I. Regulatory Limits on Claims Handling

A. Timing for Responses and Determinations

The North Carolina General Assembly has enacted “prompt pay” legislation for claims under health benefit plans, which are defined to include accident and health insurance policies, medical service contracts (i.e., Blue Cross/Blue Shield plans) and HMOs. This legislation has been codified as N.C. Gen. Stat. § 58-3-225, and sets forth the relevant time limitations involved with the filing, payment and denial of claims. The initial limiting period for insurers is that within 30 days after receipt of a claim, they must pay the claim, deny it or seek additional information.

B. Standards for Determinations and Settlements

Standards for the handling of claims involving minors are set forth in N.C. Gen. Stat. § 1-402, which provides that in litigation involving infants, no final order or judgment affecting the merits of the case incapable of being prejudicial to the infant is valid unless submitted to and approved by a judge. Therefore, if a claim involving an infant is litigated, all final orders or judgments involving that claim must be judicially approved.

Regulations promulgated in the North Carolina Administrative Code (“NCAC”) by the North Carolina Department of Insurance address claims handling and settlements. Under 11 N.C.A.C. 4.0117, claims denials must be in writing and shall cite specific policy provisions or the legal basis relied upon in denying the claim. Offers to settle shall be confirmed in writing and shall cite the specific policy provision or legal basis relied upon in support of a compromise.

Under 11 N.C.A.C. 4.0312, information used as the basis for settling a life, accident, health or disability claim shall be furnished to the Department of Insurance as necessary in connection with specific complaints and inquiries.

Under 11 N.C.A.C. 4.0319, the Commissioner of Insurance shall consider as prima facia violative of G.S. 58-63-15(11) relating to unfair trade practices the failure by an insurer to adhere to the following procedures concerning settlement of life, accident, health and disability claims when such failure is so frequent as to indicate a general business practice:
1. Examining physician’s opinion (insurer to give greater weight to opinion of a physician who has examined the patient than to the opinion of a physician who has not examined the patient).

2. Settlement offers (to remain open for a period of at least 30 calendar days).

3. Multiple health impairments (when insured is hospitalized with multiple health impairments, some covered some not, the insurer is to make pro rata payments where treatment for excluded conditions can be separated).

4. Assignment of benefits (insurer shall honor assignments even though it may have erroneously paid the insured).

5. Claim status reports (accident, health or disability claims not paid within 45 days after receipt of the initial claim; insurer to mail claim status report to the insured at that time).

II. **Principles of Contract Interpretation**

An insurance policy is a contract and its provisions govern the rights and duties of the parties thereto, and those persons entitled to the proceeds of a life insurance policy must be determined in accordance with the contract. *Fidelity Bankers Life Ins. Co. v. Dortch*, 348 S.E.2d 794 (N.C. 1986). The general rules of construction applicable to insurance policies in North Carolina are well established:

As with all contracts, the goal of construction is to arrive at the intent of the parties when the policy was issued. Where a policy defines a term, that definition is to be used. If no definition is given, non-technical words are to be given their meaning in ordinary speech, unless the context clearly indicates another meaning was intended. The various terms of the policy are to be harmoniously construed, and if possible, every word and every provision is to be given effect. If, however, the meaning of words or the effect of provisions is uncertain or capable of several reasonable interpretations, the doubts will be resolved against the insurance company and in favor of the policyholder. Whereas, if the meaning of the policy is clear and only one reasonable interpretation exists, the courts must enforce the contract as written; they may not, under the guise of construing an ambiguous term, rewrite the contract or impose liabilities on the parties not bargained for and found therein.


Ambiguity is not created merely because the parties assign different meanings to the policy's language. Rather, the language at issue must "reasonably [be] susceptible to more than one interpretation" in order to be deemed ambiguous. *N.C. Farm Bureau Mut. Ins. Co. v. Mizell*, 530 S.E.2d 93, 95 (N.C. App. 2000).

Note that the insured has the burden of bringing itself within the insuring language of the contract. *Kubit v. MAG Mut. Ins. Co.*, 708 S.E.2d 138, 147 (N.C. App. 2011). Once it has been determined that the insuring language embraces the particular claim or injury, the burden then shifts to
the insurer to prove that a policy exclusion excepts the particular injury from coverage. Id. North Carolina courts have pronounced that: “Exclusionary clauses are interpreted narrowly while coverage clauses are interpreted broadly to provide the greatest possible protection to the insured.” Id. (citation omitted).

III. Choice of Law

North Carolina courts generally apply the principle of lex loci contractus to choice of law issues relating to insurance policies. This means “that the substantive law of the state where the last act to make a binding contract occurred, usually delivery of the policy, controls the interpretation of the contract.” Fortune Ins. Co. v. Owens, 526 S.E.2d 463, 466 (N.C. 2000); SPX Corp. v. Liberty Mut. Ins. Co., 709 S.E.2d 441, 448 (N.C. App. 2011). For example, in Beavers v. Federal Ins. Co., 437 S.E.2d 881 (N.C. App. 1994), the North Carolina Court of Appeals held that North Carolina law governed an accidental death policy made in North Carolina where the insured was a resident of the state, even though insured’s drowning death occurred in West Virginia.

However, North Carolina General Statute § 58-3-1 provides: “All contracts of insurance on property, lives, or interests in this State shall be deemed to be made therein, and all contracts of insurance the applications for which are taken within the State shall be deemed to have been made within this State and are subject to the laws thereof.”

North Carolina courts have used § 58-3-1 to create an exception to the general principle of lex loci contractus when a close connection exists between North Carolina and the interests insured by the policy. See, e.g., Collins & Aikman Corp. v. Hartford Accident & Indem. Co., 436 S.E.2d 243, 245-246 (N.C. 1993). For example, in Collins & Aikman Corp., the North Carolina Supreme Court held that an excess liability policy was governed by North Carolina law under § 58-3-1, despite the fact the policy had been delivered to the insured’s broker’s office in California, because North Carolina had a close connection to the interests insured by the policy in that the insured owned 102 trucks, 97 of which were titled in North Carolina, and the accident implicating the excess policy occurred in North Carolina. Id. On the other hand, the mere presence of the insured interests in North Carolina at the time of the accident or other occurrence does not constitute a sufficient connection to warrant the application of North Carolina law to the policy if the policy was issued in another jurisdiction. Fortune Ins. Co., 526 S.E.2d at 466.

Any choice of law provision in an insurance contract applied for or issued in North Carolina calling for the application of the law of a foreign jurisdiction violates North Carolina General Statute § 58-3-1 and is void as a matter of law. See Cordell v. Brotherhood of Locomotive Firemen and Enginemen, 182 S.E. 141, 146 (N.C. 1935).

IV. Extracontractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

An insurer has an implied duty to deal fairly and act in good faith with its insured. See Robinson v. North Carolina Farm Bureau Insurance Co., 356 S.E.2d 392, 395 (N.C. App. 1987). Good faith means honesty in fact and the observance of reasonable standards of fair dealing in the insurance industry. A violation of an insurer’s duty of good faith gives rise to an action in tort
for which consequential and punitive damages may be sought. See Von Hagel v. Blue Cross of North Carolina, 370 S.E.2d 695, 698 (N.C. App. 1988). To establish liability for punitive damages, an insured must prove three elements.

First, the insured must show that the insurer (1) failed to pay a justifiable claim, see Miller v. Nationwide Mutual Insurance Co., 435 S.E.2d 537, 544-45 (N.C.App. 1993), disc. rev. denied, 442 S.E.2d 519 (N.C. 1994), (2) failed to investigate a claim before denying a claim when presented with credible evidence supporting the claim from the insured, see Von Hagel, 370 S.E.2d at 699, (3) failed to pay in a timely manner, see Robinson, 356 S.E.2d at 395-96, or committed some similar act.

Second, the insured must establish that the insurer acted in “bad faith.” Bad faith means conduct which is “not based on honest disagreement or innocent mistake.” Lovell v. Nationwide Mutual Insurance Company, 424 S.E.2d 181, 185, aff’d in part, disc. rev. improvidently allowed in part, 435 S.E.2d 71 (NC. 1993) (per curiam).

Third, the insured must prove that an element of aggravation accompanied the insurer’s actions. Aggravated conduct may be shown by fraud, malice, or willful or wanton conduct. See N.C. Gen. Stat. § ID-15(a)(1)-(3).

The insurance carrier is not liable for bad faith where the policy at issue is open to more than one reasonable interpretation and the insurance company promptly and consistently denies the insurance claim based on an interpretation of the policy “that is neither strained nor fanciful, regardless of whether it is correct.” Olive v. Great American Insurance Co., 333 S.E.2d 41, 46 (N.C.App.), disc. rev. denied, 336 S.E.2d 400 (N.C. 1985).


B. Fraud

There are five elements of actionable fraud in North Carolina. These elements are as follows:

1. That the defendant made a false representation or concealed a material fact;
2. That the false representation or concealment was reasonably calculated to deceive;
3. That the false representation was made or the concealment was done with the intent to deceive;
4. That the plaintiff was in fact deceived by the false representation or concealment and that the plaintiff’s reliance was reasonable; and
5. That the plaintiff suffered damages as a result of his reliance on the defendant’s false representation or concealment.

The plaintiff has the burden of proof as to each element. A statement of opinion, belief, recommendation, future prospect or a promise is not a representation of fact. See Johnson v. Phoenix Mutual Life Insurance Co., 266 S.E.2d 610, 616 (N.C. 1980), overruled in part on other grounds by Myers & Chapman, 374 S.E.2d at 391-92. However, a promise can be a false representation of fact if, at the time it is made, the defendant has no intention of carrying it out. See Leake v. Sunbelt Ltd., of Raleigh, 377 S.E.2d 285, 288-89 (N.C.App.), disc. rev, denied, 381 S.E.2d 774 (N.C. 1989).

C. Intentional or Negligent Infliction of Emotional Distress (IIED or NIED)

In North Carolina, to recover on a claim for intentional infliction of serious emotional distress, the plaintiff must prove three elements by the greater weight of the evidence: "1) extreme and outrageous conduct by the defendant 2) which is intended to and does in fact cause 3) severe emotional distress." Waddle v. Sparks, 414 S.E.2d 22, 27 (N.C. 1992) (citation omitted).

As to the first element, conduct is deemed "extreme and outrageous" when it "exceeds all bounds usually tolerated by decent society." Stanback v. Stanback, 254 S.E.2d 611, 622 (N.C. 1979) (citation omitted). Under the second element, plaintiff must show either that defendant intended to cause severe emotional distress or that the "defendant’s actions indicate[d] a reckless indifference to the likelihood that they [would] cause severe emotional distress." Dickens v. Puryear, 276 S.E.2d 325, 335 (N.C. 1981). "Severe emotional distress" is defined for purposes of the third element as any emotional or mental disorder, such as, for example, neurosis, psychosis, chronic depression, phobia, or any other type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so.

Waddle, 414 S.E.2d at 27 (citation omitted). A plaintiff is not required to show physical injury to recover for intentional infliction of emotional distress. See Dickens, 276 S.E.2d at 331-35. But the plaintiff must present evidence of medical documentation to substantiate alleged severe emotional distress. Waddle, 414 S.E.2d at 28.

D. State Consumer Protection Laws, Rules and Regulations

North Carolina’s Unfair and Deceptive Trade Practices Act prohibits “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.” N.C. Gen. Stat. § 75-1.1(a). The Act provides a private cause of action for persons injured by violations of its terms. See N.C. Gen. Stat. § 75-16. Claims for relief under Chapter 75 are subject to a four-year statute of limitations. See N.C. Gen. Stat. § 75-16.2. Damages for violations of Chapter 75 may be trebled. See N.C. Gen. Stat. § 75-16. A plaintiff who prevails on a claim under the Act may be entitled to attorneys’ fees if he establishes that, “[t]he party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit.” N.C. Gen. Stat. § 75-16.1(1). If the defendant prevails, he may be entitled to recover attorneys’ fees if he shows that “[t]he party instituting the action knew, or should have known, the action was frivolous and malicious.” N.C. Gen. Stat. § 75-16.1(2).

E. State Class Actions
Class actions may be brought in North Carolina pursuant to Rule 23 of the North Carolina Rules of Civil Procedure. Rule 23 provides in relevant part that, "[i]f persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued." N.C. R. Civ. P. 23(a). The rule also provides that complaints filed in certain class actions brought by corporate shareholders must be verified. See N.C. R. Civ. P. 23(b).

A “class” under Rule 23 exists “‘when the named and unnamed members each have an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members.’” Faulkenbury v. Teachers & State Employees’ Retirement System of North Carolina, 345 N.C. 683, 697, 483 S.E.2d 422, 431 (1997) (citation omitted). The North Carolina Supreme Court has held that a class action may be brought only if the following additional prerequisites are also shown to exist:

(1) the named representatives must establish that they will fairly and adequately represent the interests of all members of the class; (2) there must be no conflict of interest between the named representatives and members of the class; (3) the named representatives must have a genuine personal interest, not a mere technical interest, in the outcome of the case; (4) class representatives within this jurisdiction will adequately represent members outside the state; (5) class members are so numerous that it is impractical to bring them all before the court; and (6) adequate notice must be given to all members of the class.


In order to show that a class is numerous enough to qualify under Rule 23, class representatives do not need to “demonstrate the impossibility of joining class members, but they must demonstrate substantial difficulty or inconvenience in joining all members of the class.” Id. at 283, 354 S.E.2d at 466. In North Carolina, “[t]here... [is] no firm rule for determining when a class is so numerous that joinder of all members is impractical. The number is not dependent upon any arbitrary limit, but rather upon the circumstances of each case.” Id.

What constitutes “adequate notice” of a class action to class members is within the discretion of the trial court. Id. “Such notice should include individual notice to all members who can be identified through reasonable efforts, but it need not comply with the formalities of service of process.” Id. at 283-84, 354 S.E.2d at 466.

Once the class representatives demonstrate that the prerequisites outlined above are satisfied, the decision as to whether a class action may proceed lies within the discretion of the trial court. Faulkenbury, 345 N.C. at 697, 483 S.E.2d at 431. The trial court must balance “[t]he usefulness of the class action device. . . against inefficiency or other drawbacks.” Crow, 319 N.C. at 284, 354 S.E.2d at 466. The court may consider factors other than the aforementioned prerequisites when deciding whether to allow the lawsuit to proceed as a class action. Id.

Once a class action is filed, it may “not be dismissed or compromised without the approval of the judge.” N.C. R. Civ. P. 23(c). The judge also
decides how class members are notified of the dismissal or settlement of such an action. See id.

F. State Privacy Laws, Rules and Regulations

The Insurance Information and Privacy Protection Act, N.C.G.S. § 58-39-1 to § 58-39-120 embodies North Carolina’s privacy law. This Act is based on model legislation originally drafted by the National Association of Insurance Commissioners. North Carolina is one of approximately 15 states that have enacted the NAIC model act.

The Gramm-Leach-Bliley Act passed by the United States Congress (P.L. 106-102, 113 Stat. 1338, 11/12/99) has profound implications on privacy issues on both the state and federal level. In 2001, North Carolina enacted its own version of GLB by amending the Insurance Information and Privacy Protection Act in numerous ways.

III. Defenses in Actions Against Insurers

A. Misrepresentations/Omissions: During Underwriting or During Claim

The North Carolina General Statutes provide as follows with respect to misrepresentations made by insurance applicants:

All statements or descriptions in any application for a policy of insurance, or in the policy itself, shall be deemed representations and not warranties, and a representation, unless material or fraudulent, will not prevent a recovery on the policy.

N.C. Gen. Stat. § 58-3-10. Interpreting this section, one North Carolina court observed:

false statements will avoid a policy if fraudulently made, irrespective of materiality; however, absent fraud, the falsity of an applicant’s answer must be material to the risk in order to warrant avoidance of the policy on that ground.

Tharrington v. Sturdivant Life Insurance Co., 443 S.E.2d 797, 799-800 (N.C. App. 1994). Further, in order to avoid a fire insurance policy on the grounds that the insured made a misrepresentation, the insurer must prove that “the insured made statements that were: 1) false, 2) material, and 3) knowingly and willfully made.” Bryant v. Nationwide Mutual Fire Insurance Co., 329 S.E.2d 333, 338 (N.C. 1985); see N.C. Gen. Stat. § 58-44-16.

North Carolina Pattern Jury Instruction 880.15 notes that “[a] representation is false if it is untrue. However, the law does not require that a representation literally be true and accurate in every respect. A representation is not considered under the law to be false if it is substantially true.” Answers to ambiguous questions cannot be deemed false. See Cockerham v. Pilot Life Insurance Company, 374 S.E.2d 174, 176 (N.C.App. 1988).

A misrepresentation in an application for an insurance policy is deemed “material” if the knowledge or ignorance of it would naturally and reasonably influence the judgment of the insurance company in making the insurance contract, or estimating the degree and character of the risk, or in fixing the rate of premium. See Tolbert v. Mutual Benefit Life Insurance Co., 72 S.E.2d
915, 917 (N.C. 1952). For example, in a policy of life insurance, written questions and answers relating to health are deemed material as a matter of law. See id.

Because an insurer need not show fraud to avoid a policy (other than a fire insurance policy) as long as the representation is false and material, the insurer can avoid the policy “even though the [insured] be innocent of fraud or an intention to deceive or to wrongfully induce the assurer to act, or whether the statement be made in ignorance or good faith, or unintentionally.” Tharrington, 443 S.E.2d at 801 (citation omitted).

An insurer cannot attempt to rescind an insurance policy if the insurer or the agent knew at the time of the representation that it was false. See Willetts v. Integon Life Insurance Corp., 263 S.E.2d 300, 305 (N.C.App.), disc. rev, denied, 270 S.E.2d 116 (N.C. 1980). In fact, a regulation promulgated by the North Carolina Department of Insurance provides in part:

If an insurer does not promptly attempt to rescind an accident, health or disability policy upon becoming aware that the insured’s application contained false statements, the insurer may not subsequently use such false statements as a basis for attempted rescission or alteration of the policy.

11 NCAC 4.0316.

B. Preexisting Illness or Disease Clauses

North Carolina follows the general rule of insurance contract interpretation that when there is any doubt about its interpretation or meaning, an insurance policy exclusion precluding recovery for pre-existing disabilities or any other reason is strictly construed against the insurer. See, e.g., Cantrell v. Liberty Life Insurance Co., 315 S.E.2d 544, 547 (N.C. App.), disc. rev, denied, 321 S.E.2d 127 (N.C. 1984). The North Carolina General Statutes provide that:

At the time of issuing any new policy of individual or family hospitalization insurance or individual accident and health insurance to insureds over age 65, the term “preexisting conditions,” or its equivalent in said policy shall include only conditions specifically eliminated by rider.


Subject to certain exceptions, a group health insurer may currently exclude from coverage a pre-existing condition for a period of not more than 12 months after an insured has enrolled in the plan, or not more than 18 months in the case of a late enrollee. See N.C. Gen. Stat. § 58-68-30. The exclusionary period is reduced - the insured receives a credit - if the insured’s condition was covered on the enrollment date under one of several other health plans listed by statute. See id. § 58-68-30(a) (requiring reduction of the exclusionary period by any amounts of “creditable coverage”); see also id. § 58-68-30(c) (listing types of policies which may provide “creditable coverage”). The North Carolina General Statutes require that if a policy includes such a provision limiting coverage for preexisting conditions, the policy also must contain a provision defining “preexisting condition,” notifying the insured of the exclusionary period, and informing the insured
that he may be entitled to a credit against the period for coverage under a previous health plan. See N.C. Gen. Stat. § 58-51-15(a)(2)b. The statute sets forth an example of such a provision and requires that insurance policies follow the model language in substance. See id.

Note that effective 1/1/14, policies subject to the federal Affordable Care Act may not contain a pre-existing condition clause.

Subject to certain significant exceptions, an employee covered under a group health plan is entitled under North Carolina law to obtain coverage under an individual policy upon termination of coverage under the group policy. See N.C. Gen. Stat. § 58-53-45 to 58-53-115. The new individual policy cannot exclude any preexisting condition covered under the old group policy. See id. § 58-53-85.

C. Statutes of Limitations and Repose


D. “Investor Owned” Life Insurance Development

In 2004, the North Carolina General Assembly amended North Carolina’s insurable interest statute relating to life insurance and charitable organizations to permit “investor owned” life insurance. See N.C. Gen. Stat. § 58-58-86. Note that this statutory amendment expired on September 30, 2007. Effective October 1, 2007, sales of “investor owned” life insurance products no longer satisfied North Carolina’s insurable interest statute as it relates to charitable organizations.

E. Health Insurance High Risk Pools

Given the enactment of the Affordable Care Act (ACA), North Carolina’s High Risk Pool was dissolved effective 12/31/13. Under the ACA, North Carolina elected not to establish a state-run health benefit exchange, and participates in the federal-run exchange.

F. Stranger-Originated Life Insurance

Stranger-Originated Life Insurance (“STOLI”) is an issue of interest to the North Carolina Department of Insurance, life insurers and agents on the one hand, and life settlement companies on the other. The NAIC and NCOIL have weighed in on methods by which STOLI might be regulated.

G. Health Benefit Exchanges

Health benefit exchanges have not been implemented by the North Carolina General Assembly. Instead, North Carolina has chosen to defer to the federal government to implement exchanges in this State. See Senate Bill 4, Session Law 2013-5, North Carolina General Assembly. This bill was signed into law on March 6, 2013. As noted above, the Health Insurance Risk Pool, created by the General Assembly in 2007, was dissolved effective 12/31/13 as the federal exchanges came on line.
H.  Tort Reform

The North Carolina General Assembly during its 2011 session considered significant tort reform that addressed many issues relating to the trial of products liability, medical malpractice and civil cases generally. House Bill 542 – Tort Reform for Citizens and Businesses and Senate Bill 33 – Medical Liability Reforms are bills of note. North Carolina enacted Senate Bill 33 in 2011, significantly reforming medical malpractice suits in this state. Specifically, for actions filed on or after October 1, 2011, North Carolina places as $500,000 cap on non-economic damages in medical malpractice suits, adjusted for inflation since November 2011. See N.C.G.S. § 90-21.19. In addition, for actions arising on or after October 1, 2011, evidence offered to prove past medical expenses shall be limited to evidence of the amount actually paid to satisfy the bills, or the amount actually necessary to satisfy the bills. See N.C.G.S. § 8C-1, Rule 414.

VI.  Beneficiary Issues for Life, Accident and Health Policies

A.  Change of Beneficiary


Note, however, that courts will apply the doctrine of “substantial compliance” when analyzing a beneficiary change form. “Where it appears that the insured has done all that he reasonably could do to comply with the specific policy provisions but was unable to fully comply by reason of circumstances beyond his control, the courts will give effect to the intention of the insured and hold that the change of beneficiary has been accomplished.” English v. English, 34 N.C. App. 193, 195-96, 237 S.E.2d 555, 557 (1977).

Furthermore, a change to the policy’s beneficiary or to the ownership of the policy may only be made by the owner of the life insurance policy. Primerica, 211 N.C. App. at 262, 712 S.E.2d at 678. Should someone other than the owner of the policy attempt a change, “the changes are a legal nullity and of no force and effect, being that the changes were never validly assented to by the proper party.” Id. See Dortch, 318 N.C. at 381-82, 348 S.E.2d at 797 (holding an attempted change in beneficiary to an insurance policy by the insured was a nullity and ineffectual because only the policy owner can effectively make such changes).

B.  Effect of Divorce on Beneficiary Designation

In North Carolina, a divorce, by itself, generally will not annul or revoke the beneficiary designation in a life insurance policy. Daughtry v. McLamb, 132 N.C.App. 380, 382, 512 S.E.2d 91, 92 (1999). In rejecting the contention that an absolute divorce operates to revoke a spouse’s designation of the other spouse as beneficiary, North Carolina courts require that a separation agreement contain a specific intent to effect a beneficiary change. DeVane v. Travelers Ins. Co., 8 N.C. App. 247, 250-51, 174 S.E.2d 146, 147-48 (1970). The prevailing rule of construction as to separation agreements is stated as:
General expression or clauses in a property settlement, agreement between a husband and wife, however, are not to be construed as including an assignment or renunciation of expectancies, and a beneficiary therefore retains his status under an insurance policy if it does not clearly appear from the agreement that in addition to the segregation of the property of the spouses it was intended to deprive either spouse of the right to take under an insurance contract of the other.

Id. at 250, 174 S.E.2d at 147 (citations omitted). For a change to an insurance beneficiary designation to be effective following divorce, there must be a clear intent that the beneficiary relinquishes his or her rights that might be acquired under the policy. Id. at 250, 174 S.E.2d at 147-48. See Daughtry, 132 N.C. App. at 382, 512 S.E.2d at 92 (holding that the parties’ divorce decree does not effect a beneficiary change when the decree does not specifically refer to life insurance, but instead refers only to insurance arising out of decedent’s employment). When a party has the right under the insurance policy to change the beneficiary, his failure to exercise that right, indicates that he does not wish to effect such a change. Id. at 250, 174 S.E.2d at 148.

Note that “[n]either [N.C.] G.S. § 50-11 which provides that ‘all rights arising out of the marriage shall cease and determine,’ nor [N.C.] G.S. § 31A-1 which bars rights to ‘(a)ny rights or interests in the property of the other spouse’ discloses a legislative intent that divorce should annul or revoke the beneficiary designation in a garden-variety insurance certificate. Devane, 8 N.C. App. at 251, 174 S.E.2d at 148.

VII. Interpleader Actions

A. Availability of Fee Recovery

In North Carolina, “attorneys fees are not part of the ‘costs’ of litigation, nor is it the practice in this state, even in an interpleader case, to tax against the unsuccessful defendant an attorney’s fee for the plaintiff to be paid out of the fund.” Metropolitan Life Ins. Co. v. Jordan, 221 F. Supp. 842, 843 (W.D.N.C. 1963) (quoting Supreme Lodge Knights of Honor v. Selby, 69 S.E.2d 51 (1910)). Interpleader actions brought under a federal statute follow the same rules as to costs and attorneys’ fees as in an ordinary equity interpleader. Id. However, “the imposition of costs is discretionary, and is a discretion which, in absence of special circumstances, should be exercised in accordance with the usual practice. Beyond question, the usual practice in North Carolina is to deny counsel fees.” Id. (internal citation omitted).

B. Differences in State vs. Federal

Where an interpleader action is before a federal court pursuant to diversity subject matter jurisdiction, the Fourth Circuit’s decision in Bd. of Educ. v. Winding Gulf Collieries, 152 F.2d 382 (4th Cir. 1945), has been consistently construed as applying state law on the issue of attorneys’ fees in a diversity interpleader action. New York Life Ins. Co. v. Youa Vang, 2010 WL 76369 (W.D.N.C. Jan. 5, 2010). Note, however, that the court in Lindsey v. Primerica Life Ins. Co., 2002 WL 1585908 (M.D.N.C. 2002), appears to be the only decision by a district court in North Carolina to apply federal law rather than state law in regards to an award of attorneys’ fees in a diversity interpleader action. New York Life Ins. Co., 2010 WL 76369. The district court in Lindsey recognizes that the “uniform federal policy based on an exercise of traditional equity discretion” as related to an award of
attorneys’ fees is appropriate in an interpleader action brought under the federal interpleader statute. *Lindsey*, 2002 WL 1585908. See *Trustees of Plumbers and Pipefitters Nat. Pension Fund v. Sprague*, 251 Fed. Appx. 155 (4th Cir. 2007) (recognizing a court’s discretionary authority to reimburse a plaintiff’s fees and costs under the federal interpleader statute). The Lindsey decision, however, appears to be an outlier in North Carolina. Given the reliance by most North Carolina district courts on the Fourth Circuit’s decision in *Bd. of Edu. v. Winding Gulf*, supra, most diversity interpleader actions will follow North Carolina’s usual practice and deny counsel fees. See also *Combined Ins. Co. of Am. v. Christian*, 2015 WL 5022379 (M.D.N.C. Aug. 24, 2015) (analyzing whether awarding attorneys’ fees in the context of the federal interpleader statute was appropriate, but ultimately awarding no attorneys’ fees).