I. Regulatory Limits on Claims Handling

A. Timing for Responses and Determinations

The relevant time limitations involved with the filing, payment and denial of claims are found in Subchapter B of Chapter 542 of the Texas Insurance Code. The initial limiting period for insurers requires them to acknowledge receipt of a claim, commence any investigation of a claim, and request all required forms from the claimant within 15 business days of receiving notice of a claim. Tex. Ins. Code § 542.055. In most instances, an insurer must notify a claimant in writing of the acceptance or rejection of a claim within 15 business days after the date the insurer receives all necessary information required to secure final proof of loss. Tex. Ins. Code § 542.056(a).

The prompt payment statute entitles physicians and providers to swift payment of undisputed healthcare claims, yet it requires contractual privity between the providers and health maintenance organizations (“HMOs”) in order to be enforced. See Christus Health Gulf Coast v. Aetna, Inc., 397 S.W.3d 651 (Tex. 2013). In Christus, the plaintiffs, a group of hospitals, entered a contract with an intermediary of a Medicare health maintenance organization (HMO). The court held that plaintiffs could not sue the HMO instead of the intermediary, because there was no contract between the plaintiffs and the HMO. There was only a contract between the plaintiffs and the HMO's intermediary.

B. Standards for Determinations and Settlements

Standards for the handling and settlement of claims for life, health and accident coverage is found in § 542.003 of the Texas Insurance Code. Under the Insurance Code, an unfair claim settlement practice includes the following:

1. Knowingly misrepresenting to a claimant pertinent facts or policy provisions relating to coverage at issue;
2. Failing to acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer’s policy;

3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer’s policies;

4. Not attempting in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear;

5. Compelling a policyholder to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder;

6. Failing to maintain proper records of complaints pursuant to § 542.005;

7. Committing another act the commissioner of insurance determines by rule constitutes an unfair claim settlement practice.

Tex. Ins. Code § 542.003(b).

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

Texas common law and statutory law provide for privacy protections in addition to the federal laws generally applicable to Texas residents. For example, Texas recognizes the tort of intrusion. See Valenzuela v. Aquino, 853 S.W.2d 512, 513 (Tex. 1993). This tort occurs when one intrudes on the private affairs or solitude of another, and a reasonable person would be highly offended by such an intrusion. See id. Coercive collection practices may give rise to an action for intrusion of a debtor’s privacy. See Household Credit Serv., Inc. v. Driscol, 989 S.W.2d 72, 84 (Tex. App. – El Paso 1998, pet. denied). Texas also recognizes the tort of disclosure when one publicly discloses private facts, the matter publicized is not of legitimate public concern, and the publication of those facts would be highly offensive to a reasonable person of ordinary sensibilities. See Star-Telegram, Inc. v. Doe, 915 S.W.2d 471, 473-74 (Tex. 1995); Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 682-85 (Tex. 1976).

Statutory laws relating to privacy include the Interception of Communication provisions in the Texas Civil Practice and Remedies Code (Tex. Civ. Prac. & Rem. Code § 123.001, et seq. and Article 18.20 of the Texas Code of Criminal Procedure which protects against eavesdropping and wiretapping; the Texas Open Records Act (Tex. Gov’t Code ch. 552); and Chapter 601 Texas Insurance Code (Tex. Ins. Code §§ 601.001, et seq.) which governs privacy in the insurance context. Under the Texas Insurance code, you must obtain authorization to disclose nonpublic personal health information. Yet, there are 31 enumerated exceptions which include underwriting, loss control, case management, investigation or reporting of actual or potential fraud, etc.
II. **Principles of Contract Interpretation**


The court will first look at the language of the policy because it will presume the parties intend what the words of their contract say. See *Don's Bldg. Supply*, 267 S.W.3d at 23. The court will then examine the entire agreement and seek to harmonize and give effect to all provisions so that none will be meaningless. See *MCI Telecomms. Corp. v. Tex. Utils. Elec. Co.*, 995 S.W.2d 647, 652 (Tex. 1999).

The policy's terms are given their ordinary and generally-accepted meaning unless the policy shows the words were meant in a technical or different sense. *Don's Bldg. Supply*, 267 S.W.3d at 23; see also *Sec. Mut. Cas. Co. v. Johnson*, 584 S.W.2d 703, 704 (Tex. 1979). Texas courts strive to honor the parties' agreement and not remake their contract by reading additional provisions into it. See *Nat'l Union Fire Ins. Co. of Pittsburg, PA v. Crocker*, 246 S.W.3d 603, 606 (Tex. 2008).


III. **Choice of Law**

Regarding choice of law, a court in Texas must first apply the test set forth in Texas Insurance Code § 21.42. Section 21.42 provides that Texas law applies to an insurance policy when (1) the proceeds are payable to any citizen or inhabitant of Texas, (2) the policy was issued by an insurer doing business in Texas, and (3) the policy was issued in the course of the insurer's business in Texas. *TexCode ANN. art. 21.42 (Vernon 1981); Reddy Ice Corp. v. Travelers Lloyds Ins.*, 145 S.W.3d 337, 341 (Tex. App. -- Houston [14th Dist.] 2004); see also *Hefner v. Republic Indem. Co. of Am.*, 773 F. Supp. 11, 13 (S.D. Tex. 1991).

If the insurance contract does not meet the requirements of § 21.42, then a court is to apply the "most significant relationship" test of the Restatement (Second) of Conflict of Laws, § 6, to determine which state's law should control the dispute. *3M v. Nishika Ltd.*, 953 S.W.2d 733, 735 (Tex. 1997); *Commer. Underwriters Ins. Co. v. Royal Surplus Lines Ins. Co.*, 345 F. Supp. 2d 652 (S.D. Tex. 2004). Article 21.42 provides that Texas law applies to an insurance policy when (1) the proceeds are payable to any citizen or
inhabitant of Texas, (2) the policy was issued by an insurer doing business in Texas, and (3) the policy was issued in the course of the insurer's business in Texas. See Reddy Ice Corp., 145 S.W.3d at 340.

In a class action matter the court should also consider whether laws in states in which class members reside would provide them greater relief, or whether those states have a particular interest in the claims being made. The court should pay particular attention to a state's interest in regulating the business of insurance, as reflected in § 192 of the Restatement of Conflict of Laws (Second). That Section states: “The validity of a life insurance contract issued to the insured upon his application and the rights created thereby are determined, in the absence of an effective choice of law by the insured in his application, by the local law of the state where the insured was domiciled at the time the policy was applied for, unless, with respect to the particular issue, some other state has a more significant relationship to the transaction and the parties, in which event the local law of the other state will be applied.” See also Nat’l W. Life Ins. Co. v. Rowe, 164 S.W.3d 389, 391-92 (Tex. 2005) (applying and quoting § 192 of the Restatement).

IV. Extracontractual Claims against Insurers: Elements and Remedies

A. Bad Faith

An insurer fails to comply with its duty of good faith and fair dealing when, without a reasonable basis, it denies a claim or delays payment of a claim, and it knew or should have known, based on a duty to fairly investigate claims, that it was reasonably clear that the claim was covered by the policy. See Universe Life Ins. Co. v. Giles, 950 S.W.2d 48, 50-51 (Tex. 1997).

An insurer cannot be held liable for bad faith if it erroneously denies a claim, so long as there is a valid basis for denying the claim that existed at the time of denial. See Republic Ins. Co. v. Stoker, 903 S.W.2d 338, 340 (Tex. 1995). This does not, however, relieve an insurance carrier of its obligation to promptly investigate and process claims. Id.

B. Fraud

1. Fraud occurs when:

(A) a party makes a material misrepresentation,

(B) the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion,

(C) the misrepresentation is made with the intention that it should be acted on by the other party, and

(D) the other party acts in reliance upon the misrepresentation and thereby suffers injury.


2. Fraud can also occur when:
a party [conceals or] fails to disclose a material fact within the knowledge of that party,

(B) the party knows that the other party is ignorant of the facts and does not have an equal opportunity to discover the truth,

(C) the party intends to induce the other party to take some action by [concealing or] failing to disclose the fact, and

(D) the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

See Daugherty v. Jacobs, 187 S.W.3d 607, 618 n.3 (Tex. App. – Houston [14th Dist.] 2006, no pet. h.).

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

1. The elements of a claim for intentional infliction of emotional distress are:

(A) the defendant acted intentionally or recklessly,

(B) the defendant’s conduct was extreme and outrageous,

(C) the defendant’s actions caused the plaintiff emotional distress,

(D) the emotional distress that the plaintiff suffered was severe.

See City of Midland v. O’Bryant, 18 S.W.3d 209, 216-17 (Tex. 2000) (per curiam); Twyman v. Twyman, 855 S.W.2d 619, 621 (Tex. 1993) (adopting RESTATEMENT (SECOND) OF TORTS § 46 (1965)).

Texas does not impose a duty to avoid negligently inflicting emotional distress. A claimant may recover mental anguish damages only in connection with a breach of some other legal duty. Boyles v. Kerr, 855 S.W.2d 593, 594 (Tex. 1993).

D. State Consumer Protection Laws, Rules and Regulations


E. State Class Actions

Texas Rule of Civil Procedure 42 relates to class action lawsuits in Texas state courts. Tex. R. Civ. P. 42. Rule 42 is patterned after Fed. R. Civ. P. 23, and, as a result, “[f]ederal decisions and authorities interpreting current federal class action requirements are persuasive in Texas actions.” Ford Motor Co. v. Sheldon, 22 S.W.3d 444, 452 (Tex. 2000). Additionally, § 541.251, of the Texas Insurance Code specifically provides for class actions, in the insurance context when plaintiffs have been harmed by deceptive trade practices. Tex. Ins. Code § 541.251.

The Texas Supreme Court has observed that “[w]hen properly applied the class action device is unquestionably a valuable tool in protecting the rights of our citizens.” Southwestern Refining Co. v. Bernal, 22 S.W.3d 425, 439 (2000). Certification is conducted "on a claim-by-claim, rather than holistic, basis" in order "to preserve the efficiencies of the class action device without sacrificing the procedural protections it affords to unnamed class members." Bolin v. Sears, Roebuck & Co., 231 F.3d 970, 976 (5th Cir. 2000) (addressing certification under Rule 23 of the Federal Rules of Civil Procedure).

F. State Privacy Laws, Rules and Regulations

1. Criminal Sanctions

Sec. 602.051 of the Texas Insurance Code prohibits the disclosure of nonpublic personal health information to any person without a separate authorization from the individual or their legally authorized representative. However, a covered entity may disclose information without an authorization if the disclosure is made to another covered entity defined in Section 181.001 of the Act or to an insurance company, HMO or insurance agent as defined in Section 602.001 of the Texas Insurance Code; and, so long as the disclosure is for the purpose of treatment, payment of a claim, health care operations, performance of an HMO function described in 602.053 of the Texas Insurance Code, or as otherwise permitted by state or federal law. 181.154(c)(1)-(2) Tex. Health & Safety Code (Vernon 2011).

If one knowingly or willfully violates this chapter, the attorney general may bring an action for injunctive relief to restrain a violation of this chapter or bring an action for a civil penalty. A civil penalty assessed under this section may not be less than $3,000 for each violation. If the court finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed $250,000.

Chapter 181 of the Texas Health and Safety Code was enacted in an effort to expand HIPPA’s protections for use of certain medical records. It also prohibits the disclosure of nonpublic personal health information to any person without a separate authorization from the individual or their legally authorized representative.

Violations of this chapter can also result in the attorney general bringing an action for injunctive relief to restrain a violation of this
chapter or bring an action for a civil penalties, which can result in a $5,000 penalty for each negligent violation, $25,000 for knowing or intentional violation or $250,000 for each violation used for financial gain.

Under §522.002 of the Texas Business and Commerce Code it is a Class B misdemeanor to use a scanning device or re-encoder to access, read, scan, store, or transfer information encoded on the magnetic strip of a payment card without the consent of an authorized user of the payment card and with intent to harm or defraud another. But, it is a state jail felony if the information accessed, read, scanned, stored, or transferred was protected health information as defined by the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, Health and Safety Code.

2. **The Standards for Compensatory and Punitive Damages**

Actual damages or compensatory damages are awarded to repair a wrong or to compensate for an injury. Actual damages are classified as either economic or noneconomic damages. Economic damages are intended to compensate a claimant for actual economic or pecuniary loss. Noneconomic damages are awarded to compensate the claimant for physical pain and suffering, mental or emotional pain or anguish and all other nonpecuniary losses. Noneconomic damages are left to the discretion of the jury.

To prove gross negligence or malice, a party must present evidence that demonstrates the act or omission, when viewed objectively from the standpoint of the actor, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Transp. Ins. Co. v. Moriel, 879 S.W.2d 10, 23 (Tex. 1994). The “extreme degree of risk” showing is “a threshold significantly higher than the objective ‘reasonable person’ test for negligence.” Moriel, 879 S.W.2d at 22.

Moreover, the Plaintiff must present evidence showing the Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, or welfare of others. Id. at 23; Emmons, 50 S.W.3d at 127.

3. **Insurance Regulations to Watch**

The Texas Department of Insurance has prepared an informal working draft of amendments to the definition of “catastrophe” relating to the extension of claim-handling deadlines for weather-related events. The informal working draft proposes to establish two potential thresholds for a catastrophe:

(1) an estimated 5,000 claims and $50 million of losses for all insurers; or

(2) an estimated 10,000 claims for all insurers.

The Texas Department of Insurance has prepared an informal working draft of a rule relating to Insurance Code Chapter 21, Subchapter Z, which requires certain health benefit plan issuers to collect and report cost and utilization data on mandated health
benefits and mandated offers of coverage identified by the commissioner by rule.

4. State Arbitration and Mediation Procedures

a. Arbitration

The Texas Arbitration Act can be found at Chapter 171.001 to 171.098 of the Texas Civil Practice & Remedies Code. Texas law favors settling disputes by arbitration. See L. H. Lacy Co. v. City of Lubbock, 559 S.W.2d 348, 351 (1977). Arbitration agreements offer a permissible choice to tradition. Id at 352. There is nothing per se unconscionable about arbitration agreements. Moreover, assuming unequal bargaining power exists does not establish grounds for defeating an agreement to arbitrate. Unconscionability is to be determined in light of a variety of factors, which aim to prevent oppression and unfair surprise; in general, a contract will be found unconscionable if it is grossly one-sided. Judicial review of an arbitration award is extraordinarily narrow." E. Tex. Salt Water Disposal Co. v. Werline, 307 S.W.3d 267, 271 (Tex. 2010).

b. Mediation

Mediation is normally a voluntary, flexible, economic, fast and confidential procedure. If an agreement is reached, everyone wins. Yet, a court on its own or the motion of a party may order the parties to attend mediation. However, the court cannot compel the parties to negotiate in "good faith." See In re Acceptance Ins., 33 S.W.3d 443, 452 (Tex.App—Fort Worth 2000, orig. proceeding).

5. State Administrative Entity Rule-Making Authority

The Texas Department of Insurance (TDI) mission is to protect insurance consumers by:

- Regulating the insurance industry fairly and diligently
- Promoting a stable and competitive market
- Providing information that makes a difference.

TDI is authorized by statute to enact rules and regulations necessary for the successful regulation of the insurance industry fairly and diligently.

The determining factor in deciding whether TDI has exceeded its rule-making authority is whether the rules are "in harmony" with the general objectives of the legislation involved. Railroad Comm'n of Tex. v. Lone Star Gas Co., 844 S.W.2d 679, 685 (Tex. 1992); Gulf Coast Coal. of Cities v. Public Util. Comm'n, 161 S.W.3d 706, 711 (Tex. Tex. App—Austin 2005, no pet.). For an administrative rule to be "in harmony" with legislative objectives, it must not impose additional burdens, conditions, or restrictions in excess of or inconsistent with relevant statutory provisions. Gulf Coast Coal. of Cities, 161 S.W.3d at 712.
V. **Defenses in Actions Against Insurers**

A. **Misrepresentation/Rescission of Insurance Contract for Misrepresentation**

Section 705.005(b) of the Texas Insurance Code provides:

A defendant may use as a defense a misrepresentation made in the application for or in obtaining an insurance policy only if the defendant shows at trial that before the 91st day after the date the defendant discovered the falsity of the representation, the defendant gave notice that the defendant refused to be bound by the policy: (1) to the insured, if living; or (2) to the owners or beneficiaries of the insurance policy, if the insured was deceased.

**Tex. Ins. Code § 705.005(b).**

Further, according to § 705.004 of the Texas Insurance Code, the matter misrepresented has to be **material** to the risk or contributed to the contingency or event on which the policy became due and payable. Such a determination is a "question of fact". To avoid a policy of insurance because of a misrepresentation, the burden is on the insurance company to plead and prove that the insured provided false information and that the insured knew the information was false and made the representation willfully with the intention of inducing the issuance of a policy. See **Mayes v. Massachusetts Mut. Life Ins. Co., 608 S.W.2d 612, 616 (Tex. 1980).**

Under Texas law, it is not necessary for the insurer to prove that the misrepresented condition contributed to the event that caused the loss. **Robinson v. Reliable Life Ins. Co., 569 S.W.2d 28, 28 (Tex. 1978).** "[T]he principal inquiry in determining materiality is whether the insurer would have accepted the risk if the true facts had been disclosed." United of Omaha Life Ins. Co. v. Halsell, 2010 U.S. Dist. LEXIS 5693 (W.D. Tex. Jan. 25, 2010).

In a recent decision a Texas court held that in order for a life insurance policy to become incontestable, the insured must survive the two-year contestability period but the insurer need not contest the policy within the same two-year period when the insured dies before the two-year period lapses. **Mut. of Omaha Life Ins. Co. v. Costello, 420 S.W.3d 873, 2014 Tex. App. LEXIS 718 (Tex. App. Houston 14th Dist. 2014).**

B. **Pre-existing Illness or Disease Clauses**

The Patient Protection and Affordable Care Act of 2010 purports to eliminate preexisting clauses but, at this time, there has been no challenges or case law interpreting this mandate. Subject to future ruling based upon the “Affordable Care Act” current pre-existing condition clauses are, arguably, still in the books as valid and enforceable. See **Abel v. Occidental Life Ins. Co., 410 S.W.2d 451, 452 (Tex. Civ. App. - Ft. Worth 1966, writ ref d n.r.e.).** However, the pre-existing condition must materially contribute to the claim on the policy before it will bar recovery. See **Mutual Benefit Health and Accident Ass’n v. Hudman, 398 S.W.2d 110, 114 (Tex.**
1965). When disease or sickness contributes to the loss "directly or indirectly," a previous medical condition will preclude recovery only when it was the proximate rather than the indirect or remote cause of the loss. See Stroburg v. Ins. Co. of N. Am., 464 S.W.2d 827, 829 (Tex. 1971). This analysis is subject to future court decisions, interpretations and congressional action, amendments and changes based upon the “Affordable Care Act”, which forbids an insurer from denying coverage because of a person’s pre-existing health condition.

C. Statutes of Limitations


Section 541.162(a) of the Texas Insurance Code provides a limitations period for bringing a claim for unfair methods of competition or deceptive acts under the act:

A person must bring an action under this chapter before the second anniversary of the following: (1) the date the unfair method of competition or unfair or deceptive act or practice occurred; or (2) the date the person discovered or, by the exercise of reasonable diligence, should have discovered that the unfair method of competition or unfair or deceptive act or practice occurred.

Tex. Ins. Code § 541.162(a). Section 541.162(b), however, provides for an extension of this time limitation, in certain instances:

The limitations period provided by Subsection (a) may be extended 180 days if the person bringing the action proves that the person’s failure to bring the action within that period was caused by the defendant’s engaging in conduct solely calculated to induce the person to refrain from or postpone bringing the action.

Tex. Ins. Code § 541.162(b).

VI. Beneficiary Issues

A. Change of Beneficiary

Proceeds of an insurance policy are by statutory definition nontestamentary in nature. Tramel v. Estate of Billings, 699 S.W.2d 259, 262 (Tex. App.--San Antonio 1985, no writ); see also Patrick v. Patrick, 182 S.W.3d 433, 438 (Tex. App.--Austin 2005, no pet.) (stating that "life-insurance policies are non-probate assets and are generally transferred upon the death of the decedent through the terms of the policy, not a will"); see also Tex. Estates Code Ann. §111.051. Because an insurance policy is statutorily characterized as nontestamentary, "the instrument does not . . . have to be probated, nor does the personal representative have any power or duty with
respect to the assets involved." Holley v. Grigg, 65 S.W.3d 289, 293 (Tex. App.--Eastland 2001, no pet.) (quoting with approval, UNIF. PROBATE CODE 6-201 cmt. (1997)). "It is plain the right to the proceeds does not accrue as a testamentary right to those who will take under the laws of descent and distribution."

Policy requirements for designating or changing the beneficiary are primarily for the benefit of the insurance company, and compliance with them may be waived by the insurance company during the lifetime of the insured. Fidelity Union Life Insurance Company v. Methven, 346 S.W.2d 797 (Tex. 1961).

The Texas Insurance Code also limits the potential liability of an insurance company who pays the proceeds of a policy to the named beneficiary. Articles 1103.102 and 1103.103 of the Texas Insurance Code discharges an insurance company for paying the proceeds of its policy directly to a named beneficiary in the absence of the receipt by it of notice of an adverse claim to the proceeds of the policy from one having a bona fide legal claim to such proceeds or a part thereof.

A beneficiary named under a life-insurance policy has no standing to recover under the policy unless his interest has vested. See Cates v. Cincinnati Life Ins. Co., 947 S.W.2d 608, 614 (Tex. App.--Texarkana 1997, no writ), op. on remand from 928 S.W.2d 623, 39 Tex. Sup. Ct. J. 916 (Tex. 1996). As explained in Cates, settled Texas law holds that a named beneficiary has no vested interest in the policy proceeds unless one of the following conditions occurs: (1) a contract--separate from the policy itself--proscribes any change in the designation of the beneficiary, id.; see O'Neill v. Conn. Mut. Life Ins. Co., 544 S.W.2d 741, 744 (Tex. Civ. App.--Houston [1st Dist.] 1976, writ ref'd n.r.e.); (2) the policy itself does not authorize the owner of the policy to change the beneficiary, id., quoting McNeill v. Chinn, 45 Tex. Civ. App. 551, 101 S.W. 465, 467 (Tex. 1907)); or (3) the insured dies. Cates, 947 S.W.2d at 614; see Volunteer State Life Ins. v. Hardin, 145 Tex. 245, 197 S.W.2d 105, 107 (Tex. 1946) (restating "well settled" rule that no rights to proceeds of life policy vest in named beneficiary when policy authorizes change of beneficiary). Unless one of these events occurs to vest the beneficiary's rights, the insurer may not prevent the owner of the policy from exercising his right to change the beneficiary. See State Farm Life Ins. Co. v. Martinez, 174 S.W.3d 772, 781 (Tex. App.--Waco 2005), rev'd on other grounds, 216 S.W.3d 799, 50 Tex. Sup. Ct. J. 406, 2007 WL 431043 (Tex., Feb. 9, 2007).

ERISA broadly preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). The Fifth Circuit held that Texas Family Code § 9.301, relates to employee benefit plans and is preempted by ERISA. Manning v. Hayes, 212 F.3d 866, 870 (5th Cir. 2000, cert. denied). In Manning, the Fifth Circuit reaffirmed that federal common law, rather than the text of ERISA itself, governs resolution of cases in which a former spouse who is still the designated beneficiary of a policy governed by ERISA is alleged to have waived her rights to the policy benefits.

According to the Fifth Circuit, the rule of federal common law is applicable to disputes concerning waiver by a designated beneficiary of an ERISA plan in that "a named ERISA beneficiary may waive his or her entitlement to the proceeds of an ERISA plan providing life insurance benefits, provided that the waiver is explicit, voluntary, and made in good faith." Id. at 874.
B. Effect of Divorce on Beneficiary Designation

The Texas Family Code changes the above long standing precedent. By statute, if an insured's spouse is designated as a life-insurance beneficiary but the couple later divorces or their marriage is annulled, the earlier designation of the spouse as a policy beneficiary is ineffective. See Tex. Fam. Code Ann. § 9.301(a) (West 2006). If that happens, then the policy proceeds are payable to the named alternative beneficiary, or if there is none, then the proceeds are payable to the insured's estate. The same statute provides three exceptions to this rule. The earlier designation of a former spouse as a life-insurance beneficiary is not rendered ineffective if (1) the former spouse is designated as the beneficiary in the divorce decree; (2) the insured redesignates the former spouse as a beneficiary after the divorce; or (3) the former spouse is designated to receive the insurance proceeds in trust for, on behalf of, or for the benefit of a child or a dependent of either of the former spouses. Branch v. Monumental Life Insurance Co., 2014 WL 545517 (Tex.App.—Houston [14th Dist]Feb.11, 2014, no pet.)

VII. Interpleader Actions

A. Availability of Fee Recovery

An Interpleader stakeholder, in both State and Federal Court, is entitled to recover attorney fees from the tendered funds unless there were no rival claimants or the stakeholder unreasonably delayed in filing the action for interpleader. State Farm Life Ins. v. Martinez, 216 S.W.3d 799, 803 (Tex. 2007); Corrigan Dispatch Co. v Casa Guzman, S.A., 696 F.2d 359 (5th Cir. 1983). In Texas State court, a stakeholder is entitled to attorneys fees if it had reasonable doubts about which party was entitled to funds and it interplead the claimants in good faith, U.S. v. Ray Thomas Gravel Co., 380 S.W.2d 576 (Tex. 1964), and you were not the party responsible for the conflicting claims to the funds. In Federal Court attorney’s fees are normally awarded to the interpleader who (1) is disinterested, (2) concedes its liability in full, (3) deposits the disputed stake with the court clerk, (4) seeks discharge, and (5) is not in some way culpable with respect to the subject matter of the interpleader proceeding. See Septembertide Publ’g, B.V. v. Stein & Day, 884 F.2d 675, 683 (2d Cir.1989). You may not be entitled to attorney fees if you were the party responsible for the conflicting claims to the funds.

B. Differences in State vs. Federal Circuit

This author could discern no significant differences if an Interpleader is filed in State or Federal court, other than the procedural rules. If you file your Interpleader in Federal court a stakeholder will need to establish either diversity jurisdiction or establish a Federal question.