

APPENDIX 1

FILED: April 23, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-2308
(5:13-cv-00210-BO)

RELIASTAR LIFE INSURANCE COMPANY

Plaintiff - Appellee

v.

JOHN B. LASCHKEWITSCH

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-2308

RELIASTAR LIFE INSURANCE COMPANY,

Plaintiff - Appellee,

v.

JOHN B. LASCHKEWITSCH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Raleigh. Terrence W. Boyle, District Judge. (5:13-cv-00210-BO)

Submitted: April 19, 2018

Decided: April 23, 2018

Before GREGORY, Chief Judge, and THACKER and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

John B. Laschkewitsch, Appellant Pro Se. Hutson Brit Smelley, MCDOWELL
HETHERINGTON LLP, Houston, Texas, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John B. Laschkewitsch appeals the district court's order denying his Fed. R. Civ. P. 60(a), (b)(4) motion. We have reviewed the record and find no reversible error. Accordingly, we grant leave to proceed in forma pauperis, deny leave to strike the pro se supplemental brief, deny the motion to dismiss the appeal in part, deny the motion for affirmative relief from judgment, and affirm for the reasons stated by the district court. *Reliastar Life Ins. Co. v. Laschkewitsch*, No. 5:13-cv-00210-BO (E.D.N.C., Oct. 12, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CV-210-BO

RELIASTAR LIFE INSURANCE COMPANY,)
)
Plaintiff,)
)
v.)
)
JOHN B. LASCHKEWITSCH,)
)
Defendant.)

ORDER

This matter is before the Court on defendant's motion for relief from judgment pursuant to Rules 60(a) and 60(b)(4) of the Federal Rules of Civil Procedure. Plaintiff has responded, defendant has replied, and the matter is ripe for ruling. For the reasons that follow, defendant's motion is denied.

BACKGROUND

For purposes of this motion the Court will review only the pertinent procedural background of this matter. On May 28, 2014, the Court entered judgment in plaintiff's favor after granting plaintiff's motion for summary judgment and denying defendant's motion for summary judgment. On September 25, 2014, the Court denied defendant's motion to alter or amend the judgment. By opinion entered March 11, 2015, the court of appeals affirmed this court's judgment. *ReliaStar Life Ins. Co. v. Laschkewitsch*, 597 F. App'x 159 (4th Cir. 2015). On December 7, 2015, the United States Supreme Court denied defendant's petition for writ of certiorari, 136 S. Ct. 593 (2015), and on February 29, 2016, the Supreme Court denied defendant's petition for rehearing. 136 S. Ct. 1251 (2016).

On July 3, 2017, defendant, proceeding in this matter *pro se*, filed the instant motion. Defendant seeks relief from judgment for oversight, omissions, and want of jurisdiction. Defendant contends that this Court lacked subject matter jurisdiction to consider plaintiff's claims and that his Rule 60 motion demonstrates his meritorious defenses to plaintiff's claims.

DISCUSSION

Fed. R. Civ. P. 60(a) provides that a court may correct clerical mistakes or mistakes arising from oversight or omission. *See also Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958) ("It is axiomatic that courts have the power and the duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake."). Rule 60(a) is not limited to correction of typographical and clerical errors, and it may also be relied upon to resolve an ambiguity in a prior order or in making corrections that are consistent with the court's intention. *Sartin v. McNair Law Firm PA*, 756 F.3d 259, 266 (4th Cir. 2014) (listing cases). Thus, "the scope of a court's authority under Rule 60(a) to make corrections to an order or judgment is circumscribed by the court's intent when it issued the order or judgment." *Id.*

Defendant has failed to identify any clerical mistake or correction necessary to conform the judgment to the Court's intent. Defendant's request for relief under Rule 60(a) is therefore denied.

Fed. R. Civ. P. 60(b)(4) provides for relief from final judgment where the judgment is void. "An order is 'void' for purposes of Rule 60(b)(4) only if the court rendering the decision lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process of law."

Wendt v. Leonard, 431 F.3d 410, 412 (4th Cir. 2005). Where, as here, a judgment is challenged as void on the basis of the absence of subject matter jurisdiction, the jurisdictional error must be deemed egregious before the judgment will be treated as void, and it must be demonstrated that there was a “total want of jurisdiction’ and no arguable basis on which [the court] could have rested a finding that it had jurisdiction.” *Id.* at 413 (quoting *Nemaizer v. Baker*, 793 F. 2d 58, 65 (2nd Cir. 1986)).

Defendant challenges plaintiff’s standing to have brought this action. Federal courts may consider only cases or controversies, and “the doctrine of standing has always been an essential component” of the case or controversy requirement. *Marshall v. Meadows*, 105 F.3d 904, 906 (4th Cir. 1997) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). To demonstrate standing, plaintiffs must establish that they have suffered an injury in fact that is concrete and particularized, that the injury is fairly traceable to the challenged action of the defendant, and that the injury is likely to be redressed by a favorable decision from the Court. *Chambers Med. Techs. of S.C., Inc. v. Bryant*, 52 F.3d 1252, 1265 (4th Cir. 1995) (citing *Lujan*, 504 U.S. at 555). “The standing doctrine [] depends not upon the merits, but on whether the plaintiff is the proper party to bring the suit.” *White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 460-61 (4th Cir. 2005) (citations and quotations omitted).


Defendant has plainly failed to demonstrate that there was no arguable basis for this Court to determine that it had subject matter jurisdiction over this action. First, defendant agreed that the Court had subject matter jurisdiction. [DE 12]. Moreover, plaintiff’s suit was based on a concrete and particularized injury in fact, namely its issuance of a life insurance policy based on what would be determined to be a fraudulent application as well as questions concerning the propriety of the death benefit owed on the death of the insured. The injury to plaintiff was fairly

traceable to defendant as defendant made fraudulent statements and material misrepresentations or omissions when applying for the policy, and the injury was redressed by an order of this Court declaring the rights of the parties to the policy proceeds and that defendant breached his agent contract and committed fraud.

CONCLUSION

At bottom, defendant seeks an opportunity to re-litigate this action through the filing of a motion pursuant to Rule 60. Defendant has failed, however, to come forward with any basis which would support correcting or granting relief from the judgment in this matter and his motion [DE 180] is DENIED. Defendant's motion to seal his brother's medical records submitted in support of his motion [DE 183] is ALLOWED.

SO ORDERED, this the 16 day of October, 2017.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

APPENDIX 3

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U.S. CONSTITUTION, U.S CODES, RULES AND STATUTES

United States Constitution, Article III, § 2, Clause 1

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

United States Constitution, Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 United States Code § 1920

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

Federal Rule of Civil Procedure 6(b)

(b) **EXTENDING TIME.** (1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or (B) on motion made after the time has expired if the party failed to act because of excusable neglect. (2) Exceptions. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

Federal Rule of Civil Procedure 9(b)

(b) **FRAUD OR MISTAKE; CONDITIONS OF MIND.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

Federal Rule of Civil Procedure 9(g)

(g) **SPECIAL DAMAGES.** If an item of special damage is claimed, it must be specifically stated.

Federal Rule of Civil Procedure 54(d)(2)(B)(i-iii)

(d) COSTS; ATTORNEY'S FEES.

(1) Costs Other Than Attorney's Fees. Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

(2) Attorney's Fees.

(A) Claim to Be by Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) Timing and Contents of the Motion. Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it.

Federal Rule of Civil Procedure 54(d)(2)(D)

(D) Special Procedures by Local Rule; Reference to a Master or a Magistrate Judge. By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1), and may refer a motion for attorney's fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.

N.C. Gen. Stat. §1-52(1)

§ 1-52. Three years. Within three years an action –

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).

N.C. Gen. Stat. §1-52(9)

(9) For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

N.C. Gen. Stat. § 58-3-1. State law governs insurance contracts.

All contracts of insurance on property, lives, or interests in this State shall be deemed to be made therein, and all contracts of insurance the applications for which are taken within the State shall be deemed to have been made within this State and are subject to the laws thereof. (1899, c. 54, s. 2; 1901, c. 705, s. 1; Rev., s. 4806; C.S., s. 6287.)

N.C. Gen. Stat. § 58-38-40. Construction

(a) The provisions of this Article will not operate to relieve any insurer from any provision of law regulating the contents or provisions of insurance policies or contracts nor operate to reduce an insured's or beneficiary's rights or protection granted under any statute or provision of law.

(b) The provisions of this Article shall not be construed to mandate, require, or allow alteration of the legal effect of any provision of any insurance policy or contract.

(c) In any action brought by a policyholder or claimant arising out of a policy approved pursuant to this Article, the policyholder or claimant may base such an action on either or both (i) the substantive language prescribed by such other statute or provision of law or (ii) the wording of the approved policy. (1979, c. 755, s. 1.)

N.C. Gen. Stat. § 58-58-22(2). Individual policy standard provisions.

No policy of individual life insurance shall be delivered in this State unless it contains in substance the following provisions, or provisions that in the Commissioner's opinion are more favorable to the person insured:

(2) Incontestability. - A provision that the validity of the policy shall not be contested, except for nonpayment of premium, once it has been in force for two years after its date of issue.

N.C. Gen. Stat. §58-63-15(11). Unfair Claim Settlement Practices.

- a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- d. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- e. Failing to affirm or deny coverage of claims within a reasonable time after proof-of-loss statements have been completed;
- f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- g. Compelling [the] insured 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 insured;
- h. Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled;

- i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured;
- j. Making claims payments to insureds or beneficiaries not accompanied by [a] statement setting forth the coverage under which the payments are being made;
- k. 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;
- l. Delaying the investigation or payment of claims by requiring an insured claimant, or the physician, of [or] 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;
- m. 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; and
- n. 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.

N.C. Gen. Stat. §75-1.1. Methods of competition, acts and practices regulated; legislative policy.

(a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(b) For purposes of this section, "commerce" includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.

§ 75-16. Civil action by person injured; treble damages.

If any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict. (1913, c. 41, s. 14; C.S., s. 2574; 1969, c. 833; 1977, c. 707.)

Eastern District North Carolina Local Rule 54.1(a)(3). Application for Costs

All applications for costs must be made 14 days after the entry of judgment. Objections to applications for costs must be filed within 14 days after service of the application for costs.

(a) Filing Bill of Costs.

- (1) A prevailing party may request the clerk to tax allowable costs, other than attorney's fees, in a civil action as part of a judgment or decree by filing a bill of costs
- (2) The original bill of costs shall be filed with the clerk, with copies served on adverse parties.
- (3) The failure of a prevailing party to timely file a bill of costs shall constitute a waiver of any claim for costs.

**Additional material
from this filing is
available in the
Clerk's Office.**