[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-11685
Non-Argument Calendar

D.C. Docket No. 8:14-cv-02916-SCB-JSS

ANNE MANGANO,
an individual,

Plaintiff - Counter Defendant -Appellant,

versus

JACKSON NATIONAL LIFE INSURANCE COMPANY,
a Michigan corporation,

Defendant - Counter Claimant-Appellee,

BARBARA MANGANO, et al.,

Counter Defendant.

Appeal from the United States District Court
for the Middle District of Florida

(February 5, 2018)

Before TJOFLAT and ROSENBAUM, Circuit Judges, and REEVES,[*] District Judge.

ROSENBAUM, Circuit Judge:

Appellee Jackson National Life Insurance Company had a dilemma: After her husband Norman Mangano died, Appellant Anne Mangano sought payment on Norman's life-insurance policies. But Anne[1] was not listed as a beneficiary on those policies in Jackson's records. Instead, Norman's former wife Barbara Mangano was the identified beneficiary.

At this point, Jackson had a decision to make. What, if anything, would it do to resolve this inconsistency? As things turned out, rather than taking meaningful steps to sort out the correct beneficiary, Jackson used the circumstances to stall payout for nine months. Only after Anne filed suit did Jackson eventually concede that Anne was entitled to payment.

After Jackson finally paid, mooting Anne's initial lawsuit, Anne sought payment of attorney's fees and interest accrued during the nine-month delay. The district court denied both items. We now vacate that decision and remand for further proceedings.

[*] The Honorable Danny C. Reeves, United States District Judge for the Eastern District of Kentucky, sitting by designation.

[1] This case involves three people whose last name is Mangano. To avoid confusion, we refer to each of the Manganos by her or his first name.

I.

Between 1985 and 1988, Jackson issued three life-insurance policies to Norman Mangano ("the Policies"). These Policies stated that Jackson would pay the face amount of the policy "to the designated Beneficiary upon due proof of the death of the Insured and not later than two months after receipt of such proof." Collectively, the Policies provided for the payment of $150,000 to a designated beneficiary.

At the time the Policies were issued, Norman designated his then-wife Barbara as his beneficiary, a fact reflected in Jackson's internal records. Each policy contained the same provision permitting the policyholder to change the beneficiary "by filing at the Home Office of the Company an acceptable written request," and any change was to "take effect only when recorded by the Company at its Home Office."

Norman and Barbara's marriage did not last long. They divorced on May 21, 1990, and their Judgment for Dissolution of Marriage, entered in DuPage County, Illinois, incorporated a Property Settlement Agreement. In part, it provided for Norman to have "as his sole and exclusive property," among other things, the Policies. Additionally, the Property Settlement Agreement included the following general release between Norman and Barbara:

> That the parties hereby mutually release and relinquish to each other . . . absolutely, entirely and irrevocably from

> all interest, rights, claims, title, demands and torts of any kind, which may now exist or which may hereafter attach, arising in any manner whatsoever in, because or on account of any property, real, personal or mixed, which each may now own or at anytime hereafter hold or acquire wheresoever situated, whether vested or contingent, in possession or expectancy, in remainder, revision, or otherwise, except as provided in this Agreement.

The Property Settlement Agreement also provided for Norman to obtain a new, separate life-insurance policy benefitting Barbara—by that time his ex-spouse—with a death benefit of $50,000.

Three years after Norman and Barbara's marriage ended, on May 9, 1993, Norman married Anne, the Plaintiff-Appellant in this case. Through his financial advisors, Norman sent Jackson a signed Designation of Beneficiary form dated July 6, 1993, designating Anne as his new beneficiary under the Policies. The parties dispute whether Jackson received the forms when they were originally sent, but it is undisputed that Jackson never recorded a change of beneficiary for Norman's life-insurance policies.[2] Barbara remained the designated beneficiary on Jackson's records.

[2] Although Jackson claimed not to have received the Designation of Beneficiary form changing the beneficiary to Anne, Anne's counsel stated in later correspondence with Jackson that Norman's financial advisor sent the form together in the same mailing along with an application for life insurance for Anne. Like Norman's Designation of Beneficiary form, that life-insurance application was dated July 6, 1993, and it resulted in the issuance of a policy for Anne. Jackson disputes that the documents were sent in the same mailing.

Norman passed away on May 24, 2014. Anne called to notify Jackson on June 10. As we have noted, though, at the time Anne called, Barbara remained the designated beneficiary in Jackson's system. One week after Anne called, on June 17, Jackson nonetheless mailed Anne a letter acknowledging Norman's death, explaining the process for filing a claim, and enclosing a claim form. The letter advised Anne that Barbara was the designated beneficiary on record but still instructed Anne that "[i]n order to process the claim promptly," she should return the claim form along with a "Final Certified Death Certificate." The letter also asked Anne to provide contact information for Barbara. Jackson noted in its internal system that a claim by Anne had been initiated.

On June 26, 2014, Anne's financial advisor (the same outfit that submitted Norman's Designation of Beneficiary form in 1993) sent Jackson a letter on Anne's behalf demanding payment to her under the Policies. Enclosed with the letter was a copy of the Dissolution of Marriage, Norman's signed July 6, 1993, Designation of Beneficiary, and a copy of the transmittal letter that Norman and Anne's financial advisors had sent with the original Designation of Beneficiary form. The letter advised as follows: "Please check all your files on this matter. It was the intent of the deceased to have the proceeds of these three life insurance policies go to his current spouse, not to his ex-wife."

Jackson sent Anne a response letter on June 30, 2014. That letter stated that Anne's claim had been "referred to [Jackson's] legal department, as the beneficiary information in [sic] file needs to be reviewed." Jackson cautioned in the letter that the review could "take anywhere up to 4 weeks."

Jackson then mailed Anne another letter on July 19, 2014, stating that it had not yet received the "documents necessary for consideration of the claim," and it again requested the claim form and a final certified death certificate. Anne called Jackson's claims department on July 28, 2014, to inquire about these letters. A Jackson representative advised her that the letters reminding her to submit the claim form and death certificate were simply standard correspondence that Jackson was legally required to send out every 30 days; her claim, the representative told her, was already being processed, and Anne should "ignore" the letters and their requests for the time being.

Two days later, on July 30, lawyers representing Anne wrote to Jackson demanding payment under the Policies. They pointed to the fact that Norman and Anne's financial advisors had independently confirmed that Norman had changed the beneficiary, and they identified a provision of Florida law under which an ex-spouse's designation as a beneficiary becomes void when the marriage ends.

Anne heard nothing further until August 27, 2014. That day, Jackson mailed Anne another letter that, like the July 19, 2014, letter that Jackson's representative

told Anne to "ignore," stated that Jackson had not yet received her claim form or certified death certificate.

On September 4, 2014, almost three months after Jackson first advised Anne that Barbara was listed as the beneficiary in Jackson's records, and more than two months after Anne sent Jackson a copy of the 1993 Designation of Beneficiary form, Jackson called Barbara for the first time. Jackson later reported that during their phone conversation, Barbara expressly refused to waive her legal rights to the Policies' proceeds, though Jackson did not reveal what specifically she said.

Following this conversation, Jackson mailed Barbara three separate letters on September 16, September 17, and October 25, 2014, each explaining the process for filing a claim. Before sending Barbara anything, however, Jackson sent Anne a letter dated September 15, 2014, advising that there were "adverse claims and/or a dispute regarding the Policies," and that as a result, Jackson would "be unable to make payment without the consent of all parties." The letter instructed Anne to "advise [Jackson] when the parties have resolved their dispute," but that if they could not do so "within a reasonable time, Jackson may choose to file an interpleader action, and may seek to recover [its] fees and costs for doing so from the Policy proceeds."

In response, on October 17, 2014, Anne made one final written demand on Jackson for payment of the Policies' full proceeds. Attached to the demand was a

copy—though not a certified copy—of Norman's death certificate. Jackson never responded to this demand.

Barbara, in the meantime, still had not filed a claim or submitted to Jackson any written request for the proceeds. Hearing nothing from Jackson, on October 27, 2014, Anne filed a complaint against Jackson in Florida state court to recover the Policies' proceeds.

Jackson again spoke with Barbara on the phone the very next day, October 28, though the record does not specify who called whom.[3] According to Jackson, Barbara repeated her contention that she believed she was entitled to something from Norman's life-insurance policies. But Jackson took no further steps to investigate.

Instead, Jackson waited nearly a month after Anne filed her complaint, and then on November 21, 2014, removed Anne's lawsuit to federal court. At that time, along with an answer, Jackson filed a Counterclaim for Interpleader. The Counterclaim named Barbara and Anne as defendants and claimed that Jackson risked exposure to double litigation and double liability as a result of adverse claims.

[3] The district court found that Jackson initiated the September 4 phone call but made no finding as to which party called on October 28. The record leaves it unclear. These two calls are the only correspondence between Jackson and Barbara reflected in the record.

Although the Clerk of the Court issued a summons for Barbara on November 24, Jackson did not actually serve her for another six weeks—on January 7, 2015. Under the Federal Rules of Civil Procedure, then, Barbara had until January 28 to file a response. She never did so.

Yet Jackson never sought entry of a default judgment against Barbara. Rather, on January 27—three months after Anne filed her lawsuit and seven months after Anne notified Jackson of her original claim—Jackson filed a motion seeking to deposit the Policies' proceeds with the court and to receive an order of interpleader dismissing it from the case.

On February 4, Anne responded in opposition to Jackson's motion and took the initiative herself to seek a default judgment against Barbara. Initially, the Clerk of Court issued an entry of default against Barbara on February 5, 2015. But on February 9, 2015, Jackson notified the court that Barbara had formally waived her rights to any benefits from the Policies via a written waiver dated almost two weeks earlier, on January 29, 2015, rendering the interpleader action moot. Jackson stated that it had received the waiver on February 3, 2015.

Despite these facts, it took Jackson until February 20, 2015, to even make an offer to tender payment to Anne,[4] and it took the company until March 4, 2015—

[4] By February 24, 2015 (Tuesday), counsel for Anne had provided Jackson with all information it requested in the February 20, 2015 (Friday), letter to make payment. On February 26, 2015, Jackson informed counsel for Anne that it needed Anne to execute the Directive to Pay

more than a month from Barbara's waiver—to pay Anne the full proceeds of the Policies and seek voluntary dismissal of its interpleader counterclaim. By that time, nine months had passed since Anne initially sought the proceeds.

And although Anne provided a copy of the 1993 Designation of Beneficiary form, Anne's financial advisor independently verified the legitimacy of the form, no evidence existed undermining its validity, and Barbara waived any claim to the proceeds, Jackson maintained that Anne "was not the named beneficiary on the policies." Instead, Jackson stated that Anne "was paid the policy proceeds because the Estate of Norman Mangano was the default beneficiary and she was sole heir to the Estate."[5]

Upon Jackson's motion, the district court dismissed Jackson's claim with prejudice and reserved jurisdiction to determine Anne's entitlement to attorney's fees and costs. Anne then filed an Amended Complaint on April 30, 2015, and both she and Jackson filed motions for summary judgment on the issues of attorney's fees and interest.

Trust Account form if she wanted Jackson to pay the proceeds to her counsel and not directly to her. That same day, Anne executed the required form.

[5] Jackson points to a specific provision in the Policies stating that "[i]f the interest of all designated Beneficiaries has ended, any proceeds will be payable to the estate or legal successors of the Insured." When Barbara withdrew her claim, Jackson argues, "Jackson asked Anne Mangano to provide a copy of Mr. Mangano's will, which she did. The will demonstrated that Anne Mangano was substantially the sole beneficiary of Mr. Mangano's estate. Thus, Jackson provided payment to Anne Mangano—as the sole beneficiary of Mr. Mangano's estate—not as the beneficiary under the Policies."

The district court entered summary judgment in Jackson's favor as to attorney's fees and interest but entered final judgment for Anne as to her claim for benefits under the life-insurance policies. Anne now appeals the denial of attorney's fees and interest.

II.

In a diversity case like this one, we apply federal law to procedure and state law to substantive matters. *See Horowitch v. Diamond Aircraft Indus., Inc.*, 645 F.3d 1254, 1257 (11th Cir. 2011) (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)). The district court below applied the substantive law of Illinois, where Norman originally entered into his life-insurance agreement with Jackson. On appeal, the parties do not dispute that Illinois law governs the substantive issues in this case. Anne seeks attorney's fees under Section 155 of the Illinois Insurance Code, and she seeks interest under Chapter 215, Section 5/224 (1)(*l*) of the Illinois Compiled Statutes.

III.

We review a grant of summary judgment de novo, considering the facts in the light most favorable to the non-moving party. *United States ex rel. Phalp v. Lincare Holdings, Inc.*, 857 F.3d 1148, 1153 (11th Cir. 2017).

IV.

A.

Anne first challenges the district court's determination that she is not entitled to attorney's fees.

Section 155 of the Illinois Insurance Code provides that a court "may award" an insured attorney's fees against an insurer when, among other circumstances, the insurer engages in "unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable." 215 ILCS 5/155(1). While the "may award" language renders the court's ultimate decision one of discretion, the Illinois Supreme Court has held that where, as here, facts are undisputed, whether an insurer's conduct is "vexatious and unreasonable" presents a question of law. *See Employers Ins. Of Wausau v. Ehlco Liquidating Tr.*, 708 N.E.2d 1122, 1139 (Ill. 1999) (holding that the "undisputed facts compel the legal conclusion that Wausau's refusal to defend the Wyoming suit was vexatious and unreasonable as a matter of law"). For this reason, before we may evaluate whether the district court abused its discretion in declining to award fees, we must consider whether, as a matter of law, the district court correctly applied the "vexatious and unreasonable" standard to Jackson's conduct.

We conclude that it did not. For that reason, we must vacate the award of summary judgment denying fees and remand to allow the district court to consider

whether to exercise its discretion to award fees, accounting for the fact that Jackson's delay was "vexatious and unreasonable" as a matter of law.

The Illinois legislature enacted Section 155 "to provide a remedy to an insured who encounters unnecessary difficulties when an insurer withholds policy benefits." *McGee v. State Farm Fire & Cas. Co.*, 734 N.E.2d 144, 151 (Ill. App. Ct. 2000) (citation and internal quotation marks omitted). In passing Section 155, the Illinois legislature "intended to make suits by policyholders economically feasible and to punish insurers." *Cramer v. Ins. Exch. Agency*, 675 N.E.2d 897, 901 (Ill. 1996).

Under Section 155, "vexatious" means "without reasonable or probable cause or excuse." *Norman v. Am. Nat'l Fire Ins. Co.*, 555 N.E.2d 1087, 1110 (Ill. App. Ct. 1990) (citing Black's Law Dictionary 1403 (5th ed. 1979)). An insurer's actions are neither vexatious nor unreasonable where "(1) there is a bona fide dispute concerning the scope and application of insurance coverage; (2) the insurer asserts a legitimate policy defense; (3) the claim presents a genuine legal or factual issue regarding coverage; or (4) the insurer takes a reasonable legal position on an unsettled issue of law." *TKK USA, Inc. v. Safety Nat'l Cas. Corp.*, 727 F.3d 782, 793 (7th Cir. 2013) (quoting *Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 200 F.3d 1102, 1110 (7th Cir. 2000)) (internal quotation marks omitted).

Ultimately, though, whether conduct rises to the level of "vexatious and unreasonable" under Section 155 depends on the totality of the circumstances. *Id.* (citing *Statewide Ins. Co. v. Houston Gen. Ins. Co.*, 920 N.E.2d 611, 624 (Ill. App. Ct. 2009)). Factors to consider include the insurer's attitude, whether the insured was forced to sue to recover, and whether the insured was deprived of the use of her property. *Valdovinos v. Gallant Ins. Co.*, 733 N.E.2d 886, 889 (Ill. App. Ct. 2000). "Neither the length of time, the amount of money involved, nor any other single factor taken by itself is dispositive." *Rosalind Franklin Univ. of Med. & Sci. v. Lexington Ins. Co.*, 8 N.E.3d 20, 47 (Ill. App. Ct. 2014). Rather, "it is the attitude of the defendant which must be examined." *Id.*

The district court here concluded that while Jackson "negligently failed to record the change of beneficiary form," there was "no evidence to suggest the failure was done in bad faith," and Jackson's delay was not vexatious and unreasonable because the company was investigating "the conflict between [Anne's] claim that she was the beneficiary and Barbara Mangano as being the beneficiary designated by the Policies in [Jackson's] file." As we explain below, that conclusion was incorrect as a matter of law. *See Ehlco* 708 N.E.2d at 1139.

Rather, the record here unambiguously reflects that Jackson's was an attitude of delay, deter, and defer. True, at some points, Jackson had grounds for conducting a reasonable investigation of Barbara's alleged claim. But those

grounds do not justify the nine-month delay from Anne's claim to Jackson's payment since Jackson in fact performed virtually no investigation of Anne's claim despite maintaining that it harbored bona fide doubts about the claim's legitimacy. What's more, Jackson did nearly nothing to investigate Barbara's alleged competing claim—and conducted the modest investigation it did undertake only after much delay. When we view the entirety of Jackson's actions, we see only one way to reasonably interpret Jackson's repeated and unexplained delays of the process: as a way to draw out payment as long as possible. Indeed, the record reflects that Jackson used Barbara's oral claim of entitlement—without any investigation—as an excuse to delay payout of the insurance proceeds.

For starters, the Policies promised payment "not later than two months after receipt" of "due proof of the death of the Insured." Yet even though Jackson knew that its records reflected Barbara as the beneficiary as early as June 10, 2014, it wasn't until nearly three months later that Jackson even contacted Barbara for the first time. We find this even more troubling since Jackson advised Anne in its June 30, 2014, letter that her claim was being reviewed by its legal department in a review that "can take anywhere up to 4 weeks." But four weeks later, as we have noted, Jackson still had not so much as contacted Barbara.[6] Once Jackson finally

[6] While Anne never submitted an official claim form, Jackson very clearly treated her written and oral requests for payment as a claim, even noting in its internal records that on June 10, 2014, she called "to start the [claims] process." Anne was also told by a Jackson

did contact Barbara on September 4, 2014, it declared "adverse claims and/or a dispute" even though Barbara had not yet been invited to file a claim, let alone actually done so.

Next, though Anne filed her lawsuit against Jackson on October 27, 2014, and Jackson had suggested as early as September 15 that it might file an interpleader action itself, Jackson waited another twenty-five days before it actually filed its interpleader counterclaim. And it did not serve that on Barbara for still another six weeks.

Then when Barbara failed to respond, Jackson did not seek a default judgment against her. Instead, it waited for Anne to do that.

Jackson finally did receive a claim waiver from Barbara on February 3, 2015. But conspicuously absent from the record is any information explaining why it took so long for Jackson to obtain that waiver from Barbara—or even any information about the process that resulted in the waiver more than seven months after Jackson was made aware that Barbara's claim was suspect at best.

And though Jackson had the waiver in hand, it still did not seek a default judgment. Instead, it waited until February 9 to let the district court know about the waiver, which rendered the interpleader action moot. Less explicable yet,

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representative over the phone that the company had "set up a claim" as of July 28, 2014, and was discouraged during that call from doing anything further at that time to establish a claim.

Jackson delayed for more than a month after receipt of the February 3 waiver before paying Barbara the insurance proceeds, even though no competing claim even arguably existed at that point.

Jackson's deferential treatment of Barbara's conclusory oral claim contrasts sharply with its cavalier treatment of Anne's multiple written demands, which Anne buttressed with evidence. Unlike Barbara, who made nothing more than oral assertions despite Jackson's repeated invitations to submit a written claim, Anne provided Jackson with (1) a copy of the fully executed 1993 Designation of Beneficiary form, which was signed on July 6, 1993, by Norman and his financial advisor as a witness; (2) a copy of the 1993 transmittal letter to Jackson sent by the same financial advising firm that enclosed the 1993 Designation of Beneficiary form; (3) a letter noting that an application for life insurance for Anne, dated July 6, 1993 (the same date as the Designation of Beneficiary form), was also sent in with the 1993 Designation of Beneficiary form, and that Jackson had issued a resulting policy on Anne; and (4) a copy of the 1990 Judgment for Dissolution of Marriage between Norman and Barbara, which expressly addressed the Policies and stated that Norman was to have them "as his sole and exclusive property" to the exclusion of Barbara and which identified only a separate life-insurance policy for Barbara that was to be purchased as part of the marital settlement.

And while Jackson effectively recognized the existence of Barbara's conclusory oral claim without any investigation, Jackson appears not to have even considered any of the evidence that Anne submitted that showed that she was the rightful beneficiary. Even when Jackson finally settled the proceeds demand, as we have noted, Jackson continued to insist it paid Anne the proceeds only as the sole beneficiary of Norman's estate, not as Norman's beneficiary. Yet none of Jackson's reasons for refusing to make payment to Anne stand up to scrutiny.

First, Jackson takes issue with Norman's Designation of Beneficiary form. Specifically, Jackson asserts that Norman's 1993 request was sent to Jackson's "satellite office" rather than its "Home Office," it was never signed by a Jackson recording officer upon receipt, and it was never entered into Jackson's records. Jackson also complains that Norman and Anne failed to follow up on Norman's 1993 request.

But on this record, Norman's actions reflect his substantial compliance with the Policies' terms for changing a beneficiary. And that is all that was necessary. *See Travelers Ins. Co. v. Smith*, 435 N.E.2d 1188, 1190 (Ill. App. Ct. 1982) (collecting cases standing for the proposition that an insured need only "substantially comply" with the policy's terms to change a beneficiary). Whether or not *Jackson* signed the form or entered the document into its records does not bear in any way on whether *Norman* substantially complied, and so these facts are

irrelevant. As for what the Policies required Norman to do, they stated only that an "acceptable written request" be submitted to Jackson's "Home Office." For this reason, Norman and Anne's failure to follow up is likewise beside the point, since nothing in the Policies required that.

So that leaves only Jackson's complaint that Norman sent the request to its "satellite office" instead of its "Home Office." But while Norman sent the form to the wrong Jackson office, he nonetheless sent the form to Jackson. And significantly, Jackson takes no issue with how the form was actually prepared, any aspect of the form itself, or even the legitimacy of the form. Jackson also "does not dispute that the . . . form was sent, and that changing the beneficiary may have been [Norman's intent]." These circumstances constitute sufficient compliance on Norman's part. Again, that is enough under Illinois law for Norman to have effectuated a change of beneficiary from Barbara to Anne in 1993. *See Travelers Ins. Co.*, 435 N.E.2d at 1190. Yet to this day—and without any evidence undermining the legitimacy of the 1993 form—Jackson refuses to acknowledge Anne as the designated beneficiary.

Jackson also justifies its failure to pay Anne by asserting that the district court correctly concluded a bona fide dispute existed from the beginning, which would preclude a finding of vexatiousness under Illinois law. But we have explained why the record does not support this conclusion: while Jackson had a

basis for believing a dispute to exist at some point, Barbara's unsubstantiated oral claims alone simply do not justify the nine months Jackson took to pay Anne the proceeds, since Jackson did nothing effective to actually investigate Barbara's claim. Indeed, Jackson told Anne a dispute existed before it had even launched an investigation.

If Jackson truly believed there was a dispute, it could have filed an interpleader action immediately rather than waiting five months for Anne to sue first. *See Korte Constr.*, 750 N.E.2d at 772 (rejecting insurer's contention that bona fide insurance coverage dispute existed, noting that insurer "should have raised these disputes in a declaratory judgment action . . . instead of simply denying its duty to defend, abandoning its insured, and forcing the insured to file a declaratory judgment action"). Jackson's own actions belie its contention that a bona fide dispute really existed.

Jackson likewise points to the district court's conclusion that, "[h]ad Defendant immediately paid Plaintiff the proceeds of the Policies, it reasonably believed it would expose itself to potential double liability," to justify its failure to pay Anne. But again, while a fear of double liability might have been reasonable immediately after Anne first contacted Jackson, that does not justify Jackson's three-month delay in contacting Barbara for the first time. Nor does it make all fear of double liability reasonable ever thereafter.

Once Jackson had ample evidence Norman had substantially complied in changing his beneficiary, and once it was clear Barbara was neither coming forward with any evidence to the contrary nor even filing a written claim in response to Jackson's repeated invitations for her to do so, any fear of double liability was no longer supported by the facts. If Barbara had relied on being listed as the designated beneficiary initially, perhaps Jackson might have faced liability on other grounds, such as negligence. But a court could not have found Barbara to be the rightful beneficiary under the Policies on that basis once Norman's 1993 form and Barbara's 1993 release came to light unrebutted. A fear of double liability under the Policies themselves was unreasonable from that point on. *See Indianapolis Colts v. Mayor and City Council of Baltimore*, 741 F.2d 954, 958 (7th Cir. 1984) (no reasonable fear of double liability where agreement provision released interpleader plaintiff from liability if another valid claimant emerged). And once again, had Jackson truly feared double liability, nothing prevented it from filing an interpleader action itself instead of waiting until Anne sued Jackson.

Jackson also contends that it never threatened not to pay, but merely "declined to do so until it was determined who the rightful beneficiary was under the Policies." As we have already discussed, however, that did not justify any and all delays. Nor did it justify claiming that a dispute existed before even beginning

to investigate. Had Anne been unable to file suit, she may well never have been paid.

Of course, we cannot know precisely what motivated Jackson to delay payout so persistently. But there is no doubt that the net result of the delay allowed Jackson the opportunity to gain interest on the proceeds for nine months while it dragged out resolution of Anne's claim. And if Anne had found the process too frustrating or expensive to complete, Jackson would have avoided payout altogether.

In the end Jackson has offered no explanation as to why it waited so long to investigate the questions raised by Anne's claim, let alone to pay out the Policies' proceeds once it had ample evidence at its disposal. Looking as we must at the totality of the circumstances, and based on the record as a whole, the record compels the conclusion that Jackson followed a pattern from the beginning to delay payment. As a matter of law, its conduct was vexatious and unreasonable. *See Estate of Price v. Universal Cas. Co.*, 750 N.E.2d 739, 744 (Ill. App. Ct. 2001) (finding defendant insurer's conduct was vexatious and unreasonable where record "[did] not reflect evidence in support of defendant's argument that it reasonably attempted to investigate the claim").

In short, Jackson vexatiously and unreasonably caused Anne to "encounter unnecessary difficulties," *see McGee*, 734 N.E.2d at 151, when it dragged out

payment on the Policies for nine months. The Illinois legislature has unambiguously expressed its intent to make insureds whole and not to allow insurers to unfairly benefit from their wrongdoing in such circumstances. *See Cramer*, 675 N.E.2d at 901. For these reasons, the district court incorrectly concluded that Jackson's conduct was not "vexatious and unreasonable" under Section 155. We therefore vacate the district court's judgment denying attorney's fees and remand for a determination of whether to award fees in light of this conclusion.

B.

Anne also argued before the district court that she was entitled to prejudgment interest on the Policies' proceeds. The district court rejected her argument on the grounds that "the proper beneficiary of the proceeds of the Policies was unclear, until Defendant received the signed General Release from Barbara Mangano on February 3, 2015 . . . ." Because we have explained why that is incorrect, we must decide if the district court erred in denying Anne prejudgment interest. We conclude it did.

As noted above, interest on the Policies' proceeds is governed by Chapter 215, Section 5/224 (1)(*l*) of the Illinois Compiled Statutes. On summary judgment, the parties disagreed which version of that statute applied: the one in force when the Policies were issued in 1983, or the one in force when Norman passed away in

2014. The district court determined it to be the latter based on the Illinois Court of Appeals's application of Section 5/224(1)(*l*) in *Nabor v. Occidental Life Ins. Co. of Cal.*, 396 N.E.2d 1267 (Ill. App. Ct. 1979). While *Nabor* noted in a footnote that "[n]ormally insurance policies are governed by the law in force at the time of the issuance," the district court here observed that *Nabor* actually applied the version of Section 5/224 in force at the time the policyholder died, never even mentioning the version on the books when the policy was issued.

We agree with the district court's reading of *Nabor*. *Nabor* approvingly cited an Illinois Supreme Court case holding that "the parties' rights with respect to interest were governed by statute which might be changed at any time at the pleasure of the legislature without impairing the contract or affecting any vested rights." *Nabor*, 396 N.E.2d at 1272 (citing *Fireman's Fund Ins. Co. v. W. Refrigerating Co.*, 44 N.E. 746 (Ill. 1896)). In other words, updated laws governing interest can apply to existing insurance policies.

Anne points to more recent Illinois Supreme Court case law standing for the proposition that "statutes in force at the time an insurance policy was issued are controlling." *Gen. Cas. Ins. Co. v. Lacey*, 769 N.E.2d 18, 20 (Ill. 2002) (quoting *State Farm Mut. Auto. Ins. Co. v. Smith*, 757 N.E.2d 881 (Ill. 2001)) (alteration and internal quotation marks omitted). But the cases Anne points to all address statutes governing substantive policy provisions, not how to calculate interest upon payout.

For example, *Lacey* dealt with a statute governing whether an uninsured-motorist-insurance policy may contain a clause denying payment until all other bodily-injury-liability-insurance policies have paid out to their limits. *Lacey*, 769 N.E.2d at 21. And *Smith* addressed whether an auto-insurance policy excluding certain kinds of coverage conflicted with an Illinois law requiring policies to cover the named insured and anyone else using the insured's automobile "with the express or implied permission of the insured." *Smith*, 757 N.E.2d at 883-84. But *Nabor* makes clear that Illinois courts have treated interest statutes differently, and the Illinois Supreme Court has not rejected this approach. We believe it is correct. The district court here was correct to apply the statute in force when Norman died.

The applicable version of Section 5/224 provides that interest on a life-insurance policy's proceeds "shall accrue . . . from [the insured's] date of death, . . . unless payment is made within 31 days" of the latest of three events:

> (1) the date that due proof of death is received by the company;
> (2) the date that the company receives sufficient information to determine its liability, the extent of the liability, and the appropriate payee legally entitled to the proceeds; or
> (3) the date that legal impediments to payment of proceeds that depend on the action of parties other than the company are resolved and sufficient evidence of the same is provided to the company . . . .

215 ILCS 5/224(1)(*l*) (2011). Since the statute provides that interest "shall accrue" under those conditions, it gives courts no discretion to deny interest unless

payment is made within the requisite time. *See People v. Ramirez*, 824 N.E.2d 232, 236-37 (Ill. 2005) ("It is well established that, by employing the word 'shall,' the legislature evinces a clear intent to impose a mandatory obligation.").

Because Jackson paid Anne on March 4, 2015, Anne would be entitled to interest only if any of the three events recited by the statute occurred more than thirty-one days earlier. The operative date, then, is January 30, 2015.[7]

We have no trouble concluding that Jackson received sufficient information as to its liability before January 30, 2015. By then, it long had the documents Anne sent on June 26, 2014, and Barbara's deadline to respond to the interpleader action had passed unheeded. Because no other legal impediments were dependent on third parties, the only question is whether Jackson had received "due proof" of Norman's death before January 30. We conclude it had, because Anne sent a copy of his death certificate on October 17, 2014.[8]

[7] Thirty-one days before March 4 was actually February 1, 2015. But since February 1 was a Sunday, we count instead to the first business day before that, which was Friday, January 30.

[8] We further note that Jackson bears a significant part of the blame for the fact that Anne did not send the death certificate until October, as Jackson expressly deterred Anne from sending it on an earlier occasion when she specifically inquired about it. On July 28, 2014, when Anne called Jackson about the July 19, 2014, letter advising her to send a death certificate, a Jackson representative plainly told her to "ignore" the letter for the time being since her claim was already being processed. As the representative explained Jackson's system, the letters went out regularly, irrespective of what was actually happening with a particular claim. And though Jackson sent later letters making the same requests, those letters were very similar to the July 19 one. Nothing in the record reveals that Jackson ever alerted Anne that she was to treat the requests in those form-type letters any differently than its representative told her to treat the ones in the July 19 letter.

As Anne correctly notes, neither the Policies nor Section 5/224 defines "due proof of death." Subsection (1)(j) of the statute does provide that a policy "*may* require that due proof of the death of the insured shall consist of a certified copy of the death certificate of the insured." 215 ILCS 5/224(1)(j) (emphasis added). But no provision of the Policies here actually does impose such a requirement.

Jackson points to the fact that in the letters it sent Anne on June 17, June 19, and August 27, 2014, it specifically told her she must submit a "Final Certified Death Certificate," putting her "on notice that Jackson required such information." But the question under Illinois law is whether "[t]he policy" requires a certified copy. *See* 215 ILCS 5/224(1)(j). Jackson's letters to Anne did not change the terms of the Policies themselves. Otherwise, Jackson could have used those letters to impose any new terms it wanted, regardless of what Norman had agreed to when he initially purchased his life insurance. The term Norman actually agreed to provided that Jackson "WILL PAY" the policy amount "upon due proof of the death of the Insured." "Due proof" is not defined in the Policies' provisions. To the extent the term is ambiguous, Illinois law requires that it be interpreted against Jackson. *See Bourke v. Dun & Bradstreet Corp.*, 159 F.3d 1032, 1036 (7th Cir. 1998) (citing *Dowd & Dowd, Ltd. v. Gleason*, 693 N.E.2d 358, 368 (Ill. 1998)) ("[A]ny ambiguity in the terms of a contract must be resolved against the drafter of the disputed provision.").

Jackson has never contested the authenticity of the death-certificate copy Anne provided. In fact, it paid Anne the Policies' proceeds without ever having received a certified copy; when Jackson finally paid in March of 2015, all it had even then was the copy Anne had furnished back in October. Jackson cannot now claim that that was insufficient proof of Norman's death when its own actions demonstrated otherwise.

Finally, Jackson's last reason for not paying Anne—that she failed to file a claim using the prescribed form—can fare no better. First, Anne's payment demands substantially complied with the Policies' requirements, providing the information that the prescribed form required. But more significantly, Jackson paid Anne as the sole beneficiary of Norman's estate, even though the estate itself never filed a claim of any type. As with Jackson's payment of proceeds based on the copy of the death certificate, Jackson cannot now rely on the formality that Anne submitted the required information in a form other than the one Jackson preferred.

Since it is clear Jackson paid Anne more than thirty-one days after all three of the events listed in Section 5/224, Anne is entitled under the statute to prejudgment interest.

V.

We conclude that Jackson's response to Anne's claim—one of delay, deter, and defer—was vexatious and unreasonable as a matter of law. On remand, the district court must consider whether or not she is entitled to attorney's fees in light of this circumstance. We also conclude that Jackson had due proof of Norman's death more than thirty-one days before it paid Anne. Anne is entitled to prejudgment interest under Section 5/224. We therefore vacate the district court's judgment denying fees and interest and remand for further proceedings consistent with this opinion.

VACATED and REMANDED.