I. REGULATORY LIMITS ON CLAIMS HANDLING

A. Timing for Responses and Determinations

Policyholders are required to timely notify insurers of the occurrence of an event that triggers a coverage obligation. A typical requirement is that notice be given “as soon as practicable.” Gazis v. Miller, 186 N.J. 224, 228-31 (2006). Notice ensures that an insurer will have the opportunity to investigate a claim. If an insured delays in providing notice to the insurer under an “occurrence” policy—as opposed to a “claims-made” policy—the insurer must show “appreciable prejudice” in order to forfeit coverage. Id. (citing Cooper v. Gov’t Employees Ins. Co., 51 N.J. 86, 94 (1968); Zuckerman v. Nat’l Union Fir Ins. Co., 100 N.J. 304, 306-07 (1985)). In contrast, an insurer of a “claims-made” policy will not be required to show prejudice in order to disclaim coverage for untimely notice. Templo Fuente de Vida Corp. v. National Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 193 (N.J. 2016). In Templo, the court reasoned that insureds to an “occurrence” policy are typically “unsophisticated consumers unaware of all of the policy’s requirements”, whereas insureds to a “claims-made” policy tend to be “particularly knowledgeable insureds.” Id. at 209. An insurer is not responsible for those costs incurred by the insured prior to notification. SL Industries, Inc. v. Am. Motorists Ins. Co., 128 N.J. 188, 200-01 (1992).

An insured, however, does not lose the right to coverage if he fails to give notice because he reasonably believes, in good faith, that a claim will not arise. Zuckerman v. National Union Fire Ins. Co., 194 N.J. Super. 206 (App. Div. 1984). Such instances occur, for example, if the damage is trivial, or if there is no suggestion in the circumstances that the insured is causally linked to the alleged damages. Id. at 211. Essentially, failure to provide timely notice is not enough to deny coverage; rather, the insurer must demonstrate a breach of the notice provision, as well as that the company suffered appreciable prejudice. Id. However, in the case of a “claims made” policy, which provides coverage when a claim is made against the insured regardless of whether the underlying acts occurred outside of the policy period, the insured must strictly comply with the policy’s notice provision, even if the insured initially has reason to believe that the potential liability for a claim is less than the policy’s deductible. Alpine Home Inspections, LLC v. Underwriters at Lloyd’s London, No. A-1402-07T3, 2008 N.J. Super. Unpub. LEXIS 1892, at **5-6 (App. Div. Nov. 24, 2008).
B. Standards for Determinations and Settlements

Insurers are obligated to exercise good faith in evaluating settlement offers. Courvoisier v. Harley Davidson, 162 N.J. 153 (1999); Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474 (1974) (questioned on other grounds). A judgment or settlement in excess of an insured’s policy limit is typically the responsibility of the insured. However, since settlement negotiations are usually handled by the insurer, the insurer has a fiduciary obligation to try to settle claims within the policy limits. Courvoisier, 162 N.J. at 162; Rova Farms Resort, Inc., 65 N.J. at 496. In analyzing whether a decision was made in good faith, a court will decide if it was an “honest and intelligent one in light of the company’s expertise in the field.” State Nat’l Ins. Co. v. County of Camden, 10 F. Supp. 3d 568, 584 (D.N.J. 2014) (internal citations omitted). In the event an insurer is found to have acted in bad faith in pursuing settlement negotiations and a judgment in excess of policy limits ultimately results, the insurer will have to pay that judgment regardless of its policy limits. Courvoisier, 162 N.J. at 164; Rova Farms Resort, Inc., 65 N.J. at 496.

Alternatively, when an insurer wrongfully denies its defense coverage obligations, the insured may assume control of the defense of the case and settle the case without the input of the insurer. Griggs v. Bertram, 88 N.J. 347, 368 (1982). The insurer is then liable for the settlement amount up to its policy limits as long as the settlement is reasonable in amount and entered into in good faith. Id. The insurer possesses the burden of persuasion in proving that the settlement is unreasonable. Id. at 365.

II. PRINCIPLES OF CONTRACT INTERPRETATION


Insurance contracts will generally be interpreted according to their ordinary and plain meaning. Pizzullo, 196 N.J. at 270. When an insurance policy is clear and unambiguous, the court is bound to enforce the policy as it is written. Id. The court will not make a better contract for the parties than they anticipated. Id. However, when the language of the policy will support more than one meaning, courts should “interpret the contract to comport with the reasonable expectations of the insured.” Id. at 270-71; see also Wakefern Food Corp. v. Lib. Mut. Ins. Co., 406 N.J. Super. 524, 541 (App. Div. 2009) (“[A]n ambiguous provision must be construed favorably to the insured”) (citation omitted); Stafford v. Scottsdale Ins. Co., 2010 U.S. Dist. LEXIS 365, 9 (D.N.J. Jan. 4, 2010) (“[I]nsurance-buyers should not be subject to intricate interpretations of an insurance policy.”). An insurance contract is ambiguous “if the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage.” Hawkins v. Globe Life Ins. Co., 105 F. Supp. 3d 430, 439 (D.N.J. 2015) (internal citations omitted). In exceptional circumstances, even an unambiguous contract may be interpreted contrary to its plain meaning to effectuate the reasonable expectations of the insured. Pizzullo, 196 N.J. at 271; Evanston
III. CHOICE OF LAW

It is well-settled that New Jersey courts apply New Jersey choice of law principles to determine which state’s substantive law should apply in interpreting an insurance contract. Erny v. Estate of Merola, 171 N.J. 86, 94 (2001). In New Jersey, a choice of law analysis involves a flexible approach, usually comporting with the law of the place of contract unless the other state has a more dominant relationship or a significant government interest. Sensient Colors, Inc. v. Allstate Ins. Co., 193 N.J. 373, 395 (2008) (noting that principal location of insured risk is most important contact only where principal risk of insured is in one state); Gilbert Spruance Co. v. Penn. Mfr. Ass’n Ins. Co., 134 N.J. 96, 112 (1993) (rejecting mechanical and inflexible lex loci contractus rule).

Ordinarily New Jersey courts look to the Restatement (2d) of Conflicts of Laws § 193 (1971) to make choice-of-law determinations in interpreting casualty insurance contracts. See Gilbert Spruance, 134 N.J. at 112. Pursuant to § 193, the law of the state that the parties understood to be the principal location of the risk governs unless another state has a more significant relationship to the transaction and the parties. Id.

Where the activity is predictably multi-state, “the significance of the principal location of the insured risk diminishes.” Id. “[T]he governing law is that of the state with the dominant significant relationship according to the principles set forth in Restatement § 6.” Id. at 112. Restatement § 6 (2) sets forth the following factors to determine the state with the dominant significant relationship: (1) place of contracting; (2) place of negotiation; (3) place of performance; (4) location of the subject matter of the contract; and (5) domicile, residence, nationality, place of incorporation, and place of business of the parties. Although New Jersey courts apply these five principles in environmental coverage actions, the law of the contaminated site typically governs. See, e.g., Pfizer, Inc. v. Employers Ins. of Wausau, 154 N.J. 187 (1998). Yet, this analysis may not readily apply to product liability actions. NL Industr. v. Commercial Union Ins. Co., 65 F.3d 314, 321-323 (3d Cir. 1995).

In addition to the principles set forth in Restatement § 6, New Jersey courts also consider the requirements outlined in Restatement § 188 to determine what constitutes a significant relationship. See Polarome Mfg. Co., Inc. v. Commerce & Industr. Ins. Co., 310 N.J. Super. 168, 172 (App. Div. 1998). Restatement § 188 sets forth the following factors: (1) the needs of the interstate and international system; (2) the relevant policies of the forum; (3) the relevant policies of other interested states and the relative interests of those states on the outcome of the case; (4) the protection of justified expectations; (5) the basic policies underlying the particular field of law; (6) certainty, predictability and uniformity of result; and (7) ease in the determination and application of the law to be applied. Restatement (2d) of Conflicts of Laws § 188.

IV. EXTRACONTRACTUAL CLAIMS AGAINST INSURERS: ELEMENTS AND REMEDIES

A. Bad Faith
The covenant of good faith and fair dealing that is implied in all contractual relationships applies to insurance policies, and requires that insurers not act improperly to compromise the right of the insured to receive the full benefits of the policy. Price v. N.J. Mfrs. Ins. Co., 182 N.J. 519, 526 (2005); Griggs v. Bertram, 88 N.J. 347, 443 A.2d 163 (1982). See also N.J.S.A. 17B:30-13.1(f) (insurer must attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear). In determining whether an insurance company has acted in “bad faith,” New Jersey courts use the “fairly debatable” standard. Pickett v. Lloyd’s & Peerless Ins. Agency, 131 N.J. 457, 473, 621 A.2d 445 (1993); M&B Apartments v. Teltser, 328 N.J. Super. 265, 745 A.2d 586 (App. Div. 2000). Bad faith is established by showing that no debatable reason existed for the denial of benefits. Pickett, 131 N.J. at 481. See also Nationwide Mut. Ins. Co. v. Caris, 170 F. Supp. 3d 740, 748 (D.N.J. 2016) (A plaintiff must show that (1) the insurer lacked a reasonable basis for its denying benefits, and (2) the insurer knew or recklessly disregarded the lack of a reasonable basis for denying the claim. Such claims are analyzed in light of the “fairly debatable” standard.) Under the “fairly debatable” standard, an insured “who could not have established as a matter of law a right to summary judgment on the substantive claim [for insurance benefits] would not be entitled to assert a claim for an insurer’s bad faith refusal to pay the claim.” Wimberly Allison Tong & Goo, Inc. v. Travelers Prop. Cas. Co. of Am., 559 F. Supp. 2d 504, 515 (D.N.J. 2008). Further, under the “fairly debatable” standard, simple negligence cannot provide for the basis of a bad faith claim against an insurer, nor does the failure to settle a debatable claim by itself constitute bad faith. Badiali v. New Jersey Mfrs. Ins. Group, 220 N.J. 544, 554 (N.J. 2015). The Appellate Division has, however, expressed doubt as to whether the “fairly debatable” standard applies “when evaluating good faith in failing to settle an unliquidated bodily injury claim[.]” Taddei v. State Farm Indem. Co., 401 N.J. Super. 449, 462 (App. Div. 2008). For a processing delay, bad faith is established by showing that no valid reason existed for the delay and that the insurance company knew or recklessly disregarded the fact that no valid reason supported the delay. Pickett, 131 N.J. at 474. A bad faith claim must plead in order to proceed. Taddei, 401 N.J. Super at 465.

In general, an insurer’s bad faith towards its insured in the payment of a first-party claim is best understood as one that sounds in contract rather than in tort. Pickett, 131 N.J. at 474-475. Accordingly, an insured can recover direct and foreseeable consequential damages for bad faith conduct in the context of a first-party policy. Id. (damages in excess of the policy benefits are appropriate where the failure to pay the policy results from a denial or a withholding of benefits for reasons that are not debatably valid and the economic losses sustained by the policyholder are clearly within the contemplation of the insurance company). In bad faith actions concerning first-party policies the insured is not permitted to recover punitive damages. See e.g., Pickett, 131 N.J. at 475; Meier v. New Jersey Life Ins. Co., 195 N.J. Super. 478, 489 (App. Div. 1984), aff’d, 101 N.J. 597 (1986) (punitive damages not allowed in action on life insurance policy); Pierza v. Ohio Cas. Group of Ins. Cos., 208 N.J. Super. 40 (App. Div. 1986), cert. denied, 104 N.J. 399 (1986) (no right to recover punitive damages under PIP policy). However, egregious or deliberate dishonest conduct in the course of claim administration may give rise to an independent tort action for which punitive or exemplary damages are available. Pickett, 131 N.J. 475. The insured may also be entitled to compensation for “costs of litigation, including expenses for experts and counsel fees, and prejudgment interest.” Taddei, 401 N.J. Super. at 461.
N.J.S.A. 17B:30-13.1 prohibits health and life insurers from engaging in unfair claim settlement practices. After notice and a hearing, the Commissioner of Insurance may address such conduct by issuing a cease and desist order and a penalty not to exceed $1,000.00 for each violation or $5,000 for each knowing violation. N.J.S.A. 17B:30-17(b).


B. Fraud

Insurers may deny coverage if the insured committed fraud. See e.g., Equitable Life Assurance Soc’y v. New Horizons, 28 N.J. 307, 314 (1958). Legal fraud consists of: (1) a material misrepresentation of a presently existing or past fact; (2) made with knowledge of its falsity (scienter); (3) with the intention that the other party rely thereon; (4) resulting in reliance by the other party; (5) to the other party’s detriment. Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997).

New Jersey distinguishes between legal and equitable fraud. The elements of scienter are not essential if the plaintiff seeks to prove that a misrepresentation constituted an equitable fraud. See Rolnick v. Rolnick, 262 N.J. Super. 343, 362-363 (App. Div. 1993); Equitable Life Assurance Soc’y, 28 N.J. at 314. See also Bonco Petrol, Inc. v. Epstein, 115 N.J. 599, 609 (1989) (stating that demonstrating scienter is not necessary where a party seeks only equitable remedies).

C. Intentional Infliction of Emotional Distress and/or Outrage

To prevail on a claim for intentional infliction of emotional distress in New Jersey, a plaintiff must establish (i) that the defendant acted intentionally or recklessly, (ii) the conduct was extreme and outrageous, (iii) proximate cause and (iv) that the distress was severe. Taylor v. Metzger, 152 N.J. 490, 527 (N.J. 1998). The defendant must “intend both to do the act and to produce emotional distress” or act so “recklessly in deliberate disregard of a high degree of probability that emotional distress will follow.” Buckley v. Trenton Sav. Fund Soc’y, 111 N.J. 355, 364 (1988). The conduct of the defendant must be “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.” Buckley 111 N.J. at 355.

D. State Consumer Protection Laws, Rules, and Regulations
The New Jersey Consumer Fraud Act ("NJCFA") provides that "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice . . . ." N.J.S.A. 56:8-2. The NJCFA protects consumers from deception and misrepresentations even when they are made in good faith. Gennari, 148 N.J. at 604; Ji v. Palmer, 333 N.J. Super. 451, 461, 755 A.2d 1221 (App. Div. 2000).

The NJCFA has been construed to apply to the sale of insurance policies. Lemelleto v. Beneficial Mgmt. Corp. of Am., 150 N.J. 255, 265, 696 A.2d 546 (1997) (insurance policies are goods and services that are marketed to consumers within the definitions applicable to the NJCFA). The standard of proof that governs a private claim under the NJCFA is a preponderance of the evidence. Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 892 A.2d 1240 (2006); Sabelli v. All American Chevrolet, Inc., 2007 WL 92609 (N.J. Super. A.D. 2007)


In an action brought under the NJCFA, reliance need not be shown. Gennari, 148 N.J. at 607-608; Varacallo v. Mass. Mut. Life Ins. Co., 332 N.J. Super. 31, 43, 752 A.2d 807 (App. Div. 2000). The plaintiff must, however, demonstrate a causal relationship between the act or omission and the damages sustained. Feinberg, 331 N.J. Super. at 511; Varacallo, 332 N.J. Super. at 43. In Varacallo, for example, the court held that if the defendant withheld material information in its literature, which it intended consumers to rely upon, any consumer who saw the literature and subsequently purchased a policy would have prima facie proof of causation without the need to establish actual reliance. Varacallo, 332 N.J. Super at 49.


E. State Class Actions

To maintain a class action in New Jersey, the class representatives must satisfy all four prerequisites of R. 4:32-1(a): numerosity, commonality, typicality, and adequacy of representation. See In Re Cadillac, 93 N.J. at 424-25; Iliadis, 387 N.J. Super. at 415. In addition, the class representative must fulfill one of the three alternative requirements of R. 4:32-1(b):

(1) The prosecution of separate actions by or against individual members of the class would create a risk either of (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relieve or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The factors pertinent to the findings include: first, the interest of members of the class in individually controlling the prosecution or defense of separate actions; second, the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; third, the difficulties likely to be encountered in the management of a class action.

A class action should be permitted unless there is a clear showing that it is inappropriate or improper. Iliadis, 387 N.J. Super. at 415; Delgozzo v. Kenny, 266 N.J. Super. 169, 628 A.2d 1080 (App. Div. 1993) (class actions are particularly favored in cases involving claims of consumer fraud regardless of the specific legal theory advanced).

Where a class seeks certification based on common questions of law or fact, it must be shown that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. R. 4:32-1(b)(3). See also Delgozzo, 266 N.J. Super. 169 (existence of even single common issue of fact and law can be sufficient to satisfy requirements of commonality); Varacallo, 332 N.J. Super. 31 (case remanded for certification of class of
purchasers of vanishing premium life insurance policies in New Jersey based on fact that plaintiff had met predominance requirement); Carroll v. Cellco, 313 N.J. Super. 488, 713 A.2d 509 (App. Div. 1998) (class certification would be difficult to establish under the Consumer Fraud Act due to the individual nature of showing ascertainable loss).

F. State Privacy Laws, Rules, and Regulations


In 1996, New Jersey enacted the “Genetic Privacy Act.” N.J.S.A. 10:5-43, et. seq. With some exceptions, genetic information may not be collected, retained, or disclosed without the individual’s authorization.

V. DEFENSES

A. Misrepresentation/Omissions: During Underwriting or During Claim

An insurer may rescind a policy for equitable fraud when, in the application process, the false statements materially affect either the acceptance of the risk or the hazard assumed by the insurer. N.J.S.A. 17B:24-3(d). See also Ledley, 138 N.J. 627 (an innocent misrepresentation can constitute equitable fraud justifying rescission and insurer need not show that the insured had the intent to deceive); Mass. Mutual Life Ins. Co. v. Manzo, 122 N.J. 104, 115, 584 A.2d 190 (1991) (adopting broad materiality test under which the insurer may rescind if false concealment naturally and reasonably influenced the judgment of underwriter in determining to issue policy, in estimating degree or character of the risk, or in fixing rate of premium).

N.J.S.A. 17B:26-5 requires that an insurer include an incontestability clause in all health insurance contracts. The statute generally places a two-year time limit on efforts by insurance companies to void a policy or deny a claim based upon an allegation that a policyholder made a material misstatement on his or her insurance application. The statute permits an insurer to choose from either a clause that excludes fraudulent misstatements from the misrepresentations that are subject to the two-year contestability period, or a clause which tolls the incontestability period whenever the insured is disabled during that period. See Paul Revere Life Ins. Co., 137 N.J. 190 (statutory language that precludes a defense based on a pre-existing disability does not protect insureds who make fraudulent misrepresentations in their applications); Longobardi v. Chubb Insurance Co., 121 N.J. 530, 533, 582 A.2d 1257 (1990) (claims also may be denied for post-loss misrepresentations); Formosa v. Equitable Life Ins. Soc’y, 166 N.J. Super. 8, 398 A.2d 1301 (App. Div. 1979), cert. denied, 81 N.J. 53, 404 A.2d 1153 (1979) (a life insurance policy may be rescinded because of equitable fraud after the death of the insured provided that the company brings suit within the statutory period of contestability).
N.J.S.A. 17B:24-3(a) provides that an application for any life or health policy will not be admissible in evidence unless a copy of the application was attached to or endorsed upon the policy when issued.

An insurer may also be entitled to a rescind a so-called “stranger-owned life insurance policy” ("STOLI"), in which “an individual, typically an elderly one, procures life insurance on his life in order to subsequently assign the policy to a third party following the lapse of the two-year contestability period.” Lincoln Nat’l Life Ins. Co. v. Calhoun, 596 F. Supp. 2d 882, 884 (D. N.J. 2009). Although a STOLI is not necessarily unenforceable, at least one court has allowed an insurer to proceed with a claim for rescission where the insured who had previously reached an understanding with an investor to assign a life insurance policy to the investor, represented in his policy application that he had not “engaged in any discussions regarding the possible sale of the policy[.]” Id. at 886-88.

B. Pre-existing Illness or Disease Clauses

An insurer does not have a duty to investigate the accuracy of the information given by an insurance applicant, and the duty to investigate further arises only when independent investigation discloses sufficient facts to seriously impair the value of an application. Ledley v. William Penn Life Ins. Co., 138 N.J. 627, 639 (1995) (internal citation omitted). Even if a disease is readily discernable at the time of the application, an insurer may later deny coverage for that pre-existing disease. Kissil v. Beneficial Nat’l Life Ins. Co., 64 N.J. 555, 319 A.2d 67 (1974). However, absent an ability to rescind the policy based upon a misrepresentation in the policy application, a denial of coverage for a pre-existing condition is only warranted where the policy contains such an exclusion. See Paul Revere Life Ins. Co. v. Haas, 137 N.J. 190, 644 A.2d 1098 (1994).

Defining the precise time that an illness comes into existence has been a matter for debate, as a disease frequently exists for some time prior to manifesting any overt symptoms. The view in New Jersey is that coverage will be enforced where the first symptoms of disease are manifested after the policy goes into effect. For example, in Kissil the Court evaluated whether a child’s cystic fibrosis was a disease “contracted and commencing” before or after the policy’s 15-day waiting period. Kissil, 64 N.J. 555. The parties agreed that congenital cystic fibrosis is present at birth, but that symptoms may not appear for years. The Court held that the policy should be read as the ordinary policyholder would understand it, and defined “contracted and commencing” to mean “that coverage would exist where the first positive symptoms of the disease did not manifest with reasonable certainty within the first fifteen days” of the child’s life. Id. at 561; See also American Nurses Ass’n v. Passaic Gen’l Hosp., 98 N.J. 83, 484 A.2d 670 (1984) (interpreting malpractice liability insurance clause as ordinary policyholder would understand it).

C. Statutes of Limitations and Repose

certain actions based in tort, including a claim of bad faith settlement practices against an insurer.

The statute of limitations for breach of an insurance policy by an insurer begins to run from the date the casualty occurs. Peloso v. Hartford Fire Ins. Co., 56 N.J. 514, 521 (1970). The statute of limitations is tolled from the time an insured provides notice of the casualty to the insurer until liability is formally declined by the insurer. Id. Additionally, the statute of limitations may be tolled when a party is “insane” within the meaning of N.J.S.A. 2A:14-21; Todish v. CIGNA Corp., 206 F.3d 303 (3d Cir. 2000).


D. **False Statements**

N.J.S.A. 17B:24-3, which applies to life or health insurance policy applications, provides:

The falsity of any statement in the application for any policy or contract covered by this section may not bar the right to recovery thereunder unless such false statement affected the acceptance of the risk or the hazard assumed by the insurer.

The language of the statute is in the disjunctive. Golden v. Northwestern Mutual Life Ins. Co., 229 N.J. Super. 405, 551 A.2d 1009 (App. Div. 1988). Therefore, it is reasonable to construe the statute as not requiring the proof of a material effect on both the acceptance of the risk and the hazard assumed. The insurer needs only to show that the misrepresentation had a material impact on one of these aspects. Id. at 423.

**VI. BENEFICIARY ISSUES**

A. **Change of Beneficiary**

N.J.S.A. 17B:24-4 states that the terms of the insurance contract are controlling in changing the beneficiary or assigning the rights to a policy. “It is well-settled that a change of beneficiary can only be effected so as to bind the insurance company if it is accomplished in substantial compliance with the policy requirements.” Hirsch v. Travelers Ins. Co., 153 N.J. Super. 545, 555 (App. Div. 1977). See also Haynes v. Metropolitan Life Ins. Co., 166 N.J. Super. 308, 313, 399 A.2d 1010 (App. Div.1979) (finding “substantial compliance” when a written request of an insured to change his beneficiary designations from his estranged wife to other relatives, even though the contract required that the policy itself accompany the written request, because the estranged wife had control of the policies and refused to relinquish them). “Substantial compliance” will generally be found if “the court can be convinced that the insured made every reasonable effort to effect a change of beneficiary.” DeCeglia v. Estate of Colletti, 265 N.J. Super. 128, 134 (App. Div. 1993) (internal citation omitted).
Unless the owner of the policy changes the beneficiary in the manner provided by the policy, the insurer is obligated to pay the proceeds to the named beneficiary, in accordance with the language of the policy. See Vasconi, 124 N.J. at 342. N.J.S.A. 17B:24-5 protects the insurer from liability when it pays the policy proceeds to the named beneficiary. See also Hirsch v. Travelers Ins. Co., 153 N.J. Super. 545, 549, 380 A.2d 715 (App. Div. 1977) (“If payments have been made in accordance with the policy’s beneficiary designation, the [insurance] companies are absolved from further liability.”).

B. Effect of Divorce on Beneficiary Designation

The provision within a life insurance policy naming an ex-spouse as a beneficiary is automatically revoked pursuant to divorce or annulment. N.J.S.A. 3B:3-14; see also Hadfield v. Prudential Ins. Co., 408 N.J. Super. 48, 51 (App. Div. 2009) (construing the provisions of N.J.S.A. 3B:3-14 to cover life insurance policies). The statute had previously only covered probate property such as wills, but was amended in 2005 to explicitly cover non-probate property such as life insurance. N.J.S.A. 3B:3-14 now states in pertinent part:

Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals . . . a divorce or annulment . . . revokes any revocable . . . dispositions . . . made by a divorced individual to his former spouse in a governing instrument. . . . In the event of a divorce or annulment, provisions of a governing instrument are given effect as if the former spouse . . . disclaimed all provisions revoked by this section. . . .

N.J.S.A. 3B:1-1 was simultaneously amended to include a life insurance policy within the definition of “governing instrument.”

Additionally, the N.J. Supreme Court previously had held that a beneficiary designation in a life insurance policy is superseded by the provisions of a property settlement agreement pursuant to a divorce. Vasconi v. Guardian Life Ins. Co., 124 N.J. 338, 347 (N.J. 1991). When a divorce agreement provides for the mutual release of “any claim or right” concerning “all of the items of property, real, personal, and mixed, of any kind, nature or description” of the other spouse, it creates a rebuttable presumption that the agreement was meant to include beneficiary designations of life insurance policies. Id. at 346.

VII. Interpleader Actions

A. Availability of Fee Recovery

Interpleader allows a stakeholder that admits that it is liable to one of the claimants, but fears the possibility of multiple liability to file suit, deposit the property with the court, and withdraw from the proceedings. Prudential Ins. Co. of Am. V. Hovis, 553 F.3d 258, 262 (3d Cir. 2009). The competing claimants are left to litigate the status of the property between themselves. Amethyst Int’l, Inc., v. Duchess, No. 13-04287 (FLW)(LHG), 2014 U.S. Dist. LEXIS 21089, at *13-14 (D. N.J. Feb. 20, 2014). When the proceeds
of a life insurance policy are in dispute it is common for insurers to file interpleader actions, thus asking the court to determine which party should receive the policy proceeds. Prudential, 553 F.3d at 258.

An interpleader action proceeds in two distinct stages. NY Life Distribs. v. Adherence Group, 72 F.3d 371, (3d Cir. 1995); Prudential, 553 F.3d at 262. During the first stage a court must determine whether the interpleader complaint was properly brought and whether to discharge the stakeholder from further liability to the claimants. Id. The second stage requires that a court determine the respective rights of the claimants to interplead the funds. Id.

Additionally, valid interpleader actions may protect a stakeholder from further liability with respect to counterclaims brought by claimants where (1) a stakeholder bears no blame for the existence of the ownership controversy and (2) the counterclaims are directly related to the stakeholder’s failure to resolve the underlying dispute in favor of one of the claimants. Amethyst, 2014 U.S. Dist. LEXIS 21089, at *25.

B. Differences In State vs. Federal