I. Regulatory Limits on Claims Handling

A. Timing for Responses and Determinations

Oregon’s Unfair Claim Settlement Practices Act, Oregon Revised Statute (O.R.S.) 746.230 (the Act), sets forth general timing guidelines for responding and determining claims. It prohibits insurers from:

(b) Failing to acknowledge and act promptly upon communications relating to claims;

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims;

. . .

e. Failing to affirm or deny coverage of claims within a reasonable time after completed proof of loss statements have been submitted;

f. Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear;

. . .

(k) Delaying investigation or payment of claims by requiring a claimant or the claimant's physician, physician assistant or nurse practitioner to submit a preliminary claim report and then requiring subsequent submission of loss forms when both require essentially the same information;

(l) Failing to promptly settle claims under one coverage of a policy where liability has become reasonably clear in order to influence settlements under other coverages of the policy; [and]

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Currently pending legislation would add a dispute resolution process through the Director of the Department of Consumer and Business Services. H.B. 2492, 79th Leg., Reg. Sess. (Or. 2017).
(m) Failing to promptly provide the proper explanation of the basis relied on in the insurance policy in relation to the facts or applicable law for the denial of a claim.


Additionally, under O.R.S. 742.061(1), an insurer is liable for attorney fees if it fails to settle a claim “within six months from the date proof of loss is filed[;] . . . an action is brought in any court of this state . . .[;] and the plaintiff’s recovery exceeds the amount of any tender made by the [insurer] in such action . . . .” These provisions do not apply, however, in actions to recover personal injury protection benefits, uninsured motorist benefits, or underinsured motorist benefits if, no later than six months from the date proof of loss is filed, the insurer, in writing (a) accepts coverage, and the only issue is the amount of benefits owed; and (b) consents to submit the case to binding arbitration. O.R.S. 742.061(2) & (3); McClain v. Safeco Ins. Co. of Oregon, 284 Or. App. 410 (2017).

The Oregon Supreme Court recently expanded on what constitutes “plaintiff’s recovery” to determine whether that recovery exceeds the insurer’s tender. Long v. Farmers Ins. Co. of Oregon, 360 Or. 791, 803-04, 388 P.3d 312, 318 (2017). The court specified that “recovery” is not limited to judgments or awards and includes the insurer’s mid-litigation payments and settlement payments. Id. at 803-04, 388 P.3d at 318-19. If the aggregate of the insurer’s post-filing payments exceeds the amount of pre-suit tender, then the insurer is liable for attorney fees under O.R.S. 742.061(1). Id. at 803-04, 388 P.3d at 318.

A “proof of loss,” which starts the six-month period in O.R.S. 742.061, is “[a]ny event or submission that would permit an insurer to estimate its obligations (taking into account the insurer's obligation to investigate and clarify uncertain claims).” Dockins v. State Farm Ins. Co., 329 Or. 20, 29, 985 P.2d 796, 801 (1999). The Oregon Supreme Court clarified that this is a “pragmatic and functional” inquiry that “depends on the nature of the insurance coverage at issue.” Zimmerman v. Allstate Prop. & Cas. Ins. Co., 354 Or. 271, 286-91, 311 P.3d 497, 505-08 (2013). It emphasized the importance of the insurer’s duty to investigate. Id. Zimmerman involved a first-party claim for underinsured motorist (UIM) insurance coverage. Id. at 273-74. The court found

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2 In recent years there have been efforts to provide a private cause of action for consumers of insurance services. See S.B. 313, 78th Leg., Reg. Sess. (Or. 2015) (permitting a person to bring a cause of action against an insurer for certain unlawful insurance practices); S.B. 314, 78th Leg., Reg. Sess. (Or. 2015) (subjecting insurers to the private cause of action provided by the Oregon Unlawful Trade Practices Act). Current proposed legislation would allow an administrative remedy in lieu of a private cause of action. H.B. 2492, 79th Leg., Reg. Sess. (Or. 2017).
that a report notifying the insurer that an accident had occurred—without information as to the tortfeasor’s policy limits—was insufficient “proof of loss” and thus insufficient to trigger the insurer’s duty to investigate a UIM claim, because an insurer has no UIM liability until its insured exhausts the limits of the underinsured tortfeasor’s insurance coverage. Id. at 288, 291.

B. Standards for Determinations and Settlements

O.R.S. 746.230 also sets forth general standards for determining and settling claims. It prohibits insurers from:

(1)(a) Misrepresenting facts or policy provisions in settling claims;

... 

(d) Refusing to pay claims without conducting a reasonable investigation based on all available information;

... 

(g) Compelling claimants to initiate litigation to recover amounts due by offering substantially less than amounts ultimately recovered in actions brought by such claimants;

(h) Attempting to settle claims for less than the amount to which a reasonable person would believe a reasonable person was entitled after referring to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application altered without notice to or consent of the applicant; [and]

(j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made[.]

As noted above, however, a violation of the Act subjects an insurer to civil penalties enforced by the state but not to a private cause of action. O.R.S. 731.988; Farris, 284 Or. at 458, 587 P.2d at 1017-18; Richardson, 161 Or. App. at 623-24, 984 P.2d at 922-23.

C. State Privacy Laws, Rules, and Regulations

The use and disclosure of personal information by insurers are governed by O.R.S. 746.600 to 746.690, and by regulations enacted by the Director of the Oregon Department of Consumer and Business Services (the Director). Those regulations include Or. Admin. R. 836-080-0425 to 836-080-0440 (Use of Insurance Scores and Credit History), Or. Admin. R. 836-080-0501 to 836-080-0551 (Privacy of Personal Information), Or. Admin. R. 836-080-0600 to 836-080-0610 (Privacy of Health Insurance-Related Information), Or. Admin. R. 836-080-0615 to 836-080-0660 (Notice of Information Practices), Or. Admin. R. 836-080-0665 to 836-080-0700 (Disclosure of Personal, Privileged Information), and Or. Admin. R. 836-081-0101 to 836-081-0126 (Standards for Safeguarding Customer Information). In promulgating rules governing the use and disclosure of personal information by health insurers, the Director “shall consider the information privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 (P.L.
II. **Principles of Contract Interpretation**


III. **Choice of Law**

A. **Contract Claims**

Choice of law issues for contract claims are controlled by O.R.S. 15.300 to 15.380. To the extent not specifically excluded by O.R.S. 15.320, 15.325, 15.330, 15.335 or 15.355, if a contract includes a clear, express and conspicuous choice of law provision, that choice will generally govern. When the parties’ choice is not controlling, the applicable law is determined by a series of analytical steps based on Restatement (Second) Conflict of Laws (1971) to contract claims. See also O.R.S. 15.360 (relating to choice of law applicable to contracts).

The first question is whether the laws of Oregon and the other jurisdiction are actually in conflict. Lilienthal v. Kaufman, 239 Or. 1, 5, 395 P.2d 543, 544 (1964). If there is no conflict between the relevant principles of law in the two jurisdictions, Oregon law may be applied. Official Airline Guides v. Churchillfield Pub., 756 F. Supp. 1393, 1407 (D. Or. 1990), aff’d, 6 F.3d 1385 (9th Cir. 1993); Biomass One, L.P. v. S-P Const., 120 Or. App. 203, 208 n.2, 852 P.2d 844, 846 n.2 (1993). If they are in conflict, Oregon courts ask which state has the “most significant” relationship to the dispute. Straight Grain Builders v. Track N’ Trail, 93 Or. App. 86, 90, 760 P.2d 1350, 1351, review denied, 307 Or. 246 (1988); see also O.R.S. 15.360(1) (with respect to choice of law as to the “the rights and duties of the parties with regard to an issue in a contract,” relevant connections include “place of negotiation, making, performance or subject matter of the contract, or the domicile, habitual residence or pertinent place of business of a party”).

In the insurance context, the general rule that the parties may choose the law governing their contractual rights is preempted to some extent by O.R.S. 742.018, which provides that “[n]o policy of insurance shall contain any condition, stipulation or agreement requiring such policy to be construed according to the laws of any other state or country. Any such condition, stipulation or agreement shall be invalid.” Thus, although the parties to an insurance contract governed by O.R.S. 742.018 cannot choose the law governing
their contractual rights, the statute leaves open the question of which state’s law in fact applies to the construction of the insurance contract. And that results in the utilization of Oregon’s common law and statutory choice of law principles which, for insurance policies, usually turns on where the insurance policy was obtained, issued, and, to a lesser extent, where the risks covered by the policy are principally located.

B. Tort and Other Non-Contractual Claims

Choice of law for tort and other non-contractual claims are controlled by O.R.S. 15.400 to 15.460. Generally, the choice of law depends on the location of four contacts: (1) the place where the injurious conduct occurred; (2) the place of the resulting injury; (3) the domicile of the person or persons injured; and (4) the domicile of the person or persons whose conduct caused the injury. O.R.S. 15.440. No Oregon appellate court has applied O.R.S. 15.400 to 15.460 in a choice of law context. Given their content, it is likely that they will be applied similarly to Oregon’s common law rules based on the “most significant relationship” approach of the Restatement (Second) of Conflict of Laws (1971) to tort claims. See Erwin v. Thomas, 264 Or. 454, 456 n.2, 506 P.2d 494, 495 n.2 (1973) (quoting Restatement (Second) of Conflict of Laws at §§ 6, 145); Portland Trailer & Equip. Inc. v. A-1 Freeman Moving & Storage, Inc., 182 Or. App. 347, 358, 49 P.3d 803, 809-10 (2002) (same). That approach requires the court to consider “which state ha[s] the most significant relationship to the parties and the transaction, and [to determine] whether the interests of Oregon are so important that we should not apply [another state's] law, despite its significant connection with the transaction.” Stricklin v. Soued, 147 Or. App. 399, 404, 936 P.2d 398, 401, review denied, 326 Or. 58, 944 P.2d 948 (1997) (citing Lilienthal, further citation omitted); see also Frost v. Lotspeich, 175 Or. App. 163, 185-90, 30 P.3d 1185, 1198-99 (2001) (applying Lilienthal and Stricklin).

IV. Extracontractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

1. First-Party

An insurer’s bad faith refusal to pay policy benefits to its insured sounds in contract and is not an actionable tort in Oregon. Employers’ Fire Ins. v. Love It Ice Cream, 64 Or. App. 784, 791, 670 P.2d 160, 165 (1983). However, an insurer’s conduct in a first-party dispute may support tort recovery under a recognized tort theory, such as intentional infliction of emotional distress or wrongful interference with business relationships. Employers’ Fire, 64 Or. App. at 791, 670 P.2d at 165; see also Green v. State Farm Fire and Cas. Co., 667 F.2d 22, 24 (9th Cir. 1982) (applying Oregon law).

2. Third-Party

When a liability insurer undertakes the duty to defend its insured, it owes the insured a duty to exercise due care under the circumstances. Georgetown Realty, Inc., 313 Or. 97, 110-11, 831 P.2d 7, 14 (1992) (en banc); Maine Bonding & Cas. Co. v. Centennial Ins. Co., 298 Or. 514, 517-19, 693 P.2d 1296, 1298-99 (1985) (en banc) (rejecting the terms “good faith” and “bad faith” because they tend to inappropriately inject subjective element into analysis). A breach of that duty gives rise to tort liability, including punitive damages if appropriate. See Georgetown Realty, 313 Or. at 110-11, 831 P.2d at 14 (negligence claim); Employers’ Fire, 64 Or. App. at 791, 607 P.2d at 165
(insurer’s breach of fiduciary duty to insured is present in third-party claims).

3.  **Implied Duty of Good Faith and Fair Dealing**

Oregon law imposes a duty of good faith and fair dealing in the performance and enforcement of every contract, including insurance contacts, as long as it is consistent with the express terms of the contract. Hampton Tree Farms, Inc. v. Jewett, 320 Or. 599, 615, 892 P.2d 683, 693 (1995); McKenzie v. Pac. Health & Life Ins. Co., 118 Or. App. 377, 847 P.2d 879 (1993), review dismissed, 318 Or. 476 (1994) (health insurance contract). “[A] claim for breach of the duty of good faith may be pursued independently of a claim for breach of the express terms of the contract.” McKenzie, 118 Or. App. at 380-81, 847 P.2d at 881. In addition to typical contract damages, if physical harm results from an insurer’s breach, the insured may also recover emotional distress damages. Id. at 381-82, 847 P.2d at 881-82.

A claim for tortious breach of the implied covenant of good faith and fair dealing may exist if the parties have a “special relationship.” See Bennett v. Farmers Ins. Co., 332 Or. 138, 160, 26 P.3d 785, 798 (2001). That type of relationship exists if the insured authorized the insurer to exercise independent judgment on his behalf, and the insurer in fact acted to further the insured’s economic interests. See Bennett, 332 Or. at 160-63, 26 P.3d at 798-800; Conway v. Pac. Univ., 324 Or. 231, 240-41, 924 P.2d 818, 823-24 (1996).

**B.  Fraud**

The elements of fraud are:

1) A material misrepresentation that was false;
2) Knowledge of falsity at the time of the misrepresentation;
3) Intent that plaintiff rely on the misrepresentation;
4) Justifiable reliance on the misrepresentation; and
5) Damages proximately caused by the reliance.


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

1.  **IIED**

“To state a claim for intentional infliction of emotional distress, a plaintiff must plead that (1) the defendant intended to inflict severe emotional distress on the plaintiff, (2) the defendant’s acts were the cause of the plaintiff’s severe emotional distress, and (3) the defendant’s acts constituted an extraordinary transgression of the bounds of socially tolerable conduct.” McGanty v. Staudenraus, 321 Or. 532, 543, 901 P.2d 841, 849 (1995).
The intent element requires that the defendant desired to inflict severe emotional distress or knew that such distress was certain, or substantially certain, to result from its conduct. McGanty, 321 Or. at 550-51, 901 P.2d at 852-53 (adopting the Restatement (Second) of Torts’ definition of “intent”). Although “socially intolerable” conduct generally requires a fact-specific inquiry on a case-by-case basis, the conduct must rise to the level of “outrageous in the extreme.” Williams v. Tri-Cnty. Metro. Transp. Dist. of Oregon, 153 Or. App. 686, 689, 958 P.2d 202, 203 (1998), review denied, 327 Or. 431 (1998); Watte v. Edgar Maeyens, Jr., M.D., P.C., 112 Or. App. 234, 239, 828 P.2d 479, 481, review denied, 314 Or. 176 (1992).

A typical disagreement between an insurer and an insured over the existence of compensable events and the amount of compensation does not rise to the level of social intolerance. Rossi v. State Farm Mut. Auto. Ins. Co., 90 Or. App. 589, 591-92, 752 P.2d 1298, 1299, review denied, 306 Or. 414 (1988). Similarly, a difference in opinion as to the meaning and application of first-party coverage terms of an automobile policy “could rarely, if ever, amount to outrageous conduct.” State Farm Mut. Auto. Ins. Co. v. Berg, 70 Or. App. 410, 418, 689 P.2d 959, 964 (1984), review denied, 298 Or. 553 (1985). Nor is an insurer’s conduct “outrageous or extreme” when it lies to an insured’s attorney about the existence of evidence in order to pressure the insured to accept a settlement and to postpone an administrative hearing. Pittman v. Travelers Indem. Co., 2006 WL 1643655, at *7 (D. Or. 2006), aff’d, 286 Fed. Appx. 449 (9th Cir. 2008); cf. Green, 667 F.2d at 24 (affirming award of compensatory and punitive damages against insurer who had reasonable basis to deny claim but acted in outrageous manner in investigating loss, including trying to have insured indicted for arson).

2. NIED

In Oregon, a person generally cannot recover for negligent infliction of emotional distress unless the person is physically injured, threatened with physical injury, physically impacted by the tortious conduct, or contemporaneously witnesses a close family member’s physical injury. Philibert v. Kluser, 360 Or. 698, 711-13, 385 P.3d 1038, 1046-47 (2016); Lockett v. Hill, 182 Or. App. 377, 380, 51 P.3d 5, 6-7 (2002); see also Hammond v. Central Lane Commc’ns Ctr., 312 Or. 17, 22-23, 816 P.2d 593, 596 (1991). An exception to that rule is when “the defendant’s conduct infringe[s] on some legally protected interest apart from causing the claimed distress . . . .” Philibert, 360 Or. at 704, 385 P.3d at 1042; Lockett, 182 Or. App. at 380, 51 P.3d at 6 (citation omitted). A “legally protected interest” is an “independent basis of liability separate from the general duty to avoid foreseeable risk of harm.” Lockett, 182 Or. App. at 380, 51 P.3d at 6-7 (citation omitted). It must be “of sufficient importance as a matter of public policy to merit protection from emotional impact.” Id. at 380, 51 P.3d at 7. The infringement of a chiefly economic interest, such as loss of money or assets, is not sufficiently important to warrant protection from emotional impact. See, e.g., Hilt v. Bernstein, 75 Or. App. 502, 515, 707 P.2d 88, 95-96 (1985), review denied, 300 Or. 545 (1986) (loss of home).

D. State Consumer Protection Laws and Regulations

O.R.S. 746.230 prohibits insurers from engaging in certain claim and business practices. Again, however, a violation of the statute does not give rise to a private cause of action. Richardson, 161 Or. App. at 623-24, 984 P.2d at 922-23. Instead, it subjects the insurer to civil penalties enforced by the state. O.R.S. 731.988; Farris, 284 Or. at 458, 587 P.2d at 1017-18.
Among Oregon’s other consumer protection laws are: (1) the Unlawful Trade Practices Act, O.R.S. 646.605 to 646.656 (prohibiting sellers from engaging in certain types of conduct in consumer transactions); (2) the odometer tampering section of the Oregon Vehicle Code, O.R.S. 815.410; (3) O.R.S. 83.010 to 83.680 (requiring certain disclosures in consumer credit contracts); (4) the Consumer Warranty Act, O.R.S. 72.8010 to 72.8200 (enforcement of U.C.C. warranty provisions); (5) Oregon’s “lemon law,” O.R.S. 646A.400 to 646A.418 (allowing return or replacement of new motor vehicle with uncorrectable defect covered by manufacturer’s express warranty); (6) O.R.S. 83.710 to 83.750 (requiring certain disclosures from sellers who solicit sales of over $25 at residences); and (7) the Unlawful Debt Collection Practices Act, O.R.S. 646.639 to 646.041 (prohibiting certain practices in the collection of consumer debts).

E. State Class Actions

In Oregon, a class action is available if:

1) The class is so numerous that joinder of all members is impracticable;
2) There are questions of law or fact common to the class;
3) The claims or defenses of the representative parties are typical of claims or defenses of the class;
4) The representative parties will fairly and adequately protect the interests of the class;
5) In an action for damages, the representative parties have complied with the prelitigation notice requirements; and
6) The court finds that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.


In determining whether a class action is superior to other available methods, a court considers the following factors:

1) Whether separate actions create a risk of inconsistent adjudications, adjudications that would dispose of the interests of other members, or adjudications that would substantially impair the ability of other members to protect their interests;
2) Whether final injunctive or declaratory relief would be particularly appropriate for the class as a whole;
3) Whether common questions of law or fact predominate;
4) The class members’ interest in individually controlling the prosecution or defense of separate actions;
5) Other litigation already commenced concerning the controversy;
6) The desirability of concentrating litigation in the particular forum;
7) The elimination or reduction of class action management difficulties by adjudication through other means; and
8) Whether the amounts or interests of individual claims are insufficient to afford significant relief to the class members.

Or. R. Civ. P. 32 B(1)-(8); see Pearson v. Philip Morris, Inc., 358 Or. 99, 109-14, 361 P.3d 3, 18-21 (2015) (discussing predominance as it related to
V. **Defenses in Actions Against Insurers**

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

Under O.R.S. 742.013(1), misrepresentations or omissions in applications preclude recovery if they:

(a) Are contained in a written application for the insurance policy, and a copy of the application is indorsed upon or attached to the insurance policy when issued;

(b) Are shown by the insurer to be material, and the insurer also shows reliance thereon; and

(c) Are either:

(A) Fraudulent; or

(B) Material either to the acceptance of the risk or to the hazard assumed by the insurer.

The phrase “indorsed upon,” in subsection (a), means the insurer must reproduce on the policy itself the misrepresentations contained in the application. *Brock v. State Farm Mutual Auto. Ins. Co.*, 195 Or. App. 519, 526-28, 98 P.3d 759, 763-64 (2004); see also O.R.S. 742.016(1) (stating that an application that has not been delivered to the insured with the policy is not part of the policy, and precluding the insurer from introducing the undelivered application into evidence in an action based upon that policy).

Oregon’s appellate courts have elaborated on this test. Under *Progressive Specialty*, an insurer must prove that (1) it issued the policy in reliance on the misrepresentations; (2) the misrepresentations were material to the insurer’s decision to accept the risk; and (3) the applicant either knowingly or recklessly made the misrepresentations. *Progressive Specialty Ins. Co. v. Carter*, 126 Or. App. 236, 241-42, 868 P.2d 32, 35 (1994); accord *Story v. Safeco Life Ins. Co.*, 179 Or. App. 688, 693, 40 P.3d 1112, 1116 (2002). The insurer’s reliance on the misrepresentations must be, among other things, justifiable. *Story*, 179 Or. App. at 693-95, 40 P.3d at 1116-17. Absent information giving the insurer notice that the applicant has misrepresented facts, the insurer has no obligation to investigate the applicant’s misrepresentations. *Story*, 179 Or. App. at 696, 40 P.3d at 1117; cf. *Seidel v. Time Ins. Co.*, 157 Or. App. 556, 561-62, 970 P.2d 255, 257-58 (1998) (“An insurer is charged with the knowledge of its agent and may not rescind a policy based on a false application if the agent has knowledge of the misrepresentation.”).

Most reported Oregon cases address misrepresentations in applications for insurance policies. However, Oregon courts also have enforced policy provisions that void coverage when an insured makes a fraudulent claim. See *Callaway v. Sublimity Ins. Co.*, 123 Or. App. 18, 20, 858 P.2d 888, 888-89 (1993) (fraudulent claim); O.R.S. 742.208 (insured’s willful concealment or misrepresentation of material fact, before or after a loss, voids entire fire policy).

B. **Preexisting Illness or Disease Clauses**
1. **Statutes**

Oregon statutes do not prohibit preexisting illness and disease clauses. See O.R.S. 743.010 et seq. (“Health and Life Insurance” chapter). Regardless, such clauses are currently prohibited under the federal Affordable Care Act. See 42 U.S.C. § 300gg-3; Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2585 (2012) (“In the Affordable Care Act, Congress addressed the problem of those who cannot obtain insurance coverage because of preexisting conditions or other health issues. It did so through the Act’s “guaranteed-issue” and “community-rating” provisions.”).

2. **Case Law**

Where a “preexisting disease substantially contributed to death or disability,” there is no coverage under a group accident policy that provides benefits for death “directly and independently of all other causes” and excludes loss from death “caused by or resulting from . . . sickness or disease or medical or surgical treatment.” Perry v. Hartford Acc. & Indem. Co., 256 Or. 73, 82, 471 P.2d 785, 789-90 (1970); accord Tabler v. Standard Ins. Co., 257 Or. 166, 169, 477 P.2d 709, 710 (1970) (preexisting heart disease).

C. **Statutes of Limitations**

An action on an insurance policy is subject to the six-year limitations period generally applicable to actions on contract, unless a different period is specified in the policy. O.R.S. 12.080(1). However, in the limited instances when an Oregon insurer has tort liability (such as, when the insurer fails to use reasonable care in discharging its duty to defend), a two-year limitations period applies. O.R.S. 12.110(1).

VI. **Beneficiary Issues**

Once the insured has designated the beneficiary, he or she may change that designation only under a policy that reserves the right to change the beneficiary. O.R.S. 743.046(5) (governing change of beneficiaries for life insurance policies); O.R.S. 743.444 (governing change of beneficiaries for individual health insurance policies). Similarly, divorce can, but does not necessarily, revoke a designation of beneficiary made in favor of the former spouse—depending on the terms of the policy. See O.R.S. 107.121 (“[r]evocation of designation of beneficiary”); Sackos v. Great-West Life Assur. Co., 213 Or. App. 298, 160 P.3d 1026 (2007) (referring to the policy’s terms to determine if a man’s attempt to designate his girlfriend as his beneficiary, rather than his former wife, was effective). In short, the right of the insured to change beneficiaries depends on the policy’s terms.

A change of beneficiary of a life insurance policy is not necessarily defeated by a failure to conform to the requirements of the policy. The key question is whether the decedent intended to accomplish such a change. Sackos, 213 Or. App. at 305, 160 P.3d at 1031. As long as there is “at least some attempt made on the part of the insured to change a beneficiary,” courts will typically find that the change in the beneficiary designation was effective. Edwards v. Wolf, 278 Or. 255, 262, 563 P.2d 717, 720 (1977); see also Webber v. Olsen, 157 Or. App. 585, 592, 971 P.2d 448, 452 (1999), rev’d on other grounds, 330 Or. 189 (2000) (discussing Oregon’s “lenient” view concerning the failure to comply with requirements to change beneficiaries).
The insurer may waive its own procedural requirements for a change of beneficiary by paying the insurance proceeds into court. N. Life Ins. Co. v. Burkholder, 131 Or. 537, 550-51, 283 P. 739, 743-44 (1930) (when insured intended fiancée to be new beneficiary but carried out intent in manner different from requirement in life insurance policy, insurer waived those requirements by paying proceeds of policy into court).

VII. Interpleader Actions

A. Availability of Fee Recovery

Attorney fees are available in interpleader actions so long as the court orders that (1) the funds or property interpled (Property) are deposited with the court, or otherwise secured, and (2) the party that filed the interpleader action is discharged from liability as to the Property. See Or. R. Civ. P. 31 C. Reasonable attorney fees are assessed against the Property. Such an award of attorney fees is not available to a party who has been compensated for acting as a surety with respect to the Property. Id.

B. Differences in State vs. Federal Circuit

There is no Federal Rule of Civil Procedure that explicitly provides for a right to an award of attorney fees in interpleader actions. See Fed. R. Civ. P. 22 (providing for an interpleader action without mention of attorney fees). Instead, federal courts make such awards pursuant to their broad equitable powers. Schirmer Stevedoring Co. v. Seaboard Stevedoring Corp., 306 F.2d 188, 193 (9th Cir. 1962) (“federal courts have continued the former equity practice of allowing attorney fees to interpleading plaintiffs in strict actions of interpleader”); see also 28 U.S.C. § 2361 (allowing courts to “make all appropriate orders to enforce” judgments in interpleader actions).