



**CASE CITATIONS TO ACTIONS FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING IN THE FIRST-PARTY INSURANCE CONTEXT, WITH ACCOMPANYING CITATIONS REGARDING DISCRETIONARY POWERS BEING SUBJECT TO THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING FOR THE 50 STATES (PLUS D.C.)**

STATE	CASE CITATION AND SYNOPSIS OF GOVERNING LAW
<b>Ala.</b>	<p><i>Shelton v. Shelton</i>, 238 Ala. 489, 192 So. 55 (1939) (in a contract providing that the employment should continue only so long as the work of the employee is satisfactory to the employer, the court stated that “Under stipulations of this sort dissatisfaction must be in good faith, not arbitrary. The party must be deemed satisfied unless there be a good reason for dissatisfaction.”); <i>Loyal Am. Life Ins. Co., Inc. v. Mattiace</i>, 679 So.2d 229, 234-35, 238 (Ala. 1996) (setting out elements of cause of action for bad faith claim, and determining that defendant insurer could not rely upon its chosen method of "subjective underwriting" to create its own legitimate reason for denying a claim); <i>Chavers v. National Sec. Fire &amp; Cas. Co.</i>, 405 So. 2d 1, 4 (Ala. 1981) (“[e]very contract contains an implied in law covenant of good faith and fair dealing; this covenant provides that neither party will interfere with the rights of the other to receive the benefits of the agreement”) (citing <i>Gruenberg v. Aetna Ins. Co.</i>, 9 Cal. 2d 566, 574 (1973)) (recognizing breach of the implied covenant in tort in first-party insurance actions); <i>Sellers v. Head</i>, 261 Ala. 212, 217, 73 So. 2d 747, 751 (1954) (“Where a contract fails to specify all the duties and obligations intended to be assumed, the law will imply an agreement to do those things that according to reason and justice the parties should do in order to carry out the purpose for which the contract was made. Or as otherwise stated by Professor Williston, ‘There is an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the rights of the other party to receive the fruits of the contract; ... in every contract there exists an implied covenant of good faith and fair dealing’”).</p>
<b>Alaska</b>	<p><i>Alyeska Pipeline Serv. v. Aurora Air Service</i>, 604 P.2d 1090, 1093 (Alaska 1979) (relying on the duty of good faith, court rejected "contention that privilege arising from a contractual right is absolute and may be exercised regardless of motive."); <i>Hausam v. Wodrich</i>, 574 P.2d 805, 809 (Alaska 1978) (purchase agreement which was "contingent upon buyer's inspection and approval of all books and records" read by court to "require the exercise of honest judgment and good faith"); <i>State Farm Fire &amp; Cas. Co. v. Nicholson</i>, 777 P.2d 1152, 1156-57 &amp; 1154 n.3 (Alaska 1989) (first party bad faith actions allowed if insurer fails to deal fairly and in good faith, by refusing without proper cause to compensate its insured for a covered loss); <i>Bauer v. Blomfield Company/Holden Joint Venture</i>, 849 P.2d 1365, 1369 (Alaska 1993) (dissenting opinion) (as an element of the partnership contract, the parties’ right to receive their share of profits when a partnership distribution is made is accompanied by the duty of the parties to deal fairly and in good faith in making decisions as to whether to make such distributions) (citing Restatement (Second) of Contracts § 205 (1981) ("Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.")).</p>



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<b>Ariz.</b>	<p><i>Southwest Sav. &amp; Loan Ass'n v. SunAmp Sys. Inc.</i>, 172 Ariz. 553, 558-559, 838 P.2d 1314, 1319-20 (1992) (“Instances inevitably arise where one party exercises discretion retained or unexercised under a contract in such a way as to deny the other a reasonably expected benefit of the bargain. <i>See</i>, for example, <i>Rawlings</i> [infra], 151 Ariz. at 154, 726 P.2d at 570. The law of good faith, though inexact, attempts a remedy for such abuse. <i>See</i> Steven J. Burton, <i>Breach of Contract and the Common Law Duty to Perform in Good Faith</i>, 94 Harv.L.Rev. 369, 385-86 (1980): The good faith performance doctrine may be said to permit the exercise of discretion for any purpose -- including ordinary business purposes -- reasonably within the contemplation of the parties. A contract thus would be breached by a failure to perform in good faith if a party uses its discretion for a reason outside the contemplated range -- a reason beyond the risks assumed by the party claiming a breach. (Footnotes omitted.) <i>See also</i> Restatement (Second) of Contracts § 205 cmt. a (1981) (“Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party . . . .”); <i>Rawlings v. Apodaca</i>, 151 Ariz. 149, 160, 726 P.2d 565 (1986) (recognizing first party bad faith claim”); <i>McCarthy W. Constructors, Inc. v. Phoenix Resort</i>, 169 Ariz. 520, 821 P. 2d 181, 187 (Ariz. App. 1991) (“good faith and fair dealing are implied in every contract”); <i>Beaugureau v. Beaugureau</i>, 11 Ariz. App. 234, 236, 463 P.2d 540 (1970) (“In every agreement, there is an implied covenant of good faith and fair dealing, <i>i.e.</i>, an implied obligation by each party to cooperate with the other so that he may obtain the full benefit of performance.”).</p>
<b>Ark.</b>	<p><i>Alexander v. Alexander</i>, 262 Ark. 612, 629-30, 561 S.W.2d 59, 68 (1978) (recognizing that a party’s discretion under a contract must be exercised in good faith); <i>Howard P. Foley Co. v. J.L. Williams &amp; Co.</i>, 622 F.2d 402, 406-407 (8th Cir. 1980) (federal court applying state law found that Arkansas would imply a duty of good faith performance of contracts in common law); <i>Stevinson v. Union Standard Ins. Co.</i>, 294 Ark. 651, 746 S.W.2d 39 (1988) (recognizing first party bad faith action).</p>
<b>Cal.</b>	<p><i>Notrica v. State Comp. Ins. Fund</i>, 70 Cal. App. 4th 911, 923-25 (1999) (discussing insurance company reserve requirements and noting that “[t]he covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another” and that “the insurer may be liable if it processes claims and sets reserves without good faith regard for their impact on the insured’s premiums and potential dividends”); <i>Helmland v. National Union Fire Ins.</i>, 10 Cal. App. 4th 869, 903 (1992) (“good faith in the context of</p>



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	<p>performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party...”) (internal citations omitted). “[W]here a contract confers on one party a discretionary power affecting the rights of the other, a duty is imposed to exercise that discretion in good faith and in accordance with fair dealing...[t]o exercise that power arbitrarily and to the detriment of the other party is inconsistent with that party's justified expectations.” <i>Id.</i> at 906-07 (internal citations omitted); <i>Mission Ins. Group, Inc. v. Merco Constr. Eng’rs, Inc.</i>, 147 Cal. App. 3d 1059, 1065-66 (1983) (“[Insurer] offers no authority for the proposition that the discretion conferred upon it by the subject insurance policy and by the law could be exercised in an arbitrary or capricious manner. On the contrary, [insurer] was obliged to exercise its discretion in a manner consonant with the interests not only of the company and its other policyholders, but also in a manner which would be fair to [insured]. The days of “unfettered” discretion, if ever they existed, are no more. [Where] a contract confers on one party a discretionary power affecting the rights of the other, a duty is imposed to exercise that discretion in good faith and in accordance with fair dealing.”) (citing <i>California Lettuce Growers v. Union Sugar Co.</i>, 45 Cal.2d 474, 484 (1955)); <i>Carma Developers (California), Inc. v. Marathon Dev. Cal., Inc.</i>, 2 Cal. 4th 342, 372 n.11 (1992) (“breach of the covenant of good faith has been characterized as an attempt by the party holding the discretionary power to use it to recapture opportunities forgone in contracting...[b]ad faith performance occurs precisely when discretion is used to recapture opportunities forgone upon contracting--when the discretion-exercising party refuses to pay the expected cost of performance”); <i>MacGregor Yacht Corp. v. State Compensation Ins. Fund</i>, 63 Cal. App. 4th 448, 457 (1998) (“[F]or an insurer to fulfill its obligation not to impair the right of the insured to receive the benefits of the agreement, the insurer is obligated to give the interests of the insured at least as much consideration as it gives to its own interests.”); <i>Gruenberg v. Aetna Ins. Co.</i>, 510 P.2d 1032 (1973) (allowing first party bad faith actions if insurer fails to deal fairly and in good faith by refusing without proper cause to compensate its insured for a covered loss).</p>
<b>Colo.</b>	<p><i>Transamerica Premier Ins. Co. v. K &amp; S Constr.</i>, 850 F. Supp. 930, 934 (D. Colo. 1994) (recognizing that “[insurer], although vested with the ‘sole discretion’ to provide financial assistance, was required to act in good faith in exercising its judgment,” but finding that it had acted in good faith); <i>Amoco Oil Co. v. Ervin</i>, 908 P.2d 493, 498 (Colo. 1995) (“The duty of good faith and fair dealing applies when one party has discretionary authority to determine certain terms of the contract, such as quantity, price, or time. ... The covenant may be relied upon only when the manner of performance under a specific contract term allows for discretion on the part of either party. ... The concept of discretion in performance ‘refers to one party's power after contract formation to set or control the terms of performance.’ [Steven J. Burton, More on Good Faith Performance of a</p>



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	Contract: A Reply to Professor Summers, 69 Iowa L. Rev. 497, 501 (1984).] Discretion occurs when the parties, at formation, defer a decision regarding performance terms of the contract. <i>Id.</i> Generally, the good faith performance doctrine may be used to protect a ‘weaker’ party from a ‘stronger’ party”); <i>Bayou Land Co. v. Talley</i> , 924 P.2d 136, 154 (Colo. 1996) (“we have implied the duty of good faith and fair dealing when one party has discretionary authority to determine certain terms of the contract.”); <i>Rogers v. Westerman Farm Co.</i> , 29 P.3d 887, 908 (Colo. 2001) (“In Colorado, every contract contains an implied duty of good faith and fair dealing”); <i>Farmers Group, Inc. v. Trimble</i> , 691 P.2d 1138, 1141 (Colo. 1984) (insurer has duty to act in good faith and fair dealing under implied covenant in insurance contract).
<b>Conn.</b>	<i>Hoskins v. Titan Value Equities Group, Inc.</i> , 252 Conn. 789, 793, 749 A.2d 1144, 1146 (2000) (“It is axiomatic that the implied duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship. The covenant of good faith and fair dealing presupposes that the terms and purpose of the contract are agreed upon by the parties and that what is in dispute is a party’s discretionary application or interpretation of a contract term.”) (internal citations omitted); <i>Verrastro v. Middlesex Ins. Co.</i> , 207 Conn. 179, 190, 540 A.2d 693, 699 (1988) (recognizing the implied covenant of good faith and fair dealing in the first party insurance context, and noting that “[t]he concept of good faith and fair dealing is essentially a rule of construction designed to fulfill the reasonable expectations of the contracting parties as they presumably intended”) (internal citations omitted).
<b>Del.</b>	<i>Wilmington Leasing, Inc. v. Parrish Leasing Co.</i> , 1996 Del. Ch. LEXIS 123 at *5 (1996) (“[a]n implied covenant of good faith and fair dealing inheres in every contract. . . . From that implied covenant flows the principle of contract construction that ‘if one party is given discretion in determining whether [a] condition in fact has occurred[,] that party must use good faith in making that determination.”); <i>Blish v. Thompson Automatic Arms Corp.</i> , 30 Del. Ch. 538, 64 A.2d 581, 597 (1948) (wherein the court found that although an underwriting contract gave the underwriter the right to cancel the contract if, in its "absolute judgment," the offering was impractical or inadvisable, the term "absolute judgment" contemplated a "judgment based upon sincerity, honesty, fair dealing and good faith, not one evidencing caprice or bad faith."); <i>Pierce v. International Ins. Co.</i> , 671 A.2d 1361, 1367 (Del 1996) (in first party insurance action, recognizing implied covenant of good faith and fair dealing in contract); <i>Tackett v. State Farm Fire &amp; Cas. Ins. Co.</i> , 653 A.2d 254, 265 (Del. 1995) (same)



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<b>D.C.</b>	<i>R. A. Weaver and Associates, Inc. v. Haas and Haynie Corp.</i> , 663 F.2d 168, 175-76 (D.C. Cir. 1980) (when the event triggering the right to invoke the express power is closely controlled by one party, the district court may examine the good faith of the party to determine whether the party inappropriately caused or prevented the triggering event).
<b>Fla.</b>	<i>Sepe v. City of Safety Harbor</i> , 761 So. 2d 1182, 1185 (Fla. App. 2000) (even where one party has "sole discretion" under a contract, that party, in exercising its discretion, must act in good-faith and in accordance with the contracting parties' expectations) (providing list of parallel cases from other jurisdictions re: good faith exercise of discretion); <i>Cox v. CSX Intermodal, Inc.</i> , 732 So. 2d 1092, 1097-98 (Fla. App. 1999) (stating "where the terms of the contract afford a party substantial discretion ..., the duty to act in good faith ... limits that party's ability to act capriciously to contravene the reasonable contractual expectations of the other party").
<b>Ga.</b>	<i>MacDougald Const. Co. v. State Hwy Dep't</i> , 125 Ga. App. 591, 593, 188 S.E.2d 405, 406 (1972) (stating "the time honored rule that where a decision is left to the discretion of a designated entity, the question is not whether it was in fact erroneous, but whether it was in bad faith, arbitrary or capricious so as to amount to an abuse of that discretion."); <i>Century 21 Mary Carr &amp; Assoc. v. Jones</i> , 204 Ga. App. 96, 97 (1992) (noting that "(E)very contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement") (citing the Restatement (Second), Contracts, § 231); <i>Crooks v. Chapman Co.</i> , 124 Ga. App. 718, 719 (1971) (same).
<b>Haw.</b>	<i>Best Place, Inc. v. Penn America Inc. Co.</i> , 82 Haw. 120, 133 (1996) ("[T]he insured need not show a conscious awareness of wrongdoing or unjustifiable conduct, nor an evil motive or intent to harm the insured. An unreasonable delay in payment of benefits will warrant recovery for compensatory damages...However, conduct based on an interpretation of the insurance contract that is reasonable does not constitute bad faith."); <i>Mendes v. Hawaii Ins. Guar. Assoc.</i> , 87 Haw. 14, 19 (1998) ("[E]very contract contains an implied covenant of good faith and fair dealing...[We are] persuaded that there are sound reasons for recognizing a cause of action in tort for breach of the implied covenant of good faith and fair dealing in the insurance context.").



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<b>Idaho</b>	<p><i>Oberbillig v. Bradley Mining Co.</i>, 372 F.2d 181, 184 (9th Cir. 1967) (holding mineral grant vesting sole discretion in grantee to conduct mining operations was subject to duty of good faith); <i>Idaho Power Co. v. Cogeneration, Inc.</i>, 134 Idaho 738, 750 (2000) (“The implied covenant of good faith and fair dealing is a covenant implied by law in the parties' contract. No covenant will be implied which is contrary to the terms of the contract negotiated and executed by the parties.”) (citing <i>First Security Bank of Idaho v. Gaige</i>, 115 Idaho 172, 176, 765 P.2d 683, 687 (1988); <i>Cogeneration</i>, 134 Idaho at 750); <i>White v. Unigard Mut. Ins. Co.</i>, 730 P.2d 1014, 1016-18 &amp; 1020 (Idaho 1986) (recognizing the implied covenant of good faith and fair dealing in the relations between an insurer and insured).</p>
<b>Ill.</b>	<p><i>Labovitz v. Dolan</i>, 189 Ill. App. 3d 403, 416-17, 545 N.E.2d 304, 313 (1989) (in exercising his sole discretion to determine whether partnership income was needed for partnership purposes or was available for case distributions to the limited partners, the general partner was required to act in "good faith" and not for the specific intent of forcing the limited partners to sell their interests -- “although the Articles clearly gave the general partner the sole discretion to distribute cash as he deemed appropriate, that discretion was encumbered by a supreme fiduciary duty of fairness, honesty, good faith and loyalty to his partners. Language in an agreement such as a ‘sole discretion’ does not metamorphose the document into an unrestricted license to engage in self-dealing at the expense of those to whom the managing partner owes such a duty.”) (citing <i>Foster Enterprises, Inc. v. Germania Federal Savings &amp; Loan Association</i>, 97 Ill. App. 3d 22, 30, 421 N.E.2d 1375, 1381 (1981) ("Good faith between contracting parties requires that a party vested with contractual discretion must exercise his discretion reasonably and may not do so arbitrarily or capriciously.")); <i>Carrico v. Delp</i>, 141 Ill. App. 3d 684, 690, 490 N.E.2d 972, 976 (1986) (“Good faith between contracting parties requires the party vested with contractual discretion to exercise it reasonably, and he may not do so arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of the parties.”); <i>Williams v. Jader Fuel Co., Inc.</i>, 944 F.2d 1388, 1394 (7th Cir. 1991) (applying Illinois law, "[A] party vested with contractual discretion must exercise that discretion reasonably and with proper motive, and may not do so arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of the parties."); <i>Kohler v. Leslie Hindman, Inc.</i>, 80 F.3d 1181, 1188 (7th Cir. 1996) (applying Illinois law) (holding auction consignment contract with sole discretion in auction house to rescind sales subject to duty of good faith); <i>Calcagno v. Personalcare Health Management, Inc.</i>, 207 Ill. App. 3d 493, 507, 565 N.E.2d 1330, 1339 (1991) (recognizing common law contract claim for breach of the implied covenant of good faith and fair dealing in the insurance contract not preempted by statutory penalties).</p>



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<b>Ind.</b>	<i>Erie Ins. Co. v. Hickman by Smith</i> , 622 N.E.2d 515 (Ind. 1993) (recognizing bad faith action in first-party context); <i>Vernon Fire &amp; Cas. Ins. Co. v. Sharp</i> , 264 Ind. 599, 609, 349 N.E.2d 173, 181 (1976) (there is a legal duty implied in all insurance contracts that the insurer deal in good faith with its insured) (recognizing contractual remedy in first party insurance context); <i>Liberty Mut. Ins. Co. v. Parkinson</i> , 487 N.E.2d 162, 164 (1985) (there is a legal duty implied in all insurance contracts that the insurer deal in good faith with its insured) (recognizing contractual remedy).
<b>Iowa</b>	<i>Iowa Fuel &amp; Minerals, Inc. v. Iowa State Bd. of Regents</i> , 471 N.W.2d 859, 863 (Iowa 1991) ("[C]ontract will not be interpreted giving discretion to one party in a manner which would put one party at the mercy of another, unless the contract clearly requires such an interpretation."); <i>Midwest Management Corp. v. Stephens</i> , 291 N.W.2d 896, 913 (Iowa 1980) ("[e]ven though the contract purports to leave the determination of one of the conditions to the "sole discretion" of Midwest, we do not believe that such discretion could be exercised arbitrarily"); <i>Kooyman v. Farm Bureau Mut. Ins. Co.</i> , 315 N.W.2d 30, 33-34 (Iowa 1982) ("A covenant is implied in an insurance contract that neither party will do anything to injure the rights of the other in receiving the benefits of the agreement." ... 'Bad faith' under the circumstances of this case refers simply to the absence of good faith required by the implied contract. See 7C Appleman, supra § 4712, at 439."); <i>Dolan v. Aid Ins. Co.</i> , 431 N.W.2d 790, 794 (Iowa 1988) (noting that "we are convinced traditional damages for breach of contract will not always adequately compensate an insured for an insurer's bad faith conduct" and allowing first party bad faith actions in absence of a reasonable basis for denying benefits of the policy and defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim); <i>Morrison v. Mahaska Bottling Co.</i> , 39 F.3d 839 (8th Cir. 1994) ("[u]nder Iowa law, "[a] contract imposes upon each party a duty of good faith in its performance and enforcement") (citing Restatement (Second) of Contracts § 205 (1981)).
<b>Kan.</b>	<i>Lessley v. Hardage</i> , 240 Kan. 72, 81, 727 P.2d 440, 447 (1986) (a good faith obligation is implied to limit the exercise of discretion); <i>Kansas Baptist Convention v. Mesa Operating Ltd. Partnership</i> , 253 Kan. 717, 725, 864 P.2d 204, 211 (1993) ("Kansas courts imply a duty of good faith and fair dealing in every contract. Parties shall not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract") (internal citations omitted); <i>Bonanza, Inc. v. McLean</i> , 242 Kan. 209, 222, 747 P.2d 792, 800-01 (1987) ("there is an implied undertaking in every



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	contract on the part of each party that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. Ordinarily if one exacts a promise from another to perform an act, the law implies a counterpromise against arbitrary or unreasonable conduct on the part of the promisee.”).
<b>Ky.</b>	<i>City of Bowling Green v. Knight</i> , 216 Ky. 838, 288 S.W. 741, 742 (1926) (sewer construction contract authorizing city engineer to cancel contract at any time "he decided" work not progressing satisfactorily held to imply a requirement that engineer exercise his option in good faith and on reasonable grounds; engineer could not arbitrarily or capriciously exercise judgment); <i>Ranier v. Mount Sterling Nat'l Bank</i> , 812 S.W.2d 154, 156-157 (Ky. 1991) (“In every contract, there is an implied covenant of good faith and fair dealing. Indeed, it may be said that contracts impose on the parties thereto a duty to do everything necessary to carry them out. The Bank, in this case, has breached its implied duty of good faith and fair dealing,” by applying note payments in derogation of the rights of a third party) (internal citations omitted); <i>Ligon v. Parr</i> , 471 S.W.2d 1 (Ky. 1971) (a court may impose a duty of good faith and fair dealing to prevent one party from impairing the ability of the other party to benefit from the contract).
<b>La.</b>	<i>Lambert v. Maryland Casualty Co.</i> , 418 So. 2d 553, 558, 561 (La. 1982) (wherein the court recognized that a surety was required to act in good faith under a contractual provision that it “may in its sole discretion” grant or refuse requests for financing by the other contracting party); <i>Brill v. Catfish Shaks of America, Inc.</i> , 727 F.Supp. 1035, 1039 (E.D. La. 1989) (“As a general rule, there is an implied covenant of good faith and fair dealing in every contract.”) (applying Louisiana law).
<b>Me.</b>	<i>Corthell v. Summit Thread Co.</i> , 132 Me. 94, 167 A. 79, 81 (1933) (wherein an employment agreement provided that the employee would be compensated for "all future inventions" with "reasonable recognition," "the basis and amount [of which] to rest with" the employer "at all times." Despite the reservation of discretion to the employer, the court held that the employer's promise was not illusory and that the contract was valid. <i>Id.</i> at 82. Stating that the contract "was to be interpreted in good faith on the basis of what is reasonable and intended, and not technically," and also emphasizing that the contract contained specific language instructing that it should be construed in that manner, the court found that the employer's





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	promise was not illusory based on the provision for "reasonable recognition" and the parties' exhibition of a contractual intent. <i>Id.</i> (finding a valid enforceable agreement and also concluding that the employer breached it); <i>Hodgkins v. New Eng. Tel. Co.</i> , 82 F.3d 1226, 1230-31 (1st Cir. 1996) (recognizing that discretion under a contract vesting the employer with "sole, exclusive, and complete discretion" in the operation of an employee award program could not be exercised arbitrarily or in bad faith under Maine law, citing <i>Corthell, supra</i> ); <i>Marquis v. Farm Family Mut. Ins. Co.</i> , 628 A.2d 644 (Me. 1993) (contract action allowed for insurers' breach of the implied covenant of good faith and fair dealing in the first party context).
<b>Md.</b>	<i>Eastern Shore Mkts., Inc. v. J.D. Assocs. Ltd. Pshp.</i> , 213 F.3d 175, 184 (4th Cir. 2000) (noting under Maryland law that "a promisor who undertakes to exercise judgment on behalf of a promisee impliedly agrees to exercise good judgment"); <i>Food Fair Stores, Inc. v. Blumberg</i> , 234 Md. 521, 534 (1964) ("in every contract there exists an implied covenant that each of the parties thereto will act in good faith and deal fairly with the others"); <i>Automatic Laundry Service, Inc. v. Demas</i> , 216 Md. 544, 141 A.2d 497 (1958) (same).
<b>Mass.</b>	<i>Murach v. Massachusetts Bonding &amp; Ins. Co.</i> , 339 Mass. 184, 186-87, 158 N.E.2d 338, 340-41 (1959) (insurance contract -- insurer must exercise discretionary power to settle claims in good faith; "Although [the policy] language leaves the matter of settlement entirely to the insurer's discretion, its privilege in this respect imports a reciprocal obligation for its exercise. That obligation is to act in good faith.") (internal citations omitted); <i>Anthony's Pier Four, Inc. v. HBC Associates</i> , 411 Mass. 451, 473, 583 N.E.2d 806, 820 (1991) (finding that a party's use of a discretionary right under an agreement as a pretext supported a determination that the party breached the covenant of good faith and fair dealing; "It is, therefore, bad faith to use discretion 'to recapture opportunities forgone on contracting' as determined by the other party's reasonable expectations -- to refuse to pay the expected cost of performance") (internal citations omitted); <i>Concourse Ticket Agency v. Kraft</i> , 1995 Mass. Super. LEXIS 619 at * 7 (1995) (one party's use of a discretionary right under an agreement as a pretext constitutes a breach of the covenant of good faith and fair dealing); <i>Northern Heel Corp. v. Compo Indus., Inc.</i> , 851 F.2d 456, 471 (1st Cir. 1988) (applying Massachusetts law, court found violation of implied covenant of good faith and fair dealing in repudiation that was 'but a tool engineered to serve the illicit purpose' of extracting price concessions); <i>Fortune v. National Cash Register Co.</i> , 373 Mass. 96, 364 N.E.2d 1251, 1255-58 (1977) (good faith limitations apply to express power to terminate contract "at will"); <i>Lewis v. H. P. Hood &amp; Sons, Inc.</i> , 331 Mass. 670, 675-76, 121 N.E.2d 850, 853 (1954) ("the exercise of the power [rights to call



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	stock] here involved for purposes of reprisal, spite or other motives tending to show bad faith would be an abuse of the power and would not stand”).
<b>Mich.</b>	<i>Ferrell v. Vic Tanny Int’l Inc.</i> , 137 Mich. App. 238, 243, 357 N.W.2d 669, 672 (1984) (“Where a party to a contract makes the manner of its performance a matter of its own discretion, the law does not hesitate to imply the proviso that such discretion be exercised honestly and in good faith”); <i>Burkhardt v. City Nat’l Bank</i> , 57 Mich. App. 649, 652, 226 N.W.2d 678, 680 (1975) (same); <i>Hubbard Chevrolet Co. v. General Motors Corp.</i> , 873 F.2d 873, 876-77 (5th Cir. 1989) (applying Michigan law) (Michigan law recognizes an implied covenant of good faith and fair dealing in the performance of all contracts where one party to the contract makes its performance a matter of its own discretion); <i>LLMD of Mich., Inc. v. Marine Midland Realty Credit Corp.</i> , 789 F. Supp. 657, 660 (E.D. Pa 1992) (applying Michigan law) (same); <i>Commercial Union Ins. Co. v. Medical Protective Co.</i> , 426 Mich. 109, 116, 393 N.W.2d 479, 482 (1986) (noting “the implied covenant of good faith and fair dealing which arises from the contract between the insurer and the insured”).
<b>Minn.</b>	<i>White Stone Partners, L.P. v. Piper Jaffray Cos.</i> , 978 F.Supp. 878, 882 (D.Minn. 1997) (applying Minnesota law) (holding financing agreement giving “unfettered discretion” to one party to terminate agreement was subject to covenant of good faith and fair dealing) (citing cases); <i>In re Hennepin County 1986 Recycling Bond Litig.</i> , 540 N.W.2d 494, 502 (1995) (“Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not “unjustifiably hinder” the other party’s performance of the contract.”).
<b>Miss.</b>	<i>Cenac v. Murry</i> , 609 So. 2d 1257, 1258, 1272-73 (Miss. 1992) (“[a]ll contracts contain an implied covenant of good faith and fair dealing in performance and enforcement. . . . Good faith is the faithfulness of an agreed purpose between two parties, a purpose which is consistent with justified expectations of the other party. The breach of good faith is bad faith characterized by some conduct which violates standards of decency, fairness or reasonableness”); <i>UHS-Qualicare, Inc. v. Gulf Coast Community Hospital, Inc.</i> , 525 So. 2d 746, 755 (Miss. 1987) (noting that the primary function of our law of contracts is ‘to deter people from behaving opportunistically toward their contracting parties,’ and implying contractual term that would prohibit contracting party from terminating contract for the other party’s immaterial breaches); <i>Andrew Jackson Life Insurance Company v. Williams</i> , 566 So. 2d 1172, 1188-89 (Miss. 1990) (“This covenant applies to both insured and insurer -- albeit more so to the



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	latter party. In short, the duty requires abstinence by all parties from commission of wrongful conduct which injures ‘the right of [the another] to receive the benefits of the agreement.’ Shipstead & Thomas, Comparative and Reverse Bad Faith: Insured's Breach of Implied Covenant of Good Faith and Fair Dealing as Affirmative Defense or Counterclaim, XXIII TORT & INS. L. J. 215, 218 (1987). Recognition of an implied covenant and an evolving significant expansion of insurer liability stem from the recognition of ‘the “special relationship” existent between the insurer and insured, as well as the superior bargaining position of the insurer.’”) (citation omitted).
<b>Mo.</b>	<i>Martin v. Prier Brass Mfg. Co.</i> , 710 S.W.2d 466, 473 (Mo. Ct. App. 1986) (defendant “was bound to exercise the power conferred by the contract as interpreter of the terms an arbiter of all questions that arise under the Plan in good faith. ... It is a fundamental principle and concomitant of agreements that: Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement. That duty prevents one party to the contract to exercise a judgment conferred by the express terms of agreement in such a manner as to evade the spirit of the transaction or so as to deny the other party the expected benefit of the contract. The express Plan empowered [defendant] as the exclusive determinant of the benefits due the employees [] under the contract. To deny them those expectations without notice merely because [defendant] reads that notice is not due, not only impairs rights already vested, but also the contract duty of good faith).
<b>Mont.</b>	<i>Story v. Bozeman</i> , 242 Mont. 436, 451-52, 791 P.2d 767, 776 (1990) (same; “In special relationship contracts, the standard of conduct is the same as that for other contracts -- honesty in fact and observance of reasonable commercial standards of fair dealing in the trade. Section 28-1-211, MCA. In contracts involving the special relationships that we have delineated, supra [e.g., insurance], if the standard of conduct required by the implied covenant of good faith and fair dealing as defined in § 28-1-211, MCA, is violated, the duty of good faith and fair dealing is breached. In addition to recovering damages for breach of contract, the aggrieved party may also recover tort damages.”); <i>Richland Nat'l Bank &amp; Trust v. Swenson</i> , 249 Mont. 410, 420, 816 P.2d 1045, 1051-52 (1991) (“a breach of the covenant may be found when the discretion conferred by the contract has been misused to deprive the other party of the benefit of the bargain.”) (internal citations omitted); <i>Nicholson v. United Pacific Insurance Co.</i> , 219 Mont. 32, 41-42, 710 P.2d 1342, 1348 (1985) (when one party used its discretion to arbitrarily, capriciously or unreasonably deprive the other party of the benefit of the contract, those expectations were violated); <i>Weber v. Blue Cross of Montana</i> , 196 Mont. 454, 464, 643 P.2d 198, 203 (1982) (“Blue Cross has an obligation to act in good faith with its members. This is especially true because Blue Cross is in a much better bargaining position than



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	those applying for membership in its program.”); <i>McJunkin v. Kaufman &amp; Broad Home Sys.</i> , 229 Mont. 432, 438-39 (1987) (“The nature and extent of an implied covenant of good faith and fair dealing is measured in a particular contract by the justifiable expectations of the parties. Where one party acts arbitrarily, capriciously or unreasonably, that conduct exceeds the justifiable expectations of the second party. The second party then should be compensated for damages resulting from the other's culpable conduct.”).
<b>Neb.</b>	<i>Strategic Staff Mgmt., Inc. v. Roseland</i> , 260 Neb. 682, 689-90 (2000) (“The implied covenant of good faith and fair dealing exists in every contract and requires that none of the parties to the contract do anything which will injure the right of another party to receive the benefit of the contract”); <i>Cimino v. First Tier Bank</i> , 247 Neb. 797, 530 N.W.2d 606 (1995) (same).
<b>Nev.</b>	<i>Pemberton v. Farmers Ins. Exch.</i> , 109 Nev. 789, 793, 858 P.2d 380, 382 (1993) (“An insurer fails to act in good faith when it refuses ‘without proper cause’ to compensate the insured for a loss covered by the policy. Such conduct gives rise to a breach of the covenant of good faith and fair dealing. This breach or failure to perform constitutes ‘bad faith’ where the relationship between the parties is that of insurer and insured.”) (internal citations omitted); <i>Aluevich v. Harrah's</i> , 99 Nev. 215, 217, 660 P.2d 986, 987 (1983) (“[A]n implied covenant of good faith and fair dealing has . . . been implied in contractual relations which involve a special element of reliance such as that found in partnership, insurance and franchise agreements.”); <i>Frantz v. Johnson</i> , 999 P.2d 351, 358 n.4 (Nev. 2000) (“An implied covenant of good faith and fair dealing exists in every Nevada contract and essentially forbids arbitrary, unfair acts by one party that disadvantage the other.”) (citing <i>Overhead Door Co. v. Overhead Door Corp.</i> , 103 Nev. 126, 128, 734 P.2d 1233, 1235 (1987) (same)).
<b>N.H.</b>	<i>Centronics Corp. v. Genicom Corp.</i> , 132 N.H. 133, 143, 562 A.2d 187, 193 (1989) (“under an agreement that appears by word or silence to invest one party with a degree of discretion in performance sufficient to deprive another party of a substantial proportion of the agreement's value, the parties' intent to be bound by an enforceable contract raises an implied obligation of good faith to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting” and noting “Since the timeliness of payment is often essential to the value of insurance, the insured in <i>Lawton (infra)</i> , like the corporation in <i>Griswold (infra)</i> and the contractor in <i>Seaward</i> , could otherwise have been effectively deprived of consideration for his own prior performance (i.e., in paying the premiums due). <i>Lawton</i> , to be sure, spoke also of the



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	<p>insurer's improper motive to coerce the insured into accepting less than the true amount owed. But once the time for performance has arrived, it would seem that any motive for withholding payment would be improper; e.g., withholding simply to enjoy continued use of the money would be wrong. <i>Accord Jarvis v. Prudential Ins. Co.</i>, 122 N.H. 648, 653-54, 448 A.2d 407, 410-11 (1982). If, then, any motive to withhold payment beyond the reasonable time is wrong, <i>Lawton</i> is best understood as a case in which good faith was held to require that discretion over the timing of payment be subjected to a test of commercial reasonableness." <i>Id.</i> at 142, 562 A.2d at 192. The court further noted that in <i>Lawton</i> and other cited cases, "the defendant's discretionary act of bad faith kept money in its pocket, with the attendant opportunities to use that money as it saw fit." <i>Id.</i> at 146, 562 A.2d at 195.); <i>Lawton v. Great Southwest Fire Ins. Co.</i>, 118 N.H. 607, 612, 392 A.2d 576, 580 (1978) (holding that an insurance company would violate an implied obligation of good faith if it delayed payment owed to its own insured for the purpose of coercing the insured into accepting less than the full amount due. Under a contract leaving the time for performance unspecified, good faith limits discretion under a standard of commercial reasonableness) (recognizing contractual cause of action for breach of the implied covenant of good faith and fair dealing in the first-party insurance context); <i>Smith, Batchelder &amp; Rugg v. Foster</i>, 119 N.H. 679, 406 A.2d 1310 (1979) (provision in written employment contract permitting employer to terminate the contract if dissatisfied with employee's work did not render employer's promise illusory because of implicit requirement that employer, in good faith, be dissatisfied with employee's work, when and if termination option was exercised); <i>Griswold v. Heat, Inc.</i>, 108 N.H. 119, 124, 229 A.2d 183, 187 (1967) (employer promised to pay for accounting services which the employee "in his sole discretion may render." The court found that the employee was bound by an obligation of good faith in connection with such services).</p>
<b>N.J.</b>	<p><i>Fireman's Fund Ins. Co. v. Security Ins. Co.</i>, 72 N.J. 63, 367 A.2d 864, 869 (N.J. 1976) ("there is also embodied in the policy contract an implied covenant of good faith and fair dealing with which the insurer must comply before seeking to rely on the powers reserved to it by the language of the policy contract, even though that language, read literally, gives the insurer the absolute, unrestricted right to exercise those powers. The policy is a contract, to which applies, in full measure the rule that: * * * In every contract there is an implied covenant that 'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract; in other words, in every contract there exists an implied covenant of good faith and fair dealing.'" (citing 5 Williston on Contracts § 670, 159-160 (3d. ed. 1961) and <i>Association Group Life, Inc. v. Catholic War Veterans, infra</i>); <i>Nolan v. Control Data Corp.</i>, 243 N.J. Super. 420, 579 A.2d 1252 (1990) ("The court held that defendant's absolute and unfettered power under the written agreement to alter sales quotas and thereby compensation rates was required to be</p>



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	<p>exercised in good faith and for legitimate business reasons so as not to deprive plaintiff of the fairly agreed benefits of his labors.”); <i>Pickett v. Lloyd's</i>, 131 N.J. 457, 467, 621 A.2d 445, 450 (1993) (“an insurance company owes a duty of good faith to its insured in processing a first-party claim. We begin by noting that every contract imposes on each party the duty of good faith and fair dealing in its performance and its enforcement. In New Jersey, we have stated that obligation to be an implied term of every contract.”); <i>Association Group Life, Inc. v. Catholic War Veterans</i>, 61 N.J. 150, 153, 293 A.2d 382, 384 (1972) (“In every contract there is an implied covenant that “neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract; in other words, in every contract there exists an implied covenant of good faith and fair dealing.”) (internal citations omitted).</p>
N.M.	<p><i>Castle v. McKnight</i>, 116 N.M. 595, 866 P.2d 323 (1993) (in analyzing an agreement providing that “one party will not change the location of the boundary line fences . . . without the express written consent of the other party,” (866 P.2d at 324), the New Mexico Supreme Court found that “the consent clause contains an implied covenant of reasonableness.” (<i>Id.</i> at 326). “In searching for what [may be] called ‘the essence of the agreement,’ a court seeks a fair bargain. It may . . . justify the term it supplies on the ground that the term prevents one party from being in a position of ‘economic servility’ and ‘completely at the mercy’ of the other. 2 E. Allen Farnsworth, <i>Farnsworth on Contracts</i> § 7.16, at 307 (1990) (footnote omitted).” (<i>Id.</i>)); <i>Allsup's Convenience Stores, Inc. v. North River Ins. Co.</i>, 127 N.M. 1, 13-14 (1998) (“Every contract in New Mexico imposes the duty of good faith and fair dealing upon the parties in the performance and enforcement of the contract.”); <i>Burge v. Mid Continent Cas. Co.</i>, 933 P.2d 210, 216 (N.M. 1996) (recognizing first-party action in contract and tort and holding that “[b]ad faith is determined by whether or not the insurer was justified in refusing coverage or offering less than the total coverage.”).</p>
N.Y.	<p><i>Cortale v. Educational Testing Serv.</i>, 171 Misc. 2d 928, 930, 656 N.Y.S.2d 154, 156 (1997) (“Regardless of the express terms of the contract, the agreement between the parties carried with it (as do all contracts) an implicit duty of good faith and fair dealing. This implied covenant requires that ‘neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract’ (<i>Dalton v Educational Testing Serv.</i>, 87 NY2d 384, 389 [1995]). Or, as the dissent stated more comprehensively in <i>Dalton</i>: ‘the issue here is whether there is evidence that ETS performed its discretionary functions arbitrarily or irrationally, or with bad faith in fact.’” <i>Id.</i> at 397 (internal citations omitted)); <i>Richard Bruce &amp; Co. v. J. Simpson &amp; Co.</i>, 40 Misc. 2d 501, 504, 243 N.Y.S.2d 503, 506 (1963) (“The term ‘absolute discretion’</p>



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	<p>must be interpreted in context and means under these circumstances a discretion based upon fair dealing and good faith -- a reasonable discretion. We think, however, that such a promise is fairly to be implied.”) (internal citations omitted); <i>Travellers Int’l v. TWA</i>, 41 F.3d 1570 (2d Cir. 1994) (under New York law, when a contract confers decision-making power on a single party the resulting discretion is nevertheless subject to an obligation that it be exercised in good faith); <i>Carvel Corp. v. Diversified Management Group, Inc.</i>, 930 F.2d 228, 231 (2d Cir. 1991) (same); <i>Cross &amp; Cross Properties, Ltd. v. Everett Allied Co.</i>, 886 F.2d 497, 502 (2d Cir. 1989) (“Since the duty of good faith and fair dealing is implied in every contract, contracting parties’ fields of discretion under a contract are bounded by the parties’ mutual obligation to act in good faith”) (applying New York law); <i>deCiutiis v. Nynex Corp.</i>, 1996 U.S. Dist. LEXIS 13122 at * 11-12, 12 BNA IER CAS 150 (S.D.N.Y. 1996) (holding complaint sufficient to state cause of action for breach of implied covenant of good faith, where contract gave company “sole, exclusive and complete discretion” to decide whether to grant cash award for beneficial employee suggestions, and “NYNEX’s decision not to give plaintiff any award at all even though it adopted the suggestions and benefited from substantial savings of costs could be found to have been made in bad faith”); <i>Brassil v. Maryland Cas. Co.</i>, 210 N.Y. 235, 241, 104 N.E. 622, 624 (1914) (in a case involving an insurer’s failure to prosecute an appeal, “there is a contractual obligation of universal force which underlies all written agreements. It is the obligation of good faith in carrying out what is written. The defendant’s failure to observe this requirement of the contract in suit is the thing upon which its liability may safely be predicated.”); <i>Acquista v. New York Life Ins. Co.</i>, 285 A.D.2d 73, 81, 730 N.Y.S.2d 272, 278 (2001) (recognizing contract action for breach of the in the first-party insurance context, and finding “no reason to limit damages recoverable for breach of a duty to investigate, bargain, and settle claims in good faith to the amount specified in the insurance policy.”).</p>
N.C.	<p><i>Mezzanotte v. Freeland</i>, 20 N.C. App. 11, 17, 200 S.E.2d 410, 414-15 (1973) (wherein a real estate purchase agreement was contingent on the securing of financing on such terms and conditions as were satisfactory to the purchasers, the court held: "The contract implies that [the purchasers] would in good faith seek proper financing from [the bank] and that such financing in keeping with reasonable business standards could not be rejected at the personal whim of [the purchasers] but only for a satisfactory cause. Where a contract confers on one party a discretionary power affecting the rights of the other, this discretion must be exercised in a reasonable manner based upon good faith and fair play. * * * A promise conditioned upon an event within the promisor's control is not illusory if the promisor also 'impliedly promises to make reasonable effort to bring the event about or to use good faith and honest judgment in determining whether or not it has in fact occurred.' The implied promise is enforceable</p>



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	by the promisee, and it constitutes a legal detriment to the promisor; therefore it furnishes sufficient consideration to support a return promise.") (internal citations omitted); <i>Gallimore v. Daniels Constr. Co.</i> , 78 N.C. App. 747, 751 (1986) (court may impose a duty of good faith and fair dealing to prevent one party from impairing the ability of the other party to benefit from the contract); <i>Weyerhaeuser Co. v. Godwin Bldg. Supply Co.</i> , 40 N.C. App. 743, 746-47, 253 S.E.2d 625, 627-28 (1979) (contractual breach of implied covenant of good faith and fair dealing for failure to act reasonably and in good faith).
<b>N.D.</b>	<i>Fetch v. Quam</i> , 623 N.W.2d 357, 361 (N.D. 2001) ("An insurer has a duty to act fairly and in good faith in its contractual relationship with its policyholders." .. "This duty of good faith imposed on an insurer, which has its genesis in the contractual relationship between the insurer and its policyholders, is implied by law to include a duty of fair dealing in paying claims, providing defense to claims, negotiating settlements, and fulfilling all other contractual obligations."); <i>Matrix Props. Corp. v. TAG Invs.</i> , 2000 N.D. 88, 609 N.W.2d 737, 744 (2000) (because real estate option agreement "is generally considered as requiring a performance which must be satisfactory to [the promisor] in the exercise of honest judgment, such contracts have been almost universally upheld. Because of the duty to act in good faith, a party's promise is not illusory; rather, the restraint that the obligation to act in good faith places on the promisor's discretion furnishes good consideration for the parties' agreement.") (citing 13 Richard A. Lord Williston on Contracts § 38.21 (4th ed. 2000).
<b>Ohio</b>	<i>Steiner v. Van Dorn Co.</i> , 104 Ohio App. 3d 51, 56-57, 660 N.E.2d 1256; 1259-60 (1995) (holding that the language in a settlement agreement that parties would "apportion the fees among plaintiffs' counsel as they deem appropriate," was subject to an implied covenant of good faith and fair dealing); <i>Wagner v. Midwestern Indemnity Co.</i> , 83 Ohio St. 3d 287, 699 N.E.2d 507 (Oh. 1998) (ruling that bad faith claims against an insurer are judged under a reasonable justification standard and upholding contract and tort damages for insurer's breach of the implied covenant of good faith and fair dealing in failing to pay their claims without reasonable justification).
<b>Okla.</b>	<i>Boone v. Kerr-McGee Oil Industries, Inc.</i> , 217 F.2d 63, 65 (10th Cir. 1954) (implicitly applying Oklahoma law) ("Where discretion is lodged in one of two parties to a contract or a transaction, such discretion must, of course, be exercised in good faith. That simply means that what is done must be done honestly to effectuate the object and purpose the parties had in mind in providing for the exercise of such power. All the authorities





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	<p>are to this effect.”); <i>Hall v. Farmers Insurance Exchange</i>, 713 P.2d 1027, 1030-31 (Okla. 1985) (held that bad faith resort to a termination clause in an insurance agency contract subjected the party who committed the breach to liability for damages that the termination caused. The defendant insurance company had resorted to the termination clause in response to the plaintiff's vocal objections to company policies. The court found as further evidence of bad faith that the defendant's action served to deprive the plaintiff of renewal his expected income from renewal premiums and "to parcel that income among its other, less obstreperous agents," those less vocal in their opposition to company policies. <i>Id.</i> Those premiums generated a substantial portion of the agent's normal compensation. Accordingly, the court found Hall entitled to the benefits that he would have received but for Farmers' bad faith termination”); <i>Christian v. American Home Assurance Co.</i>, 577 P.2d 899, 902-04 (1978) (describing the implied covenant of good faith and fair dealing in every contract, and concluding that bad faith subjects insurer to liability in contract and tort) (quoting <i>Gruenberg v. Aetna Ins. Co.</i>, 9 Cal. 3d 566, 510 P.2d 1032, 108 Cal. Rptr. 480 (Cal. 1973)); <i>Western Natural Gas Co. v. Cities Serv. Gas Co.</i>, 507 P.2d 1236, 1241 (Okla. 1972) (in every contract there exists an implied covenant of good faith and fair dealing, and, more specifically, the law will imply an agreement to refrain from doing anything which will destroy or injure the other party's right to receive the benefit of the contract).</p>
<b>Ore.</b>	<p><i>McKenzie v. Pacific Health &amp; Life Ins. Co.</i>, 118 Or. App. 377, 381, 847 P.2d 879, 881 (1992) (“we conclude that a claim for breach of the duty of good faith may be pursued independently of a claim for breach of the express terms of the contract. ... A contract that necessitates the exercise of discretion certainly implicates the duty of good faith. Yet, so long as it is not inconsistent with the express terms of the contract, the duty of good faith is a contractual term that is implied by law into every contract, not just those that necessitate the exercise of discretion. We conclude that, within defendant's obligation to pay all covered claims was the duty to determine, in good faith, whether a claim is covered, and to refrain from arbitrarily refusing to pre-authorize medical treatment.”) (internal citations omitted); <i>Brooke v. Mt. Hood Meadows Oreg., Ltd.</i>, 81 Or. App. 387, 393, 725 P.2d 925, 929 (1986) (“Like the corporate director's fiduciary responsibility to the shareholders for the declaration of dividends, the general partner's duty to the limited partners in the distribution of profit is discharged by decisions made in good faith that reflect legitimate business concerns.”); <i>Best v. United States Nat'l Bank</i>, 303 Or. 557, 561, 563, 739 P.2d 554, 557-58 (1987) (“This court has long stated...that there is an obligation of good faith in the performance and enforcement of every contract.”; “When one party to a contract is given discretion in the performance of some aspect of the contract, the parties ordinarily contemplate that that discretion will be exercised for particular purposes. If the discretion is exercised for purposes not contemplated by the parties, the party exercising discretion has performed in bad faith.”) (citing <i>Comini v.</i></p>



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	<i>Union Oil Co.</i> , 277 Or. 753, 756, 562 P2d 175 (1977)).
<b>Pa.</b>	<i>Garner v. Girard Trust Bank</i> , 442 Pa. 166, 275 A.2d 359, 361 (Pa. 1971) (holding forfeiture that pension plan committee determined with sole discretion was subject to judicial review to insure good faith and reasonable judgment); <i>Somers v. Somers</i> , 418 Pa. Super. 131, 136-137 (1992) (“it is possible to recognize certain strains of bad faith which include: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance”) (internal citations omitted); <i>Brown v. Candelora</i> , 708 A.2d 104 (Pa. Super. 1998) (allowing for contract cause of action for breach of the implied covenant of good faith and fair dealing in the first party insurance context).
<b>R.I.</b>	<i>Lees v. Howarth</i> , 85 R.I. 321, 326-27, 131 A. 2d 229, 232 (1957) (a party having an uncontrolled discretion to apply the corpus of a trust for the benefit of a beneficiary entitled to all the trust income during his lifetime, must exercise that discretion in good faith); <i>Bibeault v. Hanover Ins. Co.</i> , 417 A.2d 313, 319 (R.I. 1980) (“an insurer doing business in Rhode Island is obligated to act in good faith in its relationship with its policyholders. ... The duty of an insurer to deal fairly and in good faith with an insured is implied by law. Since violation of this duty sounds in contract as well as in tort, the insured may obtain consequential damages for economic loss and emotional distress and, when appropriate, punitive damages.”); <i>Ide Farm &amp; Stable, Inc. v. Cardi</i> , 110 R.I. 735, 739 (1972) (“there is an implied covenant of good faith and fair dealing between parties to a contract so that the contractual objectives may be achieved”).
<b>S.C.</b>	<i>Commercial Credit Corp. v. Nelson Motors, Inc.</i> , 247 S.C. 360, 369, 147 S.E.2d 481, 485 (1966) (recognizing that where unlimited authority and discretion are imposed upon one party to a contract, the law will impose an implied covenant that such discretion be performed reasonably); <i>Nichols v. State Farm Mut. Auto. Ins. Co.</i> , 279 S.C. 336, 339, 306 S.E.2d 616, 618 (1983) (“there is an implied covenant of good faith and fair dealing in every insurance contract “that neither party will do anything to impair the other's rights to receive benefits under the contract,” and noting that “In Respondent's suit for breach of contract he must only show that his claim is valid.”), overruled on other grounds in <i>Duncan v. Mutual Life Ins. Co.</i> , 427 S.E.2d 657 (S.C. 1993); <i>Carolina Bank &amp; Trust Co. v. St. Paul Fire &amp; Marine Co.</i> , 279 S.C. 576, 580, 310 S.E.2d 163, 165 (1983) (“[i]mplicit in the holding is the extension of a duty of good faith and fair dealing in the performance of all obligations undertaken by the insurer for the



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	insured").
<b>S.D.</b>	<i>Trouten v. Heritage Mut. Ins. Co.</i> , 632 N.W.2d 856, 862-63 (S.D. 2001) (“In every contract there is an implied covenant of good faith and fair dealing which prohibits either contracting party from preventing or injuring the other party's right to receive the agreed benefits of the contract.”); <i>Helmholt v. Le Mars Mut. Ins. Co.</i> , 404 N.W.2d 55, 57 (S.D. 1986) (“We begin with the premise that a duty to act or deal in good faith is found in all insurance contracts. A covenant is implied in an insurance contract that neither party will do anything to injure the rights of the other in receiving the benefits of the agreement.”) (internal citations omitted).
<b>Tenn.</b>	<i>Solomon v. First American Nat'l Bank of Nashville</i> , 774 S.W.2d 935, 945 (Tenn. App. 1989) (“It may be reasonably argued that, where a contract grants discretionary powers to one party, there is an implied agreement that such powers will be reasonably exercised. The allegations of the complaint and the evidence in the record are sufficient to support an action for breach of implied contract by failure to exercise within reasonable bounds the discretionary powers conferred by the contract”); <i>Hurley v. Tennessee Farmers Mut. Ins. Co.</i> , 922 S.W.2d 887, 892 (Tenn. App. 1995) (“Insurance contracts are subject to the same rules of construction and enforcement as apply to contracts generally. A qualifying word which may be read into every contract is the word reasonable, or its equivalent reasonably. Every contract contains an implied duty of good faith and fair dealing in its performance and enforcement.”).
<b>Tex.</b>	<i>Cowden v. Broderick &amp; Calvert, Inc.</i> , 131 Tex. 434, 443-44 (1938) (“Discretion differs from uncontrolled will. It is thus defined in <i>The Steamship Styria v. Morgan</i> , 186 U.S. 1, 46 L. Ed. 1027, 1033, 22 Sup. Ct. 731: ‘Discretion means the equitable decision of what is just and proper under the circumstances.’ In <i>Paquette v. City of Fall River</i> , 278 Mass. 172, 179 N. E. 588, the court in construing a law authorizing a school committee to employ a teacher ‘to serve at its discretion’ held that the discretion given was ‘freedom to act according to honest judgment’ and that discretion as used in the law was ‘not a word for arbitrary will or inconsiderate action.’); <i>Arnold v. National County Mut. Fire Ins. Co.</i> , 725 S.W.2d 165, 167 (Tex. 1987) (“In the insurance context a special relationship arises out of the parties' unequal bargaining power and the nature of insurance contracts which would allow unscrupulous insurers to take advantage of their insureds' misfortunes in bargaining for settlement or resolution of claims. In addition, without such a cause of action insurers can arbitrarily deny coverage and delay payment of a claim with no more penalty than interest on



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	the amount owed. An insurance company has exclusive control over the evaluation, processing and denial of claims. For these reasons a duty is imposed that "[An] indemnity company is held to that degree of care and diligence which a man of ordinary care and prudence would exercise in the management of his own business."; <i>Aranda v. Ins. Co. of North America</i> , 748 S.W.2d 210, 212 (Tex. 1988) ("The duty of good faith and fair dealing is thus imposed on the insurer because of the disparity of bargaining power and the exclusive control that the insurer exercises over the processing of claims").
<b>Utah</b>	<i>Resource Management Co. v. Weston Ranch &amp; Livestock Co.</i> , 706 P.2d 1028, 1037 (Utah 1985) ("RMC's right of termination in paragraph 16 is conditioned on the occurrence of a condition subsequent: the determination that 'there is not sufficient promise of minerals of commercial value . . . sufficient to justify the further expenditures of time or money by THE COMPANY.' However, that determination is to be made in the 'sole discretion' of RMC. Notwithstanding the breadth of that power, it may not be exercised capriciously or in bad faith. The Westons' argument that the literal meaning of 'sole discretion' confers an arbitrary power to avoid all obligations under the contract is without merit. The law generally imposes a duty to perform contractual obligations in good faith."); <i>Olympus Hills Shopping Center, Ltd. v. Smith's Food &amp; Drug Centers, Inc.</i> , 889 P.2d 445, 450, 450 (Utah App. 1994) (holding commercial lessee must exercise sole discretion to operate any business in leased space reasonably and in good faith); <i>Cook v. Zions First National Bank</i> , 919 P.2d 56, 60 (Utah App. 1996) (holding "sole discretion" clause in employment contract subject to implied duty of good faith); <i>Brown v. Moore</i> , 973 P.2d 950, 954 (Utah 1998) ("Every contract is subject to an implied covenant of good faith") (internal citations omitted); <i>Billings v. Union Bankers Ins. Co.</i> , 918 P.2d 461, 465 (Utah 1996) ("as parties to a contract, the insured and the insurer have parallel obligations to perform the contract in good faith, obligations that inhere in every contractual relationship"); <i>Beck v. Farmers Ins. Exchange</i> , 701 P.2d 795, 800 (Utah 1985) (same; "state of mind of the insurer is irrelevant; even an inadvertent breach of the covenant of good faith implied in an insurance contract can substantially harm the insured and warrants a remedy").
<b>Vt.</b>	<i>Carmichael v. Adirondack Bottled Gas Corp.</i> , 161 Vt. 200, 208-09, 635 A.2d 1211, 1216-17 (1993) ("The definition of the 'covenant of good faith and fair dealing' is broad. An underlying principle implied in every contract is that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement. The implied covenant of good faith and fair dealing exists to ensure that parties to a contract act with faithfulness to an agreed common purpose and consistency with the justified expectations of the other party") (internal citations



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	omitted); <i>Shaw v. E. I. Du Pont de Nemours &amp; Co.</i> , 126 Vt. 206, 209, 226 A.2d 903, 906 (1966) (“An implied covenant of good faith and fair dealing prevails in every contract. The underlying principle is that there is an implied covenant that neither party shall do anything to injure or destroy the rights of the other party to receive the benefits of the agreement.”).
<b>Va.</b>	<i>Virginia Vermiculite, Ltd. v. W.R. Grace &amp; Co.</i> , 156 F.3d 535 (4th Cir. 1998) (“it is a basic principle of contract law in Virginia, as elsewhere, that although the duty of good faith does not prevent a party from exercising its explicit contractual rights, a party may not exercise contractual discretion in bad faith, even when such discretion is vested solely in that party. See Steven J. Burton & Eric G. Anderson, <i>Contractual Good Faith</i> 46-47 (1995) (“The courts could leave all discretion in performance unbridled. . . . No U.S. court now takes this approach . . . . Thus, contractual discretion is presumptively bridled by the law of contracts -- by the covenant of good faith implied in every contract”); <i>Tymshare, Inc. v. Covell</i> , 234 U.S. App. D.C. 46, 727 F.2d 1145, 1152-54 (D.C. Cir. 1984) (applying Virginia law) (where an employee's compensation contract contained an express power that allowed Tymshare to change the term of a sales quota plan "within [its] sole discretion," the Court of Appeals for the District of Columbia found this power to be "not necessarily the equivalent" of a power that could be exercised "for any reason whatsoever, no matter how arbitrary or unreasonable." Rather, the court found the power subject to good faith limitations because the employee would reasonably expect Tymshare not to "abuse its discretion" in changing the quota plan.); <i>Harris v. USAA Cas. Ins. Co.</i> , 37 Va. Cir. 553, 568 (1994) (“this case [] involves the application of Virginia law in a first-party insurance context. It is the opinion of this court, after careful consideration of what authority exists in Virginia and nationwide, that the Virginia Supreme Court would imply a duty of good faith in a first-party insurance context but would find the breach of same to give rise to a claim for breach of contract . . . .”).
<b>Wash.</b>	<i>McCush v. Watcom Timber Co.</i> , 139 Wash. 314, 324-25, 246 P. 933, 937-38 (1926) (recognizing that discretion under a contract must be exercised fairly and in good faith); <i>Goodyear Tire &amp; Rubber Co. v. Whiteman Tire</i> , 86 Wash. App. 732, 738, 935 P.2d 628, 632 (1997) (recognizing that the duty of good faith and fair dealing applies when one party has discretionary authority to determine certain terms of the contract, such as quantity, price, or time, as well as when the manner of performance under a specific contract term allows for discretion on the part of either party); <i>Tank v. State Farm Fire &amp; Casualty Co.</i> , 105 Wash. 2d 381, 386, 715 P.2d 1133, 1136 (1986) (“an insurance company's duty of good faith rises to an even higher level than that of honesty and lawfulness of purpose toward its policyholders: an insurer must deal fairly with an insured, giving equal



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	consideration in all matters to the insured's interests"); <i>Badgett v. Security State Bank</i> , 116 Wash. 2d 563, 569-70 (1991) ("There is in every contract an implied duty of good faith and fair dealing. This duty obligates the parties to cooperate with each other so that each may obtain the full benefit of performance."); Rev. Code Wash. 48.01.030 (2001) ("The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.").
<b>W.Va.</b>	<i>Smith v. Buege</i> , 182 W.Va. 204, 208 (1989) (citing duty of good faith and fair dealing implicit in contracts, and noting imposition of implied terms of reasonableness); <i>Allstate Ins. Co. v. Bedell</i> , 506 S.E.2d 74 (W.Va. 1998) (recognizing first party contract actions in the insurance context).
<b>Wis.</b>	<i>Rogers-Ruger Co. v. McCord</i> , 115 Wis. 261, 264, 91 N.W. 685, 686 (1902) (recognizing the implied limitation of good faith upon a contracting party's complete discretion); <i>Hilker v. Western Auto. Ins. Co.</i> , 204 Wis. 1, 10, 231 N.W. 257, 261 (1930) ("the good-faith performance of the obligation which the insurance company assumed when it took to itself the complete and exclusive control of all matters that determine the liability of the insured, requires that it be held to that degree of care and diligence which a man of ordinary care and prudence would exercise in the management of his own business were he investigating and adjusting such claims"); <i>Anderson v. Continental Ins. Co.</i> , 85 Wis. 2d 675, 689, 691, 271 N. W. 2d 368, 375-376 (1978) (recognizing that the insurer has a duty to act in good faith and fair dealing toward the insured; it relied for that proposition on the Restatement (Second) of Contracts § 205 (1981), as well as on the adoption of the Restatement's position in <i>Gruenberg v. Aetna Ins. Co.</i> , 9 Cal. 3d 566, 575, 510 P. 2d 1032, 1038 (1973)); <i>In re Estate of Chayka</i> , 47 Wis. 2d 102, 108, 176 N.W.2d 561, 564 (1970) (recognizing a common law duty of good faith and fair dealing); <i>Market Street Assoc. Ltd. Partnership v. Frey</i> , 941 F.2d 588, 592 (7th Cir. 1991) (applying Wisconsin law) (a contracting party cannot be allowed to use his own breach to gain an advantage by impairing the rights that the contract confers on the other party).
<b>Wyo.</b>	<i>Louis J. Roussalis, M.D. v. Wyoming Medical Center, Inc.</i> , 4 P.3d 209, 239 (Wyo. 2000) (reversing summary judgment finding that jury could properly find that defendant failed to act in good faith in exercising discretion under contract); <i>State Farm Mut. Auto. Ins. Co. v. Shrader</i> , 882 P.2d 813, 825 (Wyo. 1994) (in the insurance context, "Wyoming has recognized that a breach of the implied covenant of good faith and fair dealing may



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	be actionable in contract for compensatory damages.”).

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