I. REGULATORY LIMITS FOR CLAIMS HANDLING

Title 33 of the Official Code of Georgia, the “Georgia Insurance Code,” is the statutory provision governing insurance in the state.

A. Timing for Responses and Determinations

1. Health Benefit Plan Defined

   “Health benefit plan” is defined under O.C.G.A. § 33-24-59.5(a)(2) as “any hospital or medical insurance policy or certificate, health care plan contract or certificate, qualified higher deductible health plan, health maintenance organization subscriber contract, any health benefit plan established pursuant to Article 1 of Chapter 18 of Title 45, or any dental or vision care plan or policy, or managed care plan or self-insured plan; but health benefit plan does not include policies issued in accordance with Chapter 31 of this title; disability income policies; or Chapter 9 of Title 34, relating to workers’ compensation.”

2. Time Limits for Payment of Claims Under Health Benefit Plans

   Pursuant to O.C.G.A. § 33-24-59.5(b)(1), “All benefits under a health benefit plan will be payable by the insurer which is obligated to finance or deliver health care services under that plan upon such insurer’s receipt of written or electronic proof of loss or claim for payment for health care goods or services provided. The insurer shall within 15 working days for electronic claims or 30 calendar days for paper claims after such receipt mail or send electronically to the insured or other person claiming payments under the plan payment for such benefits or a letter or electronic notice which states the reasons the insurer may have for failing to pay the claim, either in whole or in part, and which also gives the person so notified a written itemization of any documents or other information needed to process the claim or any portions thereof which are not being paid. Where the insurer disputes a portion of the claim, any

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1 The impact of the Patient Protection and Affordance Care Act (PPACA) on health insurance in Georgia is beyond the scope of this paper.
undisputed portion of the claim shall be paid by the insurer in accordance with this chapter. When all of the listed documents or other information needed to process the claim has been received by the insurer, the insurer shall then have 15 working days for electronic claims or 30 calendar days for paper claims within which to process and either mail payment for the claim or a letter or notice denying it, in whole or in part, giving the insured or other person claiming payments under the plan the insurer’s reasons for such denial.”

O.C.G.A. § 33-24-59.14 articulates prompt pay requirements in connection with benefits under a health benefit plan and the penalties for failing to comply.

3. **Contract of Life Insurance Defined**

Life insurance is “insurance on human lives and insurance appertaining to or connected with human lives. The transacting of life insurance includes the granting of endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits in the event of the disability of the insured, and optional modes of settlement of proceeds of life insurance. An insurer authorized to transact life insurance may also grant annuities.” O.C.G.A. § 33-7-4.

Pursuant to O.C.G.A. § 33-25-1, a “contract of life insurance” is one whereby the insurer, for a consideration, assumes an obligation to be performed upon the death of the insured or upon the death of another in the continuance of whose life the insured has an insurable interest, whether such obligation is one to pay a sum of money, to perform services, or to furnish goods, wares, or merchandise, or other things of value, and whether the cost or value of the undertaking on the part of the insurer is more or less than the consideration flowing to him.”

4. **Time Limits for Payment of Claims Under a Contract of Life Insurance**

Pursuant to O.C.G.A. § 33-25-3(a)(11), all policies for of life insurance in this state must contain a provision that “when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and, at the insurer’s option, surrender of the policy and proof of the interest of the claimant. If an insurer shall specify a particular period prior to the expiration of which settlement shall be made, the period shall not exceed two months from the receipt of such proofs”.

5. **Accident and Sickness Policy**

Accident and sickness insurance is “insurance against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness and every insurance appertaining thereto.” O.C.G.A. § 33-7-2.
Pursuant to O.C.G.A. § 33-29-1, “accident and sickness policy” means “any policy insuring against loss resulting from sickness or from bodily injury or death by accident, or both, or any contract to furnish ambulance service in the future.”

6. Time of Payment of Claims Under an Accident and Sickness Policy

According to O.C.G.A. § 33-29-3(b)(8), “The policy shall include a provision incorporating and restating the substance of the provisions of subsections (b) and (c) of Code Section 33-24-59.5, relating to time limits for payment of claims for benefits under health benefit policies and sanctions for failure to pay timely. If a policy provides benefits for loss of time, such policy shall also provide that, subject to proof of such loss, all accrued benefits payable under the policy for loss of time will be paid not later than at the expiration of each period of 30 days during the continuance of the period for which the insurer is liable and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.”

B. Standards for Determinations and Settlements

1. Unfair Claims Settlement and Trade Practices

Under O.C.G.A. § 33-6-33 and § 33-6-34, the following acts of an insurer, when committed flagrantly and in conscious disregard of the Georgia Insurance Code or when committed with such frequency as to indicate a general business practice to engage in such conduct, constitute unfair claims settlement and trade practices:

(A) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;

(B) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(C) Failing to adopt and implement procedures for the prompt investigation and settlement of claims arising under its policies;

(D) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear;

(E) Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;

(F) Refusing to pay claims without conducting a reasonable investigation;
(G) When requested by the insured in writing, failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims;

(H) When requested by the insured in writing, making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made;

(I) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form; provided, however, this paragraph shall not preclude an insurer from obtaining sworn statements if permitted under the policy;

(J) When requested by the insured in writing, failing in the case of claims denial or offers of compromise settlement to provide promptly a reasonable and accurate explanation of the basis for such actions. In the case of claims denials, such denials shall be in writing;

(K) Failing to provide forms necessary to file claims within 15 calendar days of a request with reasonable explanations regarding their use;

(L) Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by the insurer are performed in a workmanlike manner;

(M) Indicating to a first-party claimant on a payment, draft check, or accompanying letter that said payment is final or a release of any claim unless the policy limit has been paid or there has been a compromise settlement agreed to by the first-party claimant and the insurer as to coverage and amount payable under the contract; and

(N) Issuing checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which releases the insurer or its insured from its total liability.

2. Consumer Protections

Under O.C.G.A. § 33-6-4 and § 33-6-5, unfair methods of competition and unfair and deceptive acts or practices include, but are not limited to distribution of misleading information regarding the financial condition of an insurer, promulgating agreements that have the effect of rebating insurance premiums
and issuance of discriminatory contracts of insurance.

O.C.G.A. § 33-6-4(b)(8)(A)(iv)(I) provides that unfair discrimination prohibited by the provisions of this subparagraph includes discrimination based on race, color, and national or ethnic origin. In addition, in connection with any kind of insurance, it shall be an unfair and deceptive act or practice to refuse to insure or to refuse to continue to insure an individual; to limit the amount, extent, or kind of coverage available to an individual; or to charge an individual a different rate for the same coverage because of the race, color, or national or ethnic origin of that individual. The prohibitions of this division are in addition to and supplement any and all other provisions of Georgia law prohibiting such discrimination which were previously enacted and currently exist, or which may be enacted subsequently, and shall not be a limitation on such other provisions of law.

O.C.G.A. § 33-57-1 et seq. discusses the creation of a consumers’ insurance advocate within the Governor’s Office of Consumer Affairs.

O.C.G.A. § 33-24-59.13 governs exemptions from certain unfair trade practices for certain wellness and health improvement programs.

3. Minors

Under Georgia law, O.C.G.A. § 33-24-5(b), a minor not less than 15 years of age may contract for life insurance and accident and sickness insurance on his own life or body or the life or body of any person in whom he has an insurable interest. A minor is deemed competent to exercise all rights and powers with respect to or under any such contract or policy. Further, a minor may surrender his interest in the contract or policy and give a valid discharge for any benefit accruing or money payable under the contract or policy.

Georgia law provides that a minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate contracts for life insurance or accident and sickness insurance or to rescind, avoid, or repudiate any exercise of a right or privilege under the contract, except that the minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by promissory note or otherwise, any consideration or premium on any such contract or policy. Any contract or policy for life insurance and accident and sickness insurance procured by or for a minor under O.C.G.A. § 33-24-5(b) is payable either to the minor or his estate or to a person having an insurable interest in the life of such minor.

4. Cancellation of Insurance Lines or Class of Business

O.C.G.A. § 33-6-5(12)(A) provides that no insurer shall cancel, nonrenew, or otherwise terminate all or substantially all of an entire line or class of business for the purpose of
withdrawing from the market in this state unless:

(i) The insurer has notified the Commissioner in writing of the action, including the reasons for such action, at least one year before the completion of the withdrawal, provided that this paragraph shall not be construed to prevent such insurer from canceling, nonrenewing, or terminating policies where the insurer, by contract, statute, or otherwise, has the right to do so; or

(ii) The insurer has filed a plan of action for the orderly cessation of the insurer's business within a period of time shorter than one year and such plan of action has been approved by the Commissioner.

O.C.G.A. § 33-6-5(12)(B) provides that at a minimum, in order to provide for orderly cessation and withdrawal, an insurer shall provide a general notice to each insured at least 90 days prior to the termination of any policy followed by a subsequent notice which meets the applicable statutory notice requirements for canceling, nonrenewing, or terminating insurance under the Georgia Insurance Code.

II. PRINCIPLES OF CONTRACT INTERPRETATION

According to O.C.G.A. § 33-24-16, “Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application made a part of the policy.”

In Georgia, insurance contracts are governed by the rules of construction applicable to other contracts, and words in the policy must be given their usual and common signification and customary meaning. See Byrd v. United States Automobile Association, 317 Ga. App. 280, 282 (2012). Construction of a contract is a question of law for the court. See Id. When the language of an insurance policy is unambiguous and capable of but one reasonable construction, the court must expound the contract as made by the parties. See Liberty Surplus Ins. Corp. v. Norfolk S. Ry. Co., 2017 U.S. App. LEXIS 5763 (11th Cir. 2017); Ins. Co. of Pa. v. APAC-Southeast, Inc., 297 Ga. App. 553, 557, 677 S.E.2d 734 (2009).

III. CHOICE OF LAW

“When a choice-of-law question arises in a contract action brought in Georgia, substantive matters such as the validity and construction of the contract are governed by the substantive law of the state where the contract was made (or is to be performed, if that is a different state); but procedural and remedial matters are governed by the law of Georgia, the forum state.” Allstate Insur. Co. v. Duncan, 218 Ga. App. 552 (1995) (citing Federal Ins. Co. v. Nat. Distrib. Co., 203 Ga. App. 763, 765-766 (1992)).
IV. EXTRA CONTRACTUAL CLAIMS AGAINST INSURERS: ELEMENTS AND REMEDIES

A. Bad Faith

1. Private Cause of Action


Under O.C.G.A. § 33-4-6, an insurer is subject to imposition of a penalty and attorney fees if it refuses in bad faith to pay a covered loss. To prevail on claim for insurer’s bad faith, an insured must prove two conditions: (1) that demand for payment was lodged against the insurer at least 60 days prior to filing suit, and (2) that the insurer’s failure to pay was motivated by bad faith. See Wallace v. State Farm Fire & Cas. Co., 247 Ga. App. 95, 96 (2000).


The remedies available under O.C.G.A. § 33-4-6 belong solely to the insured. The statute does not create a cause of action in a third party for bad faith.

O.C.G.A. § 33-4-6 states the amount of damages that can be recovered by an insured for bad faith. The penalties are the greater of 50% of the principal amount owed for the loss or $5,000 plus all reasonable attorney’s fees for the prosecution of the action. See O.C.G.A. § 33-4-6(a).
2. Claims Investigated by Commissioner of Insurance

Claims of unfair settlement and trade practices against insurance companies are investigated by the Commissioner of Insurance except where a private cause of action has been created. Upon a finding of unfair settlement and/or trade practices on the part of an insurer, the Commissioner may issue an order prohibiting that insurer from continuing such act, practice or transaction. See O.C.G.A. § 33-2-24(a). The Commissioner may also prosecute an action in any superior court of proper venue to enforce any order made by him and the superior court may, in addition to granting other relief, issue injunctions. See O.C.G.A. §§ 33-2-24(e) and 33-2-24(f). The Commissioner may also subject the insurer to criminal prosecution by the state. See O.C.G.A. § 33-2-24(d). The Commissioner has the authority to place any duly licensed person under Title 33 on probation for a period of time no longer than one year for each and every act in violation of Title 33 or rules, regulations, or orders issued by the Commissioner. The Commissioner can authorize penalties of up to $2,000 for each and every act in violation of Title 33 or of the rules, regulations or orders of the Commissioner. If a licensed person under Title 33 knew or reasonably should have known he was in violation of Title 33 or of the rules, regulations or orders of the Commissioner, the monetary penalty may be increased up to $5,000 for each and every act. See O.C.G.A. § 33-2-24(g); see also O.C.G.A. § 33-6-7 through § 33-6-11; § 33-6-35 through § 33-6-36.

B. Fraud

1. Actual Fraud

O.C.G.A §§ 51-6-1 and 51-6-2 articulate the statutory elements for fraud. The tort of fraud has five elements. These are: (1) a false representation made by the defendant; (2) scienter; (3) intent to induce the plaintiff to act or refrain from acting based upon the representation; (4) justifiable reliance by the plaintiff; and (5) damages. Sewell v. Cancel, 331 Ga. App. 687, 694 (2015); Stewart v. SunTrust Mortg., Inc., 331 Ga. App. 635, 636-37 (2015); Mecca Constr., Inc. v. Maestro Invs., LLC, 320 Ga. App. 34, 41 (2013).

2. Constructive Fraud

An action for “constructive fraud” in Georgia is based on equitable doctrine; as such, monetary damages are not available to the injured plaintiff. See Blakey v. Victory Equip. Sales, 259 Ga. App. 34, 39 576 S.E. 2d 288 (2002). Intent is not an element of constructive fraud, and as such, the elements for constructive fraud mirror those for negligent misrepresentation. See Consolidated American Ins Co. v. Spears, 218 Ga. App. 478, 479, 462 S.E.2d 160 (1995).
3. Negligent Misrepresentation

An action for “negligent misrepresentation” is a common law action in tort and damages are available to the injured plaintiff. See Robert & Co. Assocs. v. Rhodes-Haverty Partnership, 250 Ga. 680, 300 S.E.2d 503 (1983) (citing Restatement (Second) of Torts, § 522 (1977)). The elements for negligent misrepresentation are (1) the defendant’s negligent supply of false information to foreseeable persons, known or unknown; (2) such persons’ reasonable reliance upon that false information; and (3) economic injury proximately resulting from such reliance. See Hardaway Co. v Parsons, Brinckerhoff, Quade & Douglas, Inc., 267 Ga. 424, 426, 479 S.E.2d 727 (1997).

C. Intentional Infliction of Emotional Distress

Georgia has long recognized a cause of action for intentional infliction of emotional distress. However, the burden which the plaintiff must meet in order to prevail in this cause of action is a stringent one. To prevail, a plaintiff must demonstrate that: (1) the conduct giving rise to the claim was intentional or reckless; (2) the conduct was extreme and outrageous; (3) the conduct caused emotional distress; and (4) the emotional distress was severe. See Blue View Corp. v. Bell, 298 Ga. App. 277, 279 (1) (679 SE2d 739) (2009). The defendant’s conduct must be 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. Jefferson v. Houston Hospitals, Inc., 336 Ga. App. 478, 484 (2016); Canziani v. Visiting Nurse Health Sys., 271 Ga. App. 677, 679 (2005). Whether a claim rises to the requisite level of outrageousness and egregiousness to sustain a claim for intentional infliction of emotional distress is a question of law. See Thompson-El v. Bank of Am., N.A., 327 Ga. App. 309 759 S.E. 2d 49 (2014).

D. State Consumer Protection Laws, Rules and Regulations

1. Unfair Trade Practices


2. Unfair Claims Settlement Practices Act

O.C.G.A § 33-6-30 et seq. governs “Unfair Claims Settlement Practices”. “The purpose of this article is to set forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of Georgia. It is not intended to cover claims involving workers’ compensation, fidelity, or surety insurance.” O.C.G.A. § 33-6-31. “The provisions of Code Sections 33-6-7 through 33-6-11, relating to hearings, cease and desist orders, penalties, judicial review, intervenors, and other matters in connection with violations of Article 1 of this chapter shall be applicable to violations of this article.” O.C.G.A. § 33-6-35(b). There is no private cause of action for violation of this article. See O.C.G.A. § 33-6-37.

3. Consumers’ Health Insurance Protection Act

O.C.G.A. §§ 33-6-4 and 33-6-5, part of the Consumers’ Health Insurance Protection Act (codified by the General Assembly in 2002), enumerate unfair methods of competition and unfair or deceptive acts or practices.

O.C.G.A. § 33-6-4(b)(8)(A)(iv)(II) provides that a violation of this division will give rise to a civil cause of action for damages resulting from such violation including, but not limited to, all damages recoverable for breach of insuring agreements under Georgia law including damages for bad faith and attorney’s fees and costs of litigation. A violation also gives rise to the awarding of punitive or exemplary damages in an amount as may be determined by the trier of fact if such violation is found to be intentional.

4. Enforcement

The insurance commissioner is vested with the authority to create rules and regulations to enforce the Georgia Insurance Code. See O.C.G.A. §§ 33-2-9, 33-2-24, 33-6-12, 33-6-36. The provisions of Code Sections 33-6-7 through 33-6-11, relating to hearings, cease and desist orders, penalties, judicial review, intervenors, and other matters in connection with violations of Chapter 6 of the Georgia Insurance Code, entitled “Unfair Trade Practices,” apply to the entire Chapter which includes unfair or deceptive acts or practices and unfair claims settlement practices. See O.C.G.A. §§ 33-6-7 through 33-6-11 and 33-6-35(b).

5. No private cause of action

Claims of unfair settlement and trade practices against
insurance companies are investigated by the Commissioner of Insurance except where a private cause of action has been created. O.C.G.A. § 33-6-30 et seq. governing unfair claims settlement practices do not create or allow a private remedy. See O.C.G.A. § 33-6-37.

E. State Class Actions

1. Class Action Requirements

Pursuant to O.C.G.A. §9-11-23(a), class actions are appropriate methods for one or more members of a class to sue or be sued as representative parties on behalf of all only 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 class or defenses of the representative parties are typical of the claims or defenses of the class; and
(4) The representative parties will fairly and adequately protect the interests of the class.

Furthermore, pursuant to O.C.G.A. §9-11-23(b), an action may be maintained as a class action if the aforementioned requirements are satisfied, and:

(1) The prosecution of separate actions by or against individual members of the class would create risk 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;
(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief 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 matters pertinent to the findings include:
   (a) The interest of members of the class in individually controlling the prosecution or defense of separate actions;
   (b) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
   (c) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
   (d) The difficulties likely to be encountered in the management of a class action.
2. Failure to Satisfy the Requirements and Receive Class Certification

Georgia courts have been very restrictive regarding the meeting of the requirements set forth in O.C.G.A. §9-11-23. In a class action litigation by a facsimile recipient against the sender, the trial court judgment in favor of the recipient did not comply with the statutory requirements because the judgment did not describe the members of the class; recipients who were excluded from the class had to be determined and excluded. See Am. Home Servs. v. A Fast Sign Co., 322 Ga. App. 791 (2013). Despite the fact that it appeared from the record that a group of landowners raised several issues of fact common to all to support a nuisance claim, the trial court’s order of certification was vacated, as the court failed to specify, either orally or in writing, whether each of the five prerequisites under O.C.G.A. §9-11-23 was presented. See Griffin Indus., Inc. v. Green, 280 Ga. App. 858 (2006).

Factors which the trial courts must take into account in determining whether to certify a class action include: the number of class members; the financial ability of plaintiff; and whether individual questions of law or fact as between the defendant and the individual class plaintiffs would yet predominate. See Ford Motor Credit Co. v. London, 175 Ga. App. 33 (1985). Class action is inappropriate when the resolution of individual questions plays too integral a part in the determination of liability, such as a suit on behalf of hospital patients to recover damages for the hospital’s alleged failure to refund overpayments made by the patients for medical expenses incurred at the hospital, since resolution would be made only by examining each patient’s account. See Winfrey v. Southwest Community Hospital, Inc., 184 Ga. App. 383 (1987); See also Rite Aid of Ga., Inc. v. Peacock, 315 Ga. App. 573 (2012).

F. State Privacy Laws, Rules, and Regulations

1. Common Law Right of Privacy


2. Statutory Right to Privacy

Numerous statutes prohibit the dissemination of “private” information, including, but not limited to, the following:

(A) Psychiatric records. See O.C.G.A. § 37-3-166;

(B) Medical records. See O.C.G.A. § 24-12-1(a); however such records may be released under certain circumstances articulated in O.C.G.A. § 31-12-2 (such
as a court order or subpoena). Additionally, the privilege is waived in cases in which the patient
"places his care and treatment or the nature and extent of his injuries at issue in any judicial
proceeding. It is important to note that the Health Insurance Portability and Accountability Act of 1996,
Pub.L. No. 104-191 ("HIPAA") expressly preempts any provision of State law that is contrary to its
provisions. See 45 C.F.R. § 160.203. In Georgia, HIPAA has been ruled to preempt Georgia law in
certain instances. See, e.g., Northlake Medical Center, LLC v. Queen, 280 Ga. App. 510, 634 S.E.2d
486 (2006); see also Allen v. Wright, 282 Ga. 9, 644 S.E.2d 814 (2007); see also Moreland v. Austin, 284

(C) Records created regarding child support enforcement. See O.C.G.A. § 19-11-30;

(D) Certain library records. See O.C.G.A. § 24-12-30;

(E) HIV/AIDS diagnosis. See O.C.G.A. § 24-12-20;

(F) Healthcare "peer review" proceedings and investigations. See O.C.G.A. § 31-7-15;

(G) Reports of child abuse or of a child’s abuse of narcotics. See O.C.G.A. § 49-5-40;

(H) Family violence information. See O.C.G.A. § 33-6-4(b)(15)(C) (There are exceptions for the limited
purposes of complying with legal obligations, verifying an individual’s claim to be a subject of
family violence, cooperating with a victim of family violence in seeking protection from family violence,
or facilitating the treatment of a family violence related medical condition. See Id.).

V. DEFENSES IN ACTIONS AGAINST INSURERS

A. Misrepresentations/Omissions: During Underwriting or During Claim

Misstatements or omissions by an insured will permit rescission of a contract only if (1) fraudulent, (2) material, or (3) absent the
misstatement or omission, the insurer would not have issued the policy in good faith. See O.C.G.A. § 33-24-7. An insurer may prevail on
summary judgment if it can show that a representation was objectively false and was material to the extent that it changed the nature,
(1993).

An agent’s actual knowledge of a false statement or omission on an application for insurance is imputed to the insurer and estops the

B. Preexisting Illness or Disease Clauses

According to O.C.G.A. § 33-24-26(a), "No group accident and sickness insurance policy...shall be issued in this state, which policy limits or restricts payment of benefits for any preexisting illness or condition not otherwise excluded from the group policy for a period in excess of 12 months following the date of the issuance of the certificate covering the insured person." O.C.G.A. § 33-30-15 also discusses coverage for preexisting conditions in the context of group accident and sickness insurance.

Georgia adopts a case by case review, examining the language of the specific policy at issue in order to determine the scope of the exclusion. See, e.g., Bergan v. Time Ins. Co., 196 Ga. App. 78, 80, 395 S.E.2d 361, 363 (1990) (although not diagnosed with cancer prior to the effective date of other policy, plaintiff was advised to have follow-up examinations; in light of policy exclusion for "illness or injury for which medical care, treatment, medicine, or advice was received prior to the effective date of coverage," the court found plaintiff had received "advice," and claim was thus subject to preexisting disease clause of policy); see also Lee v. Chrysler Life Ins. Co., 204 Ga. App. 550, 419 S.E.2d 727 (1992) (recent cancer, although in remission, should have been disclosed pursuant to policy provision asking whether the insured had been "attended" to for cancer).

C. Statute of Limitations

1. Contract

There is a six-year statute of limitations under Georgia law for simple contracts in writing, which includes contracts for insurance. See O.C.G.A. § 9-3-24.

2. Injury to Person

There is a two-year statute of limitations under Georgia law for injuries to the person, which includes infliction of emotional distress and fraud. See O.C.G.A. § 9-3-33.

3. Collection, Use, and Disclosure of Information Gathered by Insurance Institutions

Georgia law also provides for a two-year statute of limitations for actions against an insurance institution, agent, or insurance-support organization that fails to comply with O.C.G.A. §§ 33-39-9 (written requests for access to personal information), 33-39-10 (written requests to correct, amend or delete information), or 33-39-11 (adverse underwriting decisions; specific reasons provided to applicant), or discloses information in violation of O.C.G.A. § 33-39-14 (disclosure of information collected in connection with insurance transactions).
D. Other Defenses - Failure to Comply with Conditions


VI. BENEFICIARY ISSUES

According to O.C.G.A. § 33-24-3(b), “An individual has an unlimited insurable interest in his or her own life, health, and bodily safety and may lawfully take out a policy of insurance on his or her own life, health, or bodily safety and have the policy made payable to whomsoever such individual pleases, regardless of whether the beneficiary designated has an insurable interest.”

According to O.C.G.A. § 33-25-11(a), “Whenever any person residing in the state shall die leaving insurance on his or her life, such insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of creditors of the insured unless the insurance policy or a valid assignment thereof provides otherwise.”

VII. INTERPLEADER ACTIONS

A. Availability of Fee Recovery

According to O.C.G.A. §23-3-90, “Whenever a person is possessed of property or funds or owes a debt or duty, to which more than one person lays claim of such a character to render it doubtful or dangerous for the holder to act, he may apply to equity to compel the claimants to interplead.” Furthermore, if the person bringing the action has to make or incur any expenses in so doing, including attorney’s fees, the amount so incurred shall be taxed in the bill of costs, with the court’s approval, the court in its discretion determining the amount of the attorney’s fees, and shall be paid by the parties cast in the action as other costs are paid. See O.C.G.A. §23-3-90(b).

It is essential to the maintenance of a petition for interpleader that there be at least two persons, having conflicting claims, each apparently well founded, to a fund in the hands of a person having no interest in or claim thereon, and who, as between the conflicting claimants, is perfectly indifferent. See Davis v. Davis, 96 Ga. 136 (1895). Nash v. United Bank-Thomaston, 319 Ga. App. 179 (2012). The general doctrine is, that interpleader lies, where two or more persons claim the same thing, under different titles, or in separate interests, from another person, who, not claiming any title or interest therein himself, and not knowing to which of the claimants he ought of right to render the duty claimed, or to deliver the property claimed, is either molested by an action or actions brought against him, or fears he may suffer injury, from the conflicting claims of the

Georgia litigation has centered on issues involving interpleader involving insurance issues. In a case involving a petition for interpleader brought by insurer, alleging that the insured changed the beneficiary named in the policy prior to his death, without alleging when or how the change was made, setting forth a copy of the policy, or stating whether or not the insured reserved to himself the right to change the beneficiary, was insufficient to inform the court of the nature, character, and foundation of the claim so as to enable the court to determine whether or not an interpleader was essential to the plaintiff’s protection, and the trial court erred in overruling the general demurrer to the petition. See Lowery v. Independent Life & Acci. Ins. Co., 209 Ga. 753 (1953). Therefore, the doubt or danger that would authorize an interpleader must be reasonable. See Daniel v. Citizens & Southern Nat’l Bank, 182 Ga. 384 (1936).

B. Differences in State versus Federal Circuit

Statutory interpleader under the Georgia Civil Practice Act broadens and liberalizes the rules relating to the remedy of interpleader so as to render the technicalities associated with the equitable remedy of a strict bill of interpleader no longer applicable to complaints tried under that section. Interpleader provisions should be liberally construed in order that their utilitarian purposes may be best effectuated. The right to statutory interpleader depends merely upon the stakeholder's good-faith fear of adverse claims, regardless of the merits of those claims or what the stakeholder bona fide believes the merits to be. See Penland v. Corlew, 248 Ga. App 564 547 S.E. 2d 306 (2001).

Interpleader under Fed. R. Civ. P. 22 is an equitable procedure intended to protect a stakeholder from multiple liability and the vexation of defending multiple claims to the same fund. Therefore, the principle requirement for interpleader is a real and reasonable fear of double liability or vexatious, conflicting claims. The requirement that the claims for which interpleader is sought be adverse to each other is not satisfied where the stakeholder could be liable to both claimants. See Washington Electric Cooperative, Inc. v. Paterson, Walke & Pratt, 985 F. 2d 677, 679 (2d Cir. 1993). Therefore, the principle requirement for interpleader is "a real and reasonable fear of double liability or vexatious, conflicting claims." Id. (quoting Indianapolis Colts v. Mayor of Baltimore, 741 F.2d 954, 957 (7th Cir. 1984))In the absence of a decision from the state's highest court, the federal courts must adhere to the decisions of the state's intermediate appellate courts unless there is some persuasive indication that the state's highest court would decide the issue otherwise. See King v. Guardian Life Ins. Co., 686 F. 2d 894, 898 (11th Cir. 1982). The federal circuit court of appeals generally defers to an interpretation of state law by a federal district judge sitting in that state, provided his interpretation appears to be reasonable and consistent with the state's law. See Faser v. Sears Roebuck & Co., 674 F. 2d 856, 859 (11th Cir. 1982).