

APPENDIX 1

FILED: June 4, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-2309
(5:15-cv-00021-D)

JOHN LASCHKEWITSCH

Plaintiff - Appellant

v.

AMERICAN NATIONAL LIFE INSURANCE COMPANY

Defendant - Appellee

JUDGMENT

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UNPUBLISHED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. 17-2309

JOHN LASCHKEWITSCH,

Plaintiff - Appellant,

v.

AMERICAN NATIONAL LIFE INSURANCE COMPANY,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever, III, Chief District Judge. (5:15-cv-00021-D)

Submitted: May 31, 2018

Decided: June 4, 2018

Before KING and WYNN, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

John B. Laschkewitsch, Appellant Pro Se. Joseph Ray Pope, WILLIAMS MULLEN, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John B. Laschkewitsch appeals the district court's orders awarding summary judgment and attorney's fees to American National Life Insurance Company. We have reviewed the record and find no reversible error. Accordingly, we grant leave to proceed in forma pauperis and affirm for the reasons stated by the district court. *Laschkewitsch v. Am. Nat'l Life Ins. Co.*, No. 5:15-cv-00021-D (E.D.N.C. Aug. 5, 2016 & July 27, 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. 5:15-CV-21-D

JOHN LASCHKEWITSCH,)
)
Plaintiff,)
)
v.) **ORDER**
)
)
AMERICAN NATIONAL LIFE)
INSURANCE COMPANY,)
)
Defendant.)

John Laschkewitsch (“Laschkewitsch” or “plaintiff”) is a familiar litigant. See, e.g., Laschkewitsch v. Legal & Gen. Am., Inc., 247 F. Supp. 3d 710, 715–16 (E.D.N.C. 2017). On August 5, 2016, the court granted summary judgment to defendant American National Life Insurance Company (“ANICO”) on Laschkewitsch’s claims and ANICO’s counterclaims, denied Laschkewitsch’s motion for summary judgment, and entered judgment in ANICO’s favor. See [D.E. 42, 43]. On July 27, 2017, the court awarded ANICO \$115,861.41 in attorneys’ fees and \$3,345.72 in damages, and entered judgment. See [D.E. 55, 56]. On August 24, 2017, Laschkewitsch moved for relief from judgment under Federal Rules of Civil Procedure 60(a) and 60(b)(4) [D.E. 57]. ANICO responded in opposition [D.E. 62], and Laschkewitsch replied [D.E. 65]. As explained below, the court denies Laschkewitsch’s motion.

Under Rule 60(a), “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Fed. R. Civ. P. 60(a). Laschkewitsch’s arguments concerning a perceived “mistake arising from oversight or omission” parrot contentions this court rejected when granting summary judgment for

ANICO. The court has reviewed the motion under the governing standard. See Sartin v. McNair Law Firm PA, 756 F.3d 259, 264–66 (4th Cir. 2014); Rhodes v. Hartford Fire Ins. Co., 548 F. App'x 857, 859–61 (4th Cir. 2013) (per curiam) (unpublished); Kosnoski v. Howley, 33 F.3d 376, 379 (4th Cir. 1994). The motion lacks merit and is denied.

Rule 60(b)(4) authorizes the court to “relieve a party or its legal representative from a final judgment” when “the judgment is void.” Fed. R. Civ. P. 60(b)(4). According to Laschkewitsch, the judgment entered against him is void because the court lacks subject-matter jurisdiction. The court has reviewed the motion under the governing legal standard. See Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC, 859 F.3d 295, 302 n.3 (4th Cir. 2017); Wendt v. Leonard, 431 F.3d 410, 412–13 (4th Cir. 2005); Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 817 (4th Cir. 2004); Schwartz v. United States, 976 F.2d 213, 217 (4th Cir. 1992). The motion lacks merit and is denied.

Finally, to the extent Laschkewitsch seeks relief from the judgment of July 27, 2017, under Rule 59(e),¹ the motion does not meet the governing legal standard under Rule 59(e). See Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc., 674 F.3d 369, 378 (4th Cir. 2012); Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007); Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998); Hutchinson v. Staton, 994 F.2d 1076, 1081–82 (4th Cir. 1993). Thus, the motion is denied.

In sum, the court DENIES Laschkewitsch’s motion for relief from judgment [D.E. 57]. The court GRANTS Laschkewitsch’s motion to seal [D.E. 61].

SO ORDERED. This 11 day of October 2017.

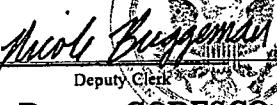
I certify the foregoing to be a true and correct

copy of the original.

Peter A. Moore, Jr., Clerk

United States District Court

Eastern District of North Carolina

By: 

Deputy Clerk


JAMES C. DEVER III

Chief United States District Judge

¹ See Dove v. CODESCO, 569 F.2d 807, 809 (4th Cir. 1978).

APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-CV-21-D

JOHN LASCHKEWITSCH,)
)
Plaintiff,)
)
v.)
)
AMERICAN NATIONAL LIFE)
INSURANCE COMPANY,)
)
Defendant.)

ORDER

On August 5, 2016, this court granted summary judgment to defendant American National Life Insurance Company (“ANICO”) on plaintiff John Laschkewitsch’s (“Laschkewitsch”) claims and ANICO’s counterclaims, and denied Laschkewitsch’s motion for summary judgment. See [D.E. 42]. On August 26, 2016, this court entered a scheduling order directing ANICO to submit “a summary of claimed damages, attorneys’ fees and costs, . . . with a statement of position on whether an evidentiary hearing is required.” [D.E. 45]. On September 16, 2016, ANICO submitted its summary but did not comment on the necessity of an evidentiary hearing. See [D.E. 49]. On October 7, 2016, Laschkewitsch responded in opposition and requested a telephone hearing. See [D.E. 51] 10.

ANICO seeks \$121,173.96 in attorneys’ fees for defending against Laschkewitsch’s claims, defending against Laschkewitsch’s frivolous motions, and prosecuting its counterclaims. For damages, ANICO seeks \$1,115.24 in compensatory damages, trebled to \$3,345.72 under North Carolina’s Unfair and Deceptive Trade Practices Act (“UDTPA”). As explained below, the court in part and denies in part ANICO’s request for attorneys’ fees and grants ANICO’s request for damages.

I.

ANICO seeks attorneys' fees under four theories: (1) N.C. Gen. Stat. § 6-21.5; (2) N.C. Gen. Stat. § 75-16.1; (3) Tex. Civ. Prac. & Rem. Code § 38.001(8); and (4) Fed. R. Civ. P. 11(c)(2). ANICO's entitlement to attorneys' fees turns on two inquiries: (1) whether the cited source authorizes an award of attorneys' fees; and, if so, (2) whether the fees requested are reasonable.

A.

Under North Carolina law, "a successful litigant may not recover attorneys' fees, whether as costs or as an item of damages, unless such a recovery is expressly authorized by statute." Silicon Knights, Inc. v. Epic Games, Inc., 917 F. Supp. 2d 503, 516 (E.D.N.C. 2012) (quotation omitted), aff'd, 551 F. App'x. 646 (4th Cir. 2014) (per curiam) (unpublished); see Stillwell Enters., Inc. v. Interstate Equip. Co., 300 N.C. 286, 289, 266 S.E.2d 812, 814 (1980). N.C. Gen. Stat. Section 6-21.5 states:

In any civil action, special proceeding, or estate or trust proceeding, the court, upon motion of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading. The filing of a general denial or the granting of any preliminary motion, such as a motion for judgment on the pleadings pursuant to G.S. 1A-1, Rule 12, a motion to dismiss pursuant to G.S. 1A-1, Rule 12(b)(6), a motion for a directed verdict pursuant to G.S. 1A-1, Rule 50, or a motion for summary judgment pursuant to G.S. 1A-1, Rule 56, is not in itself a sufficient reason for the court to award attorney's fees, but may be evidence to support the court's decision to make such an award. A party who advances a claim or defense supported by a good faith argument for an extension, modification, or reversal of law may not be required under this section to pay attorney's fees. The court shall make findings of fact and conclusions of law to support its award of attorney's fees under this section.

Section 6-21.5 aims "to discourage frivolous legal action." McLennan v. C.K. Josey, Jr., 785 S.E.2d 144, 148 (N.C. Ct. App. 2016). Whether to award attorneys' fees under section 6-21.5 rests in the

trial court's discretion. See id. at 147; Persis Nova Constr., Inc. v. Edwards, 195 N.C. App. 55, 66, 671 S.E.2d 23, 30 (2009).

To award attorneys' fees under section 6-21.5 requires two findings: that the party seeking fees is a "prevailing party" and that "there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading." A "prevailing party" is one "who prevails on a claim or issue in an action, not a party who prevails in the action." Persis Nova Constr., Inc., 195 N.C. App. at 67, 671 S.E.2d at 30 (emphasis omitted). Having received summary judgment on all of Laschkewitsch's claims and all of its counterclaims, ANICO is a "prevailing party." See REO Props. Corp. v. Smith, 227 N.C. App. 298, 306, 743 S.E.2d 230, 235 (2013); Persis Nova Constr., Inc., 195 N.C. App. at 66-67, 671 S.E.2d at 29-30.

As for the complete lack of a justiciable issue, a justiciable issue is "an issue that is real and present as opposed to imagined or fanciful." Sunamerica Fin. Corp. v. Bonham, 328 N.C. 254, 257, 400 S.E.2d 435, 437 (1991) (quotation omitted). To find "a complete absence" of a justiciable issue, "it must conclusively appear that such issues are absent even giving the pleadings the indulgent treatment they receive on motions for summary judgment or to dismiss." Id. For a defendant to recover attorneys' fees under section 6-21.5,

a plaintiff must either: (1) reasonably have been aware, at the time the complaint was filed, that the pleading contained no justiciable issue; or (2) be found to have persisted in litigating the case after the point where [he] should reasonably have become aware that pleading [he] filed no longer contained a justiciable issue.

McLennan, 785 S.E.2d at 148 (quotations omitted) (alterations in original); see Credigy Receivables, Inc. v. Whittington, 202 N.C. App. 646, 655, 689 S.E.2d 889, 895 (2010). In making this determination, a court must review "all relevant pleadings and documents to determine whether

attorneys' fees should be awarded." Lincoln v. Bueche, 166 N.C. App. 150, 153, 601 S.E.2d 237, 241 (2004).

ANICO cites Laschkewitsch v. Lincoln Life & Annuity Distributors, Inc., 47 F. Supp. 3d 327 (E.D.N.C. 2014), and Reliastar Life Insurance Company v. Laschkewitsch, No. 5:13-CV-210-BO, 2014 WL 2211033, at *1 (E.D.N.C. May 28, 2014) (unpublished), and argues that Laschkewitsch should reasonably have been aware when he filed his complaint that it contained no justiciable issues of law or fact. In the two cited cases, the court ruled against Laschkewitsch on his claims or counterclaims and concluded that Laschkewitsch defrauded the defendants by applying for insurance for his ALS-afflicted brother using false information. The court issued those rulings in 2014, before Laschkewitsch filed this action against ANICO, and Laschkewitsch bases this action on the same fraudulent scheme at issue in Lincoln Life and Reliastar. Laschkewitsch's claims in this case essentially mirror those asserted in his previous, unsuccessful lawsuits. Thus, according to ANICO, Laschkewitsch's claims failed to raise a justiciable issue of either law or fact from the outset, and Laschkewitsch was reasonably aware of that fact. The court agrees.

When this court granted ANICO's motion for summary judgment, it held that collateral estoppel barred Laschkewitsch from relitigating material facts decided in Lincoln Life and Reliastar. See [D.E. 42]. By granting summary judgment on this basis, the court concluded that the holdings in Lincoln Life and Reliastar foreclosed Laschkewitsch's claims against ANICO. Essentially, the court held that from the outset of this case, Laschkewitsch's claims raised no "real and present" issues. Given that Laschkewitsch was a losing party in Lincoln Life and Reliastar, he should reasonably have been aware that his complaint against ANICO contained only "imagined or fanciful" issues.

Alternatively, even if Laschkewitsch should not reasonably have been aware that his claims lacked a justiciable issue of law or fact when he filed his complaint against ANICO, Laschkewitsch should reasonably have become aware of that fact at several different points in the litigation. First, when ANICO filed its motion for summary judgment and supporting memorandum, Laschkewitsch had to know that his complaint against ANICO contained only imagined or fanciful issues. ANICO's briefing exhaustively addressed not just collateral estoppel but also correctly explained why Laschkewitsch's claims also failed on the merits. In doing so, ANICO relied on evidence that foreclosed any reasonable expectation of recovery by Laschkewitsch and highlighted a lack of credible evidence concerning the validity of Laschkewitsch's claims. See Sunamerica Fin. Corp., 328 N.C. at 259, 400 S.E.2d at 439 (stating that "action by the losing party which perpetuated litigation in the face of events substantially establishing that the pleadings no longer presented a justiciable controversy may also serve as evidence for purposes of 6-21.5"); GE Betz, Inc. v. Conrad, 231 N.C. App. 214, 243, 752 S.E.2d 634, 655 (2013) (stating that a party "should reasonably have become aware" that his pleading no longer contained a justiciable issue under section 6-21.5 if he lacked "credible evidence implicating [the defendant]" in the alleged wrongdoing). At that time, Laschkewitsch should reasonably have known that his claims against ANICO lacked a justiciable issue.

A losing party also must have persisted after the point when he reasonably should have been aware that his pleading lacked a justiciable issue. A party "persists" in litigating the action in such a manner when he takes "further affirmative action in regard to the lawsuit between the time" he was put on notice of the nonjusticiable nature of his claims and when the court ultimately disposes of the claims. Bryson v. Sullivan, 330 N.C. 644, 665, 412 S.E.2d 327, 338 (1992). Laschkewitsch opposed ANICO's motion for summary judgment and later moved for summary judgment on his own

baseless claims. Thus, Laschkewitsch persisted in litigating his case after the point where he should reasonably have become aware that his claims no longer presented a justiciable issue. See Sunamerica Fin. Corp., 328 N.C. at 258, 400 S.E.2d at 438 (concluding that a plaintiff “persisted” by opposing the defendant’s motion for summary judgment).

Having determined that ANICO can recover attorneys’ fees under section 6-21.5, the court analyzes the extent of ANICO’s recovery. ANICO argues it should recover the total amount of fees incurred in defending against Laschkewitsch’s claims, defending against Laschkewitsch’s “meritless motions,” and prosecuting its compulsory counterclaims. [D.E. 49] 6.

ANICO can recover its total cost of defending against Laschkewitsch’s claims. See Brooks v. Giese, 334 N.C. 303, 308 n.2, 432 S.E.2d 339, 341 n.2 (1993); In re Williamson, 91 N.C. App. 668, 684, 373 S.E.2d 317, 326 (1988). Section 6-21.5 provides for fees from “the losing party in any pleading,” thus ANICO can recover fees incurred defending against Laschkewitsch’s many frivolous motions and in prosecuting its compulsory counterclaims (other than its claim for breach of contract, as explained below). Dragged into court to defend against claims that lack a justiciable issue of either fact or law, ANICO’s fees incurred in litigating its compulsory counterclaims and defending against Laschkewitsch’s motions are directly traceable to Laschkewitsch’s frivolous legal action. By referencing “the losing party in any pleading,” section 6-21.5 contemplates the possibility of a counterclaim plaintiff recovering fees from a counterclaim defendant. See N.C. Gen. Stat. § 6-21.5; see also id. (stating that “[a] party who advances a claim or defense supported by a good faith argument for an extension, modification, or reversal of law may not be required under this section to pay attorney’s fees” (emphasis added)).¹

¹ Because the court awards attorneys’ fees to ANICO under section 6-21.5, the court does not address ANICO’s alternative arguments in support of a fee award under N.C. Gen. Stat. § 75-16.1 and Rule 11(c)(2) of the Federal Rules of Civil Procedure.

ANICO cannot recover fees incurred prosecuting its counterclaim for breach of contract based on the agent agreement between ANICO and Laschkewitsch. That agreement required Laschkewitsch to comply with ANICO's rules and regulations concerning underwriting practices, acceptance of risks, policy delivery, and all other areas of conduct of ANICO's business. [D.E. 26-6]

2. Texas law governs the "execution and performance" of the agent agreement. Id. at 6. Under Texas law, attorneys' fees are recoverable in a suit only if they are authorized by contract or statute. Tucker v. Thomas, 419 S.W.3d 292, 295 (Tex. 2013).

ANICO relies on a provision of the Texas Civil Practice and Remedies Code which provides that "[a] person may recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for . . . an oral or written contract." Tex. Civ. Prac. & Rem. Code § 38.001(8). To recover attorneys' fees under this section, a party must (1) prevail on the underlying claim and (2) recover damages. See In re Nalle Plastics Family Ltd. P'ship, 406 S.W.3d 168, 172–73 (Tex. 2013). Thus, even if a party prevails on its claim for breach of contract, it cannot recover fees if it was not actually awarded damages on that claim. See Mustang Pipeline Co. v. Driver Pipeline Co., 134 S.W.3d 195, 201 (Tex. 2004); Green Int'l, Inc. v. Solis, 951 S.W.2d 384, 390 (Tex. 1997).

ANICO alleges that Laschkewitsch's breach of the agent agreement caused ANICO damages in the amount of the commission ANICO paid Laschkewitsch when he obtained the policy for his brother. See [D.E. 49] 8 (citing [D.E. 26-3] ¶¶ 5, 7, 10, 13). But ANICO does not actually seek to recover the commission as damages for its breach-of-contract claim. Instead, ANICO seeks return of the commission as damages for its UDTPA claim only. See id. at 10. Because ANICO does not ask to recover damages for its breach-of-contract claim, it will not be awarded damages for that claim. Thus, ANICO cannot recover attorneys' fees under Tex. Civ. Prac. & Rem. Code

§ 38.001(8).

The court concludes that \$2,633.00 is a reasonable estimate of the fees incurred in prosecuting this counterclaim. Thus, the court deducts that amount from ANICO's requested attorneys' fees.

B.

Having awarded ANICO attorneys' fees, the court addresses whether the fees requested are reasonable. In support of its fee request, ANICO submitted the affidavit of Gilbert C. Laite, III. See Laite Aff. [D.E. 49-1]. Laite is a partner at Williams Mullen, counsel for ANICO in this case. Id. ¶2. Sitting in diversity and having granted attorneys' fees under a North Carolina statute, the court applies North Carolina law to determine the reasonableness of the fee request. See Peter Farrell Supercars, Inc. v. Monsen, 82 F. App'x 293, 300 (4th Cir. 2003) (per curiam) (unpublished); Koontz v. Wells Fargo N.A., No. 2:10-CV-00864, 2013 WL 1337260, at *2–3 (S.D. W. Va. Mar. 29, 2013) (unpublished); Silverdeer St. John Equity Partners I LLC v. Kopelman, No. 5:11-CV-00095-JG, 2012 WL 5879752, at *1 (E.D.N.C. Nov. 21, 2012) (unpublished).

Under North Carolina law, a court examines several factors to determine whether the requested attorneys' fees are reasonable: (1) the time and labor expended; (2) the skill required; (3) the customary fee for similar work in the locality; (4) the opportunity costs to the attorney in terms of precluding other employment by the attorney; (5) the experience, reputation, and ability of the attorney; (6) the novelty and difficulty of the questions of law; (7) the adequacy of representation in terms of the amount involved and the results obtained; and (8) the difficulty of the problems faced by the attorney, especially any unusual difficulties.² Not every factor is relevant in every case. See

² See United Labs., Inc., 335 N.C. at 195, 437 S.E.2d at 381–82; GE Betz, Inc., 231 N.C. App. at 244, 752 S.E.2d at 655; Ehrenhaus v. Baker, 216 N.C. App. 59, 96–97, 717 S.E.2d 9, 33–34 (2011); Williams v. Randolph, 94 N.C. App. 413, 426, 380 S.E.2d 553, 561 (1989); see also

Williams, 94 N.C. App. at 423-27, 380 S.E.2d at 559-62.

As for the customary fee for like work in the locality, Laite and Kelly Hanley represented ANICO and are partners at Williams Mullen. See Laite Aff. ¶¶ 8, 15. Laite was the “senior litigator” on the case. Id. ¶ 5. During this litigation, Laite’s hourly rate ranged from \$480-500, and Hanley’s ranged from \$340-370. Id. ¶¶ 4-5, 8. The hourly rates of Laite and Hanley fall within the range of customary fees for like work in the Eastern District of North Carolina. See Order, Reliastar, 5:13-CV-210-BO, [D.E. 169] 3 (E.D.N.C. Nov. 12, 2014); Order, Lincoln Life, 5:13-CV-315, [D.E. 116] 2 (E.D.N.C. Oct. 1, 2014); Silverdeer St. John Equity Partners I LLC, 2012 WL 5879752, at *2; Bennett v. CSX Transp., Inc., 905 F. Supp. 2d 704, 708-09 (E.D.N.C. 2012), rev’d on other grounds, 552 F. App’x 222 (4th Cir. 2014) (per curiam) (unpublished); Beasley v. Sessoms & Rogers, P.A., No. 5:09-CV-43-D, 2011 WL 5402883, at *4 (E.D.N.C. Nov. 8, 2011) (unpublished).

Other relevant factors bolster finding that the requested fees are reasonable. Laite has 32 years of experience as a commercial litigator and has appeared on multiple industry lists, including “Super Lawyers” and “The Best Lawyers in America.” Laite Aff. ¶ 3. He also served as general counsel of the Greater Raleigh Chamber of Commerce. Id. Hanley has been practicing law since

Silverdeer St. John Equity Partners I LLC, 2012 WL 5879752, at *1. Although North Carolina state courts have not expressly adopted the federal lodestar factors, the North Carolina factors essentially track the federal factors. See Silverdeer St. John Equity Partners I LLC, 2012 WL 5879752, at *1; Williams, 94 N.C. App. at 426, 380 S.E.2d at 561. Those factors include: “(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney’s opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney’s expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys’ fees awards in similar cases.” Grissom v. The Mills Corp., 549 F.3d 313, 320 (4th Cir. 2008)(quotation omitted); see McAfee v. Boczar, 738 F.3d 81, 88 n.5 (4th Cir. 2013), as amended (Jan. 23, 2014); Barber v. Kimbrell’s Inc., 577 F.2d 216, 226 (4th Cir. 1978).

1991, with over nine of those years spent as a commercial litigator at Williams Mullens gathering “significant experience in creditor’s rights litigation, including commercial foreclosure, collections and lender liability defense and contract disputes in state and federal court.” Id. ¶ 8(b). As for the adequacy of representation, Laschkewitsch sought damages totaling \$350,000.00, plus treble and punitive damages. The court not only granted ANICO summary judgment on Laschkewitsch’s claims, dismissing them with prejudice, but also awarded ANICO summary judgment on its counterclaims. Although the questions of law were not difficult or novel, counsel’s representation was made difficult by Laschkewitsch’s numerous meritless filings and stonewalling.

The hours claimed also are reasonable. ANICO’s attorneys spent 308.3 hours litigating this case. Laite Aff. ¶ 15. Lincoln Life involved virtually the same claims and counterclaims as this case. In fact, in Lincoln Life, Laschkewitsch asserted fewer claims than he did here. In Lincoln Life, the court found that the 624.2 hours claimed “were reasonable based on the work necessary to defend against plaintiff’s claims, prosecute defendant’s counterclaims and respond to plaintiff’s numerous frivolous motions.” Order, Lincoln Life, 5:13-CV-315-BO, [D.E. 116] 3 (E.D.N.C. Oct. 1, 2014); see Declaration in Support of Attorney’s Fees, Lincoln Life, 5:13-CV-315, [D.E. 104] ¶ 13 (E.D.N.C.). The hours claimed here are less than half those claimed in Lincoln Life. Defending against more claims, prosecuting the same counterclaims, and responding to Laschkewitsch’s numerous frivolous motions, ANICO’s counsel spent less than half as much time as Lincoln Life’s counsel, whose work this court has already found was reasonable. This comparison supports the court’s finding that the hours billed in this case were reasonable.

The court must still review the specific tasks billed for to ensure they were reasonable. Laschkewitsch’s arguments on this point are largely meritless, except for his contention that ANICO’s attorneys should not recover for time spent checking dockets, tracking whether service was

timely, receiving orders and filings, and the like. Typically, “purely clerical or secretarial” tasks such as collecting documents, indexing documents, and filing documents are not billable at any hourly rate. See Supler v. FKAACS, Inc., No. 5:11-CV-229-FL, 2013 WL 6713120, at *3 (E.D.N.C. Dec. 19, 2013) (unpublished); Silverdeer St. John Equity Partners I LLC, 2012 WL 5879752, at *2; Rivers v. Ledford, 666 F. Supp. 2d 603, 607–08 (E.D.N.C. 2009). North Carolina courts have not directly addressed this issue directly, but the Supreme Court of North Carolina has held that “[a] trial judge, acting within his discretion, may consider and include in the sum he awards as attorneys fees the services expended by paralegals and secretaries acting as paralegals if, in his opinion, it is reasonable to do so.” Lea Co. v. N.C. Bd. of Transp., 323 N.C. 691, 695, 374 S.E.2d 868, 871 (1989). ANICO’s attorneys billed their normal rates for tasks within the orbit of “clerical or secretarial” work, such as:

- Receiving and docketing documents, [D.E. 49-2] 4 (.3 hours = \$139.05);
- Finalizing, filing, and serving the answer and counterclaims, id. at 14 (4.3 hours = \$2,107.00);
- Finalizing pleadings for filing and service, id. at 15 (.7 hours = \$248.00);
- Working on document organization, indexing and cross-referencing for initial disclosures, id. (1.3 hours = \$461.50);
- Finalizing and serving the Rule 11 response, id. at 23 (.5 hours = \$245.00);
- Checking the status of filings with the court, id. at 48 (.1 hours = \$35.50);
- Reviewing the status of filings, id. (.2 hours = \$71.00);
- Reviewing the court docket for any subsequent filings, id. at 53 (.1 hours = \$35.50);
- Preparing exhibits for filing, id. at 59 (.4 hours = \$142.00);
- Reviewing and monitoring summary judgment filings, id. (.5 hours = \$245.00);

- Finalizing exhibits for filing, id. (.4 hours = \$142.00);
- Assisting with filing summary judgment, brief in support, and other pleadings regarding the motion to seal, id. (.4 hours = \$142.00);
- Preparing pleadings and exhibits for service, id. (.3 hours = \$106.50);
- Checking tracking to determine if timely served, id. at 64 (.2 hours = \$71.00);
- Overseeing filing of response brief and service of same, id. at 71 (.5 hours = \$245.00);
- Receipt and handling of court notice regarding submission to Judge, id. at 81 (.2 hours = \$98.00).

Rather than disallow these hours, the court applies the customary paralegal rate in this district. See Rivers, 666 F. Supp. 2d at 608. The customary hourly rate for paralegals in this district is \$150-200. See Order, Lincoln Life, 5:13-CV-315, [D.E. 116] 2 (E.D.N.C. Oct. 1, 2014). Applying the middle of this range—\$175/hour—to the total hours spent on these tasks—10.4—the court decreases the fees requested for these tasks to \$1,820. Thus, the court deducts \$2,679.55, and awards a total of \$115,861.41 in attorneys' fees.

II.

ANICO seeks to recover the \$1,115.24 commission paid to Laschkewitsch as damages for its UDTPA claim under N.C. Gen. Stat. § 75-1.1. ANICO does not seek to recover damages under any of its other causes of action. A successful UDTPA claimant is “automatic[ally]” entitled to treble damages. Marshall v. Miller, 302 N.C. 539, 547, 276 S.E.2d 397, 402 (1981); see N.C. Gen. Stat. § 75-16. Thus, the court awards ANICO \$3,345.72 in damages. See Laschkewitsch v. Legal & Gen. Am., Inc., No. 5:15-CV-251-D, 2017 WL 1102619, at *9 (E.D.N.C. Mar. 23, 2017) (unpublished); Lincoln Life, 47 F. Supp. 3d at 335.

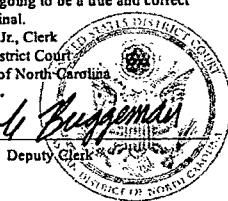
III.

In sum, after applying the paralegal rate to clerical/secretarial work and deducting the amount of fees reasonably attributable to ANICO's counterclaim for breach of contract, the court AWARDS ANICO \$115,861.41 in attorneys' fees. The court AWARDS ANICO \$3,345.72 in damages, treble the amount of ANICO's compensatory damages of \$1,115.24. ANICO may apply for costs consistent with the Federal Rules of Civil Procedure and this court's local rules. The clerk shall close the case.

SO ORDERED. This 27 day of July 2017.

I certify the foregoing to be a true and correct copy of the original.
Peter A. Moore, Jr., Clerk
United States District Court
Eastern District of North Carolina

By: *Nicole Buggeman*



J. C. Dever
JAMES C. DEVER III
Chief United States District Judge

APPENDIX 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-CV-21-D

I certify the foregoing to be a true and correct
copy of the original.

Julie Richards Johnston, Clerk
United States District Court
Eastern District of North Carolina

By: 

Deputy Clerk



JOHN LASCHKEWITSCH,)
Plaintiff,)
v.)
AMERICAN NATIONAL LIFE)
INSURANCE COMPANY,)
Defendant.)

ORDER

John B. Laschkewitsch (“Laschkewitsch” or “plaintiff”) is a former insurance agent who fraudulently attempted to profit, via numerous life insurance policies, from the illness and death of his brother, Ben, from amyotrophic lateral sclerosis (“ALS”). See, e.g., Laschkewitsch v. Lincoln Life & Annuity Distrib., Inc., 47 F. Supp. 3d 327, 330, 333–39 (E.D.N.C. 2014), appeal dismissed, 616 F. App’x 102 (4th Cir. 2015) (per curiam) (unpublished); Reliastar Life Ins. Co. v. Laschkewitsch, No. 5:13-CV-210-BO, 2014 WL 2211033, at *4–12 (E.D.N.C. May 28, 2014) (unpublished), aff’d, 597 F. App’x 159 (4th Cir.) (per curiam) (unpublished), cert. denied, 136 S. Ct. 593 (2015). In this case, Laschkewitsch seeks a declaratory judgment awarding him \$350,000 in life insurance proceeds and declaring that American National Life Insurance Company (“American National Life” or “defendant”) committed various torts and statutory violations in refusing to pay the proceeds to him. See Compl. [D.E. 1] ¶¶ 1–173. In response, American National Life alleges that Laschkewitsch is liable for fraud, violations of North Carolina’s Unfair and Deceptive Trade Practices Act (“UDTPA”), N.C. Gen. Stat, §§ 75-1 et seq., misrepresentation, and

breach of Laschkewitsch's agent agreement. See Ans. ¶¶ 1–173 & Counterclaims ¶¶ 1–99 [D.E. 6].

On October 12, 2015, American National Life moved for summary judgment [D.E. 25] and filed a supporting memorandum [D.E. 24]. American National Life argues that Laschkewitsch is collaterally estopped from denying his fraudulent conduct. See [D.E. 24]; see also State v. Summers, 351 N.C. 620, 622–23, 528 S.E.2d 17, 20 (2000); Beckwith v. Llewellyn, 326 N.C. 569, 573–74, 391 S.E.2d 189, 191–92 (1990); Thomas M. McInnis & Assocs., Inc. v. Hall, 318 N.C. 421, 426–33, 349 S.E.2d 552, 556–60 (1986); King v. Grindstaff, 284 N.C. 348, 356–60, 200 S.E.2d 799, 805–08 (1973). In support, American National Life notes that the United States District Court for the Eastern District of North Carolina has twice determined that Laschkewitsch knew about his brother Ben's ALS no later than October 2009, but lied on later life insurance policy applications as part of a scheme to defraud life insurance companies. See [D.E. 24] 10–11; Reliastar Life Ins. Co. v. Laschkewitsch, No. 5:13-CV-210-BO, 2014 WL 4825357, at *1 (E.D.N.C. Sept. 25, 2014) (unpublished); Lincoln Life & Annuity Distrib., Inc., 47 F. Supp. 3d at 333–39; Reliastar Life Ins. Co., 2014 WL 2211033, at *4–12. American National Life asks this court to apply collateral estoppel and bar Laschkewitsch from relitigating: (1) that Laschkewitsch and Ben “knew about Ben's ALS by no later than October 2009”; (2) that Laschkewitsch “knew about and failed to disclose that, by January 2010, pending and contemplated life insurance on Ben[']s . . . life exceeded” \$3,000,000; (3) that Laschkewitsch “knew about Ben's medical treatments by at least January 2010”; and (4) that Laschkewitsch “engaged in a scheme to profit off the illness and death of his brother, for his sole personal gain, to the tune of \$3.9 million.” [D.E. 24] 10–11; see Reliastar Life Ins. Co., 2014 WL 4825357, at *1; Lincoln Life & Annuity Distrib., Inc., 47 F. Supp. 3d at 333–39. Moreover, American National Life asks this court to grant summary judgment to American National Life and dismiss Laschkewitsch's claims. See [D.E. 24] 11–24. Finally, American

National Life asks this court to award it summary judgment on its fraud, misrepresentation, UDTPA, and breach-of-agent-agreement counterclaims against Laschkewitsch. See id. 24–29. On November 10, 2015, Laschkewitsch responded in opposition [D.E. 31]. On November 23, 2015, American National Life replied [D.E. 33].

On December 8, 2015, Laschkewitsch moved for summary judgment [D.E. 34] and filed a supporting memorandum [D.E. 35]. Essentially, Laschkewitsch disputes that collateral estoppel applies and argues that he is entitled to summary judgment on his seven claims and on American National Life’s four counterclaims. See [D.E. 35] 8–30. On December 28, 2015, American National Life responded in opposition [D.E. 36]. On January 15, 2016, Laschkewitsch replied [D.E. 37].

On March 29, 2016, Laschkewitsch moved in limine to bar evidence and certain allegations in American National Life’s motion for summary judgment and response opposing summary judgment [D.E. 38] and filed a memorandum in support [D.E. 39]. On April 18, 2016, American National Life responded in opposition [D.E. 40]. On May 6, 2016, Laschkewitsch replied [D.E. 41].

The court has reviewed Laschkewitsch’s motion in limine and the record. The motion in limine is untimely and baseless and is denied. See, e.g., [D.E. 40]; Lincoln Life & Annuity Distrib., Inc., 47 F. Supp. 3d at 332; Reliastar Life Ins. Co., 2014 WL 2211033, at *4. Additionally, the court rejects the inadmissible evidence attached to Laschkewitsch’s motion in limine.

As for the motions for summary judgment, the court has reviewed the motions, the admissible evidence, and the entire record under the governing standard. See, e.g., Fed. R. Civ. P. 56; Scott v. Harris, 550 U.S. 372, 378 (2007); Celotex Corp. v. Catrett, 477 U.S. 317, 325–26 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–55 (1986); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585–87 (1986). “When cross-motions for summary judgment are before a court, the court examines each motion separately, employing the familiar standard under

Rule 56 of the Federal Rules of Civil Procedure.” Desmond v. PNGI Charles Town Gaming, L.L.C., 630 F.3d 351, 354 (4th Cir. 2011).

North Carolina law applies to this dispute; therefore, this court must determine how the Supreme Court of North Carolina would rule on the claims and counterclaims. See, e.g., Twin City Fire Ins. Co. v. Ben Arnold-Sunbelt Beverage Co., 433 F.3d 365, 369 (2005). If the state supreme court “has spoken neither directly nor indirectly on the particular issue before [a federal court],” that court must “predict how [the state supreme] court would rule if presented with the issue.” Id. (quotations omitted). In making that prediction, the court “may consider lower court opinions[,] . . . treatises, and the practices of other states.” Id. (quotation omitted). When predicting an outcome under state law, “a federal court should not create or expand [a] [s]tate’s public policy.” Time Warner Entm’t-Advance/Newhouse P’ship v. Carteret-Craven Elec. Membership Corp., 506 F.3d 304, 314 (4th Cir. 2007) (quotation omitted) (first alteration in original); see Wade v. Danek Med., Inc., 182 F.3d 281, 286 (4th Cir. 1999).

The Supreme Court of North Carolina has held that collateral estoppel can provide a basis for summary judgment and preclude relitigation of issues actually determined in prior litigation. See Beckwith, 326 N.C. at 573–74, 391 S.E.2d at 191–92; Thomas M. McInnis & Assocs., Inc., 318 N.C. at 427–35, 349 S.E.2d at 556–60; King, 284 N.C. at 357–61, 200 S.E.2d at 806–08. Collateral estoppel applies where a party seeks, in a subsequent action, to reopen “identical issues merely by switching adversaries.” Beckwith, 326 N.C. at 574, 391 S.E.2d at 191. Specifically, collateral estoppel bars suit where: (1) the issues are the same as those involved in the prior action; (2) the issues were raised and actually litigated in the prior action; (3) the issues were material and relevant to the prior action’s disposition; and (4) the determination of those issues was necessary and essential to the judgment in the prior action. See Summers, 351 N.C. at 622–23, 528 S.E.2d at 20; Beckwith,

326 N.C. at 573–74, 391 S.E.2d at 191–92; Thomas M. McInnis & Assocs., Inc., 318 N.C. at 436–37, 349 S.E.2d at 561; King, 284 N.C. at 358, 200 S.E.2d at 806.

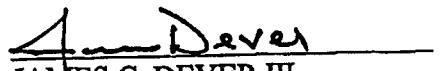
Lincoln Life & Annuity Distributors, Inc. and Reliastar Life Insurance Co. involved Laschkewitsch as a party and concerned Laschkewitsch's scheme to defraud life insurance companies arising from Ben's illness and death. The court agrees with American National Life that the issues litigated in Lincoln Life & Annuity Distributors, Inc. and Reliastar Life Insurance Co. (1) are the same as those being litigated in this action; (2) were raised and actually litigated in the prior actions; (3) are material and relevant to the disposition of the prior actions; and, (4) the determination of those issues was necessary and essential to the judgment in the prior actions. See, e.g., Lincoln Life & Annuity Distrib., Inc., 47 F. Supp. 3d at 333–38; Reliastar Life Ins. Co., 2014 WL 2211033, at *4–12. Thus, collateral estoppel applies. See, e.g., Summers, 351 N.C. at 622–23, 528 S.E.2d at 20; Beckwith, 326 N.C. at 573–74, 391 S.E.2d at 191–92; Thomas M. McInnis & Assocs., Inc., 318 N.C. at 436–37, 349 S.E.2d at 561; King, 284 N.C. at 358, 200 S.E.2d at 806.

As for defendant's counterclaims, “[r]es judicata and collateral estoppel can be used defensively or offensively.” Sawyers v. Farm Bureau Ins. of N.C., Inc., 170 N.C. App. 17, 30–31, 612 S.E.2d 184, 193–94 aff'd per curiam on basis of dissenting opinion 360 N.C. 158, 622 S.E.2d 490 (2005). The court agrees with American National Life that the issues litigated in Lincoln Life & Annuity Distributors, Inc. and Reliastar Life Insurance Co. (1) are the same as the counterclaims in this action; (2) were raised and actually litigated in the prior actions; (3) are material and relevant to the disposition of the prior actions; and, (4) the determination of those issues was necessary and essential to the judgment in the prior actions. See, e.g., Lincoln Life & Annuity Distrib., Inc., 47 F. Supp. 3d at 333–38; Reliastar Life Ins. Co., 2014 WL 2211033, at *4–12. Thus, collateral estoppel applies. See, e.g., Summers, 351 N.C. at 622–23, 528 S.E.2d at 20; Beckwith, 326 N.C.

at 573-74, 391 S.E.2d at 191-92; Thomas M. McInnis & Assocs., Inc., 318 N.C. at 436-37, 349 S.E.2d at 561; King, 284 N.C. at 358, 200 S.E.2d at 806. Accordingly, this court grants American National Life's motion for summary judgment and denies Laschkewitsch's motion for summary judgment.

In sum, the court GRANTS defendant's motion for summary judgment based on collateral estoppel [D.E. 25], GRANTS defendant's motion to seal [D.E. 27], GRANTS plaintiff's motion to seal [D.E. 32], DENIES plaintiff's motion for summary judgment [D.E. 34], and DENIES plaintiff's motion in limine [D.E. 38]. The court DISMISSES with prejudice plaintiff's claims and GRANTS summary judgment to defendant on its four claims. Not later than August 31, 2016, defendant American National Life shall submit a proposed schedule for further proceedings concerning an award of damages, attorney's fees, and costs.

SO ORDERED. This 5 day of August 2016.



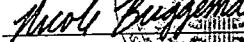
JAMES C. DEVER III
Chief United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

JOHN LASCHKEWITSCH,)
Plaintiff,)
V.)
AMERICAN NATIONAL LIFE)
INSURANCE COMPANY,)
Defendant.)

**JUDGMENT IN A CIVIL CASE
CASE NO. 5:15-CV-21-D**

I certify the foregoing to be a true and correct
copy of the original.
Julie Richards Johnston, Clerk
United States District Court
Eastern District of North Carolina

By: 
Deputy Clerk
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

Decision by Court.

This action came before this Court for ruling as follows.

IT IS ORDERED, ADJUDGED, AND DECREED that the court GRANTS defendant's motion for summary judgment based on collateral estoppel [D.E. 25], GRANTS defendant's motion to seal [D.E. 27], GRANTS plaintiff's motion to seal [D.E. 32], DENIES plaintiff's motion for summary judgment [D.E. 34] and DENIES plaintiff's motion in limine [D.E. 38]. The court DISMISSES with prejudice plaintiff's claims and GRANTS summary judgment to defendant on its four claims. Not later than August 31, 2016, defendant American National Life shall submit a proposed schedule for further proceedings concerning an award of damages, attorney's fees, and costs.

This Judgment Filed and Entered on August 5, 2016, and Copies To:

John Laschkewitsch

Sent to 1933 Ashridge Dr. Fayetteville, NC

Gilbert C. Laite, III
Kelly C. Hanley

28304 via US Mail
(via CM/ECF Notice of Electronic Filing)
(via CM/ECF Notice of Electronic Filing)

DATE:
August 5, 2016

JULIE RICHARDS JOHNSTON, CLERK
(By) /s/ Nicole Briggeman
Deputy Clerk

APPENDIX 5

In the
Supreme Court of the United States

JOHN LASCHKEWITSCH,

Petitioner,

v.

AMERICAN NATIONAL LIFE INSURANCE COMPANY

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH
CIRCUIT, APPENDIX 5; CITATION OF U.S. CONSTITUTION,
U.S. CODES, RULES AND STATUTES

John Laschkewitsch
Petitioner *pro se'*
1933 Ashridge Dr.
Fayetteville, NC 28304
(910) 286-8008
cessnajbl@yahoo.com

September 1, 2018

APPENDIX 5

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 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.

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. § 58-33-40. Appointment of agents.

(a) Except as provided in subsection (b) of this section, no individual who holds a valid insurance agent's license issued by the Commissioner shall, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed.

(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. To appoint an individual as its agent, the appointing insurer shall file, in a format approved by the Commissioner, a notice of appointment within 15 days after the date the first insurance application is submitted. The individual shall be authorized to act as an agent for the appointing insurer for the kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited...

N.C. Gen. Stat. § 58-33-56. Notification to Commissioner of termination.

(a) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the Commissioner within 30 days after the effective date of the termination, using a form prescribed by the Commissioner, if the reason for termination is for or related to one of the causes listed in G.S. 58-33-46 (a) or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in G.S. 58-33-46(a). Upon the written request of the Commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(b) An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason that is not for or related to one of the causes listed in G.S. 58-33-46 (a) shall notify the Commissioner within 30 days after the effective date of the termination, using a form prescribed by the Commissioner. Upon written request of the Commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

(c) The insurer or the authorized representative of the insurer shall promptly notify the Commissioner in a form acceptable to the Commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Commissioner in accordance with subsection (a) of this section had the insurer then known of its existence.

(d) Within 15 days after making the notification required by subsections (a), (b), and (c) of this section, the insurer shall mail a copy of the notification to the producer at the producer's last known address. If the producer is terminated for cause for any of the reasons listed in G.S. 58-33-46(a), the insurer shall provide a copy of the notification to the producer at the producer's last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.

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. § 58-60-15. Disclosure requirements.

(a) The insurer shall provide to all prospective purchasers a Buyer's Guide and a Policy Summary prior to accepting any applicant's initial premium deposit, unless the policy for which application is made contains an unconditional refund provision of at least 10 days or unless the Policy Summary contains such an unconditional refund offer, in which event the Buyer's Guide and Policy Summary must be delivered with the policy or prior to delivery of the policy.

N.C. Gen. Stat. § 58-60-30. Failure to comply.

The failure of an insurer to provide or deliver a Buyer's Guide, or a Policy Summary as provided in G.S. 58-60-15(a) and (b) shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy within the meaning of G.S. 58-58-40 and Article 63 (Unfair Trade Practice Act) of this Chapter.

N.C. Gen. Stat. § 58-63-15. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and False Advertising of Policy Contracts. – Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share or surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) False Information and Advertising Generally. – Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

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.**