I. REGULATORY LIMITS ON CLAIMS HANDLING

A. Timing for Responses and Determinations

The Delaware Insurance Code generally requires an insurance company to respond “promptly” to insurance claims, which includes (1) prompt responses to communications from insureds, (2) prompt investigation of claims, (3) reasonable investigation of claims based upon all available information before refusing to pay claims, (4) affirming or denying coverage “within a reasonable time after proof of loss statements have been completed,” and (5) prompt settlement of claims once liability has become reasonably clear. See 18 Del. C. § 2304 (16) (b), (c), (d), (e), and (m).

The Delaware Insurance Code, 18 Del. C. § 2312, provides the Insurance Commissioner with the authority to promulgate regulations defining these time parameters in more detail. Pursuant to this authority, various regulations have been adopted. For instance, a “prompt” payment of a settled claim “is defined as remittance of check within 30 days from the date of agreement, memorialized in writing, final order by the court, or unappealed arbitration award.” Delaware Regulation #18-900 CDR 903 (4.0). Insurers must “respond within 15 working days” to communications from insureds. Delaware Regulation #18-900 CDR 902 (1.2.1.2). Insurers must commence investigations of claims within 10 working days upon receiving notice of a loss. Delaware Regulation #18-900 CDR 902 (1.2.1.3). Insurers have 30 days to affirm or deny coverage after receiving proof of loss statements. Delaware Regulation #18-900 CDR 902 (1.2.1.5).

The Administrative Procedure Act, 29 Del. C. § 10101 et seq., codifies rule-making and hearing authority for Delaware state agencies and specifies the manner and extent to which action by state agencies is subject to public comment and judicial review. Except as otherwise provided in the Insurance Code (Title 18), it applies to and governs all administrative actions. 18 Del. C. § 323 sets forth generally the procedures for hearings before the Insurance Commissioner.

The Commissioner may issue regulations in accordance with 18 Del. C. § 311 “as an aid to” the administration or effectuation of the Delaware Insurance Code, Chapter 18 of the Delaware Code. (Insurance regulations are posted online at: http://regulations.delaware.gov/AdminCode/title18/index.shtml.)
In May 2012, the General Assembly enacted a statute to allow insurers
to deliver documents and notices to their insured, provided that the insurer
obtains the insured's affirmative consent and it meets the requirements of
the Uniform Electronic Transactions Act (6 Del. C. § 12A-101 et. seq.). 18
Del. C. § 107.

In August 2012, the General Assembly enacted a statute requiring
insurers to “provide clear and prominent notice to residential property
insurance policyholders as to the existence of deductibles for losses caused
by wind, hail or hurricanes” for new policies or policy renewals issued after
January 1, 2013. 18 Del. C. § 4140.

Also, effective January 1, 2013, all property and casualty insurance
companies doing business in Delaware, unless otherwise exempt, must annually
submit to the Department of Insurance the opinion of an appointed actuary

B. Standards for Determination and Settlements

Standards for handling insurance claims are set forth in the Delaware
Insurance Code, 18 Del. C. § 2304 “Unfair methods of competition and unfair
or deceptive acts or practices defined”, and the above discussed regulations.

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

There are a host of statutes that address confidentiality of
information: 16 Del C. § 1119A (the records of residents of a nursing
facility or similar facility); 16 Del C. § 1210, et. seq. (personal health
information) 18 Del C. § 2406 (records regarding an insurance fraud
investigation or examination); 16 Del C. § 2006 (uniform health data); 29 Del
C. § 7971 (long-term care residents); 16 Del C. § 1121 (nursing home facility
patient’s rights); 21 Del. C. § 305 (motor vehicle driving history and
license records); 9 Del C. § 1184 (the public right of inspection of public
records which would invade a person’s right of privacy are denied); 18 Del.
C. § 535 (compliance with Title V of Gramm-Leach-Bliley Act of 1999); 18 Del.
C. § 3918 (enacted in 2014 to address vehicle data-reporting devices); 24
Del. C. § 3913 (privileged communications for social workers). In addition,
the Insurance Commissioner has adopted comprehensive regulations protecting
insureds’ privacy, including regulations captioned “Privacy of Consumer
Financial and Health Information” (Delaware Regulation # 18 900 CDR 904), and
“Standards for Safeguarding Customer Information.” (Delaware Regulation # 18
900 CDR 905).

II. PRINCIPLES OF CONTRACT INTERPRETATION

Delaware’s principles of contract interpretation find summary in the
following passage from ConAgra Foods, Inc. v. Lexington Ins. Co., 21 A.3d 62
(Del. 2011):

This Court has adopted traditional principles of contract
interpretation. One such principle is to give effect to the
plain meaning of a contract's terms and provisions when the
contract is clear and unambiguous. But, when we may reasonably
ascribe multiple and different interpretations to a contract, we
will find that the contract is ambiguous.

We interpret insurance contracts similarly. Clear and
unambiguous language in an insurance contract should be given its ordinary and usual meaning. Where the language of a policy is clear and unequivocal, the parties are to be bound by its plain meaning. In construing insurance contracts, we have held that an ambiguity does not exist where the court can determine the meaning of a contract without any other guide than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends. An insurance contract is not ambiguous simply because the parties do not agree on its proper construction. Creating an ambiguity where none exists could, in effect, create a new contract with rights, liabilities and duties to which the parties had not assented. But, we also have explained that an insurance contract is ambiguous when it is reasonably or fairly susceptible of different interpretations or may have two or more different meanings.

Id. at 68-69 (citations and quotations omitted); see also In re Viking Pump, Inc., 148 A.3d 633 (Del. 2016).

Delaware adheres to the 'objective' theory of contracts, i.e., a contract's construction should be that which would be understood by an objective, reasonable third party. Osborn ex rel. Osborn v. Kemp, 991 A.2d 1153 (Del. 2010). The court will read a contract as a whole and will give each provision and term effect, so as not to render any part of the contract mere surplusage. Id. The court will not read a contract to render a provision or term "meaningless or illusory." Id. A contract must contain all material terms in order to be enforceable, and specific performance will only be granted when an agreement is clear and definite and a court does not need to supply essential contract terms." Id.

An unreasonable interpretation produces an absurd result or one that no reasonable person would have accepted when entering the contract. Id.

If a contract is ambiguous, the court will apply the doctrine of contra proferentem against the drafting party and interpret the contract in favor of the non-drafting party. Id.; see also Lukk v. State Farm Mut. Auto. Ins. Co., 2014 WL 4247767, at *4 (Del. Super. Ct. Aug. 29, 2014) (holding that where one of a contract’s provisions is deemed ambiguous, “the doctrine of contra proferentem requires that the language of an insurance policy be construed most strongly against the insurance company that drafted it”) (quotations omitted). The parties' steadfast disagreement over interpretation will not, alone, render the contract ambiguous. Id. The determination of ambiguity lies within the sole province of the court. Id. A mere split in the case law concerning the meaning of a term does not render that meaning ambiguous in the Delaware courts. O'Brien v. Progressive Northern Ins. Co., 785 A.2d 281, 289 (Del. 2001). In Eagle Ind. v. DeVilbiss Health Care, the Delaware Supreme Court held that, where contract language is unambiguous, "extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create ambiguity." 702 A.2d 1228, 1232 (Del. 1997).

Ambiguous provisions in contracts of insurance are to be construed against the insurer. Penn Mut. Life Ins. Co. v. Oglesby, 695 A.2d 1146 (Del. 1997). Insurance contracts must be interpreted in a common sense manner, giving effect to all provisions so that a reasonable policyholder can understand the scope and limitation of coverage. It is the obligation of the insurer to state clearly the terms of the policy, just as it is the
obligation of the issuer of securities to make the terms of the operative
document understandable to a reasonable investor whose rights are affected by
the document. Thus, if the contract in such a setting is ambiguous, the
principle of contra proferentem dictates that the contract must be construed
against the drafter. Id. The policy behind this principle is that the
insurer or the issuer, as the case may be, is the entity in control of the
process of articulating the terms. The other party, whether it be the
ordinary insured or the investor, usually has very little say about those
terms except to take them or leave them or to select from limited options
offered by the insurer or issuer. Therefore, it is incumbent upon the
dominant party to make terms clear. Convoluted or confusing terms are the
problem of the insurer or issuer—not the insured or investor. Id.; see also
Cont'l v. Burr, 706 A.2d 499 (Del. 1998); Phillips Home Builders Inc. v.
Travelers Ins. Co., 700 A.2d 127, 129 (Del. 1997); Emmons v. Hartford
Underwriters Ins. Co., 697 A.2d 742, 745 (Del. 1997).

But, the court may resort to extrinsic evidence to resolve ambiguity
where the two parties to the agreement were business people on an equal
footing with each other who negotiated back and forth on the disputed
provision and its risk-allocation consequences. See Carey's Home Constr.,
LLC v. Estate of Myers, 2014 WL 1724835, at *5 (Del. Super. Ct. Apr. 16,
2014) (citing SI Mgmt. L.P. v. Wninger, 707 A.2d 37, 43 (Del. 1998)).

III. CHOICE OF LAW

In general, Delaware Courts will honor "a contractually designed choice
of law provision so long as the jurisdiction selected bears some material
relationship to the transaction." J.S. Alberici Constr. Co. v. Mid-West
Conveyor Co., Inc., 750 A.2d 518, 520 (Del. 2000); Annan v. Wilmington Trust
Co., 559 A.2d 1289, 1293 (Del. 1989). A material relationship exists where:

(1) A party's principal place of business is located within the
foreign jurisdiction (Maloney-Refaie v. Bridge at Sch., Inc., 958
A.2d 871, 879 n. 16 (Del. Ch. 2008); Shadewell Grove IP, LLC v.
Mrs. Fields Franchising, LLC, 2006 WL 1375106, at *7 (Del. Ch.
May 8, 2006); Hills Stores Co. v. Bozic, 769 A.2d 88, 112 (Del.
Ch. 2000));

(2) A majority of the activity underlying the action occurred
within the foreign jurisdiction (E.I. duPont de Nemours & Co. v.
Bayer CropScience L.P., 958 A.2d 245, 249 n. 9 (Del. Ch. 2008));
and

(3) Where parties to a contract performed most of their services
in the foreign state. Bozic, 769 A.2d at 112; see also Knight v.
Caremark Rx, Inc., 2007 WL 143099, at *5 n.14 (Del. Ch. Jan. 12,
2007) ("Alabama clearly satisfies this test because the claims
and counterclaims that the Settlement Agreement resolved were
pending in its State courts.").

However, a foreign jurisdiction's laws may not be used to interpret a
contractual provision "in a manner repugnant to the public policy of
Delaware." J.S. Alberici Constr. Co., 750 A.2d at 520. "One such policy is
disfavoring forfeiture of insurance coverage when the insurer does not show
prejudice resulting from the insured’s actions or omissions." Annestella v.


In the absence of a valid choice of law provision, and in the presence of a real conflict, Delaware courts use the "most significant relationship test" when conducting a contract choice of law analysis. Travelers Indem. Co. v. Lake, 594 A.2d 38, 41 (Del. 1991). The Restatement (Second) Conflict of Laws Section 6(2) provides that the following seven factors are relevant in conducting a choice of law inquiry:

(a) the needs of the interstate and international systems,

(b) the relevant policies of the forum,

(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

(d) the protection of justified expectations,

(e) the basic policies underlying the particular field of law,

(f) certainty, predictability and uniformity of result, and
(g) ease in the determination and application of the law to be applied.

Restatement (Second) of Conflict of Laws §§ 6, 188.

Section 188 directs the Court, in evaluating those principles, to pay particular attention to (a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location and subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties. Restatement (Second) of Conflict of Laws § 188(2). Obviously, these factors do not provide a precise rule for choice of law. "All that can presently be done in these areas [such as contracts] is to state a general principle, such as application of the local law 'of the state of most significant relationship', which provides some clue to the correct approach but does not furnish precise answers. In these areas, the Court must look in each case to the underlying facts themselves . . . ." Restatement (Second) of Conflict of Laws § 6, cmt. C.


In considering these factors, the Court is not permitted to simply add up the interests on both sides of the equation and apply the law with the most contacts. Monsanto Co. v. Aetna Cas. & Surety Co., 1991 WL 236936, at *2 (Del. Super. Ct. October 29, 1991). The outcome of every choice of law analysis turns on the specific facts of each case. Id.


The validity of a contract of fire, surety or casualty insurance and the rights created thereby are determined by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy, unless with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the transaction and the parties, in which event the local law of the other state will be applied. Thus under § 193 the law of the site must be applied unless some other state has a more significant relationship to the insurance contract and the parties thereto.

At least one Delaware court has chosen to apply the law of a single state to all issues in a case, notwithstanding arguments that different laws should apply to different issues as a result of the Sec. 188 - 193 analysis. Hoechst Celanese Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa., 1994 WL 721651 (Del. Super. Ct. Mar. 28, 1994).

The Restatement also provides that, in the case of insurance contracts, a court should generally apply "the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy." Restatement (Second) of Conflict of Laws § 193. Where "a company obtains insurance for risks and operations in a variety of jurisdictions," courts also apply the general choice-of-law considerations
enumerated in Section 188. Viking Pump, 2 A.3d at 87 and n.23; Liggett Grp. Inc. v. Affiliated FM Ins. Co., 788 A.2d 134, 137-38 (Del. Super. Ct. 2001); see Restatement (Second) of Conflict of Laws § 188. In applying these general rules, “Delaware courts have placed great weight on where an insured has its headquarters as the situs which links all the parties together.” Viking Pump, 2 A.3d at 87; accord Liggett Grp., 788 A.2d at 138.

IV. DUTIES IMPOSED BY STATE LAW

A. Duty to Defend

Delaware’s Supreme Court has outlined three principles for determining whether an insurer has a duty to defend an insured:

1. where there is some doubt as to whether the complaint against the insured alleges a risk insured against, that doubt should be resolved in favor of the insured;
2. any ambiguity in the pleadings should be resolved against the carrier; and
3. if even one count or theory alleged in the complaint lies within the policy coverage, the duty to defend arises.


“[A]n insurer is obliged to provide a defense for an insured only when the underlying complaint reveals that the third party's action against the insured states a claim covered by the policy, thereby triggering the duty to defend.” Evraz Claymont Steel, Inc. v. Harleysville Mut. Ins. Co., 2011 WL 6000780, at *3 (Del. Super. Ct. Nov. 30, 2011) (citing O'Brien v. Progressive N. Ins. Co., 785 A.2d 281, 288 (Del. 2001)). An insurer’s duty to defend “is limited to suits which assert claims for which it has assumed liability under the policy.” Home Ins. Co. v. Am. Ins. Co., 2003 WL 22683008, at *2 (Del. Super. Ct. Oct. 30, 2003). Generally, the court will review only two documents in its determination of an insurer’s duty to defend: the insurance policy and the complaint. Blue Hen Mech., Inc. v. Atl. States Ins. Co., 2011 WL 1598575, at *2 (Del. Super. Ct. Apr. 21, 2011). The determination on the duty to defend typically is made by looking only at the allegations in the complaint against the insured and comparing these allegations with the text of the insurance policy. Am. Ins. Grp. v. Risk Enter. Mgmt., Ltd., 761 A.2d 826, 829 (Del. 2000). The rationale behind this principle is that a determination on the duty to defend should be made at the outset of the litigation, so as to provide a defense to the insured and to permit the insurer to control the defense strategy. Id. at 829.

If the insurer does not demand a defense until after completion of discovery, however, the fully developed record must be examined to determine
whether the insurer has a duty to defend. See id. (demand for defense made after the completion of discovery, nearly 3 years after underlying tort claim was filed).

The Delaware Supreme Court has yet to determine whether mere notice of the underlying claims triggers the insurer’s duty to defend or whether the insured must actually make a demand for a defense. Id. at 830.

V. EXTRACONTRACTUAL CLAIMS AGAINST INSURERS: ELEMENTS AND REMEDIES

A. Bad Faith

1. First Party


“Where an insurer fails to investigate or process a claim or delays payment in bad faith, it is in breach of the implied duty of good faith and fair dealing underlying all contractual obligations.” Tackett v. State Farm Mutual Ins. Co., 653 A.2d 254, 264 (Del. 1995). To establish a bad-faith claim, the insured must show that “the insurer lacked reasonable justification in delaying or refusing payment.” Id. at 262. This means that, at the time the insurer denied coverage, “there [cannot have] existed a set of facts or circumstances known to the insurer which created a bona fide dispute and therefore a meritorious defense to the insurer’s liability.” Watson v. Metro. Prop. & Cas. Ins. Co., 2003 WL 2290906, at *6 (Del. Super. Oct. 2, 2003) (quoting Casson v. Nationwide Ins. Co., 455 A.2d 361, 369 (Del. 1982)). “Mere delay [in processing a claim] is not [necessarily] evidence of bad faith,” but “[d]elays attributed to a ‘get tough’ policy . . . may subject the insurer to [such] a [] claim.” Tackett, 653 A.2d at 266. If the delay or denial is willful or malicious, punitive damages may be awarded. Id. In such situations, however, there must be “an element of malice with a ‘reckless indifference’” to the plight of the insured. Id. (citing Jardel v. Hughes, 523 A.2d 518, 529 (Del. 1987)).

Furthermore, “bad faith” need not be pled with particularity like fraud, because “a bad faith claim hinges on a party’s state of mind,” a fact that may be pled generally. Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P., 624 A.2d 1199, 1208 (Del. 1993) (breach of limited partnership agreement). Because bad faith is an issue of fact, a well-pleaded claim of bad faith generally cannot be resolved on the pleadings or without granting first an adequate opportunity for discovery. Desert Equities, 624 A.2d at 1208-09.

Under Delaware law, an implied covenant of good faith and fair dealing claim does not sound in tort; it is contractual. ASB Allegiance Real Estate Fund v. Scion Breckenridge Managing Member, LLC, 50 A.3d 434, 439 (Del. Ch. 2012) (citing Wood v. Baum, 953 A.2d 136, 143 (Del. 2008) (“The implied covenant of good faith and fair dealing is a creature of contract ....”)).
A court confronting a claim for breach of implied covenant of good faith and fair dealing asks whether it is clear from what was expressly agreed upon that the parties who negotiated the express terms of the contract would have agreed to proscribe the act later complained of as a breach of the implied covenant, had they thought to negotiate with respect to that matter. Id. at 440 (citing Katz v. Oak Indus., Inc., 508 A.2d 873, 880 (Del. Ch. 1986)). A claim for breach of implied covenant of good faith and fair dealing is not based on a "free-floating duty unattached to the underlying legal documents." ASB Allegiance Real Estate Fund v. Scion Breckenridge Managing Member, LLC, 50 A.3d 434, 440 (Del. Ch. 2012) (citing Dunlap, at 441 (Del. 2005)), rev'd on other grounds, 68 A.3d 665 (Del. 2013); see also NAMA Holdings, LLC v. Related WMC LLC, 2014 WL 6436647, at *17 (Del. Ch. Nov. 17, 2014) ("[T]he implied covenant does not establish a free-floating requirement that a party act in some morally commendable sense." (citing Gerber v. Enter. Prods. Holdings, LLC, 67 A.3d 400, 418 (Del. 2013), overruled in part on other grounds by Winshall v. Viacom Int’l, Inc., 76 A.3d 808 (Del. 2013))). "It does not ask what duty the law should impose on the parties given their relationship at the time of the wrong, but rather what the parties would have agreed to themselves had they considered the issue in their original bargaining positions at the time of contracting." ASB Allegiance Real Estate Fund, 50 A.3d at 440 (citing Nemec v. Shrader, 991 A.2d 1120, 1127 (Del. 2010)). The implied covenant of good faith and fair dealing requires that a party to a contract "refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party from receiving the fruits’ [sic] of its bargain." Id. at 441 (quoting Dunlap, 878 A.2d at 442).

A contract may identify factors that a decision-maker can consider when exercising a discretionary right under the contract, and the contract may provide a contractual standard for evaluating that decision. Id. (citations omitted). Express contractual provisions always supersede implied covenant of good faith and fair dealing. Id. (citations omitted).

Determining what conduct of a party to a contract is arbitrary or unreasonable, for purposes of a claim for breach of implied covenant of good faith and fair dealing, depends on the parties' original contractual expectations, not a free-floating duty applied at the time of the wrong. Proving a breach of contract claim does not depend on the breaching party's mental state. Id. at 442 (citing NACCO Indus., Inc. v. Applica, Inc., 997 A.2d 1, 35 (Del. Ch. 2009)). Proof of a culpable mental state is not required for a claim of breach of implied covenant of good faith and fair dealing. Parties can agree to contract terms that require a particular mental state, and a court can imply a similar provision. Id. at 444.

The quasi-reformation of a contract by implying contract terms to ensure that parties' reasonable expectations are fulfilled should be a rare and fact-intensive exercise, governed solely by issues of compelling
fairness; a party may invoke the protections of implied covenant of good faith and fair dealing only when it is clear from the writing that the contracting parties would have agreed to proscribe the act later complained of had they thought to negotiate with respect to that matter. See, e.g., Wal-Mart Stores, Inc. v. AIG Life Ins. Co., 901 A.2d 106, 116 (Del. 2006) (finding policyholder that had purchased corporate-owned life insurance (COLI) policies for tax benefits failed to state claim against life insurers, their representatives, and brokers for breach of contract or covenant of good faith and fair dealing where the policyholder failed to identify any express contract provision that was breached or any implied contract term that it would have the trial court read into the contract).

2. Third-Party


Under certain circumstances, however, a third party “may recover on a contract made for his benefit.” Bank of Delmarva v. So. Shore Ventures, LLC, 2014 WL 5390389, at *3 n.26 (Del. Super. Ct. Oct. 21, 2014) (quotations omitted). “To create third party beneficiary rights, a contract should confer an intended benefit on the third party, and the conferral of such benefit must be a material part of the contract's purpose.” Greater New York Mut. Ins. Co. v. Travelers Ins. Co., 2011 WL 4501207, at *3 (D. Del. Sept. 28, 2011) (citing Global Energy Fin. LLC v. Peabody Energy Corp., 2010 WL 4056164, at * 25 (Del. Super. Ct. Oct. 14, 2010)). If the injured third party is merely an indirect beneficiary, not an intended beneficiary, then the third party may not enforce the contract. Delmar News, Inc. v. Jacobs Oil Co., 584 A.2d 531, 534 (Del. 1990) (holding that a property owner failed to show that it was an intended third-party beneficiary to an insurance contract between an oil company that caused a spill on the property and its insurer); Willis v. City of Rehoboth Beach, 2004 WL 2419143, at *1-4 (Del. Super. Oct. 14, 2004) (holding that without language in the policy indicating that a third party was an intended beneficiary, the injured parties were merely incidental beneficiaries and could not sue the liability insurer until a judgment has been obtained against the insured). An incidental third-party beneficiary, then, must first obtain a judgment against the insured before bringing a claim against the insurer. See Willis, 2004 WL 2419143, at *1 ("If, however, the injured party is neither a named insured nor a third-party beneficiary, she may not recover from the liability insurer unless there has been an assignment or there has been a judgment against the insured, such that the party has become a judgment creditor.” (citing O/E Systems, Inc v. InaCom Corp., 179 F.Supp.2d 363, 367 (D. Del. 2002))). For “a non-party [to a contract] to be a third-party beneficiary, the contracting parties must intend that the non-party receive a benefit sufficient to entitle that party


Recently, the Delaware Superior Court denied an insurer’s Motion for Summary Judgment, and allowed a plaintiff to pursue a bad faith claim against a tortfeasor’s insurer based upon the insurer’s failure to interplead its policy limits. See Gruwell v. Allstate Ins. Co., 988 A.2d 945 (Del. Super. Ct. 2009) (adopting legal analysis of the Third Circuit’s interpretation of Delaware law set forth in McNally v. Nationwide Co., 815 F. 2d 254 (3d Cir. 1987)).

3. **Damages**


An insured generally cannot recover damages for emotional distress if it prevails on a bad faith claim unless the insured suffered accompanying physical injury. Tackett, 653 A.2d at 265; but see Cummings v. Pinder, 574 A.2d 843, 845 (Del. 1990) (affirming award of damages for emotional distress because there was intentional infliction of emotional distress within the context of an attorney-client relationship, which was found to be “outrageous” (citing RESTATEMENT (SECOND) OF TORTS § 46(1) (1965))).

**B. Fraud**

“A common law fraud claim needs to allege five elements: (1) the existence of a false representation, usually one of fact, made by the defendant; (2) the defendant had knowledge or belief that the representation was false, or made the representation with requisite indifference to the truth; (3) the defendant had the intent to induce the plaintiff to act or refrain from acting; (4) the plaintiff acted or did not act in justifiable reliance on the representation; and (5) the plaintiff suffered damages as a result of such reliance.” Northpointe Holdings, Inc. v. Nationwide Emerging Managers, LLC, 2010 WL 3707677, at *7 (Del. Super. Ct. Sept. 14, 2010) (citing H-M Wexford LLC v. Encorp, Inc., 832 A.2d 129, 144 (Del. Ch. 2003)).

“[An] equitable fraud claim under Delaware law requires the plaintiff
to prove: (1) a false representation, usually one of fact, made by the
defendant; (2) an intent to induce the plaintiff to act or to refrain from
acting; (3) the plaintiff's action or inaction taken in justifiable reliance
upon the representation; and (4) damage to the plaintiff as a result of such
Supp. 2d 433, 446 (D. Del. 2010) (citing Zirn v. VLI Corp., 681 A.2d 1050,
1060-61 (Del. 1996)). Equitable fraud does not require that “the defendant
have known or believed its statement to be false or to have made the
statement in reckless disregard of the truth.” Id. (citing Stephenson v
Capano Dev., Inc., 462 A.2d 1069, 1074 (Del. 1983)).

A consumer may bring a private cause of action under Delaware’s
Consumer Fraud Act to recover for losses suffered as a result of fraud or

Moreover, Delaware’s Insurance Fraud Prevention Act prohibits
fraudulent activities and provides penalties for punishing those who commit
them. See 18 Del. C. § 2401 et seq. Section 2407 defines “insurance
fraud”, and provides as follows:

(a) It shall be a fraudulent insurance act for a person to
knowingly, by act or omission, with intent to injure, defraud or
deceive:

(1) Present, cause to be presented, prepare, assist,
abet, solicit or conspire with another to prepare or make
any oral or written statement with knowledge or belief that
it will be presented to an insurer in connection with, or
in support of, any application for the issuance of an
insurance policy, containing false, incomplete or
misleading information concerning any fact material to the
application for issuance of an insurance policy;

(2) Prepare, present or cause to be presented to any
insurer, any oral or written statement including computer-
generated documents as part of, or in support of, a claim
for payment or other benefit pursuant to an insurance
policy, containing false, incomplete or misleading
information concerning any fact material to such claims;

(3) Assist, abet, solicit or conspire with another to
prepare or present any oral or written statement, including
computer-generated documents, that is intended to be
presented to any insurer in connection with, or in support
of, any claim for payment or other benefit pursuant to an
insurance policy, which contains false, incomplete or
misleading information concerning any fact material to the
claim; or

(4) Prepare, present or cause to be presented to any
insurer or other person, or demand or require the issuance
of, a certificate of insurance that contains any false or
misleading information concerning the policy of insurance
to which the certificate makes reference, or assist, abet,
solicit or conspire with another to do any of the acts
described in this sentence. As used in this section,
"certificate of insurance" means a document or instrument, regardless of how titled or described, that is, or purports to be, prepared or issued by an insurer or insurance producer as evidence of property or casualty insurance coverage. The term does not include a policy of insurance, insurance binder, policy endorsement, or automobile insurance identification or information card.

(b) It shall be a fraudulent insurance act for a practitioner to knowingly and willfully assist, conspire with, or urge any person to violate any of the provisions of this chapter, or for any person who due to such assistance, conspiracy or urging by said practitioner, knowingly and willfully benefits from the proceeds derived from the use of the fraud.

(c) It shall be a fraudulent insurance act for any insurer or any person acting on behalf of such insurer to knowingly, by act or omission, with intent to injure, defraud or deceive:

(1) Present or cause to be presented to an insurance claimant false, incomplete or misleading information regarding the nature, extent and terms of insurance coverage which may or might be available to such claimant under any policy of insurance, whether first or third party.

(2) Present or cause to be presented to any insurance claimant false, incomplete or misleading information regarding or affecting in any fashion the extent of any claimant's right to benefit under, or to make a claim against, any policy of insurance whether first or third party.

Upon a showing of a preponderance of the evidence that one of these provisions was violated, the Delaware Insurance Commissioner may impose a penalty of up to $10,000. 18 Del. C. § 2411(b).

Section 2411 was recently amended to provide a sizable reward to be paid “to an individual who reports to the Insurance Department an incident of insurance fraud which results in either an admission or finding of fraud.” 18 Del. C. § 2411(f). The Delaware Insurance Commissioner is authorized to order restitution to an insurer or self-insured who paid a fraudulent claim. 18 Del. C. § 2411(e).

C. Intentional or Negligent Infliction of Emotional Distress (“IIED” or NIED”)

conduct was so outrageous in character, and so extreme in degree, as to go
beyond all possible bounds of decency, and to be regarded as atrocious, and
utterly intolerable in a civilized community.’” Adams v. Selhorst, 779 F.
Supp. 2d 378, 396 (D. Del. 2011) (citing O’Leary v. Telecom Res. Serv., LLC,
embarrassment, anxiety or hurt feelings do not constitute extreme emotional
TORTS § 46 (1965) cmt. j.); McKnight v. Voshell, 513 A.2d 1319, 1986 WL
17360, at *3 (Del. Aug. 6, 1986) (TABLE). So long as the conduct is viewed as
“outrageous,” however, the injured party may recover damages, even if there
is no accompanying bodily harm. Id. (citing Cummings v. Pinder, 574 A.2d
843, 845 (Del. 1990)). But, expert testimony is required to prove that a
defendant’s actions proximately caused harm to a plaintiff. Doe v. Wildey,
claim, i.e., where the conduct is aimed at someone other than the plaintiff,
Delaware courts have required that the third party be a family member or
relative who was present at the time of the alleged conduct, and that if the
person is not a family member, the additional element that such distress
caused by the conduct must result in bodily harm. Cooper, 2009 WL 3022129,
at *5 (citing RESTATEMENT SECOND OF TORTS § 46(2)).

The question of whether one’s conduct was sufficiently extreme and
outrageous so as to result in liability is usually a fact question for the

NIED contains similar elements but only requires that the defendant
acted negligently. Recovery is generally available only if the defendant was
“in the zone of danger” and if the emotional distress caused resulting
physical injury. See Armstrong v. A.I. Dupont Hosp. for Children, 60 A.3d
elements for an NIED claim)); Knight v. Carmike Cinemas, 2011 WL 3665379,
at *12 (D. Del. Aug. 22, 2011); see also Pritchett v. Delmarva Builders, Inc.,
R.R. Co., 210 A.2d 709, 714-715 (Del. 1965) (“Where negligence proximately
caused fright, in one within the immediate area of physical danger from that
negligence, which in turn produced physical consequences . . . the injury
party is entitled to recover . . . .”)); Bostic v. Smyrna Sch. Dist., 2003
courts have defined “zone of danger” as “that area where the negligent
conduct causes the victim to fear for his or her own safety.” See Fanean v.
Rite Aid Corp. of Del., Inc., 984 A.2d 812 (Del. Super. Ct. 2009) (citing Doe
courts have held that it is an issue of fact as to whether persistent
“sleeplessness, headaches, crying spells, rage, nervousness, guilt, eating
disorders and depression” collectively amount to the requisite physical

The exclusivity provisions of Delaware’s Worker’s Compensation Statute
bar work-related claims for intentional infliction of emotional distress.
See Owens v. Connections Cmty. Support Programs, Inc., 840 F. Supp. 2d 791,
799 (D. Del. 2012); 19 Del. C. §2304.

“In a breach of contract action, damages for emotional distress are not
available without accompanying physical injury or actual intentional
infliction of emotional distress.” O’Leary v. Telecom Res. Serv., LLC, 2011

D. State Consumer Protection Laws, Rules and Regulations


As previously discussed above, see Section I supra, insurers’ conduct is regulated by statute, 18 Del. C. § 2301 et seq. (“Unfair Practices in the Insurance Business”) known as Delaware’s “Unfair Trade Practices Act” (“UTPA”). 18 Del. C. § 2304(16) defines the following as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Del. C. § 2308 provides for a cease and desist and penalty order to be issued, after hearing, against a person found to be engaging in an unfair or deceptive act or practice. The penalties for such a violation, subject to the Insurance Commissioner’s discretion, may range from $1,000 for each act in violation of the UTPA, not to exceed $100,000 in the aggregate. 18 Del. C. § 2308(a)(1). If the person knew or should have known of the violation, the penalties may increase to $10,000 for each act and $150,000 in the aggregate for each 6-month period, and may also include suspension or revocation of the violator’s license. 18 Del. C. § 2308(a)(1), (a)(2).

2. Private Causes of Action


"Under the [UTPA], only the Insurance Commissioner has authority to examine and investigate alleged bad faith acts and file claims against any such person [who] has been engag[ed] . . . in any unfair or deceptive act or practice, whether or not defined in [the Act].” Davidson v. Travelers Home and Marine Ins. Co., 2011 WL 7063521, at *2 (Del. Super. Ct. Dec. 30, 2011)

E. State Class Actions

Delaware’s two Constitutional trial courts, the Delaware Court of Chancery (equity) and the Delaware Superior Court (law), have adopted a Rule 23 that is modeled on Federal Rule of Civil Procedure 23. See, e.g., Prezant v. DeAngelis, 636 A.2d 915, 920 (Del. 1994). Cases interpreting the federal rule are given weight in interpreting Delaware’s versions of Rule 23. See generally id. at 920-21.

VI. DISCOVERY ISSUES IN ACTIONS AGAINST INSURERS

A. Discoverability of Claims Files Generally


There is no per se waiver of the attorney-client privilege in bad faith cases. Tackett, 653 A.2d at 260. Many documents contained in an insurer’s claim file are privileged, however, absent a compelling need for information; the mere filing of a bad faith claim does not require that an insurer must produce these privileged documents. Williams Union Boiler v. Travelers Indem. Co., 2003 WL 22853534, at *1 (Del. Super. Ct. July 31, 2003) (denying Motion to Compel coverage opinion letter; denying deposition of coverage counsel). But if the insurer “makes factual assertions in defense of a claim which incorporate, expressly or implicitly, the advice and judgment of its counsel,” i.e., a defense that the insurer handled the insured’s claim in the normal, routine manner, then the insurer effectively waives the privilege as to documents in the claim file. See Tackett, 653 A.2d at 259-260 (finding implicit waiver, assuming the insured has no alternative means of obtaining the information, and had a “compelling” need for mental impressions that were directed toward a “pivotal issue”). Nonetheless, subsequent decisions have re-emphasized the importance of the privilege and have reiterated that the

A similar but slightly different test (the “substantial need” test) determines whether the attorney work product doctrine has been waived. Tackett, 653 A.2d at 261-63 (citing Del. Super. Ct. Civil Rule 26(b)(3)). Courts are extremely reluctant to order production of “opinion work product,” as opposed to “fact work product,” as one court recently noted that Delaware courts have only done so on two occasions. See Saito v. McKesson HBOC, Inc., 2002 WL 31657622, at *11 n.63 (Del. Ch. Nov. 13, 2002) (“Delaware law protects opinion work product in all but the most compelling circumstances where those mental impressions are critical to the pivotal issue in the litigation and no other means of proving that issue exists.”)

B. Discoverability of Reserves


C. Discoverability of Existence of Reinsurance and Communications with Reinsurers

D. Attorney/Client Communications

When an insurer hires legal counsel to defend its insured, neither the insurer nor the insured can invoke the attorney-client privilege against the other because they are considered joint clients with a common interest. See Hoechst Celanese Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa., 623 A.2d 1118, 1123-24 (Del. Super. Ct. 1992) (citing Delaware Uniform Rule of Evidence 502(d)(5), now at 502(d)(6)); see also Tenneco Auto. v. El Paso Corp., 2001 WL 1456487, at *2-3 (Del. Ch. Nov. 7, 2001) (communications between two entities that previously had common interest could not be withheld from each other based on privilege; however, because one entity’s insurer joined its insured in seeking production from the other entity, the other entity could claim privilege as to both of them).

VII. DEFENSES IN ACTIONS AGAINST INSURERS

A. Misrepresentations/Omissions: During Underwriting or During Claim

Under 18 Del. C. § 2711, if an insured made a misrepresentation when filling out an application for insurance, this may prevent recovery under a policy if (1) the misrepresentation was fraudulent, (2) was material to the acceptance of the risk or hazard assumed, or (3) if the insurer in good faith would not have issued the policy, or would not have issued it at the same rate or for the same amount of coverage if the true facts had been disclosed.

B. Failure to Comply with Conditions


based on the facts and language of the contract. Id. (citing Woodward v. Farm Family Cas. Ins. Co., 796 A.2d 638, 642 (Del. 2002)).

However, an insurer cannot argue that an insured failed to satisfy a condition precedent if the insurer is largely responsible for the insured’s omission. See Casson, 455 A.2d at 365-66.

The Delaware Supreme Court recently held that the “minor deviation” rule controls whether a motor vehicle’s use falls outside of an insurance policy’s omnibus provision relating to coverage. Hudson v. Old Guard Ins. Co., 3 A.3d 246, 331 (Del. 2010).

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


D. Statutes of Limitation


A UM/UIM claim is subject to a 3-year limitation period applicable to contract claims, rather than the 2-year statute applicable to tort claims. See Allstate Ins. Co. v. Spinelli, 443 A.2d 1286, 1289-1290 (Del. 1982) (“[A] suit for recovery of uninsured motorist benefits is more nearly akin to a contract claim than a tort action and, hence, should be controlled by [Delaware’s] contract, rather than . . . tort statute of limitations”). “[T]he statute of limitations is triggered by the alleged breach of contract, not the underlying injury.” Wilhelm v. Nationwide Gen. Ins. Co., 2011 WL 4448061, at *3 (Del. Super. Ct. May 11, 2011). On a UM claim, the statute of limitations begins to run when the insurer denies payment. Id. (citing

Insurance policy provisions that shorten the statute of limitations and alter when the claim “accrues” for limitations purposes are generally enforceable. Woodward v. Farm Family Cas. Ins. Co., 796 A.2d 638, 642-43 (Del. 2002); Closser v. Penn Mut. Fire Ins. Co., 457 A.2d 1086, 1083-84 (Del. 1983); but see Parisi v. State Farm Mut. Auto. Ins. Co., 2012 WL 2161597 (Del. Super. Ct. June 13, 2012) (holding that a policy provision shortening the statute of limitation on UIM claims to 2 years was unenforceable as against public policy). By recent amendment in May 2008, however, an insurance contract may not require that a claim be filed less than one year from the denial of a claim by an insurer. 10 Del. C. § 8106(b)(1).

Insurers who receive a claim pursuant to a casualty insurance policy must promptly notify “the claimant” as to the applicable statute of limitations. 18 Del. C. § 3914; but see LaFayette v. Christian, 2012 WL 3608690, at *3 (Del. Super. Ct. Aug. 21, 2012) (holding that 18 Del. C. § 3914 “does not apply to out-of-state insurers issuing any policy covering a non-Delaware resident, non-Delaware property, or activities to be performed outside of Delaware”); Ndieng v. Woodward, 2012 WL 6915205, at *2 (Del. Super. Ct. Dec. 19, 2012) (finding Section 3914 inapplicable to out-of-state, insured residents). “[A] plaintiff is not required to submit a formal claim to the defendant so long as his actions, as well as the actions of the defendant and the defendant’s insurer, taken together, collectively demonstrate that the insurance company was aware that at least a provisional claim was pending.” Adams v. Griffin, 2014 WL 7009530, at *2 (Del. Super. Ct. Nov. 26, 2014) (holding that a finding that defendant’s insurer did not have notice of claim where it received documents including requests for reimbursement of medical PIP benefits “would fail to give due regard to the broad construction to be accorded to the statute”). “Claimant” does not refer solely to an insured, but includes third-party claimants as well. Stop & Shop Cos., Inc. v. Gonzales, 619 A.2d 896, 899 (Del. 1993); see also Montgomery v. William More Agency, 2015 WL 1056326, at *4 (Del. Super. Ct. Feb. 27, 2015) (“The statutory notice requirement . . . is not restricted to those in a contractual relationship with the insurer.”) (citation omitted). If an insurer fails to comply with § 3914, the insurer will be precluded from asserting a statute of limitations defense. See Bray v. Wal-Mart Stores, Inc., 2014 WL 1228909, at *2 (Del. Super. Ct. Mar. 24, 2014) (citing Lankford v. Richter, 570 A.2d 1148 (Del. 1990)); but see Woodward, 796 A.2d at 646-47 (finding § 3914 inapplicable to homeowner’s claims for property damage under a policy of property insurance).

VIII. TRIGGER AND ALLOCATION ISSUES FOR LONG-TAIL CLAIMS

A. Trigger of Coverage

To trigger the duty to defend under a CGL policy, the allegations in the underlying complaint must allege bodily injury or property damage occurred during the policy period. Tyson Foods, Inc. v. Allstate Ins. Co., 2011 WL 3926195, at *7 (Del. Super. Ct. Aug. 31, 2011) (citing Monsanto Co. C.E. Health Comp. & Liab. Ins. Co., 652 A.2d 30, 34-35 (Del. 1994)). Whether coverage is “triggered” at the time the injury is sustained or when a claim is made to the insurer largely depends on the specific language of the policy. See generally Homsey Architects, Inc. v. Harry David Zutz Ins.,

B. Allocation Among Insurers


IX. CONTRIBUTION ACTIONS

A. Statutory Contribution
Under Delaware’s Uniform Contribution Among Tortfeasors Law ("DUCATL"), 10 Del. C. §§ 6301-6308, a joint tortfeasor may bring an action for contribution against another joint tortfeasor in certain circumstances. Under DUCATL, “joint tortfeasors” means two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them. 10 Del. C. § 6301. Notably, Delaware courts have held that an insurer may both maintain an action for contribution or be sued in an action for contribution under DUCATL. See PMA Ins. Co. v. Reddy, 2010 WL 369342 (Del. Super. Ct. Jan. 26, 2010) (allowing subrogee insurer to maintain action for contribution against joint tortfeasor); Evans v. Stuard, 1989 WL 167406, at *4 (Del. Super. Ct. Oct. 6, 1989) (allowing joint tortfeasor to assert claim for contribution against plaintiff’s uninsured motorist carrier for the torts of an unknown tortfeasor).

10 Del. C. § 6302 provides the contours of the right of contribution:

(a) The right of contribution exists among joint tortfeasors.

(b) A joint tortfeasor is not entitled to a money judgment for contribution until he or she has by payment discharged the common liability or has paid more than his or her pro rata share thereof.

(c) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

(d) When there is such a disproportion of fault among joint tortfeasors as to render inequitable an equal distribution among them of the common liability by contribution, the relative degrees of fault of the joint tortfeasors shall be considered in determining their pro rata shares.

Additionally, the recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasors. 10 Del. C. § 6303. Moreover, 10 Del. C. § 6304 details the effect of the release of one joint tortfeasor:

(a) A release by the injured person of 1 joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasor unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

(b) A release by the injured person of 1 joint tortfeasor does not relieve the 1 joint tortfeasor from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person’s damages recoverable against all the other tortfeasors.
This provision of the statute has been interpreted to require a two-step calculation. “First, determine the amount under subsection (a) by totalling [sic] the amount paid by all released tortfeasors.” *Farrall v. A.C. & S. Co., Inc.*, 586 A.2d 662, 668 (Del. Super. Ct. 1990). Next, “determine the amount under subsection (b) by totalling [sic] the share (percentage) of all released tortfeasors as determined by the verdict and multiplying that percentage against the damage award to that plaintiff.” *Id.* “The greater of the above amounts is subtracted from the damage award to give the amount of the liability of the remaining tortfeasor defendants to that plaintiff.” *Id.*; see also *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d 205 (Del. Ch. 2014) (finding tortfeasor “entitled to a reduction in its liability equal to the greater of (i) the share of responsibility attributable to the join tortfeasors or (ii) the settlement payments made by the joint tortfeasors”). In short, “the released tortfeasors stand as a class whose collective payments or share determine the amount by which the award to plaintiff against the non-settling tortfeasors is reduced as a single reduction.” *Farrall* at 668.

**B. Equitable Contribution**

“An equitable right of contribution arises when one of several obligors liable on a common debt discharges all, or greater than its share, of the joint obligation for the benefit of all the obligors. *Levy v. HLI Operating Co.*, 924 A.2d 210, 220 (Del. Ch. 2007). “In the insurance context . . . contribution exists only among the insurers, and only absent a contractual understanding between the insurers as to how liability on the common debt is to be divided.” *Id.* Accordingly, “the right of contribution has no place between insurer and insured, which have contracted with each other,” and, in contrast to the rights of subrogation and indemnitee, “contribution will not relieve an obligor from the entire burden of a loss, but only from its equitable share.” *Id.*

“To succeed on an equitable contribution claim, a party must show concurrent obligations existed to the same entities, and that the obligors essentially insured the same interests and the same risks.” *Id.* (citing *Home Ins. Co. v. Cincinnati Ins. Co.*, 821 N.E.2d 269, 276 (Ill. 2004) (noting that equitable contribution “applies to multiple, concurrent insurance situations and is only available where the concurrent policies insure the same entities, the same interests, and the same risks”)).

**X. DUTY TO SETTLE**

The Delaware Insurance Code imposes on insurers a duty to make good faith attempts to effectuate “prompt, fair and equitable settlements of claims in which liability has become reasonably clear.” 18 Del. C. § 2304(16)(f). Specific examples of what this provision requires in practice are contained in the applicable regulations. *See* Delaware Regulation # 18 900 CDR 902.