

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Robark Properties, LLC, )  
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 )  
Plaintiff, )  
 )  
 )  
vs. )  
 )  
Northwestern Mutual Life Insurance )  
Company, )  
 )  
 )  
Defendant. )  
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Civil Action No. 2023-CP-23-06646

**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT**

This matter comes before the Court on Defendant Northwestern Mutual Life Insurance Company’s (“Northwestern Mutual”) Motion for Summary Judgment filed on July 22, 2024, Northwestern Mutual’s Motion for Protection filed on August 13, 2024, and Plaintiff’s Motion to Compel Discovery filed on August 23, 2024. On January 24, 2025, the Plaintiff filed a memorandum in opposition to Northwestern Mutual’s motions and in support of Plaintiff’s motion to compel. An in-person hearing was held on January 27, 2025. Plaintiff Robark was represented by Ian G. Conits, Esquire, and Northwestern Mutual was represented by Yasmeen Ebbini, Esquire. Following the hearing, Northwestern Mutual asked the Court if supplemental briefing could be submitted. As a result, both parties submitted supplemental briefings to the Court. After consideration of the record, the motion and supplemental memoranda submitted by counsel, the arguments of counsel, and the applicable court rules and relevant case law, the Court hereby **GRANTS** Northwestern Mutual’s Motion for Summary Judgment. Because of this ruling, the Court finds that Northwestern Mutual’s Motion for Protection from Discovery and Plaintiff’s Motion to Compel Discovery are hereby **MOOT**.

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## FACTUAL BACKGROUND

The record reflects the following facts. Plaintiff Robark Properties, LLC (“Plaintiff”) is a business entity and the owner of three life insurance policies issued by Northwestern Mutual insuring the life of Ralph Falls, III. Mr. Falls is the acting manager of Robark Properties, LLC. In September of 2022, prior to becoming acting manager of Plaintiff, Mr. Falls sent correspondence to Northwestern Mutual requesting documents and information related to the subject insurance policies pursuant to a subpoena issued as part of separate North Carolina litigation. In response, on October 3, 2022, Northwestern Mutual provided to Mr. Falls documents relating to the policies.

On May 23, 2023, Northwestern Mutual received a letter from counsel for Mr. Falls stating that Mr. Falls had become the acting manager of Robark Properties, LLC and asserting that the Plaintiff was entitled to all documents relating to the policies. The letter requested multiple categories of documents, internal and external communications, and other information from Northwestern Mutual. On June 22, 2023, Northwestern Mutual replied and advised that additional documents would be produced, but declined to respond to the balance of the remaining requests as they were overbroad, unduly burdensome, vague and ambiguous in their descriptions.

On November 7, 2023, the Plaintiff sent a letter to Northwestern Mutual demanding that it produce all of the requested documents, communications, and information related to the policies, including all of Northwestern Mutual’s internal communications, communications with agents, and communications with nineteen different listed third-party individuals and entities. On November 16, 2023, Northwestern Mutual responded to the Plaintiff, reiterating its prior position concerning the scope of the documents, and declining to provide anything further with respect to the policies.

On December 15, 2023, the Plaintiff filed a Declaratory Judgment action asking the Court to declare that Plaintiff is entitled to all of the documents, communications, and information requested from Northwestern Mutual. The Plaintiff filed an Amended Complaint on March 4, 2024. On March 18, 2024, Northwestern Mutual answered the Amended Complaint, denying it had any legal obligation to provide the requested materials to Plaintiff. During this action, Northwestern Mutual produced to Plaintiff copies of the life insurance policies, all documents relating to any changes to those policies and regarding the payment of premiums, and other documents that it would provide to policyholders as part of its standard practices.

### LEGAL STANDARD

Under Rule 56(c), *SCRCP*, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 490, 732 S.E.2d 205, 208-09 (Ct. App. 2012). “Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” *Id.* at 490, 732 S.E.2d at 209 (quoting *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004)). When plain, palpable and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (2008). Furthermore, Rule 56(e), *SCRCP* provides that an adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 67-68, 448 S.E.2d 581, 584 (Ct. App. 1994). It is well established that “[t]he plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will

bear the burden of proof.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007).

## DISCUSSION AND ANALYSIS

The Plaintiff seeks a declaration from the Court that it is entitled to receive all of the documents and information it requested from Northwestern Mutual related to the subject life insurance policies. (Am. Compl. ¶ 31.) The Amended Complaint raises no other claims or causes of action and seeks no monetary damages or other relief. (*See id.*) Northwestern Mutual argues there is no affirmative legal duty requiring it to provide the Plaintiff with the requested materials that have not already been provided. As explained in detail below, the Court concludes that no genuine issue of material fact exists with regard to the absence of a legal duty on the part of Northwestern Mutual to provide the requested materials, and that summary judgment in favor of Northwestern Mutual is appropriate.

### I. The Law Imposes No Legal Duty to Provide the Documents

“When a party has a question regarding its rights or obligations under the law, the party may bring an action under the Declaratory Judgments Act to have the question resolved by a court.” *S.C. Lottery Comm’n v. Glassmeyer*, 433 S.C. 244, 250, 857 S.E.2d 889, 892–93 (2021). “Where a complaint is devoid of allegations which are sufficient to establish the existence of a right in plaintiff arising out of the matters alleged, a cause of action for declaratory judgment is not stated,” and the complaint is subject to dismissal. *Plenge v. Russell*, 236 S.C. 473, 486, 115 S.E.2d 177, 183 (1960) (finding the complaint contained no “assertion of legal rights and a positive legal duty” to support declaratory judgment action).

Plaintiff requests a declaration of legal right and entitlement to certain documents allegedly in the possession of Northwestern Mutual. “Whether the law recognizes a particular duty is an

issue of law to be determined by the court.” *Ellis v. Niles*, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996). The parameters for identifying a legal duty have been clearly set forth: “[a]n affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711, 714 (2003). Where the existence of a legal right or duty is required to support a declaratory judgment action, the absence of a legal duty is dispositive to such action. Here, the Court finds there is no duty under the law, contract, or otherwise requiring Northwestern Mutual to produce the requested materials to the Plaintiff.

First, the clear and unambiguous language of the policies does not give rise to a duty or obligation which requires Northwestern Mutual to provide the requested materials. An insurer’s obligation under a policy of insurance is defined by the terms of the policy itself and cannot be enlarged by judicial construction. *South Carolina Ins. Co. v. White*, 301 S.C. 133, 390 S.E.2d 471 (Ct. App. 1990); *Quinn v. State Farm Mut. Auto. Ins. Co.*, 238 S.C. 301, 304, 120 S.E.2d 15, 16 (1961) (“The Court has no power to interpolate into the agreement between the insurer and the insured a condition or stipulation not contemplated either by the law or by the contract between the parties.”).

Northwestern Mutual does in fact provide certain documents to policyholders as part of its standard practices. But what the Plaintiff seeks goes beyond those standard practices and is certainly not required by the terms of the policies. (Cowles Aff. ¶¶ 14, 15).<sup>1</sup> Plaintiff’s November 7, 2023 letter asked Northwestern Mutual to identify and provide all documents and communications to or from several listed third parties over an eleven-year period of time which in any way relate to Plaintiff or the policies. (Am. Compl., Exhibit 3.) Plaintiff also asked for

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<sup>1</sup> The Plaintiff offered no facts rebutting any assertions in Ms. Cowles’ affidavit.

documents and information concerning compensation or commissions received by any individual or entity associated with the policies, management of the policies, any changes of personnel associated with the policies, and the complete policy files. (*Id.*) Plaintiff's second set of discovery served on Northwestern Mutual in this action contain 39 requests for production seeking the same communications and documents with numerous persons and entities from Northwestern Mutual. (*See* Def.'s Mot. for Prot. Ord., Exhibit 2.)

The scope of materials and information requested by Plaintiff exceeds that of a standard request for documents from a life insurance policyholder. The insurance policies create no legal obligation on the part of Northwestern Mutual to provide its communications with numerous persons and entities, nor to disclose internal information related to agent compensation or personnel changes. No legal duty is created by the terms of the insurance policies between Plaintiff and Northwestern Mutual requiring the production of this information, and the Court declines to read such a duty into the policies.

Additionally, no applicable statutes or regulations governing the conduct of life insurance companies under South Carolina law create a duty or requirement for Northwestern Mutual to produce the requested information. Title 38, Chapter 63 of the South Carolina Insurance Code places many obligations on life insurance companies with respect to providing certain information to policyholders. However, no provisions mandate a life insurer to give policyholders any documents or information concerning internal communications or those with third parties, nor are life insurers required to disclose to policyholder's information about the specific amount of compensation or commissions paid to agents. The regulations promulgated by the South Carolina Department of Insurance codified in Chapter 59 of the South Carolina Administrative Code

similarly contain no requirements that life insurers disclose or provide such information to policyholders.

**II. There Is No Fiduciary Relationship that Gives Rise to an Obligation to Produce the Requested Materials.**

Plaintiff contends that a fiduciary relationship exists between the parties and that this relationship creates an obligation to provide the requested materials. As an initial matter, the Court notes that the Amended Complaint includes no allegation of a fiduciary relationship in support of Plaintiff's request for declaratory judgment. The Plaintiff has not cited to any South Carolina law establishing the existence of a fiduciary relationship between a life insurer and a policyholder based solely upon that relationship.

“A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). As a general rule, such a relationship “cannot be established by the unilateral action of one party” but rather “[t]he other party must have actually accepted or induced the confidence placed in him.” *Regions Bank v. Schmauch*, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct. App. 2003).

The existence of a fiduciary duty is a question of law for the court to resolve. *See Hendricks*, 353 S.C. at 459, 578 S.E.2d at 715. (“Although whether a fiduciary relationship has been breached can be a question for the jury, the question of whether one should be imposed between two classes of people is a question for the court.”). South Carolina law states that “a fiduciary relationship, if one is found to exist, flows not from the mere fact of an insurance relationship between the parties; something more than the mere fact of an insurance relationship is required to establish a fiduciary relationship.” *Pitts v. Jackson Nat’l Life Ins. Co.*, 352 S.C. 319,

333, 574 S.E.2d 502, 509 (Ct. App. 2002) (quoting 14 Lee R. Russ & Thomas F. Segalla, Couch on Insurance § 198:7, at 198–16 (3d ed. 1999)); see also *Jennings v. Travelers Home & Marine Ins. Co.*, No. 6:20-CV-00869-JD, 2022 WL 22887075, at \*3 (D.S.C. May 9, 2022) (same).

Here, the relationship between the parties is merely one of insurer and policyholder. The Plaintiff has not come forward with any facts by way of affidavit or otherwise that would support a finding of a fiduciary relationship with Northwestern Mutual. There is certainly no evidence that Northwestern Mutual accepted the role of a fiduciary with respect to the Plaintiff. Additionally, the Plaintiff has not directed the Court to any legal authorities showing that, even if there were a fiduciary relationship, there would be a duty to provide the requested materials. Those acting in a fiduciary capacity have special duties, for example, a duty of loyalty and a duty to disclose material facts that may affect the interests of a customer or business partner. See *Schmauch*, 354 S.C. at 671, 582 S.E.2d at 444; *Redwend Ltd. Partnership v. Edwards*, 354 S.C. 459, 475, 581 S.E.2d 496, 505 (Ct. App. 2003). But Plaintiff has made no showing that those fiduciary duties should be expanded to include requiring the production of the requested materials.

Plaintiff argues that Northwestern Mutual is a “financial institution” owing a fiduciary duty in accordance with *Burwell v. S.C. Nat’l Bank*, 288 S.C. 34, 340 S.E.2d 786 (1986). This belief is misplaced. First, the court in *Burwell* addressed a bank as a financial institution, not a life insurance company. Additionally, “*Burwell* does not stand for the blanket proposition that a financial institution owes a fiduciary duty to its customer if it provides the customer with advisory services.” *In re Infinity Bus. Grp., Inc.*, 628 B.R. 213, 245 (D.S.C. 2021), *aff’d*, 31 F.4th 294 (4th Cir. 2022) (applying South Carolina law and holding that no fiduciary duty was created by entity serving as a financial advisor and agent). “Instead, *Burwell* is consistent with South Carolina’s

canon of fiduciary duty cases and suggests that the existence of a fiduciary duty should be determined based on the substance of the relationship rather than the name of the relationship.” *Id.*

### **III. There Has Been No Showing by the Plaintiff Under Rule 56(f).**

Rule 56(f) allows the Court to order a continuance if the party opposing the motion submits affidavits showing the reasons why the party cannot present by affidavit “facts essential” to justify the party’s opposition. Rule 56(f), *SCRCP*. There is nothing in the affidavit submitted by the Plaintiff which suggests a reason why any additional discovery would assist the Plaintiff in responding to Northwestern Mutual’s motion for summary judgment, especially in light of the above discussion of the applicable law.

### **CONCLUSION**

For the reasons stated above, Northwestern Mutual’s Motion for Summary Judgment is hereby **GRANTED**, and Plaintiff’s action for declaratory judgment is **DISMISSED**. Northwestern Mutual’s Motion for Protection and Plaintiff’s Motion to Compel Discovery are **MOOT**.

**IT IS SO ORDERED.**

*Electronic Signature of Presiding Judge on Following Page*



Greenville Common Pleas

**Case Caption:** Robark Properties LLC vs. Northwestern Mutual Life Insurance Company  
**Case Number:** 2023CP2306646  
**Type:** Order/Summary Judgment

So Ordered

William C. McMaster, III