THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
William C. McMaster, III, Circuit Court Judge

Case No. 2023-CP-23-06646
Appellate Case No. 2025-001316

Robark Properties, LLC …… Appellant,

v.

Northwestern Mutual Life Insurance Company…… Respondent.

FINAL BRIEF OF RESPONDENT

D. Larry Kristinik
Yasmeen Ebbini
Nelson Mullins Riley & Scarborough LLP
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Attorneys for Respondent Northwestern Mutual Life Insurance Company

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

COUNTER-STATEMENT OF ISSUES ON APPEAL 1

COUNTER-STATEMENT OF THE CASE AND FACTS 1

A. Robark's Demand for Documents 1

B. The Present Action and Continuing Document Dispute 4

STANDARD OF REVIEW 8

ARGUMENT 10

I. The Circuit Court Correctly Determined No Legal Duty Exists for the Declaratory Judgment Claim 10

A. There Is No Provision in the Policies that Creates a Duty to Provide the Documents at Issue. 11

B. There Is No Statute, Regulation, or Common Law Principle that Creates a Duty for Northwestern Mutual to Provide the Documents at Issue. 13

II. The Circuit Court Correctly Ruled that There Was No Basis for Postponing its Summary Judgment Ruling to Allow for Discovery 14

A. Robark Failed to Demonstrate the Necessity for Further Discovery. 14

B. Robark Failed to Present a Valid Rule 56(f) Affidavit. 17

C. Robark Cannot Use the Discovery Process to Obtain the Relief Requested in Declaratory Judgment. 21

III. The Circuit Court Properly Rejected Robark's Late, Unpled Fiduciary Relationship Argument. 24

A. The Amended Complaint Does Not Allege the Existence of a Fiduciary Relationship. 25

B. Robark Presented no Evidence Showing the Existence of a Fiduciary Relationship. 26

C. A Fiduciary Relationship Does Not Include the Duty to Provide all Documents and Information that May Be Requested. 30

IV. The Court Should Deem Robark's Third and Fourth Issues Abandoned. 30

CONCLUSION 33

TABLE OF AUTHORITIES

Page(s)

Cases

Alford v. Martin,
176 S.C. 207, 180 S.E. 13 (1935) 9

Am. Mod. Select Ins. Co. v. McAnulty,
2022 WL 18587808 (D.S.C. May 3, 2022)..... 27

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986)..... 24

Armstrong v. Collins,
366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005)..... 27

Auto-Owners Ins. Co. v. Hamin,
368 S.C. 536, 629 S.E.2d 683 (Ct. App. 2006)..... 9

Baughman v. American Tel. & Tel. Co.,
306 S.C. 101, 410 S.E.2d 537 (Ct. App. 1991)..... 20

Bayle v. S.C. Dep't of Transp.,
344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001)..... 15, 20

Black v. Lexington School Dist. No. 2,
327 S.C. 55, 488 S.E.2d 327 (1997) 9

Brooks v. Kay,
339 S.C. 479, 530 S.E.2d 120 (2000) 26

Brown v. Green Tree Fin. Servicing Corp.,
2008 WL 2157120 (D.S.C. May 19, 2008)..... 29

Brown v. Pearson,
326 S.C. 409, 483 S.E.2d 477 (Ct. App. 1997)..... 27

Bryan R. v. Watchtower Bible & Tract Soc. of New York, Inc.,
738 A.2d 839 (Me. 1999)..... 25

Bryson v. Bryson,
378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008)..... 32

Bullard v. Crawley,
294 S.C. 276, 363 S.E.2d 897 (1987) 26

Cafe Assoc., Ltd. v. Gerngross,
305 S.C. 6, 406 S.E.2d 162 (1991) 8

Covil Corp. by & through Protopapas v. Pennsylvania Nat'l Mut. Cas. Ins. Co.,
436 S.C. 85, 870 S.E.2d 191 (Ct. App. 2022)..... 19, 20

Dawkins v. Fields,
354 S.C. 58, 580 S.E.2d 433 (2003) 15

Doe ex rel. Doe v. Batson,
345 S.C. 316, 548 S.E.2d 854 (2001) 18

Dunn v. Dunn,
298 S.C. 499, 381 S.E.2d 734 (1989) 9, 14

Ellis v. Davidson,
358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004)..... 9

Equivest Fin., LLC v. Ravenel,
422 S.C. 499, 812 S.E.2d 438 (Ct. App. 2018)..... 31

Evans v. Techs. Applications & Service Co.,
80 F.3d 954 (4th Cir. 1996) 18

Fesmire v. Digh,
385 S.C. 296, 683 S.E.2d 803 (Ct. App. 2009)..... 9

Fontaine v. Peitz,
291 S.C. 536, 354 S.E.2d 565 (1987) 16

George v. Fabri,
345 S.C. 440, 548 S.E.2d 868 (2001) 10

Glasscock, Inc. v. U.S. Fid. & Guar. Co.,
348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001)..... 30

Great Am. Ins. Co. v. Mills,
2008 WL 2250256 (D.S.C. May 29, 2008)..... 29

Guinan v. Tenet Healthsystems of Hilton Head, Inc.,
383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009)..... 14

Hendricks v. Clemson Univ.,
353 S.C. 449, 578 S.E.2d 711 (2003) 26, 29

Higgins v. Med. Univ. of S.C.,
326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997)..... 17

Houck v. State Farm Fire & Cas. Ins. Co.,
366 S.C. 7, 620 S.E.2d 326 (2005) 10

Humana Hosp.-Bayside v. Lightle,
305 S.C. 214, 407 S.E.2d 637 (1991) 17

In re CSX Corp.,
124 S.W.3d 149 (2003)..... 15

J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC,
441 S.C. 642, 896 S.E.2d 328 (Ct. App. 2023)..... 9

Matter of Est. of Smith,
419 S.C. 111, 796 S.E.2d 158 (Ct. App. 2016)..... 20

McMillan Pazdan Smith, LLC v. Mattison,
444 S.C. 316, 906 S.E.2d 612 (Ct. App. 2024)..... 8

Micro Motion, Inc. v. Kane Steel Co.,
894 F.2d 1318 (Fed. Cir. 1990)..... 22, 24

Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.,
320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995)..... 18, 19

Moore v. Moore,
360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004)..... 26, 27, 29, 30

Moore v. Weinberg,
373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007)..... 14

Moses v. Mfrs. Life Ins. Co.,
298 F. Supp. 321 (D.S.C. 1968)..... 29

Nader v. Blair,
549 F.3d 953 (4th Cir. 2008) 18

Nelson v. Piggly Wiggly Cent., Inc.,
390 S.C. 382, 701 S.E.2d 776 (Ct. App. 2010)..... 11

Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Env't Control,
387 S.C. 380, 692 S.E.2d 920 (2010) 15

Poco-Grande Invs. v. C & S Family Credit, Inc.,
301 S.C. 323, 391 S.E.2d 735 (Ct. App. 1990)..... 27

Pond Place Partners v. Poole,
351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002)..... 10

Portrait Homes - S.C., LLC v. Pennsylvania Nat'l Mut. Cas. Ins. Co.,
442 S.C. 515, 900 S.E.2d 245 (Ct. App. 2023)..... 11

Redwend Ltd. P'ship v. Edwards,
354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003)..... 30

Regions Bank v. Schmauch,
354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)..... 28

Robertson v. First Union Nat. Bank,
350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002)..... 17

Seattle Times Co. v. Rhinehart,
467 U.S. 20 (1984) 23

Singletary v. Wachovia Mortg. Corp./Wells Fargo,
2013 WL 1194863 (D.S.C. Jan. 28, 2013) 24

South Carolina Ins. Co. v. White,
301 S.C. 133, 390 S.E.3d 471 (Ct. App. 1990) 11

Spence v. Wingate,
395 S.C. 148, 716 S.E.2d 920 (2011) 10, 11

St. Paul Reinsurance Co. v. Ollie's Seafood Grille & Bar, LLC,
242 F.R.D. 348 (D.S.C. 2007) 19

State v. Lindsey,
394 S.C. 354, 714 S.E.2d 554 (Ct. App. 2011) 31

Steele v. Victory Sav. Bank,
295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988) 27

Town of Hollywood v. Floyd,
403 S.C. 466, 744 S.E.2d 161 (2013) 8

Williams v. Government Employees Ins. Co.,
409 S.C. 586, 762 S.E.2d 705 (2014) 11

Wilson v. Gaston County, NC,
685 F. App'x 193 (4th Cir. 2017) 24

Woodson v. DLI Props., LLC,
406 S.C. 517, 753 S.E.2d 428 (2014) 8

Regulations

S.C. Reg. § 69-12 13

S.C. Reg. § 69-30 13

S.C. Reg. § 69-40 13

Rules

Rule 26, SCRCP 15

Rule 56, SCRCP 8, 9, 17, 18

Other Authorities

James F. Flanagan, *South Carolina Civil Procedure* (2nd ed. 1996) 17

COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court correctly granted summary judgment in favor of Northwestern Mutual on Robark's sole claim for declaratory judgment after finding Northwestern Mutual had no legal duty to produce the documents and communications Robark demanded.

2. Whether the Circuit Court correctly concluded further discovery would not contribute to the court's resolution of the legal question underlying the declaratory judgment claim.

3. Whether the Circuit Court correctly found that Robark's affidavit failed to comply with Rule 56(f) requirements because it did not detail how further discovery would uncover relevant evidence and create a genuine issue of material fact or explain why additional fact discovery was necessary to resolve the dispositive legal question in the case.

4. Whether the Circuit Court correctly rejected Robark's unpled theory that a fiduciary relationship with Northwestern Mutual created a legal duty to provide Robark with the requested documents and communications.

COUNTER-STATEMENT OF THE CASE AND FACTS

This case centers around a single question: does a life insurance company have a legal duty to provide its policyholders with copies of documents and communications beyond standard policy records? Appellant Robark Properties LLC ("Robark" or "Appellant") appeals from the Circuit Court's Order denying its Motion to Reconsider the court's Order granting Respondent Northwestern Mutual Life Insurance Company's ("Northwestern Mutual" or "Respondent") Motion for Summary Judgment. This Court should affirm the Circuit Court and find, as the Circuit Court did, that there has been no showing that Northwestern Mutual has any contractual, statutory, or other legal duty to provide Robark with the requested documents and communications.

A. Robark's Demand for Documents

In 2022, Robark began its efforts to obtain documents related to three life insurance policies issued by Northwestern Mutual through a series of unrelated litigation in North Carolina, captioned *Mary Cooper Falls Wing vs. Goldman Sachs Trust Company, N.A., et al*. (Wake County Superior Court Case Nos. 18-CVS-5916, 17-CVS-3947, 17-CVS-3283, 18-CVS-5830 and 15-E-1997). (*See*

Am. Compl. ¶¶ 12, 13, 19, Exs. 1–3; R. at 71–73, 77–110.) The managing member of Robark, Ralph Falls, III, was also a plaintiff in the North Carolina actions. While the complaints are not in the record in this case, it appears that litigation was brought by Mr. Falls and his sisters for the purpose of challenging the validity of amendments to their late father's Trust, which impacted their beneficiary status. Robark owns the three policies at issue, each of which insures the life of Mr. Falls. Between 2022 and 2023, Northwestern Mutual received several letters from attorneys representing Mr. Falls and Robark demanding the production of extensive documents and information related to the policies pursuant to a September 22, 2022 subpoena issued in the North Carolina actions. (*Id*.; Mot. for Summ J., Ex. 1 – Christine Cowles Affidavit ¶ 3; R. at 141–46.) The subpoena sought documents and materials related to the insurance policies, Robark, Mr. Falls, and several other individuals and entities. (*Id.* ¶ 4; R. at 142.) According to Robark the purpose of the document requests "was for Robark's new management to gain a better understanding of the policies and their respective histories[.]" (*See* 1/27/2025 Hr'g Tr. 10:14–16; R. at 416.) On October 3, 2022, Northwestern Mutual transmitted documents in response to the subpoena, including annual policy statements and documents showing changes to the policies' ownership and beneficiary designations. (*Id.* ¶¶ 4–5; R. at 143.)

Northwestern Mutual continued to receive contact from Mr. Falls seeking information about the policies. On April 27, 2023 and May 11, 2023, Northwestern Mutual provided Mr. Falls with a number of policy illustrations, an application for one of the policies, an application for term upgrade or term conversion, beneficiary and owner designation forms, and various documents relating to policy changes and dividend changes for the policies. (*Id.* ¶ 6; R. at 143.) In Robark's May 23, 2023 letter, Northwestern Mutual was informed that Mr. Falls had become the acting manager of Robark and was entitled to receive "all records" associated with the policies so he

could "prudently manage the company's affairs." (*See* Am. Compl., Ex. 1; R. at 78.) The letter identified numerous categories of documents that Robark requested from Northwestern Mutual relating to the policies, along with all communications between Northwestern Mutual and various third-party individuals and entities. (*Id.*; R. at 79–80.) Among other things, Robark is seeking commission and compensation information for financial representatives, communications with lawyers and law firms, communications with accounting firms, and communications with trustees. (*Id.*; R. at 79.)

In response to Robark's letter, Northwestern Mutual investigated the North Carolina actions and discovered that a motion to approve settlement and early judgment was filed April 12, 2023, and granted by the Court in a June 2, 2023 Order and Judgment that dismissed the North Carolina cases and rendered the subpoena moot. (Mot. for Summ J., Ex. 1 – Cowles Aff. ¶ 8; R. at 144.) Northwestern Mutual responded to Robark on June 22, 2023, advising that, although the subpoena for documents was moot, it would still provide Robark additional documents including annual policy statements from 2013 to 2020, premium payment summaries, policy or dividend change documents, and documents showing the closure of the insurance service account. (Am. Compl. Ex. 2; R. at 82–84.) Northwestern Mutual stated it would not, however, produce documents that were outside the scope of materials produced to customers as part of the company's standard practice. (*Id*. ¶¶ 9, 10; R. at 144.) In response to Robark's request for "copies of the policies," Northwestern Mutual indicated the company does not maintain physical copies of policies, but policy replicas could be ordered. (*Id.* ¶ 11; R. at 144–45.)

Robark's November 7, 2023 letter reiterated the demand that all requested documents and information be produced despite Northwestern Mutual's objections regarding the scope, confidentiality, and proprietary nature of the information and the now moot subpoena. The letter

included additional requests for specific documents and communications originating from Northwestern Mutual and other third parties. Northwestern Mutual provided replica copies of the Policies to Robark on or around November 16, 2023. Northwestern Mutual additionally sent a letter to Robark explaining that Client Services and Northwestern Mutual's counsel had both provided substantial documents and information to Robark to satisfy his demands, but it would not be providing any further documents with respect to the Policies. (*See* Am. Compl. Ex. 4; R. at 112.)

B. The Present Action and Continuing Document Dispute

On December 15, 2023, Robark initiated the underlying action by filing a Complaint for declaratory judgment against Northwestern Mutual. An Amended Complaint was filed March 4, 2024, and Northwestern Mutual timely answered on March 18, 2024. (*See* Am. Compl.; R. at 70–76; Am. Ans.; R. at 121–27.) The one-count Amended Complaint contains no jury trial demand and seeks no financial damages or other monetary relief. To support the singular declaratory judgment action, Robark claims Northwestern Mutual is "obligated" to produce the documents, communications and information requested, and that "it is entitled to a declaration to this effect." (*Id.* ¶¶ 31, 32; R. at 75.) The only relief Robark seeks in this case is a declaration that it is "entitled to all the documents, communications and information it has requested from Northwestern Mutual." (Am. Compl. ¶ A; R. at 75.)

Robark served its first set of interrogatories and requests for production on March 4, 2024. In response, Northwestern Mutual made a 339-page document production which contained policy replicas, copies of policy applications, annual policy statements, beneficiary designation forms, dividend option request forms, in-force illustrations, and documents related to the closing of the insurance service account, all of which had been previously provided to Robark. (Mot. for

Protective Order at 2; R. at 263.) Robark's second set of discovery requests form the basis of the Robark's discovery dispute. Served on July 17, 2024, the set included 39 requests for production seeking the very same documents and information demanded in Robark's previous letters. (*See* Mot. for Protective Order at 3, Ex. 2 – Second Set of Requests for Production; R. at 274–81.) The chart below summarizes the documents that Northwestern Mutual provided to Robark in contrast to the documents and communications Robark requested but were not provided:

Policyholder Documents Provided:	**Documentation Requested but Not Provided:**
All Annual Policy Statements for years 2013 to 2022.	All documents, communications and/or information related to Robark and/or the Policies from 2013 through present.
All policy change documents	All communications between any representative, agent, or employee of Northwestern Mutual and: • John Bode; • Any attorney, agent, employee or other person acting on behalf of John Bode; • Coleen Miller; • Walter E. Brock, Jr.; • Any attorney, representative, or employee of Young Moore and Henderson, P.A.; • Walter Brodie Burwell Jr., • Any other attorney, representative, or employee of Envisage Law (formerly known as Pinna Johnston & Burwell); • John Mitchell; • David Woody; • Any representative, agent, or employee of Heirloom Advisors; • Any representative, agent or employee of the "Condrey Network"; • Any representative, agent or employee of the "Berry Network"; • Any representative, agent or employee of Norton Collar Lund Lilley, PLLC; • Jeff Pink; • Any representative, agent or employee of Barham Guy Frelier, P.A.; • Dianne Sellers; and

	• Any representative, agent or employee of Fidelity Investments, including but not limited to Carrie Slaughter, Doug Clements and/or Kathy Sommer (formerly Segodnia)
All dividend change documents	All communications with third parties (including John Bode or his attorney Walter Brock) related to Robark, the North Carolina litigation, or the subpoena served on Northwestern Mutual on or about September 22, 2022
All beneficiary designations and change documents	All communications between a representative, agent, or employee of: • Northwestern Mutual; • Heirloom Advisors; • the Condrey Network; and • the Berry Network and a third party related in any way to Robark and/or the Policies
All ownership designations and change documents	All internal communications from: • Northwestern Mutual; • Heirloom Advisors; • the Condrey Network; and • the Berry Network related in any way to Robark and/or the Policies
Policy replicas	Any and all communications relating to Robark and/or the Policies sent to Northwestern Mutual since 2013, including the identity of each person who sent a communication and the date, parties, means, and substance of each and every communication
Policy applications	Any and all communications relating to Robark and/or the Policies sent by Northwestern Mutual since 2013, including the identity of each person Northwestern Mutual has sent a communication to and the date, parties, means, and substance of each and every communication
Policy illustrations	All documents and communications concerning any compensation and/or commissions received by any individual, entity and/or financial representative associated with the Policies, including, but not limited to, John Mitchell, David Woody, and/or Heirloom Advisors

Client policy summaries	All documents and communications regarding management of the Policies by John Mitchell and/or David Woody since 2013. Including all documents and communications concerning any changes of any personnel assigned to or associated with the Policies
Documents related to Insurance Service Account (ISA) closure	All other documents and communications related to QPP for the Policies
Documents related to the use of Quik Pay Plus (QPP)	A complete explanation of what involvement, if any, David Wood has had with the Policies since 2013
Premium payment histories	The complete file for Robark and the Policies from 2013, including all documents and communications concerning Robark and/or the Policies

On July 25, 2024, Northwestern Mutual filed a Motion for Summary Judgment arguing that no legal duty obligates the company to produce the documents and information that Robark demands. (Mot. for Summ. J. at 10–11; R. at 137–38.) On August 13, 2024, Northwestern Mutual filed a Motion for Protective Order addressing Robark's second set of discovery, arguing those requests were an improper attempt to circumvent the Circuit Court's declaratory authority because the requests seek the same materials that are the subject of Robark's Amended Complaint. (Mot. for Protective Order at 2–3; R. at 263–64.) Robark filed a Motion to Compel Northwestern Mutual's discovery responses on August 23, 2025. (Mot. to Compel; R. at 282.)

On January 24, 2025, Robark submitted a Memorandum in Support of its Motion to Compel and in Opposition to Northwestern Mutual's Motion for Summary Judgment and Protective Order. (*See* Mem. in Opp'n to Summ. J.; R. at 298–313.) The Circuit Court held a hearing on the parties' pending motions the following Monday, January 27, 2025. (1/27/2025 Hr'g Tr.; R. at 407–35.) Following the hearing, the Circuit Court allowed the parties to submit supplemental briefings to support their summary judgment positions. Northwestern Mutual filed its supplemental memoranda on February 3, 2025, and Northwestern Mutual filed its response on February 10, 2025. The Circuit Court granted Northwestern Mutual's Motion for Summary

Judgment by written Order entered on March 7, 2025. (Order; R. at 6–15.) The Circuit Court determined that "[w]here 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." (*Id.* at 5; R. at 10.) It concluded that no duty existed in law, contract, or otherwise requiring Northwestern Mutual to produce the requested materials. (*Id.*; R. at 10.) The Circuit Court additionally ruled that Robark failed to present any evidence establishing the existence of a fiduciary relationship it claims to have with Northwestern Mutual and further that Robark failed to submit an affidavit pursuant to Rule 56(f), *SCRCP*. (*Id.* at 7–9; R. at 12–14.)

On March 17, 2025, Robark filed a Motion to Reconsider the Court's March 7, 2025 Order. (Mot. to Reconsider; R. at 375–96.) Northwestern Mutual filed a Reply in Opposition to the Motion to Reconsider on April 1, 2025. (Reply in Opp'n to Reconsideration; R. at 397–405.) The Circuit Court held a hearing on Robark's motion on May 30, 2025. (5/30/2025 Hr'g Tr.; R. at 437–51.)[1] Robark's motion was denied by Form 4 Order dated June 11, 2025. (Form 4 Order; R. at 16.) On July 1, 2025, Robark filed and served its Notice of Appeal. This appeal follows.

STANDARD OF REVIEW

This Court applies the same standard as the trial court when reviewing a grant of summary judgment. *Woodson v. DLI Props., LLC*, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014). Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Cafe Assoc., Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991). "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

[1] Due to transcription errors, the arguments made by counsel for the parties at this hearing are not reflected in the court's transcript. It is Northwestern Mutual's understanding that the errors resulted from a microphone at the podium not being activated.

remaining for trial." *McMillan Pazdan Smith, LLC v. Mattison*, 444 S.C. 316, 323, 906 S.E.2d 612, 616 (Ct. App. 2024). However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004).

"[O]ur standard of review for a declaratory judgment is based on the issue raised by the request for the judgment." *J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC*, 441 S.C. 642, 664, 896 S.E.2d 328, 340 (Ct. App. 2023). "Declaratory judgment actions are neither legal nor equitable, and therefore, the standard of review depends on the nature of the underlying issues." *Auto-Owners Ins. Co. v. Hamin*, 368 S.C. 536, 540, 629 S.E.2d 683, 685 (Ct. App. 2006). "To determine whether an action is legal or equitable, this Court must look to the action's main purpose as reflected by the nature of the pleadings, evidence, and character of the relief sought." *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009). "The character of an action is determined by the complaint in its main purpose and broad outlines and not ... by allegations that are merely incidental." *Alford v. Martin*, 176 S.C. 207, 212, 180 S.E. 13, 15 (1935). Here, the main purpose of this action is for Robark to try to obtain documents from an entity with which it has a contractual relationship. Accordingly, this action should be considered to be legal in nature.

Moreover, this Court should review the Circuit Court's decision as to the insufficiency of Robark's Rule 56(f) affidavit under an abuse of discretion standard. *See e.g., Black v. Lexington School Dist. No. 2*, 327 S.C. 55, 488 S.E.2d 327 (1997) (applying abuse of discretion standard to trial court's exclusion of affidavit pursuant to Rule 56, SCRCP). An abuse of discretion occurs

when there is no evidence to support the trial judge's factual conclusion or when the ruling is based upon an error of law. *Id.* "The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion." *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989).

ARGUMENT

I. The Circuit Court Correctly Determined No Legal Duty Exists for the Declaratory Judgment Claim.

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The first and dispositive question in this case is whether any legal duty or obligation exists to support a declaratory judgment compelling Northwestern Mutual to provide all documents, communications, and information requested by Robark in this matter. Robark's Amended Complaint asserts, without authority, that Northwestern Mutual is "obligated" to produce all such documents and communications, including internal and third-party communications. (Am. Compl. ¶ 32; R. at 75.) The Circuit Court correctly held that no such duty exists, and this Court should affirm. (Order at 6–7; R. at 11–12.)

The sole cause of action brought by Robark is for declaratory judgment. The Amended Complaint pleads no other causes of action and makes no request for monetary damages. (*See generally* Am. Compl.; R. at 70.) As such, the gravamen of relief sought is a declaration that Northwestern Mutual has an obligation to "produce the documents, communication and information" requested by Robark, and that Robark was legally entitled to such documents. (*See* Am. Compl. ¶¶ 32, A; R. at 75.) Under the Declaratory Judgment Act, a plaintiff must establish both (1) a definite assertion of a legal right and (2) a corresponding positive legal duty denied by the defendant. *Pond Place Partners v. Poole*, 351 S.C. 1, 16, 567 S.E.2d 881, 889 (Ct. App. 2002). Duty is generally defined as the obligation to conform to a particular standard of conduct toward

another. *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 781 (Ct. App. 2010). The existence of a duty owed is a question of law for the courts. *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11–12, 620 S.E.2d 326, 329 (2005); *see also Spence v. Wingate*, 395 S.C. 148, 160, 716 S.E.2d 920, 926 (2011) ("Whether the law recognizes a particular duty is an issue of law to be decided by the Court.").

A. There Is No Provision in the Policies that Creates a Duty to Provide the Documents at Issue.

"An insurance policy is a contract between the insured and the insurance company, and the terms of the policy are to be construed according to contract law." *Portrait Homes - S.C., LLC v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 442 S.C. 515, 559, 900 S.E.2d 245, 269 (Ct. App. 2023), *reh'g denied* (Apr. 24, 2024), *cert. dismissed* (Mar. 20, 2025). "The construction of a clear and unambiguous contract is a question of law for the court to determine." *Williams v. Government Employees Ins. Co.*, 409 S.C. 586, 594,762 S.E.2d 705, 710 (2014) (emphasis in original).

No duty to provide the materials requested by Robark arises from the Policy language in this case. The Circuit Court concluded that nothing within the Policies' clear and unambiguous language requires Northwestern Mutual to turn over the categories of documents requested by Robark as part of the contractual insurance relationship.[2] (Order at 5; R. at 10.) Moreover, the Circuit Court declined to expand or enlarge its construction of the Policies to impose such an obligation. (*Id.*; R. at 10.) (citing *South Carolina Ins. Co. v. White*, 301 S.C. 133, 390 S.E.3d 471 (Ct. App. 1990) (explaining an insurer's obligation under an insurance policy is defined by the terms of the policy itself and cannot be enlarged by judicial construction). Instead, the Circuit Court found that Robark and Mr. Falls had received all documents and materials that Northwestern

[2] Replica copies of the Policies were provided as exhibits to Northwestern Mutual's Motion for Summary Judgment. (*See* Mot. for Summ. J., Exs. 5–7; R. at 173–261.)

Mutual would normally provide policyholders in its routine practice, including, among other records, policy replicas, documents showing policy changes, and premium payments. The Circuit Court concluded the terms of the Policies did not require more. (Order at 5–6; R. at 10–11.) ("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.").

With its summary judgment motion, Northwestern Mutual presented undisputed evidence of the types of documents it normally provides to life insurance policyholders as part of its standard practice. The affidavit of Assistant General Counsel Christine Cowles offered in support of summary judgment details the types of documents Northwestern Mutual typically provides to its policyholders, such as: Policy replicas; Applications; Beneficiary change forms; Policy change forms; Dividend change forms; Annual policy statements; Illustrations; Documents related to insurance service accounts; Documents related to Quick Pay Plus; Documents regarding premiums due and premium payments; and Documents relating to any other type of policy servicing request made by the owner of the policy. (Mot. for Summ. J., Ex. 1 – Cowles Aff. ¶ 16; R. at 145–46.)

Along with the materials produced pursuant to the North Carolina subpoena prior to the commencement of this action, Northwestern Mutual provided Robark and Mr. Falls with copies of the policy replicas, annual policy statements from 2013–2022, documents showing any policy or dividend changes, all beneficiary and ownership designation change forms, documents showing the closure of the Insurance Service Account, premium payment histories and summaries, multiple policy illustrations, policy applications, and other related servicing documents. (*Id.* Cowles Aff. ¶¶ 5, 6, 10, R. at 143, 144–45; *see* Document Comparison Chart, *supra*.) The affidavit establishes it is not within the standard practice of Northwestern Mutual to provide policy owners with any

information or documents other than what they had already provided to Robark and Mr. Falls. (*Id.* Cowles Aff. ¶ 15; R. at 145.) Robark failed to present any evidence refuting the affidavit's description of Northwestern Mutual's standard practice.

B. There Is No Statute, Regulation, or Common Law Principle that Creates a Duty for Northwestern Mutual to Provide the Documents at Issue.

In addition to the absence of any contractual duty within the policy language, the Circuit Court also found no statute, regulation, or common law that imposed a duty on Northwestern Mutual to produce documents and information beyond what it had already provided to Robark. (*See* Order at 6–7; R. at 11–12.) Throughout this litigation Robark did not—and still has not—identified any statute, regulation, or other authority or Department of Insurance guidance that requires an insurance company to provide what Robark requests from Northwestern Mutual. This is not to say that South Carolina law imposes no obligations on insurers to provide materials to policyholders. Title 38, Chapter 63 of the South Carolina Insurance Code and Chapter 59 of the South Carolina Administrative Code both require certain disclosures on the part of an insurer such as providing copies of policies, applications, policy loan notices, policy illustrations, buyer's guides, annual reports, and other documents.[3] However, nothing mandates the production of a company's internal and external communications and other materials simply because a policyholder makes a request. (Mot. for Summ. J. at 11–12, R. at 138–39; Order at 6–7, R. at 11–12.)

Robark's declaratory judgment action is merely an attempt to manufacture a legal duty to placate Mr. Falls' personal campaign to obtain the requested documents and communications by

[3] *See* S.C. Reg. § 69-12, Part B, Art. VII (entitled "Information Furnished to Applicants"); Art. IX (entitled "Reports to Policyholders"); S.C. Reg. § 69-30(E) (entitled "Life Insurance Disclosure Regulation" and requiring a buyer's guide and policy illustrations be provided for new or existing life insurance policies); S.C. Reg. § 69-40, Section 9 (requiring annual reports to be sent to policyholders for certain types of life insurance policies).

any means necessary. (*See* 1/27/25 Hr'g Tr. 27:22-23; R. at 433.) (Robark's counsel confirmed his client was "going to exhaust every legal remedy available to him to get these documents."). Robark's requests far exceed any legal entitlement under the Policies or South Carolina law. As the Circuit Court recognized, Northwestern Mutual cannot be compelled to produce documents it is under no legal duty to otherwise maintain, create, or provide. *See Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007), *aff'd*, 383 S.C. 583, 681 S.E.2d 875 (2009) ("If there is no duty, the defendant is entitled to a judgment as a matter of law."). Because Northwestern Mutual produced all documents that fall within its own established servicing practices—and no contractual, statutory, or other authority requires more—the Circuit Court correctly determined that no right or entitlement to the requested documents existed as a matter of law, and properly granted summary judgment for Northwestern Mutual. This Court should affirm.

II. The Circuit Court Correctly Ruled that There Was No Basis for Postponing its Summary Judgment Ruling to Allow for Discovery.

"A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact." *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009). As the Circuit Court's Order concluded, no further discovery was needed before ruling on the summary judgment motion because the dispositive legal question—whether Northwestern Mutual owes a duty to provide the categories of documents Robark demanded—did not depend on additional factual development for resolution. (Order at 4; R. at 9.) The Circuit Court correctly denied Robark's attempt to convert a declaratory judgment action into an open-ended discovery device to obtain various documents, information, and communications to which policyholders have no legal entitlement.

A. Robark Failed to Demonstrate the Necessity for Further Discovery.

The Circuit Court correctly determined that further discovery was not needed before granting summary judgment because issues of law, not fact, controlled in this case. *See Dunn*, 298 S.C. at 502, 381 S.E.2d at 735 (confirming the rulings of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion); *see also Bayle v. S.C. Dep't of Transp*., 344 S.C. 115, 128–29, 542 S.E.2d 736, 743 (Ct. App. 2001) (affirming summary judgment without further discovery where the record "does not demonstrate further discovery would have contributed to the resolution of the issue at hand—namely, whether the statute of limitations barred Bayle's action.").

Robark repeatedly asserts it was not given a "full and fair opportunity to complete discovery," but has never identified how further discovery would purportedly lead to relevant evidence showing the existence of a legal duty on Northwestern Mutual's part. This is essential on a motion for summary judgment where "the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003).

The arguments presented in Robark's briefings show a critical misunderstanding of the appropriate scope and relevance of any discovery in this case. Discovery must be directly related to uncovering relevant evidence for the specific claims pled. It is not a tool used to expand underlying claims or to explore a party's potential disputes or questions *ad infinitum*. *See* Rule 26(b)(1), *SCRCP* ("Parties may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter involved in the pending action.*"). Any discovery that is unrelated to whether a duty exists is completely irrelevant. This position is well-supported by the understanding that, although the scope of discovery is generally broad, "requests must show a reasonable

expectation of obtaining information that will aid the dispute's resolution. Thus, discovery requests must be 'reasonably tailored' to include only relevant matters." *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Env't Control*, 387 S.C. 380, 388, 692 S.E.2d 920, 925 (2010) (quoting *In re CSX Corp*., 124 S.W.3d 149, 152 (2003)).

Consequently, the only relevant discovery in this case is that which helps the court resolve the central question of whether there is a legal duty to provide the subject documents, and any discovery must be aimed at producing evidence of that purported obligation. An action seeking a declaration of rights or obligations of the parties does not entitle Robark to demand the production of the extensive documents and information it seeks from Northwestern Mutual and other entities through the discovery process. Counsel for Northwestern Mutual explained to the Circuit Court that Robark's discovery is not designed to assist in a resolution of the central issue in this case but instead to bypass the issue entirely. (*See* 1/27/25 Hr'g Tr. 17:23-25, 20:5-12; R. at 423, 426.) ("the documents that have been requested by the Plaintiff in its second requests for production are the very same documents, materials and communication that Plaintiff has filed this action seeking a declaration that it has a right to.").

The foundation of the declaratory judgment claim is an alleged legal entitlement to documents and information. (*See generally* Am. Compl.; R. at 70.) The Circuit Court's Order found that Northwestern Mutual provided the types of documents typically offered to policyholders in the company's standard practice, and that Robark offered no evidence to the contrary aside from its own assertions. (*See* Order at 5, n.1; R. at 10.) Further, at no point does Robark explain how the Circuit Court's denial of discovery constituted an abuse of discretion. *See Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565 (1987) ("An abuse of discretion occurs when the trial judge's ruling is based upon an error of law or, when based on factual conclusions, is without

evidentiary support.") The Circuit Court correctly determined that further discovery would not have yielded relevant evidence concerning the purported legal duty in this case and that Robark's ability to sustain its declaratory judgment claim could not be permitted to hinge upon the speculative discovery of such evidence.

B. Robark Failed to Present a Valid Rule 56(f) Affidavit.

This Court should also reject Robark's argument that it should have been allowed discovery because Robark never filed an affidavit in compliance with Rule 56(f), SCRCP. Rule 56(f) is titled "When Affidavits Are Unavailable" and provides:

> Should it appear from the affidavits of a party opposing the motion that he cannot ***for reasons stated*** present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

Rule 56(f), SCRCP (emphasis added).

"Affidavits are the principal means of bringing information before the court in a motion for summary judgment." *Robertson v. First Union Nat. Bank*, 350 S.C. 339, 351, 565 S.E.2d 309, 316 (Ct. App. 2002) (quoting James F. Flanagan, *South Carolina Civil Procedure* 454 (2nd ed. 1996). It is axiomatic that if a plaintiff "files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is ***required*** under Rule 56, to grant summary judgment" if the facts presented by the defendant support that it is entitled to judgment as a matter of law. *Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 598-99, 486 S.E.2d 269, 272 (Ct. App. 1997) (emphasis added) (quoting *Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991)). Accordingly, Rule 56(f) provides a mechanism that a party opposing summary judgment can utilize if there is evidence it needs to oppose a motion for

summary judgment, but the party just needs more time to secure that evidence by affidavit or otherwise.

Courts place great weight on the requirement that a Rule 56(f) affidavit be submitted before continuing consideration of a motion for summary judgment. "A party may not simply assert in its brief that discovery was necessary and thereby overturn summary judgment when it failed to comply with the requirement of Rule 56(f) to set out reasons for the need for discovery in an affidavit." *Evans v. Techs. Applications & Service Co.*, 80 F.3d 954, 961 (4th Cir. 1996). In *Doe ex rel. Doe v. Batson*, our Supreme Court stated:

> Rule 56(f) applies when it appears "*from the affidavits* of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition." In such a case, "the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just."

345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001) (quoting Rule 56(f), SCRCP) (emphasis in original). A court may only postpone a summary judgment ruling if it receives a proper Rule 56(f) affidavit. *See e.g., Nader v. Blair*, 549 F.3d 953, 961 (4th Cir. 2008) (a party must generally comply with Rule 56(f) "which requires that it set out the reasons for discovery in an affidavit, and it cannot withstand a motion for summary judgment by merely asserting in its brief that discovery was necessary.") Because Robark did not submit a Rule 56(f) affidavit, the Circuit Court had no basis to postpone its consideration of summary judgment.

Robark claims the affidavit of Ralph Falls, filed as Exhibit E to its Memorandum in Opposition to Summary Judgment, satisfies the affidavit requirements of Rule 56(f). It does not. (*See* Appellant's Br. at 6–7; Memo in Opp'n to Summ. J., Ex. E – Affidavit of Ralph Falls, III, R. at 346–47.) First, "Rule 56(f) ***requires*** the party opposing summary judgment to at least present affidavits ***explaining why he needs more time for discovery***." *Batson*, 345 S.C. at 321, 548 S.E.2d

at 857 (emphasis added). In *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, the defendant argued it had not received a full and fair opportunity to conduct discovery prior to the lower court's partial grant of summary judgment. 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995). The lower court found the defendant failed to comply with Rule 56(f), SCRCP when it did not present affidavits showing the reasons why it could not obtain necessary affidavits. *Id.* at 480 n. 10, 465 S.E.2d at 772 n. 10. The Court of Appeals affirmed, disagreeing with the defendant's discovery position because it had not "pointed out in any specific manner how it would be prejudiced by its inability to conduct discovery," or "advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment." *Id.* at 479–80, 465 S.E.2d at 771.

The affidavit of Ralph Falls fails for similar reasons. Northwestern Mutual's Reply in Opposition to Robark's Motion for Reconsideration outlined the various issues with Mr. Falls' affidavit, including the fact that it merely states he read the Amended Complaint, Motion to Compel, and Memorandum in Support of the Motion to Compel and Opposition to Summary Judgment, and that he believes the information contained therein to be true. (Reply to Mot. to Reconsider at 4–5, R. at 400–01; Mem. in Opp'n to Summ. J., Ex. E – Affidavit of Ralph Falls, Jr., ¶¶ 5–6, R. at 346–47) ("The facts stated in those documents are true of my own knowledge, except for those matters alleged upon information and belief, and as to those, I believe them to be true.").

It is well established that "[t]he party opposing summary judgment bears the burden of showing what specific facts it hopes to discover that will raise an issue of material fact." *St. Paul Reinsurance Co. v. Ollie's Seafood Grille & Bar, LLC*, 242 F.R.D. 348, 352 (D.S.C. 2007). The affidavit of Mr. Falls provides no explanation as to why additional time or discovery is needed and

does not state why Robark could not present evidence to justify its opposition to summary judgment. Moreover, the affidavit fails to identify any of the specific evidence that would be sought by further discovery or describe how that evidence will create a genuine material issue of fact to avoid summary judgment. The absence of such critical detail fails to satisfy Rule 56(f), and such deficiencies cannot be cured by a blanket assertion that the affidavit incorporates Robark's arguments on these points by reference. *See Covil Corp. by & through Protopapas v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 436 S.C. 85, 91, 870 S.E.2d 191, 194–95 (Ct. App. 2022), *aff'd as modified*, 444 S.C. 117, 906 S.E.2d 558 (2024) (affirming the lower court's finding that the defendant "failed to submit a Rule 56(f) affidavit setting forth the discovery it needed to conduct" and "merely presented an unsupported ... and self-serving assertion that it needed additional time for discovery ...."). Additionally, nowhere in the record is there any deposition notice, discovery request, or subpoena submitted by Robark for the purpose of conducting discovery on whether a duty exists to provide the requested materials. Over six months passed between Northwestern Mutual filing its motion for summary judgment and supporting affidavit on July 22, 2024, and the court's hearing on January 27, 2025, providing Robark with ample time to attempt any discovery it truly believed was necessary. But at no point during those six months did Robark serve discovery requests seeking information about Northwestern Mutual's standard practices or try to schedule any depositions. *See Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 113, 410 S.E.2d 537, 544 (1991) (stating the reasonable diligence of a party in pursuing discovery is a factor to consider in determining whether a party had a full and fair opportunity for discovery).

The rulings of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Bayle*, 344 S.C. at 128, 542 S.E.2d at 742. "When a party seeks additional time but fails to comply with [Rule 56(f)] setting forth the procedure for

requesting additional time, an appellate court should be very hesitant to say the trial court abused its discretion in denying the request." *Matter of Est. of Smith*, 419 S.C. 111, 120–21, 796 S.E.2d 158, 163 (Ct. App. 2016) (J. Few, concurring). The Circuit Court correctly concluded that Robark failed in its burden to show how further discovery was necessary to resolve the legal question at issue on summary judgment, and this Court should affirm.

C. Robark Cannot Use the Discovery Process to Obtain the Relief Requested in Declaratory Judgment.

The discovery Robark alleges the Circuit Court should have compelled is not discovery directed at resolving a factual dispute—it is the very remedy Robark ultimately seeks through the declaratory judgment action itself. As Robark alleges in the Amended Complaint, "[a]n actual controversy therefore exists between Plaintiff and Northwestern Mutual regarding whether the documents, communications and information requested by Plaintiff should be provided by Northwestern Mutual." (Am. Compl. ¶ 31; R. at 75.) The November 7, 2023 letter from Robark asked Northwestern Mutual to provide "[a]ll documents, communications and or information relating to Robark and/or the Policies from 2013 through present," including "all communications between any representative, agent, or employee" of Northwestern Mutual and:

- John Bode and/or any attorney, agent, employee or other person acting on behalf of John Bode;
- Coleen Miller;
- Walter E. Brock, Jr. and/or any other attorney, representative, or employee of Young Moore and Henderson, P.A.;
- Brodie Burwell and/or any other attorney, representative, or employee of Envisage Law (formerly known as Pinna Johnston & Burwell);
- John Mitchell;
- David Woody;
- Any representative, agent, or employee of Northwestern Mutual;
- Any representative, agent, or employee of Heirloom Advisors;
- Any representative, agent or employee of the "Condrey Network" through 2021;
- Any representative, agent or employee of the "Berry Network" from 2021 through present;
- Any representative, agent or employee of Norton Collar Lund Lilley, PLLC;

- Any representative, agent or employee of Barham Guy Frelier, P.A.;
- Dianne Sellers; and
- Any representative, agent or employee of Fidelity Investments, including but not limited to Carrie Slaughter, Doug Clements and/or Kathy Sommer (formerly Segodnia).

(*See* Am. Compl., Ex. 3; R. at 95–110.) The letter additionally demanded:

- All communications between a representative, agent or employee of Northwestern Mutual, Heirloom Advisors, the Condrey Network, the Berry Network, and a third party related in any way to Robark or the Policies (*Id.*, Nos. 3–6; R. at 96, 97);
- All internal communications of Northwestern Mutual, the Condrey Network, the Berry Network, and Heirloom Advisors related in any way to Robark or the Policies. (*Id.*, Nos. 7–10; R. at 97);
- "All documents and communications concerning any compensation and/or commissions received by any individual, entity and/or financial representative associated with Robark and/or the Policies, including, but not limited to, John Mitchell, David Woody, and/or Heirloom Advisors" (*Id.*, No. 11; R. at 97);
- "All documents and communications regarding management of the Policies by John Mitchell and/or David Woody since 2013. Including but not limited to all documents and communications concerning any changes of any personnel assigned to or associated with the Policies" (*Id.*, No. 12; R. at 97); and
- "[T]he complete file for Robark and the Policies from 2013 to present, including, but not limited to, all documents and communications concerning Robark and/or the Policies." (*Id.*, No. 16; R. at 98.)

These documents and communications are the catalyst of the underlying dispute and ultimately serve as the basis for Robark's entire declaratory judgment action. (*See* Am. Compl. ¶¶ 24, 29–32; R. at 74, 75.) During the summary judgment hearing, Robark's counsel advised the Circuit Court that his discovery requests were "geared toward figuring out what support [Northwestern Mutual] actually ha[s] for [its] position and what the universe of documents is" in this case. (1/27/25 Hr'g Tr. 12:17-20; R. at 418.) Counsel also claimed Robark was "entitled to conduct discovery before this Court decides, with finality, what is to happen here." (*Id.* 13:5-6; R. at 419.) But even though a party may be entitled to engage in discovery prior to the court's final determination, this right is not unlimited.

Courts have consistently held that discovery cannot be used to obtain the ultimate relief sought in the litigation prior to a judicial determination of entitlement. *See e.g.*, *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) (discovery may not be used as a means to circumvent substantive rights or to gain access to information that is the very subject of the dispute). Using discovery in this way would effectively grant the relief sought before the court has ruled on the question of entitlement, rendering the declaratory judgment action meaningless and circumventing the court's authority to adjudicate the merits. Such an approach undermines the purpose of declaratory judgment actions and violates the principle that discovery is a tool for developing evidence, not for prematurely awarding the substance of the claim. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34 (1984) ("Liberal discovery is provided for the sole purpose of assisting in the preparation and trial, or the settlement, of litigated disputes.").

Next, Robark contends that Northwestern Mutual made false allegations and misrepresented to the Circuit Court that "Robark's discovery requests seek the 'very same' information sought by declaratory judgment" in this case. (Appellant's Br. at 20, 22.) This statement is not false; it is fact. A review of Robark's second set of requests for production reflects the significant overlap in the documents and communications Robark has continued to demand. (*See* Mot. for Protective Order, Ex. 2, R. at 275; Document Comparison Chart, *supra*.) Aside from a handful of new requests, the majority of Robark's requests for production were copied verbatim from its November 7, 2023 letter. The requests seek the same substantive production of "any and all communications relating to Robark and/or the Policies" dating back to 2013 concerning essentially the same list of individuals and subject matter. (*Id.*, Ex. 2, Nos. 8–34, 39; R. at 278–80, 281.) Allowing a party to use discovery to obtain the same documents and information it seeks through declaratory judgment would undermine the court's authority and vitiate the entire purpose

of a declaratory judgment action here. Permitting such discovery in this case would have allowed Robark to bootstrap a nonexistent duty by compelling production first and seeking legal justification later or simply dismissing the action as moot.

Unable to identify any authority establishing a duty that would entitle it to the documents it seeks, Robark was forced to change strategy and argue that further discovery is necessary to resolve "fact issues" such as what constitutes Northwestern Mutual's "standard practices" or other "industry standards." (Appellant's Br. at 8.) Despite what Robark may believe, merely claiming that something is a fact issue does not convert it into one. Courts have long held that a party against whom summary judgment has been sought cannot create a question of fact by identifying discrepancies in his own account of the facts. *See Wilson v. Gaston County, NC*, 685 F. App'x 193, 205 (4th Cir. 2017); *Singletary v. Wachovia Mortg. Corp./Wells Fargo*, No. CA 2:11-0484-RMG-BM, 2013 WL 1194863, at *6 (D.S.C. Jan. 28, 2013). The discovery rules are designed to assist a party to prove a claim it reasonably believes to be viable without discovery, not to find out if it has any basis for a claim. *See Micro Motion*, 894 F.2d at 1327 (citations omitted). "That the discovery might uncover evidence showing that a plaintiff has a legitimate claim does not justify the discovery request." *Id.*

The only question facing the Circuit Court on summary judgment here was whether any existing contract provision, statute, regulation, or other legal authority imposed a duty on insurers like Northwestern Mutual to provide the types of documents at issue to policyholders upon request. In the absence of a legal duty imposing this obligation, Robark's desire to conduct discovery into insurer practices or general industry customs is irrelevant. *See e.g., Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986) (reiterating "the mere existence of *some* alleged factual dispute

between the parties will not defeat an otherwise properly supported motion for summary judgment[.]").

III. The Circuit Court Properly Rejected Robark's Late, Unpled Fiduciary Relationship Argument.

Robark opposed summary judgment asserting it had a fiduciary relationship with Northwestern Mutual. The Circuit Court properly granted summary judgment for Northwestern Mutual, rejecting the assertion that the purported existence of a "fiduciary relationship" with Northwestern Mutual changed the outcome. There are several reasons Robark's fiduciary relationship argument fails. First, the Amended Complaint is completely devoid of any allegations of or reference to a fiduciary relationship, and whether a fiduciary relationship exists is a question of law for the court. Second, Robark presented no evidence that would support any of the requisites for finding the existence of a fiduciary relationship. Third, there is no legal authority requiring a person or entity acting in a fiduciary capacity to provide all documents and information requested by the person to whom they owe their duties.

A. The Amended Complaint Does Not Allege the Existence of a Fiduciary Relationship.

As an initial matter, Robark's Amended Complaint does not allege that a fiduciary relationship existed with Northwestern Mutual. At no point does Robark raise, reference, or even hint at the existence of a fiduciary relationship in its pleadings. *See e.g., Bryan R. v. Watchtower Bible & Tract Soc. of New York, Inc.*, 738 A.2d 839, 846 (Me. 1999) ("Simple recitations of a trusting relationship will not suffice for identifying a fiduciary duty. Instead, the plaintiff must set forth specific facts constituting the alleged relationship with sufficient particularity to enable the court to determine whether, if true, such facts could give rise to a fiduciary relationship.").

Specificity is required to establish the existence of such a relationship. The Amended Complaint contains no allegations showing that Robark has any foundation to believe Northwestern Mutual would act solely in Robark's interest and benefit. Nor does it provide facts showing that Robark reposed any trust in Northwestern Mutual or that Northwestern Mutual accepted or induced the confidence purportedly placed in it. The Circuit Court noted this shortcoming in its Order and directly asked Robark's counsel why it did not allege the existence of a fiduciary relationship in its Amended Complaint during the hearing on Robark's Motion for Reconsideration. (*See* Order at 7, R. at 12; 5/30/25 Hr'g Tr. 11:7–9, R. at 447.) Robark's counsel stated that Robark "didn't think [it] needed to specifically allege" a fiduciary relationship because it "didn't believe it was necessary to state a legal conclusion in our complaint." (5/30/25 Hr'g Tr. 11:7–22, R. at 447.)[4] Robark's failure to specify or allege ***any*** fiduciary or special relationship in the Amended Complaint prevents any reliance by Robark on the existence of a fiduciary duty to support its request for a declaratory judgement.

B. Robark Presented no Evidence Showing the Existence of a Fiduciary Relationship.

To prove a "confidential relationship" existed, Robark was required to present evidence that it placed its trust and confidence in Northwestern Mutual, and that, in turn, Northwestern Mutual exerted dominion over Robark. *See Brooks v. Kay*, 339 S.C. 479, 488, 530 S.E.2d 120, 125 (2000) ("A confidential relationship arises when the grantor has placed his trust and confidence in the grantee, and the grantee has exerted dominion over the grantor.") (citing *Bullard v. Crawley*,

[4] At that hearing, Robark requested that the Circuit Court grant leave to amend the Amended Complaint to add these allegations and correct the issue. However, nothing in the record shows the Circuit Court ruled on Robark's request for leave to amend. Additionally. Robark did not file a Rule 59(e) motion asking the Circuit Court to rule on this issue. Accordingly, whether the Circuit Court should have granted leave to amend the Amended Complaint to add fiduciary allegations is not preserved for appellate review.

294 S.C. 276, 363 S.E.2d 897 (1987)). As stated above, the allegations in Robark's Amended Complaint fail to allege any facts relevant to the existence of a fiduciary relationship. Additionally, Robark presented no affidavits or other evidence to support a finding of a fiduciary relationship. (Appellant's Br. at 8.)

The question of whether a fiduciary relationship should be imposed between two classes of people is a question for the court, which can properly be determined at summary judgment. *See e.g.*, *Hendricks v. Clemson Univ.*, 353 S.C. 449, 457, 578 S.E.2d 711, 715 (2003); *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004) ("Whether a fiduciary relationship exists between two people is an equitable issue for the judge to decide."). "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 interest of the one imposing the confidence." *Brown v. Pearson*, 326 S.C. 409, 421, 483 S.E.2d 477, 483 (Ct. App. 1997). As such, "the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing." *Moore*, 360 S.C. at 251, 599 S.E.2d at 472.

Significantly, a fiduciary relationship cannot be established by the unilateral action of one party, instead "the other party must have actually accepted or induced the confidence placed in him." *Steele v. Victory Sav. Bank*, 295 S.C. 290, 295, 368 S.E.2d 91, 94 (Ct. App. 1988); (Order at 7–8, R. at 12–13; Memo in Support of Summ. J. at 7–8, R. at 354–55.) "The touchstone of determining whether a fiduciary relationship exists" therefore depends upon "the relationship of the parties involved and the transaction in question." *Am. Mod. Select Ins. Co. v. McAnulty*, No. 8:21-CV-00295-JD, 2022 WL 18587808, at *4 (D.S.C. May 3, 2022) (citing *Armstrong v. Collins*, 366 S.C. 204, 222, 621 S.E.2d 368, 377 (Ct. App. 2005)); *see also Poco-Grande Invs. v. C & S*

Family Credit, Inc., 301 S.C. 323, 325, 391 S.E.2d 735, 735 (Ct. App. 1990) ("[W]here there is no confidential or fiduciary relationship, and an arm's length transaction between mature, educated people is involved, there is no right to rely.")

Robark argued that assigning financial representative John Mitchell to the Policies was "the foundation upon which my client trusted Northwestern would, you know, act in its – not on its own behalf but in the interest of my client with regard to my client's policies. It's a fiduciary relationship between the two." (1/27/25 Hr'g Tr. 11:5–11, R. at 417; Mem. in Opp'n to Summ. J. at 8, R. at 305.) But this simply reiterates the basic elements of a fiduciary relationship. No evidence in the record suggests that Northwestern Mutual undertook an "advisory role" or exerted control over Robark and its policy decisions. (Appellant's Br. at 15–16.) Despite this, Robark speculates that by listing John Mitchell as a financial representative for the Policies, Northwestern Mutual effectively undertook to advise Robark "through Mitchell." (Mem. in Opp'n to Summ. J. at 7, 8; R. at 304, 305.) Robark also claims Northwestern Mutual "concede[d] Mitchell discussed 'a number of options' with Robark concerning the Policies," before referencing part of Northwestern Mutual's response to Robark's 2022 and 2023 letters which states:

> • Who initiated the QPP?
>
> John Bode expressed to John Mitchell concern about Robark Properties being able to continue to pay the required out-of-pocket premiums for the policies and asked whether going paid up on the policies might be possible/worthwhile. John Bode and John Mitchell discussed a number of options, including QPP; John Bode chose that option.

(Am. Compl., Ex. 3; R. at 100.)

Robark never states that Northwestern Mutual's role was to provide advice for the Policies or that it had ceded decision making power over the Policies to Northwestern Mutual. Unsubstantiated assertions that Northwestern Mutual "provided advice" or that its representatives held titles such as "Wealth Management Advisor" are insufficient to establish a fiduciary

relationship, especially where there is no evidence that Northwestern Mutual accepted fiduciary obligations. (Order at 8, R. at 13; Memo in Support of Summ. J. at 8–9, R. at 355–56); *see also Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003) ("[N]o fiduciary relationship between a bank and its depositor exists when the bank is unaware of any special trust reposed in it."). Robark presented no evidence to contradict Northwestern Mutual's position that it has only an ordinary insurer-policyholder relationship with Robark and was unaware of any special confidence or trust reposed in it by Robark. Simply put, the record contains no evidence that Robark communicated its alleged special confidence or trust to Northwestern Mutual nor does it demonstrate a bilateral understanding of that fact which is necessary to convert an ordinary business relationship into a fiduciary one.

The reality is that the parties here have an ordinary commercial relationship: Robark owned three life policies issued by Northwestern Mutual and Northwestern Mutual provided standard policy documents, statements, and servicing updates to its policyholder as a matter of course. To establish a fiduciary relationship the facts must show "the entrusted party actually accepted or induced the confidence placed in him." *Moore*, 360 S.C. at 251, 599 S.E.2d at 472. Robark has presented no evidence that Northwestern Mutual itself managed Robark's finances, made policy decisions on its behalf, or exercised control over its affairs. *See Hendricks*, 353 S.C. at 459, 578 S.E.2d at 716 ("Historically, [our supreme c]ourt has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters.").

Particularly in situations involving a life insurance company and a policyholder, "a fiduciary relationship is not established by the mere fact of an insurance relationship between the parties, and something more than that is required to create a fiduciary relationship to the insured."

Couch on Insurance § 198:7 (3d ed. 2024). This distinction has been routinely acknowledged by South Carolina's federal district courts applying South Carolina law. *See e.g., Moses v. Mfrs. Life Ins. Co.*, 298 F. Supp. 321 (D.S.C. 1968) (holding a claim of fiduciary relationship cannot rest upon the mere relationship of insurer and insured); *Brown v. Green Tree Fin. Servicing Corp*., No. C. A. 2:06-2777-PMD, 2008 WL 2157120, at *11 (D.S.C. May 19, 2008) (same); *Great Am. Ins. Co. v. Mills*, No. CIV.A.4:06-CV-01971R, 2008 WL 2250256 (D.S.C. May 29, 2008) (noting "the court is reluctant to recognize a fiduciary relationship between an insurance company and an insured where South Carolina courts have not done so.").

In the absence of any evidence showing a confidential or fiduciary relationship existed with Northwestern Mutual here, the Circuit Court properly rejected the purported existence of a fiduciary relationship as a basis for finding a legal duty requiring Northwestern Mutual to provide the documents requested by Robark.

C. A Fiduciary Relationship Does Not Include the Duty to Provide all Documents and Information that May Be Requested.

Even if Robark *could* establish the existence of a fiduciary relationship, it points to no authority or precedent that states or requires partes in a fiduciary relationship to provide comprehensive access to internal and third-party communications, proprietary business materials, and any related documents or information. (*See* Order at 8, R. at 13; Memo in Support of Summ. J. at 10, R. at 357.) Generally, a person acting in a fiduciary capacity must exercise loyalty and act in the best interests of the other. *See Moore*, 360 S.C. at 251, 599 S.E.2d at 472 (citing *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 475, 581 S.E.2d 496, 505 (Ct. App. 2003)). But the duties of a fiduciary do not include the sweeping obligation Robark seeks here—to provide nearly all documents and communications generated during the insurer's administration of a policy. (Order at 8; R. at 13.) The Circuit Court correctly granted summary judgment here as no South Carolina

case holds that a fiduciary must provide all internal and external documents, communications, or materials created over years of routine business interactions, and Robark cites none. This Court should affirm.

IV. The Court Should Deem Robark's Third and Fourth Issues Abandoned.

This Court should not consider the arguments in Appellant's initial brief that have been abandoned. "South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). Thus, when a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue. *Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 505–06, 812 S.E.2d 438, 441 (Ct. App. 2018) (citing *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). The third and fourth issues Robark raises on appeal are unsupported by any legal authority and are therefore abandoned. (*See* Appellant's Br. at 13–14.) Notwithstanding this issue, Northwestern Mutual will briefly address the merits of the underlying arguments.

The third issue on appeal states the Circuit Court erred by finding that Northwestern Mutual had produced copies of the Policies in this case. (Appellant's Br. at 13.) This argument consists of three sentences which echo Robark's theory rejected by the Circuit Court that copies of the Policies have not been produced because Northwestern Mutual only provided "policy replicas." (*Id.*) Robark's fourth issue then expands upon its incorrect assertion with a two-sentence argument that insists the Circuit Court could not have considered policy language when analyzing the existence of a legal duty because "Northwestern Mutual does not have copies of the Policies." (*Id.* at 14.)

On April 3, 2024, Northwestern Mutual served its Answers to Robark's First Set of Interrogatories and provided the following explanation regarding "replica copies" of the policies:

> [Northwestern Mutual] maintains an accurate record of all insurance policies that it issues and any applications, declarations pages, schedules, amendments, riders, and endorsements for such policies. To the extent that the term "copy" is intended by the Plaintiff to mean "photocopy" on paper or scanning and maintaining in a digital format, it is not industry practice for insurance companies to maintain photocopies or scanned copies of the insurance policies they issue and deliver to insureds or policyholders, other than completed and signed hardcopy applications, which are part of the insurance policies. Northwestern Mutual further states that it produces replica policies when requested by policyholders and that those replica policies include language and forms identical to the policies delivered to policyholders. Replica policies also include any changes or amendments to the policies occurring since the date of delivery.

(*See* Mem. in Opp'n to Summ. J., Ex. C – Ans to Pl.'s First Set of Interrogatories; R. at 335–36.)

The affidavit of Northwestern Mutual's Assistant General Counsel Christine Cowles presents further uncontroverted evidence of the accuracy and legitimacy of the policy replicas. (*See* Mot. for Summ. J., Ex. 1 – Cowles Aff.; R. at 142.) Cowles' affidavit corroborated the process Northwestern Mutual uses when a policyholder makes a request for a replacement copy. It states that Northwestern Mutual generates policy replicas containing the identical forms used in the original policy contracts when delivered, along with a data page showing the policy number, owner, beneficiary, and other specific information unique to each policy. (*Id.* Cowles Aff. ¶ 11; R. at 144–45.) Despite Robark's insistence to the contrary, the record shows no conflicting evidence was presented to support Robark's assertion that the policy replicas are somehow inaccurate, incomplete, or of questionable authenticity. Instead, Robark relies entirely on its own speculation that policy replicas "are not copies of the Policies," despite it never identifying a single discrepancy. (*See* Appellant's Br. at 13.) "An issue is deemed abandoned and will not be

considered on appeal if the argument is raised in a brief but not supported by authority." *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). Because the third and fourth issues in Appellant's initial brief are illogical, conclusory, and unsupported by legal authority this Court should reject the arguments as abandoned.

CONCLUSION

The Circuit Court correctly decided to grant summary judgment for Northwestern Mutual based on the absence of a legal duty requiring Northwestern Mutual to provide the materials requested by Robark. Based on the foregoing, Respondent respectfully asks that this Court affirm the Circuit Court and uphold the grant of summary judgment.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: *s/ Yasmeen Ebbini*

D. Larry Kristinik
S.C. Bar No. 64983
Yasmeen Ebbini
S.C. Bar No. 104681
1320 Main Street, 17th Floor
Columbia, SC 29201
803-799-2000
larry.kristinik@nelsonmullins.com
yasmeen.ebbini@nelsonmullins.com

Attorneys for Respondent Northwestern Mutual Life Insurance Company

This 9 day of April 2026.