I. Regulatory Limits on Claims Handling

A. Timing for Responses and Determinations

The legislation codified as Mo. Rev. Stat. 376.383 sets forth the relevant time limits for the handling of health insurance claims. See Mo. Rev. Stat. § 376.383 (2016). Under Section 376.383, upon the receipt of an electronically filed claim by a health carrier or a third-party contractor, a health carrier has forty-eight (48) hours to send an electronic acknowledgement of the date of receipt. See id. A health carrier, within thirty (30) processing days of a filed claim by a health carrier or a third-party contractor, shall send a notice of the status of a claim that includes a request for additional information or that it is a “clean claim.” See id. (A clean claim is a claim with no defect, impropriety, lack of any required substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment). If the claim is a clean claim, then the health carrier shall pay or deny the claim. See id. This time limit does not apply if the health carrier pays the claim. See id.

A health carrier has ten (10) processing days from the receipt of additional information to either pay the claim or any undisputed part, or send notice of receipt and status of the claim. See Mo. Rev. Stat. § 376.383 (2016). This notice shall state that the claim is denied in full or part and the reason for denial or a final request for additional information. See id. After receiving the additional information requested by the final request for information, a health carrier has five (5) days to pay or deny the claim. See id. If the health carrier fails to pay or properly deny
within forty-five (45) processing days, the health carrier shall incur penalties. See id. A proper denial shall be communicated to the claimant and shall include the specific reason why the claim is denied. See id. Moreover, any claim for which the health carrier has not communicated a specific reason for the denial shall not be considered denied under this section. See id. The definition of health carrier is not limited to health insurance companies. Rather, it is defined to include, among other things, sickness and accident insurance companies, and health maintenance organizations. See Mo. Rev. Stat. § 376.1350(22) (2016).

B. Standards for Determinations and Settlements

Under the Missouri Unfair Claims Settlement Practices Act, codified as Mo. Rev. Stat. §§ 375.1000 to 375.1018 (2016), an insurer engages in an improper claims practice if it commits any of the acts identified in Section 375.1007 in conscious disregard of Sections 375.1000 to 375.1018 or any rules promulgated under Sections 375.1000 to 375.1018, or it does so with such frequency as to indicate a general business practice to engage in such conduct. See Mo. Rev. Stat. § 375.1005 (2016). Such acts include, but are not limited to, misrepresenting to claimants and insured relevant facts or policy provisions, failing to promptly acknowledge pertinent communications, or refusing to pay claims without conducting a reasonable investigation. See Mo. Rev. Stat. § 375.1007 (2016).

II. Principles of Contract Interpretation

The primary rule of judicial construction of an insurance policy is for the court to enforce the insurance contract according to the parties' intent as expressed in the language of the freely entered contract, unless doing so would violate applicable federal or state law. Todd v. Missouri United School Ins. Council, 223 S.W.3d 156 (Mo. 2007) (en banc); Bowan ex rel. Bowan v. General Sec. Indemn. Co. of Arizona, 174 S.W.3d 1 (Mo. App. E.D. 2005). When analyzing an insurance policy, the court considers the entire policy, not just isolated provisions or clauses. Rice v. Shelter Mut. Ins. Co., 301 S.W.3d 43, 47 (Mo. 2009) (en banc). The court will try to give each provision of the policy a reasonable meaning and avoid interpreting the policy in a way that renders one or more provisions “useless” or “redundant.” Lero v. State Farm Fire and Cas. Co., 359 S.W.3d 74, 83 (Mo. App. W.D. 2011).

The terms of an endorsement and the terms of the printed policy should be reconciled if reasonably possible, but if there is an irreconcilable conflict, the terms of the endorsement will be given effect. MFA Mut. Ins. Co. v. Dunlap, 525 S.W.2d 766 (Mo. App. 1975); White v. Illinois Founders Ins. Co., 52 S.W.3d 597, 598 (Mo. App. E.D. 2011). In addition, the construction the parties have placed upon the contract of insurance by their own actions is significant. Stone v. Farm Bureau Town & Country Ins. Co. of Missouri, 203 S.W.3d 736, 745 (Mo. App. S.D. 2006).

Since policies are generally intended to protect the insured from a covered risk, where it is reasonably possible, they will be interpreted to provide coverage rather than to defeat it. Burns v. Smith, 303 S.W.3d 505, 512 (Mo. 2010) (en banc). Where one clause appears to provide coverage but another clause indicates that such coverage is not provided, then the policy is ambiguous, and “the ambiguity will be resolved in favor of coverage for the insured.” Rice, 301 S.W.3d at 48;
see Jones v. Mid-Century Ins. Co., 287 S.W.3d 687, 689 (Mo. 2009) (en banc) ("Missouri law is well-settled that where one provision of a policy appears to grant coverage and another to take it away, an ambiguity exists that will be resolved in favor of coverage."). However, the mere fact that a policy contains a limitation on coverage or an exclusion does not render the policy ambiguous. Floyd-Tunnell v. Shelter Mut. Ins. Co., 439 S.W.3d 215, 221 (Mo. 2014) (en banc).

Whether a policy is ambiguous or not is determined from an examination of the specific facts of the case and the relevant policy provisions. Dahmer v. Hutchison, 315 S.W.3d 375 (Mo. App. S.D. 2010). If the policy is ambiguous, evidence of subsidiary agreements, the relationship of the parties, the subject matter of the policy, the facts and circumstances surrounding the execution of the policy, and the practical construction the parties have placed on the contract by their actions is admissible. Royal Banks of Missouri v. Fridkin, 819 S.W.2d 359, 362 (Mo. 1991) (en banc).

III. Choice of Law

When more than one state has a connection with or a relationship to the insurance contract in question, the resolution of an issue of substance under that contract requires a determination, be it express or implied, of what law governs the disposition of that issue. Markway v. State Farm Mut. Auto. Ins. Co., Inc., 799 S.W.2d 146 (Mo. App. W.D. 1990). Generally, the court at the forum determines, according to its own conflict-of-laws rules, whether a given law is substantive or procedural, but in making this determination, the court will give consideration to interpretation of foreign law by courts of that state. Noe v. U.S. Fidelity & Guaranty Co., 406 S.W.2d 666, 668 (Mo. 1966). In insurance policy cases, the "substantive" law the court must apply includes the execution, interpretation, and validity of the contract; the existence of an insurable interest; and damages for vexatious delay in performance by the insurer. Kellog v. National Protective Ins. Co., 155 S.W.2d 512 (Mo. App. 1941); Grider v. Twin City Fire Ins. Co., 426 S.W.2d 698 (Mo. App. 1968); and Handly v. Lyons, 475 S.W.2d 451 (Mo. App. 1971).

IV. Extra-Contractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

1. First Party

The Missouri Supreme Court’s decision in Overcast v. Billings Mut. Ins. Co., 11 S.W.3d 62, 67 (Mo. 2000) (en banc), is the leading case on first-party extra-contractual claims. The tort of bad faith does not apply to first-party claims. See id. When the insurer wrongfully refuses to pay a first-party claim, the insurer has breached the contract and liability is limited to damages for breach of contract. See id.
If the jury determines that the refusal to pay was vexatious, the insured may recover penalties, interest, and attorney's fees under Missouri's vexatious-refusal-to-pay statutes. Mo. Rev. Stat. §§ 375.296 and 375.420 (2016). Section 375.296 allows recovery after the insurer has refused to pay and 30 days have passed. Section 375.420 does not have that requirement.

2. Third Party

Missouri courts have long recognized the right of the insured to recover against the insurer under the tort of bad faith when the insurer refuses to pay a third-party settlement demand. See Overcast, 11 S.W.3d at 67. A bad faith refusal to settle action will lie when a liability insurer:

1) reserves the exclusive right to contest or settle any claim;
2) prohibits the insured from voluntarily assuming any liability or settling any claims without consent; and
3) is guilty of fraud or bad faith in refusing to settle a claim within the limits of the policy.

Scottsdale Ins. Co. v. Addison Ins. Co., 448 S.W.3d 818, 827 (Mo. 2014) (en banc). A demand by the insured to settle a claim is not an essential element of a bad faith claim under Missouri law. Scottsdale Ins. Co., 448 S.W.3d at 828. Nor is an excess judgment. Id. at 827.

Whether the insurer's refusal to pay the loss was willful is determined by the facts as presented at the time the insured demanded payment under the policy. See JAM Inc. v. Nautilus Ins. Co., 128 S.W.3d 879, 897-98 (Mo. App. W.D. 2004). This right to sue for bad faith may also be assigned to a third-party claimant. See Scottsdale Ins. Co. v. Addison Ins. Co., 448 S.W.3d 818, 830 (Mo. 2014) (en banc); Ganaway v. Shelter Mut. Ins. Co., 795 S.W.2d 554, 564-65 (Mo. App. S.D. 1990).

3. Damages

In a case involving a first-party loss, the insured may recover the following damages under Missouri's vexatious-refusal-to-pay statutes: (1) the amount of the covered loss; (2) 20% of the first $1,500 of the loss; (3) 10% of the amount of the loss in excess of $1,500; and (4) reasonable attorney's fees. See Mo. Rev. Stat. §§ 375.296 and 375.420 (2016).

In a case involving a third-party loss, the insurer is liable for the entire amount of the jury verdict. See Ganaway, 795 S.W.2d at 563-64. It may also be possible to recover punitive damages if the insurer's refusal to settle was willful or wanton. See Zumwalt, 228 S.W.2d at 756. In Advantage Bldgs. & Exteriors, Inc. v. Mid-Continent Cas. Co., 449 S.W.3d 16, 29 (Mo. App. W.D. 2014), the Missouri Court of Appeals upheld the submission of a punitive damage claim in a bad faith action based on a jury instruction that directed the jury to award punitive damages if the jurors found that the insurer had acted with evil motive or reckless indifference to the insured's rights.
B. **Fraud**

In Missouri, the elements for common-law fraud are:

1) a false and material representation;

2) the defendant's knowledge of the representation's falsity or ignorance of truth;

3) the defendant's intent that the representation be acted upon by the plaintiff in a manner reasonably contemplated;

4) the plaintiff’s ignorance of the falsity of the representation;

5) the plaintiff’s rightful reliance on the truth of the statement and his right to rely thereon; and

6) proximate injury.


C. **Intentional or Negligent Infliction of Emotional Distress**

1. **Intentional Infliction of Emotional Distress**

The elements of a cause of action for intentional infliction of emotional distress include a showing by the plaintiff that:

1) the defendant's conduct was extreme and outrageous;

2) the defendant acted in an intentional or reckless manner; and

3) such conduct resulted in severe emotional distress that is medically diagnosable and medically significant.

See Gibson v. Brewer, 952 S.W.2d 239, 249 (Mo. 1997) (en banc); Nazeri v. Missouri Valley Coll., 860 S.W.2d 303 (Mo. 1993) (en banc); and Hendrix v. Wainwright Indus., 755 S.W.2d 411 (Mo. App. E.D. 1988).

2. **Negligent Infliction of Emotional Distress**

The elements of a cause of action for negligent infliction of emotional distress include a showing by the plaintiff that:

1) the defendant should have realized its conduct involved an unreasonable risk of causing distress; and
2) the emotional distress or mental injury must be medically diagnosable and sufficiently severe to be medically significant.


D. **State Consumer Protection Laws, Rules, and Regulations**

These issues as applied to insurers are covered under Missouri's Unfair Claims Settlement Practices Act and Missouri's Unfair Trade Practice Act. See Mo. Rev. Stat. §§ 375.1000-375.1018 (2016); Mo. Rev. Stat. §§ 375.930-375.948 (2016). While both Acts are still in effect, the Unfair Claims Settlement Practices Act essentially clarified, if not replaced, the provisions within the Unfair Trade Practice Act. See above in Section I. B. for a summary of the protections afforded consumers and insureds under these Acts.

E. **State Class Actions**

Class actions may be brought in Missouri under Rule 52.08 of the Missouri Rules of Civil Procedure. See Mo. R. Civ. P. 52.08. To maintain a class action under Rule 52.08, the plaintiffs must satisfy all elements of subdivision (a) and at least one element of subdivision (b). In relevant part, subdivision (a) requires plaintiffs to prove that:

1) the class is so numerous that joinder of all members is impractical,

2) there are common questions of law or fact,

3) the claims or defenses of the representative parties are typical of the class, and

4) the representative parties will fairly and adequately protect the interests of the class.

Additionally, a class action may be maintained under subdivision (b) only if:

1) the separate prosecution of actions would create the risk of inconsistent decisions or adjudications dispositive as to other members, or

2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, or

3) the court finds that questions of law or fact common to members predominate over any questions affecting only individual members.

See Mo. R. Civ. P. 52.08.
F. State Privacy Laws, Rules, and Regulations

Since the early twentieth century, Missouri has recognized a cause of action for an "invasion of privacy." Sullivan v. Pulitzer Broadcasting Co., 709 S.W.2d 475, 477 (Mo. 1986) (en banc) (citing Munden v. Harris, 134 S.W. 1076 (Mo. App. 1911)).

In supplementing the Federal Gramm-Leach-Bliley Act, Missouri enacted Mo. Rev. Stat. § 362.422 (2016), which governs the disclosure of nonpublic personal information to nonaffiliated third parties. Among other things, Section 362.422 authorizes a state agency with primary regulatory authority to adopt rules and regulations in furtherance of the Federal Act. See id.

Based on the authority granted by Section 362.422, the Missouri Department of Insurance adopted 20 C.S.R. 100-6.100 and 100-6.110 to address the privacy of financial information. See Mo. Rev. Stat. § 362.422 (2016). These regulations require the insurer to give notice to the insured of its privacy policies detailing the types of nonpublic information the insurer collects, the types of such information the insurer discloses, to whom such information is disclosed, and setting forth the policies and procedures in place to protect the security of nonpublic personal information. See 20 C.S.R. 100-6.100. The insurer must also give the insured the opportunity to "opt out" of a disclosure of nonpublic personal information to a "nonaffiliated third party." See id.

These regulations also require insurance companies to implement a comprehensive written information security program to include administrative, physical, and technological safeguards for the protection of customer information. See 20 C.S.R. 100-6.110. This program must ensure the security and confidentiality of customer information as well as protect against anticipatory threats to such information and unauthorized access by others to the protected information. See id.

Issues of privacy within the insurer/insured relationship often arise in cases where the insurer denies the claim of the insured for intentional acts of the insured, such as arson. Therefore, the Missouri Supreme Court in Overcast v. Billings Mut. Ins. Co. held that Missouri's vexatious-refusal-to-pay statute does not preempt all tort actions brought by an insured such that an insured could also sue for defamation following denial of an insurance claim based on an arson defense. See Overcast v. Billings Mut. Ins. Co., 11 S.W.3d 62, 69-70 (Mo. 2000) (en banc).

The elements of defamation in Missouri are: (1) publication; (2) of a defamatory statement; (3) that identifies the plaintiff; (4) that is false; (5) that is published with the requisite degree of fault; and (6) damages the plaintiff's reputation. Id. at 70.

Thus, in Overcast, where a denial letter was sent by the insurer in the mail, this was held to be an unsuccessful attempt to avoid publication of a letter containing a defamatory statement where the insurer was aware that the allegation of arson by the insured would need to be published and would be published to third parties. Id. at 70.
The Missouri Supreme Court in *Overcast* also made clear that there is no statutory immunity in Missouri for statements made by insurers in denying claims. Id. at 71. Thus, under *Overcast*, where insureds do not specifically request the reasons why their claim was being denied, they do not consent to defamation. Id. at 71-72.

V. **Defenses in Actions Against Insurers**

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

Under Missouri law, the insurance company must show that a representation is "both false and material in order to void the policy when (1) the representation is warranted to be true; (2) the policy is conditioned upon its truth; (3) the policy provides that its falsity will avoid the policy; or (4) the application is incorporated into and attached to the policy." Smith v. AF & L Ins. Co., 147 S.W.3d 767, 774 (Mo. App. E.D. 2004). See also *Allen v. Bryers*, 2016 WL 7378560, *11 (Mo. Dec. 20, 2016) (en banc).

Otherwise, the insurer may avoid an insurance policy where there has been a fraudulent misrepresentation in the application. See *Shirkey v. Guarantee Trust Life & Ins. Co.*, 141 S.W.3d 62, 67 (Mo. App. W.D. 1998); see also *Central Bank of Lake of the Ozarks v. First Marine Ins. Co.*, 975 S.W.2d 222, 225 (Mo. App. W.D. 1998). To prove a fraudulent misrepresentation, the insurer must demonstrate that the insurer made a false statement with the intent to deceive the insurer. *Continental Cas. Co. v. Maxwell*, 799 S.W.2d 882, 887-88 (Mo. App. W.D. 1990).

A fact included in an insurance application is material when it appears that it might reasonably have influenced the insurer to accept or reject the risk or to charge a different premium. See *Priesmeyer v. Shelter Mut. Ins. Co.*, 995 S.W.2d 41, 45 (Mo. App. W.D. 1999). An answer on the application for insurance is not a mistake simply because the agent does not ask the questions verbatim; the answer may be construed to be a misrepresentation that voids the policy if the requisite elements of fraudulent misrepresentation are established. See *Schnatzmeyer v. National Life Ins. Co.*, 791 S.W.2d 815, 820-21 (Mo. App. E.D. 1990).

B. **Preexisting Illness or Disease Clauses**

The insurer has the burden of proving that a preexisting condition bars coverage under a policy’s preexisting condition exclusion. See *Williams v. Nat'l Cas. Co.*, 132 S.W.3d 244 (Mo. 2004) (en banc) (where an insurer seeks to escape coverage because of a policy exclusion, the burden is on the insurer to show facts that make the exclusion applicable); *Drury v. Blue Cross/Blue Shield of Mo.*, 943 S.W.2d 834 (Mo. App. E.D. 1997). The preexisting condition exclusion is applicable if the insured had complained about the symptoms of a specific illness before the effective date of the policy. See *England v. John Alden Life Ins. Co.*, 846 F.Supp. 798, 803 (Mo. App. W.D. 1994). Knowledge of the specific illness is not required under the preexisting condition exclusion. See id.
C. Statutes of Limitation

There is a split of authority in Missouri concerning the applicable statute of limitations. Most courts have held that the insured has ten (10) years under Mo. Rev. Stat. § 516.110 (2016) (setting time limit for bringing suits on contracts) to file suit on the policy. See e.g., Johnson v. State Mut. Life Assurance Co. of America, 942 F.2d 1260 (8th Cir. 1991). It has been held, on at least one occasion, that the five (5) year statute of limitations under Mo. Rev. Stat. § 516.120 applied to the insured’s claim; however, in that instance the insured’s claim was based on the insurer’s negligent payment of policy proceeds to the wrong beneficiary. See Curnes v. Equitable Life Assurance Soc’y of U.S., 6 S.W.3d 175 (Mo. App. S.D. 1999); see also Mo. Rev. Stat. § 516.120 (2016).

VI. Beneficiary Issues

Under a life insurance contract, if the insured has not reserved the right to change the beneficiary, the interest of the beneficiary vests upon the issuance of the policy. Blum v. New York Life Ins. Co., 95 S.W. 317, 319 (Mo. 1906); see also Fendler v. Roy, 58 S.W.2d 459 (Mo. 1932). This principle is applicable even though the insured and the beneficiary are divorced after the policy was issued. See Service Life Ins. Co. of Fort Worth v. Davis, 466 S.W.2d 190 (Mo. App. 1971). However, a policy may provide that a divorce will revoke the designation of a spouse as a beneficiary. General American Life Ins. Co. v. Barrett, 847 S.W.2d 125 (Mo. App. W.D. 1993).

If the insured has reserved the right to change the beneficiary, the interest of a named beneficiary is a contingency until the death of the insured. Service Life Ins. Co. of Fort Worth, 466 S.W.2d 190, 195 (Mo. App. 1971). When the right to change the beneficiary is reserved, the insured can change the designation of the beneficiary without the consent and the knowledge of a named beneficiary. Western & Southern Life Ins. Co. v. Cash, 454 S.W.2d 584, 587 (Mo. App. 1970).

A provision reserving the power to change the beneficiary will prescribe the manner in which a change of beneficiary is to be effected. The policy may require a written request in the form prescribed the by the insurer to be made and delivered to the insurer. Other provisions may require such a request and the return of the policy to the insurer and the endorsement of the change thereon. Persons v. Prudential Ins. Co. of America, 233 S.W.2d 729 (Mo. 1950). When the policy’s provisions have been complied with and the insurer’s records reflect the request, a change of beneficiary has been accomplished.

The specific requirements for changing a beneficiary must be construed in light of two doctrines. First, the provision in a policy that pertains to changing a beneficiary is for the benefit of the insurance company, and the insurance company may waive the requirements therein. Glass v. Transamerica Life Ins. Co., 322 S.W.3d 556, 559 (Mo. App. S.D. 2010). If the intent of the insured is established, the insurer may waive compliance with all the requirements by making the desired change. Dunnavant v. Mountain States Life Ins. Co., 67 S.W.2d 785, 789-90 (Mo. App. 1934); see also Bell v. Garcia, 639 S.W.2d 185 (Mo. App. E.D. 1982).
In addition, "Missouri recognizes the equitable doctrine of substantial compliance to carry out the intent of the insured where the insured has not strictly complied with the method set forth by an insurance policy to change the beneficiary." Anglen v. Heimburger, 803 S.W.2d 109, 112 (Mo. App. W.D. 1990). This doctrine "makes an incomplete or irregular change of beneficiary effective against the original beneficiary where the insured has done all within his power to exercise his right to change the beneficiary." Id.

VII. Interpleader Actions

A. Availability of Fee Recovery

Rule 52.07 of the Missouri Rules of Civil Procedure provides that a stakeholder may bring an interpleader action if the stakeholder is or may be exposed to double or multiple liability. "It is well settled that in a case where interpleader properly lies, the stakeholder is entitled to reasonable attorney's fees as part of his costs." Northwestern National Insurance Company v. Mildenberger, 359 S.W.2d 380, 387 (Mo. App. 1962).

An award of attorney fees is permitted because an interpleader action is an equitable remedy, existing independent of Mo. Rev. Stat. § 507.060 (2016) and Mo. R. Civ. P 52.07, and is governed by equitable principles. Insurance Co. of North America v. Skyway Aviation, Inc., 828 S.W.2d 888, 892 (Mo. App. W.D. 1992). In those cases where attorney’s fees have been paid to the stakeholder out of the fund, the trial court has discretion to allow the successful claimant to collect those fees from the unsuccessful claimant. See Mix v. Broyes, 567 S.W.2d 696, 699 (Mo. App. 1978).

B. Differences in State vs. Federal Circuit

The Missouri interpleader rule is largely similar to the Federal Rule. See Fed. R. Civ. P. 22. However, unlike the federal rule, Missouri allows a cross-claim to be filed in an interpleader action where the cross-claim goes beyond the subject matter of the interpleader action. Tillman v. Deese, 488 S.W.2d 206 (Mo. App. 1972).