I. Regulatory Limits on Claims Handling

A. Timing for Responses and Determination

The Pennsylvania Code contains regulations relating to Unfair Claims Settlement Practices. See 31 Pa. Code §§ 146.1 to 146.10. Pursuant to Section 146.6, every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. Every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.

B. Standards for Determinations and Settlements

The Pennsylvania Code provides specific standards for prompt, fair and equitable settlements applicable to insurers. See 31 Pa. Code §§ 146.7 & 146.8. Prompt settlement of a first-party claim generally requires that an insurer advise the insured of its decision within 15 working days after receipt of a properly executed proof of loss. See Willow Inn, Inc. v. Public Serv. Mut. Ins. Co., 399 F.3d 224, 229 (3rd Cir. 2005) (citing 31 Pa. Code § 146.7(a)(1)). Furthermore, an insurer's failure to pay the undisputed portion of a claim may constitute actionable, bad faith conduct. Id. at 233. However, if a reasonable basis exists to suspect fraud, then the insurer is generally relieved of its regulatory requirements.

Importantly, in addressing an insured's claim, a life, health, or accident insurer is no longer limited to consideration of statements contained in documents attached to the policy itself. Rather, the relevant statute only requires that a copy of the application or other materials be provided to the insured if the insurer intends to rely on them in deciding the claim. See Prousi v. Unum Life Ins. Co. of America, 77 F. Supp.2d 665, 668 (E.D.Pa. 1999), affirmed without published opinion, 251 F.3d 154 (3rd Cir. 2000). The relevant statute provides as follows:

No statement made by an insured shall be received into evidence in any controversy between the parties to, or a claimant or claimants interested in, a life insurance or health and accident insurance policy unless a copy of the document containing the statement is or has been furnished to such person or those legally acting on his behalf in the controversy.
40 P.S. § 441.

C. State Privacy Laws, Rules, and Regulations


Under the Insurance Department Act of 1921, the Pennsylvania Insurance Department must maintain the privacy of consumer information. See 40 P.S. § 22 et seq. Section 65.2-A, entitled "Authority to share confidential information," specifically provides as follows:

(a) The commissioner shall maintain as confidential any documents, materials or other information received from the National Association of Insurance Commissioners, or its successor organization, or from regulatory or law enforcement officials of this Commonwealth or other jurisdictions in which the documents, materials or other information are confidential by law in those jurisdictions. Documents, materials or other information obtained by the commissioner under this section shall be given confidential treatment, may not be subject to a subpoena and may not be made public by the commissioner or any other person.

(b) The commissioner may share confidential documents, materials or other information relating to any company, insurer or person with regulatory or law enforcement officials of this Commonwealth or other jurisdictions as long as, prior to receiving the documents, materials or other information, those parties demonstrate by written statement the necessary authority and intent to provide to it the same confidential treatment as required by this article. Access may also be granted to the National Association of Insurance Commissioners or its successor organization, if, prior to receiving the information, the organization demonstrates by written statement the intent to provide to it the same confidential treatment as required by this article.

II. Principles of Contract Interpretation


The court’s purpose in interpreting insurance contracts is to ascertain the intent of the parties as manifested by the terms used in the written insurance policy. When the language of the policy is clear and unambiguous, the court gives effect to that language. Alternatively, when a provision in the policy is ambiguous, the policy is to be construed in favor of the insured to further the contract's prime purpose of indemnification and against the insurer, as the

Contractual language is ambiguous "if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." Hutchison v. Sunbeam Coal Co., 513 Pa. 192, 519 A.2d 385, 390 (1986). It is not a question to be resolved in a vacuum. Rather, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts. The court will not distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity. Madison Constr. Co. v. Harleysville Mut. Ins. Co., 557 Pa. 595, 735 A.2d 100, 106 (1999).

The last-antecedent rule is a canon of statutory interpretation, which has been extended to a life insurance policy. See J.C. Penney Life Ins. Co. v. Pilosi, 393 F.3d 356, 365-66 (3d Cir. 2004). The rule provides "that qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding and not to others more remote." Stepnowski v. C.I.R., 456 F.3d 320, 324 (3d Cir. 2006) (quoting United States v. Hodge, 321 F.3d 429, 436 (3d Cir. 2003)). In other words, if a sentence reads "A or B with respect to C," it should be interpreted as containing two items: (1) "A" and (2) "B with respect to C." Id. at 324 n.7. However, the last-antecedent rule "is not an absolute and can assuredly be overcome by other indicia of meaning." Pilosi, 393 F.3d at 365 (quoting Barnhart v. Thomas, 540 U.S. 20, 26, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003)). Viera v. Life Ins. Co. of N. Am., 642 F.3d 407 (3d Cir. 2011) (Where the meaning of the contract language is clear, the last-antecedent rule should not be used to create ambiguity.)

III. Choice of Law


In the absence of a choice of law provision, Pennsylvania uses a flexible choice of law method that combines "'the approaches of both [the] Restatement II (contacts establishing significant relationships) and 'interests analysis' (qualitative appraisal of the relevant State's policies with respect to the controversy).'" Hammersmith v. TIG Ins. Co., 480 F.3d 220, 231 (3d Cir. 2007) (quoting Melville v. American Home Assurance Co., 584 F.2d 1306, 1311 (3d Cir. 1978)). In the insurance context, the location of the insured risk is given "'greater weight than any other single contact.'" Hammersmith, 480 F.3d at 233 (citing Restatement (Second) of Conflict of Laws § 193 cmt. B).

In Reassure Am. Life Ins. Co. v. Midwest Res., Ltd., 2011 U.S. Dist. LEXIS 15966 (E.D. Pa. 2011), the Court applied Pennsylvania law noting that the insured resided in Pennsylvania, signed the original life insurance contract with Reassure, as well as the agreement to sell the policy to Midwest, in Pennsylvania and Pennsylvania had a significant interest in regulating an insurance contract issued to a Pennsylvania insured.

IV. Extra Contractual Claims Against Insurers: Elements and Remedies

A. Bad Faith
In D'Ambrosio v. Pennsylvania Nat. Mut. Ins. Co., 494 Pa. 501, 431 A.2d 966 (1981), the Pennsylvania Supreme Court rejected a claim based in tort against an insurer for bad faith conduct in failing to pay a first party property damage claim. The insured sought damages for emotional distress and punitive damages. The Court noted it was for the Legislature to determine whether sanctions beyond those under the Unfair Insurance Practices Act are required to deter conduct which is less than scrupulous.

In 1990, the Pennsylvania legislature enacted 42 Pa.C.S.A. § 8371 which created a statutory cause of action for an insurer's bad faith. Section 8371 states:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

1. Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate plus 3%.
2. Award punitive damages against the insurer.
3. Assess court costs and attorney's fees against the insurer.

The legislature did not define the term "bad faith." However, the courts have consistently recognized that bad faith has a particular meaning in the insurance context:

'Bad faith' on the part of an insurer is any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of known duty (i.e., good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith. Terletsky v. Prudential Property and Casualty Insurance Co., 437 Pa. Super. 108, 649 A.2d 680, 688 (1994), app. den. 540 Pa. 641 (1995).

In Rancosky v. Wash. Nat'l Ins. Co., 2015 PA Super 264, 130 A.3d 79, 92-93 (2015), the Pennsylvania Superior Court stated:

A "dishonest purpose" or "motive of self-interest or ill will" is not a third element required for a finding of bad faith. [citation omitted] A "motive of self-interest or ill will" may be considered in determining the second prong of the test for bad faith, i.e., whether an insurer knowingly or recklessly disregarded its lack of a reasonable basis for denying a claim. [citation omitted].

The Pennsylvania Supreme Court granted a Petition for Allowance of Appeal limited to the following issue:

of self-interest or ill-will" is merely a discretionary consideration rather than a mandatory prerequisite to proving bad faith?


Under Pennsylvania law, some courts have found that the conduct of the insurer during pendency of the bad faith litigation may be considered as evidence of bad faith. See O'Donnell v. Allstate Insurance Co., 734 A. 2d 901 (Pa. Super. Ct.1999) (Holding that such conduct may be considered; but finding no evidence that Allstate was motivated by a dishonest purpose or ill motive, or otherwise breached its fiduciary or contractual duty by utilizing the discovery process to conduct an improper investigation); Hollock v. Erie Ins. Exchange, 842 A.2d 409 (Pa. Super. Ct. 2004), app. dismissed, 903 A.2d 1185 (Pa. 2006) (Upholding trial court finding of bad faith based on conduct that included conduct during the trial of the bad faith lawsuit which was characterized as "an intentional attempt to conceal, hide or otherwise cover-up the conduct of Erie employees").

In Toy v. Metropolitan Life Insurance Company, 593 Pa. 20, 928 A. 2d 186 (2007), the Pennsylvania Supreme Court considered the following issue:

Whether a bad faith claim within the meaning of § 8371 may be premised on allegations that an insurer engaged in deceptive or unfair conduct in soliciting the insured to purchase an insurance policy.

The insured, Georgina Toy, brought suit against Metropolitan Life alleging, inter alia, bad faith and violations of the Unfair Trade Practices and Consumer Protection Law, in the sale of a life insurance policy. Specifically, Ms. Toy charged that Metropolitan Life and its agent misrepresented the life insurance policy to be a savings or investment vehicle. The Court identified the issue as one of statutory construction, controlled by the Statutory Construction Act of 1972 ("Act"), 1 Pa. C.S. § 1921(a). The Court focused on the following words in the statute: "bad faith", "arising under an insurance policy", and the grant of an award based on the "amount of the claim from the date the claim was made by the insured".

Noting that when § 8371 was enacted in 1990, the term "bad faith", as it concerned allegations by an insured against his insurer, had acquired a particular meaning in the law. According to the Court, the term "concerned the duty of good faith and fair dealing in the parties' contract and the manner by which an insurer discharged its obligations of defense and indemnification in the third-party context or its obligation to pay for a loss in the first party context."

The Court concluded that it "need go no further than the words of the statute to ascertain that the Legislature did not intend to provide Toy with a remedy under § 8371 for the deceptive or unfair practices in which she alleged Metropolitan engaged in soliciting her purchase of the Policy." The insured had not alleged a cognizable claim under the bad faith statute. The Court held that Metropolitan was entitled to summary judgment on Toy’s § 8371 claim as a matter of law.

In Toy, the Court noted that cases cited in Toy's brief concern two questions with which the lower courts have been grappling, but which were not before the Court and remain for another day:
1. The role that the Unfair Insurance Practices Act may play in
   the trial of a bad faith claim.
2. Whether an insurer’s conduct in litigating the bad faith claim
   that its insured asserts against it in a complaint may be
   considered by the court in determining whether and to what
   extent an insured is entitled to relief under § 8371.

In Northwestern Mutual Life Ins. Co. v. Babayan, 430 F. 3d 121, 138 (3d Cir. 2005), the Third Circuit Court of Appeals addressed an insured’s bad faith claim based on “post-claim underwriting practices”. The insured, Babayan, had submitted a claim for disability benefits. Northwestern conducted a “contestability” review which the company manual directs be performed if a claim is filed within two years of the application date. The review uncovered medical treatment and diagnoses that had not been included in the application. Based on the results of the review, Northwestern sent a notice to Babayan rescinding the policy and sent a check refunding the premium payments. Babayan did not cash the check.

Northwestern filed a complaint alleging misrepresentation and fraud and deceit and sought to have the policy declared void ab initio. The insured filed a complaint against Northwestern seeking, inter alia, declaratory judgment and alleging bad faith.

The insured argued that the court should predict that the Pennsylvania Supreme Court would conclude that “post-claim underwriting” may constitute bad faith. There were no decisions interpreting Pennsylvania law that had extended bad faith to post claim underwriting practices.

The court noted as follows:

We note that the term ‘post-claim underwriting’ itself is nebulous, particularly because it is difficult to draw a distinction between post-claim eligibility investigation and post-claim underwriting. For example, it is not bad faith to conduct a thorough investigation into a questionable claim. See O’Donnell [ex rel. Mitro v. Allstate Ins., 1999 Pa Super 161, 734 A. 2d 901 (Pa Super. Ct. 1999)], 734 A. 2d at 907-08 (noting the existence of ‘red flags’ that prompted the investigation)…. Babayan’s concept of ‘post-claim underwriting’ would usurp this general principal and prevent insurers from engaging in post-claim investigations, even in the face of incontrovertible evidence that an insured made a clear misrepresentation.

430 F. 3d at 138.

The court concluded that the particular practice undertaken by Northwestern did not constitute bad faith.


In Barber v. Unum Life Insurance Co. of America, 383 F.3d 134 (3d Cir. 2004), the Third Circuit Court of Appeals found that because § 8371 related
to an employee benefit plan, ERISA preempted it, and because § 8371 did not regulate insurance, ERISA’s savings clause did not avoid preemption.

In Mishoe v. Erie Insurance Company, 573 Pa. 267, 824 A.2d 1153 (2003), the Pennsylvania Supreme Court held that there is no right to a jury trial in a bad faith action brought in Pennsylvania State Courts pursuant to 42 Pa. C.S.A. §8371. The United States Court of Appeals for the Third Circuit had previously ruled in Klinger v. State Farm Mutual Auto Insurance Co., 115 F.3d 230 (3d Cir. 1997), that the punitive damages remedy in the bad faith statute triggers the Seventh Amendment right to a jury trial in a case pending in Federal Court.

B. Fraud

The elements of fraud are as follows:

(1) A representation;
(2) which is material to the transaction at hand;
(3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false;
(4) with the intent of misleading another into relying on it;
(5) justifiable reliance on the misrepresentation; and,
(6) the resulting injury was proximately caused by the reliance.


"[T]he tort of intentional non-disclosure has the same elements as intentional misrepresentation except in the case of intentional non-disclosure the party intentionally conceals a material fact rather than making an affirmative misrepresentation.[citation omitted]." Id. However, mere silence is not sufficient to constitute fraud in the absence of a duty to speak. Duquesne Light Co. v. Westinghouse Electric Corp., 66 F. 3d 604, 612 -13 (3d Cir. 1995).

The statute of limitations for claims of common law fraud is two years. 42 Pa. C.S.A. § 5524(7). Limitations periods run from the time the cause of action accrues. The relevant statute of limitations begins to run as soon as the right to institute and maintain a suit arises, which generally is when the injury was inflicted. Drelles v. The Manufacturers Life Insurance Co., 881 A. 2d 822, 831 (Pa. Super. Ct. 2005). The discovery rule and the doctrine of fraudulent concealment are exceptions that act to toll the running of the statute of limitations. Id.

In Drelles v. Manufacturers Life Insurance Company, 881 A. 2d 822 (Pa. Super. Ct. 2005), the insureds brought suit alleging illegal sales practices involving “vanishing premium” insurance plans. The insurers argued that the applicable statutes of limitations barred the various claims including fraud and deceit. The Superior Court reversed the trial court’s grant of summary judgment in favor of the insurers on the statute of limitations. The Superior Court concluded that reasonable minds could differ as to whether the insureds knew or could have known of their alleged injuries within ten days of delivery of their new insurance policies. See also, Dilworth v. Metropolitan Life Insurance Company, 418 F. 3d 345 (3d Cir. 2005) (District court erred by holding that the plain language of the policy dispositively demonstrated that a reasonable person would have been put on notice that she had not received a vanishing premium policy if she had performed a cursory examination of the policy. Reasonable minds could disagree as to whether the information in the policy revealed that the premium payments did not ‘vanish’.)
C. Intentional or Negligent Infliction of Emotional Distress

1. Intentional Infliction of Emotional Distress

The Pennsylvania Supreme Court has stated that “[t]he possibility cannot be ruled out that emotional distress damages may be recoverable on a contract where, for example, the breach is of such a kind that serious emotional disturbance was a particularly likely result. D’Ambrosio v. Pa. National Mut. Ins., 494 Pa. 501, 431 A. 2d 966 (Pa. 1981).


While not expressly recognizing the tort, the Pennsylvania Supreme Court has identified the minimum requirements if the tort were to be accepted in Pennsylvania. Defendant’s conduct must be extreme and outrageous to state a cause of action for intentional infliction of emotional distress. For guidance, the Pennsylvania courts have looked to the Restatement (Second) of Torts § 46.

The Restatement (Second) of Torts § 46 provides:

Outrageous Conduct Causing Severe Emotional Distress

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

The Restatement states that extreme and outrageous conduct goes beyond all possible bounds of decency.


2. Negligent Infliction of Emotional Distress

The Pennsylvania Superior Court has recognized four factual scenarios which may support a claim for negligent infliction of emotional distress:

"(1) situations where the defendant had a contractual or fiduciary duty toward the plaintiff; (2) the plaintiff was subjected to a physical impact; (3) the plaintiff was in a zone of danger, thereby reasonably experiencing a fear of impending physical injury; or (4) the plaintiff observed a tortious injury to a close relative."


The first scenario was presented in Toney, which involved a claim by the mother of a severely deformed baby who claimed that the defendants’ negligent
misinterpretation of an ultrasound prevented her from preparing herself for the shock of witnessing her son's birth with such substantial physical deformities. In the decision in support of affirmance in the Pennsylvania Supreme Court, the reach of this cause of action was explained to be limited to "preexisting relationships involving duties that obviously and objectively hold the potential of deep emotional harm in the event of breach." 36 A.3d at 95.

The Pennsylvania Supreme Court has generally denied recovery for emotional distress, unless accompanied by physical impact or physical injury, noting that the Second Restatement also follows this approach. See Restatement (Second) of Torts § 436A (1965) ("If the actor's conduct is negligent as creating an unreasonable risk of causing either bodily harm or emotional disturbance to another, and it results in such emotional disturbance alone, without bodily harm or other compensable damage, the actor is not liable for such emotional disturbance.").; Restatement (Second) of Torts § 456 cmt. b (1965) ("Where the tortious conduct does not result in bodily harm, there can ordinarily be no recovery for mere emotional disturbance which has no physical consequences."). Physical impact and physical injury are not synonymous terms, however. [citation omitted]. Schmidt v. Boardman Co., 608 Pa. 327, 11 A.3d 924, 948 (2011).

D. State Consumer Protection Laws and Regulations


The Unfair Trade Practices and Consumer Protection Law (UTPCPL) bars certain types of "unfair methods of competition" and "unfair or deceptive acts or practices." 73 P.S. § 201-3. Unlike the UIPA, the UTPCPL explicitly creates a private cause of action in favor of consumers. 73 P.S. § 201-9.2. The provisions of the UTPCPL most likely to be cited in a complaint against an insurance carrier include the following:

(ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;

(viii) Disparaging the goods, services or business of another by false or misleading representation of fact;
Advertising goods or services with intent not to sell them as advertised;

Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reduction;

Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;

Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. § 201-2(4) (emphasis added).

In Horowitz v. Federal Kemper Life Assurance Co., 57 F.3d 300 (3rd Cir. 1995), the Third Circuit explained that the UTPCPL only applies to affirmative "malfeasance" or "misfeasance," meaning an insurer's improper performance of a contractual obligation. Id. at 307. "[A]n insurer's mere refusal to pay a claim which constitutes nonfeasance, the failure to perform a contractual duty, is not actionable." Id. The insurer's letter refusing the beneficiary's claim under a life insurance policy and stating its reasons for denial did not involve malfeasance and thus, was not actionable under the UTPCPL. Id.

In Leo v. State Farm Mut. Ins. Co., 939 F. Supp. 1186 (E.D. Pa. 1996), affirmed by unpublished opinion, 116 F.3d 468 (3rd Cir. 1997), the district court explained that conduct tending to show that the insurer did not pay benefits in a timely manner did not amount to malfeasance, and therefore, was not actionable under the UTPCPL. Id.

In Lesoon v. Metropolitan Life Ins. Co., 898 A. 2d 620 (Pa. Super. Ct. 2006), the Pennsylvania Superior Court held that the trial court erred in awarding only nominal damages for violations of the UTPCPL. The Superior Court stated that, at a minimum, the insureds should be compensated for the difference in price between the policy that was promised to them and the policy that was issued. See also, Solarchick v. Metropolitan Life Ins. Co., 430 F. Supp. 2d 511 (W.D. PA 2006) (in action grounded in fraud and UTPCPL, plaintiffs were entitled to "actual loss" or "actual damages" but not "expectation" or "benefit of the bargain" damages.)

In Grimes v. Enter. Leasing Co. of Phila., LLC, 105 A.3d 1188 (Pa. 2014), a per curiam decision, the Pennsylvania Supreme Court held that the mere acquisition of counsel would not suffice to satisfy the "ascertainable loss" requirement.

In Grimes, the Pennsylvania Supreme Court had also granted review to consider whether a private plaintiff who alleges deceptive conduct under the UTPCPL's "catchall" provision need not plead or prove justifiable reliance. The Court did not address that question because the "ascertainable loss" issue was dispositive.

However, in Toy v. Metropolitan Life Ins. Co., 593 Pa. 20, 928 A.2d 186 (2007), the Court stated that justifiable reliance is an element of a Consumer Protection Law claim. See also, Kern v. Lehigh Valley Hosp., 2015 PA Super 19,
The UTPCPL allows for an award of treble damages.

Section 9.2 of the UTPCPL, provides, in relevant part:

Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recovery actual damages or one hundred dollars ($100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars ($100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to the relief provided in this section, costs and reasonable attorney fees.

73 P.S. §201-9.2 (emphasis added).

In Schwartz v. Rockey, 932 A. 2d 885 (Pa. 2007), an action by home purchasers against the sellers for fraudulent non-disclosure and/or concealment of water infiltration, the Pennsylvania Supreme Court held "as a matter of statutory construction, that the courts' discretion to [award] treble damages under the UTPCPL should not be closely constrained by the common-law requirements associated with the award of punitive damages". The effect of the Court's holding is that the standard for an award of punitive damages as described in Feld v. Merriam, 506 Pa. 383, 395, 485 A.2d 742, 747-48 (1984), i.e., that "punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." (quoting Restatement (Second) of Torts §908(2) (1977)), does not apply to an award of treble damages under the UTPCPL.

However, in affirming the decision of the Pennsylvania Superior Court, the Pennsylvania Supreme Court also cautioned that "courts of original jurisdiction should focus on the presence of intentional or reckless, wrongful conduct, as to which an award of treble damages would be consistent with, and in furtherance of, the remedial purposes of the UTPCPL".

A trial court, when evaluating a petition or motion for costs and/or counsel fees for the "bad faith" of an insurer, may look to other statutes on the same or similar subjects, such as the Unfair Insurance Practices Act, 40 P.S. § 1171.1 et seq. Romano v. Nationwide Mut. Fire Ins. Co., 646 A.2d 1228, 1233 (Pa. Super. 1994).

E. State Class Actions

1. Class Actions Pa.R.C.P 1701 et seq.

Rule 1701. (Definition and Conformity)

(a) As used in this chapter, “Class action” means any action brought by or against parties as representatives of a class until the court by order refuses to certify it as such or revokes a prior certification under these rules. “Residual funds” are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorney’s fees, and other court approved disbursements to implement relief granted.

(b) Except as otherwise provided in this chapter, the procedure in a class action shall be in accordance with the rules governing the form of action in which relief is sought.

Rule 1702. (Prerequisites to a Class Action)

One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action 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 claims or defenses of the representative parties are typical of the claims or defenses of the class;
(4) the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709; and
(5) a class action provides a fair and efficient method for adjudication of the controversy under criteria set forth in Rule 1708.

Rule 1708. Criteria for Certification. Determination of Class Action as Fair and Efficient Method of Adjudication

In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth in subdivisions (a), (b) and (c).

(a) Where monetary recovery alone is sought, the court shall consider

(1) whether common questions of law or fact predominate over any question affecting only individual members;

(2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;

(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.


In Wilkes v. Phoenix Home Life Mut. Ins. Co., 902 A.2d 366 (Pa. 2006), the Pennsylvania Supreme Court held that the appellees were barred by the doctrine of res judicata from bringing suit in Pennsylvania against appellant, Phoenix Home Life Mutual Insurance Company ("appellant" or "Phoenix"), due to an out-of-state class action settlement in New York. Appellees had not opted-out of the New York class action. The court further found that notice given to appellees was not adequate and provided them with sufficient information to comprehend the propriety of their inclusion in that litigation. The Court noted that Appellees had benefited from the settlement of the New York action.

V. Defenses In Actions Against Insurers

A. Misrepresentation/Rescission of Insurance Contract for Misrepresentation

In Rohm and Haas Co. v. Continental Cas. Co., 566 Pa. 464, 781 A. 2d 1172, 1179 (2001), the Pennsylvania Supreme Court addressed the issue of fraud in the insurance context:
When an insured secures an insurance policy by means of fraudulent misrepresentations, the insurer may avoid that policy. New York Life Ins. Co. v. Brandwene et ux., 316 Pa. 218, 172 A. 669 (Pa. 1934). See also Smith and Judge, supra. The burden of proving fraud must be established by clear and convincing evidence and rests with the party alleging it. Id. The clear and convincing standard requires evidence that is "so clear, direct, weighty, and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts of the issue." Lessner v. Rubinson, 527 Pa. 393, 592 A.2d 678, 681 (Pa. 1991). This court has previously observed that fraud "is never proclaimed from the housetops nor is it done otherwise than surreptitiously with every effort usually made to conceal the truth of what is being done. So fraud can rarely if ever be shown by direct proof. It must necessarily be largely inferred from the surrounding circumstances." Shechter v. Shechter, 366 Pa. 30, 76 A.2d 753, 755 (Pa. 1950).

In an insurance fraud case, the insurer must prove that the fraudulent misrepresentations were material to the risk assumed by the insurer. Evans v. Penn Mutual Life Ins. Co. of Philadelphia, 322 Pa. 547, 186 A. 133 (Pa. 1936). When knowledge or ignorance of certain information would influence the decision of an insurer in the issuance of a policy, assessing the nature of the risk, or setting premium rates, that information is deemed material to the risk assumed by the insurer. A.G. Allebach, Inc. v. Hurley, 373 Pa. Super. 41, 540 A.2d 289 (Pa.Super. 1988). Furthermore, "fraud consists of anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or silence, word of mouth or look or gesture." Moser v. DeSetta, 527 Pa. 157, 589 A.2d 679, 682 (Pa. 1991). That is, there must be a deliberate intent to deceive. Evans, supra. Finally, "the concealment of a material fact can amount to a culpable misrepresentation no less than does an intentional false statement." Moser, supra 589 A.2d at 682

To void an insurance policy under the law of Pennsylvania, the insurer has the burden to prove that: (1) the insured made a false representation; (2) the insured knew the representation was false when it was made or the insured made the representation in bad faith; and (3) the representation was material to the risk being insured. Coolspring Stone Supply v. American States Life Ins. Co., 10 F.3d 144, 148 (3d Cir. 1993) (citing Shafer v. John Hancock Mut. Life Ins. Co., 410 Pa. 394, 189 A.2d 234, 236 (1963)). The insurer has the burden to prove all three elements by clear and convincing evidence. Batka v. Liberty Mut. Fire Ins. Co., 704 F.2d 684, 687 (3d Cir. 1983) ("Pennsylvania requires that an insurer establish the defense of fraud in the application by 'clear, precise and indubitable' evidence . . . [and] that the factfinder be satisfied of the elements of the defense by clear and convincing evidence.") (citations omitted). This heightened burden of proof is applied when deciding summary judgment in an insurance case where the issue is fraud in the application. Justofin v. Metro. Life Ins. Co., 372 F.3d 517 (3d Cir. 2004).

In order to void a policy ab initio, "the insurer must prove that the intent to deceive was deliberate". Grimes v. Prudential Insurance Company of America, 401 Pa. Super. 245, 585 A.2d 29, 33 (1991)). Ordinarily, the question as to whether an applicant’s misstatement was made in bad faith is
a question of fact for the jury. See, Grimes, 401 Pa. Super. at 259, 585 A.2d at 31 (citations omitted).

An inference of fraud is irresistible when, for example, unreported illness or disability of the insured was so serious and so recent that he could not have forgotten it. Burkett v. Equitable Life Asur. Soc. Of America, 287 F. 3d 293 (3d Cir. 2002) (quoting Evans v. Penn. Mut. Life Ins. Co., 322 Pa. 547, 186 A. 133, 138 (1936).

Summary judgment may be entered on a rescission claim when, based upon the evidence produced in discovery, the only reasonable inference a fact finder could draw is that the applicant’s answers were knowingly false, or made in bad faith. Northwestern Mut. Life Ins. Co. v. Babayan, 430 F. 3d 121 (3d Cir. 2005).

In the case of Health, Accident or Casualty Insurance 40 P.S. § 751 et seq. applies.

40 P.S. § 757 entitled “False statements in application” states:

The falsity of any statement in the application for any policy shall not bar the right to recovery, unless the false statement was made with actual intent to deceive, or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer.

An insurance company shall not be liable if an insured makes false statements that were made with actual intent to deceive or materially affected the acceptance of the risk or materially affected the hazard assumed by the insurer. The insurer must prove intent to deceive or materiality, but not both. Connecticut Mutual Life Insurance Co. v. Wyman, 718 F.2d 63, 235 A.2d 406, 409 (3d Cir. 1983). Knepp v. Nationwide Insurance Co., 471 A.2d 1257 (Pa. Super. Ct.1984).

B. Preexisting Illness or Disease Clauses

1. Statutes

The “Individual Accident and Sickness Insurance Minimum Standards Act”, 40 P.S. §776.1 includes a provision that limits the defense of pre-existing conditions:

40 P.S. § 776.6. Pre-existing conditions

(a) Notwithstanding the provisions of Section 618(A)(2) of the Insurance Company Law of 1921, if an insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insurer's health history or medical treatment history, the policy must cover any loss occurring after twelve months from any preexisting condition and not specifically excluded from coverage by terms of the policy, and, except as so provided, the policy or contract shall not include wording that would permit a defense based upon preexisting conditions. Changes to policies or contracts required under this section, including changes to premium rates applicable thereto, shall be permitted by endorsement or rider."
Long-Term Care insurance is governed by 40 P.S. § 991.1101 et seq, which includes the following:

§ 991.1107. Underwriting standards

The definition of the term 'pre-existing condition' under Section 1105(c) does not prohibit an insurer from using an application form designed to elicit the complete health history of the applicant and, on the basis of the answers on that application, for underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a pre-existing condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in Section 1105(c)(2) expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for a specifically named or describe pre-existing diseases or physical conditions beyond the waiting period described in Section 1105(c)(2)."

40 P.S. § 991.1105 titled "Disclosure and performance standards for long-term care insurance includes the following:

(c)(1) No long-term care insurance policy or certificate may use a definition of 'pre-existing condition' which is more restrictive than a definition of 'pre-existing condition' that means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within six months preceding the effective date of coverage of an insured person."

(2) No long-term care insurance policy may exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within six months following the effective date of coverage of an insured person."

2. Case Law

In Lawson v. Fortis Ins. Co., 301 F.3d 159, 162 (3d Cir. 2002), the issue was described as whether receiving treatment for the symptoms of an unsuspected or misdiagnosed condition prior to the effective date of coverage makes the condition a pre-existing one under the terms of the insurance policy. "In other words, we must determine whether it is possible to receive treatment "for" a condition without knowing what the condition is." The minor child, Elena Lawson, was diagnosed with leukemia shortly after a health insurance policy became effective. In finding that Elena's leukemia was not a pre-existing condition under the language of the policy, the Third Circuit stated:

Elena did not receive advice or treatment for leukemia before the effective date of coverage, so Plaintiffs' interpretation of the pre-existing condition language in the Fortis insurance policy should prevail. At a minimum, the contract language is ambiguous, and thus it should be construed against Fortis.

The Fortis insurance policy excludes coverage for a "Sickness, Injury, disease or physical condition for which medical advice or treatment was recommended by a Physician or received from a Physician within the five (5) year period preceding that Covered
Person's Effective Date of Coverage." There is no doubt that the "sickness" here is leukemia. Therefore, the key word in the pre-existing condition exclusion for our purposes is "for." Elena received treatment "for" what were initially diagnosed as symptoms of a respiratory tract infection. Therefore, the treatment she received was not "for" leukemia, but "for" a respiratory tract infection.

The Pennsylvania statute governing long-term care insurance was enacted on December 15, 1992 and became effective on February 13, 1993. In Yoder v. American Travellers Life Ins. Co., 2002 PA Super 398, 814 A. 2d 229 (Pa. Super. Ct. 2002), the Pennsylvania Superior Court concluded that the legislature did not intend the provisions of the act to apply to policies issued prior to their adoption, but renewed thereafter.

Real Estate Trust Co. of Philadelphia v. Metropolitan Life Ins. Co., 340 Pa. 533, 17 A.2d 416 (1941) involved claims under four policies of life insurance where death resulted from mixed causes. The policies contained identical clauses providing for the payment of double indemnity in the event that "the death of the insured resulted in consequence of bodily injury effected solely through external, violent and accidental means . . . independently and exclusively of all other causes." Provision was also made that: "This indemnity shall not be payable if the death of the insured results directly or indirectly from disease or from bodily or mental infirmity." The court decided that the insured must prove that death was caused solely by "external" and "accidental means" and if a pre-existing condition may have been a contributing factor, the insured bore the burden of proof on that issue. See also, Dunn v. Maryland Casualty Company, 339 Pa. Super. 70, 488 A.2d 313 (1985).

In Schneider v. UNUM Life Ins. Co., 149 F. Supp. 2d 169 (E.D. PA. 2001), the court held that claims asserted by the insureds against the insurer based on violations of provisions of the Pennsylvania insurance code, 40 Pa. Cons. Stat. §§ 991.1105(b)(1), (c), 991.1107, and 991.1111(a), (d), and (e), and regulations promulgated by the Pennsylvania Insurance Commissioner, 31 Pa. Code § 89.94, 89.908 (d) were precluded from ERISA preemption by the Savings Clause, 29 U.S.C. § 1144 (b)(2)(A).

C. Statutes of Limitations

In Ash v. Continental Insurance Company, 593 Pa. 523, 932 A. 2d 877 (Pa. 2007), the Pennsylvania Supreme Court answered the question of which statute of limitation was applicable to a claim under the bad faith statute, 42 Pa.C.S. § 8371.

In Ash, the Court discussed the underpinnings of the Pennsylvania bad faith insurance statute. While noting that courts generally treat a breach of the duty of good faith and fair dealing as a breach of contract action, such decisions addressed the implied duty of good faith imposed on parties to a contract, rather than the duty of good faith imposed by § 8371. (The Supreme Court declined to engage in a discussion of whether such a duty is implied in every contract as the issue was not presently before the Court.)

The Pennsylvania Supreme Court acknowledged that the bad faith statute was enacted by the Legislature to deter bad faith and was preceded by the decision of the Pennsylvania Supreme Court in D'Ambrosio v. Pennsylvania National Mut. Cas. Ins. Co., 494 Pa. 501, 431 A. 2d 966 (1981) declining to recognize a cause of action in tort for the breach of an implied covenant of good faith and fair
dealing. The Court concluded that the duty under § 8371 is one imposed as a
matter of social policy rather than one imposed by mutual consensus, and "an
action to recover damages for a breach of that duty derives primarily from the
law of torts". Therefore, the Court held that such an action is subject to the
two-year statute of limitations under 42 Pa.C.S. § 5524.

the Pennsylvania Superior Court provided examples of how difficult it may be for
an insurer to rely on the two-year statute of limitations in a bad faith case:

Generally, for purposes of applying the statute of limitations, a
claim accrues when the plaintiff is injured. See Adamski v. Allstate
In the context of an insurance claim, a continuing or repeated
denial of coverage is merely a continuation of the injury caused by
the initial denial, and does not constitute a new injury that
triggers the beginning of a new limitations period. See id. at 1042
(holding that the insured may not separate initial and continuing
refusals to provide coverage into distinct acts of bad faith).

However, there is an important distinction between an initial act of
alleged bad faith conduct and later independent and separate acts of
such conduct. See id. at 1040. When a plaintiff alleges a subsequent
and separately actionable instance of bad faith, distinct from and
unrelated to the initial denial of coverage, a new limitations
period begins to run from the later act of bad faith. See id. An
inadequate investigation is a separate and independent injury to the
insured. [citation omitted]. . . Additionally, a refusal to
reconsider a denial of coverage based on new evidence is a separate
and independent injury to the insured. [citation omitted] . . . The
statute of limitations for such injuries begins to run, in the first
instance, when the insurer communicates to the insured the results
of its inadequate investigation, and in the latter instance, when
the insurer communicates to the insured its refusal to consider the
new evidence that discredits the insurer's basis for its claim
denial. [citation omitted]

The statute of limitations for claims of common law fraud is two years. 42
Pa. C.S.A. § 5524(7).

The Unfair Trade Practices and Consumer Protection Law is governed by a

VI. Beneficiary Issues

A. Change of Beneficiary Designation

"Designation of a beneficiary under Pennsylvania law is a matter of
contract between the insurer and the insured. In order to change one's
compliance." Cipriani v. Sun Life Ins. Co. of Am., 757 F.2d 78, 81 (3d Cir. 1985)
1975)). Under this doctrine, strict and literal compliance with the policy terms
is not always necessary. Ehrlich, 508 F.2d at 132-33. Rather, "Pennsylvania
courts will give effect to an insured's intention to change the beneficiary on an insurance policy where, even in the absence of strict compliance with the policy provisions, the insured has made every reasonable effort under the circumstances to comply with those provisions. "Cipriani, 757 F.2d at 81. Put simply, "'[t]he essential inquiry is whether . . . [it has been] . . . shown that the insured intended to execute a change to such an extent that effect should be given it." Id. (quoting Prudential Ins. Co. of Am. v. Bannister, 448 F. Supp. 807 (W.D. Pa. 1978)). Diener v. Renfrew Ctrs., Inc., 2011 U.S. Dist. LEXIS 108352 (E.D. Pa. 2011) (Granting leave to amend complaint to provide details regarding efforts of deceased wife to effectuate a change of beneficiary from her estranged husband to her son and/or mother).

B. Effect of Divorce

Section 6111.2 of the Pennsylvania Probate, Estates and Fiduciaries Code provides as follows:

§ 6111.2. Effect of divorce or pending divorce on designation of beneficiaries

(a) Applicability. --This section is applicable if an individual:

(1) is domiciled in this Commonwealth;

(2) designates the individual's spouse as beneficiary of the individual's life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to the spouse; and

(3) either:

(i) at the time of the individual's death is divorced from the spouse; or

(ii) dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).

(b) General rule. --Any designation described in subsection (a)(2) in favor of the individual's spouse or former spouse that was revocable by the individual at the individual's death shall become ineffective for all purposes and shall be construed as if the spouse or former spouse had predeceased the individual, unless it appears the designation was intended to survive the divorce based on:

(1) the wording of the designation;

(2) a court order;

(3) a written contract between the individual and the spouse or former spouse; or

(4) a designation of a former spouse as a beneficiary after the divorce decree has been issued.

(c) Liability.
(1) Unless restrained by court order, no insurance company, pension or profit-sharing plan trustee or other obligor shall be liable for making payments to a spouse or former spouse which would have been proper in the absence of this section.

(2) Any spouse or former spouse to whom payment is made shall be answerable to anyone prejudiced by the payment.

20 Pa.C.S. § 6111.2


C. The Slayer’s Act

Pennsylvania’s Slayer’s Act provides as follows:

§ 8802. Slayer not to acquire property as result of slaying.

No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following.


In Burkland v. Burkland, 2013 U.S. Dist. Lexis 11327 (E.D. Pa. 2013), involving an employer life insurance and accidental death plan, the court noted that it was unnecessary to determine whether ERISA preempts Pennsylvania’s Slayer’s Act because the federal common law that would apply if ERISA preempted the Slayer’s Act is essentially the same in a “slayer” situation, i.e. that no person should be permitted to profit from his own wrong.

VII. Interpleader

A. State Court Interpleader

1. Rule Interpleader

Pennsylvania Rule of Civil Procedure 2302 is titled Interpleader by Defendants and provides:

At any time during the pendency of an action, the court, of its own motion or upon petition of a defendant, may interplead the plaintiff and one or more claimants not parties of record. More than one claimant may be interpleaded.

Rule Interpleader involves a pending lawsuit in which a defendant may interplead claimants who are not parties to the action. Interpleader is unavailable as a remedy with respect to a claimant who is already a party to the action. Rule 2303 sets forth what must be plead in a Petition for Interpleader.

Rule 2303. Allegations Required in Petition. Stay of Proceedings

(a) The petition for interpleader shall allege

(1) that a claimant not a party of record has made or is expected to make a demand upon the defendant as a result of
which the defendant is or may be exposed to double or multiple liability to the plaintiff and to such claimant as to all or any part of the claim asserted by the plaintiff.

(2) that the petition is filed in good faith and not in collusion with the plaintiff or any claimant.

(3) the interest, if any, which the defendant claims in the money or property in controversy and whether the defendant is able (or if not, the reasons therefor) to pay or deliver that part of the money or property as to which he or she claims no interest into court or to such person as the court may direct.

(4) whether the defendant has admitted the claim of, or subjected himself or herself to independent liability to, the plaintiff or any claimant in respect to the subject matter of the action.

(b) The petition shall be subscribed and verified.

(c) The filing of the petition shall stay all proceedings in the action until the court has disposed of the petition.

When an answer is filed to the Petition for Interpleader challenging the factual averments of the petition, an issue of fact is raised requiring the petitioner either to take depositions or to order the matter for disposition without depositions. University City Savings and Loan Assn v. Girard Life Ins. Co. of America, 257 A. 2d 92 (Pa. Super. Ct. 1969).

2. Civil Action Interpleader

If there is no pending action against a person or entity seeking to undertake interpleader, a civil action interpleader may be commenced by that person or entity. See, Harleysville Ins. Co. v. Lacontora, 34 Phila. 257 (1997)(Interpleader action is the proper method for the resolution of competing claims to disbursement of insurance proceeds resulting from a fire in a building).

3. Jury Trial

In Slavin v. Slavin, 368 Pa. 559, 84 A.2d 313 (1951), an interpleader action which concerned the ownership of a sum of money deposited in court by the District Attorney of Allegheny County, the court granted an interpleader and brought a party on the record as interpleaded claimant and ordered the District Attorney to pay into court the sum of $13,028.00. The dispute between the claimants was submitted to a jury.

4. Attorney’s Fees

Attorney’s fees are recoverable by statute.

42 Pa.C.S. § 2503. Right of participants to receive counsel fees.

The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:
(4) A possessor of property claimed by two or more other persons, if the possessor interpleads the rival claimants, disclaims all interest in the property and disposes of the property as the court may direct.
(5) The prevailing party in an interpleader proceeding in connection with execution upon a judgment.

B. Federal Court Interpleader

1. Rule Interpleader

Federal Rule of Civil Procedure 22 addresses interpleader by a plaintiff and by a defendant, stating:

Rule 22. Interpleader

(a) Grounds.
(1) By a Plaintiff. Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:
   (A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or
   (B) the plaintiff denies liability in whole or in part to any or all of the claimants.
(2) By a Defendant. A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

Diversity of citizenship between Plaintiff and Defendants and amount in controversy must be satisfied in Rule Interpleader.


"The purpose of the interpleader device is to allow 'a party who fears being exposed to the vexation of defending multiple claims to a limited fund . . . that is under his control a procedure to settle the controversy and satisfy his obligation in a single proceeding.'" Prudential Ins. Co. of America v. Hovis, 553 F.3d 258, 262 (3d Cir. 2009) (quoting 7 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1704 (3d ed. 2001)). "[I]nterpleader allows a stakeholder who 'admits it is liable to one of the claimants, but fears the prospect of multiple liability[,] . . . to file suit, deposit the property with the court, and withdraw from the proceedings.'" Id. (quoting Metro Life Ins. Co. v. Price, 501 F.3d 271, 275 (3d Cir. 2007)). "The typical interpleader action proceeds in two distinct stages." Id. First, the court determines whether the interpleader action is proper and whether to discharge the stakeholder from liability. Id. Next, the court determines the rights of the claimants. Id.

..."It is true that, '[b]ecause interpleader is an equitable proceeding, it is subject to dismissal based on equitable doctrines.'" Hovis, 553 F.3d at 263 (quoting U.S. Fire Ins. Co. v. Asbestospray, Inc., 182 F.3d 201, 208 (3d Cir. 1999)). "It is a
general rule that a party seeking interpleader must be free from blame in causing the controversy, and where he stands as a wrongdoer with respect to the subject matter of the suit . . ., he cannot have relief by interpleader." Farmers Irrigating Ditch & Reservoir Co. v. Kane, 845 F.2d 229, 232 (10th Cir. 1988). This rule "is meant to prevent a tortfeasor, facing claims from multiple parties, from using the interpleader device to cap its liability." Hovis, 553 F.3d at 263 n.4.

2. **Statutory Interpleader**

In statutory interpleader, the court has jurisdiction if the value is $500 or more and two or more adverse claimants, of diverse citizenship claim or may claim to be entitled to the money or property. The statute provides as follows:

28 USCS § 1335

§ 1335. **Interpleader**

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $ 500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $ 500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $ 500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in subsection (a) or (d) of section 1332 of this title [28 USCS § 1332], are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if

(2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

The stakeholder invoking interpleader must deposit the largest amount for which it may be liable in view of the subject matter of the controversy. United States Fire Ins. Co. v. Asbestospray, Inc., 182 F.3d 201 (3d Cir. 1999).

Service of process is nationwide as to claims to the interpleaded funds. See, 28 USCS § 2361

3. **Jury Trial**
In Jefferson Standard Ins. Co. v. Craven, 365 F. Supp. 861 (M.D. Pa. 1973), the court had discharged the interpleading insurance company from further liability, leaving only the ownership of the proceeds at issue. A jury demand had been filed by one of the claimants. The court found that whether the initial interpleading is to be permitted is an equitable inquiry for the court. The second stage involves the resolution of disputes amongst possible claimants to the fund. The court denied a motion to strike the jury demand, noting that the status of the jury trial was unsettled, but finding support for proceeding with a jury in 3A Moore, Federal Practice § 22.14 [4], at 3114-15.

4. Attorney’s Fees