I. REGULATORY LIMITS ON CLAIMS HANDLING

A. Timing for Responses and Determinations

The state of Idaho does not have any express statements regarding definitive times for an insurer to respond and/or make a determination with respect to a submitted claim. The only direction given in this regard can be found in the Unfair Claims Settlement Practices Act, I.C. § 41-1329. This statute provides that an insurer shall be deemed to be committing an unfair method of competition or an unfair or deceptive act or practice in the business of insurance if it, among other acts, fails to “acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies”; fails to “adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies”; refuses “to pay claims without conducting a reasonable investigation based upon all available information”; fails “to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed”; does not attempt “in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear”; and/or attempts “to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application”. I.C. § 41-1329(2), (3), (4), (5), (6), and (8).

It must also be noted that Idaho Code Section 41-1839 provides any insurer who fails to pay the amount “justly due” under a policy of insurance within thirty days of the submission of a proof of loss statement from the insured, will be liable for attorneys fees in the event of litigation. I.C. § 41-1839(1).

B. Standards for Determinations and Settlements

There is no specific direction regarding the standards for determinations and settlements by insurers other than the general language of Idaho Unfair Claims Settlement Practices Act, as quoted above. The statute in this regard provides that an insurer will be deemed to be committing an unfair method of competition or an unfair or deceptive act or practice in the business of insurance if it, among other acts, if it fails “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.” I.C. § 41-1329(14).

If a settlement involves a minor, the settlement must be approved by court order by the
filing of a verified petition before such settlement is deemed to be valid or of any effect. I.C. §
15-5-409a.

II. PRINCIPLES OF CONTRACT INTERPRETATION

When interpreting insurance policies, Idaho applies the general rules of contract law
Idaho 538, 540, 66 P.3d 242, 244 (2003). In Idaho, the general rule is that, because insurance
contracts are adhesion contracts, typically not subject to negotiation between the parties, any
ambiguity that exists in the contract “must be construed against the insurer.” Arreguin v.

Whether an insurance policy is ambiguous is a question of law. Mut. Of Enumclaw Ins.
Co. v. Roberts, 128 Idaho 232, 912 P.3d 119, 122 (1996). When determining whether a policy is
ambiguous, Idaho courts ask “whether the policy ‘is reasonably subject to conflicting
interpretation.’” Id. A provision that seeks to exclude the insurer’s coverage must be strictly
construed in favor of the insured. Moss v. Mid-America Fire & Marine Ins. Co., 103 Idaho 298,
300, 647 P.2d 754, 756 (1982). The burden is on the insurer to use clear and precise language if
it wishes to restrict the scope of its coverage. Id. “W]hen interpreting their insurance policies, we
do not expect policyholders to know how most courts around the country have construed certain
words or to have the knowledge of those who have spent their careers working in or with the
insurance industry. Unless contrary intent is shown, common, non-technical words are given the
meaning applied by laymen in daily usage—as opposed to the meaning derived from legal
usage—in order to effectuate the intent of the parties.” Weinstein v. Prudential Prop. & Cas. Ins.
Co., 149 Idaho 299, 320-21, 233 P.3d 1221, 1242-43 (2010); see also Gearhart v. Mut. of
was confusing).

An insurer cannot seek to apply policy limitations and exclusions in a way to defeat the
precise purpose for which the insurance is purchased. See Martinez v. Idaho Counties Reciprocal
Mgmt. Program, 134 Idaho 247, 999 P.2d 902, 907 (Idaho 2000) (“Upon review of these
requirements and exclusions, it appears that if any actual coverage does exist it is extremely
minimal and affords no realistic protection to any group or class of injured persons. The
declarations page of the policy contains language and words of coverage, then by definition and
exclusion takes away the coverage. The fact that there might be some small circumstance where
coverage could arguably exist does not change the reality that, when the policy is considered in
its entirety, the City was receiving only an illusion of coverage for its premiums. This Court will
not allow policy limitations and exclusions to defeat the precise purpose for which the insurance
is purchased.”).
III.  **CHOICE OF LAW**

Idaho follows the Restatement (Second) of Conflict of Laws’ rules governing choice of law provisions. *Ward v. Puregro*, 128 Idaho 366, 368-69, 913 P.2d 582, 584-85 (1996). The Restatement provides that “[t]he law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.” *See* Restatement (Second) of Conflict of Laws § 187(1) (1971). Typically, choice-of-law provisions are given their full effect and the court will apply the laws of another state. *Carroll v. MBNA America Bank*, 148 Idaho 261 (2009). However, the procedural law of the Idaho court will still apply. *Id.*

Even if an issue could not be resolved by an explicit provision in the contract, the chosen law will apply unless: (1) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties’ choice; or (2) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of a particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties. Restatement (Second) of Conflict of Laws § 187(2).

An Idaho court will then determine whether the chosen state’s law recognizes the choice-of-law clause. *Cerami-Kote, Inc. v. Energywave Corp.*, 116 Idaho 56, 58 n. 1, 773 P.2d 1143, 1145 n. 1 (1989). Further, the chosen law will apply as long as there is no contrary Idaho public policy. The key consideration in making a public policy determination is whether some policy of the forum state is contravened by applying the rules of the selected state. Restatement (Second) of Conflict of Laws § 6 cmt. e. (1971).

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

A.  **Bad Faith**

A plaintiff establishes a claim for the tort of bad faith where it shows “(1) the insurer intentionally and unreasonably denied or withheld payment, (2) the claim was not fairly debatable, (3) the denial or failure to pay was not the result of a good faith mistake, and (4) the resulting harm is not fully compensable by contract damages.” *Seiniger Law Office, P.A. v. North Pacific Ins.*, 145 Idaho 241, 179 P.3d 606 (2008); *Robinson v. State Farm Mut. Auto. Ins. Co.*, 137 Idaho 173, 45 P.3d 829 (Idaho 2002) (*citing* *White v. Unigard Mut. Ins. Co.*, 112 Idaho 94, 730 P.2d 1014). The Idaho Supreme Court has acknowledged “[i]n *White*, we adopted the standard set by the Arizona Supreme Court in *Rawlings v. Apodaca, ...*, 726 P.2d 565 (Ariz. 1986), for determining whether an insurer has acted in bad faith ....” *Truck Ins. Exch. v. Bishara*, 128 Idaho 550, 554, 916 P.2d 1275, 1279 (1996).

In essence, a bad faith claim turns upon two fundamental issues: (1) whether the denial or delay of payment by the insurer is “unreasonable;” and (2) whether such denial or delay is “intentional.” Whether a claim is “fairly debatable” is an issue inherent in the determination of whether the insured’s conduct was “unreasonable,” as opposed to being a distinct element. Additionally, as *Rawlings* explains, “[a] failure to pay a claim is unreasonable unless the claim’s validity is ‘fairly debatable’ **after** an adequate investigation.” 726 P.2d at 572. The Idaho
Supreme Court has consistently held that the insured has the burden of showing that the claim was not fairly debatable. *Robinson v. State Farm Mut. Auto. Ins. Co.*, 137 Idaho 173, 45 P.3d 829.

Idaho has recognized a third-party bad faith action in tort where an insurer has unreasonably, intentionally or negligently denied or delayed settlement of a claim. *Robinson v. State Farm Mut. Ins. Co.*, 137 Idaho at 178, 45 P.3d at 834; *Reynolds v. American Hardware Mut. Ins. Co.*, 115 Idaho 362, 365, 766 P.2d 1243, 1246 (1988); *McKinley v. Guaranty National Ins. Co.*, 144 Idaho 247, 251, 159 P.3d 884, 888 (2007). In determining whether a liability insurer has acted in bad faith in failing to settle or in delaying settlement of a claim against the insured, the trier of fact must consider the following factors, within emphasis on the first two: (1) the insurer’s failure to communicate with the insured, including particularly informing the insured of any compromise offer; (2) the amount of financial risk to which each party will be exposed in the event an offer is refused; (3) the strength of the injured claimant’s case on the issues of liability and damages; (4) insurer’s thorough investigation of the claim; (5) the failure of the insurer to follow the legal advice of its own attorney; (6) any representations by the insured which misled the insurer in its settlement negotiation; and (7) any other factors which may weigh toward establishing or negating the bad faith of the insurer. *McKinley*, 144 Idaho at 251, 159 P.3d at 888; *Truck Insurance Exchange v. Bishara*, 128 Idaho 550 at 555, 916 P.2d at 1280.

In order to avoid liability for bad faith failure to settle when the insured’s potential liability is in excess of the policy limits, the insurer, at a minimum, must make a diligent effort to ascertain the facts, communicate the results of such investigation to the insured and “must inform him of any settlement offers that may affect him, so that the insured may take proper steps to protect his own interests.” *McKinley v. Guaranty National Ins. Co.*, 144 Idaho at 252, 159 P.3d at 889, citing *Bishara*, 916 P.2d at 1280.

B. Fraud

A claim for fraud requires that the plaintiff prove “(1) a representation; (2) its falsity; (3) its materiality; (4) the speaker’s knowledge of its falsity; (5) the speaker’s intent that the representation be acted upon by the hearer; (6) the hearer’s ignorance of the falsity; (7) the hearer’s reliance that the statement was true; (8) the hearer’s right to rely on the truthfulness; and (9) the hearer’s proximate injury.” *Thomas v. Medical Center Physicians, PA*, 138 Idaho 200, 207, 61 P.3d 557, 564 (2002). The party alleging fraud has the burden of proving each element by clear and convincing evidence. *Lindberg v. Roseth*, 137 Idaho 222, 225, 46 P.3d 518, 521 (2002).

Misrepresentations about the insurance being purchased can result in “out-of-pocket” damages -limits the recovery of damages to the difference between the real value of the property purchased and the price paid or contracted for- or “benefit of the bargain” damages -the difference between the real value of the property purchased and the value which it would have had had the representations been true. *Walston v. Monumental Life Ins. Co.*, 129 Idaho 211, 216-18, 923 P.2d 456, 461-63 (1996).
In addition, the law is well settled that a claim for fraud must be predicated upon statements of fact and not of opinion. *Mitchell v. Barendregt*, 120 Idaho 837, 820 P.2d 707 (Ct. App. 1991); *Bodine v. Bodine*, 114 Idaho 163, 754 P.2d 1200 (Ct.App. 1988). “The law requires the plaintiff to have formed his or her own conclusions as to such future events, and will not justify or remedy the plaintiff’s reliance and change of position based on another’s prediction or opinion.” *Mitchell*, 120 Idaho at 713, 820 P.2d at 843.

“[C]onstructive fraud usually arises from a breach of duty where a relation of trust and confidence exists; such relationship may be said to exist whenever trust or confidence is reposed by one person in the integrity and fidelity of another. Examples of relationships from which the law will impose fiduciary obligations on the parties include when the parties are: members of the same family, partners, attorney and client, executor and beneficiary of an estate, principal and agent, insurer and insured, or close friends. … The gist of a *constructive fraud* finding is to avoid the need to prove intent (i.e., knowledge of falsity or intent to induce reliance) [under the *elements* required to prove actual fraud], since it is inferred directly from the relationship and the breach. In sum, if a plaintiff establishes that there has been a breach of duty arising from a relationship of trust and confidence, the plaintiff is not required to prove (1) the speaker's knowledge of the falsity regarding the statement or representation of fact, or (2) the speaker's intent that the hearer rely on the statement or representation of fact, to sustain a claim of *constructive fraud*. However, the party is still required to prove the remaining seven *elements* of actual fraud.” *Doe v. BSA*, 159 Idaho 103, 109, 356 P.3d 1049, 1055 (2015) (emphasis added).

C. **Intentional Infliction of Emotional Distress and/or Outrage**

1. **Intentional Infliction of Emotional Distress**

   In order to prove a claim for intentional infliction of emotional distress, the claimant must prove “(1) the conduct was intentional or reckless; (2) the conduct was extreme and outrageous; (3) there was a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress was severe.” *Nation v. State Dept. of Corrections*, 144 Idaho 177, 192, 158 P.3d 953, 968 (2007); *Edmonson v. Shearer Lumber Products*, 139 Idaho 172, 179, 75 P.3d 733, 740 (2003); *Roper v. State Farm Mut. Auto. Ins. Co.*, 131 Idaho 459, 463, 958 P.2d 1145, 1149 (1998).

   In order to be actionable, the emotional distress suffered by the claimant must be severe. *Jeremiah v. Yanke Machine Shop*, 131 Idaho 242, 248, 953 P.2d 992, 998 (1998). In explaining the requisite level of proof of severity necessary to support the claim, the Idaho Courts have favorably quoted from the *ReSTATEMENT (SECOND) OF TORTS* § 46. *Evans v. Twin Falls County*, 118 Idaho 210, 220, 796 P.2d 87, 97 (1990) (quoting *ReSTATEMENT (SECOND) OF TORTS* § 46, comment j (1965).

   Idaho Courts require competent evidence that the plaintiff incurred physical damage, was hampered in the performance of his or her daily functions, or suffered a severely disabling emotional response to the defendants conduct. *See Davis v. Gage*, 106 Idaho 735, 741, 682 P.2d 1282, 1288 (1984) (testimony of the plaintiffs they were upset, embarrassed, angered, bothered and depressed insufficient to support a claim for intentional infliction of emotional distress).
Severe emotional distress may be shown either by physical manifestation of the distress or subjective testimony. *Davis*, 106 Idaho at 741, 682 P.2d at 1288.

To qualify as “extreme and outrageous,” the defendant’s conduct must be more than merely objectionable or unreasonable. “Even if a defendant’s conduct is unjustifiable, it does not necessarily rise to the level of ‘atrocious’ and ‘beyond all possible bounds of decency’ that would cause an average person of the community to believe it was ‘outrageous’.” *Alderson v. Bonner*, 142 Idaho 733, 740, 132 P.3d 1261, 1268 (2006), citing *Edmonson v. Shearer Lumber Products*, 139 Idaho 172, 180, 75 P.3d 733, 744 (2003). Whether a defendant’s conduct is so extreme and outrageous as to permit recovery for intentional infliction of emotional distress is a matter of law for the court to decide. *Edmonson*, 139 Idaho at 180, 75 P.3d at 741; *Nation v. Idaho Dept. of Corrections*, 144 Idaho 177, 192, 158 P.3d 953, 968 (2007).

2. **Negligent Infliction of Emotional Distress**

“Negligent infliction of emotional distress requires a showing of (1) a legally recognized duty; (2) a breach of that duty; (3) a causal connection between the defendant’s conduct and the breach; and (4) actual loss or damage. *Bollinger v. Fall River Rural Elec. Co-op., Inc.*, 152 Idaho 632, 642, 272 P.3d 1263, 1273 (2012). Additionally, the plaintiff must demonstrate physical manifestation of the alleged emotional injury.” *Wright v. Ada Cnty.*, 160 Idaho 491, 501, 376 P.3d 58, 68 (2016). See also *Walston v. Monumental Life Ins. Co.*, 129 Idaho 211, 219, 923 P.2d 456, 554 (1996) (stating, “[f]or a claim of negligent infliction of emotional distress to arise, there must be physical injury to the plaintiff.”); *Czaplicki v. Gooding Joint School Dist.* 231, 116 Idaho 326, 333, 775 P.2d 640, 647 (1989) (noting that “[i]t is beyond dispute that in Idaho no cause of action for negligent infliction of emotional distress will arise where there is no physical injury to the plaintiff.”).

“The ‘physical injury’ requirement is designed to provide some guarantee of the genuineness of the claim in the face of the danger that claims of mental harm will be falsified or imagined.” *Czaplicki*, 116 Idaho at 333, 775 P.2d at 647.

Thus, “[w]here the defendant’s negligence causes only mental disturbance, without accompanying physical injury, illness or other physical consequences, and in the absence of some other independent basis for tort liability, the great majority of courts still hold that in the ordinary case there can be no recovery.” *Brown v. Matthews Mortuary, Inc.*, 118 Idaho 830, 836, 801 P.2d 37, 43 (1990) (quoting Prosser and Keeton, The Law of Torts § 54, p. 361 (1984)). *See Black County Racquetball Club, Inc. v. Idaho First Nat’l Bank*, 119 Idaho 171, 177, 804 P.2d 900, 906 (1991) (allegation of humiliation and severe emotional distress insufficient allegations to support claim for negligent infliction of emotional distress); *Summers v. Western Idaho Potato Processing Co.*, 94 Idaho 1, 479 P.2d 292 (1970) (where plaintiff had her clothes ripped off in front of her co-workers, allegations of pain, suffering, mental anguish and nervous shock insufficient to state a claim of a physical manifestation for a claim of negligent infliction of emotional distress); *Herrera v. Conner*, 111 Idaho 1012, 1023, 729 P.2d 1075, 1085 (Ct. App. 1986) (allegations of mental pain and anguish, even “great mental pain and anguish” insufficient to state a claim for negligent infliction of emotional distress).
However, Idaho Courts have recognized that allegations of loss of sleep, headaches, and stomach pains are sufficient to prove an accompanying physical injury sufficient to assert a claim for negligent infliction of emotional distress. Brown, 118 Idaho at 837, 801 P.2d at 44. Likewise, in the case of Czaplicki, it was held that allegations of physical symptoms such as severe headaches, occasional suicidal thoughts, sleep disorders, reduced libido, fatigue, stomach pains and loss of appetite sufficient to withstand summary judgment on negligent infliction of emotional distress claim. Czaplicki, 116 Idaho at 333, 775 P.2d at 647.

To the extent that alleged physical manifestations of emotional distress constitute medical conditions, expert testimony was required to establish causation. Cook v. Skyline Corp., 135 Idaho 26, 13 P.3d 857 (2000).

D. State Consumer Protection Laws, Rules and Regulations

Idaho’s Consumer Protection Act (“ICPA”) prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” I.C. § 48-603. While the ICPA enumerates and declares unlawful “certain unfair and deceptive acts or practices in the conduct of any trade or commerce” (see I.C. § 48-603), it specifically excludes from its provisions any “unfair or deceptive acts or practices in the business of insurance” as defined in Idaho Code § 41-1301-1327. I.C. §48-605(3); see e.g., Irwin Rogers Ins. Agency, Inc. v. Murphy,122 Idaho 270, 833 P.2d 128 (Idaho App. 1992) (holding that § 48-603 prevented insured from maintaining consumer protection action against insurer even though allegations related to a promissory note entered into between insurer and insured and not conduct related to the insurance policy).

E. State Class Actions

Idaho has no relevant case law on state class actions against insurers. However, Idaho has noted that if such a situation were to arise it would use the Restatement (Third) of Torts as guidance.

1. Class Actions - I.R.C.P. 77 et seq.

One or more members of a class may sue or be sued as representative parties on behalf of all only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. I.R.C.P 77.

An action may be maintained as a class action if those prerequisites are satisfied, and in addition: (1) the prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying judgments with respect to class members that would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests; or (2) the party opposing the
class has acted or refused to act on grounds generally applicable to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or (3) the court finds that the questions of law or fact common to the class members predominate over any questions affecting individual members, and that a class action is superior to other available methods for the fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include: (A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties in managing a class action. I.R.C.P. 77.

F. State Privacy Laws, Rules and Regulations

Any records or information about an individual who is contained in the Department of Health and Welfare’s records is confidential pursuant to IDAPA 16.06.01. However, the Department will comply with Idaho's Public Records Act, I.C. §§ 74-101 - 74-126, when requests for the examination and copying of defined public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. Idaho does recognize the tort of invasion of privacy. See, e.g., Jensen v. State, 139 Idaho 57, 72 P.3d 897 (2003).

I.C. § 41-1334 empowers the Director of Insurance to adopt rules necessary to carry out the provisions the Gramm-Leach-Bliley Act related to privacy and protection of non-public personal information. The rules adopted by the Director of Insurance are required to be consistent with Title V of the Gramm-Leach-Bliley Act. However, I.C. § 41-1334 does not create a private cause of action.

V. DEFENSES IN ACTIONS AGAINST INSURERS

A. Misrepresentations/Omissions: During Underwriting or During Claim

Idaho Code § 41-1811 has codified the common law defense of fraud and misrepresentation in the insurance contract context and has limited its application. Idaho Code § 41-1811 describes the only circumstances in which a contract for insurance is voidable.

Idaho Code Section 41-1811 provides:

All statements and descriptions in any application for an insurance policy or annuity contract, or in negotiations therefor, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

(a) Fraudulent; or
(b) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

(c) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

A “[m]aterial misrepresentation permits the defrauded party to elect from three possible remedies: damages, rescission, or enforcement of the bargain against the fraudulent party according to the fraudulent party's representation of the bargain.” Robinson v. State Farm Mut. Auto. Ins. Co., 137 Idaho 173, 181, 45 P.3d 829, 837 (2002). I.C. § 41-1811 does not abrogate the common law requirement that the party seeking rescission must tender back any consideration received under the contract. Id. An insurer is required to make a tender of premiums back to the insured within a reasonable time after it discovers the potential of a misrepresentation defense. Robinson, 137 Idaho at 181, 45 P.3d at 837. Since the insurance company frames application questions, the insurance company must keep them free from misleading interpretations and a consequence of its failure to do so is that all ambiguities in the insurance application will be construed against the insurer. Wardle v. International Health & Life Ins. Co., 97 Idaho 668, 671, 551 P.2d 623, 626 (1976). An ambiguous question in an insurance application is to be interpreted as an ordinary person standing in the position of the insured reasonably would have interpreted it. Wardle, 97 Idaho at 673, 551 P.2d at 628. An insurance applicant must act in good faith to truthfully answer direct questions on an insurance application that call for information within the applicant’s knowledge. Wardle, 97 Idaho at 672, 551 P.2d at 623.

B. Preexisting Illness or Disease Clauses

1. Statutes

Pursuant to I.C. § 41-5208(3)(a), a health insurance benefit plan shall not deny, exclude or limit benefits for a covered individual for covered expenses incurred more than twelve months following the effective date of the individual’s coverage due to a preexisting condition. This permitted exclusion does not apply to persons who satisfy the portability requirements of I.C. § 41-5208(3)(b).

A health benefit plan shall not define a preexisting condition more restrictively than: (1) a condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care or treatment during the six months immediately preceding the effective date of coverage; (2) a condition for which medical advice, diagnosis, care or treatment was recommended or received during the six months immediately preceding the effective date of coverage; or (3) a pregnancy preexisting on the effective date of coverage. I.C. § 41-5208(3)(a)(i)-(ii).
2. Case Law

In *Malone v. Continental Life and Accident Co.*, the court addressed language that required that a sickness originate while the policy was in effect to be covered. *Malone v. Continental Life and Accident Co.*, 89 Idaho 77, 83, 403 P.2d 25, 231 (1965). In *Malone*, the Court stated, “the general rule in construing policies of the type under consideration in this cause, that the origination of a sickness or disease is deemed to be the time when it first becomes manifest or active, or when there is a distinct symptom or condition from which one learned in medicine can diagnose the disease with reasonable certainty.” *Malone*, 89 Idaho at 83, 403 P.2d at 231.

C. Statutes of Limitations and Repose

Under Idaho law, a claim for breach of written contract must be commenced within five years. I.C. § 5-217. While there is no express holding by the Idaho Supreme Court on the issue, it is generally believed that a claim for bad faith tort falls under the catch-all provision of the statute of limitations and as such must be commenced within four years of its accrual. I.C. § 5-224.

VI. BENEFICIARY ISSUES

A. Change of Beneficiary

The test in Idaho for determining whether there has been substantial compliance with the requirements to change the beneficiary of a death benefit plan or life insurance policy is whether there is evidence that the insured had determined to change beneficiary and that the insured had done everything to the best of his ability to effect such change. *Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust*, 147 Idaho 117, 206 P.3d 481 (2009). Generally, the method of changing beneficiaries may be prescribed by the insurance policy, charter, or bylaws of the insurance company. *Noyes v. Noyes*, 106 Idaho 352, 679 P.3d 152 (Ct. App. 1984)

B. Effect of Divorce on Beneficiary Designation

In Idaho, generally, when a husband names his wife as the beneficiary of his policy on his own life and thereafter they are divorced, but no change is made in the beneficiary, the mere fact of divorce does not affect the right of the named beneficiary to the proceeds of the policy. *Beneficial Life Ins. Co. v. Stoddard*, 95 Idaho 628, 516 P.2d 187 (1973). "However, a beneficiary's interest in a life insurance policy may be terminated by a property settlement agreement which may reasonably be construed as a relinquishment of the spouse's rights to the insurance." *Id.; see also Prudential Ins. Co. v. Cooper*, 666 F. Supp. 190 (D. Idaho 1987).
VII. **INTERPLEADER ACTIONS**

A. **Availability of Fee Recovery**

I.C. § 5-321 provides that "[a] person possessing the property who" appropriately files an Interpleader action may "request for allowance of his costs and reasonable attorney fees incurred in such action. In ordering the discharge of such party, the court may, in its discretion, award such party his costs and reasonable attorney fees from the amount in dispute which has been deposited with the court. At the time of final judgment in the action, the court may make such further provision for assumption of such costs and attorney fees by one (10 or more of the adverse claimants. At the same time, the court may, in its discretion, award to the person determined to be entitled to the property his costs and reasonable attorneys' fees against an unsuccessful claimant if the claim assert by said claimant was frivolous or without substantial merit." I.C. 5-321.

Under federal law, a judgment in Interpleader ordinarily entitles the stakeholder to an award of attorneys' fees from the interpleaded funds for work performed filing the action in Interpleader. *Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 898 (9th Cir. 2012). "Moreover, a district court has great discretion in apportioning the stakeholder's fees among the winning and losing claimants, . . . providing a mechanism for vexatious claimants in incur the costs of their meritless claims." *Id.* (citing Schirmer Stevedoring Co. v. Seaboard Stevedoring Corp., 306 F.2d 188 (9th Cir. 1962))

B. **Differences in State vs. Federal**

There does not appear to be any differences between Idaho Rule of Civil Procedure 22 and Federal Rule of Civil Procedure 22.