I. REGULATORY LIMITS ON CLAIMS HANDLING

A. Timing for Responses and Determinations

Alabama Insurance Regulation Chapter 482-1-124-.04 sets forth the relevant time requirements for handling life, accident, and health insurance claims. Some of the highlights of the regulation are as follows:

- Applicable forms for proper filing of claim must be provided within 15 days of receipt of a notification of a claim.
- Claims processing must begin within 15 days from receipt of proof of loss.
- For life insurance claims, insurer must affirm or deny liability or inform claimant that claim is being processed within the time set forth in the policy, but no longer than 60 days from receipt of proof of loss.
- Undisputed claims shall be paid “within a reasonable time.”
- If a claim is partially disputed, those undisputed portions shall be paid within 60 days of the determination that such claims are undisputed.
- Notification of a continued investigation shall be provided to the insurer every 45 days.
- A reply shall be made within 20 days of any written communications from insured.
- Written notice of a denial shall be sent to claimant within 15 days of the decision to deny the claim and the reasons for such denial shall be included in the notice.


In addition to the above-mentioned requirements, the reimbursement of health claims is governed by Alabama Code § 27-1-17. Both in-state and out-of-state insurers are subject to these provisions to the extent they receive, process, adjudicate, pay, or deny claims for healthcare services submitted for persons residing in Alabama or who receive such services in Alabama. Ala. Code § 27-1-17(a) (1975). The Code requires insurers to pay for services rendered by Alabama healthcare providers within 45 calendar days.
from receipt of a “clean written claim” or 30 calendar days upon receipt of a “clean electronic claim.” Id. If the claim is denied or pending, the insurer must, within 45 calendar days for written claims and 30 calendar days for electronic claims, notify the healthcare provider or certificate holder of the reasons for denying or pending the claim, and what, if any, additional information is required to further process the claim. Id. The failure to comply with these time restraints can result in the payment of interest on the claim (at the rate of 1.5 percent per month prorated daily) to the healthcare provider. Id. Once the necessary information is received on the claim, the insurer must pay, deny, or otherwise adjudicate the claim within 21 calendar days from receipt of the information. Id.

B. Standards for Determinations and Settlements

The Alabama Department of Insurance has enacted “minimum standards” for the investigation and disposition of life, accident, and health claims arising under policies or certificates of insurance issued pursuant to State law (some of which are listed above). Ala. Admin. Code § 482-1-124-.02; Ala. Admin. Code § 482-1-124-.04. Compliance with Section 503 of the Employee Retirement Income Security Act of 1974 (“ERISA”), and any regulations issued thereunder, constitute compliance with these regulations. Ala. Admin. Code § 482-1-124-.02(2).

Minors, which are defined as a person under the age of 19, Ala. Code § 26-2A-20(11) (1975), lack the capacity to contract in Alabama. Minors are not liable on any of their contracts, except for necessaries. All other contracts of infants, whether executory or executed, may be avoided or ratified at the election of the minor. H & S Homes, LLC v. McDonald, 823 So. 2d 627, 630 (Ala. 2001). The same principle applies to settlement of insurance claims. Thus, when a settlement is agreed to by a minor and an insurer, a contract is formed that is binding upon the insurer but voidable at the minor’s election. Nationwide Mut. Ins. Co. v. Wood, 121 So. 3d 982, 985 (Ala. 2013). A minor is not bound by the settlement agreement until court approval is obtained, but the insurer is bound not to revoke or attempt to withdraw its offer prior to the hearing. Id. The courts have established standards by which a settlement with a minor can be binding and enforceable against the minor and bar all future related claims. This action is accomplished through a pro amicus settlement (i.e., a settlement approved by the court through a determination that the settlement is in the best interest of the minor). Compare Large v. Hayes, 534 So. 2d 1101 (Ala. 1988) with Abernathy v. Colbert City Hosp. Bd., 388 So. 2d 1207 (Ala. 1980) and Burlington N. R.R. Co. v. Warren, 574 So. 2d 758 (Ala. 1990). Alabama Rule of Civil Procedure 17 further requires the appointment of a guardian ad litem for a “minor defendant.” Ala. R. Civ. P. 17(c).

II. PRINCIPLES OF CONTRACT INTERPRETATION

Any ambiguities in an insurance contract must be construed liberally in favor of the insured. Nationwide Mut. Ins. Co. v. Thomas, 103 So. 3d 795, 803 (Ala. 2012). A corollary to this rule is that exceptions to coverage must be interpreted as narrowly as possible in order to provide maximum coverage to the insured. Id. However, courts are not at liberty to rewrite policies to provide coverage not intended by the parties. Id. (citing Newman v. St. Paul Fire & Marine Ins. Co., 456 So. 2d 40, 41 (Ala. 1984)). In the absence of statutory provisions to the contrary, insurance companies have the right to limit their liability and write policies with narrow coverage. Id. (citing United States Fid. & Guar. Co. v. Bonitz Insulation Co. of Ala., 424
If there is no ambiguity, courts must enforce insurance contracts as written and cannot defeat express provisions in a policy, including exclusions from coverage, by making a new contract for the parties. Id. (citing Turner v. United States Fid. & Guar. Co., 440 So. 2d 1026, 1028 (Ala. 1983)).

If an insurance policy is clear and unambiguous in its terms, then there is no question of interpretation and construction. Am. & Foreign Ins. Co. v. Tee Jays Mfg. Co., 699 So. 2d 1226, 1228 (Ala. 1997). If an insurance policy is unclear and ambiguous in its terms, but not void for uncertainty, then it must be interpreted and construed under well-settled rules of construction applicable to all contracts. Id. It is the province of the court, not the jury, after duly considering the whole of the policy, to determine if it is uncertain or ambiguous in its terms. Id. The fact that parties interpret the insurance policy differently does not make the insurance policy ambiguous. Tate v. Allstate Ins. Co., 692 So. 2d 822, 824 (Ala. 1997). While ambiguities or uncertainties in an insurance policy should be resolved against the insurer, ambiguities are not to be inserted by strained or twisted reasoning. Kelley v. Royal Globe Ins. Co., 349 So. 2d 561, 563 (Ala. 1977). Where the parties disagree on whether the language in an insurance contract is ambiguous, a court should construe language according to the meaning that a person of ordinary intelligence would reasonably give it. Western World Ins. Co. v. City of Tuscumbia, 612 So. 2d 1159, 1160 (Ala. 1992). The issue of whether a contract is ambiguous or unambiguous is a question of law for the court to decide. Phillips v. National Sec. Fire & Cas. Co., 59 So. 3d 711, 714 (Ala. 2010).

Where an insurance policy defines certain words or phrases, a court must defer to the definition provided by the policy. See St. Paul Fire & Marine Ins. Co. v. Edge Mem’l Hosp., 584 So. 2d 1316, 1322 (Ala. 1991). If certain words or phrases are not defined by the policy, courts must determine the meaning. An undefined word or phrase in an insurance policy does not create an inherent ambiguity. To the contrary, where questions arise as to the meaning of an undefined word or phrase, the court should simply give the undefined word or phrase the same meaning that a person of ordinary intelligence would give it. Id.; See also Carpet Installation & Supplies of Glenco v. Alfa Mut. Ins. Co., 628 So. 2d 560, 562-63 (Ala. 1993). The terms of an insurance policy should be given a rational and practical construction. Green v. Merrill, 308 So. 2d 702, 704 (Ala. 1975). A court must consider the policy as a whole and not consider the language in question in isolation. Phillips, 59 So. 3d at 714.

III. CHOICE OF LAW

Alabama law follows the traditional conflict-of-law principles of lex loci contractus and lex loci delicti. Lifestar Response of Ala., Inc. v. Admiral Ins. Co., 17 So. 3d 200, 213 (Ala. 2009) (citing Liberty Mut. Ins. Co. v. Wheelwright, 851 So. 2d 466 (Ala. 2002)). Under the principles of lex loci contractus, a contract is governed by the law of the jurisdiction within which the contract is made. Id. (citing Cherry, Bekaert & Holland v. Brown, 582 So. 2d 502 (Ala. 1991)). The substantive rights of the parties under the contract, including the issue of damages, are controlled by the law of the state where the contract is executed. Shelter Mut. Ins. Co. v. Barton, 822 So. 2d 1149, 1158 (Ala. 2001). Alabama has long recognized the right of parties to an agreement to choose the law of a particular state to govern the agreement (provided the other state’s law is not contrary to Alabama policy). Cherry, Bekaert & Holland v. Brown, 582 So. 2d 502 (Ala. 1991). Under the
principle of *lex loci delicti*, an Alabama court will determine the substantive rights of an injured party according to the law of the state where the injury occurred. *Lifestar Response of Ala., Inc.*, 17 So. 3d at 213 (citing *Fitts v. Minnesota Mining & Mfg. Co.*, 581 So. 2d 819 (Ala. 1991)).

IV. **EXTRACONTRACTUAL CLAIMS AGAINST INSURERS: ELEMENTS AND REMEDIES**

**A. Bad Faith**

The classic elements of a tort claim for bad faith failure to pay an insurance claim in Alabama are: 1) the existence of 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; 4) the insurer’s actual knowledge of the absence of any legitimate or arguable reason; and 5) if the intentional failure to determine the existence of a lawful basis is relied upon, the plaintiff must prove the insurer’s intentional failure to determine whether there is a legitimate or arguable reason to refuse to pay the claim. See, e.g., *State Farm & Cas. Co. v. Brechbill*, 144 So. 3d 248, 258 (Ala. 2013). In addition, the plaintiff must generally be entitled to a directed verdict on the breach-of-contract claim. *Ex parte Alfa Mut. Ins. Co.*, 799 So. 2d 957, 966 (Ala. 2001). Furthermore, a plaintiff must have a direct contractual relationship with the insurance company; the ability to recover under the policy is not enough to sustain a bad faith claim. *Bashir’s Inc. v. Sharif*, No. 2:09–CV–536–RDP, 2012 WL 3637582, *3 (N.D. Ala. April 22, 2012). Finally, a plaintiff must demonstrate that the insurer had an intent to injure the plaintiff. *Harrington v. Guaranty Nat’l Ins. Co.*, 628 So. 2d 323, 325–26 (Ala. 1993).

However, the Supreme Court of Alabama has expanded the tort of bad faith “failure to pay” by holding that a plaintiff may recover upon proof that the insurer “recklessly or intentionally failed to properly investigate a claim or to subject the results of its investigation to a cognitive evaluation.” *Employees’ Benefits Association v. Grissett*, 732 So. 2d 968, 976 (Ala. 1998). Moreover, such recklessness “may be inferred and imputed to an insurer when it has shown a reckless indifference to facts or proof submitted by the insured.” *Id.* See also *Alfa Mut. Fire Ins. Co. v. Thomas*, 738 So. 2d 815 (Ala. 1999). For a discussion of the tort of bad faith and the distinction between “normal” and “abnormal” cases, see *White v. State Farm Fire & Cas. Co.*, 953 So. 2d 340, 347–49 (Ala. 2006).

**B. Fraud**

*Alabama Code § 6-5-101* (1975) states that “[m]isrepresentations of a material fact made willfully to deceive, or recklessly without knowledge, and acted on by the opposite party, if made by mistake and innocently and acted upon the opposite party, constitute legal fraud.” *Ala. Code § 6-5-101* (1975). Generally speaking, the four elements of fraud are 1) a misrepresentation of a material fact; 2) made willfully to deceive or recklessly without knowledge; 3) which was reasonably relied on by the plaintiff under the circumstances; and 4) which caused damage to the plaintiff as a proximate consequence. See, e.g., *Liberty Nat. Life Ins. Co. v. Ingram*, 887 So. 2d 222, 227 (Ala. 2004). A fraud action accrues when a plaintiff has detrimentally relied on the fraud, i.e., when legally cognizable damage occurs. *Ex parte Haynes Downard Andra & Jones, LLP*, 924 So. 2d 687, 694 (Ala. 2005). A fraud action is viable only if the plaintiff’s damage is a proximate result of his reasonable reliance upon the defendant’s
misrepresentation. Bosarge Offshore, LLC v. Compass Bank, 943 So. 2d 782, 786 (Ala. 2006). Rule 9(b) of the Alabama Rules of Civil Procedure requires that “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” Ala. R. Civ. P. 9(b).

C. Intentional Infliction of Emotional Distress and/or Outrage

In order to maintain a claim for the tort of outrage or intentional infliction of emotional distress, a plaintiff in Alabama must demonstrate that 1) the defendant either intended to inflict emotional distress or knew or should have known that emotional distress was likely to result from its conduct; 2) the defendant’s conduct was extreme and outrageous; and 3) the defendant’s conduct caused emotional distress so severe that no reasonable person could be expected to endure it. See, e.g., Stabler v. City of Mobile, 844 So. 2d 555, 560 (Ala. 2002) (quoting Jackson v. Ala. Power Co., 630 So. 2d 439, 440 (Ala. 1993)). The conduct must go “beyond all possible bounds of decency” and “be regarded as atrocious and utterly intolerable in a civilized society.” Anderson v. Gentry, 577 So. 2d 1261, 1264 (Ala. 1991) (quoting Am. Road Serv. Co. v. Inmon, 394 So. 2d 361 (Ala. 1980)) (internal quotation marks omitted).

The tort of outrage is a very limited cause of action. Little v. Robinson, 72 So. 3d 1168, 1172 (Ala. 2011). Since the Alabama Supreme Court first recognized the tort of outrage in 1980, it has been recognized in regards to only three kinds of conduct: (1) wrongful conduct in the family-burial context, Whitt v. Hulsey, 519 So. 2d 901 (Ala. 1987); (2) barbaric methods employed to coerce an insurance settlement, Nat’l Sec. Fire & Cas. Co. v. Bowen, 447 So. 2d 133 (Ala. 1983); and (3) egregious sexual harassment, Busby v. Truswal Sys. Corp., 551 So. 2d 322 (Ala. 1991). This is not to say, however, that the tort of outrage is viable in only these three circumstances. Little, 72 So. 3d at 1172-73. In recent years, the Alabama Supreme Court affirmed a judgment on a tort-of-outrage claim asserted by a teenage boy’s mother to counsel the boy concerning his stress over his parents’ divorce, instead began exchanging addictive prescription drugs for homosexual sex for a number of years, resulting in the boy’s drug addiction. O’Rear v. B.H., 69 So. 3d 106 (Ala. 2011).

Alabama does not recognize a tort for negligent infliction of emotional distress. Taylor v. Alabama, 95 F. Supp. 2d 1297, 1318 (M.D. Ala. 2000), Gideon v. Norfolk S. Corp., 633 So. 2d 453, 453-54 (Ala. 1994). However, a physical injury is no longer a prerequisite to the recovery of damages for emotional distress in a negligence action. Woodley v. City of Jemison, 770 So. 2d 1093, 1097 (Ala. Civ. App. 1999). Rather than establish a new cause of action, the Alabama Supreme Court has adhered to the principle that negligently causing emotional distress is part and parcel of the traditional tort of negligence. Id.

D. State Consumer Protection Laws, Rules and Regulations

Title 27, Chapter 12 of the Alabama Code governs trade practices in the insurance context. Section 27-12-1 describes the purpose of trade practice laws:

(a) The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in the Insurance Regulation Act by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

 Ala. Code § 27-12-1(a) (1975). Section 27-12-2 generally prohibits unfair competition, etc., as follows:

No person shall engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

 Ala. Code § 27-12-2 (1975). Section 27-12-11 provides as follows:

(a) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity, or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such contract.

(b) No person shall make or permit any unfair discrimination between amount of premium, policy fees or rates charged for any policy or contract of disability insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract or in any other manner whatever.

 Ala. Code § 27-12-11 (1975). Section 27-12-21 addresses the Commissioner of Insurance’s authority relating to unfair trade practices, in pertinent part, as follows:

(a) Whenever the commissioner has reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition, or in any act or practice in the conduct of such business which is not defined in this trade practices law, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 10 days after the date of the service thereof . .

 Ala. Code § 27-12-21(a) (1975).
E. **State Class Actions**

Rule 23 of the Alabama Rules of Civil Procedure is similar to Rule 23 of the Federal Rules of Civil Procedure. In addition, class actions in Alabama are subject to Alabama Code § 6-5-640 et seq. In deciding whether the class is to be certified, a trial court must employ a rigorous analysis to determine whether each of the elements of Rule 23 has been satisfied. Ala. Code § 6-5-641(e) (1975). The trial court must prepare a written order addressing all such factors and specifying the evidence, or lack of evidence upon which the court has based its decision. Id. A trial court’s decision certifying or refusing to certify a class action is immediately appealable. Ala. Code § 6-5-642 (1975). The appeal must be filed within 42 days of the order certifying or refusing to certify the class.

F. **State Privacy Laws, Rules and Regulations**

1. **Criminal Sanctions**

Under Alabama law, criminal eavesdropping, a class A misdemeanor, is a criminal offense when a person “intentionally uses any devise to eavesdrop, whether or not he is present at the time.” Ala. Code § 13A-11-31 (1975).

Section 34-24-504 governs the confidentiality of patient medical records as follows:

Any licensee licensed under the provision of this article shall comply with all laws, rules, and regulations governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within this state are maintained.


Section 27-3A-2 outlines the purposes of the insurance statute which includes, in pertinent part, that “utilization review agents maintain the confidentiality of medical records in accordance with applicable laws.” Ala. Code § 27-3A-2(5) (1975). Section 34-26-2 governs confidentiality relations between licensed psychologists, licensed psychiatrists, or licensed psychological technicians and their clients. Ala. Code § 34-26-2 (1975). But see Marks v. Tenbrunsel, 910 So. 2d 1255 (Ala. 2005) (holding that the privilege granted by § 34-26-2 is impliedly repealed by the immunity provision of the child-abuse reporting statutes, found at § 26-14-9).

Under section 22-11A-2, the disclosure of information relating to reportable diseases is required. Ala. Code § 22-11A-2 (1975). The Alabama Supreme Court has stated that the statutory requirement that a physician disclose information regarding his or her HIV and AIDS patients, including names and addresses, was not an unconstitutional invasion of privacy because the State has a legitimate interest in the prevention of spreading HIV and AIDS, which was supported by the fact that the disclosure was limited to representatives of the state having responsibility for the health of the community. Middlebrooks v. State Bd. Of Health, 710 So. 2d 891, 893 (Ala. 1998).

Section 22-11A-69 governs confidentiality related to records, proceedings, deliberations, and documents in the investigation and review of
any infected health care worker. ALA. CODE § 22-11A-69 (1975). Section 22-11A-22 renders medical records of persons infected with sexually transmitted diseases as confidential and imposes a penalty for their unauthorized release. ALA. CODE § 22-11A-22 (1975). Section 22-21-30 addresses the disclosure of information as follows:

Information received by the State Board of Health through on site inspections by the State Licensing Agency is subject to public disclosure and may be disclosed upon written request. Information received through means other than inspection will be treated as confidential and shall not be directed publicly except in a proceeding involving the question of licensure or revocation of license.


2. The Standards for Compensatory and Punitive Damages

“An award of damages for mental anguish generally is not allowed in breach-of-contract actions in Alabama.” Bowers v. Wal-Mart Stores, Inc., 827 So. 2d 63, 68-69 (Ala. 2001) (citing Ruiz de Molina v. Merritt & Furman Ins. Agency, 207 F.3d 1351 (11th Cir. 2000)). While some exceptions to this rule have evolved through precedent, an express exception has not been recognized for the breach of an insurance contract; thus, mental anguish damages are generally not recoverable. See also Bashir's Inc. v. Sharif, No. 2:09-CV-536-RDP, 2012 WL 3637582, *4, n.3 (N.D. Ala. April 22, 2012). But see Independent Fire Ins. Co. v. Lunsford, 621 So. 2d 977, 979 (Ala. 1993) (permitting mental anguish damages when the insurance involved a mobile home) and Pate v. Rollison Logging Equip., Inc., 628 So. 2d 337, 345 (Ala. 1993) (reversing summary judgment for insurers on breach of contract and mental anguish claims in light of recent Lunsford holding and the “special nature of credit disability insurance”).

A plaintiff may, however, recover punitive damages for the bad faith failure to pay a claim under an insurance contract. See, e.g., Nationwide Mut. Ins. Co. v. Clay, 525 So. 2d 1339, 1344 (Ala. 1987) (affirming award of $1.25 million in punitive damages when disability insurer failed to pay $46,000 in benefits and holding that “punitive damages need not necessarily bear any particular relationship to compensatory damages.”). See also Intercontinental Life Ins. Co. v Lindblom, 598 So. 2d 886 (Ala. 1992). In order to sustain a claim for punitive damages, a plaintiff must prove at least “nominal damage and that the acts complained of were committed with malice, willfulness, or wanton and reckless disregard of the rights of others.” Gulf Atl. Life Ins. Co. v. Barnes, 405 So. 2d 916, 925 (Ala. 1981). See also ALA. CODE § 6-11-20 (1975) (providing definitions of “malice” and “wantonness” for punitive damages purposes).

Punitive damages are also capped by statute. See ALA. CODE § 6-11-21 (1975). In cases not involving physical injury or wrongful death, punitive damages are generally limited to three times the compensatory damages or $500,000, whichever is greater. ALA. CODE § 6-11-21(a). In civil actions for physical injury, punitive damages are limited to three times the compensatory damages or $1,500,000, whichever is greater. ALA. CODE § 6-11-21(d). Of course, punitive damages must be proportionate to the compensatory award, consistent with the standards set forth by the U.S. Supreme Court.
Compensatory damages cannot be apportioned in cases of multiple defendants and an indivisible injury, as contribution is not permitted among joint tortfeasors. See, e.g., Tatum v. Schering Corp., 523 So. 2d 1042, 1048 (Ala. 1988). The plaintiff may collect from any or all of the tortfeasors. Id. Alabama courts have also applied the rule of non-apportionment of punitive damages, under which damages are fixed regardless of the culpability of individual tortfeasors. See, e.g., CP & B Enter., Inc. v. Mellert, 762 So. 2d 356, 361 (Ala. 2000) (citing Robbins v. Forsburg, 257 So. 2d 353, 355 (1971)). C.f. Reserve Nat. Ins. Co. v. Crowell, 614 So. 2d 1005, 1009-10 (Ala. 1993) (noting the punitive damages cap does not represent apportionment of damages among joint tortfeasors but holding that the punitive damages cap can apply to one tort-feasor and not the other where one tort-feasor’s conduct excepts it from the statutory cap). However, a valid indemnification agreement will be upheld, despite the general rule that indemnification, like contribution, is not available. Humana Med. Corp. v. Bagby Elevator Co., 653 So. 2d 972, 974 (Ala. 1995). See also Holcim, Inc. v. Ohio Cas. Ins. Co., 38 So.3d 722, 726 (Ala. 2009) (discussing contribution and indemnity agreements).

3. Insurance Regulations to Watch

Alabama’s Insurance Code is contained at § 21-1-1, et seq. However, Alabama’s Insurance Regulations are not routinely available in hard copy; they are available online.¹ Two regulations that warrant careful attention are Chapters 482-1-131, entitled “Life Insurance Disclosure Regulation,” and 482-1-132, entitled “Advertisements of Life Insurance and Annuities Regulation,” each of which address a broad range of group and individual life insurance. The regulations address vocabulary, form, content, disclosure, and penalty provisions. Also of note is Chapter 482-1-124, which sets forth the minimum standards for the disposition of life, accident and health insurance claims.

In addition, Chapter 482-1-097-.04, entitled “NAIC Accounting Practices and Procedures and Insurer Reporting Requirements,” requires that all financial reports to the Department of Insurance be submitted on the NAIC forms and be prepared in accordance with NAIC practices and procedures except when in conflict with other Alabama laws or regulations.

4. State Arbitration and Mediation Procedures


In 1992, Alabama promulgated the Alabama Civil Court Mediation Rules, which provide for strictly voluntary mediation by agreement of the parties or by the court *sua sponte*. No record of the proceedings is made (Rule 12), parties can terminate the proceedings at any time by withdrawal (Rule 13), and they bear the costs equally (Rule 15). In 1996, the Alabama Legislature enacted the “mandatory” pre-trial mediation provisions of Alabama Code § 6-6-20, which makes mediation mandatory, either by agreement, upon motion of the parties, or by the court *sua sponte*. Ala. Code § 6-6-20(b) (1975). Parties are subjected to sanctions for failure to mediate if ordered. Ala. Code § 6-6-20(c). Mediation rules and practices can vary by local circuit.

5. **State Administrative Entity Rule-Making Authority**

Title 27 of the Code of Alabama governs insurance. Section 27-2-17 empowers the Commissioner of the Department of Insurance to make rules and regulations. Ala. Code § 27-2-17(a) (1975). Moreover, Section 27-2-19 allows the Commissioner to bring suit to enforce the provisions of Title 27. Ala. Code § 27-2-19 (1975). If the Commissioner determines that a provision of Title 27 has been violated which may result in a criminal prosecution, the Commissioner is directed to provide this information to the Attorney General to institute such action. Id.

Section 27-2-33 outlines the Commissioner’s authority as follows:

The Commissioner of Insurance is empowered to place an insurance company under supervision, after a hearing thereon, by appropriate order, for the following reasons:

1. When an insurance company has been notified under the provisions of Section 27-27-41 of impairment or deficiency of assets and given 60 days to make good the impairment;

2. A determination by the commissioner that an insurer is impaired or insolvent;

3. A determination by the commissioner that an insurer’s condition is such as to render the continuation of its business hazardous to its policyholders following an examination of the operations and financial condition of an insurer by the commissioner;


V. **DEFENSES IN ACTIONS AGAINST INSURERS**

A. **Misrepresentations/Omissions: During Underwriting or During Claim**

An insurer is statutorily entitled under Alabama Code § 27-14-7 to rescind an insurance policy due to “misrepresentations, omissions, concealment of facts and incorrect statements” in an application which is

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either (1) fraudulent, (2) material either to the acceptance of the risk or to the hazard assumed, or if (3) the insurer in good faith would either have not issued the policy, or would have issued the policy with different coverage or at a different rate if the true facts were known. See, e.g., Alfa Life Ins. Corp. v. Lewis, 910 So. 2d 757, 761 (Ala. 2005). Section 27-14-7 applies to renewal policies as well as original policies. Ex parte Quality Cas. Ins. Co., 962 So. 2d 242 (Ala. 2006). It is essential that an insurer relying upon this section must demonstrate that it was following established underwriting standards, rather than a subjective decision it made after the claim was filed. Loyal Am. Life Ins. Co. v. Mattiace, 679 So. 2d 229, 234 (Ala. 1996).

Alabama Code § 27-14-7 requires no particular mental state or intent and the insurer may rescind the policy even if the insured lacked any intent to deceive. Caribbean I Owners’ Ass’n, Inc. v. Great Am. Ins. Co., 600 F. Supp. 2d (S.D. Ala. 2009). See also Duren v. Nw. Nat’l Life Ins. Co., 581 So. 2d 810, 813 (Ala. 1991). However, if the policy language allows voidance only for an intentional misrepresentation, then the policy language controls, and the insurer loses the protection of the statute. Nationwide Mut. Fire Ins. Co. v. Guster Law Firm, LLC, 944 F. Supp. 2d 1116, 1127 (N.D. Ala. 2013). In addition, acceptance of premiums after the insurer learns of grounds for forfeiture or rescission may preclude such forfeiture or rescission. Henson v. Celtic Life Ins. Co., 621 So. 2d 1268, 1277 (Ala. 1993). Furthermore, this code section requires that for life insurance and annuity contracts, a rescission on the part of the insurer be accompanied by a payment into court of all premiums paid on the policy or contract. Ala. Code. § 27-14-7(b) (1975). Finally, the Alabama Supreme Court has found that contesting a policy on the basis of misrepresentations in an insurance application is an affirmative defense. This means the defense can be waived if not properly plead. Patterson v. Liberty Nat. Life Ins. Co., 903 So. 2d 769, 779 (Ala. 2004).

B. **Preexisting Illness or Disease Clauses**

Alabama uses the term “preexisting sickness” as well as “preexisting illness or disease.” The courts addressing a question of whether a condition is covered by the policy at issue must first examine the language of the policy itself, which is crucial in determining what is to be considered a preexisting illness or disease. In order to preclude coverage for a preexisting illness, the insurer must demonstrate that the illness fits within the definition in the policy at issue and that the insurer did not waive the exclusion for such illness. Peek v. Reserve Nat’l Ins. Co., 585 So. 2d 1303, 1306 (Ala. 1991) (examining definition; trial court erred in granting summary judgment because insurer did not provide sufficient evidence that condition predated contract and was thus excluded).

It is also worth noting that Alabama has held that when the plaintiff alleges fraud by the insurer concerning coverage, presumably including for preexisting illnesses, the mere payment of unnecessary premiums, even when no claim has been filed or denied, constitutes sufficient injury to sustain a cause of action against the insurer. Boswell v. Liberty Nat. Life Ins. Co., 643 So. 2d 580, 582 (Ala. 1994). However, such a claim is not ripe if based on a speculative injury. Allstate Life Ins. Co. v. Parker, 951 So. 2d 682, 688-89 (Ala. 2006). The Alabama Supreme Court has characterized the requisite injury as an insured “paying for something that did not exist and would never exist.” Donoghue v. Am. Nat. Ins. Co., 838 So. 2d 1032, 1038 (Ala. 2002) (reversing dismissal where insured claimed he was told life
insurance plan would have separate retirement fund that in reality did not exist).

C. Statutes of Limitations and Repose


VI. Beneficiary Issues

In general, the designation of the beneficiary of an insurance policy is governed by the provisions of the policy itself. See, e.g. Gibson v. Henderson, 459 So. 2d 845, 847 (Ala. 1984) (citing Williams v. Williams, 438 So. 2d 735 (Ala. 1983)). When a beneficiary may be changed at the will of the insured or owner, the beneficiary is said to have a "mere expectancy and no vested right or interest therein." Flowers v. Flowers, 224 So. 2d 590, 597 (Ala. 1969). Alabama law suggests that the converse is also true that an irrevocable beneficiary of an insurance policy has a vested interest in the proceeds. See, e.g., Woodham v. Woodham, 387 So. 2d 150, 151 (Ala. 1980).

A. Change of Beneficiary

Changes to an insurance beneficiary are also governed by the provisions of the policy. Midland Nat. Life Ins. Co. v. Turner, No. 06-0429, 2007 WL 2254419, *4 (S.D. Ala. Aug. 2, 2007) (citing Ziegler v. Cardona, 830 F. Supp. 1395, 1398 (M.D. Ala. 1993)). Strict compliance with the terms of the policy for changing the beneficiary is generally required, absent proof of "excusing circumstances." Gibson, 459 So. 2d at 848 (citing 5 Couch on Insurance 2d § 28:76 (1960)). For example, if a policy requires that "the insured actually file the forms before the change is effective," and the forms are not filed by the insured or someone acting at his or her direction, the terms of effectuating a change of beneficiary have not been met. Id. at 849 (internal citations omitted).

Nevertheless, strict compliance with the policy’s requirements for changing the beneficiary may be waived by the insurer. Ziegler, 830 F. Supp. at 1398 (citing Whitman v. Whitman, 142 So. 2d 413 (1932)). Alabama courts have held that "where an insurance company interpleads life insurance proceeds, it is held to have waived its requirements under the policy relative to a change of beneficiary." Id.; Midland, 2007 WL 2254419 at *4.

B. Effect of Divorce on Beneficiary Designation

In Alabama, divorce itself has no legal effect on the designation of insurance beneficiaries. See Walden v. Walden, 686 So. 2d 345, 346 (Ala. Civ. App. 1996). Specifically regarding life insurance policies, Alabama courts have held that despite a divorce, “where the insured fails to exercise his right to change the beneficiary, and absent a clause in the policy that
conditions the rights of a beneficiary-spouse on the continuance of the marriage, the right of the beneficiary to receive proceeds pursuant to the policy is not affected by a divorce.” Id. (citing Flowers, 224 So. 2d at 590). This rule has been expanded to include retirement and pension plans. Id. (citing Ex parte Pitts, 435 So. 2d 83 (Ala. 1983)).

However, a divorce decree or judgment requiring the maintenance of an insurance policy for the benefit of the ex-spouse or a child will be upheld. In such an event, the ex-spouse or child is considered to have a “vested equitable interest” in the insurance proceeds and the insured will have “no power to name anyone else as beneficiary.” McKinnis v. McKinnis, 564 So. 2d 451, 452 (Ala. Civ. App. 1990); See also Hanner v. Metro Bank and Protective Life Ins. Co., 952 So. 2d 1056, 1063-64 (Ala. 2006).

Additional complications can arise, for example, when an insured purchases a replacement policy for the one in existence at the time of the divorce judgment, when children reach the age of majority, or if the insured re-marries an ex-spouse. See, e.g., Ray v. Ohio Nat. Life Ins. Co., 537 So. 2d 915 (Ala. 1989) (Insured’s remarriage to former wife terminated interest that previously named beneficiaries had in life policy under agreement which was incorporated into divorce judgment); Whitten v. Whitten, 592 So. 2d 183 (Ala. 1991); Frawley v. U.S. Steel Min. Co., 496 So. 2d 731 (Ala. 1986).

VII. Interpleader Actions

A. Availability of Fee Recovery

Alabama federal courts generally permit “[t]he award of costs and attorneys’ fees in an interpleader action.” Prudential Ins. Co. of Am. v. Boyd, 781 F.2d 1494, 1497 (11th Cir. 1986). “The usual practice is to tax the costs and fees against the interpleader fund.” Id. at 1498. The decision to award fees “is discretionary” and there is “no right” to “recover and costs and attorney’s fees.” Life Investors Ins. Co. America v. Childs, 209 F. Supp. 2d 1255, 1256 (M.D. Ala. 2002). The Eleventh Circuit has enumerated three reasons justifying the award of attorneys’ fees and costs in interpleader actions: (1) an “interpleader action often yields a cost-efficient resolution;” (2) “the stakeholder in the asset often comes by the asset innocently;” and (3) “fees for the stakeholder typically are quite minor and therefore do not greatly diminish the value of the asset.” In re Mandalay Shores Co-op. Hous. Ass’n, Inc., 21 F.3d 380, 383 (11th Cir. 1994). However, Alabama federal courts hold that fee recovery is not warranted “when a stakeholder’s interpleader claim arises out of the normal course of business.” Id.; Childs, 209 F. Supp. at 1256. Moreover, “[t]his standard typically is applied to insurance companies.” Mandalay, 21 F.3d at 383.

In Alabama state courts, fee recovery is governed by Alabama Rule of Civil Procedure 22. Under Rule 22(c), “the court may allow to one or more of the parties a reasonable sum or sums for counsel fees and disbursements payable out of said fund or property.” Ala. R. Civ. P. 22(c). However, no such allowance shall be made unless it is claimed in the complaint or answer.” Id. As with the federal rule, the decision to impose fees “is at the discretion of the trial court.” Youngblood v. Bailey, 459 So. 2d 855 (Ala. 1984). Any attorney’s fee allowed by the trial court must be charged against the fund and not against one of the claimants. Union Springs Tel. Co. v. Renfroe, 620 So. 2d 649, 651 (Ala. 1993). For example, in Renfroe, the Alabama Supreme Court denied a company’s claim to attorney’s fee because
B. Differences in State vs. Federal


Statutory interpleader, under 28 U.S.C. § 1335, provides an independent basis for federal court jurisdiction. The statute requires minimal diversity of citizenship to be present among the claimants. Id. Additionally, the amount in controversy must equal or exceed $500 and the stakeholder must deposit with the court the amount in controversy or post a bond at the time of filing the complaint. Id. Under 28 U.S.C. § 1397, venue for statutory interpleader is proper in any district where a claimant resides. Furthermore, 28 U.S.C. § 2361 provides for nationwide service of process and grants federal courts the authority to discharge the stakeholder from liability and enjoin the claimants from further litigation. Conversely, in interpleader actions under Federal Rule of Civil Procedure 22, there must be an independent basis of federal jurisdiction such as diversity or federal question. Progressive Specialty Ins. Co. v. Hanson, No. 2:12-cv-734, 2012 WL 5966638, *1 (M.D. Ala. Nov. 28, 2012) (citing Perkins State Bank v. Connolly, 632 F. 2d 1306, 1310 n. 3 (5th Cir. 1980)).

The rule interpleader actions (Federal Rule of Civil Procedure 22 and Alabama Rule of Civil Procedure 22) proceed similarly as “[t]he Alabama Rule is patterned after [Federal] Rule 22.” Poss v. Franklin Fed. Sav. & Loan Ass’n of Russellville, Ala., 455 So. 2d 9, 11 (Ala. 1984). There are two noteworthy differences between Federal Rule 22 and Alabama Rule 22. First, Alabama Rule 22(b) expressly provides for the stakeholder’s release from liability following deposit or delivery. Ala. R. Civ. P. 22(b). The Federal Rule 22 does not contain a similar provision. Fed. R. Civ. P. 22. However, the same is accomplished by case law in federal interpleader actions. Ohio Nat. Life Assur. Corp. v. Langkau ex rel. Estate of Langkau, 353 F. App’x 244, 248 (11th Cir. 2009). Likewise, Alabama Rule of Civil Procedure 22(c), which provides for attorneys’ fees, has no counterpart in the federal rules. Again, federal case law provides for an award of fees and costs. See, e.g., Prudential, 781 F.2d at 1497; Childs, 209 F. Supp. at 1256; Mandalay, 21 F.3d at 383.