

## State Farm Fire and Casualty Company vs. Shawn Brechbill

Year: 2013

Court: Alabama Supreme Court

Case Number: CV-2010-900034

UP weighed in as a friend of the court to ask that the Brechbill opinion be corrected to accurately state the law in the State of Alabama for the past 30 years with regard to insurer breach of contract and bad faith. Under AL law, the elements of a bad faith cause of action are: (1) an insurance contract between the parties and a breach thereof by the defendant; (2) an intentional refusal to pay the insured's claim; (3) the absence of any reasonably legitimate or arguable reason for that refusal (the absence of a debatable reason). In the "abnormal" case, the reason for refusal is not legitimate or arguable if it is based on an improper claim investigation or analysis; and (4) the insurer's actual knowledge of the absence of any legitimate or arguable reason. "Abnormal" means "alternative," not "extra." The elements as restated above are entirely consistent with "abnormal" bad faith being an alternative. UP reminded the court that a claim investigation or analysis is improper where the insurer, for example: (1) intentionally or recklessly failed to investigate the plaintiff's claim; (2) intentionally or recklessly failed to properly subject the plaintiff's claim to a cognitive evaluation or review; (3) created its own debatable reason for denying the plaintiff's claim; or (4) relied on an ambiguous portion of the policy as a lawful basis to deny the plaintiff's claim.

UP's brief was drafted pro bono by Gregory A. Brockwell of Leitman, Seigal, Payne & Campbell, P.C. and Amy Bach, Esq.