

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**THE LINCOLN NATIONAL LIFE  
INSURANCE COMPANY,**

**Plaintiff,**

**v.**

**SHANNON D. STEWARD and VIDA  
MULLER,**

**Defendants.**

**CIVIL ACTION FILE**

**NO. 1:16-CV-3108-MHC**

**ORDER**

This case comes before the Court on Plaintiff The Lincoln National Life Insurance Company (“Lincoln National”)’s Motion for Discharge and to Dismiss Defendant Steward’s Counterclaims for Failure to State a Claim, and for Attorney’s Fees [Doc. 24] (“Pl.’s Mot.”).

**I. BACKGROUND**

**A. Factual Background**

Mercedeh Steward (“the Insured”) was covered under two policies issued by Lincoln National: (a) a group policy of life insurance with a death benefit of \$27,000; and (b) an individual policy, Policy No. 280017905, with a death benefit

of \$100,000. Compl. [Doc. 1] ¶ 7; Steward's Answer [Doc. 13] ("Answer") ¶ 7. The Insured died on May 18, 2016. Compl. ¶ 8; Answer ¶ 8. On that date, the beneficiaries of her life insurance coverage under the group policy were the Insured's husband, Defendant Shannon D. Steward ("Steward") (63%) and the Insured's mother, Defendant Vida Muller ("Muller") (37%). Compl. ¶ 9; Answer ¶ 9.

After the Insured's death, the entire \$27,000 under the group policy was erroneously paid to Steward. Compl. ¶ 10; Answer ¶ 10. To correct the error, Defendants agreed to the payment of \$9,990 (37% of the death benefit) to Muller from the \$100,000 benefits under the individual policy, reducing the amount owed under the individual policy to \$90,010. Compl. ¶ 11; Answer ¶ 11. Also by agreement of Defendants, Lincoln National paid \$6,200 to Express Funeral Funding based on an assignment of benefits executed by Steward on the individual policy, leaving a balance under the individual policy of \$83,810. Assignment, attached as Ex. 2 to Compl. [Doc. 1-2]; letter from Muller, attached as Ex. 3 to Compl. [Doc. 1-3].

On the original application for the individual policy, the beneficiaries were Steward (75%) and Muller (25%). Policy No. 280017905, attached as Ex. 4 to Compl. [Doc. 1-4]. On February 8, 2016, prior to the Insured's death, Lincoln

National received an e-mail with a beneficiary designation form for the individual policy bearing the Insured's signature and identifying Steward as the sole beneficiary. E-mail and enclosed beneficiary designation form, attached as Ex. 5 to Compl. [Doc. 1-5].

Following the Insured's death, Lincoln National received benefit claims from both Steward and Muller. Claim forms, attached as Exs. 6 and 7 to Compl. [Doc. 1-6, 1-7]. By letter dated June 20, 2016, Lincoln National informed Muller that the company's records reflected that she was not the beneficiary. Compl. ¶ 16; Answer ¶ 16; see letter, attached as Ex. 8 to Compl. [Doc. 1-8]. Lincoln National requested that Muller "advise in writing if you are withdrawing your claim against this policy." Id.

In a letter dated June 21, 2016, Muller maintained her right to the benefits. Letter, attached as Ex. 9 to Compl. [Doc. 1-9]. She wrote: "I am not withdrawing my claim against the Policy. My Daughter (Merci) had my name as her beneficiary for almost 10 years, and now her new husband wants me out by force!" Id. On June 25, 2016, Muller further asserted: "The change was made when my daughter . . . was [v]ery ill and was under extreme pressure and also was under heavy sedation. At this time I am not withdrawing my claim as her exclusive beneficiary of this policy." Letter, attached as Ex. 10 to Compl. [Doc. 1-10].

By letters dated June 24, 2016, and July 19, 2016, to both Defendants, Lincoln National advised of the conflicting claims and the necessity of an interpleader action if the parties were unable to resolve the claims. Letters, attached as Exs. 11 and 12 to Compl. [Doc. 1-11, 1-12]. By letter dated July 27, 2016, Muller reiterated that she was not withdrawing her claim. Letter, attached as Ex. 13 to Compl. [Doc. 1-13]. As of the filing of this action, Lincoln National had not been advised by Defendants of any resolution by agreement. Compl. ¶ 21; Answer ¶ 21. Therefore, Lincoln National was at risk of being subjected to multiple lawsuits and exposed to multiple liability absent interpleader. Compl. ¶ 23; Answer ¶ 23.

This action in interpleader was filed by Lincoln National pursuant to Rule 22 of the Federal Rules of Civil Procedure. Compl. Lincoln National sought permission to pay into the registry of the Court the sum of \$83,810.00, plus applicable interest, representing death benefits payable under the policy of life insurance benefits due to the Insured's death. Id. Because of competing claims of Defendants, Lincoln National also asked that Defendants be directed to interplead in this proceeding and assert any claims they may have as to the death benefits payable under the life insurance policy. Id.

On August 31, 2016, this Court ordered Lincoln National to tender to the Clerk of Court its check in payment of the death benefits under the policy and directed the Clerk to receive the funds into the registry of the Court for ultimate disposition once the interpleader action is resolved. Order [Doc. 6]. On September 8, 2016, Lincoln National deposited the amount of \$83,810.00 in accordance with the Court's Order. After doing so, Lincoln National had no interest in the outcome of the case, and it retained no claim to the interpleader funds (other than its claim for reasonable attorney's fees and costs).

On September 12, 2016, Muller answered the Complaint and filed a cross-claim against Steward. [Doc. 9.] On September 27, 2016, Steward answered the Complaint and filed a cross-claim against Muller. [Doc. 13.] Steward also asserted a counterclaim against Lincoln National for breach of contract, breach of the implied covenant of good faith and fair dealing, and negligent misrepresentation. Countercl. [Doc. 13]. Steward contends that Lincoln National breached the contract because he was the sole beneficiary and Lincoln National "refused" to pay him. *Id.* ¶¶ 13, 15. Steward alleges that Lincoln National breached the implied covenant of good faith by disclosing "confidential details" concerning the individual policy to Muller without his consent, failing to require Muller to provide "any substantiating documentation or evidence to support her

claim,” and “forc[ing] [him] to either settle with Vida Muller or face interpleader action . . . .” Id. ¶¶ 18-20. Finally, he asserts that Lincoln National “supplied false information to [him] or otherwise omitted material information by failing to convey to him that it would disclose to Vida Muller the details of the individual policy.” Id. ¶ 22. Steward faults Lincoln National for disclosing to Muller that “the \$9,990 was being withheld from the individual policy, thereby putting her on alert that another policy existed with a much larger death benefit.” Id. ¶ 11.

By stipulation submitted on November 7, 2016, Muller withdrew her claim to the benefits, and Steward and Muller agreed to dismiss their cross-claims against each other. Joint Stipulation [Doc. 21]. Counsel for Lincoln National requested that Steward consent to Lincoln National’s discharge from the case, with Lincoln National waiving any claim for attorney’s fees, but Steward refused to do so. Aff. of Kenton J. Coppage, attached as Ex. 1 to Pl.’s Mot. [Doc. 24-1] (“Coppage Aff.”) ¶¶ 7-8. Therefore, Lincoln National filed the instant motion, seeking to be discharged from further liability, dismissed from this action, and awarded attorney’s fees and costs. Further, it contends, Steward’s counterclaims should be dismissed because they fail to state a claim upon which relief can be granted.

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Under Federal Rule of Civil Procedure 12(b)(6), a claim will be dismissed for failure to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 547 (2007). The Supreme Court has explained this standard as follows:

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citation omitted). Thus, a claim will survive a motion to dismiss only if the factual allegations in the pleading are “enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555.

At the motion to dismiss stage, the court accepts all the well-pleaded facts in the plaintiff’s complaint as true, as well as all reasonable inferences drawn from those facts. McGinley v. Houston, 361 F.3d 1328, 1330 (11th Cir. 2004); Lotierzo v. Woman’s World Med. Ctr., Inc., 278 F.3d 1180, 1182 (11th Cir. 2002). Not

only must the court accept the well-pleaded allegations as true, they must be construed in the light most favorable to the pleader. Powell v. Thomas, 643 F.3d 1300, 1302 (11th Cir. 2011). But the court need not accept legal conclusions, nor must it accept as true legal conclusions couched as factual allegations. Iqbal, 556 U.S. at 678. Thus, evaluation of a motion to dismiss requires the court to assume the veracity of well-pleaded factual allegations and “determine whether they plausibly give rise to an entitlement to relief.” Id. at 679.

### **III. DISCUSSION**

#### **A. Steward’s Counterclaims**

Initially, Lincoln National contends that Steward’s counterclaims should be dismissed because they are not independent of the issue of the interpleader action. Pl.’s Br. in Supp. of Mot. to Dismiss [Doc. 24-2] (“Pl.’s Br.”) at 9. Steward, however, contends that his claim is that Lincoln National is liable to him for negligently creating the dispute which made interpleader necessary. Def.’s Resp. in Opp’n to Pl.’s Mot. [Doc. 27] (“Def.’s Resp.”) at 3-. Steward contends that this is an independent cause of action. Id. at 5 (citing Bankers Life & Cas. Co. v. Thornton, 1:15-CV-3330-WSD, 2016 WL 5407815 (N.D. Ga. Sept. 28, 2016) (denying summary judgment where it appears Plaintiff’s errors can plausibly be blamed for the existence of the underlying controversy)).

While Eleventh Circuit precedent on counterclaim protections of an interpleader plaintiff is not fully developed, the Eleventh Circuit has relied upon an illustrative Third Circuit case, which is relevant for the issue at hand. See generally Ohio Nat'l Life Assurance Corp. v. Langkau ex rel. Estate of Langkau, 353 F. App'x 244, 248 (11th Cir. 2009) (citing Prudential Ins. Co. of Am. v. Hovis, 553 F.3d 258, 262 (3d Cir. 2009)). In Hovis, the Third Circuit held that a counterclaim by a claimant against an interpleader plaintiff can be maintained only if the claim is "truly independent of who was entitled to the life insurance proceeds, which is the issue the interpleader action was brought to settle." 553 F.3d at 264-65. Further, a counterclaim is not truly independent if it simply involves an allegation that the interpleader failed to resolve the investigation in favor of the counterclaimant. Id. The Third Circuit opined that if the interpleader "had immediately paid [Hovis] the proceeds of [the life insurance policy], Hovis would not have brought an action against [the interpleader] based on any of the causes of action that were counterclaimed. Id. (citations omitted). Thus, the inquiry for the Court becomes one of whether it is possible to separate the counterclaims from the interpleader action.

Sec. Life of Denver Ins. Co. v. Shah, No. CV411-008, 2012 WL 3777135, at \*5 (S.D. Ga. Aug. 29, 2012); see also Perez v. Wells Fargo Bank, Nat'l Assoc., Inc., No. 4:12-CV-218-HLM, 2015 WL 13066079, at \*7 (N.D. Ga. Mar. 31, 2015) ("Where a plaintiff's claims arise directly out of a stakeholder's refusal to pay proceeds, those claims are not truly independent of the interpleader action.") (citation omitted).

However, an interpleader action would not bar a counterclaim that the stakeholder's negligent action caused the controversy. Perez, 2015 WL 13066079,

at \*8 (citing Lee v. W. Coast Life Ins. Co., 688 F.3d 1004, 1012-13 (9th Cir. 2012)).

[A] stakeholder may be liable for diminishing the value of the interpleaded estate simply because of the presence of an unrelated dispute as to who is the rightful owner or liable for its investigation of ownership of the stake, at least where defects in its investigation can plausibly be blamed for the existence of the underlying ownership controversy.

Bankers Life, 2016 WL 5407815, at \*3 (citation and internal quotation marks omitted).

The Court will therefore consider whether Steward's counterclaims should be dismissed because they are not independent of the interpleader action or fail to state a claim upon which relief can be granted.

### **1. Breach of Contract**

The Court finds that Steward's counterclaim for breach of contract is not independent of the interpleader action. This count is based solely on Lincoln National's alleged refusal immediately to pay Steward the full death benefit. Countercl. ¶¶ 12-16. See Bankers Life, 2016 WL 5407815, at \*3 ("Ms. Moore's first counterclaim is not truly independent of the interpleader, because it simply involves an allegation that Plaintiff failed to pay her the proceeds of the Policy."); Independent Order of Foresters v. Ashe, No. 1:12-CV-3611-RGV, 2013 WL 12063908, at \*3-4 (N.D. Ga. Dec. 19, 2013) (concluding that breach of contract

claim arose directly out of the refusal to pay the proceeds of the estate). Therefore, Steward's counterclaim for breach of contract is **DISMISSED**.

## 2. Breach of Implied Covenant of Good Faith and Fair Dealing

Steward asserts that Lincoln National acted in bad faith by disclosing confidential information to Muller about the death benefit in the individual policy which led to the instant litigation. Countercl. ¶¶ 18-20. This claim arguably is independent of the interpleader action because it alleges that the interpleader's conduct caused the controversy at issue; however, the counterclaim fails to state a claim under which relief can be granted.

Although every contract contains an implied covenant of "good faith and fair dealing in the contract's performance and enforcement," Myung Sung Presbyterian Church, Inc. v. N. Am. Ass'n of Slavic Churches & Ministries, Inc., 291 Ga. App. 808, 810 (2008), this implied covenant does not provide a substantive legal basis for a claim separate and apart from an underlying breach of contract. See Am. Casual Dining, L.P. v. Moe's Sw. Grill, L.L.C., 426 F. Supp. 2d 1356, 1370 (N.D. Ga. 2006) ("General allegations of breach of the implied duty of good faith and fair dealing not tied to a specific contract provision are not actionable."); Morrell v. Wellstar Health Sys., Inc., 280 Ga. App. 1, 5 (2006) (stating that there is no independent cause of action for violation of the duty of good faith and fair dealing

apart from breach of an express term of the contract). In other words, to state a claim for breach of the implied duty of good faith and fair dealing, “the plaintiff must be found to have stated a claim for breach of contract (since the implied covenant cannot be breached independently of an express contract term).” Clark v. Aaron’s, Inc., 914 F. Supp. 2d 1301, 1308 (N.D. Ga. 2012). Lincoln National contends that, because Steward has asserted no viable breach-of-contract claim, his reliance on the implied covenant must fail. Pl.’s Br. at 12. The Court agrees. See Perez, 2015 WL 13066079, at \*7 (concluding that, because the plaintiff’s complaint fails to identify a specific contract provision that intervenor breached, the plaintiff “cannot state a claim for breach of the implied duty of good faith and fair dealing.”). Therefore, this claim is **DISMISSED**.

### 3. Negligent Misrepresentation

Steward contends that Lincoln National supplied false information or omitted material information by failing to inform him of the disclosure it would make to Muller, which caused him economic injury. Countercl. ¶¶ 22-24. Once again, although this claim is independent of the interpleader action because it alleges that the interpleader’s conduct caused the controversy at issue, it fails to state a claim under which relief can be granted.

“The essential elements of negligent misrepresentation are (1) the defendant’s negligent supply of false information to foreseeable persons, known or unknown; (2) such persons’ reasonable reliance upon that false information; and (3) economic injury proximately resulting from such reliance.” Chesapeake Employers’ Ins. Co. v. Eades, 77 F. Supp. 3d 1241, 1257 (N.D. Ga. 2015) (quoting Marquis Towers, Inc. v. Highland Grp., 265 Ga. App. 343 (2004)) (internal punctuation omitted). However, “a false representation made by a defendant, to be actionable, must relate to an existing fact or a past event. Fraud cannot consist of mere broken promises, unfilled predictions or erroneous conjecture as to future events.” Infrasource, Inc. v. Hahn Yalena Corp., 272 Ga. App. 703, 707 (2005) (citation omitted). Steward fails to respond to Lincoln National’s arguments regarding the timing of the alleged misrepresentation, and the Court finds that any alleged omission by Lincoln National would have pertained to future, rather than past or present, events, and thereby cannot form the basis of an action for fraud. Therefore, this claim is **DISMISSED**.<sup>1</sup> See J. G. Wentworth Originations, LLC v.

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<sup>1</sup> To the extent that Steward seeks to assert claims for extra-contractual damages, they also fail because O.C.G.A. § 33-4-6, which Steward has not invoked, affords the exclusive extra-contractual remedy for the alleged failure to pay benefits under the policy. Lincoln Nat’l Life Ins. Co. v. Davenport, 201 Ga. App. 175 (1991). Further, a “bad faith” claim under the statute requires the “refusal of the insurer” to pay benefits under an insurance policy within sixty days after demand and a

Mobley, No. 11-CV-1406, 2012 WL 4922862, at \*8 (D. Md. Oct. 12, 2012) (holding that, although claim for negligent misrepresentation is not barred by interpleader action, it failed to allege facts to support the claim).

**B. Dismissal from Suit**

As detailed above, the Court has determined that all of Steward's counterclaims against Lincoln National should be dismissed as a matter of law. A disinterested stakeholder who has filed an action in interpleader may be dismissed from the case and discharged from further liability to the claimants. See, e.g., Ohio Nat'l Life Assurance Corp. v. Langkau, 353 F. App'x 244, 248 (11th Cir. 2009). Thus, Lincoln National asserts that it should be discharged from liability and dismissed from this action. Pl.'s Br. at 20.

Given the circumstances leading to this action, Lincoln National contends that interpleader was the correct course of action and it should be discharged and dismissed from this action. Pl.'s Br. at 21. The Court agrees. Lincoln National is hereby **DISCHARGED** and **DISMISSED** as a Plaintiff in this action.

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finding that "such refusal was in bad faith." O.C.G.A. § 33-4-6(a). Lincoln National has not "refused" the payment of benefits under the policy.

### C. Attorney's Fees

“In an interpleader action, costs and attorneys’ fees are generally awarded, in the discretion of the Court, to the plaintiff who initiates interpleader as a mere disinterested stakeholder.” See Prudential Ins. Co. of Am. v. Boyd, 781 F.2d 1494, 1497 (11th Cir. 1986). “The usual practice is to tax the costs and fees against the interpleader fund, although the court may tax the losing claimant directly when her conduct justifies doing so.” Id. at 1498.

However, the normal-course-of-business exception typically is applied to insurance companies. In re Mandalay Shores Co-op Housing Ass’n, Inc., 21 F.3d 380, 383 (11th Cir. 1994). “Lower courts in this Circuit have adhered to the Mandalay Shores guidance and have generally been loath to award fees and costs to life insurance companies for whom interpleader actions are an entirely predictable and routine cost of doing business for which appropriate mitigating measures can be taken in advance.” State Farm Life Ins. Co. v. Smith, No. 1:11-CV-2012-WSD, 2014 WL 49861 (N.D. Ga. Jan. 7, 2014) (citations omitted).

Here, Lincoln National states that it has admitted liability for payment of the policy proceeds and paid them into the Court’s registry. Pl.’s Br. at 22. It was required to file a complaint in interpleader due to the Defendants’ competing claims and, as a disinterested stakeholder, it contends that it should not be required

to bear the fees and expenses. Id. It had offered to waive any claim to its attorney's fees if the parties consented to its discharge from interpleader, but Steward refused to consent, instead filing "unnecessary and meritless counterclaims." Lincoln National contends that this should justify its fees. Id. at 22. Lincoln National contends that it was willing to waive any claim if Steward had agreed to its discharge, but Steward's refusal, and insistence on pursuing his counterclaim, removed this matter from the normal course of business. Pl.'s Reply in Supp. of Mot. to Dismiss [Doc. 28] at 5.

Relevant factors in considering an award of fees include "whether: (1) the case is simple, (2) the stakeholder performed any unique services for the claimants or the court, (3) the stakeholder acted in good faith and with diligence, (4) the services rendered were beneficial, and (5) the claimants improperly protracted the proceedings." Nat'l Life Ins. Co. v. Alembik-Eisner, 582 F. Supp. 2d 1362, 1372 (N.D. Ga. 2008) (quoting Wright's Federal Practice and Procedure § 1719). Here, although Steward counterclaimed, the case was not particularly complex. There is no evidence that Lincoln National performed any unique services. Although Lincoln National appears not to have acted in bad faith, and the services rendered ultimately proved beneficial, Steward contends that it was improper for Lincoln National to inform Muller of the policy, and that Lincoln National's actions

ultimately are what led to the dispute between Defendants (and, as discussed above, the Court was not required to reach the merits). Steward's counterclaims certainly protracted the proceedings. However, counterclaims that ultimately are not successful are not necessarily sufficient to warrant an award of fees. See, e.g., Sec. Life of Denver, 2012 WL 3777135, at \*8 (determining that an interpleader action arose in the normal course of the insurer's business in spite of counterclaims).

Here, the Court finds that the dispute arose in the normal course of Lincoln National's business. Therefore, Lincoln National's request for attorney's fees is **DENIED**.

#### **IV. CONCLUSION**

For the foregoing reasons, it is hereby **ORDERED** that Plaintiff The Lincoln National Life Insurance Company's Motion for Discharge and to Dismiss Defendant Steward's Counterclaims for Failure to State a Claim, and for Attorney's Fees [Doc. 24] is **GRANTED IN PART and DENIED IN PART**. Plaintiff's Motion is **GRANTED** with respect to the discharge and dismissal of Plaintiff in this action as well as the dismissal of Steward's counterclaims. It is hereby **ORDERED** that Lincoln National Life Insurance Company is

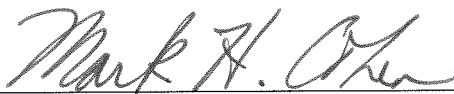
**DISCHARGED** and **DISMISSED** as Plaintiff in this action. Plaintiff's Motion as to its request for attorney's fees is **DENIED**.

It is further **ORDERED** that Defendant Steward's Counterclaims [Doc. 13] are **DISMISSED**.

It is further **ORDERED** that, pursuant to the Joint Stipulation of Partial Settlement and Dismissal of Crossclaims [Doc. 21], all claims against Vida Muller are **DISMISSED WITH PREJUDICE** and Vida Muller's crossclaim against Shannon Steward is **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that Defendant Shannon Steward shall file a proposed order regarding disbursement of funds pursuant to Local Rule 67.1 within fourteen (14) days of the date of this Order. See LR 67.1, NDGa.

**IT IS SO ORDERED** this 31<sup>st</sup> day of May, 2017.

  
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MARK H. COHEN  
United States District Judge