I. Regulatory Limits on Claims-Handling

A. Timing for Responses and Determinations

North Dakota law imposes requirements regarding the timing for responses and determinations. Under N.D.C.C. § 26.1-36-37.1, an insurer must pay the claim or the portion of the claim that isn’t contested, deny the claim, or make an initial request for additional information within fifteen business days after receiving a health insurance proof of loss form. If a claim, or a portion of a claim, is disputed, the insured or its assignee must be notified in writing that the claim is contested and the reasons for the dispute must be stated. Id.; see also N.D.C.C. § 26.1-33-05 (providing provisions required in life policy); N.D.C.C. § 26.1-36-04 (providing provisions required in accident and health policy provisions). Otherwise, N.D.C.C. § 26.1-04-03 governs the handling of insurance claims.

B. Standards for Determinations and Settlements

Claims handling standards are set forth in N.D.C.C. § 26.1-04-03. The North Dakota Supreme Court has not determined whether the statute creates a private right of action. Dvorak v. Am. Family Mut. Ins. Co., 508 N.W.2d 329, 333 (N.D. 1993). However, the Court has ruled that an allegation of a single act of misconduct is insufficient as a matter of law to support a claim under section 26.1-04-03. Id. at 332-33. A plaintiff must make a showing the defendant insurance company is involved in prohibited conduct with a “‘frequency indicating a general business practice.’” Id. at 333 (quoting Volk v. Wis. Mortg. Assur. Co., 474 N.W.2d 40, 45 (N.D. 1991)).


C. State Privacy Laws, Rules, and Regulations

N.D. Century Code § 26.1-02-27 states that “[a]n insurance company, nonprofit health service corporation, or health maintenance organization may not disclose to a nonaffiliated third party a customer’s nonpublic personal information contrary to the provisions of title V of the Gramm-Leach-Bliley Act [Pub. L. 106-102; 113 Stat. 1436].” The commissioner shall adopt rules as may be necessary to carry out § 26.1-02-27. Id. The rules must be consistent with and no more restrictive than the model regulation adopted by
the national association of insurance commissioners entitled “Privacy of Consumer Financial and Health Information Regulation.” Id. N.D. Century Code § 26.1-02-27 does not create a private right of action. Id.

North Dakota law requires confidentiality of medical information. An insurance company must adopt and maintain procedures to ensure confidentiality in compliance with all federal and state law and regulations and professional ethical standards. N.D.C.C. § 26.1-36-12.4(1); see also HIPPA regulations. Data or information pertaining to the health, diagnosis or treatment of a person covered under a policy or contract, or a prospective insured, regardless of the format, must remain confidential and cannot be disclosed unless a valid exception excuses or required disclosure. Id. If the data or information identifies the covered person or prospective insured, disclosure is proper if the person consents by a written, dated, and signed approval. N.D.C.C. § 26.1-36-12.4(1)(a). If the data or information identifies the health care provider, disclosure is proper if the provider consents by a written, dated and signed approval. N.D.C.C. § 26.1-36-12.4(1)(b). Disclosure may be made if the data or information does not identify either the covered person or the prospective insured or the health care provider and the disclosure is for use for statistical purposes or research. N.D.C.C. § 26.1-36-12.4(1)(c). Disclosure is proper if required by statute or court order, N.D.C.C. § 26.1-36-12.4(1)(d), or if the information is pertinent in the event of a claim or litigation between the covered person or prospective insured and the insurer. N.D.C.C. § 26.1-36-12.4(1)(e).

II. Principles of Contract Interpretation

North Dakota law covering insurance contracts is set forth in N.D.C.C. Ch. 26.1-29. In insurance contract interpretation cases, a court will construe the specific language of the insurance contract to determine and give effect to the mutual intention of the parties. Grinnell Mut. Reinsurance Co. v. Thies, 2008 ND 164, ¶ 7, 755 N.W.2d 852. If the language of the insurance contract is clear, there is no room for construction. State v. N.D. State Univ., 2005 ND 75, ¶ 12, 694 N.W.2d 255. If coverage depends on an undefined term, the plain ordinary meaning of the term is applied. Id. Insurance contracts are construed as a whole to give meaning and effect to each clause, if possible. Id.

While insurance policies are regarded as adhesion contracts, a court will not rewrite a contract to impose liability of the policy unambiguously precludes coverage. Hughes v. State Farm Mut. Auto Ins. Co., 236 N.W.2d 870, 885 (N.D. 1976). A court may, however, invoke the Doctrine of Reasonable Expectations in the case of ambiguity in order to fulfill a reasonable belief of the insured. See Mills v. Agrichemical Aviation, Inc., 250 N.W.2d 663 (N.D. 1977) (stating “[w]hat the one hand bestows, the other imperceptibly takes away. This kind of legerdemain by draftsmanship, the lack of notice to the buyer of the policy exclusions, the inconspicuous placement of the exclusionary clauses in the contracts, their obscure relationship to each other, and the reasonable belief of the insured that he was securing general liability coverage . . . all foster coverage expectations which must be fulfilled in this instance.”).

An insurance company transacting insurance business in North Dakota must obtain a certificate of authority. N.D.C.C. § 26.1-02-07. The failure to obtain a certificate of authority does not impair the validity of any act
or contract of the company and does not prevent the company from defending any civil acting in any North Dakota court, however it prevents a company from maintaining a civil action in any court in North Dakota to enforce any right, claim or demand arising out of the transaction of insurance business until the company has obtained a certificate of authority.  Id.

III. Choice of Law

North Dakota applies the significant contacts rule to choice of law problems in cases arising from contract.  Issendorf v. Olson, 194 N.W.2d 750 (N.D. 1972).  This approach analyzes all of the facts and circumstances surrounding the occurrence, and gives controlling effect to the law of the jurisdiction which has the greatest interest in the specific issue raised in the litigation due to the relationship or contact with the occurrence or the parties.  Nat’l Farmers Union Prop. & Cas. Co. v. Dairyland Ins. Co., 485 F. Supp. 1009, 1011 (D.N.D. 1980).

IV. Extra Contractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

An insurance company has a duty to act fairly and in good faith in dealing with its insured.  Hartman v. Miller, 2003 ND 24, ¶ 12, 656 N.W.2d 676.  “The gravamen of the test for bad faith is whether the insurer acts unreasonably in handling an insured’s claim.”  Id.; see also N.D. J.I. Civ. 19.10.  An insurer is not guilty of bad faith for denying a claim when the claim is fairly debatable or when the insurer has a reasonable basis for denying payment.  Fetch v. Quam, 2001 ND 48, ¶ 18, 623 N.W.2d 357.  An insurer’s breach of the duty to act fairly and in good faith may subject it to liability for damages proximately caused by the breach to the insured.  See Corwin Chrysler-Plymouth, Inc. v. Westchester Fire Ins. Co., 279 N.W.2d 638, 643 (N.D. 1979).

B. Fraud

Insurance fraud is codified in N.D.C.C. § 26.1-02.1.  A “fraudulent insurance act” is defined in N.D.C.C. § 26.1-02.1-01(3) as including the following acts or omissions committed by a person knowingly and with the intent to defraud:

a. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, reinsurer, insurance producer, or any agent thereof, false or misleading information as part of, in support of, or concerning a fact material to one or more of the following:
   (1) An application for the issuance or renewal of an insurance policy or reinsurance contract;
   (2) The rating of an insurance policy or reinsurance contract;
   (3) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
   (4) Premiums paid on an insurance policy or reinsurance contract;
   (5) Payments made in accordance with the terms of an insurance policy or reinsurance contract;
(6) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;
(7) The financial condition of an insurer or reinsurer;
(8) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
(9) The issuance of written evidence of insurance;
(10) The reinstatement of an insurance policy; or
(11) The formation of an agency, brokerage, or insurance producer contract.

b. Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction.

c. Removal, concealment, alteration, or destruction of the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance.

d. Theft by deception or otherwise, or embezzlement, abstracting, purloining, or conversion of monies, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance.

e. Attempting to commit, aiding or abetting in the commission of, or conspiring to commit the acts or omissions specified in this section.

A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act is being, will be, or has been committed must provide the information to the commissioner. N.D.C.C. § 26.1-02.1-06.

C. Intentional or Negligent Infliction of Emotional Distress

1. Intentional Infliction of Emotional Distress

The elements of a cause of action for intentional infliction of emotional distress are (1) extreme and outrageous conduct; (2) that is intentional or reckless; and (3) that the conduct caused severe emotional distress. Hougum v. Valley Mem’l Homes, 1998 ND 24, ¶ 26, 574 N.W.2d 812. The Court makes the initial determination as to whether a jury could reasonably regard the defendant’s conduct as extreme and outrageous. See Sec. Nat’l Bank v. Wald, 536 N.W.2d 924, 927 (N.D. 1995).

2. Negligent Infliction of Emotional Distress

The elements of a cause of action for negligent infliction of emotional distress are (1) the defendant created an unreasonable risk of physical injury to plaintiff; and (2) the defendant’s negligence caused the plaintiff to suffer emotional distress that resulted in bodily harm. Muchow v. Lindblad, 435 N.W.2d 918, 921 (N.D. 1989). “The bodily harm essential to sustaining a claim for relief for negligent infliction of emotional distress
is defined . . . as ‘any physical impairment of the condition of another’s body, or physical pain or illness.’” Id. In sum, “transitory, non-recurring physical phenomena do not constitute bodily harm, but long and continued physical phenomena may constitute physical illness and bodily harm.” Hartman v. Estate of Miller, 2003 ND 24, ¶ 32, 656 N.W.2d 676.

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

North Dakota’s Unfair Trade Practices Law, N.D.C.C. Ch. 51-10, and Consumer Fraud and Unlawful Credit Practices statute, N.D.C.C. § 51-15-02, protect consumers from unfair methods of competition and deceptive acts or practices in trade and commerce. No implied private right of action exists under Chapter 51-15. N.D.C.C. § 51-15-02.3. The North Dakota Supreme Court has not determined whether these laws apply in the insurance context.

The North Dakota Prohibited Practices in the Insurance Business Act is set forth in N.D.C.C. Chapter 26.1-04. Among prohibited practices are unfair methods of competition or unfair and deceptive acts or practices, see N.D.C.C. § 26.1-04-02; see also N.D.C.C. § 26.1-04-03 (listing and defining unfair methods of competition and unfair or deception acts or practices); coercing purchaser or borrower to insure with a particular company or insurance producer, see N.D.C.C. § 26.1-04-04; discrimination by life insurance companies and rebates and inducements by insurance producers, see N.D.C.C. § 26.1-04-05; factoring in visual acuity in life or accident and sickness contracts, see N.D.C.C. § 26.1-04-05.1; insured persons and applicants for insurance accepting rebates, see N.D.C.C. § 26.1-04-06; and misrepresentations of terms of policy and future dividends. N.D.C.C. § 26.1-04-07.

E. **State Class Actions**

North Dakota gives the district courts broad discretion in deciding whether to certify a class action, and a decision will not be overturned absent an abuse of discretion. Riter, Laber & Assoc., Inc. v. Koch Oil, Inc., 2000 ND 15, ¶ 4, 605 N.W.2d 153. The requirements for certifying a class action in North Dakota are the same as the requirements for certifying a class under Rule 23 of the Federal Rules of Civil Procedure. N.D.R. Civ. P. 23. The North Dakota Supreme Court has held that class certification was permissible where policyholders brought a suit against long-term care insurers to recover for fraud, negligent misrepresentation, consumer fraud, and false advertising in sale of the policies. Rose v. United Equitable Ins. Co., 2002 ND 148, 651 N.W.2d 683 (N.D. 2002).

V. **Defenses In Actions Against Insurers**

A. **Misrepresentation/Rescission of Insurance Contract For Misrepresentation**

An oral or written misrepresentation made in the negotiation of an insurance contract or policy by the insured or in the insured’s behalf is material or defeats the policy or prevents its attaching only if the misrepresentation has been made with actual intent to deceive or unless the matter misrepresented increased the risk of loss. N.D.C.C. § 26.1-29-25. If the representation is false in a material point, the insured may rescind the insurance contract from the time when the representation becomes false. N.D.C.C. § 26.1-29-24. Materiality is to be determined not by the event, but
solely by the probable and reasonable influence of the facts upon the party to whom the communication is due in forming the party’s estimate of the disadvantages of the proposed contract or in making the party’s inquiries. N.D.C.C. § 26.1-29-17.

B. Preexisting Illness or Disease Clauses

1. Statutes

Each accident and health insurance policy delivered or issued for delivery to any person in this state must contain a provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person’s coverage by name or specific description effective on the date of the person’s loss, which existed prior to the effective date of the person’s coverage under the policy. Any such exclusion or limitation may only apply to a preexisting disease or physical condition for which medical advice or treatment was received by the person during the two-year period before the effective date of the person’s coverage. The exclusion or limitation may not apply to loss incurred or disability commencing after the end of the two-year period commencing on the effective date of the person’s coverage. N.D.C.C. § 26.1-36-04(1)(d).

2. Case Law

The case of Daley dealt with an insurance company who denied coverage for a knee injury because, as excluded under the preexisting condition clause of the contract, the injury wasn’t a “covered sickness.” Daley v. Am. Family Mut. Ins. Co., 355 N.W.2d 812 (N.D. 1984). In reversing the trial court’s denial of a jury trial to the insurer, the North Dakota Supreme Court found that the insurer had raised genuine issues of material fact as to its defense based on the pre-existing condition exclusion on the policy. Id. at 815-16.

C. Statutes of Limitations


The six-year limitations period does not apply to actions against automobile insurers to recover no-fault benefits. If no basic or optional excess no-fault benefits have been paid for loss, an action for the benefits may be commenced not later than two years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four years after the accident, whichever is earlier. N.D.C.C. § 26.1-41-19(1). If basic or optional excess no-fault benefits have been paid for loss, an action for recovery of further benefits for the loss by either the same or another
VI. Beneficiary Issues

In North Dakota, a beneficiary’s rights in an insurance policy are not affected by a divorce between the beneficiary and the insured, however, the beneficiary may still contract away an interest in the policy through a settlement agreement even if the beneficiary is not formally changed. Ridley v. Metro. Fed. Bank FSB, 544 N.W.2d 867, 868-869 (N.D. 1996).

VII. Interpleader Actions

A. Availability of Fee Recovery

North Dakota has no reported case law discussing whether fees and costs are recoverable in a state interpleader action. However, the Federal District Court of North Dakota has awarded costs and fees in interpleader actions. See, e.g., Hartford Life & Acc. Ins. Co. v. Rogers, No. 3:13-CV-101, 2014 WL 4980891, *3 (D.N.D. Oct. 3, 2014) (“A court may award attorneys’ fees and costs to an interpleader plaintiff ‘if the plaintiff is (1) a disinterested stakeholder, (2) who had conceded liability, (3) has deposited the disputed funds with the court, and (4) has sought a discharge from liability.’” (citing Metro. Life Ins. Co. v. Kubicheck, 83 Fed. Appx. 425, 431 (3d Cir. 2003))).

B. Differences in State vs. Federal Circuit