

## IOWA

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### I. REGULATORY LIMITS ON CLAIMS HANDLING

#### A. Timing for Responses and Determinations

Iowa Code Chapter 514A establishes laws related to Accident and Health Insurance. The Iowa Code dictates that all insurance policies issued in the state must include a provision stating that within 20 days of an occurrence or commencement of any loss covered by the policy, or as soon thereafter as reasonably possible, the insured must provide written notification to the insurer. *Iowa Code* § 514A.3(1)(e) (2020). After receiving notice of the claim, the insurer is required to send proof-of-loss forms to the insured. *Id.* § 514A.3(1)(f). Thereafter, the insured has 90 days to submit written proof of loss to the insurer. *Id.* § 514A.3(1)(g). The statute also provides that indemnities payable under the policy for any loss, other than a loss for which the policy provides periodic payments, must be paid immediately upon receipt of written proof of the loss. *Id.* § 514A.3(1)(h).

Iowa Code section 507B provides general rules for an insurer's duty to respond to a claim and promptly pay or deny the claim. The statute authorizes the insurance commissioner to establish processes for timely adjudication and payment of claims by insurers for health care benefits. Accordingly, the Insurance Division enacted "Prompt payment" regulations which became effective July 2, 2002. *See Iowa Admin. Code* r. 191-15.32(507B) (2020). Pursuant to the regulations, insurers subject to Iowa law are required either to accept and pay or deny a claim for health care benefits within 30 days of receiving the claim. *Id.* r. 191-15.32(507B)(2)(c). The regulation further provides that an insurer has 30 days from the receipt of a claim to request additional information to clarify the insured's request for policy benefits. *Id.*

Iowa Code Chapter 505A establishes Iowa's involvement in the Interstate Insurance Product Regulation Compact. Under this Chapter, the compacting states jointly and cooperatively act to promote and protect the interests of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products. *Iowa Code* § 505A.1(1)(a) (2020). Through a "Commission" established by the statute, the compacting states establish uniform standards for insurance products and related advertisements. *Iowa Code* § 505A.1(1). The Commission, which is composed of a representative from each compacting state, has duties that include, but are not limited to, the promulgation of rules related to the chapter and the review of insurance products and proposed advertisements filed with the Commission. *See id.* §§ 505A.1(4)-(5).

In workers' compensation cases, at the administrative level, a claimant can make a penalty benefits claim for an unreasonable delay in commencement of benefits. See Iowa Code § 86.13(4)(a) (2020). A grant of penalty benefits at the administrative level does not, however, establish the first element of a bad faith claim in civil litigation under the principle of issue preclusion. See *Thornton v. Am. Interstate Ins. Co.*, 897 N.W.2d 445, 463 (Iowa 2017) (quoting *McIlravy v. N. River Ins. Co.*, 653 N.W.2d 323, 328, 330 (Iowa 2002)). A denial of such benefits can, however, be used defensively to preclude the bad faith claim. *Brcka v. St. Paul Travelers Cos.*, 366 F. Supp. 2d 850, 857 (S.D. Iowa 2005).

In 2003, the Iowa legislature established statutory protections related to health and accident insurance issued to National Guard and Armed Forces personnel who are under twenty-five and would otherwise be covered under another plan as a full-time student dependent. Iowa Code § 29A.43(2) (2020). This section provides that any time taken as a leave of absence during a period of temporary duty which would otherwise terminate coverage under a dependent student policy shall be considered a period of continuous coverage when the student returns to the insured dependent status as a full-time student. *Id.*

Chapter 507B of the Iowa Code ("Insurance Trade Practices") was enacted with the stated intent to define and prohibit unfair methods of competition and unfair or deceptive acts and practices related to the issuance of insurance policies and the handling of claims within the State of Iowa. Iowa Code § 507B.1 (2020). Specific time limits for responses to requests for coverage and rendering coverage determinations are set forth in Chapter 191-15 of the Iowa Administrative Code. For example: an insurer has 15 days to acknowledge receipt of claim (Iowa Admin. Code r. 191-15.42(1)); 30 days after proof of loss to accept or deny claim, or notify the insured that more information is required (Iowa Admin. Code r. 191-15.41(2)-(3)); and 30 days after affirmation of liability to tender payment for a claim not in dispute (Iowa Admin. Code r. 191-15.41(6)).

## **B. Standards for Determination and Settlements**

If an insurer denies a claim pursuant to a specific policy provision, condition or exclusion, the particular basis for the denial must be included in a written denial letter sent to the insured. Iowa Admin. Code r. 191-15.41(2).

Iowa Code section 507B.3 prohibits any person from engaging in unfair methods of competition, and unfair or deceptive acts or practices, but relies on section 507B.4, among others, to define the prohibited acts. Iowa Code section 507B.4(3)(j), specifically, enumerates claim settlement practices that the Iowa legislature has deemed unlawful. Prohibited practices include:

1. Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

2. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
4. Refusing to pay claims without conducting a reasonable investigation based upon all available information.
5. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.
6. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear, or failing to include interest on the payment of claims when required under subsection “p” or section 511.38.
7. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.
8. Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.
9. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured.
10. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made.
11. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.
12. Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.
13. Failing to promptly settle claims, where liability has become reasonably clear,

under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

14. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

15. Failing to comply with the procedures for auditing claims submitted by health care providers as set forth by rule of the commissioner. However, this subparagraph shall have no applicability to liability insurance, workers' compensation or similar insurance, automobile or homeowners' medical payment insurance, disability income or long-term care insurance.

*Iowa Code § 507B.4(3)(j) (2020).*

There are no specific provisions in Chapter 507B permitting a private cause of action for unfair claims practices, and, as such, the Iowa Supreme Court has explicitly found that no private cause of action exists. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 254-55 (Iowa 2012) (citing *Seeman v. Liberty Mut. Ins. Co.*, 322 N.W.2d 35 (Iowa 1982)) (affirming district court's ruling that no private cause of action is provided for in Chapter 507B). The insurance commissioner, however, is granted extensive authority to enforce its provisions. See Iowa Code §§ 507B.6-.8.

The insurance commissioner may issue a notice of hearing and conduct a hearing wherein the commissioner has the authority to administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, as well as having the power to subpoena witnesses or records. Iowa Code § 507B.6(1), (4).

The insurance commissioner may issue cease and desist orders. *Iowa Code § 507B.6A(1); id. § 507B.7(1).*

The insurance commissioner may impose monetary penalties for violating Iowa's insurance trade practices. *Id. § 507B.7(1)(a).*

The insurance commissioner may suspend or revoke an insurance company's license to sell insurance based upon violations of the Act. *Id. § 507B.7(1)(b).*

An insurer may seek judicial review of a cease and desist order. *Id. § 507B.8.*

As noted above, although the Iowa Supreme Court has recognized the validity of administrative sanctions imposed for violations of Chapter 507B, the court has repeatedly declined to adopt a private cause of action for alleged violations. See, e.g., *Mueller*, 818 N.W.2d at 254-55; *Seeman*, 322 N.W.2d at 43. Instead, the court has found that the intent and purpose of the Insurance Trade Practices Act is to provide regulatory guidance. *Seeman*, 322 N.W.2d at

42. As such, the legislature “intended only to invest the insurance commissioner with administrative enforcement powers and that the chapter not be expanded in the exercise of administrative or judicial discretion.” *Id.* Consequently, based on legislative intent, the insurance commissioner is the sole repository of authority to enforce the requirements of Chapter 507B. *Id.*

In 2011, Chapter 514J was repealed and rewritten by the Iowa legislature. The current version of Chapter 514J provides uniform standards for establishing and maintaining external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination made by a health carrier. Iowa Code § 514J.101 (2020). It is important to note that, unless Chapter 514J provides otherwise, a covered person may not request an external review until the covered person has exhausted the health carrier’s internal grievance procedure. Iowa Code § 514J.106(1).

While Chapter 507B does not provide a separate, private cause of action, its provisions may assist both insureds and insurers in insurance coverage litigation by establishing a standard of care for evaluating the reasonableness of an insurance company’s actions. *Weber v. State Farm Mut. Auto Ins. Co.*, 873 F. Supp. 201, 209 (S.D. Iowa 1994).

## II. PRINCIPLES OF CONTRACT INTERPRETATION

When construing or interpreting the meaning of insurance policy provisions, Iowa courts strive to ascertain the intent of the parties at the time the policy was sold. *Ferguson v. Allied Mut. Ins. Co.*, 512 N.W.2d 296, 299 (Iowa 1994) (citations omitted). *See Just v. Farmers Auto. Ins. Ass’n.*, 877 N.W.2d 467, 471 (Iowa 2016) (stating the Court has “well-settled” rules that guide the construction and interpretation of insurance policies).

Importantly, Iowa courts note a distinction between “interpretation” and “construction” of insurance contracts. *See id.* Interpretation, which requires the court to determine the meaning of contractual words, is a legal question unless the meaning of the language “depends on the extrinsic evidence or on a choice among reasonable inferences from extrinsic evidence.” *Id.* (quoting *Connie’s Constr. Co. v. Fireman’s Fund Ins. Co.*, 227 N.W.2d 207, 210 (Iowa 1975)). Construing a contract, however, requires the court to determine the legal effect of the contract terms, which is always an issue of law for the court to resolve. *Id.* (citing *Connie’s Constr. Co.*, 227 N.W.2d at 210).

“[I]nsurance contracts are construed in the light most favorable to the insured.” *Id.* Similarly, exclusions are strictly construed against the insurer. *Id.* (citing *Bankers Life Co. v. Aetna Cas. & Sur. Co.*, 366 N.W.2d 166, 169 (Iowa 1985)). “When construing insurance policies ‘the objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of the insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.’” *Id.* (quoting *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 786 (Iowa 1988)). Accordingly, the principle of reasonable expectations “

‘undergirds the congeries of rules applicable to construction of insurance contracts in Iowa.’” *Id.* (quoting *Rodman v. State Farm Mut. Auto. Ins. Co.*, 208 N.W.2d 903, 906 (Iowa 1973)).

Finally, when construing insurance policies, Iowa courts consider the effect of the policy as a whole, in light of all declarations, riders and endorsements attached. *Id.* (citations omitted).

### III. CHOICE OF LAW

When a choice of law issue exists, Iowa courts apply the choice of law rules set forth in the Restatement (Second) Conflict of Laws to determine the applicable state law to govern a dispute. *Cole v. State Auto. & Cas. Underwriters*, 296 N.W.2d 779, 781 (Iowa 1980). Specifically, Iowa courts determine choice of law issues in insurance coverage cases by the noted intent of the parties or the most significant relationship test. *Gabe’s Constr. Co., Inc. v. United Capitol Ins. Co.*, 539 N.W.2d 144, 146 (Iowa 1995) (citing *Cole*, 296 N.W.2d at 781). A choice of the governing law by the parties, if reasonable, will be enforced based on the provisions of section 187 of the Restatement (Second). *Cole*, 296 N.W.2d at 781. Absent a choice of the governing law in the policy, the parties’ rights are determined by the law of the state which “has the most significant relationship to the transaction and the parties.” *Gabe’s Constr. Co.*, 539 N.W.2d at 146 (quoting Restatement (Second) of Conflicts of Law § 188(1) (1971)).

### IV. DUTIES IMPOSED BY STATE LAW

#### A. Duty to Defend

##### 1. Standard for Determining Duty to Defend

The Iowa Supreme Court has found that “[a]n insurer’s duty to defend is separate from its duty to indemnify; the duty to defend is broader than the duty to indemnify.” *Employers Mut. Cas. Co. v. Cedar Rapids Television Co.*, 552 N.W.2d 639, 641 (Iowa 1996) (quotations omitted). The reason for this difference is because “it is impossible to determine the basis, if any, upon which the plaintiff will recover *until the action is completed.*” *First Newton Nat’l Bank v. General Cas. Co. of Wi.*, 426 N.W.2d 618, 630 (Iowa 1988) (citations omitted) (emphasis added).

The obligation to provide a defense arises “whenever there is potential or possible liability to indemnify the insured based on the *facts* appearing at the outset of the case.” *A.Y. McDonald Indus., Inc. v. Insurance Co. of N. Am.*, 475 N.W.2d 607, 627 (Iowa 1991) (quoting *First Newton Nat’l Bank*, 426 N.W.2d at 623) (emphasis added). Further, if any claim advanced in the petition or complaint is *potentially* covered by the policy, the insurer has an obligation to defend the entire action. *Id.* at 627; *see also First Newton Nat’l Bank*, 426 N.W.2d at 630. If there is any doubt as to whether the petition alleges a claim that falls within the policy coverage, that doubt is resolved in favor of the insured. *A.Y. McDonald*, 475 N.W.2d at 627 (citing *First Newton Nat’l Bank*, 426 N.W.2d at 628).

In determining whether there is a duty to defend, courts look to the petition (complaint) to decide whether the facts alleged “bring the claim within the liability covered by the policy.” *Stine Seed Farm, Inc. v. Farm Bureau Mut. Ins. Co.*, 591 N.W.2d 17, 18 (Iowa 1999) (quoting *Chipokas v. Travelers Indem. Co.*, 267 N.W.2d 393, 395 (Iowa 1978)). Moreover, the insurer must examine the operative facts alleged, rather than any labels attached to the claims by the plaintiff. *See id.* at 19. It is “clear under Iowa law that an insurance company is to look at the *allegations of fact* in the third-party plaintiff’s petition against the insured and *not* the legal theories on which the third-party claims insured is liable.” *Employers Mut. Cas. Co.*, 552 N.W.2d at 642 (emphasis in original). The mere artful pleading of an excluded claim under an alternative theory which may be covered by a policy does not create coverage under a liability policy if the underlying basis for the claim is excluded by the insurance contract. *See Stine Seed Farm, Inc.*, 591 N.W.2d at 19; *see also Continental Ins. Co. v. Bones*, 596 N.W.2d 552, 559 (Iowa 1999) (stating that coverage is controlled and determined by the actual claim against the insured, rather than a label attached by the claimant); *Essex Ins. Co. v. Fieldhouse, Inc.*, 506 N.W.2d 772, 775 (Iowa 1993) (same). This statement is limited by the fact that “[i]nsurance coverage is a contractual matter and is ultimately based on policy provisions.” *Talen v. Employers. Mut. Cas. Co.*, 703 N.W.2d 395, 402 (Iowa 2005) (citing *State Farm Auto. Ins. Co. v. Malcolm*, 259 N.W.2d 833, 835 (Iowa 1977)).

## 2. Issues with Reserving Rights

A reservation of rights occurs when an insurer, though providing a defense for its insured, has expressly reserved the right to deny coverage for any judgment entered against the insured based on the belief that there is no coverage provided by the policy. *See Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637 (Iowa 2000). An insurer does not breach the insurance policy simply because it provides a defense under a reservation of rights. *Id.* at 642 (citations omitted). Some courts have found that an insured may settle without an insurer’s consent when the defense is being provided under a reservation of rights. *See e.g., Cay Divers, Inc. v. Raven*, 812 F.2d 866, 870-71 (3d Cir. 1987); *Gates Formed Fibre Prods., Inc. v. Imperial Cas. & Indem. Co.*, 702 F. Supp. 343, 346 (D. Me. 1988). The Iowa Supreme Court, however, has declined to follow these decisions because they “permit an insured to breach his duties under the policy without losing coverage, even though there has not been a breach of the contract by the insurance company.” *Kelly*, 620 N.W.2d at 642.

An insurer cannot, however, rely on the fact that it is providing a defense under a reservation of rights as justification for refusing to settle. *Id.* at 644. “At the point in time that the insurer is faced with a fair and reasonable settlement demand *that a reasonable and prudent insurer would pay*, the insurer must either abandon its coverage defense and pay the demand or lose its rights to control the conditions of settlement.” *Id.* (emphasis added). If the insurer facing this dilemma chooses to debate coverage rather than pay the settlement demand, “the insured is free to either pay the settlement demand or stipulate to the entry of judgment in the amount of the demand” and the insurer, if later found to have coverage, “will be liable for the insured’s settlement if the settlement is found to be fair and reasonable.” *Id.* at 645. The Iowa Supreme



Court reasoned that under these circumstances the insurer, despite the absence of bad faith, has breached its contractual duty to settle cases where appropriate. *Id.*; see *Thornton*, 897 N.W.2d at 474.

An insured's right and ability to exercise this right to settle independent of the insurer and the required steps for properly exercising this right are set forth in *Red Giant Oil Co. v. Lawlor*, 528 N.W.2d 524 (Iowa 1995).

## **B. State Privacy Laws; Insurance Regulatory Issues; Arbitration/Mediation**

The Gramm-Leach-Bliley Act enacted by the United States Congress has profound implications on privacy issues at both the state and federal levels. See Pub. L. No. 106-102. The privacy regulations of the Health Insurance Portability and Accountability Act (HIPAA), effective April 14, 2003, also have important consequences regarding how an individual's personal health information may be used and disseminated. See Standards for Privacy of Individually Identifiable Health Information, 67 FR 53182-01.

Section 505.17 of the Iowa Code governs the handling and protection of a customer's confidential information obtained by the Insurance Division in the course of an investigation or examination. The statute provides that information, records, and documents obtained by the Insurance Division do not constitute public records and shall be treated as confidential. *Iowa Code* § 505.17(1)(a).

In 2003 the Iowa legislature enacted a new provision pertaining to the sale of insurance policy term information by consumer reporting agencies. Iowa Code section 505.24 establishes that a consumer reporting agency shall not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for the purpose of furnishing consumer reports to third parties and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. *Id.* §§ 505.24(1) & (2). Section 505.24(2) provides the same protection to information submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. *Id.* § 505.24(2). Information submitted in conjunction with an insurance inquiry about a consumer includes, but is not limited to, the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage. *Id.*

Iowa law also includes disclosure restrictions focused on specific entities and relating to particular medical conditions. Medical, hospital, and counseling records maintained by a public entity regarding the condition, treatment, diagnosis, or care of a patient generally maintain their status as confidential records and are not subject to public inspection unless otherwise ordered by a court, the lawful custodian of the records, or by another person duly authorized to release the information. *Id.* § 22.7(2). Records maintained by an HMO are subject to the physician-



patient privilege, and officers, directors, trustees, partners, and employees of the HMO are prohibited from disclosing any privileged communication made to a provider. *Id.* § 514B.30(1). Further, HMOs are generally prohibited from releasing the names of its members except for research and analysis regarding cost or quality issues. *Id.* § 514B.30(2).

Medical and related information concerning a patient's substance abuse treatment or mental health issues is afforded strong privacy protection under Iowa law. These types of information are generally not disclosed without the patient's express, written authorization. See *Id.* §§ 125.37; 125.93; 228.2; 228.3. Third party payers (including insurers) are required to file written statements with the commissioner of insurance agreeing to maintain the confidentiality of mental health information and to destroy the information when it is no longer needed. *Id.* § 228.7(1). Information concerning HIV testing or the HIV status of an insured is kept strictly confidential and cannot be released even upon subpoena, search warrant or discovery request. *Id.* § 141A.9. Physicians and others are required to report information, including identifying information, about communicable diseases, brain injuries, and venereal diseases. See *id.* §§ 22.7(16); 139A.3; 135.22; *Iowa Admin. Code* r. 641-1.3. In addition, the state has authorized various agencies to collect vital statistics on such medical records as birth defects. *Iowa Code* § 136A.6; *Iowa Admin. Code* r. 641-4.7. The state and providers are required to keep this information confidential except for legitimate research purposes.

### 1. Criminal Sanctions

Iowa also has a general consumer fraud statute that criminalizes unfair and deceptive practices in the lease, sale or advertisement of "any merchandise" or the solicitation of contributions for charitable purposes. *Iowa Code* § 714.16(2)(a). It is well settled under Iowa law, however, that this Act does not create a private cause of action on the part of a consumer. *Stepp v. State Farm Mut. Auto. Ins. Co.*, No. 06-CV-2027-LRR, 2006 WL 2038596, at \*3-4 (N.D. Iowa July 19, 2006); *Grinnell Mut. Reinsurance Co. v. Jungling*, 654 N.W.2d 530, 537 (Iowa 2002); *Molo v. River City Ford Truck Sales*, 578 N.W.2d 222, 227-28 (Iowa 1998).

### 2. The Standards for Compensatory and Punitive Damages

Punitive damages awards are governed by statutory law in Iowa. See *Iowa Code* § 668A.1. To recover punitive damages under Iowa Code section 668A.1, two issues must first be established. First, the plaintiff must prove, by a preponderance of clear, convincing and satisfactory evidence and, that the defendant's conduct amounted to a willful and wanton disregard for the rights or safety of another; and second, the Plaintiff must prove that the conduct of the defendant was directed specifically at the claimant, or at the person from which the claimant's claim is derived, or that the defendant exhibited intentional, outrageous conduct. *Iowa Code* § 668A.1; see also *Vlotho v. Hardin County*, 509 N.W.2d 350, 356 (Iowa 1993). Merely objectionable conduct is insufficient to satisfy the requirements of section 668A.1. See, e.g., *Beeman v. Manville Corp. Asbestos Disease Compensation Fund*, 496 N.W.2d 247, 255 (Iowa 1993); *Larson v. Great West Cas. Co.*, 482 N.W.2d 170, 175 (Iowa Ct. App. 1992). Conduct is

willful and wanton in the context of a punitive damage claim only when an actor has intentionally done an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow. *Burke v. Deere & Co.*, 6 F.3d 497 (8th Cir. 1993); *Nicholson v. Biomet, Inc., No. 18-CV-3057-CJW-KEM, 2020 WL 3399899, at \*18 (N.D. Iowa Mar. 6, 2020)*. If a claimant establishes the requisites for a punitive damage claim, but cannot establish that the conduct was directed at the claimant, the claimant's recovery is limited to 25% of the punitive damage award with the remaining portion of the award paid into the civil reparations trust. *Iowa Code*, § 668A.1(2)(b).

### 3. Insurance Regulations to Watch

The Financial and Health Information Regulations set forth in Iowa Administrative rule 191-90(505) create a right of privacy for insureds and claimants relating to information maintained by insurance companies, including claims filed. Generally, the regulations provide protection to an individual's health information similar to the federal HIPAA privacy regulations. In the interest of information security, rule 191-90.37(505) requires insurers to implement security programs to safeguard a customer's confidential health information.

Further, insurers are generally required to provide a clear and conspicuous notice to their customers that accurately states privacy policies and practices related to financial information. Iowa Admin. Code r. 191-90.3(1). The information that must be included in the privacy notice is set forth in Iowa Administrative Code rule 191-90.5. During the lifetime of the customer relationship, an insurer must annually provide a copy of its financial privacy policy to insureds. *Id.* r. 191-90.4. In addition, an insurer must obtain a valid authorization to disclose nonpublic personal health information related to its insured. *Id.* r. 191-90.18. The regulations also require an insurer to implement a security program to safeguard customer's confidential health information. *Id.* r. 191-90.37.

### 4. State Administrative Entity Rule-Making Authority

The Iowa legislature has granted to the commissioner of insurance the responsibility to "establish, publish, and enforce rules" regarding the Insurance Division and requirements thereunder. *Iowa Code* § 505.8.

## V. EXTRACONTRACTUAL CLAIMS AGAINST INSURERS: ELEMENTS AND REMEDIES

### A. Bad Faith Claim Handling/Bad Faith Failure to Settle Within Limits

#### 1. First Party

In recognition of the contractual relationship between the insurer and insured, the Iowa Supreme Court has recognized first party bad faith claims "to provide the insured an adequate remedy for the insurer's wrongful conduct." *Dolan v. Aids Ins. Co.*, 431 N.W.2d 790, 794 (Iowa

1988), see also *De Dios v. Indem. Ins. Co. of N. Am.*, 927 N.W.2d 611, 616 (Iowa 2019), amended (May 14, 2019). To establish a first-party bad faith claim under Iowa law, the claimant must provide substantial evidence supporting the following two elements: (1) that the insurer had no reasonable basis for denying benefits under the policy; and (2) that the insurer knew, or had reason to know, that its denial was without basis. *McIlravy*, 653 N.W.2d at 329; *United Fire & Cas. Co. v. Shelly Funeral Home, Inc.*, 642 N.W.2d 648, 657 (Iowa 2002); *Thornton v. Am. Interstate Ins. Co.*, 940 N.W.2d 1, 12 (Iowa 2020). The first element is objective, while the second element is subjective. *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473 (Iowa 2005).

A reasonable basis for denying insurance benefits exists if a claim is “fairly debatable” as to either a matter of fact or law. *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 396 (Iowa 2001); see also *Covia v. Robinson*, 507 N.W.2d 411, 416 (Iowa 1993); *Thornton*, 897 N.W.2d at 465. “A claim is ‘fairly debatable’ when it is open to dispute on any logical basis.” *Bellville*, 702 N.W.2d at 473. Whether a claim is “fairly debatable” can generally be determined by the court as a matter of law. *Id.* (quoting *Gardner v. Hartford Ins. Accident & Indem. Co.*, 659 N.W.2d 198, 206 (Iowa 2003)) (“That is because “[w]here an objectively reasonable basis for denial of a claim *actually exists*, the insurer cannot be held liable for bad faith as a matter of law.” (emphasis added)). The standard for determining whether the decision to deny coverage was “fairly debatable” requires an evaluation of whether the decision to deny such coverage was based “on the exercise of honest and informed judgment” on the part of the insurer. *Wells Dairy, Inc. v. Travelers Indem. Co. of Illinois*, 241 F. Supp. 2d 945, 969 (N.D. Iowa 2003) (citing *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 12 (Iowa 1990)). If the court determines that the defendant had no reasonable basis upon which to deny a claim, it must then determine if the insurer knew, or should have known, that the basis for denying the employee’s claim was unreasonable. *Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 483 (Iowa 2007).

“[W]hen an objectively reasonable basis for denying the claim exists, the insurer cannot be held liable for bad faith as a matter of law.” *Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 346 (Iowa 1999) (citing *Sampson v. Am. Standard Ins. Co.*, 582 N.W.2d 146, 150 (Iowa 1998)). “The reasonable basis for denying the claim, however, must exist at the time the claim is denied.” *Id.* (citing *Sampson*, 582 N.W.2d at 150). While an insurer must investigate a claim, “an imperfect investigation, standing alone, is not sufficient cause for recovery if the insurer in fact has an objectively reasonable basis for denying the claim.” *Id.* at 347 (citation omitted). “In fact, where an insurer has an objectively reasonable basis to deny coverage, it has no duty to investigate further before denying the claim.” *Id.* (citing *Morgan v. Am. Family Mut. Ins. Co.*, 534 N.W.2d 92, 98 (Iowa 1995)).

The Iowa Supreme Court adopted a “directed verdict” standard for bad faith claims in *Bellville v. Farm Bureau Mutual Insurance Co.*, significantly limiting bad faith claims in Iowa because most bad faith claims can now be determined as a matter of law. 702 N.W.2d at 473. Under this rule, “[u]nless the trial court is prepared to grant a directed verdict to the insured on his claim under the policy . . . it follows that reasonable minds could disagree about the insured’s

entitlement to the policy proceeds[]” and, “[t]herefore, the insurer should be entitled to a directed verdict in its favor on the insured’s bad faith claim . . . .” *Bellville*, 702 N.W.2d at 474 (quoting Stephen S. Ashley, *Bad Faith Actions Liability & Damages* § 5:04 (2d ed. 1997)). Thus, the existence of a submissible jury question on the insured’s entitlement to policy benefits will generally, though not automatically, establish that the issue is fairly debatable. See *Reuter v. State Farm Mut. Auto. Ins.*, 469 N.W.2d 250, 254 (Iowa 1991). While there was initially some debate among the courts following *Bellville* regarding the effect of the ruling on bad faith claims, the Iowa Supreme Court verified in *Thornton v. American Interstate Insurance Co.* that the “directed verdict” rule applies to bad faith claims. 897 N.W.2d at 460-71.

Finally, Iowa courts follow the standard established in Section 184(1) of the Restatement (Second) of Agency for settlements between an agent and the insured, where both the agent and the insurer are joined as defendants in a cause of action. See *Seastrom*, 601 N.W.2d at 345. Under the Restatement, a plaintiff’s settlement with the agent does not operate as a release of the insurer’s liability. See *id.*

## 2. Third-Party

When an insurer undertakes to defend an insured, the insurer has control over both the defense and settlement negotiations. *Kelly*, 620 N.W.2d at 643 (citing *Kooyman v. Farm Bureau Mut. Ins. Co.*, 315 N.W.2d 30, 32 (Iowa 1982)). The covenant of good faith and fair dealing in these circumstances includes a “duty to settle claims without litigation in appropriate cases.” *Kooyman*, 315 N.W.2d at 33. Third-party bad faith arises when the insurer’s failure to settle a third-party claim exposes the insured to monetary liability that exceeds the policy limits. *Id.* at 33-34; *Thornton*, 897 N.W.2d at 461. While the right to seek bad faith damages against the insurer resides with the insured, under certain circumstances an insured may assign its rights to a third-party claimant, usually in exchange for a covenant not to execute on an excess judgment. See *Kooyman*, 315 N.W.2d at 33-34. (allowing third-party claimant to bring insured’s bad faith claim against insurer, after third-party claimant and insured had entered into an agreement to not execute on the excess judgment).

“[A]n insurer who refuses, contrary to its contractual obligation, to defend a third-party action against its insured on the ground the policy involved affords no coverage is liable for attorney fees incurred by the insured in defense of the action brought against him.” *Thornton*, 897 N.W.2d at 474 (Iowa 2017) (quoting *New Hampshire Ins. Co. v. Christy*, 200 N.W.2d 834, 840 (Iowa 1972)). Attorney fees or expenses, however, are not awarded in an action to establish insurance coverage “unless there is a showing made in the declaratory judgment action that the insurance company has acted in bad faith or fraudulently or was stubbornly litigious.” *Clark-Peterson Co. v. Independent Ins. Ass’n*, 514 N.W.2d 912, 915-16 (Iowa 1994) (quoting *Christy*, 200 N.W.2d at 845). The recovery of emotional distress damages or injury to reputation or credit rating on a claim that an insurer acted in bad faith by failing to exercise good faith in representing an insured against a third party is permitted on the basis that such a claim is a tort.

*Berglund v. State Farm Mut. Auto. Ins. Co.*, 121 F.3d 1225, 1229-1230 (8th Cir. 1997). The recovery of such damages may require that an injury to property be shown. *Id.*

## B. Fraud

Under Iowa common law, the essential elements for a fraud action are well established: 1) materiality; 2) falsity; 3) representation; 4) scienter; 5) intent to deceive; 6) justifiable reliance; and 7) resulting injury and damage. *Plymouth Farmers Mut. Ins. Ass'n v. Armour*, 584 N.W.2d 289, 291-92 (Iowa 1998) (citations omitted). An insurer's conduct in purporting to represent an insured and making settlement offers to a complaining third-party claimant despite the insurer's intent not to pay the claim may give rise, under Iowa law, to a fraudulent misrepresentation claim on behalf of the third-party claimant. *Bradley v. West Bend Mut. Ins. Co.*, No. 3-735/02-1938, 2003 WL 22900373, at \*4-5 (Iowa Ct. App. Dec. 10, 2003).

Iowa Code chapter 507E governs claims alleging insurance fraud. Under this chapter, a person commits a class "D" felony if:

[T]he person, with the intent to defraud an insurer, does any of the following:

- a. Presents or causes to be presented to an insurer, any written document or oral statement, including a computer-generated document, as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.
- b. Assists, abets, solicits or conspires with another to present or cause to be presented to an insurer, any written document or oral statement, including a computer-generated document, that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.
- c. Presents or causes to be presented to an insurer, any written document or oral statement, including a computer-generated document, as part of, or in, an application for insurance coverage, knowing that such document or statement contains false information concerning a material fact.

*Iowa Code* § 507E.3(2)(a)-(c).

Furthermore, "[i]n general, 'fraudulent misrepresentations leading to the creation of a contract gives rise to a right of rescission.'" *Rubes v. Mega Life & Health Ins. Co., Inc.*, 642 N.W.2d

263, 269 (Iowa 2002) (quoting *Robinson v. Perpetual Servs. Corp.*, 412 N.W.2d 562, 568 (Iowa 1987)). When a party relies on equitable rescission due to fraud, five elements must be proven: 1) a representation; 2) falsity; 3) materiality; 4) an intent to induce the other to act or refrain from acting; and 5) justifiable reliance. *Rubes*, 642 N.W.2d at 269 (citing *Hylar v. Garner*, 548 N.W.2d 864, 872 (Iowa 1996)). “Fraud must be established by a clear, satisfactory, and convincing evidence.” *McGough v. Gabus*, 526 N.W.2d 328, 331 (Iowa 1995) (citations omitted). Concealment of or failure to disclose a material fact can constitute fraud, provided the nondisclosure is by a party that is under a duty to communicate the concealed fact. *Id.*

The intent required is only that the applicant intends to induce the company into acting favorably on the application. See *Rubes*, 642 N.W.2d at 269. There is no requirement of intent to deceive the company, only intent to induce issuance of the policy in question. *Id.*

Although a plaintiff cannot blindly rely on a misrepresentation, the falsity of which would be apparent if the plaintiff had made a cursory investigation, the standard for justifiable reliance is subjective, *i.e.*, whether the complaining party, in view of his own information and intelligence, could reasonably rely or had a right to rely on the representations. See *McGough*, 526 N.W.2d at 332.

### C. Intentional or Negligent Infliction of Emotional Distress

A plaintiff must establish four elements to make a prima facie showing of intentional infliction of emotional distress: (1) outrageous conduct by the defendant; (2) intent to cause, or reckless disregard of the probability of causing, emotional distress; (3) severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the outrageous conduct. *Millington v. Kuba*, 532 N.W.2d 787, 793 (Iowa 1995) (citation omitted); *Hedlund v. State*, 930 N.W.2d 707, 723 (Iowa 2019), as amended (Sept. 10, 2019).

Iowa courts have noted that “[i]t is for the court to determine in the first instance, [sic] as a matter of law, whether the conduct complained about may reasonably be regarded as outrageous.” *Northrup v. Farmland Indus., Inc.*, 372 N.W.2d 193, 198 (Iowa 1985) (citing *Vinson v. Linn-Mar Comm. Sch. Dist.*, 360 N.W.2d 108, 118 (Iowa 1984); *Roalson v. Chaney*, 334 N.W.2d 754, 756 (Iowa 1983)). To be sufficiently outrageous within the meaning of this cause of action, the 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.” *Vinson*, 360 N.W.2d at 118 (citations omitted); *Hedlund*, 930 N.W.2d at 723.

Iowa courts recognize the tort of negligent, or unintentional, infliction of emotional distress, which is separate and distinct from the tort of intentional infliction of emotion distress. See *Lawrence v. Grinde*, 534 N.W.2d 414, 420 (Iowa 1995). Generally, to recover on a claim for negligent infliction of emotional distress, the plaintiff must establish that he or she sustained a physical injury as a result of the defendant’s conduct. See, *e.g.*, *Clark v. Estate of Rice*, 653



N.W.2d 166, 170 (Iowa 2002); *Rolling v. Daily*, 596 N.W.2d 72, 75 (Iowa 1999). There are, however, narrowly applied exceptions to the physical injury requirement:

We have recognized recovery for emotional distress damages in actions which did not involve an intentional tort when a party negligently performed an act which was ‘so coupled with matters of mental concern or solicitude, or with the sensibilities of the party to whom the duty is owed, that a breach of that duty will necessarily or reasonably result in mental anguish or suffering, and it should be known to the parties from nature of the [obligation] that such suffering will result from its breach.’

*Lawrence*, 534 N.W.2d at 420-21 (citation omitted).

The Iowa Supreme Court has recognized only four circumstances which satisfy this requirement, all of which are based on a contractual relationship or a pre-existing relationship of trust between the parties. *Clark*, 653 N.W.2d at 169-74. First, emotional distress damages have been permitted absent a physical injury in the context of a medical malpractice action based on a physician’s negligent examination and treatment of a pregnant woman that resulted in the death of her fetus. *Oswald v. LeGrand*, 453 N.W.2d 634, 639 (Iowa 1990). Second, emotional distress damages have been allowed when a family member views the death or injury of a close family member, also known as a “bystander” claim. *Barnhill v. Davis*, 300 N.W.2d 104, 105-08 (Iowa 1981). Third, emotional distress damages have been permitted for negligence in the delivery of a communication that announces the death of a family member. *Cowan v. Western Union Telegraph Co.*, 98 N.W. 281, 282-84 (Iowa 1904); *Mentzer v. Western Union Tel. Co.*, 62 N.W. 1, 6 (Iowa 1895). Finally, the negligent performance of a contract for funeral services has also been found to support emotional distress damages absent a physical injury. *Meyer v. Nottger*, 241 N.W.2d 911, 920 (Iowa 1976).

#### **D. State Consumer Protection Laws, Rules and Regulations**

Iowa Code chapter 507B generally provides for regulation of insurers who engage in certain proscribed “unfair methods of competition” and “deceptive acts or practices” in the business of insurance. *Iowa Code* § 507B.1. Section 507B.4 contains a comprehensive list of those acts and practices defined as “unfair” or “deceptive.” *Id.* § 507B.4. Unfair claims settlement practices include only specified acts committed with “such frequency as to indicate a general business practice . . .” *Id.* § 507B.4(3)(j). Chapter 507B does not create a private cause of action for damages, even where the carrier has violated the statute. *Seeman*, 322 N.W.2d at 43; *see also Terra Indus., Inc. v. Commonwealth Ins. Co. of Am.*, 990 F. Supp. 679, 684 (N.D. Iowa 1997).

Iowa also has a general consumer fraud statute that criminalizes unfair and deceptive practices in the lease, sale or advertisement of “any merchandise” or the solicitation of contributions for charitable purposes. *See Iowa Code* § 714.16(2)(a). It is well settled under Iowa law, however, that this Act does not create a private cause of action on the part of a



consumer. *Stepp v. State Farm Mut. Auto. Ins. Co.*, No. 06-CV-2027-LRR, 2006 WL 2038596, at \*3-4 (N.D. Iowa July 19, 2006); *Molo v. River City Ford Truck Sales*, 578 N.W.2d 222, 227-28 (Iowa 1998).

## VI. DISCOVERY ISSUES IN ACTIONS AGAINST INSURERS

### A. Discoverability of Claims Files Generally

Under Iowa law, an insurer's investigation of a claim, even if performed in the ordinary course of business, *can* constitute non-discoverable work-product. In *Wells Dairy, Inc. v. Am. Indus. Refrigeration, Inc.*, the Iowa Supreme Court adopted the Wright and Miller work-product test. 690 N.W.2d 38, 48 (Iowa 2004). Under the Wright and Miller test, the proper inquiry when determining whether a document was prepared in anticipation of litigation, and thus work-product, is "whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation." *Id.* (citing 8 Charles Alan Wright et al., *Federal Practice and Procedure* § 2024, at 198-99 (2d ed. 1994)). "If [the] documents 'would have been created in essentially similar form irrespective of litigation[,] . . . it [cannot] fairly be said that they were created 'because of' actual or impending litigation." *Id.* (citing *U.S. v. Aldman*, 134 F.3d 1194, 1202 (2d Cir. 1998)). Accordingly, a claim file and/or documents in a claim file can be shielded from discovery by Iowa's work-product rule to the extent that those documents can satisfy the Wright and Miller test. *See id.*

Where bad faith is at issue, however, the scope of discovery to which the insured may be entitled is expanded. In particular, the Iowa Supreme Court has found that the claim file may be discoverable when a bad faith claim against the insurer is raised. *See, e.g., Squealer Feeds v. Pickering*, 530 N.W.2d 678, 683 (Iowa 1995), *abrogated by Wells Dairy, Inc.*, 690 N.W.2d 678. In these instances, although materials generated subsequent to the denial of coverage are generally not discoverable, the court has allowed an in-camera inspection of such subsequent materials where additional information was provided to or came to the attention of the insurer and the case involves issues regarding whether the insurer acted in bad faith to continue to deny coverage after receiving the additional information. *Id.*

### B. Discoverability of Reserves

The United States Court of Appeals for the Eighth Circuit has recognized that although insurance company risk management documents are not typically prepared in anticipation of litigation, and, therefore, generally discoverable, they may be protected from discovery to the extent that they disclose *individual case reserves* calculated in anticipation of litigation. *Simon v. G. D. Searle & Co.*, 816 F.2d 397, 401-02 (8th Cir. 1987). The court found that "individual case reserve figures reveal the mental impressions, thoughts and conclusions of an attorney in evaluating a legal claim" and, therefore, by their very nature, are prepared in anticipation of litigation. *Id.* Notably, however, the court held that when these individual reserves are combined

in an aggregate form in order to establish general risk management documents, they lose their individual value and significance and, therefore, become discoverable. *Id.*

### **C. Discoverability of Existence of Reinsurance and Communications with Reinsurers**

Neither Iowa courts nor the Eighth Circuit Court of Appeals, when construing Iowa law, have directly addressed the discoverability of the existence of reinsurance and the discoverability of communications between an insurer and reinsurer. Recently, however, the United States District Court for the Northern District of Iowa confronted this issue. See *Progressive Cas. Ins. Co. v. FDIC*, 298 F.R.D. 417, 425 (N.D. Iowa 2014) (granting motion to compel communications with reinsurer); *Progressive Cas. Ins. Co. v. FDIC*, 302 F.R.D. 497, 501-04 (N.D. Iowa 2014) (upholding discovery of reinsurance information against privilege objections); *Progressive Cas. Ins. Co. v. FDIC*, 49 F. Supp. 3d 545 (N.D. Iowa Oct. 3, 2014) (denying privilege objections to production of communications with reinsurer). Most likely, Iowa courts would apply the general principles of discovery and look to determine whether the information sought in discovery is relevant, whether providing this information would place any undue hardship on the insurer, and lastly, whether this information may be obtained in any other way. The decisions by the Northern District of Iowa provide helpful guidance.

### **D. Attorney/Client Communications**

Notably, under Iowa law, the joint-client exception to the attorney-client privilege and work product doctrine applies to permit discovery of privileged communications between outside counsel retained by an insurer to pursue a subrogation action and the insurer's employees that were made in the course of the subrogation litigation, by the insured, in whose name the subrogation action was brought, in subsequent litigation stemming from the same facts giving rise to the subrogation action. *Brandon v. West Bend Mut. Ins. Co.*, 681 N.W.2d 633, 639-40 (Iowa 2004). However, the scope of discovery in this situation is limited to communications made during the period of joint representation of the insured and the insurer by outside counsel retained by the insurer. *Id.* Furthermore, a person does not waive the attorney-client privilege by verifying or providing information for answers to interrogatories. *Id.*

## **VII. DEFENSES IN ACTIONS AGAINST INSURERS**

### **A. Misrepresentations/Omissions: During Underwriting or During Claim**

Iowa law permits equitable rescission of an insurance contract where fraudulent misrepresentations provided the basis for instituting coverage under a policy. See *Rubes*, 642 N.W.2d at 269. The elements of an equitable rescission claim include: "(1) a representation; (2) falsity; (3) materiality; (4) an intent to induce the other to act or refrain from acting; and (5) justifiable reliance." See *id.* "In an equitable rescission action, it is not the knowledge of falsity that is at issue, but 'whether misrepresentations induced the complaining party to contract.'" *Id.* (quoting *Utica Mut. Ins. Co. v. Stockdale Agency*, 892 F. Supp. 1179, 1195 (N.D. Iowa 1995)).

Where an application asks a prospective insured to speculate about the status of his or her health, responses to such general queries must, in good faith, be truthful. *See id.* at 271. Where, however, an application seeks “straightforward answers to known past information,” an insurer is justified in relying on the answers provided. *See id.*

Intoxication is also a defense to a life insurance policy including an explicit intoxication exclusion. *See Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 355 (Iowa 1995). “A person is ‘under the influence of alcohol’ and therefore intoxicated when one or more of the following are true: (1) the person’s reason or mental ability has been affected; (2) the person’s judgment is impaired; (3) the person’s emotions are visibly excited; and (4) the person has, to any extent, lost control of bodily actions or motions.” *Id.* “[I]ntoxication is determined by focusing upon the insured’s reasoning and mental abilities, judgment, emotions and physical control. Many facts are potentially relevant, only one of which is the insured’s blood alcohol level.” *Id.*

Submission of a fraudulent claim may not prevent an insured’s recovery on the insurance policy if the violation or fraud with regard to the policy provisions did not contribute to the loss. *Am. Family Mut. Ins. Co. v. Mill*, 569 F. Supp. 2d 841, 854 (S.D. Iowa 2008). Iowa Code section 515.101 provides any condition or stipulation in an application, policy or contract of insurance making the policy void before the loss occurs shall not prevent recovery on the policy by the insured, if the plaintiff shows that the failure to observe such provisions or the violation thereof did not contribute to the loss. *Id.*

## **B. Failure to Comply with Conditions**

In addressing the burden of proof in disputes over breach of insurance policy terms, the Iowa Supreme Court has consistently required the party seeking coverage to prove compliance with the applicable policy terms. *American Guar. & Liability Ins. Co. v. Chandler*, 467 N.W.2d 226, 228-29 (Iowa 1991) (citations omitted). The claiming party may satisfy this burden in one of three ways: (1) showing substantial compliance with the policy provision; (2) showing that the failure to comply was either excused or waived; or (3) showing that the failure to comply was not prejudicial to the insurer. *Id.* (citing *Henderson v. Hawkeye Security Ins. Co.*, 106 N.W.2d 86, 92 (Iowa 1960)).

Iowa Code section 516A.1 establishes physical contact as a condition for coverage under a UM policy claim based on an accident caused by an unidentified motorist (*i.e.*, a “hit-and-run” driver). Iowa Code § 516A.1. The Iowa Supreme Court has consistently found that the physical contact requirement in section 516A.1 does not violate the Equal Protection Clauses of the Iowa and Federal constitutions. *See, e.g., Claude v. Guar. Nat’l Ins. Co.*, 679 N.W.2d 659, 665 (Iowa 2004); *Mortiz v. Farm Bureau Mut. Ins. Co.*, 434 N.W.2d 624, 627 (Iowa 1989). Consequently, as a prerequisite to advancing a UM claim based on an accident with an unidentified motorist, the insured must first establish physical contact between the insured’s vehicle and the uninsured/unknown vehicle. *Mortiz*, 434 N.W.2d at 627. Failure to establish physical contact is

grounds for denying a UIM claim even if multiple non-party witnesses testify that the uninsured/unknown vehicle was the cause of the accident. *Claude*, 679 N.W.2d at 665.

When an insurer seeks to void coverage because of an insured's failure to cooperate, as required under an insurance policy, the insurer must first demonstrate that it exercised reasonable diligence in securing the insured's cooperation. *Bradley v. West Bend Mut. Ins. Co.*, 2003 WL 22900373, at \*3-5. Additionally, the insured must show that it was prejudiced by the insured's alleged lack of cooperation before denying a third-party beneficiary's claim under the policy. *Id.*

### C. Challenging Stipulated Judgments: Consent and/or No-Action Clause

"When an insurer defends an insured, it has control over the defense and over settlement." *Kelly*, 620 N.W.2d at 643 (citing *Kooyman*, 315 N.W.2d at 32). In situations where the insured and a third party settle or enter into a stipulated judgment because the insurer refuses to defend, the insurer must plead and prove that the settlement was the result of fraud or collusion. *Red Giant Oil Co. v. Lawlor*, 528 N.W.2d 524, 535 (Iowa 1995). If either defense is proven, the settlement is invalid and unenforceable against the insurer. *Id.* In this context, the injured plaintiff has the burden to prove by a preponderance of the evidence that "(1) the underlying claim was covered by the policy, and (2) the settlement which resulted in judgment was reasonable and prudent." *Id.*

However, in situations where the insurance company breaches its duty of good faith and fair dealing to settle when faced with a fair and reasonable settlement demand that a reasonable and prudent insurer would pay, the insurer, if found to have coverage, may be liable for a settlement or stipulated judgment entered into between the insured and an injured third party. *Kelly*, 620 N.W.2d at 643.

Similarly, under Iowa law, a consent-to-be-bound provision in a UIM policy is valid "provided the insurer does not withhold or refuse its consent without a reasonable basis to do so." *Wilson v. Farm Bureau Mut. Ins. Co.*, 714 N.W.2d 250, 258 (Iowa 2006). When there is a consent-to-be-bound provision in the policy, the insured is obligated to comply with all the provisions of the policy and obtain a valid judgment against an underinsured motorist. *Id.* Thereafter, the insurer "has an implied reciprocal duty to refrain from withholding or refusing its consent to be bound by the judgment without a reasonable basis to do so." *Id.* Where an insurer challenges consent to a judgment, the insurer has the burden to show it was prejudiced "when [the] insured has not secured the insurer's consent to be bound." *Id.* at 259.

### D. Preexisting Illness or Disease Clauses

#### 1. Small Group Health Coverage

In order for a carrier or organized delivery system (which offers small group health insurance coverage) to impose a pre-existing condition exclusion, with respect to a participant or beneficiary, the following requirements must be met:

- (1) The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period ending on the enrollment date. However, genetic information shall not be treated as a condition under this subparagraph in the absence of a diagnosis of the condition related to such information.
- (2) The exclusion extends for a period of not more than twelve months, or eighteen months in the case of a late enrollee, after the enrollment date.
- (3) The period of any such pre-existing condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

*Iowa Code § 513B.10(3)(a).*

A carrier or organized delivery system shall not impose any pre-existing condition exclusions in the following ways:

- (1) In the case of a child who is adopted or placed for adoption before attaining eighteen years of age and who, as of the last day of the thirty-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This subparagraph shall not apply to coverage before the date of such adoption or placement for adoption.
- (2) In the case of an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage.
- (3) Relating to pregnancy as a pre-existing condition.

*Id.* § 513B.10(3)(b).

## 2. Long Term Care Insurance

A long-term care insurance policy or certificate shall not use a definition of preexisting condition which is more restrictive than the following:

“Preexisting condition” 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 individual.

*Id.* § 514G.103(15); *see id.* § 514G.105(2)(a).

According to the Iowa Code,

A long-term care insurance policy or certificate, other than a policy or certificate issued to a group as described in section 514G.103, subsection 9, shall not exclude coverage for a loss or confinement that is the result of a pre-existing condition under the loss or confinement begins within six months following the effective date of coverage of an insured individual.

*Id.* § 514G.105(2)(b). More importantly, the definition of “pre-existing condition” does not prohibit an insurer from:

using an application form designed to elicit the complete health history of an applicant, and on the basis of the answers on that application, underwriting in accordance with that insurer’s established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, is not required to be covered until the waiting period described in [section 514G.105(2)(b)] expires. A long-term care insurance policy or certificate shall not exclude, or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in [section 514G.105(2)(b)].

*Id.* § 514G.105(2)(d).

### **3. Individual Health Benefit Plans**

The Iowa Code also dictates the availability of coverage to individuals. Per Iowa law,

The individual basic or standard health benefit plan shall not deny, exclude or limit benefits for a covered individual for losses incurred more than twelve months following the effective date of the individual’s coverage due to a preexisting condition. A preexisting condition shall not be defined more restrictively than any of the following:

- a. A condition that would cause an ordinary prudent person to seek medical advice, diagnosis, care or treatment during the twelve months immediately preceding the effective date of coverage;

- b. A condition for which medical advice, diagnosis, care or treatment was recommended or received during the twelve months immediately preceding the effective date of coverage; or
- c. A pregnancy existing on the effective date of coverage.

*Id.* § 513C.7(2).

In addition to the foregoing, section 514A.3B has several additional requirements. Section 514A.3B requires an insurer that “accepts an individual for coverage under an individual policy or contract of accident and health insurance” to

waive any time period applicable to a preexisting condition exclusion or limitation period requirement of the policy or contract with respect to particular services in an individual health benefit plan for the period of time the individual was previously covered by qualifying previous coverage as defined in section 513C.3, by chapter 249A or 514I, or by Medicare coverage provided pursuant to Tit. XVIII of the federal Social Security Act that provided benefits with respect to such services, provided that the coverage was continuous to a date not more than sixty-three days prior to the effective date of the new policy or contract.

*Id.* § 514A.3B(1).

Section 514A.3B goes on to state,

An insurer issuing an individual policy or contract of accident and health insurance which provides coverage for children of the insured shall permit continuation of existing coverage or re-enrollment in previously existing coverage for an individual who meets the requirements of section 513B.2, subsection 14, paragraph “a”, “b”, “c”, “d”, or “e”, and who is an unmarried child of an insured or enrollee who so elects, at least through the policy anniversary date on or after the date the child marries, ceases to be a resident of this state, or attains the age of twenty-five years old, whichever occurs first, or so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education.

*Id.* § 514A.3B(2).

Furthermore, “[a] carrier shall not modify a basic or standard health benefit plan with respect to an individual or dependent through riders, endorsements, or other means to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.” *Id.* § 513C.7(3).



### E. Statutes of Limitations and Repose

The statute of limitations for an insurance coverage claim depends on whether the plaintiff asserts a cause of action based upon contract or tort theory. Actions based on a breach of written contract are subject to a ten-year limitations period. *Id.*, § 614.1(5)(a). Alternatively, personal injury actions based on a tort claim are subject to a two-year limitations period. *Id.* § 614.1(2). This two-year limitation period commences when the plaintiff discovers the injury or by reasonable diligence should have discovered it. *Nixon v. State*, 704 N.W.2d 643, 646 (Iowa 2005) (citations omitted). Similarly, actions based on a medical malpractice claim are limited to two years after the date “the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought.” *Iowa Code* § 614.1(9)(a).

Under common law, this exception to the two-year statute of limitations was referred to as the “discovery rule.” *Chrischilles v. Griswold*, 150 N.W.2d 94, 100 (Iowa 1967), *superseded by statute on other grounds as stated in Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554 (Iowa 2018). Under the common law discovery rule, knowledge of the injury was imputed when a person gained knowledge sufficient to put the person on inquiry notice, triggering a duty to investigate even though the person might not possess full knowledge or facts of the nature of the problem that caused the injury. *Langner v. Simpson*, 533 N.W.2d 511, 517 (Iowa 1995).

Iowa case law has raised the question, at least with respect to cancer, of whether the statutory language of Iowa Code section 614.1(9) has eliminated “inquiry notice” with respect to the common law discovery rule, and replaced it with the requirement that a claimant actually be diagnosed with the injury that forms the basis of the claim and have knowledge of its factual cause before the limitation commences. *See Murtha v. Calahan*, 745 N.W.2d 711, 717 (Iowa 2008) (holding that an “injury” does not occur merely upon the existence of the continuing undiagnosed condition,” but rather “occurs when ‘the problem grows into a more serious condition which poses greater danger to the patient or which requires more extensive treatment’ ” (quoting *DeBoer v. Brown*, 673 P.2d 912, 914 (Ariz. 1983)); *Rathje v. Mercy Hosp.*, 745 N.W.2d 443, 460 (Iowa 2008) (holding the limitations period under 614.1 (9) does not begin until discovery of both the injury and its factual cause); *see also Rock v. Warhank*, 757 N.W.2d 670, 676 (Iowa 2008) (holding that plaintiff could not, and should not, have known of her injury until the day of diagnosis and that common law notions of inquiry notice should not be incorporated into the statute). Iowa courts continue to cite these cases with approval. *See, e.g., Shams v. Hassan*, 905 N.W.2d 158, 163 (Iowa 2017). Accordingly, it is unclear whether, or to what extent, the elimination of inquiry notice with regard to medical malpractice claims will impact tort actions generally.

Additionally, the Iowa Supreme Court has recognized that reduced contractual limitations periods, established within an insurance policy, are enforceable if the limitations period is reasonable. *Nicodemus v. Milwaukee Mut. Ins. Co.*, 612 N.W.2d 785, 787 (Iowa 2000). Such a

contractual limitation period “must provide a reasonable period of time for filing actions to recover under the insurance contract.” *Id.* (citation omitted). Notably, in a case where the Iowa Supreme Court found a contractual limitation period to be clearly unreasonable and therefore invalid, the court adopted the standard ten-year limitations period for written contracts under Iowa Code section 614.2 as the applicable standard. *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 334-35 (Iowa 2005).

Where an insurance policy is ambiguous as to when the limitations period begins to run, the “general rule is that the contract statute of limitations commences upon the date the contract is breached.” *Hamm v. Allied Mut. Ins. Co.*, 612 N.W.2d 775, 784 (Iowa 2000) (citing *Diggan v. Cycle Sat, Inc.*, 576 N.W.2d 99, 102 (Iowa 1998)). A breach occurs when an insurer denies an insured’s request for benefits. *Hamm*, 612 N.W.2d at 784.

## VIII. TRIGGER AND ALLOCATION ISSUES FOR LONG-TAIL CLAIMS

### A. Trigger of Coverage

When coverage becomes triggered under the policy depends largely upon whether the insurance contract is to indemnify against a loss or to indemnify against a liability. *Central Nat’l Ins. Co. v. Ins. Co. of N. Am.*, 522 N.W.2d 39, 42 (Iowa 1994). Under a policy designed to indemnify against a loss, coverage is not triggered until the insured has suffered a proven loss. *Id.* For instance, the Iowa Supreme Court has recognized that a claim for UM benefits in the aftermath of a self-insurer’s insolvency would not accrue until the insolvency. *See Faeth*, 707 N.W.2d at 334-35. Under a policy designed to indemnify against a liability, the obligation of the insurer becomes fixed when the liability attaches to the insured. *Central Nat’l Ins. Co.*, 522 N.W.2d at 42 (citation omitted).

An additional consideration for liability policies is whether the policy is an “occurrence” or a “claims made” policy. Occurrence policies, the most common type of liability policies, generally provide coverage for any covered occurrence that arises during the policy period, regardless of when the claim is actually made. *Tacker v. American Family Mut. Ins. Co.*, 530 N.W.2d 674, 675-76 (Iowa 1995). Whereas, a claims made policy covers any claim, possibly including claims which occurred prior to the effective date of the policy, so long as the claim is made within the policy period. *Hasbrouck v. St. Paul Fire & Marine Ins.*, 511 N.W.2d 364, 366 (Iowa 1993). Some policies, however, limit prior acts coverage to those incidents that the insured had no knowledge of prior to the effective policy date nor that the insured had any reasonable way to foresee that the claim may be brought. *Lewis v. St. Paul Fire & Marine Ins.*, 452 N.W.2d 386, 388 (Iowa 1990). These policies also typically include a retroactive date that precludes coverage for any acts prior to that date.

When multiple policies potentially cover a loss that occurred over a period of time, courts have promulgated several theories to determine if damage occurred during a policy’s term: exposure; manifestation; discovery; actual damage; and multiple trigger. *Village of Morrisville*

*Water & Light Dept. v. USF&G*, 775 F. Supp. 718, 729-31 (D. Vt. 1991). Under the exposure rule, damage transpires when the first exposure to the loss-causing event occurs. *Id.* at 730. The manifestation rule finds an occurrence when damages become apparent to the injured party or are manifested. *Id.* Under the actual damage or injury-in-fact rule, an occurrence transpires when the property is actually harmed by the exposure, but the injury need not have been apparent at the time. *Id.* at 731. Two commonly accepted multiple-trigger theories also exist. Under the double trigger rule, damage occurs when exposure first occurs and when it is manifested or apparent. *Id.* at 730. Conversely, under the triple or continuous trigger theory, an occurrence is found upon exposure, manifestation and all points in between. *Id.* at 730-31. Iowa Courts have not ruled on this issue, but based on the language of liability policies and analysis in other cases, would likely adopt an injury-in-fact or actual damage theory for trigger of coverage issues. See *The Weitz Co., L.L.C. v. Travelers Cas. & Sur. Co.*, 266 F. Supp. 2d 984 (S.D. Iowa 2003); see also *Tacker v. Am. Family Mut. Ins. Co.*, 530 N.W.2d 674, 676 (Iowa 1995) (concluding that, pursuant to Iowa law, the time of an occurrence under a CGL policy is when the claimant sustains damage, not when the offending or damage-causing act took place). The operative language of the policy, however, would be the primary factor in making any ruling on the trigger of coverage issue by an Iowa Court.

## **B. Allocation Among Insurers**

There are three primary types of other insurance clauses: (1) those providing that in the event of other insurance, the insurer issuing the policy in question is not liable at all (usually called "escape" clauses); (2) those providing that in the event of other insurance, the coverage offered by the policy in question shall be "excess" coverage, that is, the insurer is liable only if the loss is in excess of the limits of the other policy or policies (usually called "excess" clauses); and (3) those providing that in the event of other insurance, the insurer issuing the policy in question shall be liable only for the proportion of the loss that represents the ratio between the limit of liability stated therein and the total limit of liability of all valid and collectible insurance covering the loss (usually called "pro rata" clauses). *Grinnell Mut. Reins. Co. v. Globe Am. Cas.*, 426 N.W.2d 635, 637 (Iowa 1988) (citation omitted).

The general rule in Iowa is that where one of the policies contains an "excess" coverage clause and the other contains a "pro rata" clause, effect is generally given to the excess coverage clause. *Id.* (citation omitted). Thus, the excess carrier pays only to the extent that the "pro rata" insurance policy fails to satisfy the claim. *Id.* (citations omitted).

## **IX. CONTRIBUTION ACTIONS**

Under Iowa law, contribution rights and remedies are found at Iowa Code sections 668.5 and 668.6. The basis for contribution is each person's equitable share of the overall liability, including the claimant's fault, as determined in accordance with Iowa Code section 668.3. See *Iowa Code* § 668.5(1). For contribution to be available, the tortfeasors must have common liability to the injured party. See *Rees. v. Dallas County*, 372 N.W.2d 503, 504 (Iowa 1985)

(citations omitted). Common liability, however, need not be based on the same legal theory to give rise to contribution. *See Allied Mut. Ins. Co. v. State*, 473 N.W.2d 24, 27 (Iowa 1991) (citing *Schreier v. Sonderleiter*, 420 N.W.2d 821, 824 (Iowa 1988)).

Contribution is available to a person who enters a settlement with a claimant only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable. *See* Iowa Code § 668.5(2).

Iowa Code section 668.5(3) also sets forth rules for subrogation payment restrictions.

#### A. Claim in Equity vs. Statutory

The provisions for enforcement of a contribution claim are found in Iowa Code § 668.6. Contribution may be enforced either in the original action or in a separate action. *See id.* § 668.5(1). An action for contribution must be commenced within one year after the judgment becomes final, if a judgment has been entered. *See Iowa Code* § 688.3. If a judgment has not been entered, a claim for contribution is only enforceable by satisfying one of the following two conditions:

- (1) The person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought by payment made within the period of the statute of limitations applicable to the claimant's right of action and must have commenced the action for contribution within one year after the date of that payment.
- (2) The person seeking contribution must have agreed while the action was pending to discharge the liability of the person from whom contribution is sought and within one year after the date of the agreement must have discharged that liability and commenced the action for contribution.

*Id.* § 668.5(3)(a)-(b).

Please note, however, there can be no independent cause of action for contribution without the underlying liability. *See Blair v. Werner Enters.*, 675 N.W.2d 533, 537 (Iowa 2004). In *Blair v. Werner Enterprises*, the Iowa Supreme Court upheld the district court's dismissal of a tortfeasor's claims seeking contribution through counterclaims against the plaintiffs and cross-claims against the other defendants where the plaintiffs had voluntarily dismissed the Iowa state court action to file in federal court in Texas. *See id.* at 536-37.

A petition filed under Iowa Code Chapter 668 tolls the statute of limitations against all parties "who may be assessed any percentage of fault under this chapter." However, the person must have "party" status, as defined in Iowa Code § 668.2.

## B. Elements

As noted, the elements of contribution are fact and situation dependent. The elements of a particular claim will depend on the existing facts and the tort cause of action that permits liability under those facts. When pleading contribution claims, Iowa Code section 668.5 provides a general guide regarding the required statutory procedures.

## X. DUTY TO SETTLE

When an insurer acts to defend an insured against a third party, the insurer has control over the defense and possible settlements. *Kooyman v. Farm Bureau Mut. Ins. Co.*, 315 N.W.2d 30, 32 (Iowa 1982); *see also Kelly*, 620 N.W.2d at 643. Based on the nature of the relationship, Iowa law imposes an implied covenant of good faith and fair dealing in this situation. *Kelly*, 620 N.W.2d at 643. “This covenant includes a duty to settle claims without litigation in appropriate cases.” *Kooyman*, 315 N.W.2d at 33.

“It is bad faith for an insurance company to act irresponsibly in settlement negotiations with respect to the insured’s risk in that part of the claim in excess of coverage.” *Wierck v. Grinnell Mut. Reins. Co.*, 456 N.W.2d 191, 195 (Iowa 1990). The insurer also acts in bad faith if it factors the “limited amount between an offer and the policy limits” into its consideration of settlement offers. *Id.* Rather, the insurer should ignore the policy limits and consider only whether it would, but for the policy limits, settle the case for the offered amount. *Id.* If the insurer would settle without regard to its policy limits, it is obliged to do so and pay toward the settlement up to the policy limits. *Id.* If, on the other hand, the insurer would reject the settlement offer even if the policy limits would have covered the entire claim, it is free to do so without a finding that it acted in bad faith. *Id.*

An insurer also has a duty to settle in situations where the insurer has reserved its rights to deny coverage, but the insurer’s liability for failure to settle changes.<sup>1</sup> In those situations, “where the insured may ultimately be responsible for a judgment if coverage is found not to exist, it is extremely important that the insurance company, who is controlling the defense, fulfill its contractual obligation to settle were appropriate.” *Id.* at 645. In *Kelly v. Iowa Mutual Insurance Co.*, the Iowa Supreme Court concluded,

An insurance company cannot use its erroneous belief that it has no coverage to justify a refusal to settle. At the point in time that the insurer is faced with a fair and reasonable

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<sup>1</sup> An insurer does not act in bad faith when it refuses to settle a case based on a coverage dispute. *See Kelly*, 620 N.W.2d at 644 n.5 (citing *Cay Divers, Inc.*, 812 F.2d at 871 (holding the carrier’s “refusal to consent to settlement in the face of a genuine concern over coverage does not constitute bad faith.”); *Associated Wholesale Grocers, Inc. v. Americold Corp.*, 934 P.2d 65, 90 (Kan. 1997) (holding that an insurer is not subject to excess liability where it refuses to settle a claim based on a good faith question as to coverage)).

settlement demand that a reasonable and prudent insurer would pay, the insurer must either abandon its coverage defense and pay the demand or lose its right to control the conditions of settlement. If the insurer prefers to debate coverage and, accordingly, refuses to pay the settlement demand, the insured is free to either pay the settlement demand or stipulate to the entry of judgment in the amount of the demand. The insurer, if found to have coverage, will be liable for the insured's settlement if the settlement is found to be fair and reasonable.

620 N.W.2d at 645-46 (internal citations omitted). Accordingly, the standard is “when an insurer provides a defense under a reservation of rights and rejects a fair and reasonable settlement demand that a reasonable and prudent insurer would pay, the insured is free to consummate the settlement on those terms that protect the insured from any personal exposures.” *Id.* at 646.

As a general rule, Iowa law precludes an insurer from filing a subrogation action against a tortfeasor if the insured has waived a cause of action against the tortfeasor. *See, e.g., Farm Bureau Mut. Ins. Co. v Allied Mut. Ins. Co.*, 580 N.W.2d 788, 789-90 (Iowa 1998). In this situation, the insurer may file a breach of contract action against its insured that caused the insurer to lose its subrogation rights by releasing the tortfeasor from liability. *See id.* Iowa law, however, provides an exception to this general rule when the tortfeasor has knowledge of the insurer's subrogation rights at the time of entering into the release with the insured. *See Allied Mut. Ins. Co. v. Heiken*, 675 N.W.2d 820, 830 (Iowa 2004). In this situation, an insurer's right to subrogation against the tortfeasor is not barred and, in fact, the insurer must pursue reimbursement from the tortfeasor instead of the indemnified insured. *See id.*

## XI. LH&D BENEFICIARY ISSUES

### A. Change of Beneficiary

Iowa Code section 514A.3 requires all accident and sickness policies to include a “Change of Beneficiary” provision. Specifically, section 514A.3 provides:

Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

*Iowa Code* § 514A.3(1)(I).

### B. Effect of Divorce on Beneficiary Designation

With respect to dissolution of marriage, the general rule in Iowa is that dissolution of marriage does not automatically void a beneficiary designation naming the former spouse. *See Schultz v. Schultz*, 591 N.W.2d 212, 214 (Iowa 1999) (citing *Sorensen v. Nelson*, 324 N.W.2d 477, 479 (Iowa 1984)). Rather, courts will look to the language of the dissolution decree and any stipulations or settlement agreements governing the parties' property rights to determine how the parties intended to address pre-dissolution beneficiary designations. *See Schultz*, 591 N.W.2d at 214. The court will examine these documents to determine whether the dissolution court disposed of the parties' contingent interest or whether the parties waived such interests as part of the dissolution of marriage. *See id.*

## **XII. INTERPLEADER ACTIONS**

Under Iowa law, interpleader actions are governed by the Iowa Rules of Civil Procedure, not by statute. Iowa's interpleader rules are located at Iowa Rules of Civil Procedure 1.251 through 1.257. Interpleader actions may be initiated by a plaintiff, *see* Iowa R. Civ. P. 1.251, or a defendant, *see id.* at 1.252. To protect the subject of an interpleader action, the court may enjoin all parties to the action from beginning or prosecuting any other suits regarding the subject of the interpleader until it provides further notice. *See* Iowa R. Civ. P. 1.255. This injunctive relief is available once the interpleader petition and the original notices have been filed. *See id.*

The object of an interpleader action is not to protect a party against double liability, but a double vexation with respect to one liability. *See Hoyt v. Gouge*, 125 Iowa 603, 101 N.W. 464, 464 (1904) (citations omitted). A party seeking interpleader must be a stakeholder, but that party must contest his liability to one or all claimants, and he must be exposed to claims of the same kind, debt or duty. *See Spahn & Rose Lumber Co. v. Iowa Steel & Constr. Co.*, 257 Iowa 168, 171, 131 N.W.2d 791, 793 (1964).

In interpleader proceedings, the first proposition to be established is the plaintiff's entitlement to maintain interpleader. *See C.F. Sales, Inc. v. Amfert, Inc.*, 344 N.W.2d 543, 550 (Iowa 1983) (citation omitted). Once plaintiff establishes that proposition, trial and adjudication of defendants' claims follows. *See id.* After plaintiff's right to maintain interpleader is established, the various claims, cross-claims and counterclaims of the parties to the interpleader action are either tried in equity or at law according to their nature. *See id.* at 551. With regard to the dispute to be tried at law, parties are entitled to a jury trial of issues upon proper jury demand. *See id.*

### **A. Availability of Fee Recovery**

Pursuant to Iowa Rule of Civil Procedure 1.256, "[c]osts may be taxed against the unsuccessful claimant in favor of the successful claimant and the party initiating the interpleader." Iowa R. Civ. P. 1.256. The Iowa Supreme Court instructed that it does "not think that the term costs should be given a narrow interpretation of court costs only." *See C.F. Sales*,



*Inc.*, 344 N.W.2d at 551. In *C.F. Sales*, the interpleader stored certain personal goods that were the subject of the interpleader action incurring storage cost. *See id.* Based on a broad reading of the term “costs,” the court awarded the successful interpleader its storage costs incurred during the pendency of the interpleader action.

What is less clear, however, is whether costs include attorneys’ fees. In *C.F. Sales, Inc.*, the Iowa Supreme Court applied the majority rule regarding recovery of attorneys’ fees in interpleader actions to award the interpleader its attorneys’ fees, but did not explicitly adopt the majority rule. *See id.* at 552-53. The rule the court applied is the following:

[A] party who is faced with conflicting claims to funds or property in his possession, or has reasonable doubt as to the party entitled thereto, who stand indifferent between the claimants and claims no interest in the funds or property, and who in good faith interpleads the various claimants, is entitled to an allowance for fees.

*Id.* at 552. In this analysis, the Court noted that the key question is whether the interpleader is “indifferent” to the claimants. *See id.*

#### **B. Differences in State vs. Federal**

When the Iowa Supreme Court adopted civil rules, it followed the substance of Federal Rule 22, but made some changes in structure. *Id.* at 550 (citations omitted). Accordingly, Iowa’s interpleader rules echo the broad form of interpleader adopted by the United States Supreme Court. *See id.*; *see also* Iowa R. Civ. P. 2.251, cmt.