I. REGULATORY LIMITS ON CLAIMS HANDLING

A. Timing for Responses and Determinations

All relevant time limitations are found in the Insurance Code Title 24-A, at Sections 2436 and 2436-A, commonly called the Unfair Claims Settlements Act. For example, claims for loss other than by fire are payable within 30 days of proof of loss and fire-related claims have a 60 day limit. 24-A M.R.S.A. § 2436 (1). And an insurer may, at any time within the 30 days, notify the insured that additional reasonable information is needed. A second 30-day clock then begins to run once the insurer has received the requested information. 24-A M.R.S.A. § 2436-A creates a private cause of action for the insured if the insurer fails to adhere to the requirements of § 2436.

B. Standards for Determinations and Settlements

Claims handling standards are set forth in the same sections discussed under section A. Note that § 2436-A does create a private right of action for certain specific knowing violations of the Act.

II. PRINCIPLES OF CONTRACT INTERPRETATION

Maine follows the bedrock principle of contract law that ambiguities are interpreted against the drafter. Barrett, 2005 ME 43 at ¶ 17, 870 A.2d 146.

III. CHOICE OF LAW

In Maine, when determining whether to enforce a choice of law provision in a contract, courts are guided by the choice of law analysis outlined in the Restatement. Pursuant to section 187(2) of the Restatement (Second) of Conflicts of Laws, Maine courts will enforce a contractual choice of law provision “unless either (a) 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 (b) the 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 the particular issue . . . .” Schroeder v. Rynel, Ltd., Inc., 1998 ME 259, ¶ 8, 720 A.2d 1164 (quoting Restatement (Second) of Conflicts of Laws § 187(2) (1971)).

Similarly, in the absence of a choice of law provision in an insurance contract, Maine courts apply the Restatement’s “most significant contacts and relationships” approach to conflicts of law. Flaherty v. Allstate Ins. Co., 2003 ME 72, ¶ 16, 822 A.2d 1159, 1165-66 (citing the Restatement (Second) of Conflict of Laws §§ 145, 146 (1971)). Under this approach, Maine courts isolate the issue, identify the policies embraced in the laws in conflict, and examine the contacts with the respective jurisdictions to determine which jurisdiction has a superior interest in having its laws and policies applied. Flaherty v. Allstate Ins. Co., 2003 ME 72, ¶ 19, 822 A.2d 1159 (citing Collins v. Trius, Inc., 663 A.2d 570, 573 (Me. 1995)). In examining the parties’ contacts with the respective jurisdictions, Maine courts consider:

(a) the place where the injury occurred,
(b) the place where the conduct causing the injury occurred,
(c) the domicile, residence, nationality, place of the parties, and
(d) the place where the relationship, if any, between the parties is centered.

Flaherty, 2003 ME 72, ¶ 19, 822 A.2d 1159 (citing the Restatement (Second) of Conflict of Laws § 145 (1971)).

IV. EXTRACONTRACTUAL CLAIMS AGAINST INSURERS: ELEMENTS AND REMEDIES

A. Bad Faith

1. First Party

There is no independent tort of bad faith that accompanies an insurer's breach of the implied covenant of good faith and fair dealing. Marquis v. Farm Family Ins. Co., 628 A.2d 644 (Me. 1993). An insured's "remedies for breach of the duty [are limited] to the traditional remedies for breach of contract . . . .” Id. at 652. Where there is no coverage, there is no breach. See also, Colford v. Chubb Life Ins., 687 A.2d 609, 616 (Me. 1996) (“In order to secure emotional distress and punitive damages in this action, [an insured] must demonstrate that [the insurer] committed independently tortious conduct beyond the denial of [the] claim.”
2. **Third Party**

Third parties are limited to contract remedies. This rule heavily circumscribes liability of insurers as to third parties. See, e.g., Stull v. First American Title Ins. Co., 745 A.2d 975, 980 (Me. 2000) (declining to go beyond the holding of Colford in determining third party rights).

3. **Damages**

The traditional remedies for breach of contract are available to the insured in the event an insurer breaches its contractual duty to act in good faith, including full general and consequential damages. In addition, the Legislature has provided the remedies set forth in the late payment claims statute, 24-A M.R.S.A. § 2436, and the unfair claims practices statute, 24-A M.R.S.A, § 2436-A. Both of these remedies provide for statutory interest and attorney fees in certain instances for improper actions of an insurer. Marquis v. Farm Family Mut. Ins. Co., 628 A.2d 644, 652 (Me. 1993).

B. **Fraud**

A defendant is liable for fraud if the plaintiff establishes the following elements by clear and convincing evidence:

[The defendant] (1) makes a false representation (2) of a material fact (3) with knowledge of its falsity or in reckless disregard of whether it is true or false (4) for the purpose of inducing another to act or to refrain from acting in reliance upon it, and (5) the plaintiff justifiably relies upon the representation as true and acts upon it to his damage.

Letellier v. Small, 400 A.2d 371, 376 (Me. 1979). When clear and convincing evidence is required, plaintiffs bear the burden of persuasion to “place in the ultimate factfinder an abiding conviction that the truth of [their] factual contentions are highly probable.” St. Francis De Sales Federal Credit Union v. Sun Ins., Co. of New York, 2002 ME 127, ¶ 26, 818 A.2d 995 (Me. 2002).

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

To prevail on a claim of intentional infliction of emotional distress, the plaintiff must show that:

(1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from [the defendant’s] conduct;

(2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, utterly intolerable in a civilized community;

(3) the actions of the defendant caused the plaintiff’s emotional distress; and

(4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.
Lyman v. Huber, 2010 ME 139, ¶ 16, 10 A.3d 707 (quoting Curtis v. Porter, 784 A.2d 18, 22-23 (Me. 2001)). To be liable for NIED, the defendant must (1) have owed a duty to the plaintiff; (2) have breached that duty; (3) such breach resulting in (4) severe emotional distress to the plaintiff. Curtis v. Porter, 784 A.2d 18, 25 (Me. 2001). A plaintiff pursuing either tort in the context of an insurer/insured relationship must demonstrate independently tortious conduct beyond the denial of a claim. Colford v. Chubb Life Ins. Co. of America, 687 A.2d 609, 616 (Me. 1996).

The Maine Law Court has not directly addressed the question of whether a plaintiff has an independent action for NIED against an insurer. Presumably the same preconditions apply to that claim as to any other action beyond breach of contract for independent conduct beyond the denial of the claim. cf. Commercial Union Ins. Co. v. Workers' Compensation Bd., 704 A.2d 358, 359 (Me. 1997).

D. State Consumer Protection Laws, Rules and Regulations

Pursuant to Maine’s Unfair Trade Practices Act, 5 M.R.S.A. § 207, et seq., a purchaser of personal, family or household goods, services, or property who suffers any loss of money or property as a result of an unfair or deceptive act committed in the conduct of trade may maintain an action pursuant to the Act. 5 M.R.S.A. §§ 207, 213. In order to recover against an insurer under the act, the plaintiff must establish a loss of money or property as a result of the insurer’s actions. Curtis v. Allstate Ins. Co., 787 A.2d 760, 770 (Me. 2002). In that case, the Court held that signing a release in exchange for the settlement did not constitute such a loss. Id. To date, Curtis is the only Law Court case considering the actions of an insurer.

E. State Class Actions

State class action suits must be filed according to Rule 23 of the Maine Rules of Civil Procedure, which tracks considerably with Rule 23 of the Federal Rules of Civil Procedure. The prerequisites to a class action in Maine include: 1. The class is so numerous that joinder of all members is impracticable; 2. Commonality in questions of law or fact; 3. That the claims and defenses of the class representatives are typical to all class members; 4. And that the class representatives will adequately represent the class. M.R. Civ.P. 23(a); Campbell v. First American Title Ins. Co., 269 F.R.D. 68, 75 (D. Me. 2010).

If the class meets the prerequisites, the class may be certified if it meets the requirements under Rule 23(b): 1. That separate actions would create a risk of inconsistent outcomes or impede the interests of parties to separate actions; 2. The opposing party’s actions are applicable to the entire class and injunctive or declaratory relief may be appropriate; or 3. The court finds that question of law or fact are common to the class members and predominate over any questions affecting individual members. M.R. Civ.P. 23(b).

F. State Privacy Laws, Rules and Regulations

1. Criminal Sanctions

Maine does not have a separate criminal law for invasion of privacy interests. However, criminal sanctions may be brought for Deceptive Insurance Practices under 17-A M.R.S. §901-A.
2. **The Standards for Compensatory and Punitive Damages**

Compensatory damages are awarded to compensate a plaintiff for actual damages suffered including “for loss, detriment of injury”. Moholland v. Empire Fire & Marine Ins. Co., 746 A.2d 362, 365 (Me.2000). Maine Courts have found that Pre-judgement interest is a form of compensatory damages; however post-judgement interest does not fall within compensatory damages. *Id.*

Punitive Damages are awarded to serve as a deterrent function beneficial to society “when no other remedy would suffice”. Caron v. Caron, 577 A.2d 1178, 1180 (Me. 1990). The factfinder must also consider additional elements when considering punitive damages, such as the defendant’s financial condition, state of mind, and the egregiousness of the actions. *Id.*

3. **Insurance Regulations to Watch**

All regulations are located under the Maine State Insurance Code, Title 24-A of the Maine Revised Statutes.

4. **State Arbitration and Mediation Procedures**

State law requires Alternative Dispute Resolution (“ADR”) for all cases filed in the Superior Court. The ADR must be scheduled within 60 days and completed within 120 days of the court’s scheduling order. M.R. Civ. P. 16B(a). There are limited exemptions under Rule 16B(b). If the parties cannot agree on a neutral mediator, the Court will appoint one to them. M.R. Civ. P. 16B(d). The costs and fees of the mediator will be split between the parties. M.R. Civ. P. 16B(d). Within 10 days of the ADR the Court must be notified whether the parties settled and if they did not, the mediator must provide a report. M.R. Civ. P. 16B(h).

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

The Bureau of Insurance is governed by the Code of Maine Rules (“CMR”) promulgated under Maine’s Administrative Procedure Act. 5 M.R.S.A. § 8051 et seq. The CMR provides Rules to all of Maine’s agencies. Those rules can be found at http://www.maine.gov/sos/cec/rules/rules.html.

V. **DEFENSES IN ACTIONS AGAINST INSURERS**

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

Misrepresentations, omissions, concealment of facts and incorrect statements may not prevent a recovery under a policy or contract unless they are either fraudulent, or:

[m]aterial either to the acceptance of the risk, or to the hazard assumed by the insurer, such that the insurer in good faith would either not have issued the insurance or contract, or would not have issued it at the same premium rate, or ... 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 . . . .

24-A M.R.S.A. § 2411.

B. **Preexisting Illness or Disease Clauses**
Maine statute does permit clauses for preexisting medical conditions under statutes 24-A M.R.S.A. §§ 2696; 2850.

C. Statutes of Limitations and Repose

"All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards, except on actions on a judgment or decree of any court of record of the United States, or of any state or of a justice of the peace in this State, and except as specially provided." 14 M.R.S.A. § 752. This rule applies to all causes of action against insurers qua insurers.

VI. BENEFICIARY ISSUES

A. Change of Beneficiary

Maine, like many jurisdictions, recognizes that a change form/change of beneficiary is effective when the insured has substantially complied with insurer’s requirements for changing a named beneficiary. Clark v. Metro. Life Ins. Co., 126 Me. 7, 135 A. 357, 359 (1926). The Law Court has held that as a general rule, if “the insured has taken all necessary steps, and otherwise done all in his power to effect a change of beneficiary, and all that remains to be done is some purely ministerial duty on the part of the [insurer], then the change will be regarded as complete.” Id.

B. Effect of Divorce on Beneficiary Designation

Under Maine law, the fact that the named beneficiary has been divorced from the insured does not affect the beneficiary’s rights to insurance proceeds. Lamarche v. Metro. Life Ins. Co., 236 F. Supp. 2d 34, 43-44 (D. Me. 2002).

VII. INTERPLEADER ACTIONS

A. Availability of Fee Recovery

Citing M. R. of Civ. P. 22, the District of Maine has determined the standard for determination of who pays costs and attorney’s fees is whether the disinterested stakeholder was subjected to the claims through no fault of its own: “An interpleader fee is usually awarded out of the fund to compensate a totally disinterested stakeholder who has been, by reason of the possession of the fund, subjected to conflicting claims through no fault of his own.” Centex-Simpson Const. Co. v. Fidelity & Deposit Co. of Maryland, 795 F.Supp. 35, 41-42 (D. Me. 1992 (citing Ferber Co. v. Ondrick, 310 F.2d 462, 467 (1st Cir. 1962), cert. denied, 373 U.S. 9111, 83 S. Ct 1300 (1963)).

B. Differences in State vs. Federal