempt to inspect the roof. Thomas, 738 So. 2d at 817. Further, Alfa employees conceded that the standard fire insurance policy issued to the plaintiff covered wind damage to her roof, siding, and outbuilding. Id. at 818. The court held that it was undisputed there was an insurance contract and that contract was breached. The court noted that Alfa employees testified the standard fire insurance policy sold to plaintiff covered most of the wind-damage claims that arose from Hurricane Opal. Id. As such, Alfa breached its contract with plaintiff and she is entitled to a directed verdict on the contract claim effectively establishing the necessary element to her bad faith claim. Id.

In Employees' Benefit Assoc. v. Grissett, plaintiff obtained membership with Employees' Benefit Association ("EBA"). 732 So. 2d 968, 970 (Ala. 1998). As a member of EBA, one receives certain benefits which include insurance coverage. Id. at 971. Plaintiff suffered a cerebral aneurysm at his home and sought coverage from EBA under his insurance policies. In order for plaintiff to receive the necessary coverage, he had to fill out forms, get his doctor's signature on those forms, and then submit to EBA in a timely manner. Id. at 972. EBA paid the first few claims even though they were late, but soon after stated that it would not pay for any claims that were not reported within four weeks. Id. at 973. Due to circumstances that were out of plaintiff's control, his next claim was late and refused. Id.

At trial, EBA argued that it was not an insurance company and the inquiry should end there. Grissett, 732 So. 2d at 977. However, the court disagreed stating the payment of dues to the membership fund, from which disability claims are paid, establishes a situation in which the doctrine of bad faith is applicable. Id. Plaintiff presented evidence where EBA admitted that it should have paid plaintiff's final claim. As such, plaintiff proved the breach of contract as to his claim, and the court held he successfully proved the elements necessary to establish a prima facie case for bad faith. Id. at 977.

B. Bad Faith Failure to Investigate

The second form of bad faith in which a plaintiff can recover is under the theory of bad failure to investigate the claim. In Acceptance Ins. Co. v. Brown, the plaintiff had a commercial general - liability insurance policy ("CGL") to insure their grocery store. 832 So. 2d 1, 4 (Ala. 2001). Under the policy, both the husband and wife were individually insured. Id. A robbery was later attempted, while both plaintiffs were still at their convenience store. Id. at 6. Both plaintiffs were armed and confronted the intruder. An altercation followed, and the intruder ran with arms out toward the wife. She stated that she closed her eyes and fired injuring the intruder. The intruder

filed suit alleging a tort against the plaintiffs. The tort judgment was granted and plaintiffs' filed suit against their insurance company alleging duty to defend, duty to indemnify, and bad faith. Id.

Acceptance denied coverage based on the determination that plaintiffs' policy had an "intentional acts" exclusion and an assault-and-battery exclusion. Brown, 832 So. 2d at 7. As to the bad faith claim, plaintiffs allege the insurance company failed to properly investigate their claim and obtain a coverage opinion before denying their request for benefits. Id. at 17. Plaintiffs presented expert testimony to the effect "that industry practice required that Acceptance obtain a coverage opinion from an attorney before denying Brown a defense." Id. The court agreed with plaintiffs based on both the expert's testimony and evidence showing Acceptance denied plaintiff's request for a defense even though it had information supporting plaintiffs' contention that it was accidental, or may have been the result of negligence. Id.

In Aetna life Ins. Co. v. Lavoie, the plaintiffs, husband and wife, were insured under a group policy of health and medical insurance issued by Aetna. 470 So. 2d 1060, 1061 (Ala. 1984). The plaintiff wife sought medical attention because of headaches, dizziness, diarrhea, nervousness, pain, and shortness of breath. She was admitted to the hospital and stayed for approximately 23 days trying to determine what was the cause of her illness. Id. at 1062. Aetna was made aware of these complaints before it denied her claim.

Subsequently, Aetna denied plaintiff's claim stating it was unnecessary to keep her in the hospital as long as the doctors did and noted that the tests run were also unnecessary. Aetna, 470 So. 2d at 1063. At trial, plaintiff presented evidence indicating that when Aetna first denied her claim there had been no review by a medical physician even though the denial letter stated there had been. Id. at 1066. A subsequent letter denying plaintiff's claim stated it had been re-reviewed by the "Medical Department" when in actuality the senior adjuster had examined the file. Id. Evidence was also presented that the admitting diagnosis would have qualified for coverage under plaintiff's policy. Id. The court noted "Aetna violated all of its own recognized principles and procedures for handling such claims; bypassing the Medical Department that was the only source of medically qualified information available to Aetna and deliberately, intentionally and recklessly representing to the Lavoies that their file had been reviewed by a 'member of the Medical Department.'" Id. at 1068. As such, the court held that under the "extraordinary" facts of this case, the elements of bad faith

have been satisfied.²

The court went on to note that partial payment is not an absolute defense to bad faith. *Aetna*, 470 So. 2d at 1075. “While it is true that partial payments may be considered as evidence of a lack of a dishonest purpose or ill-will in an insurer’s denial, it does not follow that partial payment, in and of itself, precludes recovery under a bad faith theory.” *Id.* Otherwise, the court noted “an insurer could avert liability in tort even though the evidence conclusively proved that the insured was the victim of an intentional denial of a portion of a claim which was not otherwise reasonably debatable.” *Id.*

C. UM/UIM Cases

A claim for bad faith can also be based on UM or UIM insurance benefits. The Alabama Supreme Court has noted that “there can be no breach of an uninsured motorist contract, and therefore no bad faith, until the insured proves that he is legally entitled to recover.” *Quick v. State Farm Mut. Auto. Ins. Co.*, 429 So. 2d 1033, 1035 (Ala. 1983).

In *LeFevre v. Westberry*, the court noted there was “no universally definitive answer ... to ... when an action for bad faith may be maintained for the improper handling of an uninsured or underinsured motorist claim; the answer is, ... , dependant upon the facts of each case.” 590 So. 2d 154, 159 (Ala. 1991). The court continued stating “the insurer and the insured occupy adverse positions until the uninsured motorist’s liability is fixed ...” *Id.*

The *LeFevre* Court set out the general rules for a claim for uninsured/underinsured motorist benefits:

1. When a claim is filed by its insured, the uninsured motorist carrier has an obligation to diligently investigate the facts, fairly evaluate the claim, and act promptly and reasonably.
2. The uninsured motorist carrier should conclude its investigation within a reasonable time and should notify its insured of the action it proposes with regard to the claim for uninsured motorist benefits.

²See *Ex Parte Simmons*, 791 So. 2d 371, 379-81 (Ala. 2000) (stating that *Lavoie* “held that postdenial efforts to develop facts that would support a good-faith denial of the claim could not be used to overcome an initial denial made in bad faith and reiterated on numerous subsequent occasions before the insurer sought pertinent information that was missing from the file...and not as a shield to protect an insurer from the consequences of actions taken in bad faith during a “reconsideration” or an “appeal.”

3. *Mere delay does not constitute vexatious or unreasonable delay in the investigation of a claim if there is a bona fide dispute on the issue of liability.*

4. *Likewise, mere delay in payment does not rise to the level of bad faith if there is a bona fide dispute on the issues of damages.*

5. *If the uninsured motorist carrier refuses to settle with its insured, its refusal to settle must be reasonable.*

*590 So. 2d at 161. In Pontius v. State Farm Mut. Auto. Ins. Co., the court applied these general rules to determine that plaintiff's claim for bad-faith failure to pay was premature. 2005 Ala. LEXIS 82 *17.*

*In Pontius, plaintiff was involved in an automobile accident and sued the driver of the other vehicle. 2005 Ala. LEXIS 82 *1. Plaintiff was insured by State Farm and subsequently made a claim for underinsured-motorist ("UIM") benefits. State Farm did not pay the benefits and moved to intervene in the pending suit. Id. at *2. Plaintiff amended complaint to add State Farm as a defendant and asserted claims seeking UIM benefits and alleging bad faith and breach of contract.*

*The Pontius Court noted that plaintiff did not have to obtain a judgment against the other driver before plaintiff joined State Farm as a defendant for the plaintiff's claim of UIM benefits. 2005 Ala. LEXIS 82 *16. As to bad faith, the court noted that plaintiff had to demonstrate that she was "legally entitled to recover" damages for bad faith under the policy, and must "be able to establish fault on the part of the uninsured motorist, which gives rise to damages and must be able to prove the extent of those damages." Id. (Citing LeFevre, 590 So. 2d at 157, quoting Quick, 429 So. 2d at 1035).³ "Where a legitimate dispute exists as to liability, whether under primary coverage or uninsured motorist coverage, a tort action for bad faith refusal to pay a contractual claim will not lie." Pontius, 2005 Ala. LEXIS 82 *16 (quoting Bowers v. State Farm Mut. Auto. Ins. Co., 460 So. 2d 1288, 1290 (Ala. 1984)).*

³See National Ins. Assoc. v. Sockwell, 829 So. 2d 111, 130-131 (Ala. 2002) (holding plaintiff established the necessary elements to her bad faith claim under UIM because National never inquired whether plaintiff had settled her claims with the other insurance carriers. It is the insurer's duty to marshal all of the facts pertinent to its denial – before denying the claim – if the insurer wishes to rely on those facts to deny a bad faith claim. Further, court held that evidence submitted to claims adjuster established plaintiff's claim was to be paid.

IV. Duty of Good Faith and Fair Dealing

In every insurance contract there exists an “implied ‘covenant of good faith and fair dealing’” applicable to both the insured and the insurer. Mark D. Hess, London & Yancey, LLC; Select Procedural, Discovery and Evidence Issues in Fraud and Bad Faith Litigation, p. 7. See Chavers, 405 So. 2d at 4 (Ala. 1981). The insured is responsible for dutifully paying its premiums and appropriately presenting his/her claim. Id. See United Insurance Co. of America v. Cope, 630 So. 2d 407 (Ala. 1993) (stating “the obligation to pay or to evaluate the validity of the claim does not arise until the insured has complied with the terms of the contract with respect to submitting claims.”)). The nonpayment of premiums voids the contract and precludes a claim for bad faith. Id. See Grimes v. Liberty National Fire Ins. Co., 551 So. 2d 329 (Ala. 1989). On the other hand, the insured has recourse against the insurer if it fails to honor the coverage as outlined in the policy. That recourse is filing a lawsuit stating the insurer acted in “bad faith.” See Howton v. State Farm Mut. Auto. Ins. Co., 507 So. 2d 448 (Ala. 1987).

In Congress Life Ins. Co. v. Barstow, the plaintiff had group medical-insurance coverage from Congress Life. 799 So. 2d 931, 932 (Ala. 2001). In obtaining insurance coverage, plaintiff answered in the affirmative stating that neither he nor his dependants had a medical or surgical condition in the past five years. Id. One year later, plaintiff’s daughter was referred to an oral surgeon, who requested preauthorization from the insurance company to perform jaw surgery necessary to correct a congenital jaw condition. Id. at 933.

During the review of this claim, Congress froze all medical claims submitted by plaintiff, which required plaintiff to personally pay for some claims. Barstow, 799 So. 2d at 934. After review, Congress informed plaintiff that it had determined the daughter’s jaw to be a pre-existing condition not covered under their policy. If the plaintiffs wished to keep their medical coverage, they would need to waive coverage for their daughter’s jaw condition. Id. at 934-35.

After receiving a letter from plaintiffs’ doctor and attorney, Congress referred the case to an independent medical consultant for review. Barstow, 799 So. 2d at 935. After review, the consultant advised that it did not appear that plaintiffs knew of the jaw condition when they applied for coverage. Consequently, Congress Life approved the preauthorization, but such approval came after plaintiffs’ suit for bad faith had been filed. Id. The court noted that “once the bad faith has occurred, once the duty to use good faith in considering insurance claims has been breached, the insurance company cannot later seek to justify its denial by gathering information which it should have had in the first place.” Id. at 939 (quoting Aetna Life Ins. Co. v. Lavoie,

505 So. 2d at 1053). However, in this matter the court held that Congress Life initially had a good faith basis for denying the preauthorization and, then, reconsidered its denial and ultimately decided in good faith, to approve the surgery and pay the claim. *Id.*

V. Defenses

“To defeat a bad faith claim, the defendant does not have to show that its reason for denial was correct, only that it was arguable.” *Liberty National Life Ins. Co. v. Allen*, 699 So. 2d 138, 143 (Ala. 1997). Courts have consistently and recently held that an incorrect statement material to the risk assumed by the insurer provides a basis for the insurer to avoid the policy. See *Alfa Life Ins. Corp. v. Lewis*, 910 So. 2d 757, 762 (Ala. 2005); *Nationwide Mut. Fire Ins. Co. v. Pabon*, 903 So. 2d 759, 768 (Ala. 2004).

An arguable reason to deny a claim would be establishing the party bringing the bad faith claim does not have a direct contractual relationship with the insurance company. *Williams v. State Farm Mut. Auto. Ins. Co.*, 886 So. 2d 72, 75-76 (Ala. 2003); see *Slade*, 747 So. 2d at 304. Additionally, a bad faith claim fails if the insurance company can establish the insured failed “to cooperate with the investigation and to provide” the insurance company “with information required under the contract.” *Turner v. Liberty National Fire Ins. Co.*, 681 So. 2d 589, 592 (Ala. Civ. App. 1996). Such action provides the insurance company with a legal and/or factual defense to a claim for bad faith. *Id.*

A few cases involving bad faith focus on the adequacy of the insurance company’s estimate of damage. The court handles these claims on a case-by-case basis. If the insurance policy states the insurance company’s liability for damages covers the “cost of repair or replacement” and, evidence shows the insurance company attempted to exercise its option to pay for the repair, then there is no breach of contract. *Emanuelson v. State Farm Auto. Ins. Co.*, 651 So. 2d 29, 31 (Ala. Civ. App. 1994). When the insured rejects the offer of repair or replacement as insufficient there is an obvious dispute regarding the adequacy of the estimate, which prevents the element of breach of contract. *Id.*⁴

Lastly, as previously mentioned, the Alabama Supreme Court has

⁴See *Lary v. Valiant Ins. Co.*, 864 So. 2d 1105 (Ala. Civ. App. 2002) (holding that claim for bad faith fails after insurance company presented evidence showing it initially paid for repairs to the vehicles in question. Following repairs, additional problems arose in one vehicle and it was determined a total loss. The additional repairs made it a total loss and insurance company offered to pay for the loss, but a dispute arose as to cash value of the vehicle (bad faith denied)).

“refused to recognize a cause of action for the negligent handling of insurance claims, and it will not recognize a cause of action for alleged wanton handling of insurance claims.” Kervin and Hose Headquarters, Inc. v. Southern Guaranty Ins. Co., 667 So. 2d 704, 706 (Ala. 1995) (citations omitted).

VII. Conclusion

The tort bad faith failure to pay or investigate a claim is still frequently plead. However, as the aforementioned case law indicates, insureds have become less and less successful establishing the necessary elements and prevailing on their bad faith claim. The diminishing success of insureds’ bad faith claims is directly attributable to the amount of attention insurance companies pay to each claim. Insurance companies have become increasing thorough when examining the validity of a claim and determining if the insured’s policy covers said claim. This “good faith” eliminates the breach of contract element preventing the prima facie showing of bad faith failure to pay.