

Attorneys fees may be awarded in the discretion of the court on a finding of bad faith.

state law should provide the governing rules. See [*All Underwriters v. Weisberg*, 222 F.3d 1309, 1315 \(11th Cir.2000\)](#) (applying Florida law to the issue of attorney's fees); [*Pace v. Ins. Co. of N. America*, 838 F.2d 572, 579 \(1st Cir.1988\)](#) (applying a Rhode Island statute providing a cause of action for bad faith refusal to settle claims); [*INA of Texas v. Richard*, 800 F.2d 1379, 1381 \(5th Cir.1986\)](#) (holding that state law applies to the issue of attorney's fees in a marine insurance dispute); [*Austin v. Servac Shipping Line*, 794 F.2d 941, 948 \(5th Cir.1986\)](#) (holding that state law applies to the issue of punitive damages in a case involving unfair handling of an insurance claim); see also [*Southworth Mach. Co. v. F/V Corey Pride*, 994 F.2d 37, 41 \(1st Cir.1993\)](#) (noting in dictum that a claim for refusal to settle normally is governed by state law); cf. [*American Nat'l Fire Ins. Co. v. Kenealy*, 72 F.3d 264, 270 \(2d Cir.1995\)](#) (declining to apply New York law on attorney's fees where insureds were sued by their insurance company and prevailed).

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. *Christian v. American Home Assurance Co.*, 577 P.2d 899 (Okla.1977). In regard to punitive damages, we would point out that the intent necessary to establish the tort of bad faith is not equivalent to the intent that would sustain an award for punitive damages. Punitive damages may only be awarded when an insurer has acted with malice, wantonness, or wilfulness....
[417 A.2d at 319](#). Pace