

SMITHAMUNDSEN LLC

COMPENDIUM OF THE LAW ON FIRST PARTY BAD FAITH

State	Tort of First-Party Bad Faith Recognized	Statutes Governing Bad Faith	Can an Insurer be Liable for Punitive Damages in a Bad Faith Action?	Case Law
Alabama	Yes	Ala. Code § 27-12-24 (2007)	Yes	<u>Chavers v. Nat. Sec. Fire & Cas. Co.</u> , 405 So. 2d 1, 10 (Ala. 1981); <u>Standard Plan, Inc. v. Tucker</u> , 582 So. 2d 1024, 1025 (Ala. 1991) (affirming trial court's award of punitive damages)
Alaska	Yes	No	Yes	<u>State Farm Fire & Casualty Co. v. Nicholson</u> , 777 P.2d 1152, 1156-1158 (Alaska 1989) (punitive damages are recoverable if insurer has acted with malice, bad motives or reckless indifference to the interests of the insured)
Arizona	Yes	No	Yes	<u>Noble v. National American Life Insurance Co.</u> , 624 P.2d 866, 868, 128 Ariz. 188, 190 (1981); <u>Linthicum v. Nationwide Life Ins. Co.</u> , 723 P.2d 675, 680-681, 150 Ariz. 326, 331-332 (1986) (punitive damages may be awarded if there is evidence of an evil mind and aggravated and outrageous conduct)
Arkansas	Yes	Yes; A.C.A. § 23-79-208(a)(1)	Yes	<u>Columbia Nat'l. Ins. Co. v. Freeman</u> , 347 Ark. 423, 429 64 S.W.3d 720 (2002) (affirming trial court's grant of punitive damages); <u>Employers Equitable Life Ins. Co. v. Williams</u> , 282 Ark. 29 (1984) (upholding award of punitive damages)

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California	Yes	Yes; Cal. Ins. Code § 790.03(h) (2007)	Yes	<u>Frommoethelydo v. Fire Ins. Exch.</u> , 42 Cal. 3d 208 (Cal. 1986); <u>Chodos v. Ins. Co. of N. Am.</u> , 126 Cal. App. 3d 86, 104, 178 Cal. Rptr. 831, 840 (Cal. Ct. App. 1981)(finding that punitive damages award was not excessive considering the particular nature of insurer's acts)
Colorado	Yes	Yes; Colo. Rev. Stat. § 10-3-1113	Yes	<u>Farmers Group, Inc. v. Trimble</u> , 691 P.2d 1138, 1141 (1984) (overruled on other grounds); <u>Ballow v. PHICO Ins. Co.</u> , 878 P.2d 672, 682 (Colo. 1994) (Award of punitive damages on a claim of bad faith breach of an insurance contract upheld where breach accompanied circumstances of fraud, malice, or willful and wanton conduct)
Connecticut	Yes	No	No	<u>Grand Sheet Metal Products Co. v. Protection Mut. Ins. Co.</u> , 375 A.2d 428, 429, 34 Conn. Supp. 46, 48 (Conn. Super. Ct. 1977).
Delaware	No	No	Yes	<u>Tackett v. State Farm Fire & Cas. Ins. Co.</u> , 653 A.2d 254, 256 (Del. 1995) (An insured may be entitled to the recovery of punitive damages in a bad faith action if the insurer's breach is particularly egregious.)

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Florida	No	Fla. Stat. § 626.9541(1)(i)(2007) codified at § 624.155	Yes	<u>Opperman v. Nationwide Mut. Fire Ins. Co.</u> , 515 So. 2d 263, 265-66 (Fla. Dist. Ct. App. 1987); <u>John J. Jerue Truck Broker v. Insurance Co. of N. Am.</u> , 646 So. 2d 780, 782-783 (Fla. Dist. Ct. App. 1994); <u>Scott v. Progressive Express Ins. Co.</u> , 932 So. 2d 475, 479 (Fla. Dist. Ct. App. 2006) (holding that plaintiff's bad faith allegations were sufficient to state a cause of action for punitive damages)
Georgia	No	Ga. Code Ann. § 33-4-6 (2007)	No	<u>United States Fid. & Guar. Co. v. Woodward</u> , 118 Ga. App. 591, 594, 164 S.E.2d 878, 881 (Ga. Ct. App. 1968); <u>Garrett v. Unum Life Ins. Co. of Am.</u> , 427 F. Supp. 2d 1158, 1161 (M.D. Ga. Dec. 22, 2005)
Hawaii	Yes	Yes; Haw. Rev. Stat. § 431:10C-315(a)(4) provides a two-year statute of limitations for a bad faith cause of action against an insurer arising out of a tort action involving a motor vehicle accident.	Yes	<u>Best Place v. Penn Am. Ins. Co.</u> , 920 P.2d 334, 346, 82 Haw.120, 132 (1996) (Holding that punitive damages are reasonable in a bad faith tort cause of action if the evidence reflects "some thing more" than the conduct necessary to establish the tort)

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Idaho	Yes	No	Yes	<u>White v. Unigard Mut. Ins. Co.</u> , 730 P.2d 1014, 1020, 112 Idaho 94, 100 (1986); <u>Walston v. Monumental Life Ins. Co.</u> , 923 P.2d 456, 465-467, 129 Idaho 211, 220-222 (1996) (Upholding the district court's award of punitive damages)
Illinois	No	Yes; 215 Ill. Comp. Stat. 5/155 (2007)	No	<u>Cramer v. Ins. Exch. Agency</u> , 174 Ill. 2d 513, 675 N.E.2d 897 (1996)
Indiana	Yes	Ind. Code Ann. § 27-4-4-5 (2007)(applying only to unauthorized, foreign or alien insurer)	Yes	<u>Monroe Guar. Ins. Co. v. Magwerks Corp.</u> , 829 N.E.2d 968, 970 (Ind. 2005) (affirming the trial court's award of punitive damages); <u>Erie Ins. Co. v. Hickman</u> , 622 N.E.2d 515 (Ind. 1993)
Iowa	Yes	No	Yes	<u>Pirkl v. Nw. Mut. Ins. Ass'n</u> , 348 N.W.2d 633 (Iowa 1984) (holding that recovery of punitive damages allowed in first-party action); <u>Seeman v. Liberty Mut. Ins. Co.</u> , 322 N.W.2d 35, 43 (Iowa 1982); <u>Dolan v. Aid Ins. Co.</u> , 431 N.W.2d 790, 792 (Iowa 1988); <u>Bradley v. West Bend Mut. Ins. Co.</u> , No. 3-735 / 02-1938, 2003 Iowa App. LEXIS 1088 at *10 (Iowa Ct. App. 2003) (holding that punitive damages are available in bad faith cases involving misconduct of a malicious, illegal or immoral nature)

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Kansas	No	No	Yes, if insured can prove that insurer committed independent tort accompanied by fraud, malice, or wanton disregard for rights of others, punitive damages may be awarded	<u>Spencer v. Aetna Life & Cas. Ins. Co.</u> , 227 Kan. 914, 920, 926 (1980) (holding that Kansas does not recognize the tort of bad faith; recognizes tort of breach of implied covenant of good faith and fair dealing and the remedy for such breach is attorney's fees); <u>Guarantee Abstract & Title Co., Inc. v. Interstate Fire & Cas. Co., Inc.</u> , 232 Kan. 76, 652 P.2d 665, 667-68 (1982) (holding that punitive damages may be awarded if insurer committed independent tort accompanied by malice, fraud, or wanton disregard for rights of others)
Kentucky	Yes	Ky. Rev. Stat. Ann. § 304.12-230(5) (2007); Ky. Rev. Stat. Ann. § 411.184(3) (2007)	Yes	<u>Wittmer v. Jones</u> , 864 S.W.2d 885, 890-91 (Ky. 1993) (holding that claimants with a cause of action for bad faith refusal are entitled to a jury instruction regarding punitive damages); <u>Curry v. Fireman's Fund Ins. Co.</u> , 784 S.W.2d 176, 178 (Ky. 1989)
Louisiana	Yes	Yes; La. R.S. 22:658 La. R.S. 22:1220	No	<u>Rogers v. Comm. Union Ins. Co.</u> , 796 So. 2d 862, 867-68 (La. App. 3 Cir. 2001)
Maine	No	Yes; Me. Rev. Stat. Ann. tit. 24-A, § 2436 (2007).	No	<u>Marquis v. Farm Family Mut. Ins. Co.</u> , 628 A.2d 644, 652 (Me. 1993); <u>Colford v. Chubb Life Ins. Co. of Am.</u> , 687 A.2d 609, 616, (Me. 1996) (in order to secure punitive damages the insured must demonstrate that insurer committed independently tortious conduct beyond the denial of a claim)

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Maryland	No	No	No	<u>Johnson v. Fed. Kemper Ins. Co.</u> , 536 A.2d 1211, 1213, 74 Md. App. 243, 248 (Md. Ct. Spec. App. 1988)
Massachusetts	No	Yes; Mass. Gen. Laws ch. 93A, § 9 (2007); Mass. Gen. Laws ch. 176D, § 3(9) (2007).	Yes	<u>Reicher v. Berkshire Life Ins. Co. of Am.</u> , 360 F.3d 1, 4 (1st Cir. 2004) (analyzing Massachusetts law); <u>McEvoy Travel Bureau, Inc. v. Norton Co.</u> , 563 N.E.2d 188, 196, 408 Mass. 704, 717 (1988) (holding that the multiple damages provisions of state statute are essentially punitive in nature)
Michigan	No	Mich. Comp. Laws Serv. § 500.2006(4) (2007)	No	<u>Siller v. Employers Ins. of Wausau</u> , 123 Mich. App. 140, 143-144, 333 N.W.2d 197, 198 (Mich. Ct. App. 1983)
Minnesota	No	None as to bad faith; however, violation of Minnesota's claims handling statute (MSA § 72A17-72A.53) may constitute "unfair practice or deceptive acts."	No	<u>Morris v. Am. Family Mut. Ins. Co.</u> , 386 N.W.2d 233, 237 (Minn. 1986) (holding that there is no private right of action for violation of Minnesota's claim handling statutes); <u>Minn.-Iowa Television Co. v. Watonwan T.V. Improvement Ass'n</u> , 294 N.W.2d 297, 309 (Minn. 1980) (first-party insured cannot recover punitive damages in breach of contract action against insured in absence of independent tort)

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Mississippi	Yes	No	Yes	<p><u>Standard Life Ins. Co. v. Veal</u>, 354 So. 2d 239 (Miss. 1977) (allowing recovery of punitive damages in first-party action for bad faith); <u>Universal Life Ins. Co. v. Veasley</u>, 610 So. 2d 290, 295 (Miss. 1992); <u>State Farm Fire & Cas. Co. v. Simpson</u>, 477 So. 2d 242, 250 (Miss. 1985) (holding that punitive damages recoverable where breach of contract attended by some intentional wrong, insult, abuse or gross negligence which amounts to an independent tort)</p>
Missouri	Yes	<p>Yes; V.A.M.S. § 375.420; V.A.M.S. § 375.296; no bad faith causes of action in automobile liability cases allowed; mutual insurers not subject to vexatious refusal statutes (V.A.M.S. § 380.511)</p>	<p>Yes; <u>see also</u> V.A.M.S. § 375.296, which provides additional damages for vexatious refusal to pay subject to V.A.M.S. § 375.420.</p>	<p><u>Groves v. State Farm Mut. Fire Ins. Co.</u>, 540 S.W.2d 39, 41 (Mo. 1976); <u>Dhyne v. State Farm Fire & Cas. Co.</u>, No. SC87032, 2006 Mo. LEXIS 52 at *5 (Jan. 31, 2006) (affirming award of statutory bad faith damages)</p>

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Montana	Yes	Yes; Mont. Code Ann. § 33-18-242	Yes	<u>Story v. Bozeman</u> , 791 P.2d 767, 776, 242 Mont. 436, 451 (1990); <u>Thomas v. Northwestern Nat'l Ins. Co.</u> , 1998 MT 343, 973 P.2d 804, 809 (1998); <u>Dees v. American Nat'l Fire Ins. Co.</u> , 260 Mont. 431, 444-446 (1993) (Insured can recover punitive damages by establishing that the insurer violated one or more specified subsections of statute and by clear and convincing evidence that the insurer acted with actual malice or actual fraud)
Nebraska	Yes	No	No	<u>State of Neb. ex rel. Cherry v. Burns</u> , 258 Neb. 216, 226, 602 N.W.2d 477 (1999) (holding that punitive damages contravene the Nebraska Constitution and are not allowed); <u>Ruwe v. Farmers Mut. United Ins. Co., Inc.</u> , 238 Neb. 67, 72 469 N.W.2d 129 (1991)
Nevada	Yes	Yes; Nev. Rev. Stat. Ann. § 686A.310.	Yes; see Nev. Rev. Stat. Ann. § 42.005 (2007)	<u>Pemberton v. Farmers Ins. Exch.</u> , 858 P.2d 380, 384, 109 Nev. 789, 797 (1993); <u>Crystal Bay Gen. Imp. Dist. v. Aetna Cas. & Sur. Co.</u> , 713 F. Supp. 1371, 1376-1377 (D. Nev. 1989); <u>United Fire Ins. Co. v. McClelland</u> , 105 Nev. 504, 503, 780 P.2d 193, 198-199 (1989) (punitive damages awarded where insurer's conduct constituted oppression, fraud, or malice, and conscious disregard for the insureds' rights)

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New Hampshire	No	No	No	<u>Lawton v. Great Southwest Fire Ins. Co.</u> , 392 A.2d 576, 580, 118 N.H. 607, 613-14 (1978); <u>Jarvis v. Prudential Ins. Co. of Am.</u> , 448 A.2d 407, 409, 122 N.H. 648, 652 (1982)
New Jersey	Yes	No	Yes	<u>Pickett v. Lloyd's</u> , 621 A.2d 445, 452, 131 N.J. 457, 470 (N.J. 1993) (punitive damages permitted only in egregious circumstances)
New Mexico	Yes	Yes; N.M. Stat. Ann. § 59A-16-30	Yes	<u>State Farm Gen. Ins. Co. v. Clifton</u> , 527 P.2d 798, 800, 86 N.M. 757, 759 (1974); <u>Sloan v. State Farm Mutual Auto. Ins. Co. (In re Sloan)</u> , 85 P.3d 230, 238-239, 135 N.M. 106, 114-115 (2004) (In most cases, the plaintiff's theory of bad faith, if proven, will logically also support punitive damages) (where trial court determines that no reasonable jury could find the insurer's conduct to have manifested a culpable mental state, court may withhold the giving of a punitive-damages jury instruction)
New York	No	No	No	<u>Aquista v. N.Y. Life Ins. Co.</u> , 285 A.D. 2d 73, 81, 730 N.Y.S.2d 272, 278 (Sup. Ct. N.Y. 2001); <u>US Alliance Fed. Credit Union v. CUMIS Ins. Soc'y, Inc.</u> , 346 F. Supp. 2d 468, 470 (S.D.N.Y. 2004) (interpreting NY law)
North Carolina	Yes	None	Yes	<u>Johnson v. First Union Corp.</u> , 128 N.C. App. 450, 456, 496 S.E.2d 1, 9 (N.C. Ct. App. 1998) (reversing court's dismissal of a bad faith claim for punitive damages)

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North Dakota	Yes	No	Yes, although N.D. Cent. Code § 32-03.1-11(4) limits the amount of punitive damages	<u>Corwin Chrysler-Plymouth, Inc. v. Westchester Fire Ins. Co.</u> , 279 N.W.2d 638, 645 (N.D. 1979) (holding that a finding of bad faith alone does not entitle the insured to punitive damages; oppression, fraud, or malice, actual or implied, must also be found); <u>Bender v. Time Ins. Co.</u> , 286 N.W.2d 489, 493 (N.D. 1979)
Ohio	Yes	None	Yes	<u>Hoskins v. Aetna Life Ins. Co.</u> , 6 Ohio St. 3d 272, 277, 452 N.E.2d 1315, 1320 (1983) (holding that punitive damages may be recovered against an insurer who breaches his duty of good faith in refusing to pay a claim of its insured upon adequate proof); <u>Zoppo v. Homestead Ins. Co.</u> , 71 Ohio St. 3d 552, 558, 644 N.E.2d 397 (1994) (holding that the award of punitive damages was justified)
Oklahoma	Yes	No	Yes; see 23 Okla. tit. Stat. § 9.1 (2007)	<u>Christian v. Am. Home Assurance Co.</u> , 577 P.2d 899, 902 (Okla. 1977); <u>Willis v. Midland Risk Ins. Co.</u> , 42 F.3d 607, 615 (10th Cir. 1994) (holding that punitive damages may be awarded in addition to actual or compensatory damages only upon proof that defendant is guilty of conduct evincing a wanton or reckless disregard for the rights of another, oppression, fraud or malice, actual or presumed)

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Oregon	No	No	No	<u>Emplrs.' Fire Ins. Co. v. Love It Ice Cream Co.</u> , 64 Or. App. 784, 791, 670 P.2d 160, 165 (1983); <u>Farris v. United States Fid. & Guar. Co.</u> , 284 Or. 453, 466, 587 P.2d 1015, 1023 (1978)
Pennsylvania	No	Yes; 42 Pa. Cons. Stat. § 8371 (2007).	Yes	<u>Terletsky v. Prudential Prop. and Cas. Ins. Co.</u> , 649 A.2d 680, 688, 437 Pa. Super. 108, 124 (Pa. Super. Ct. 1994) (punitive damages may be awarded against an insurer)
Rhode Island	Yes	No	Yes	<u>Bibeault v. Hanover Ins. Co.</u> , 417 A.2d 313, 319-20 (R.I. 1980) (recognizing that the insured may recover punitive damages where appropriate)
South Carolina	Yes	S.C. Code Ann. § 38-59-40 (2006)	Yes	<u>Nichols v. State Farm Mut. Auto. Ins. Co.</u> , 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1983) (affirming award of punitive damages where insurer's actions were willful or in reckless disregard of the insured's rights)

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South Dakota	Yes	Yes; S.D. Codified Laws § 58-12-3 (2007) authorizes recovery of attorneys fees when insurer's refusal to pay full amount of loss is vexatious and without reasonable cause; S.D. Codified Laws § 21-3-2 (2007) addresses punitive damages in non-contract actions and requires malice	Yes, in bad faith tort action only. Punitive damages are not available in breach of contract claims based on an insurance policy.	<u>Athey v. Farmers Ins. Exch.</u> , 234 F.3d 357, 363 (8 th Cir. 2000) (holding that conditioning settlement of underinsurance policy on release of bad faith claim sufficient to support award of punitive damages against insurer); <u>Harter v. Plains Ins. Co.</u> , 579 N.W.2d 625, 634 (1998) (holding that malice required under S.D. Codified Laws § 21-3-2 for recovery of punitive damages); <u>Kirchoff v. Am. Cas. Co. of Reading, Pa.</u> , 997 F.2d 401, 406 (8 th Cir. 1993) (holding that punitive damages not available in breach of contract claims based on insurance policy under South Dakota law)
Tennessee	No	Tenn. Code Ann. § 56-7-105(a) (2007)	No	<u>Ginn v. Am. Heritage Life Ins. Co.</u> , 173 S.W.3d 433, 443 (Tenn. Ct. App. 2004); <u>Rice v. Van Wagoner Cos.</u> , 738 F. Supp. 252, 253 (M.D. Tenn. 1990)
Texas	Yes	Yes; Tex. Ins. Code § 541.151	Yes; under § 541 of the Texas Insurance Code	<u>Aranda v. Ins. Co. of N. Am.</u> , 748 S.W.2d 210, 212-13 (Tex. 1998); <u>Underwriters Life Ins. Co. v. Cobb</u> , 746 S.W.2d 810, 813 (Tex. App. 1988) (upholding, but modifying amount of punitive damages awarded)
Utah	No	No	No	<u>Beck v. Farmers Ins. Exch.</u> , 701 P.2d 795, 800 (1985); <u>Machan v. UNUM Life Ins. Co. of America</u> , 116 P.3d 342, 349 (2005)

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Vermont	Yes	No	Yes	<u>Bushey v. Allstate Ins. Co.</u> , 670 A.2d 807, 809, 164 Vt. 399, 402 (1995); <u>Davis v. Liberty Mut. Ins. Co.</u> , 19 F. Supp. 2d 193, 203 (D. Vt. 1998) (Punitive damages may be appropriate when insurer has exhibited gross misconduct or reckless disregard)
Virginia	No	Va. Code Ann. § 38.2-209 (2007)	Yes	<u>Nationwide Mut. Ins. Co. v. St. John</u> , 259 Va. 71, 75, 524 S.E.2d 649, 651 (2000) (explaining that §38.2-209 operates as a punitive statute); <u>Meccia v. Pioneer Life Ins. Co.</u> , 13 Va. Cir. 17, 22 (1987); <u>A & E Supply Co. v. Nationwide Mut. Fire Ins. Co.</u> , 798 F.2d 669, 676 (4th Cir. 1986)
Washington	Yes	Yes; Wash. Rev. Code § 48.01.030	Yes; see Wash. Rev. Code § 19.86.090	<u>Coventry v. American States Ins. Co.</u> , 961 P.2d 933, 937, 136 Wn.2d 269, 279 (1998); <u>Leingang v. Pierce County Medical Bureau</u> , 131 Wn.2d 133, 149, 930 P.2d 288, 296 (1997); <u>Gingrich v. Unigard Sec. Ins. Co.</u> , 57 Wn. App. 424, 433, 788 P.2d 1096, 1101 (Wash. Ct. App. 1990)(Remedy for insurer's breach of its duty of good faith may include costs, attorney fees and treble damages)

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Washington, D.C.	Not definitively determined, but majority of Courts say no	No	No	<p><u>Washington v. Gov't Employees Ins. Co.</u>, 769 F. Supp. 383, 387 (D.D.C. 1991) (holding that D.C. law does not recognize a tort of bad faith refusal to pay, expressly opposing prior district court decision that the tort was recognized in D.C.); <u>Am. Registry of Pathology v. Ohio Cas. Ins. Co.</u>, 401 F. Supp. 2d 75, 78-79 (D.D.C. 2005) (finding that the District of Columbia does not recognize the tort of bad faith refusal of an insurer to pay); <u>but see, Washington v. Group Hospitalization, Inc.</u>, 585 F. Supp. 517, 520 (D.D.C. 1984) (holding that the District of Columbia recognizes a cause of action in tort for bad faith refusal of an insurer to pay)</p>
West Virginia	Yes	None	Yes	<p><u>Hayseeds, Inc. v. State Farm Fire & Cas. Co.</u>, 177 W. Va. 323, 331, 352 S.E.2d 73, 80-81 (1986) (punitive damages are appropriate when insurer actually knew that the policyholder's claim was proper, but willfully, maliciously and intentionally denied the claim); <u>Jones v. Wesbanco Bank Parkersburg</u>, 194 W. Va. 381, 389, 460 S.E.2d 627, 635 (W. Va. 1995); <u>Berry v. Nationwide Mut. Fire Ins. Co.</u>, 181 W. Va. 168, 176, 381 S.E.2d 367, 375 (1989) (upholding the jury's award of punitive damages)</p>

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Wisconsin	Yes	None	Yes	<u>Anderson v. Cont'l Ins. Co.</u> , 85 Wis. 2d 675, 680, 271 N.W.2d 368, 371, 379 (1968) (holding that punitive damages may be awarded if a defendant intentionally breached the duty of good faith and was guilty of oppression, fraud, or malice); <u>Trinity Evangelical Lutheran Church v. Tower Ins. Co.</u> , 261 Wis. 2d 333, 340, 661 N.W.2d 789 (2003) (upholding punitive damages award)
Wyoming	Yes	No	Yes	<u>McCullough v. Golden Rule Ins. Co.</u> , 789 P.2d 855, 860-861 (Wyo. 1990) (awarding of punitive damages for the tort of bad faith requires wanton or willful misconduct by the insurer)