I. Regulatory Limits on Claims Handling

A. Timing for Responses and Determinations

With respect to accident, health and medicare supplement insurance policies, Miss. Code Ann. § 83-9-5 establishes applicable time limits for submission and payment of claims. Examples: 30 days to provide written notice of claim to insurer (Miss. Code Ann. § 83-9-5(1)(e)); 25 days to pay benefits after receipt of written proof of loss in form of clean claim form submitted electronically or 35 days if submitted in paper format (Miss. Code Ann. § 83-9-5(1)(h)).

Otherwise, Mississippi has no "unfair claims practices" statute. However, within Mississippi's insurance code, Miss. Code Ann. § 83-5-1, et seq., may be found its "unfair trade practices" prohibitions, § 83-5-33; the specific enumerated acts prohibited are found or alluded to at §§ 83-5-35 and 83-5-45, which statutes deal with unfair methods of competition or deceptive acts or practices both defined and "undefined"; the later prohibition may be constitutionally suspect.

B. Standards for Determinations and Settlements

The resolutions of claims involving minors and other incompetents is controlled by statute; no such resolution is valid without specific court approval. Miss. Code Ann. § 93-13-1, et seq. Depending upon the gross size of the compromise, formal guardianship will be required; the threshold value is $25,000.00. Miss. Code Ann. § 93-13-211. Again, Mississippi has no general unfair claims practices statute; therefore, the standards for determination and settlements, to the extent not specified by policy terms, are matters susceptible of ex post facto "regulation" by the courts. "Unreasonable" delay in payment has been held actionable by the Mississippi Supreme Court. See, e.g., Caldwell v. ALFA Ins. Co., 686 So. 2d 1092 (Miss. 1996).

II. Principals of Contract Interpretation

The interpretation of insurance policy language is a question of law. Generally, under Mississippi law, when the words of an insurance policy are plain and unambiguous, the court will afford them their plain, ordinary meaning, and will apply them as written. Ambiguous and unclear insurance policy language must be resolved in favor of the insured. Further,
provisions that limit or exclude coverage are to be construed liberally in favor of the insured and most strongly against the insurer. Lewis v. Allstate Ins. Co., 730 So. 2d 65, 68 (Miss. 1998); Paul Revere Life Ins. Co. v. Prince, 375 So. 2d 417, 418 (Miss. 1979).

III. Choice of Law

Choice of law analysis involves a multi-step process. First, it must be determined whether the conflicting laws are substantive or procedural. Regardless of the substantive law to be applied, Mississippi courts will apply their own procedural law. Ford v. State Farm Ins. Co., 625 So. 2d 792, 793 (Miss. 1993). However, few laws are classified as procedural in Mississippi. In addition to the Mississippi Rules of Civil Procedure and Mississippi Rules of Evidence, Mississippi courts have only found the definition of "procedural" to include statutes of limitations, awards of attorney's fees and awards of pre-judgment interest. Sentinel Indus. Contracting Corp. v. Kimmins Indus. Serv. Corp., 743 So. 2d 954, 960 (Miss. 1999). The Mississippi Supreme Court has held that contract construction is substantive. Zurich Am. Ins. Co. v. Goodwin, 920 So. 2d 427, 433 (Miss. 2006); Boardman v. United Servs. Auto. Ass'n, 470 So. 2d 1024, 1039 (Miss. 1985).

In determining which state's substantive law to apply, Mississippi relies on the "center of gravity" doctrine set forth in the Restatement (Second) of Conflict of Laws. The Mississippi Supreme Court has described the center of gravity doctrine as follows:

This doctrine is a rule whereby the court trying the action applies the law of the place which has the most significant relationship to the event and parties or which, because of the relationship or contact with the event and parties, has the greatest concern with the specific issues with respect to the liabilities and rights of the parties to the litigation.

Mitchell v. Craft, 211 So. 2d 509, 514-15 (Miss. 1968). Under Mississippi law, the court applies the factors set forth in the Restatement (Second) of Conflicts of Law in determining which state's law to apply, including the place of contracting, the place of negotiation of the contract, the place of performance, the location of the subject matter of the contract and the domicile, residence, nationality, place of incorporation and place of business of the parties. Baites v. State Farm Mutual Auto Ins. Co., 733 So. 2d 320, 322-23 (Miss. Ct. App. 1998).

IV. Extracontractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

To recover punitive damages on a cause of action for "bad faith" under Mississippi law, a plaintiff must prove the following elements by a preponderance of the evidence: (1) that the insurer lacked an arguable or legitimate basis for denying the claim; and (2) that the insurer committed a willful or malicious wrong, or acted with gross and reckless disregard for the insured's rights. State Farm Mut. Auto. Ins. Co. v. Grimes, 722 So. 2d 637, 641 (Miss. 1998); Standard Life Ins. Co. v. Veal, 354 So. 2d 239, 248 (Miss. 1977).
B. Fraud

To establish a cause of action for fraud or intentional misrepresentation under Mississippi law, a plaintiff must prove by clear and convincing evidence the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it should be acted upon by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) his/her consequent and proximate injury. Levens v. Campbell, 732 So. 2d 753, 761-62 (Miss. 1999); Allen v. Mac Tools, Inc., 671 So. 2d 636, 642 (Miss. 1996); Boling v. A-1 Detective Patrol Service, Inc., 659 So. 2d 586, 590 (Miss. 1995).

C. Intentional Infliction of Emotional Distress and/or Outrage

To establish a cause of action for intentional infliction of emotional distress and/or outrage under Mississippi law, a plaintiff must prove that the defendant's conduct was malicious, intentional, willful, wanton, grossly careless, indifferent or reckless. If such conduct is present, then no personal injury is required in order to recover under this cause of action. This cause of action focuses on the defendant's conduct, not the plaintiff's emotional condition. Robinson v. Hill City Oil Co., 2 So. 3d 661, 668 (Miss. Ct. App. 2008); Smith v. Malouf, 722 So. 2d 490, 497-98 (Miss. 1998); Morrison v. Means, 680 So. 2d 803, 806 (Miss. 1996); Leaf River Forest Products, Inc. v. Ferguson, 662 So. 2d 648, 659 (Miss. 1995). However, if the defendant's conduct is not malicious, intentional, outrageous, etc., then "there must be some sort of demonstrative harm, and said harm must have been reasonably foreseeable to the defendant." Morrison, 680 So. 2d at 806; Strickland v. Rossini, 589 So. 2d 1268, 1275 (Miss. 1991).

To establish a cause of action for negligent infliction of emotional distress under Mississippi law, a plaintiff must prove that the defendant's conduct was negligent, that plaintiff suffered physical harm with emotional distress, that defendant's conduct was a substantial factor in causing plaintiff's emotional distress, and that it was foreseeable that defendant's conduct could cause the emotional distress. Gamble v. Dollar General Corp., 852 So. 2d 5, 13 (Miss. 2003).

D. State Consumer Protection Laws and Regulations

Mississippi has no Unfair Claims Practices Act Statute. However, Mississippi does have an Insurance Unfair Trade Practices Act in Miss. Code. Ann. § 83-5-33. It provides: No person shall engage in the state in any trade practice which is defined in § 83-5-29 to § 83-5-51 as, or determined pursuant to said sections to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. Miss. Code Ann. § 83-41-315(1) specifically addresses health maintenance organizations, preferred provider organizations and other pre-paid health and benefit plans. It provides:

(a) Every group and individual contract holder is entitled to a group or individual written contract respectively.
(b) The contract shall not contain provisions or statements which are unjust, unfair, inequitable, misleading,
deceptive, or which encourage misrepresentation as defined by the Unfair Trade Practices Act.

(c) The contract shall contain a clear statement of the following:

(i) Name and street address of the physical location of the home office of the health maintenance organization and telephone number;
(ii) Eligibility requirements;
(iii) Benefits and services within the service area;
(iv) Emergency care benefits and services;
(v) Out of area benefits and services (if any);
(vi) Copayments, deductibles or other out-of-pocket expenses;
(vii) Limitations and exclusions;
(viii) Enrollee termination;
(ix) Enrollee reinstatement (if any);
(x) Claims procedures;
(xi) Enrollee grievance procedures;
(xii) Continuation of coverage;
(xiii) Conversion;
(xiv) Extension of benefits (if any);
(xv) Coordination of benefits (if applicable);
(xvi) Subrogation (if any);
(xvii) Description of the service area;
(xviii) Entire contract provision;
(xix) Term of coverage;
(xx) Cancellation of group or individual contract holder;
(xxi) Renewal;
(xxii) Reinstatement of group or individual contract holder (if any);
(xxiii) Grace period; and
(xxiv) Conformity with state law, including, but not limited to, Section 83-9-1 et seq.

Mississippi also has a general unfair trade practice act statute, Miss. Code Ann. § 75-24-5. It provides in pertinent part that “unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce are prohibited.”

E. State Class Actions

The Mississippi Supreme Court expressly omitted to adopt an analog to Rule 23 of the Federal Rules of Civil Procedure permitting class actions when it adopted its own version otherwise largely modeled after the Federal Rules. In Marx v. Broom, 632 So. 2d 1315, 1322 (Miss. 1994), the Court held "[i]n enacting the rules of civil procedure, this Court intentionally omitted Rule 23, which would have covered class actions." The comments to the rules clearly state: class action practice is not being introduced into Mississippi trial courts at this time. This has not changed. Prior to Janssen Pharmaceutical, Inc. v. Armond, 866 So. 2d 1092 (Miss. 2004), plaintiffs commonly joined massed claims (typically misjoined) in a single civil action, jurisdiction and venue objections notwithstanding, as if "class action" practice were authorized. However, the Mississippi Supreme Court in Janssen greatly curtailed this practice by requiring that plaintiffs demonstrate a common transaction or occurrence connecting the claims. The
day after Janssen was decided, the Mississippi Supreme Court amended the comment to Miss. R. Civ. P. 20 to require a "distinct litigable event linking the parties."

F. State Privacy Laws, Rules and Regulations

Mississippi has no statutory or constitutional provision directly addressing privacy rights in the context of life, health and accident insurance. There are no standards on privacy ___. insurance.

V. Defenses in Actions Against Insurers
A. Misrepresentations/Omissions: During Underwriting or During Claim

Miss. Code Ann. § 83-9-11 addresses misrepresentations in insurance policy applications and an insurance company's right to rescind the policy due to those misrepresentations. This statute provides:

(1) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within fifteen (15) days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(2) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(3) The falsity of any statement in the application for any policy covered by Sections 83-9-1 to 83-9-21 may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

Mississippi courts have reiterated the standard set forth in Miss. Code Ann. § 83-9-11 for rescission of policies based on misrepresentations. Under the case law an insurance company must establish two (2) elements to prevail on a defense that a policy is voidable as a result of the insured's misrepresentation: (1) that a false statement was made in the representation, and (2) that the false statement was material. Wesley v. Union Nat. Life, 919 F. Supp. 232, 234 (S.D. Miss. 1995); Golden Rule Ins.

Moreover, “there is no requirement under Mississippi law that the actual cause of [loss] be related to risks concealed by an insurance applicant in order for the concealed facts to be material.” Wesley, 919 F. Supp. at 234. It is important to note that the “material to the risk” test is viewed from the standpoint of a "reasonably careful and intelligent underwriter," not from that of a third party such as a doctor. Equitable Mortgage Corp. v. Mortgage Guar. Ins. Corp., 791 F. Supp. 620, 625 (S.D. Miss. 1990).

Finally, it should also be noted that under Mississippi law an insurance agent’s knowledge of the condition misrepresented by the insured is imputed to the insurer and, therefore, waives the right to rescind the policy. Southern United Life Ins. Co. v. Caves, 481 So. 2d 764, 767 (Miss. 1985).

B. Pre-existing Illness or Disease Clauses

Miss. Code Ann. § 83-9-49 governs preexisting condition clauses in health and accident policies. This statute provides:

(1) Any group hospital, health or medical expense insurance policy, hospital or medical service contract, health and accident insurance policy or any other insurance contract of this type which is delivered or issued for delivery in this state on or after January 1, 1994, shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition incurred more than twelve (12) months following the effective date of the individual's coverage. Any group policy, contract or plan subject to this section shall not contain a definition of a preexisting condition more restrictive than the following:

(a) A condition that would have caused an ordinary prudent person to seek medical advise, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage;

(b) A condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage.

(2) Any individual hospital, health or medical expense insurance policy, hospital or medical service contract, health and accident insurance policy or any other insurance contract of this type which is delivered or issued for delivery in this state on or after January 1, 1994, shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition incurred more than twelve (12) months following the
effective date of the individual's coverage. Any individual policy, contract or plan subject to this section shall not contain a definition of a preexisting condition more restrictive than the following:

(a) A condition that would have caused an ordinary prudent person to seek medical advice, diagnosis, care or treatment during the twelve (12) months immediately preceding the effective date of coverage;

(b) A condition for which medical advice, diagnosis, care or treatment was recommended or received during the twelve (12) months immediately preceding the effective date of coverage;

(c) A pregnancy existing on the effective date of coverage.

(3) This section shall not apply to hospital daily indemnity plans, specified disease only policies, or other limited, supplemental benefit insurance policies.

Mississippi courts have held that "the ailment or disease will ordinarily be deemed to exist when a distinct symptom, ailment or condition manifests itself from which a doctor can, with reasonable accuracy, diagnose the disease." Thompson v. Commercial Ins. Co., 344 So. 2d 135, 137 (Miss. 1977) (quoting Blue Cross and Blue Shield of Mississippi, Inc. v. Mosley, 317 So. 2d 58, 61 (Miss. 1975)). The question as to whether or not the illness or disease is preexisting is normally a jury question. Thompson, 344 So. 2d at 137.

C. Statutes of Limitation and Repose

There is a three-year statute of limitations under Mississippi law for causes of action based upon contract or tort theories. See Miss. Code Ann. § 15-1-49. The three-year period does not begin to run until the alleged breach of contract occurs or the tort is discovered or should be discovered. Id. Mississippi has no statue of repose for insurance claims.

VI. Beneficiary Issues

A. Change of Beneficiary

Under Mississippi law, a change of beneficiary must generally be made in writing and in proper form. However, where this has not been done, "the courts will brush aside technicalities to give effect to the intention of the insured." Mitchell v. United States, 165 F. 2d 758, 761 (5th Cir. 1948). Regarding requested changes to a designated beneficiary, Mississippi follows the majority rule of courts that accept the "substantial compliance rule". Bell v. Parker, 563 So. 2d 594, 598 (Miss. 1990). "Under this rule, where an insured evidences an intent to change beneficiaries, and does all (s)he can do to comply with the requirements of the policy, substantial compliance will be found and the change of beneficiaries will be upheld." Id.

B. Effect of Divorce on Beneficiary Designation
Divorce does not generally serve to revoke a designation of the former spouse as a beneficiary under a policy of insurance under Mississippi law. Generally, if a party wishes to change a beneficiary from a former spouse, then formal steps need to be taken to have the named beneficiary changed. However, "termination of marriage" clauses which are clear and unambiguous have been upheld. Allgood v. Metropolitan Life Ins. Co., 543 F. Sup 2d 591, 594 (S.D. Miss. 2008). Further, divorce decrees often require a spouse to maintain insurance with the former spouse named as the beneficiary.

VII. **Interpleader Actions**

A. **Availability of Fee Recovery**

Rule 22 of the Mississippi Rules of Civil Procedure provides that "[p]ersons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability." However, attorney's fees are not recoverable by the plaintiff or stakeholder in interpleader actions.

B. **Difference in State vs. Federal**

The Mississippi interpleader rule is patterned after and similar to the Federal interpleader rule. See Fed. R. Civ. P. 22.