TENNESSEE

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I. Regulatory Limits on Claims Handling

A. Timing for Responses and Determinations

Tenn. Code Ann. § 56-7-109 deals directly with the timely reimbursement of health insurance claims. Such section defines "clean claims" as those which require no further information, adjustment or alteration by the provider of the services in order to be processed and paid by the health insurer. Tenn. Code Ann. § 56-7-109(a)(1)(A). Under § 56-7-109(b)(l)(A), it is required that no later than thirty calendar days after the date that a health insurance entity receives a claim submitted on paper from a provider, a health insurance entity shall: pay the total amount of the claim if clean, pay the portion of the claim that is clean and not in dispute and notify the provider in writing why the remaining portion of the claim will not be paid, or notify the provider in writing of all reasons why the claim is not clean and will not be paid and what substantiating documentation and information is required to adjudicate the claim as clean. If the claim is received by electronic submission, the health insurance entity only has twenty-one calendar days to do one of the above. Tenn. Code Ann. § 56-7-109(b)(l)(B).

Under § 56-7-109, health insurance entities are also required to provide contracted providers with all necessary information to properly submit a claim. If the insurance company does not comply with such provisions, they are forced to pay one percent (1.0%) interest per month , which accrues from the day after the payment was due on the amount of the claim that remains unpaid. § 56-7-109(b)(4).

B. Standards for Determinations and Settlements

There are a number of acts which are prohibited by Tenn. Code Ann . § 56-8-105 relating to the standards for determinations and settlements. Included are the following:

1. Knowingly misrepresenting relevant facts or policy provisions relating to coverages at issue.

2. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies.

3. Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies.

4. Except when the prompt and good faith payment of claims is governed by more specific standards, not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear.

5. Compelling insureds or beneficiaries to a life insurance contract to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them; provided, that equal consideration shall be given to the relationship between the amount claimed and the amounts ultimately recovered through litigation or other valid legal arguments.

6. Refusing to pay claims without conducting a reasonable investigation except when denied because of an electronic submission error by the claimant.

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

8. Attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application; provided, that this subdivision (8) does not apply to settlement of, or attempts to settle, claims by third-party claimants.

9. Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured.

10. Making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made. Nothing in this subdivision (10) shall be construed to require specific coverage identification for payments made to meet urgent needs of an insured; provided , that the insured, at or before the final settlement of the claim, receives a written explanation indicating the coverage or coverages under which the payments are made.

11. Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form. Nothing contained in this subdivision (11) shall be construed as obligating any insurer to make a decision upon any claim without sufficient investigation and information to determine if the claim, or any part of the claim, is false, fraudulent, or for an excessive amount.

12. Failing, in the case of claims denials or offers of compromise settlement , to promptly provide a reasonable and accurate explanation of the basis for such actions. Nothing contained in this subdivision (12) shall be construed as obligating any insurer to make a decision upon any claim without sufficient investigation and information to determine if the claim, or any

part of the claim, is false, fraudulent, or for an excessive amount.

Further, this subdivision (12) shall not apply to denials of, or offers of compromise settlement of, third-party claims.

13. In response to a request for claims forms, failing to provide forms necessary to present claims within fifteen (15) calendar days of such a request with reasonable explanations regarding their use.

14. If the insurer owns a repairer or requires a repairer to be used, the insurer's failure to adopt and implement reasonable standards to assure that the repairs are performed in a workmanlike manner.

15.Failing to make payment of workers' compensation benefits as such payment is required by the commissioner of labor and workforce development or by title 50, chapter 6.

Tenn. Code Ann. § 56-8-105.

The Commissioner of Insurance has sole enforcement authority for such violations, which means that a private right of action does not exist under this section. See Lindsey v. Allstate Ins. Co., 34 F. Supp. 2d 636 (W.D. Tenn. 1999). However, these regulations do not wholly foreclose the application of the Tennessee Consumer Protection Act although its application has been severely limited by the Tennessee legislature's recently enacted H.B. 1189/S.B. 1912, which is codified at Tenn. Cod. Ann. § 56-8-113. This new statute limits the application of the Tennessee Consumer Protection Act against insurance companies only to those remedies available at common law, declaratory, injunctive , or equitable relief and rights to relief or sanctions allowed under Title 50 (Workers Compensation), Title 56 (Insurance). Riad v. Erie Ins . Exchange, 436 S.W.3d 256, 269 (Tenn. Ct. App. 2013); citing T.C.A. § 56-8-113.

C. State Privacy Laws, Rules, and Regulations

Under Tenn. Code Ann. § 56-11-108, all information, documents and any copies of such either obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation is to be given confidential treatment. It is not subject to subpoena and cannot be made public by the Commissioner of Insurance, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the insurer's or health maintenance organization's prior written consent, unless the Commissioner, after providing notice and opportunity to be heard to the insurer or health maintenance organization and its affiliates that would be affected, determines that the interest of the policyholders, enrollees, providers, shareholders, or the public will be served by the publication. In that event, the Commissioner may publish all or a part as he deems appropriate. See Tenn. Code Ann. § 56-11-108.

II. Principles of Contract Interpretation

A. General Rule

The interpretation of a contract is a question of law, Guiliano v. Cleo, Inc., 995 S.W.2d 88, 95 (Tenn. 1999), and the cardinal rule of contractual interpretation is that the entire agreement is considered to ascertain and give effect to the intent of the parties. Maggart v. Almany Realtors, Inc., 259 S.W.3d 700, 703-04 (Tenn. 2008). The Court will initially determine the intent of the parties by examining the plain and ordinary meaning of the written words that are contained within the four corners of the contract. Dick Broad. Co., Inc. of Tenn. v. Oak Ridge FM, Inc., 395 S.W.3d 653, 639 (Tenn. 2013). This factual inquiry is objective. Stonebridge Life Ins. Co. v. Horne, No. W201200515COAR3CV, 2012 WL 5870386, at *7 (Tenn. Ct. App. Nov. 21, 2012). Where the language is clear and unambiguous then the literal meaning of the words controls and the interpretation will be one that gives reasonable meaning to all of the provisions without neutralizing their effect. Maggart, 259 S.W.3d at 704.

B. Ambiguous Language

Only after an ambiguity in the meaning of a contract or a provision therein is found does contract interpretation becomes a question of fact. Dick Broad., 395 S.W.3d at 659. An ambiguity exists where the contract or a provision therein is susceptible to more than one reasonable interpretation and its meaning is uncertain such that it may fairly be understood in more than one way. Maggart, 259 S.W.3d at 704. A contract or a provision therein is not ambiguous merely because the parties differ as to their interpretations. Id. Moreover, the court will not use a strained construction of the contract to find an ambiguity where none exists. Id. Where an ambiguity is found a court may consider extrinsic evidence to ascertain the intent of the parties including the circumstances or conditions surrounding the execution of the contract, the situation of the parties, the subject matter of the contract, and the object or purpose of the contract. Stonebridge, 2012 WL 5870386, at *8. However, when an ambiguity is found, a court may construe its meaning against the drafter of the contract. Kiser v. Wolfe , 353 S.W.3d 741, 748 (Tenn. 2011).

III. Choice of Law

A. Lex loc rule

Tennessee follows the lex loci contractus rule for claims based on a contract. Vantage Tech., LLC v. Cross, 17 S.W.3d 637, 650 (Tenn. Ct. App. 1999). This rule presumes that the law of the jurisdiction where the contract was executed, absent a contrary intent, will govern. Id. This rule is based on the intent of the parties i.e. that the contract was executed with the intent to perform in the state of its execution. Govt Emps Ins. Co. v. Bloodworth, No. M2003-02986-COA-R10-CV, 2007 WL 1966022, at *26 (Tenn. Ct. App. Jun. 29, 2007). Tennessee will, therefore, apply the substantive law of the state in which the policy was executed where there is no enforceable choice of law clause in the contract to the contrary. Id. at *27. The purpose of this choice of law rule is that the location and jurisdiction of the risk the insurance contract covers will contribute to the terms and conditions of the policy. Id.

B. Exceptions

1. Parties to a contract can choose to be governed by the law of a state other than the state where the policy is executed or made. Solomon v. FloWarr Mgmt., Inc., 777 S.W.2d 701, 705 n.4 (Tenn. Ct. App. 1989).

2. Where the parties execute or make a contract in one state but it is agreed that the place of performance is to be in another state the law of the place of performance will govern. Id.

IV. Extracontractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

An insurance company who refuses after a loss occurs to pay the loss within sixty (60) days after a demand has been made by the holder of the policy on which the loss occurred, shall be liable to pay the holder of the policy, in addition to the loss and interest thereon, a sum not exceeding twenty-five percent (25%) on the liability for the loss; provided, that the court or jury finds that the insurer acted in bad faith. The trier of fact must also find that the actions of the insurer inflicted additional expense, loss, or injury including attorney's fees upon the insured. Tenn. Code Ann. § 56-7-105(a). However, where there is evidence that the insured made no formal demand or failed to wait for more than sixty (60) days before filing suit after the formal demand was made, the insured will not be entitled to the bad faith penalty. Hurley v. Tenn. Farmers Mut. Ins. Co., 922 S.W. 2d 887, 894 (Tenn. Ct. App. 1995).

For there to be a recovery under the "bad faith" statute, the plaintiff must be able to show that the loss was a compensable claim, and that the insured acted without justification in their denial of the claim. See generally, Tenn. Code. Ann. § 56-7-101, et. seq. This section does not make the mere refusal to pay sufficient evidence of bad faith so as to justify the added recovery; it requires that bad faith and proof of subsequent additional loss be shown; the additional liability provided attaches only in the case of bad faith on the part of the insurer. See Supreme Ruling of Fraternal Mystic Circle v. Snyder , 227 U.S. 497 (1913); Globe Indem. Co. v. Union & Planters' Bank & Trust Co., 27 F.2d 496 (6th Cir. 1928).

The Tennessee legislature has also imposed the same statutory penalty on a policy holder who brings a bad faith action. See Tenn. Code Ann. § 56-7-106. This code section entitles the insurer to a recovery of twenty-five percent of the amount of the loss claimed under the policy; provided, that such liability, within the limits prescribed, shall, in the discretion of the trier of fact trying the cause, be measured by the

additional expense, loss, or injury inflicted upon the defendant by reason of the suit.

It is not bad faith for an insurer adjusting a first party claim to delay or refuse payment of disputed benefits where there exists " substantial legal grounds that the policy does not afford coverage for the alleged loss." Nelms v. Tenn. Farmers Mut. Ins. Co., 613 S.W.2d 481 (Tenn. Ct. App. 1978). Also a finding of bad faith refusal to pay could expose an insurance company to punitive or treble damages, because Tenn. Code Ann. § 56-7-105 does not foreclose liability pursuant to the Tennessee Consumer Protection Act. Riad, 436 S.W.3d 256, 275-76 (Tenn. Ct. App. 2013).

B. Fraud

In order to maintain an action for fraudulent misrepresentation in Tennessee, a plaintiff must prove the following: (1) that the defendant made a representation of fact; (2) that the representation was false; (3) the representation related to a material fact; (4) the representation was made either knowingly, recklessly, or without belief in its truth; (5) the plaintiff acted reasonably in relying on the representation; and (6) that plaintiff suffered damage as a result of the misrepresentation. See The Judds v. Pritchard, No. 01A01-9701-CV-00030, 1997 WL 589070 (Tenn. Ct. App. Sept. 24, 1997) (citing Metro. Govt, of Nashville & Davidson Cnty. v. McKinney, 852 S.W.2d 233 (Tenn. Ct. App. 1992)).

The two key elements necessary in succeeding on a claim for fraud against the insurer are (1) misrepresentation; and (2) reasonable reliance on the misrepresentation. Holt v. Am. Progressive Life Ins. Co ., 731 S.W.2d 923, 927 (Tenn. Ct. App. 1987).

C. Intentional Infliction of Emotional Distress and/or Outrage

1. Intentional Infliction of Emotional Distress

The Tennessee Supreme Court has established three primary elements necessary to succeed on a claim for intentional infliction of emotional distress: (1) the conduct complained of must be intentional or reckless ; (2) the conduct must be so outrageous that it is not tolerated by civilized society; and (3) the conduct must result in serious mental injury to the plaintiff. Bain v. Wells, 936 S.W.2d 618, 622 (Tenn. 1997). The plaintiff is not required to prove his emotional distress through expert testimony. Miller v. Willbanks, 8 S.W.3d 607, 615 (Tenn. 1999).

2. Negligent Infliction of Emotional Distress

The Court has also established elements for negligent infliction of emotional distress. See Camper v. Minor, 915 S.W.2d 437 (Tenn. 1996). To prevail on a claim of negligent infliction of emotional distress, a plaintiff in Tennessee must:

> (1) satisfy the five elements of ordinary negligence: duty, breach of duty, injury or loss, causation in fact, and proximate or legal cause; (2) establish a serious or severe emotional injury; and (3) support his or her serious or severe injury with expert medical or scientific proof.

Marla H. v. Knox Cnty., 361 S.W.3d 518, 529 (Tenn. Ct. App. 2011) (internal citations omitted).

The court noted that, a serious or severe emotional injury is one that occurs where a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case. Id. (citing Camper, 915 S.W.2d at 446; quoting Rodrigues v. State, 52 Haw. 156 , 472 P.2d 509, 520 (1970).

D. State Consumer Protection Laws and Regulations

The Tennessee General Assembly has now passed H.B. 1189/S.B. 1912 , which is codified at Tenn. Code Ann. § 56-8-113. This new statute limits the applicability to of the Tennessee Consumer Protection Act on insurance providers. It provides:

> Notwithstanding any other law, title 50 and this title shall provide the sole and exclusive statutory remedies and sanctions applicable to an insurer, person, or entity licensed, permitted, or authorized to do business under this title for alleged breach of, or for alleged unfair or deceptive acts or practices in connection with, a contract of insurance as such term is defined in § 56-7-101(a). Nothing in this section shall be construed to eliminate or otherwise affect any:
>
> (1) Remedy, cause of action, right to relief or sanction available under common law;
>
> (2) Right to declaratory, injunctive or equitable relief, whether provided under title 29 or the Tennessee Rules of Civil Procedure; or
>
> (3) Statutory remedy, cause of action, right to relief or sanction referenced in title 50 or this title.

The import of this statute is that unless an alleged cause of action is a common law cause of action, seeks declaratory, injunctive or equitable relief, or rights to relief as sanctioned by Title 50 (Workers Compensation) and title 56 (Insurance), the Tennessee Consumer

Protection Act is inapplicable. Riad v. Erie Ins. Exchange, 436 S.W.3d 256, 269 (Tenn. Ct. App. 2013).

E. State Class Actions

Tennessee Rule of Civil Procedure 23 functions solely to pertain to class action lawsuits. This rule states:

> 23.01 Prerequisites to a Class Action.
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> One or more members of a class may sue or be sued as representative parties on behalf of all only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interest of the class.
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> 23.02. Class Actions Maintainable.
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> An action may be maintainable as a class action if the prerequisites of 23.01 are satisfied, and in addition:
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> (1) The prosecution of separate actions by or against individual members of the class would create a risk of
>
> (a) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for a party opposing the class,or
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> (b) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interest; or
>
> (2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
>
> (3) The court finds that the question of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in

the particular forum; (d) the difficulties likely to be encountered in the management of a class action.

23.05 Dismissal or Compromise

A certified class action shall not be voluntarily dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

In 1996, the Supreme Court held that "when a trial court properly exercises its discretion and certifies a lawsuit as a class action under Rule 23.02(3), the fact that one of the significant common legal issues is resolved prior to trial does not justify a decertification of the action if the common questions of law or fact that remain predominate. More importantly, if the trial court has properly exercised its discretion in certifying the class initially, modifications to that order remain the trial court's prerogative. Meighan v. U.S. Sprint Commc'ns Co., 924 S.W.2d 632, 638 (Tenn. 1996).

F. State Privacy Laws, Rules and Regulations

Section 10-7-503 of the Tennessee Code specifies records that are open to the public and not confidential. Such records include the following: all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity. Tenn. Code Ann. § 10-7-503. However, documents sealed by a Protective Order are not subject to inspection under the Public Records Act. Arnold v. City of Chattanooga, 19 S.W.3d 779 (Tenn. Ct. App. 1999).

Section 10-7-504 of the Tennessee Code specifies confidential records that are not open to the public. Tenn. Code Ann. § 10-7-504.

V. Defenses in Actions Against Insurers

A. Misrepresentations/Omissions: During Underwriting or During Claim

Tennessee statutory law addresses the issue of misrepresentations made by insurance applicants:

No written or oral misrepresentation or warranty made in the negotiations of a contract or policy of insurance, or in the application for contract or policy of insurance, by the

> insured or in the insured's behalf, shall be deemed material or defeat or void the policy or prevent its attaching, unless the misrepresentation or warranty is made with actual intent to deceive, or unless the matter represented increases the risk of loss.

Tenn. Code Ann. § 56-7-103

In interpreting Tenn. Code Ann. §56-7-103, the Courts have found that in order for an insurer to avoid coverage under a policy, the insurer must first prove that answers in the application were false and that the false answers were either given with intent to deceive or materially increased the risk of loss. Womack v. Blue Cross & Blue Shield of Tenn., 593 S.W.2d 294, 295 (Tenn. 1980). Whether a statement was a misrepresentation or made with intent to deceive are questions reserved for the trier of fact. Any issue as to whether or not a misrepresentation materially increased the risk is a question of law to be decided by the Court. Id.

Tennessee law imposes a duty upon those seeking to obtain insurance to make a fair disclosure to the insurer of all facts of risk . Collins v. Pioneer Tide Ins. Co., 629 F.2d 429, 433 (6th Cir. 1980). That duty is breached by the applicant either by providing false statements or by failing to give full information known to the prospective insurer about matters material to risk, provided the insurer has no actual knowledge. Id.

With regard to materiality of the statement, Tennessee Courts have recognized that a misrepresentation increases the risk of loss when it is of such importance that it naturally and reasonably influences the judgment of the insurer in making the contract. Sine v. Tenn. Farmers Mut. Ins. Co., 861 S.W.2d 838, 839 (Tenn. Ct. App. 1993).

B. Preexisting Illness or Disease Clauses

1. Statutes

Tennessee statutory law deals with conversion of group health insurance policies to individual policies and preexisting conditions:

> The converted policy shall not exclude a preexisting condition not excluded by the group policy. However, the converted policy may provide that any hospital, surgical or medical benefits payable under the policy may be reduced by the amount of the benefits payable under the group policy after the termination of the individual's insurance under

the group policy. The converted policy may also include provisions so that during the first policy year the benefits payable under the converted policy, together with the benefits payable under the group policy, shall not exceed those that would have been payable had the individual's insurance under the group policy remained in force and effect.

Tenn. Code Ann. § 56-7-2317.

2. Case Law

Under Tennessee law, an insurer may limit coverage in a sickness and hospitalization insurance policy against any condition originating prior to the issuance of the policy. Horace Mann Mut. Ins. Co. v. Burrow, 373 S.W.2d 469, 471 (Tenn. 1963). Such clauses are strictly construed against the insurer, and the existence of the condition must have manifested itself or been active prior to the issuance of the policy for the exclusion to apply. Id. at 472.

C. Statutes of Limitation and Repose

There is a six year statute of limitations under Tennessee law for causes of action based upon contract theories. Tenn. Code Ann. § 28-3-109. Any civil action for a claim of fraud in obtaining an insurance policy must be brought within five years of the commission of the acts constituting fraud or within five years of the time that the plaintiff discovered or through reasonable diligence should have discovered such acts, whichever is later. Tenn. Code Ann. § 56-53-107.

VI. Beneficiary Issues

A. Change of Beneficiary

The question of who is the beneficiary of the policies is governed by the contractual language of the policies themselves. See Cronbach v. Aetna Life Ins. Co., 284 S.W. 72, 73 (Tenn. 1926) (holding that the mode of changing beneficiary prescribed in the policy must be followed); see also Life & Cas. Ins. Co. of Tenn. v. Cornish, 315 S.W. 2d 6, 8 (Tenn. Ct. App. 1958) (ruling that provisions regarding change of beneficiary are part of the terms of the contract, and in order to effect a change of beneficiary, the mode prescribed in policy must be followed). A life insurance policy in which the right to name or change the beneficiary is reserved to the insured is a contract in which the insurer agrees to pay the death benefit to the beneficiary designated by the insured. See Dyke v. Dyke, 122 F.Supp. 529, 535 (E.D. Tenn. 1954). The person entitled to a policy's benefits is the person designated as the beneficiary in the insurance contract. See Travelers

Ins. Co. v. Webb, Nos. 01-A-01-9508-CH00379, 94-2051-III, 1996 WL 23491 , at *2 (Tenn. Ct. App. Jan. 24, 1996).

If an insured executes a change of beneficiary form, then it must be considered as a part of the insurance contract. See Stonebridge Life Ins. Co. v. Horne, No. W201200515COAR3CV, 2012 WL 5870386, at *5 (Tenn. Ct. App. Nov. 21, 2012) (citing D & E Const. Co., Inc. v. Robert J. Denley Co., Inc., 38 S.W.3d 513 (Tenn. 2001)). When reviewing change in benefit forms, Tennessee courts engage in common law analysis of contract interpretation. Courts pay special emphasis to the intention of the parties as reflected in the change of benefit form, and the cardinal rule is that the intention of the parties must prevail. See Allstate Ins. Co. v. Watson, 195 S.W.3d 609, 611 (Tenn. 2006).

Tennessee has long recognized the substantial compliance test for change of beneficiaries in life insurance policies. See Sun Life Assurance Co. of Canada v. Hicks, 844 S.W.2d 652, 654 (Tenn. Ct. App. 1992). Essentially, Tennessee courts will give effect to the intention of an insured by holding that the change of beneficiary has been accomplished where he has done all that he could to comply with the provisions of the policy. Cronbach v. Aetna Life Ins. Co., 284 S.W.72, 73 (Tenn. 1926). Whether an insured has done all that he could to change a beneficiary in compliance with policy requirements is necessarily a fact-specific inquiry. See Hicks, 844 S.W.2d at 654.

B. Effect of Divorce on Beneficiary Designation

The principles of contract law, not family law, govern the designation of beneficiaries of insurance or annuity policies under Tennessee law. In Bowers v. Bowers, 637 S.W.2d 456 (Tenn. 1982), the Tennessee Supreme Court addressed the split among the Tennessee state courts on whether a divorce decree surrendering property rights precludes the claim of an ex-wife who remained the named beneficiary on her former husband's insurance or annuity policy. The Court found that being a named beneficiary on an insurance policy is not a property right and does not arise out of the marital relationship. Id. at 457. Later, in Mathews v. Harris, 713 S.W.2d 311 (Tenn. 1986), the Tennessee Supreme Court held that the beneficiary designation of a former wife by name was not affected by the subsequent divorce proceedings nor by the parties' property settlement agreement waiving future claims. Id. at 312.

Tennessee appellate courts have stated that the designation of beneficiaries on life insurance policies and death benefits in annuity agreements are matters of contract between the participant and the company or organization issuing the policy of life insurance or funding the annuity agreement. See Lunsford v. Lunsford, No. M2004-00662-COA-R3 -CV, 2005 WL 2572389, at *2 (Tenn. Ct. App. Oct. 12, 2005). Tennessee

law does not distinguish between a death benefit in an annuity agreement and the death benefit in a retirement plan. Designation of beneficiaries in these contracts cannot be altered by will, by completing a survey conducted by an employer, or by marital dissolution agreement. Id. at *2.

Under Tennessee law, the designation of beneficiaries on life insurance policies and the death benefits in annuity agreements are matters of contract between the participant and the company or organization issuing the policy of life insurance or funding the annuity agreement. As such, the beneficiary may be changed only by substantially complying with the contract provisions. See Lunsford, 2005 WL 2572389, at *2. Thus, in Tennessee, a change of beneficiary must be accomplished in substantial compliance with the terms of the insurance [or annuity] contract, and the language of a will does not operate to deprive the named beneficiary of her rights to policy proceeds. See In re Estate of Williams, No. M200002434COAR3CV, 2003 WL 1961805, at *18 (Tenn. Ct. App. Apr. 28, 2003). However, parties may contract outside of the marital relationship to surrender beneficiary claims to a policy. See Lunsford, 2005 WL 2572389, at *3.

VII. Interpleader Actions

A. Availability of Fee Recovery

In both federal and state courts in Tennessee, attorneys fees are rarely awarded as a matter of right, but rather such an allowance is within the discretion of the court. See Unum Life Ins. Co. of Am. v. Kelling, 170 F.Supp.2d 792, 793 (M.D. Tenn. 2001); Inter-Southern Life Ins. Co. v. McDaniel, 19 S.W.2d 269, 272 (Tenn. 1929).

B. Differences in State vs. Federal Circuit

Attorneys fees are generally unavailable in federal court in Tennessee for insurance companies. Whether a court should allow a party who commences an interpleader action to recover his attorneys fees and costs is a matter committed to judicial discretion and is rarely awarded as a matter of course. Kelling, 170 F.Supp.2d at 793; see also W. Life Ins. Co. v. Nanney, 290 F.Supp. 687, 688 (E.D. Ten. 1968); Paul Revere Life Ins. Co. v. Riddle, 222 F.Supp. 867, 868 (E.D. Tenn. 1963).

The general rule is that a disinterested mere stakeholder plaintiff who brings a necessary interpleader action is entitled to a reasonable award of attorneys fees. Kelling, 170 F. Supp.2d at 793 (citing Mut. Life Ins. Co. v. Bondurant, 27 F.2d 464 (6th Cir. 1928); In re Creekstone Apartments Assocs., L.P., 165 B.R. 851 (Bankr. M.D. Tenn. 1994)). There are, however, exceptions to the general disinterested plaintiff rule, and courts have used their discretion to exclude insurance companies from fee recovery according to three distinct theories. Id. at 794.

First, courts have found insurance companies should not be compensated merely because conflicting claims have arisen during the normal course of business. Id. Such a cost should not be transferred to the insured. Id. at 795. Second, courts have denied insurance companies awards of attorneys fees because insurance companies, by definition, are interested stakeholders. Id. at 794. Filing the interpleader action immunizes the company from further liability under the contested policy. Id. The insurance company avoids the risk of paying the proceeds to the incorrect beneficiary and therefore avoids subjecting itself to subsequent litigation. Id. at 795. Third, courts have also exempted insurance companies from the general rule based upon the policy argument that it would be inequitable to deplete the fund that is the subject of preservation through the interpleader. Id. This policy concern is even stronger when a minor seeks to benefit from the fund. Id.

In state courts in Tennessee, allowances for attorneys fees are similarly not a matter of right, but are within the sound discretion of the court and will not be awarded absent a clear necessity which demanded the filing of the bill of interpleader. McDaniel, 19 S.W.2d at 272; see also Woodard v. Metro. Life Ins. Co., 24 S.W.2d 888, 888 (Tenn. 1930). Tennessee courts, however, generally do not punish an uninterested stakeholder from filing an interpleader action and may award a reasonable fee to be paid out of the fund. See Butler v. Fowler , 188 S.W.2d 612 (Tenn. Ct. App. 1944) (allowing an award of a reasonable attorneys fee to Metropolitan Life Insurance Company).