I. **Regulatory Limits on Claims Handling**

A. **Timing for Responses and Determinations**

The New Hampshire Legislature has enacted a "prompt payment" requirement for claims under health insurance policies. This legislation is codified in N.H. Rev. Stat. Ann. § 415:6-h, and it sets forth the relevant time limitations involved with the filing and payment or denial of claims. The initial limiting period for insurers is 30 calendar days upon the receipt of a non-electronic claim or 15 calendar days upon receipt of an electronic claim, and insurers must pay the claim, deny it, or seek additional information during those time frames. See N.H. Rev. Stat. Ann. § 415:6-h, I. Additionally, there are more general time limits set forth in New Hampshire Code of Administrative Rules, Insurance Department Chapter 1000.

B. **Standards for Determinations and Settlements**

Claims handling standards are generally set forth in the New Hampshire Code of Administrative Rules, Insurance Department Chapter 1000. Additionally, New Hampshire has a liberal rule in civil actions regarding the power of an attorney to bind a client by settlement, which is based upon the premise that it "is essential to the orderly and convenient dispatch of business, and necessary for the protection of the rights of the parties." Bossi v. Bossi, 131 N.H. 262, 264, 551 A.2d 978, 979-80 (1988). Oral agreements between attorneys are binding in civil actions, id., and "action taken in the conduct and disposition of civil litigation by an attorney within the scope of his authority is binding on his client," Manchester Hous. Auth. v. Zyla, 118 N.H. 268, 269, 385 A.2d 225, 226 (1978).

The standards for handling claims involving minors are set forth in New Hampshire Superior Court Rule - Civil 40, which provides that the court must approve settlements involving minors when the net amount of the settlement exceeds $10,000.00. N.H. Super. Ct. Civ. R. 40(b).

II. **Principles of Contract Interpretation**

When interpreting an insurance policy, the "fundamental goal" is "to carry out the intent of the contracting parties." Bartlett v. Commerce Ins. Co., 167 N.H. 521, 530, 114 A.3d 724, 732 (2015) (quotations omitted). The court will "first examine the language of the contract itself," looking to the "plain and ordinary meaning of the policy’s words in context." Id.
Terms of the policy are construed objectively and “as would a reasonable person in the position of the insured based upon more than a casual reading of the policy as a whole.” Id. at 531. “Where the terms of a policy are clear and unambiguous, we accord the language its natural and ordinary meaning.” Id. The court will not “examine the parties’ reasonable expectations of coverage when a policy is clear and unambiguous; absent ambiguity, our search for the parties’ intent is limited to the words of the policy.” Id. “The fact that the parties may disagree on the interpretation of a term or clause in an insurance policy does not necessarily create an ambiguity.” Id. “For an ambiguity to exist, the disagreement must be reasonable.” Id.

Ambiguity may lie in the definition of a term or in the term’s application within the context of the policy. See State Farm Mut. Ins. Co. v. Pitman, 148 N.H. 499, 501-02, 809 A.2d 1280, 1281-82 (2002). When determining whether an ambiguity exists, the court will “look to the claimed ambiguity, consider it in its appropriate context, and construe the words used according to their plain, ordinary, and popular definitions.” Bartlett, 167 N.H. at 531 (quotation omitted). “If one of the reasonable meanings of the language favors the policyholder, the ambiguity will be construed against the insurer . . . in order to honor the insured’s reasonable expectations.” Id. (quotation omitted). However, when the policy language is clear, the court “will not perform amazing feats of linguistic gymnastics to find a purported ambiguity simply to construe the policy against the insurer and create coverage where it is clear that none was intended.” Id. (quotation omitted).

The doctrine of construing ambiguity against an insurer is based upon the fact that insurers have a better understanding of the terms that they employ. State Farm Mut. Ins. Co., 148 N.H. at 501. The burden is on the insurance carrier to prove a lack of coverage. N.H. Rev. Stat. Ann. § 491:22-a.

III. Choice of Law

“[I]n the absence of an express choice of law validly made by the parties, the contract is to be governed, both as to validity and performance, by the law of the state with which the contract has its most significant relationship.” Cecere v. Aetna Ins. Co., 145 N.H. 660, 662, 766 A.2d 696, 698 (2001) (quotation omitted). “Particularly in the context of insurance contracts, . . . the State which is the principal location of the insured risk bears the most significant relationship to the contract, in the absence of an express choice of law by the parties.” Id. (quotation omitted). “This rule articulates the fundamental contract policy of giving effect to the intention of the parties and their reasonably justified expectations, and promotes predictability of results, which is of foremost concern in contracts cases.” Id. (quotation and citation omitted). In instances where one policy covers multiple risks in various states, the courts will look to the location of the specific risk at issue, and the law of that state will govern. Ellis v. Royal Ins. Companies, 129 N.H. 326, 332, 530 A.2d 303, 307 (1987).

IV. Extracontractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

The New Hampshire Supreme Court has expressly “rejected the argument that an insurer has an independent duty to deal fairly with its insured and [has] held that an insurer’s wrongful or bad-faith refusal to settle or pay a claim pursuant to its contractual obligations d[oes] not give rise to a cause of

Although extracontractual claims are limited, an insurer could still be subject to statutory penalties under the New Hampshire Administrative Insurance Department Rules. Examples: an insurer that violates life insurance solicitation rules by acting in bad faith will be subject to suspension, revocation, or a fine after a hearing (N.H. Code Admin. R. Ann. Ins. § 301.07); violations of rules regarding the sale of insurance by financial institutions subject insurers to similar penalties (id. at § 3205.02). Additionally, insurers have a contractual duty of good faith and fair dealing. See Jarvis, 122 N.H. at 652.

In regard to third-party claims, “an insurer has a duty of reasonable care in the settlement of a third-party liability claim. Therefore, a breach of that duty may give rise to an action in tort.” Bennett v. ITT Hartford Grp., Inc., 150 N.H. 753, 757, 846 A.2d 560, 564 (2004). New Hampshire courts recognize an independent cause of action in tort for third-party claims to “address the dilemma presented by the absolute control of trial and settlement vested in the insurer by the insurance contract and the conflicting interests of the insurer and insured.” Id. (quotation omitted). In a third-party claim, the “insurer is in a position to expose the insured to a judgment in excess of the policy limits through its refusal to settle a case or to otherwise injure the insured by virtue of its exclusive control over the defense of the case.” Id. at 758. “Because the insurer and the insured have conflicting interests, and the insurer has absolute control over the situation, an insurer has a duty to the insured to act in good faith” in a third party claim. Id.

B. Fraud

“To establish fraud, a plaintiff must prove that the defendant made a representation with knowledge of its falsity or with conscious indifference to its truth with the intention to cause another to rely upon it.” Snierson v. Scruton, 145 N.H. 73, 77, 761 A.2d 1046, 1049 (2000), as modified (Nov. 22, 2000). “In addition, a plaintiff must demonstrate justifiable reliance.” Id. “A plaintiff cannot allege fraud in general terms, but must specifically allege the essential details of the fraud and the facts of the defendants' fraudulent conduct.” Id.

C. Intentional or Negligent Infliction of Emotional Distress

The elements of intentional infliction of emotional distress consist of four elements derived from the Restatement (Second) of Torts § 46: 1) extreme and outrageous conduct; 2) which is intentional or reckless; 3) and causes; 4) severe emotional distress. Morancy v. Morancy, 134 N.H. 493, 495-96, 593 A.2d 1158, 1159 (1991). In other words, one “who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.” Mikell v. Sch. Admin. Unit No. 33, 158 N.H. 723, 738, 972 A.2d 1050, 1055 (2009).

“In determining whether conduct is extreme and outrageous, it is not enough that a person has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by ‘malice.’” Id. at 729 (quotation omitted). “Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible
bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” Id. (quotation omitted).

As for negligent infliction of emotional distress, the elements include “(1) causal negligence of the defendant; (2) foreseeability; and (3) serious mental and emotional harm accompanied by objective physical symptoms.” Tessier v. Rockefeller, 162 N.H. 324, 342, 33 A.3d 1118, 1132 (2011) (quotation omitted). The New Hampshire Supreme Court has also held that “the emotional harm must be a significant, painful mental experience with lasting effects”; to “ensure that the emotional injury is sufficiently serious to be afforded legal protection as well as to establish causation, . . . expert testimony is required to prove physical symptoms suffered from alleged negligent infliction of emotional distress.” O’Donnell v. HCA Health Servs. of New Hampshire, Inc., 152 N.H. 608, 611-12, 883 A.2d 319, 324 (2005) (quotation omitted).

D. State Consumer Protection Laws, Rules and Regulations

The Consumer Protection Act, N.H. Rev. Stat. Ann. § 358-A, permits private actions for deceptive practices. The statute exempts those engaged in a “[t]rade or commerce that is subject to the jurisdiction of the bank commissioner, the director of securities regulation, the insurance commissioner, the public utilities commission, the financial institutions and insurance regulators of other states, or federal banking or securities regulators who possess the authority to regulate unfair or deceptive trade practices.” N.H. Rev. Stat. Ann. § 358-A:3, I. The “consumer has the initial burden of establishing the violation, including that the violating practice was in trade or commerce. Once the violation is established, the burden shifts to the business to establish that the transaction was exempt.” McMullin v. Downing, 135 N.H. 675, 680, 609 A.2d 1226, 1230 (1992); see also N.H. Rev. Stat. Ann. § 358-A:3, V.

The New Hampshire Supreme Court has affirmed that the insurance industry is not subject the Consumer Protection Act, explaining that the “regulation of the insurance industry is comprehensive and protects consumers from the same fraud and unfair practices as RSA chapter 358-A.” Bell v. Liberty Mut. Ins. Co., 146 N.H. 190, 194, 776 A.2d 1260, 1263 (2001) (quotation omitted); see also Averill v. Cox, 145 N.H. 328, 761 A.2d 1083 (2000); Rousseau v. Eshleman, 128 N.H. 564, 519 A.2d 243 (1986).

E. State Class Actions

Originally permitted by common law, class actions in New Hampshire State Courts are now governed by Superior Court Rule – Civil 16. The prerequisites are:

1. The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

2. There are questions of law or fact common to the class which predominate over any questions affecting only individual members;

3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;

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

5. A class action is superior to other available methods for the fair and efficient adjudication of the controversy; and
6. The attorney or non-attorney representative for the representative parties will adequately represent the interests of the class.

This rule is similar to Rule 23 of the Federal Rules of Civil Procedure in that it requires a showing of numerosity, predominance of common issues of law and fact, typicality, that the class action is superior to alternative methods, and that the plaintiff and his or her counsel will adequately protect the intended class. The court must make findings as to each element of Rule 16 before certifying a class for trial or for settlement purposes, and will often look to the federal courts for guidance. See, e.g., Prive v. New Hampshire-Vermont Health Servs., No. 98-E-20, 1998 WL 375294, at *1 (N.H. Super. July 1, 1998); Private Truck Council of Am., Inc. v. State, 128 N.H. 466, 470, 517 A.2d 1150, 1152 (1986).

Rule 16 also provides for conditional certification, or certification of sub-classes or classes for purposes of addressing a specific issue. N.H. Super. Ct. Civ. R. 16(b), (i). Unlike federal class actions, in New Hampshire state court, aggregating the claims of the class members can satisfy any jurisdictional limit. See id. at R. 16(c).

F. State Privacy Laws, Rules and Regulations

1. Criminal Sanctions


2. The Standards for Compensatory and Punitive Damages

When “there has been a bad-faith breach of an insurance contract, the damages recoverable are not limited to the policy limits plus interest.” Jarvis v. Prudential Ins. Co. of Am., 122 N.H. 648, 653, 448 A.2d 407, 410 (1982). “The insured may recover specific consequential damages if he can prove that such damages were reasonably foreseeable by the insurance company and that he could not have reasonably avoided or mitigated such damages.” Id. However, “[r]ecovery of damages for mental suffering and emotional distress that may accompany the economic damage is not . . . permitted in contract actions.” Id. “Consequential damages are reasonably foreseeable losses that flow from a breach of contract.” Drop Anchor Realty Trust v. Hartford Fire Ins. Co., 126 N.H. 674, 678, 496 A.2d 339, 342 (1985).

Compensatory damages, on the other hand, are intended to “put the injured party in as good a position, so far as money damages can put him, as he would have occupied had the defendant fully performed” the contract. Emery v. Caledonia Sand & Gravel Co., 117 N.H. 441, 446, 374 A.2d 929, 933 (1977) (quotation omitted). Additionally, New Hampshire recognizes that, under certain
circumstances, “enhanced compensatory damages” can be awarded. “When an act is wanton, malicious, or oppressive, the aggravating circumstances may be reflected in an award of enhanced compensatory damages.” Stewart v. Bader, 154 N.H. 75, 87, 907 A.2d 931, 942 (2006) (quotation omitted). Enhanced compensatory damages, which are also sometimes known as “liberal compensatory damages,” are “awarded only in exceptional cases. . . . there must be ill will, hatred, hostility, or evil motive on the part of the defendant.” Id. (quotations omitted).

As for punitive damages, New Hampshire has a strong aversion to such damages; N.H. Rev. Stat. Ann. § 507:16 prohibits the award of punitive damages “in any action, unless otherwise provided by statute.” See also Stewart, 154 N.H. at 88 (explaining that, generally, “[n]o damages are to be awarded as a punishment to the defendant or as a warning and example to deter him and others from committing like offenses in the future”). However, the New Hampshire Supreme Court has held insurance companies “liable for exemplary or punitive damages [even] where fines and penalties are not expressly excluded by the policy language.” Weeks v. St. Paul Fire & Marine Ins. Co., 140 N.H. 641, 646, 673 A.2d 772, 775 (1996); see also American Home Assurance Co. v. Fish, 122 N.H. 711, 715, 451 A.2d 358, 360 (1982).

2. Insurance Regulations to Watch

Some insurance regulations to watch include those concerning: (1) prescription prices for pharmacists and pharmacies; (2) uniform prior authorization forms and electronic standards for prescription drug benefits; and (3) form and rate filings. According to the New Hampshire Insurance Department website, https://www.nh.gov/insurance/legal/ (last accessed March 3, 2017), these regulations are all in their final proposal stages and, thus, could be adopted soon.

4. State Arbitration and Mediation Procedures

With only a couple of exceptions, Superior Court Rule – Civil 32 generally requires all civil actions to be assigned to alternative dispute resolution. Rule 32 contains detailed procedures, as well as specific requirements that the neutral party must meet. See generally N.H. Super. Ct. Civ. R. 32. Additionally, alternative dispute resolution proceedings, and the information related to those proceedings, are generally confidential and not admissible at trial. See id. R. 32(d).

Courts can also order parties in any civil action to engage in mediation, pursuant to Superior Court Rule – Civil 30. Parties may also agree to mediation, arbitration, or some other form of alternative dispute resolution. See id. R. 30, 33; see also In re Appeal of City of Manchester, 153 N.H. 289, 295, 893 A.2d 695, 700 (2006) (explaining that the “primary purpose of the arbitration process is expeditious and economical dispute resolution”).

5. State Administrative Entity Rule-Making Authority

In New Hampshire, the state legislature may “authorize an administrative board or body to adopt ordinances, rules, by-laws, or regulations in aid of the successful execution of some general statutory provision.” In re New Hampshire Dep’t of Transp., 152 N.H. 565, 571, 883 A.2d 272, 279 (2005) (quotation omitted). “This rule-making authority permits boards to fill in details to effectuate the purpose of the statute.” Id. (quotation omitted). “Administrative officials, however, do not possess the power to contravene a statute,” and “cannot add to, detract from, or in any way modify statutory law.” Id. (quotations omitted). If an administrative entity acts “beyond the limited
discretion granted by the legislature,” the courts will declare that regulation or rule invalid. Id. In making this determination, the courts will “look first to the intended scope of the rule-making power granted by the legislature” to the administrative entity, and the purpose of the statute. Id. N.H. Rev. Stat. Ann. § 400-A:15 provides the statutory authority for the New Hampshire Insurance Department to promulgate insurance-related rules and regulations.

V. Defenses in Actions Against Insurers

A. Misrepresentations/Omissions: During Underwriting or During Claim

N.H. Rev. Stat. Ann. § 415:9 provides that the “falsity of any statement in the application for any policy covered by this chapter shall not bar the right to recovery thereunder, unless such false statement was made with actual intent to deceive, or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer.”

The New Hampshire Supreme Court has held that the “test under RSA 415:9 of the materiality of a false statement made without actual intent to deceive is whether the statement could reasonably be considered material in affecting the insurer’s decision to enter into the contract, in estimating the degree or character of the risk, or in fixing the premium rate thereon.” Mut. Ben. Life Ins. Co. v. Gruette, 129 N.H. 317, 320-21, 529 A.2d 870, 872 (1987) (quotation omitted). The question of materiality is generally for the trier of fact. Taylor v. Metro. Life Ins. Co., 106 N.H. 455, 458, 214 A.2d 109, 112 (1965). Fraud, either in fact or by implication, need not be shown, as it is sufficient that the “false statements materially affected either the acceptance of the risk or the hazard assumed by the insurer.” Id. (quotation omitted).

Also, although rescission is an equitable remedy always within the sound discretion of the trial court and depending upon the circumstances of the particular case, “an insurer cannot avoid coverage under a compulsory insurance or financial responsibility law because of fraud when the claimant is an innocent third party.” Mooney v. Nationwide Mut. Ins. Co., 149 N.H. 355, 357-58, 822 A.2d 567, 569-70 (2003). Although generally the insurer rather than innocent third parties bear the risk of intentional material misrepresentations made by the insured, there is no reason in law or policy for the burden of such a risk to be placed on the insurer in preference to the insured who made the intentional material misrepresentations. Id. The “same public policy considerations are not present when the claimant is the person who procured the insurance through fraud,” and, therefore, the courts will not “permit an insured to benefit from his fraudulent misrepresentations and leave the insurer without a remedy.” Id.

B. Preexisting Illness or Disease Clauses

There does not appear to be any relevant case law in New Hampshire discussing the construction of pre-existing clauses in insurance policies. The issue of pre-existing illness or disease, however, has been discussed in cases concerning misrepresentations in an application. See Taylor v. Metropolitan Life Ins. Co., 106 N.H. 455, 214 A.2d 109 (1965); Gagne v. Massachusetts Bonding & Ins. Co., 78 N.H. 439, 101 A. 212 (1917).

There are statutes pertaining to preexisting conditions. For instance, N.H. Rev. Stat. Ann. § 420-G:7 permits health insurers to impose a preexisting condition exclusion period under certain circumstances and subject to certain time frames. See also N.H. Rev. Stat. Ann. § 415-A:5. N.H. Rev. Stat. Ann. § 415-D:5, III(b) prohibits long term care insurance policies from excluding “coverage for a loss or confinement that is the result of a preexisting condition
unless the loss or confinement begins within 6 months following the effective date of coverage of an insured person.”


C. Statutes of Limitation and Repose

Pursuant to N.H. Rev. Stat. Ann. § 508:4, all personal actions, except where otherwise specified, must be brought within three years of the act or omission complained of. However, New Hampshire recognizes the Discovery Rule, which provides that a personal action may be brought beyond the three-year statute of limitations if the act or omission was not discovered, and could not reasonably have been discovered at the time of the act or omission; if this applies, then the action must be brought within three years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered the injury and its causal relationship to the act or omission complained of. See N.H. Rev. Stat. Ann. § 508:4. New Hampshire also recognizes tolling of the statute of limitations period for certain groups, including minors, incapacitated persons, and out-of-state defendants. See id. at §§ 508:3, 508:8, and 508:9.

Although New Hampshire has statutes of repose for certain claims, including those involving damages related to the construction of real property, see id. at § 508:4-b, there does not appear to be any applicable statutes of repose in the insurance context.

VI. Beneficiary Issues

A. Change of Beneficiary

Generally, “[m]odification of an insurance contract must be by the mutual agreement of the parties.” Maville v. Peerless Ins. Co., 141 N.H. 317, 319, 686 A.2d 1165, 1167 (1996). The intent of the parties, as evidenced by the terms of the modification via the change form or the accompanying letter, may determine the effective date of any such modification. Id. at 319-20.

As to the changing of a beneficiary, an “insured has the right to change the designation of a policy’s beneficiary” at any time, “if the policy reserves this right to the insured,” and provided that the “insured has not contracted away this right.” Dubois v. Smith, 135 N.H. 50, 56, 58, 599 A.2d 493, 497-98 (1991). Additionally, the New Hampshire Supreme Court adheres “to the traditional rule that the policy holder has the burden of effecting a change of beneficiaries.” Frederick v. Frederick, 141 N.H. 530, 532, 687 A.2d 711, 713 (1996); see In re Estate of McIntosh, 146 N.H. 474, 478, 773 A.2d 649, 652 (2001) (noting that it “is the originator's burden to change the named beneficiary”). “Placing the obligation to change the beneficiary designation on the policy holder ensures a smooth transfer of funds in the difficult period following the policy holder's death, and reduces the incentives for costly and divisive litigation.” Frederick, 141 N.H. at 532.

B. Effect of Divorce on Beneficiary Designation

Upon a final decree of divorce and unless the decree specifically provides otherwise, if one spouse is a member of a group health insurance policy, the former spouse remains eligible for group benefits and coverage as a family member until the earliest of the following events: the three year anniversary of the divorce, the remarriage of either former spouse, the death of the member, or such earlier time as provided by the final divorce decree. N.H. Rev. Stat. Ann. § 415:18, VII-b. If the divorced spouse is 55 years of age or older,
however, coverage will continue until that spouse becomes eligible in another employer-based group plan or becomes eligible for Medicare. Id. at § 415:18, XVI(c) (5).

In regard to life insurance, an insured has the right to change the designation of the policy’s beneficiary, so long as the policy reserves this right. Dubois v. Smith, 135 N.H. 50, 56, 599 A.2d 493, 497 (1991). Unless that right was contracted away in a divorce stipulation, it is “not usually affected by the divorce or marriage of the insured, no matter how the personal or legal relationship of the insured to the beneficiary changes.” Id. In other words, “a divorce decree may only change a beneficiary designation when it expressly states that the parties intend such a result.” Frederick v. Frederick, 141 N.H. 530, 532, 687 A.2d 711, 713 (1996).

Additionally, an anti-hypothecation order, which restrains parties in a divorce proceeding from transferring real or personal property, does not restrict the insured from changing the beneficiary of a life insurance policy during the divorce. See generally Elter-Nodvin v. Nodvin, 163 N.H. 678, 48 A.3d 908 (2012).

VII. Interpleader Actions

A. Availability of Fee Recovery

The New Hampshire Supreme Court has held that costs, as well as fees, are allowable to the party asserting the interpleader action. Manchester Fed. Sav. & Loan Ass’n v. Emery-Waterhouse Co., 102 N.H. 233, 239, 153 A.2d 918, 922 (1959); but see Fid. & Cas. Co. of N.Y. v. LePage, 105 N.H. 327, 329, 200 A.2d 12, 13 (1964) (observing that “provisions for counsel fees allowable as taxable costs have been and continue to be totally unrealistic,” and noting that the “need for overhaul is long overdue”).

B. Differences in State vs. Federal

In New Hampshire, a “bill of interpleader is a proper and appropriate remedy to pursue where the insurance proceeds are inadequate to satisfy pending claims. It enables a liability insurer to effect a ratable allocation of the proceeds of its policy among all the claimants in order to avoid any contention of negligence, bad faith or preferential treatment on its part in making a settlement with any of the claimants.” Fid. & Cas. Co. of N.Y. v. LePage, 105 N.H. 327, 328, 200 A.2d 12, 13 (1964).

The First Circuit has similarly explained that in “interpleader, the plaintiff ordinarily is a mere stakeholder who solicits the assistance of a court in order to avoid potentially inconsistent liabilities.” Hudson Sav. Bank v. Austin, 479 F.3d 102, 107 (1st Cir. 2007).

Additionally, federal courts, like those in New Hampshire, have “discretion to award costs and counsel fees to the stakeholder in an interpleader action whenever it is fair and equitable to do so.” Sun Life Assur. Co. of Canada v. Sampson, 556 F.3d 6, 8 (1st Cir. 2009) (quotation and ellipsis omitted). “The test for awarding fees and costs is a typical equitable one that is very similar to the standard used to determine whether interpleader relief ought to be granted—should the interpleading party be required to assume the risk of multiplicity of actions and erroneous election.” Id. (quotation omitted). “If not, then the stakeholder should be made whole.” Id. (quotation omitted). “The test is not satisfied if the stakeholder has contributed to the need for interpleader by acting in bad faith or by unduly delaying in seeking relief.” Id. (quotation omitted).