I. REGULATORY LIMITS ON CLAIMS HANDLING

A. Timing for Responses and Determinations

Wyoming Statute § 26-15-124(b) requires property and casualty insurers to reject or accept claims for benefits and to pay the same within 45 days after receipt of the claim and supporting bills.

B. Standards for Determinations and Settlements

General Standards for handling claims are set forth in Wyoming Statute § 26-13-124. That statute, which primarily applies to first party claims for benefits, rather than liability coverage, provides:


(a) A person is considered to be engaging in an unfair method of competition and unfair and deceptive act or practice in the business of insurance if that person commits or performs with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:

(i) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(ii) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(iii) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(iv) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(v) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
(vi) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(vii) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(viii) Attempting to settle a claim for less than the amount to which a reasonable person would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(ix) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured;

(x) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;

(xi) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(xii) Delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(xiii) Failing to promptly settle claims, where liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(xiv) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(xv) Denying or failing to timely pay disability insurance claims for medically necessary services, procedures or supplies as required by W.S. 26-40-201;

(xvi) Failing to comply with the external review procedures required by W.S. 26-40-201; or

(xvii) Failing to pay a claim after an external review organization has declared such claim to be a benefit covered under the terms of the insurance policy.

No private right of action exists under the above statute. Herrig v. Herrig, 844 P.2d 487, 494 (Wyo. 1992). The conduct proscribed by W.S. § 26-
13-124, however, is often alleged by insureds as evidence supporting bad faith claims.

C. **Privacy Protections (In addition to Federal Gramm-Leach-Bliley Act)**

Wyoming Statute § 26-2-133 provides as follows:

a. The [Insurance] commissioner is authorized to adopt rules necessary to govern the practices of all persons licensed under this code with respect to the disclosure of nonpublic personal financial and health information of insurance consumers and customers. The rules shall prohibit the disclosure of any nonpublic personal information contrary to the provisions of title V of the Gramm-Leach-Bliley Act of 1999, P.L. 106-102.

[former subsection b repealed, 2007]

Chapters 54 and 55 of the Wyoming Insurance Regulations address, in considerable detail, the privacy and disclosure rules. Chapter 54 sets forth privacy protections for financial and health information of insureds adopted from the Gramm-Leach-Bliley Act.

II. **PRINCIPLES OF CONTRACT INTERPRETATION**

Under Wyoming law an insurance policy is a contract and should be construed in accordance with general principles of contractual interpretation. *Squillace v. Wyoming State Employees' & Officials' Group Ins. Bd. of Admin.*, 933 P.2d 488, 491 (Wyo. 1997).

Based on Wyoming’s established standards for interpretation of contracts, the words used in the contract are afforded the plain meaning that a reasonable person would give to them. When the provisions in the contract are clear and unambiguous, the court looks only to the "four corners" of the document in arriving at the intent of the parties. In the absence of any ambiguity, the contract will be enforced according to its terms. *Hickman v. Groves*, 71 P.3d 256, 258 (Wyo. 2003). If the language of the contract is unambiguous, extrinsic evidence is not admitted to contradict the plain meaning of the agreement. *Prudential Preferred Properties v. J & J Ventures, Inc.*, 859 P.2d 1267 (Wyo. 1993).

If the contract is ambiguous, the intent of the parties may be determined by looking at extrinsic evidence. An ambiguous contract is one which is obscure in its meaning because of indefiniteness of expression or the presence of a double meaning. *Wadi Petroleum, Inc. v. Ultra Res., Inc.*, 65 P.3d 703, 708 (Wyo. 2003). Whether a contract is ambiguous is a matter of law for the court to decide, and disagreement among the parties to a contract as to the contract's meaning does not mean that contract is ambiguous. *Claman v. Popp*, 279 P.3d 1003, 1013 (Wyo. 2012). Ambiguities in an insurance contract are strictly construed against the insurance company that drafted the contract. *State Farm v. Paulson*, 756 P.2d 764, 765 (Wyo. 1988).

III. **CHOICE OF LAW**

Absent a choice of law provision in the contract, under Wyoming law contracts are to be construed according to the law of the place where made,
except where the contract is made in one state to be performed in another, in which case the law of the state of performance will govern unless it clearly appears the parties intended otherwise. J. W. Denio Milling Co. v. Malin, 165 P. 1113 (Wyo. 1917).

Where the contract or policy contains a choice of law agreement, Wyoming has adopted the Restatement (Second) of Conflict of Laws which sets forth the following rule for applying choice of law agreements:

1. The law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.

2. The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either

   a. the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or

   b. application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue....


As to tort claims, the general rule in Wyoming is “the lex loci delicti, or the law of the place where the tort or wrong has been committed, is the law that governs and is to be applied with respect to the substantive phases of torts or the actions therefor, and determines the question of whether or not an act or omission gives rise to a right of action or civil liability for tort.” Duke v. Housen, 589 P.2d 334, 342 (Wyo. 1979).

IV. DUTIES IMPOSED BY STATE LAW

A. Duty to Defend

1. Standard for Determining Duty to Defend

The duty to defend is an independent consideration in liability policies and it is invoked by any claim set forth in the complaint that is potentially covered under the policy. Shoshone First Bank v. Pacific Employers Insurance Company, 2 P.3d 510 (Wyo. 2000). The duty to defend is broader than the duty to indemnify. Id. The insurer is obligated to defend if the claim falls rationally within the policy coverage. Matlack v. Mountain West Farm Bureau Mutual Insurance Company, 44 P.3d 73 (Wyo. 2002). The determination of whether a claim is rationally covered is made by examination of the facts alleged in the complaint. Id. If the policy
potentially covers one or more claims, the insurer has a duty to defend all claims and any doubts about coverage are resolved against insurer. Id.

2. Issues with Reserving Rights

An insurer who reserves the right to deny coverage loses the right to control the litigation. Insurance Company of North America v. Spangler, 881 F.Supp. 539, 544 (D. Wyo. 1995); see also Marathon Ashland Pipe Line LLC v. Maryland Cas. Co., 243 F.3d 1232, 1249 (D. Wyo. 2001) (declining to extend the holding in Spangler to any other factual situations). An insured does not breach the cooperation clause by settling a claim being defended under a reservation of rights, as long as the insurer is provided adequate prior notice of the settlement. Gainsco Insurance Company v. Amoco Production Company, 53 P.3d 1051, 1067 (Wyo. 2002). In addition, for the insurer to be bound by the settlement, it must be reasonable, in good faith, without collusion and must not prejudice the rights of the insurer. Id. The insured and the third-party assignee/claimant bear the burden of proving that the settlement was reasonable. Id.

B. Duty to Settle

Under Wyoming law, the failure to settle a third-party claim within policy limits will expose the insurer to tort liability for bad faith if the insured is exposed to a judgment in excess of policy limits. Jarvis v. Farmers Insurance Exchange, 948 P.2d 898 (Wyo. 1997); see also Crawford v. Infinity Ins. Co., 64 Fed. 146, 151 (10th Cir. 2003).

V. EXTRACONTRACTUAL CLAIMS AGAINST INSURERS: ELEMENTS AND REMEDIES

A. Bad Faith

1. Third-Party Bad Faith

In Western Casualty Surety Co. v. Fowler, 390 P.2d 602 (Wyo. 1964), the Wyoming Supreme Court first recognized a tort cause of action for third-party bad faith. This cause of action arises out of the duty of liability insurers to defend and settle claims asserted against their insureds by third parties. Darlow v. Farmer’s Insurance Exchange, 822 P.2d 820, 827 (Wyo. 1991). A cause of action for third-party bad faith will lie when an insurer fails in bad faith to settle a third-party claim against its insured within policy limits. Herrig v. Herrig, 844 P.2d 487, 490 (Wyo. 1992). The insurer’s duty to the insured in this context is to exercise intelligence, good faith and honest and conscientious fidelity to the interest of the insured as well as its own interest, giving at least equal consideration to the interest of the insured. Fowler, 390 P.2d at 606. Entry of a judgment in excess of policy limits is a prerequisite to a cause of action for third-party bad faith. Jarvis v. Farmers Insurance Exchange, 948 P.2d 898 (Wyo. 1997). The Wyoming Supreme Court recently held that a claim of third-party bad faith may lie where the insured voluntarily stipulates to a judgment in excess of policy limits without the insurer’s consent. Gainsco Insurance Company v. Amoco Production Company, 53 P.3d 1051 (Wyo. 2002). Third-party claimants have no direct cause of action against an insurer for bad faith, either in contract or tort. Herrig, 844 P.2d 487 (Wyo. 1992).

2. First-Party Bad Faith
The Wyoming Supreme Court recognized the tort of first-party bad faith in *McCullough v. Golden Rule Insurance Co.*, 789 P.2d 855 (Wyo. 1990). The standard for first-party bad faith under *McCullough* is whether or not the validity of the denied claim is fairly debatable. In order to prevail on a claim of first-party bad faith, the insured must establish the following two elements: (1) the absence of a reasonable basis for the insurance company to deny the policy benefits sought and (2) the insurer’s knowledge or reckless disregard of the lack of a reasonable basis for denying the claim. *Darlow*, 822 P.2d at 824. The fairly debatable standard is an objective standard. *McCullough*, 789 P.2d at 860.

3. **Claims Handling Bad Faith**

Wyoming also recognizes a “claims handling” or procedural first-party bad faith cause of action. In *Hatch v. State Farm Casualty Company*, 842 P.2d 1089 (Wyo. 1992), the Wyoming Supreme Court held that, even if an insurance company is able to demonstrate that its denial of the claim is protected by the fairly debatable defense, it may still be subject to liability if the manner in which it investigated, handled or denied the claim violated the implied covenant of good faith and fair dealing. The Court observed that this variant of the first-party bad faith tort is closely related to the tort of intentional infliction of emotional distress. Id. at 1097. The conduct that will give rise to a *Hatch*-type claim is outrageous conduct and/or oppressive and intimidating claim handling practices. *Meyer v. Conlon*, 162 F.3d 1264, 1273 (10th Cir. 1998).

4. **Damages**

Punitive damages are recoverable in tort actions for bad faith, but only if the insured proves willful and wanton misconduct on behalf of the insurer. The insured may recover attorney fees under Wyoming Statute § 26-15-124(c) if the insurer refuses unreasonably and without cause to defend a liability claim or pay a loss covered by the policy. Section 26-15-124(c) affords a private right of action in favor of the insured. *Stewart Title Guaranty Company v. Tilden*, 110 P.3d 865 (Wyo. 2005); *Herrig v. Herrig*, 844 P.2d 487 (Wyo. 1992).

B. **Fraud**

In Wyoming, fraud is established when the plaintiff demonstrates that the defendant made a false representation intended to induce action by the plaintiff, that the plaintiff reasonably believed the representation was true and that the plaintiff relied on the false representation and suffered damages. *Jurkovich v. Tomlinson*, 905 P.2d 409 (Wyo. 1995). Wyoming Rule of Civil Procedure 9(b) requires that, when alleging fraud, the circumstances constituting fraud must be stated with particularity. Fraud must be proven by clear and convincing evidence and will never be presumed. *McKenney v. Pacific First Federal Savings of Tacoma*, 887 P.2d 927 (Wyo. 1994).

C. **Intentional Infliction of Emotional Distress and/or Outrage**

In *Leithead v. American Colloid Co.*, 721 P.2d 1059 (Wyo. 1986) the Wyoming Supreme Court adopted the Restatement (Second) of Torts § 46 (1977), which provides:

Outrageous Conduct Causing Severe Emotional Distress
1. One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

2. Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress
   (a) to a member of such person’s immediate family who is present at the time, whether or not such distress results in bodily harm, or
   (b) to any other person who is present at the time, if such distress results in bodily harm.

Comment (d) to the above Section defines outrageous conduct as “conduct which goes beyond all possible bounds of decency, is regarded as atrocious, and is utterly intolerable in a civilized society.” Leithead at 1066. It is a question of law for the court in the first instance whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. Id. Only where reasonable men may differ does the matter become a jury question. Id. It is also a question of law for the court in the first instance whether evidence exists of severe emotional distress sufficient to create a jury question. Id. at 1067.

D. State Consumer Protection Laws and Regulations

The Wyoming Consumer Protection Act, W.S. § 40-12-101 et seq., prohibits deceptive trade practices in connection with consumer transactions, primarily focusing on sales of merchandise. The Act generally contemplates an action by the Wyoming Attorney General on behalf of the State. W.S. § 40-12-106 & W.S. § 40-12-102(a)(vii). An individual may bring an action under the Consumer Protection Act for damages he or she has actually sustained as a result of unlawful or deceptive trade practices. W.S. § 40-12-108. A class action suit may be commenced as well. W.S. § 40-12-108(b).

The Consumer Protection Act seemingly could be utilized in a claim against an insurer. See W.S. § 40-12-102(a)(ii)and(vi) (including “any service,” “commodity” or “article of value” in the definition of merchandise). The Wyoming Supreme Court, however, has noted that the Consumer Protection Act was drafted primarily to protect consumers from unscrupulous marketing practices while the remedies for unfair insurance claim practices are addressed in the Wyoming Insurance Code. Herrig v. Herrig, 844 P.2d 487, 495 (Wyo. 1992).

E. State Class Actions

Chapter 13 of the Wyoming Insurance Code, Trade Practices and Frauds, does not provide for private enforcement, so class actions are not available under the Insurance Code. See generally W.S. § 26-13-101 et seq. As noted above, class actions are available under the Wyoming Consumer Protection Act, W.S. § 40-12-108. The Wyoming Consumer Protection Act, however, does not encompass insurance claims practices. Rule 23 of the Wyoming Rules of Civil Procedure makes class actions available only if a number of prerequisites are satisfied, including: a large number of people in the class such that joinder
of all members in the suit is impracticable, common questions of fact and law, a risk of inconsistent or incompatible adjudications if separate actions are maintained, and that a decision with respect to individual members of the class would, as a practical matter, be dispositive of the interests of the other members not party to the action.

VI. DISCOVERY ISSUES IN ACTIONS AGAINST INSURERS

A. Discoverability of Claim Files Generally

Claim files are generally treated as discoverable in direct actions against insurers, although in the only reported cases on the issue arising in Wyoming, the Tenth Circuit Court of Appeals upheld the trial courts’ limitations as to this discovery. Marathon Ashland Pipe Line LLC v. Maryland Casualty Company, 243 F.3d 1232 (10th Cir. 2001); International Surplus Lines Insurance Company, 52 F.3d 901 (10th Cir. 1995). Those cases, however, do not provide clear guidance on the issue. In Marathon Ashland Pipe Line, the Tenth Circuit did state that the date when an insurer seeks a coverage opinion is discoverable, but the coverage opinion itself will not be discoverable unless the insurer is relying on advice of counsel as a defense.

B. Discoverability of Reserves

No reported cases arising in Wyoming state or federal courts have addressed the discoverability of reserves.

C. Discoverability of Existence Of Reinsurance and Communications With Reinsurers

No reported cases arising in Wyoming state or federal courts have addressed the discoverability of reinsurance or communication with reinsurers.

D. Attorney/Client communication

The Tenth Circuit Court of Appeals, applying Wyoming law, has recognized that an advice of counsel defense exists in bad faith actions and held that a coverage opinion is discoverable if the insured is relying on advice of counsel as a defense. Marathon Ashland Pipe Line LLC v. Maryland Casualty Company, 243 F.3d 1232 (10th Cir. 2001). In Marathon the Tenth Circuit held that the district court did not abuse its discretion by accepting a liability insurer's assertion that it was not relying on advice of counsel as a defense to the insured's allegations of bad faith and by ruling therefore that the insurer had not waived the attorney-client privilege.

VII. DEFENSES IN ACTIONS AGAINST INSURERS

A. Misrepresentation/Omissions: During Underwriting or During Claim

Wyoming Statute § 26-15-109 provides:

(a) Any statements and descriptions in any application for an insurance policy or annuity contract, by or in behalf of the insured or annuitant, are representations and not warranties. Misrepresentations, omissions, concealment of
facts and incorrect statements do not prevent a recovery under the policy or contract unless either:

(i) Fraudulent; or

(ii) Material either to the acceptance of the risk, or to the hazard the insurer assumes; or

(iii) The insurer in good faith, if it knew the true facts as required by the application for the policy or contract or otherwise, would not have:

(A) Issued the policy or contract;
(B) Issued it at the same premium rate;
(C) Issued a policy or contract in as large an amount; or
(D) Provided coverage with respect to the hazard resulting in the loss.

The insurer generally has no duty to investigate an application and is entitled to rely on the applicant's representations. White v. Continental General Insurance Company, 831 F.Supp. 1545, 1553 (D. Wyo. 1993). The insurer may rescind if a misrepresentation or nondisclosure was "material" to the risk, even if made inadvertently or by mistake. Id. A material misrepresentation is one that would have influenced the prudent insurer in determining whether to accept the risk in the first place. Id. Materiality is a jury question unless there can be no dispute as to the materiality of the misrepresentation. White, 831 F.Supp. at 1554.

B. Failure to Comply with Conditions

1. Assistance and Cooperation

Wyoming has one significant case on the application of the cooperation clause, a case which concerns the insured’s right to settle without the insurer’s consent when the insurer is defending pursuant to a reservation of rights. In Insurance Company of North America v. Spangler, 881 F.Supp. 539 (D. Wyo. 1995) the federal district court, predicting how the Wyoming Supreme Court would rule, held that a cooperation clause prohibition against settling without the insurer's consent forbids an insured from settling only claims for which the insurer unconditionally assumes liability under the policy. Thus, an insured being defended under a reservation of rights may enter into a so-called Damron agreement by which the insured stipulates to a judgment and assigns his rights under the policy without breaching the cooperation clause.

2. Late Notice

Under Wyoming law, late notice of a claim (the definition of late depends on the facts and the policy language) will provide a defense to a claim for policy benefits. In Pacheco v. Continental Casualty Company, 476 P.2d 166 (Wyo. 1970). the Wyoming Supreme Court held that a claim on an accident and sickness insurance policy submitted three years after an accident failed to comply with the policy provision requiring notice within 20 days or as soon thereafter as reasonably possible. The giving of timely notice requires notice as soon as possible and is a condition precedent to coverage. State Farm Mutual Automobile Insurance Company v. Hollingsworth,
668 F.Supp. 1476 (D. Wyo. 1987). The test of reasonable notice is a subjective one taking into account the circumstances of the insured. Id. The deadline for filing a proof of loss in a fire loss case may be waived by the insurer, however, directly or through the acts of its agents in dealings with the insured after the loss. Connecticut Fire Insurance Company v. A.H. Fox, 361 F.2d 1 (10th Cir. 1966).

C. Challenging Stipulated Judgments: Consent and/or No Action
Clauses

1. Consent Judgments

The United States District Court for the District of Wyoming held in Insurance Company of North America v. Spangler, 881 F.Supp 539 (D.Wyo. 1995), that an insurer who reserves the right to deny coverage loses the right to control the litigation. The court concluded that, where the insurer was defending under a reservation of rights and had filed a declaratory judgment action contesting coverage, the insured’s assignee was not barred from recovery from the insurer for a stipulated liability to which the insurer did not consent and for which the insured is not personally liable.

2. No Action Clause

In Compass Insurance Company v. Cravens, Dargan & Company, 748 P.2d 724 (Wyo. 1988) the Wyoming Supreme Court found a duty to pay notwithstanding the absence of a formal claim or suit against the insured or a finding of legal liability. The case arose out of an oil spill caused by vandals on the insured’s property causing damage to neighboring property. The Court said there was no question that the insured had legal liability to clean up the spill based on state environmental statutes. The Court held, in an unconvincing analysis, that the statutory obligation upon the insured to clean up the spill required the insurer to “acquiesce” to the insured’s clean-up efforts even though the insured’s liability had not been finally determined by either a judgment or a written agreement between the insured, the claimant and the insurer in compliance with the “no action” clause.

The Tenth Circuit Court of Appeals, in a later case arising in Wyoming, applied a narrow reading to the Compass decision. In State of Wyoming ex rel. Department of Environmental Quality v. Federated Service Insurance Company, 211 F.3d 1279 (10th Cir. 2000) the State of Wyoming, as subrogee of the polluting company, sought indemnification from Federated Service Insurance Company on a comprehensive general liability policy and an umbrella policy for the clean-up costs. The Tenth Circuit upheld the district court’s grant of summary judgment in favor of the insurer, holding that the State was not entitled to coverage under the policies because neither the insured nor the insured’s subrogee has a right to sue the insurance carrier for coverage until the insurer denied a claim for which its insured had been found legally liable. In reaching this conclusion, the district court relied primarily on the policies’ “no action” clauses. The Court distinguished this case from the Wyoming Supreme Court’s holding in Compass Insurance Co. v. Cravens, Dargan & Company, 748 P.2d 724 (Wyo. 1988), stating that Compass “establishes a narrow public policy exception to the rule, permitting an action for coverage under a policy with a “no action” clause when the insured’s obligation to pay was clear as a matter of law and the amount of that obligation has been established by stipulation instead of judgment or agreement.”
D. Statutes of Limitations

The statute of limitations for actions based on breach of contract is ten years. W.S. § 1-3-105(a)(i). Actions based in tort, such as bad faith, are subject to a four-year limitation period. W.S. § 1-3-105(a)(iv)(C).

VII. TRIGGER AND ALLOCATION ISSUES FOR LONG-TAIL CLAIMS

A. Trigger of Coverage

No reported cases arising in Wyoming state or federal courts have addressed the issue of which policies provide coverage where the injury or damage is continuous through several policy periods.

B. Allocation Among Insurers

No reported cases arising in Wyoming state or federal courts have addressed the issue of allocation of a loss among multiple insurers.

IX. Contribution Actions

A. Claim in Equity or Statutory

Wyoming law on contribution among insurers is undeveloped. No statutory right exists. In Aetna Casualty and Surety Company v. St. Paul Fire and Marine Insurance Company, 236 F.Supp. 289 (D.Wyo. 1964) the United States District Court for the District of Wyoming ruled in a declaratory judgment action instituted by Aetna that Aetna was entitled to a judgment declaring that St. Paul was obligated to contribute its proportionate share of the insured’s loss. The Tenth Circuit affirmed, holding that “[t]he duties and rights of the insurers as to the insured’s indemnity against loss created an actual controversy within the meaning of 28 U.S.C. § 2201 which could appropriately be adjudicated by a declaratory judgment action.” St. Paul Fire and Marine Insurance v. Aetna Casualty and Surety Company, 357 F.2d 315, 316 (10th Cir. 1966). In Compass Insurance Company v. Cravens, Dargan and Company, 748 P.2d 724 (Wyo. 1988) property insurer Cravens Dargan and Company brought a subrogation action in the name of the insured, the State of Wyoming, seeking reimbursement from liability insurer Compass Insurance Company for costs of environmental cleanup caused by an oil spill. The trial court ordered that the case caption be amended substituting Cravens as the real party in interest and ruled that Compass must pay the cost of cleanup of the oil on the property of the insured’s neighbor. On appeal, the Wyoming Supreme Court held that no right of subrogation exists in favor of one insurer against another insurer of the same insured. Id., p. 728. The Court, however, characterized the action as one for reimbursement without articulating the legal basis for such a claim. Although not so articulated, the Compass case is authority for an equitable right of contribution.

B. Elements

As the Wyoming Supreme Court has not specifically recognized a contribution action between or among insurers, no specific elements can be stated. In Northland Insurance Company v. Miles, 446 P.2d 160, 162 (Wyo. 1968), however, the Wyoming Supreme Court noted that, “for a proportionate recovery clause to operate in the insurer’s favor, or for the enforcement of contribution between insurers, there must be identity of risk.” In Northland, the Court held that an automobile insurer could not deduct from
medical expense payments to its insured an offset for coverage under the
insured’s other policies providing insurance for disability or loss of
earnings.

X. **Duty to Settle**

Under Wyoming statute § 26-13-124, General Standards for handling
claims are set forth. That statute, which primarily applies to first party
claims for benefits, rather than liability coverage, provides:


(a) A person is considered to be engaging in an unfair method
of competition and unfair and deceptive act or practice in the
business of insurance if that person commits or performs with
such frequency as to indicate a general business practice any of
the following unfair claims settlement practices:

(i) Misrepresenting pertinent facts or insurance policy
provisions relating to coverages at issue;

(ii) Failing to acknowledge and act reasonably promptly upon
communications with respect to claims arising under insurance
policies;

(iii) Failing to adopt and implement reasonable standards for the
prompt investigation of claims arising under insurance policies;

(iv) Refusing to pay claims without conducting a reasonable
investigation based upon all available information;

(v) Failing to affirm or deny coverage of claims within a
reasonable time after proof of loss statements have been
completed;

(vi) Not attempting in good faith to effectuate prompt, fair and
equitable settlements of claims in which liability has become
reasonably clear;

(vii) Compelling insureds to institute litigation to recover
amounts due under an insurance policy by offering substantially
less than the amounts ultimately recovered in actions brought by
such insureds;

(viii) Attempting to settle a claim for less than the amount
to which a reasonable person would have believed he was entitled
by reference to written or printed advertising material
accompanying or made part of an application;

(ix) Attempting to settle claims on the basis of an application
which was altered without notice to, or knowledge or consent of,
the insured;

(x) Making claims payments to insureds or beneficiaries not
accompanied by a statement setting forth the coverage under which
the payments are being made;
(xi) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(xii) Delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(xiii) Failing to promptly settle claims, where liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(xiv) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(xv) Denying or failing to timely pay disability insurance claims for medically necessary services, procedures or supplies as required by W.S. 26-40-201;

(xvi) Failing to comply with the external review procedures required by W.S. 26-40-201; or

(xvii) Failing to pay a claim after an external review organization has declared such claim to be a benefit covered under the terms of the insurance policy.

No private right of action exists under the above statute. Herrig v. Herrig, 844 P.2d 487, 494 (Wyo. 1992). The conduct proscribed by W.S. § 26-13-124, however, is often alleged by insureds as evidence supporting bad faith claims, which are discussed below as third-party and first-party claims.

A. Third-Party Claims

Under Wyoming law, the failure to settle a third-party claim within policy limits will expose the insurer to tort liability for bad faith if the insured is exposed to a judgment in excess of policy limits. Jarvis v. Farmers Insurance Exchange, 948 P.2d 898 (Wyo. 1997); see also Crawford v. Infinity Ins. Co., 64 Fed. 146, 151 (10th Cir. 2003).

B. First-Party Claims

Wyoming law recognizes the independent tort cause of action for first-party bad faith claims. McCullough v. Golden Rule Ins. Co., 789 P.2d 855 (Wyo. 1990). Different from third-party bad faith claims, both the insured and insurer are parties to the policy (contract) in a first-party bad faith claim, and thus their individual rights should be controlled only by the insurance policy. Id. at 856. Thus, a first-party bad faith claim will lie when an insurer in bad faith refuses to pay its insured’s direct claim for policy benefits. Gainsco Ins. Co. v. Amoco Production Co., 53 P.3d 1051, 1058
(Wyo. 2002). The Wyoming Supreme Court has laid out an objective standard to determine whether an insurer has committed first-party bad faith. Id. First, a court must determine whether the denied claim is fairly debatable. Id. The “claim is fairly debatable if a reasonable insurer would have denied or delayed payment of benefits under the facts and circumstances.” Id. In the end, for a plaintiff to show first-party bad faith it must establish the following: (1) the absence of any reasonable basis for denying the claim, and (2) the insurer’s knowledge or reckless disregard of the lack of a reasonable basis for denying the claim. Id.; see also McCullough, 789 P.2d at 860.