I. Regulatory Limits on Claims-Handling

A. Timing for Responses and Determinations

The Minnesota Unfair Claims Practices Act governs time limits to respond to insurance claims. See Minn. Stat. § 72A.201. The Act provides that, except for health insurance claims, insurers must acknowledge a claim (providing specific information listed in the statute) and provide necessary forms and instructions with which to process the claim within ten business days after receipt of the claim. Minn Stat. § 72A.201, subd. 4(1). In addition, an insurer must reply within ten business days to all communications about a claim to which a response is requested or needed. Minn. Stat. § 72A.201, subd. 4(2). Finally, unless modified by policy language or other law, notice of acceptance or denial of a claim must be given within thirty business days after receipt of notification of a claim, Minn. Stat. § 72A.201, subd. 4(3), and within sixty days of receipt of a proof of loss, Minn. Stat. § 72A.201, subd. 4(11). If the investigation of a claim cannot reasonably be completed within the time allowed, an insurer may take additional time to investigate but must notify the insured or claimant of that fact within the thirty-day time period and explain why the investigation is not complete and the expected date of completion. Id.

B. Standards for Determinations and Settlements

Claims handling and settlement practices are also governed by Minnesota’s Unfair Claims Practices Act. See Minn. Stat. § 72A.201, subd. 4-6.

Minn. Stat. § 72A.201, subd. 5, governs general settlement offers and agreements and provides that the following acts by an insurer, adjuster, self-insured, or self-insurance administrator constitute unfair settlement practices:

1. Making a payment, settlement, or settlement offer without explaining what the payment is for;

2. Making an offer to settle one portion of a claim contingent upon an agreement to settle another portion;
3. Refusing to pay elements of a claim for which there is no good faith dispute;

4. Threatening to cancel, rescind, or not renew a policy if no settlement is reached;

5. Failing to issue settlement proceeds within five days of a settlement agreement or the performance of conditions by the claimant, whichever is later;

6. Failing to inform the insured of the policy provision(s) under which payment is made;

7. Settling or attempting to settle a claim under cash value provisions for less than the value of the property;

8. Settling or offering to settle a claim with an insured under replacement value provisions for less than the sum necessary to replace the damaged item with one of like kind and quality, including applicable taxes, license, and transfer fees;

9. Reducing or attempting to reduce any settlement for depreciation of an item not adversely affected by age, use, or obsolescence; and

10. Reducing or attempting to reduce a settlement unless the resale value of the item has increased over the preloss value by the repair of the damage.

Minn. Stat. § 72A.201, subd. 6, provides specific rules regarding the handling of settlement offers and agreements in automobile insurance claims.


C. State Privacy Laws, Rules, and Regulations

Subject to certain exceptions, the Minnesota Insurance Fair Information Reporting Act provides that insurers must obtain written authorization to disclose or to obtain personal or privileged information about a person collected in connection with an insurance transaction. Minn. Stat. § 72A.502. Exceptions to the statute include disclosures to prevent fraud and criminal activity, certain disclosures to aid actuarial studies, disclosures pursuant to a subpoena and disclosures to affiliates for marketing purposes. Id. An insurer must notify its insured of any disclosure in writing within ten days, specifying the person to whom information was disclosed and the nature of the information disclosed. Id., subd. 12. A private cause of action exists for violations of this statute. See Minn Stat. § 72A.503.

II. Principles of Contract Interpretation

Insurance policies are contracts that are governed by “[g]eneral contract principles” and “interpreted to give effect to the intent of the
Nathe Brothers v. America Nat’l Fire Ins. Co., 615 N.W.2d 341, 344 (Minn. 2000). These principles of interpretation include:

[1.] Parties to insurance contracts, as in other contracts, absent legal prohibition or restriction, are free to contract as they see fit, and the extent of liability of an insurer is governed by the contract they enter into.

[2.] Subject to the statutory law of the state, a policy of insurance is within the application of general principles of the law of contracts.

[3.] Inasmuch as the language of an insurance policy is that of the insurer, any reasonable doubt as to its meaning must be resolved in favor of the insured, but the court has no right to read an ambiguity into plain language of an insurance policy in order to construe it against the one who prepared the contract.

[4.] Where there is no ambiguity there is no room for construction. In such cases, the parties being free to contract, the language used must be given its usual and accepted meaning.

[5.] Contracts of insurance, like other contracts, must be construed according to the terms the parties have used, to be taken and understood, in the absence of ambiguity, in their plain, ordinary, and popular sense, so as to give effect to the intention of the parties as it appears from the entire contract.

[6.] The endorsements or riders attached to an insurance contract are part of the contract, and the endorsements and the policy must be construed together.

[7.] A policy and endorsements should be construed, if possible, so as to give effect to all provisions, but, where provisions in the body of the policy conflict with an endorsement or rider, the provision of the endorsement governs.

[8.] Exclusions in a policy or endorsements are as much a part of the contract as other parts thereof and must be given the same consideration in determining what is the coverage.

Bobich v. Oja, 104 N.W.2d 19, 24-25 (Minn. 1960). A policy is ambiguous “only if it is reasonably subject to more than one interpretation.” Hammer v. Investors Life Ins. Co. of N. Am., 511 N.W.2d 6, 8 (Minn. 1994). If no ambiguity exists, the policy’s plain language controls. Henning Nelson Constr. Co. v. Fireman’s Fund Am. Life Ins. Co., 383 N.W.2d 645, 652 (Minn. 1986). But if a term is ambiguous, courts may look to extrinsic evidence to clarify the policy language, and if no clarifying information is available,
the ambiguity must generally be resolved against the insurer. See, e.g., Gareis v. Benefit Ass’n of R. Employees Ins. Co., 169 N.W.2d 730, 732 (Minn. 1969); Holm v. Mut. Service Casualty Ins. Co., 261 N.W.2d 598, 600 (Minn. 1977). However, this doctrine of contra proferentem only applies to disputes between an insurer and an insured. Econ. Premier Assur. Co. v. W. Nat. Mut. Ins. Co., 839 N.W.2d 749, 755 (Minn. Ct. App. 2013). The doctrine does not apply to disputes between two insurance companies, such as disputes concerning which policy provides primary coverage. Id.

In Atwater Creamery Co. v. Western Nat’l Mut. Ins. Co., 366 N.W.2d 271, 277-78 (Minn. 1985), the Minnesota Supreme Court adopted the “reasonable expectations” doctrine that “may in certain limited situations protect the reasonable expectations of the insured with respect to coverage where the literal terms and conditions of the policy bar the claim.” West Bend Mut. Ins. Co. v. Allstate Ins. Co., 776 N.W.2d 693, 701 (Minn. 2009). However, the courts have been reluctant to apply the doctrine, and have limited its use “to ‘resolving ambiguity’ in policy terms ‘and for correcting extreme situations,’ such as ‘where a party's coverage is significantly different from what the party reasonably believes it has paid for and where the only notice the party has of that difference is in an obscure and unexpected provision.’” Id. (quoting Carlson v. Allstate Ins. Co., 749 N.W.2d 41, 49 (Minn. 2008)). Similarly, an ambiguous policy may not be construed against the insurer if doing so would result in coverage “beyond the reasonable expectations of the insured.” Occidental Fire & Cas. Co. v. Soczynski, 765 F.3d 931, 937 (8th Cir. 2014).

III. Choice of Law

Minnesota generally allows the parties of an insurance policy to agree on which jurisdiction’s law will govern the contract. Allianz Ins. Co. of Can. v. Sanftleben, 454 F.3d 853, 855 (8th Cir. 2006) (citing Milliken & Co. v. Eagle Packaging Co., 295 N.W.2d 377, 380 n.1 (Minn. 1980)). In the absence of such an agreement, the court’s threshold task is to decide whether the choice of one state’s law over another creates an actual conflict. See, e.g., Honeywell v. Ruby Tuesday, 43 F. Supp. 2d 1074, 1077 (D. Minn. 1999). If a conflict exists, the court next determines whether the law involved is procedural or substantive. Id. If the court concludes that the law involved is procedural, then the court will apply the law of the forum without further analysis. Davis v. Furlong, 328 N.W.2d 150, 153 (Minn. 1983) (“[Minnesota follows] the almost universal rule that matters of procedures and remedies [are] governed by the law of the forum state.”). However, if the court concludes that the law involved is substantive, then it must apply the five choice-influencing factors first articulated by the Minnesota Supreme Court in Milkovich v. Saari, 203 N.W.2d 408, 412 (1973): (1) predictability of result, (2) maintenance of interstate order, (3) simplification of the judicial task, (4) advancement of the forum’s governmental interest and (5) application of the better rule of law.

Smith v. Stonebridge Life Ins. Co., No. 03-1006, 2003 U.S. Dist. LEXIS 13894 (D. Minn. Aug. 8, 2003) and JSI Industries v. Steadfast Ins. Co., No. 03-6535, 2004 U.S. Dist. LEXIS 10005 (D. Minn. May 13, 2004), provide examples of the application of these factors in insurance contexts. Although these inquiries are inherently factual, in both instances the federal courts noted Minnesota’s interest in generally prohibiting first-party bad faith claims (see Section IV below) while applying Minnesota law to foreclose bad faith claims that had been asserted under the laws of other states.
Extra Contractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

Minnesota historically has been in the minority of jurisdictions that do not recognize first party bad faith. See, e.g., Morris v. Am. Family Mut. Ins. Co., 386 N.W.2d 233, 237 (Minn. 1986). However, the legislature created a mechanism to recover for bad faith with the adoption of Minn. Stat. § 604.18, which became effective August 1, 2008. The statute allows an insured to recover amounts in excess of what is owed under the policy under certain circumstances. The legislation does not apply to all forms of insurance, and its exemptions include workers’ compensation and certain life and health policies. Minn. Stat. § 604.18, subd. 1.

Liability under the statute is established if the insured can show:

(1) the absence of a reasonable basis for denying the benefits of the insurance policy; and

(2) that the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy.

Minn. Stat. § 604.18, subd. 2. If such a showing is made, the insured is entitled to recover “taxable costs” in “an amount equal to one-half of the proceeds awarded that are in excess of an amount offered by the insurer at least ten days before the trial begins or $250,000, whichever is less,” plus attorney fees not to exceed $100,000. Minn. Stat. § 604.18, subd. 3. Additional punitive damages may not be awarded. Id.

A plaintiff cannot seek taxable costs for bad faith in an initial complaint. Minn. Stat. § 604.18, subd. 4. Instead, the insured must make a subsequent motion supported by affidavits for leave to amend the complaint to seek an award under the statute. Id. The motion “may” be granted by the court if there is prima facie evidence in support of the bad faith claim. Id. If the motion to amend is granted, taxable costs are considered in a separate proceeding after a determination has been made on the underlying claim for benefits. Id. A claim under the statute may not be assigned. Id.

As of the time of this writing there have been no reported decisions by Minnesota’s appellate courts interpreting the statute in any depth. In unreported decisions the Minnesota Court of Appeals has followed the United States District Court in holding that an insurer is not liable under the statute if the merit of the insured’s claim was “fairly debatable.” Homestead Hills Homeowner Ass’n v. Am. Family Mut. Ins. Co., No. A12-0703, 2012 Minn. App. Unpub. LEXIS 1114, at *12 (Minn. Ct. App. Nov. 26, 2012); N. Nat’l Bank v. N. Star Mut. Ins. Co., No. A12-0182, 2012 Minn. App. Unpub. LEXIS 915 (Minn. Ct. App. Sept. 17, 2012) (citing Friedberg v. Chubb & Son, 800 F.Supp.2d 1020, 1025 n.1 (D. Minn. 2011). Although Minnesota trial courts have not used identical standards when applying the statute, a review of decisions appears to show that many trial court judges are not hesitating to deny motions to amend if there is insufficient evidence to sustain the bad faith allegations. Stacy Kabele, Minnesota’s First-Party Bad Faith Statute: Early Lessons Learned, Hennepin Lawyer, August 24, 2010, available at
An insurer may be liable for failing to exercise “good faith” in handling third party claims against an insured. Short v. Dairyland Ins. Co., 334 N.W.2d 384, 387-88 (Minn. 1983). An insurer breaches its duty of good faith where (1) the insured is clearly liable; (2) the insurer refuses to settle within the policy limits; and (3) the refusal to settle is not made in good faith. Id. Typically, the insured assigns his or her bad faith claim against the insurer to an injured claimant in return for relief from the excess judgment. The injured claimant (assignee) may then proceed with the claim for bad faith. See, e.g., Strand v. Travelers Ins. Co., 219 N.W.2d 622, 622 (Minn. 1974).

The third prong of the test for bad faith is the most commonly litigated. The policyholder (or assignee) has the burden of proving the insurer acted in bad faith by refusing to settle within the policy limits. See Peterson v. Am. Family Mut Ins. Co., 160 N.W.2d 541, 544 (Minn. 1968). Unfortunately, Minnesota courts have not provided a clear definition of acts that satisfy that prong. Minnesota’s seminal bad faith case states that the duty to exercise good faith “includes an obligation to view the situation as if there were no policy limits applicable to the claim.” Short, 334 N.W.2d at 387-88. In a frequently cited case, the Minnesota Court of Appeals presented a list of duties an insurance company should carry out to act in good faith:

In order to carry out this duty, the insurer should: fully investigate a claim, fairly evaluate the claim against the insured, inform the insured of the consequences of a judgment that exceeds the limits of the policy, inform the insured of the potential conflict of interest of the insured and the insurer if the case has a settlement value in excess of the policy limits, and inform the insured of settlement offers, and other pertinent information of the claim to the insured.

Kissoondath v. U.S. Fire Ins. Co., 620 N.W.2d 909, 916 (Minn. Ct. App. 2001). The court held that in instances where the insured is clearly liable, any one of the above factors “in and of itself may be determinative of a breach of the duty of good faith.” Id. (emphasis in original).

Another indicator of bad faith under prong three is failing to keep the insured updated on developments, most importantly settlement negotiations. See, e.g., Kissoondath, 620 N.W.2d at 919 (holding that the insurer’s failure to keep the insured aware of ongoing developments constituted bad faith); Larson v. Anchor Casualty Co., 82 N.W.2d 376, 384 (Minn. 1957) (discussing the good faith requirement and stressing the insurance company’s duty to keep the insured aware of settlement offers and the status of the litigation).

A bad faith claim does not constitute a tort. Morris v. Am. Family Mut. Ins. Co., 386 N.W.2d 233, 237 (Minn. 1986). Thus, damages are limited to those “naturally and proximately” flowing from the breach. Olson v. Rugloski, 277 N.W.2d 385, 387-88 (Minn. 1979). Generally, these damages equal the excess judgment. Punitive damages are not recoverable except in rare circumstances where the defendant’s breach constitutes an independent tort. Id. at 388.
B. Fraud

In Minnesota an insured must establish the following elements to prove fraud: (1) a material false representation having to do with a past or present fact that is susceptible of knowledge; (2) the representation is known to be false or asserted as one’s own knowledge without knowing its truth or falsity; (3) the representation is made with an intent to induce and actually does induce the other person to act; (4) the party acts in reliance of the representation; and (5) incurs damage attributable to the representation. Specialized Tours v. Hagen, 392 N.W.2d 520, 532 (Minn. 1986).

C. Intentional or Negligent Infliction of Emotional Distress

1. Intentional Infliction of Emotional Distress

To recover for IIED, a plaintiff must demonstrate (1) intentional or reckless conduct; (2) that is extreme and outrageous; and (3) that resulted in severe emotional distress. Saltou v. Dependable Ins. Co., 394 N.W.2d 629, 632 (Minn. Ct. App. 1986). Typically, claims for mental distress are only allowed in contract matters in exceptional circumstances where the breach is accompanied by an independent tort. Id. at 632-33. Insureds often have difficulty stating a claim for IIED because the insured must show that the extreme and outrageous conduct occurred independently from the acts that constituted the breach of contract. See, e.g., Markgraf v. Douglas Corp., 468 N.W.2d 80, 83 (Minn. Ct. App. 1991); Saltou, 394 N.W.2d at 633. In fact, the Minnesota Court of Appeals has held that “[t]he failure to pay an insurance claim in itself, no matter how malicious, does not constitute a tort; it constitutes a breach of an insurance contract.” Saltou, 394 N.W.2d at 633.

2. Negligent Infliction of Emotional Distress

The same applies to NIED claims. See Markgraf, 468 N.W.2d. at 83. In addition, even if exceptional circumstances exist that may support an NIED claim, a claimant must show that the insured’s acts caused either physical injury or physical danger to the claimant. Id. (citing Langeland v. Farmers State Bank of Trimont, 319 N.W.2d 26, 32 (Minn. 1982)); see also Engler v. Illinois Farmers Ins. Co., 706 N.W.2d 764, 770 (Minn. 2005) (permitting recovery for distress caused by fearing for another’s safety or witnessing serious injury to another but requiring plaintiff to be in a “zone of danger of physical impact” and meet additional elements).

D. State Consumer Protection Laws and Regulations


E. State Class Actions

State class actions are governed by Rule 23 of the Minnesota Rules of Civil Procedure. Rule 23 is nearly identical in substance to Rule 23 of the Federal Rules of Civil Procedure. Because of these similarities, and because
a large majority of class actions within the state are litigated in federal court, federal decisions regarding class action issues tend to be persuasive authority to state courts.

V. Defenses in Actions Against Insurers

A. Misrepresentation/Rescission of Insurance Contract for Misrepresentation

An insurer may rescind an insurance policy if an insured’s material misrepresentation is (1) “made with intent to deceive or defraud,” or (2) “increases the risk of loss” to the insurer. Minn. Stat, § 60A.08, subd. 9; Nielsen v. Mut. Serv. Cas. Ins. Co., 67 N.W.2d 457, 459 (Minn. 1954). Although this statute does not apply to “life insurance or accident and health insurance,” Id., Minn. Stat. § 62A.06, subd. 3, provides a similar standard for health Insurance. It is not necessary for the insurer to show that it would not have issued the policy “but for” the misrepresentation so long as the risk of loss increased. Pioneer Indus. v. Hartford Fire Ins. Co., 639 F.3d 461, 467-68 (8th Cir. 2011).

“Materiality” is ordinarily a jury question based on the specific facts of a particular case. Meyer v. Blue Cross & Blue Shield of Minn., 500 N.W.2d 150, 152-53 (Minn. Ct. App. 1993). A material misrepresentation increases the risk of loss when it impairs the insurer’s ability to initially make a reasonable decision to provide coverage. Howard v. Aid Ass’n for Lutherns, 272 N.W.2d 910, 912-913 (Minn. 1978); see also Waite v. Am. Family Mut. Ins. Co., 352 N.W.2d 19 (Minn. 1984). The risk of loss is also increased if the misrepresentation increases the likelihood that the insurer will be liable in the future. In re Silicone Implant Ins. Coverage Litigation, 652 N.W.2d 46, 77 (Minn. Ct. App. 2002), rev’d on other grounds, 667 N.W.2d 405 (Minn. 2003) (citing Sec. Mut. Casualty Co. v. Affiliated FM Ins. Co., 471 F.2d 238, 242 (8th Cir. 1972)).

Minn. Stat. § 61A.11 prohibits a life insurer that issued a policy without a medical examination from challenging statements about age, physical condition or family history unless they were willfully made or intentionally misleading. The Minnesota Supreme Court recently held that this standard requires proof of the insured’s subjective intent to deceive in order to rescind a policy under the statute. Larson v. Nw. Mut. Life Ins. Co., 855 N.W.2d 293, 299 (Minn. 2014). This burden may be satisfied “in either of two ways: (1) by proof of the insured’s actual intent to deceive, or (2) by inference when the insured had knowledge of material facts and failed to disclose those facts to the insurer.” Id. This decision rejected contrary Eighth Circuit authority applying an objective standard to determine whether a misrepresentation was willful or intentional. See, Ellis v. Great-West Life Assur. Co., 43 F.3d 382, 387 (8th Cir. 1994). Cases decided prior to Larson should therefore be cited with caution. Section 61A.11 does not apply to misrepresentations other than age, physical condition, and family history. PHL Variable Ins. Co. v. 2008 Christa Joseph Irrevocable Trust, 970 F. Supp. 2d 937, 941 (D. Minn. 2013). Rescission of a policy for other types of misrepresentation, such as those relating to financial conditions, are governed by the common law. Id. This common law standard does not require proving an intentional misrepresentation by the insured to rescind a policy, but the misrepresentation must have been material. Id.

B. Preexisting Illness or Disease Clauses
1. **Statutes**

By statute no claim may be denied or reduced on the basis of a preexisting disease or physical condition after the policy has been in place for two years, unless the condition or disease is specifically named or described in the policy. Minn. Stat. § 62A.04, subd. 2. However, the policy can be voided on the basis of fraud if the insurer intentionally withholds information about a “known pre-existing condition” during the application process. Kersten v. Minn. Mut. Life Ins. Co., 608 N.W.2d 869, 875 (Minn. 2000); Minn. Stat. § 62A.04, subd. 2.

2. **Case Law**

For purposes of a pre-existing condition clause, “an illness commences when it ‘manifests itself so as to interfere with bodily functions.’” Svenddal v. New England Life Ins. Co., 388 N.W.2d 787, 789 (Minn. Ct. App. 1986) (quoting Kellerman v. City of St. Paul, 1 N.W.2d 378, 380 (Minn. 1941)).

C. **Statutes of Limitation**

Actions based on insurance contracts are subject to a six-year statute of limitations. Minn. Stat. § 541.05, subd. 1(1). The limitations period begins to run when an insured has an identifiable claim for benefits against the insurer that can be initiated through the courts or arbitration. Spira v. Am. Standard Ins. Co., 361 N.W.2d 454, 457 (Minn. Ct. App. 1985); see also Entzion v. Illinois Farmers Ins. Co., 675 N.W.2d 925, 929 (Minn. Ct. App. 2004) (citing Noske v. Friedberg, 670 N.W.2d 740, 742 (Minn. 2003)). In a claim for bad faith failure to settle, the statute of limitations does not begin to run until the appellate process is complete and the judgment against the insured is final, including appeals. Amdahl v. Stonewall Ins. Co., 484 N.W.2d 811, 813 (Minn. Ct. App. 1992). An insurer may be liable under the Unfair Claims Practices Act for failing to advise an insured or claimant in writing of the expiration of a statute of limitations at least 60 days prior to expiration. Minn. Stat. § 72A.201, subd. 4(8). This statute only applies to an insured or claimant who has filed a notification of a claim known to be unresolved and who has not retained an attorney. Id.

VI. **Beneficiary Issues**

Under Minnesota law, the doctrine of “substantial compliance” allows an insured to change the beneficiary of a life insurance policy, even without notice to the insurer, if it is proven that (1) “the insured intended to change the beneficiary,” and (2) if the insured “took affirmative action or otherwise did substantially all that he could do to demonstrate that intention without regard to whether he complied with the change-of-beneficiary provisions in the policy.” Brown v. Agin, 109 N.W.2d 147, 151 (Minn. 1961). However, failure to follow the policy’s provisions may confuse the issue, hindering a factual finding of the insured’s intent, and any confusion must be resolved in favor of the named beneficiary. Gwin v. Gappa, 394 N.W.2d 530, 534 (Minn. Ct. App. 1986). Examples of actions taken that were sufficient to allow the change in beneficiary have included the insured writing a letter to the intended beneficiary stating that the named beneficiary should not receive the proceeds, Lemke v. Schwarz, 286 N.W.2d 693, 695-96 (Minn. 1979), an insured serviceman abroad mailing a change-in-
beneficiary form to the intended beneficiary, Pabst v. Hesse, 173 N.W.2d 925, 927 (1970), and an insured delivering a signed change-in-beneficiary form to his insurance agent, Metropolitan Life Ins. Co. v. Belland, 583 N.W.2d 592, 593 (Minn. App. 1998).

Unless a policy, court order or contract between the spouses provides otherwise, a divorce automatically revokes one’s designation of their former spouse as a beneficiary under an insurance policy. Minn. Stat. § 524.2-804, subd. 1; In re DeJoode, No. A13-0824, 2013 WL 6978496, at *3 (Minn. Ct. App. Jan. 13, 2013). Policy proceeds are distributed as though the former spouse had died immediately before the divorce in the event of a statutory revocation. Minn. Stat. § 524.2-804, subd. 2.

In the absence of a contract otherwise, premium payments by a beneficiary are considered gratuitous and do not provide a right to the policy or prevent the insured from changing the beneficiary to another. McCloody v. Aetna Life Ins. Co., 21 N.W.2d 476, 478 (Minn. 1946).

VII. Interpleader Actions

A. Availability of Fee Recovery

There are no reported decisions of Minnesota state courts either allowing or disallowing attorney fees in interpleader actions. See Equitable Life Assur. Soc. of U.S. v. Miller, 229 F. Supp. 1018, 1021 (D. Minn. 1964). Successful interpleader plaintiffs, including insurance companies, are frequently awarded fees in federal cases within Minnesota. See, e.g., Protective Life Ins. Co. v. Kridner, No. CIV.12-582 JRT/JJG, 2013 WL 1249205, at *2 (D. Minn. Mar. 27, 2013); Life Ins. Co. of N. Am. v. Sessing, No. CIV.09-2269(DSD/AJB), 2010 WL 2010729, at *2 (D. Minn. May 19, 2010); Redflex Traffic Sys. v. Network Elec., No. CIV 05-2702 RHK/JJG, 2006 WL 2265159, at *2 (D. Minn. Aug. 7, 2006). To recover fees, an insurer must be "'(1) a disinterested stakeholder, (2) who has conceded liability, (3) has deposited the disputed funds into court, and (4) has sought a discharge from liability.'" Kridner, 2013 WL 1249205, at *2 (quoting Landmark Chems., SA v. Merrill Lynch & Co., 234 F.R.D. 62, 63 (S.D.N.Y.2005)). The amount of fees awarded “should be modest to avoid seriously depleting the stake.” Sessing, 2010 WL 2010729, at *2 (internal quotation omitted). Fees incurred defending the insurer’s interest, such as disputing the amount of liability or defending against counterclaims unrelated to the deposited funds, are not recoverable. Kridner, 2013 WL 1249205, at *6.

B. Differences in State vs. Federal Circuit

Minnesota does not have a state interpleader statute analogous to 28 U.S.C. § 1335. However, Rules 22 of the Minnesota and Federal Rules of Civil Procedure are similar and there are not significant substantive differences between interpleader actions in federal or state court. However, Minnesota courts have not recognized a right to recover attorney fees by interpleader plaintiffs. Given this, along with the availability of national service of process and the relatively liberal jurisdictional requirements of the federal interpleader statute, 28 U.S.C. § 1335, a significant majority of Minnesota interpleader cases are filed in federal court.