

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA, FORT WAYNE DIVISION**

RELIANCE STANDARD LIFE INSURANCE COMPANY,)	
)	
)	
Plaintiff,)	
)	
)	
v.)	
)	
)	
CYNTHIA K. LYONS, JOHN E. LYONS, MICHAEL B. LYONS, and LAKE CITY BANK,)	No. 1:09-cv-158-TLS
)	
)	
Defendants,)	Hon. Theresa L. Springmann
)	
)	
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LAKE CITY BANK,)	
)	
)	
Third Party Plaintiff / Cross Claimant,)	
)	
)	
v.)	
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)	
STANDARD INSURANCE COMPANY, and CIGNA CORPORATION a/k/a CIGNA GROUP INSURANCE COMPANY,)	
)	
)	
Third Party Defendants, and)	
)	
)	
CYNTHIA K. LYONS, JOHN E. LYONS, and MICHAEL B. LYONS,)	
)	
)	
Cross-Defendants.)	
)	

**STANDARD INSURANCE COMPANY'S
MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Third Party Defendant, STANDARD INSURANCE COMPANY ("Standard"), by its attorney, Warren von Schleicher of Smith, von Schleicher & Associates, hereby submits its Memorandum in Support of its Motion for Summary Judgment with respect to the Third Party Complaint filed by Third Party Plaintiff, LAKE CITY BANK, pursuant to Fed. R. Civ. P. 56, and states as follows:

INTRODUCTION

This lawsuit involves a dispute over life insurance benefits payable under three group life insurance policies upon the death of John F. Lyons (“Decedent”), a partner with the law firm of Barrett & McNagny, LLP. Barrett & McNagny provided this coverage to its employees and partners, including the Decedent, as a benefit of their employment with the firm. One group life insurance policy was issued by Standard, one was issued by Reliance Standard, and one was issued by Life Insurance Company of North America (hereafter, “Standard Group Policy,” “Reliance Group Policy” and “LINA Group Policy,” respectively). All three group policies are employee welfare benefit plans governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.* (“ERISA”). The Decedent named his wife, Cynthia Lyons, and his two sons, John Lyons and Michael Lyons, as the designated beneficiaries of his life insurance coverage under the Standard Group Policy.¹

As a result of unsuccessful business dealings unrelated to his employment at Barrett & McNagny, the Decedent became indebted to Lake City Bank as a personal guarantor of a corporate loan. In December 2008, Lake City Bank entered a settlement agreement (“Agreement”) with the defaulting company, the Decedent and other personal guarantors to repay the corporate debt by making cash payments and transferring real estate to the Bank. In addition, the Decedent agreed that “[u]pon execution of this Agreement” he would “execute certain Assignments of Life Insurance Policy (collectively, the ‘Assignments’) in favor of Bank, assigning, transferring and setting over to Bank” the Standard Group Policy, Reliance Group

¹ Standard initially moved to dismiss the Third Party Complaint under Fed. R. Civ. P. 12(b)(6), but to expedite resolution of all claims, the parties agreed to proceed directly to cross-motions for summary judgment. It is no coincidence, therefore, that Cynthia Lyons’s Memorandum in Support of her Motion for Summary Judgment (R. 70, filed Nov. 19, 2009) repeats *verbatim* many arguments presented herein, as those arguments were first presented in Standard’s Memorandum in Support of its Motion to Dismiss the Third Party Complaint (R. 55, filed Sept. 24, 2009).

Policy, and LINA Group Policy, including “the benefits payable therefrom, pursuant to the terms and conditions of each Assignment thereof.” (Stmt, ¶ 32).²

The Decedent never executed the Assignments, nor did he otherwise designate Lake City Bank as a beneficiary of the Standard Group Policy. When the Decedent died on March 31, 2009, Lake City Bank was simply a general creditor of the Decedent’s estate. But the Bank, discontent with its general creditor status, seeks to assert a lien on the life insurance proceeds payable to the Decedent’s wife and sons under the Standard Group Policy, through the magic of “equity.” To the extent Lake City Bank endeavors to assert an “equitable lien” on the insurance proceeds based on state law, the Bank’s claim is preempted by ERISA.

Foreclosed by ERISA from asserting a state law claim, Lake City Bank poses as an ERISA “beneficiary” and attempts to assert a competing claim on the life insurance proceeds payable to the Decedent’s wife and two sons. Lake City Bank notified Standard that “the most prudent step for your company to take is to initiate an interpleader action” in Indiana “naming all of the claimed beneficiaries, including Lake City Bank, as defendants” (Stmt, ¶ 36). The Bank warned, “Should your company refuse to honor the lien or refuse to initiate an interpleader action, Lake City Bank intends to enforce its equitable lien directly against your company.” (Stmt, ¶ 37). The Bank sent mirror image letters to Reliance and LINA.

The Bank calculated that all three insurers would cede to its threat of litigation, take the path of least resistance, and deposit the funds with the Court. Then the Bank could litigate its “equitable lien” against the Decedent’s wife and sons without resistance from the insurers’

² Citations to “Stmt, ¶_” are to the corresponding paragraph of Standard’s Statement of Material Facts. Citations to pleadings and other documents filed as part of the court record are cited by docket entry number as “R._.”

counsel who specialize in ERISA. For Reliance and LINA, the Bank's tactic succeeded; they deposited the funds with the Court and earned prompt dismissal as their reward.

ERISA fiduciaries vested with discretionary authority have a duty to ensure that benefits are paid to the proper beneficiaries. Standard, therefore, refused to cede to Lake City Bank's threat and contested the Bank's claim to recover benefits under the Standard Group Policy. During pre-litigation administrative proceedings, Standard evaluated Lake City Bank's claim and reasonably determined, in the exercise of its discretionary authority, that the Bank is not a designated beneficiary of the life insurance benefits payable under the Standard Group Policy. Lake City Bank was never designated as a beneficiary (i) in writing, (ii) signed by the Decedent, (iii) dated, and (iv) submitted to the Employer. All of these steps must be accomplished to attain beneficiary status under the Standard Group Policy and ERISA.

Lake City Bank admits that it was never designated as a beneficiary. In its Third Party Complaint, Lake City Bank alleges that the Decedent "failed to execute and deliver" an Assignment naming the Bank as a beneficiary of the Standard Group Policy. (R. 11, Third Pty Comp., ¶ 16). When a party "pleads facts which show he has no claim, then he has pled himself out of court." *McCready v. eBay, Inc.*, 453 F.3d 882, 888 (7th Cir. 2006). That is precisely what Lake City Bank has done. Lake City Bank pled itself out of court by alleging that the Decedent never executed an Assignment naming Lake City Bank as a beneficiary.

There is an additional impediment that defeats Lake City Bank's third party claim against Standard. The Standard Group Policy expressly prohibits assignments. Standard reasonably determined that Lake City Bank's effort to enforce an unsigned, non-existent Assignment through imposition of an "equitable lien" violates the anti-assignment clause of the Standard Group Policy. Standard's decision to decline Lake City Bank's claim reflects a reasonable

interpretation and application of the terms of the Standard Group Policy and was not arbitrary and capricious. Accordingly, summary judgment should be entered in favor of Standard and against Lake City Bank.

STATEMENT OF MATERIAL FACTS

Jurisdiction

1. On June 8, 2009, Reliance Standard Life Insurance Company (“Reliance”) filed an Interpleader Complaint and Request for Declaratory Judgment (“Interpleader Complaint”) naming as interpleader defendants Cynthia Lyons, John E. Lyons, Michael B. Lyons and Lake City Bank. (R. 1, Interpleader Complaint).

2. Jurisdiction over the Interpleader Complaint is based on 28 U.S.C. §1331 and 29 U.S.C. §1132(e), because the Reliance Group Policy under which benefits are payable is governed by ERISA. (R. 1, Interpleader Complaint, ¶ 1).

3. On July 6, 2009, Lake City Bank filed its Answer to the Interpleader Complaint (“Answer”) and Third Party Complaint (“Third Party Complaint”). Lake City Bank names as third party defendants Standard and “Cigna Corporation a/k/a Cigna Group Insurance Company” (now known as LINA). (R. 11, Answer and Third Party Complaint).

4. In its Third Party Complaint, Lake City Bank seeks to compel Standard to deposit the proceeds of the Standard Group Policy with the Court so that Lake City Bank can assert a competing interest to the life insurance proceeds payable under the Standard Group Policy. (R. 11, Third Party Complaint, pgs. 12-13).

5. Jurisdiction over the Third Party Complaint is based on 28 U.S.C. §1331 and 29 U.S.C. §1132(e), because the Standard Group Policy under which Lake City Bank asserts a claim

for life insurance benefits is governed by ERISA. In addition, the Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

The Standard Group Policy

6. Standard issued Group Life Insurance Policy No. 645290-A (“Standard Group Policy”) to the law firm of Barrett & McNagny, LLP, as Policyholder and Employer, with an effective date of August 1, 2006. (Apdx. Ex. A, Standard Group Policy). The Certificate and Summary Plan Description (“SPD”) for the Standard Group Policy is attached to Standard’s Appendix as Exhibit B. (Apdx. Ex. B, SPD).

7. The Standard Group Policy provides coverage to “Members,” which is defined as follows:

You are a Member if you are:

1. An active partner or employee of the Employer; and
2. Regularly working at least 30 hours each week.

(Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00005). The Standard Group Policy identifies the Employer as “Barrett & McNagny, LLP.” (Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00005).

8. The Standard Group Policy defines “Class 1” Members as Partners and Associates of the Employer, Barrett & McNagny. (Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00005).

9. The Standard Group Policy provides life insurance coverage to Class 1 Members in the amount of 2.5 times the Member’s “Annual Earnings.” The maximum life insurance benefit payable is \$500,000. (Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00006).

10. The Standard Group Policy provides that “Annual Earnings” for Partners, LLC Owner-Employees, Sole Proprietors, S Corporation Shareholders and P.C. Partners are based on “Annual compensation during the Employer’s prior tax year (or the Policyholder’s prior tax year if you are a P.C. partner).” (Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00008).

11. The Standard Group Policy contains the following provision for payment of benefits:

A. Payment Of Benefits

1. Except as provided in item 6 below, benefits payable because of your death will be paid to the Beneficiary you name. See B though E of this section.

(Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00022). “Item 6” of the Standard Group Policy relates to benefits not at issue in this lawsuit, namely, the Child Care Benefit, Career Adjustment Benefit, Higher Education Benefit and Repatriation Benefit. (Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00022).

12. The Standard Group Policy defines “Beneficiary” as follows: “Beneficiary means a person you name to receive death benefits. You may name one or more Beneficiaries.” (Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00022).

13. The Standard Group Policy contains the following provision for naming and changing beneficiaries:

You must name or change Beneficiary in writing. Writing includes a form signed by you or a verification from the Policyholder or Employer of an electronic or telephonic designation made by you.

Your designation:

1. Must be dated;
2. Must be delivered to the Policyholder or Employer during your lifetime;

3. Must relate to the insurance provided under the Group Policy; and
4. Will take effect on the date it is delivered to the Policyholder or Employer.

(Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00023).

14. The Standard Group Policy, in the section titled “Assignments,” states: “The rights and benefits under the Group Policy cannot be assigned.” (Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00021; Apdx. Ex. B, SPD, pg. 18).

15. The Standard Group Policy contains the following Allocation of Authority provision:

ALLOCATION OF AUTHORITY

Except for those functions which the Group Policy specifically reserves to the Policyholder, we [Standard] have full and exclusive authority to control and manage the Group Policy, to administer claims, and to interpret the Group Policy and resolve all questions arising in the administration, interpretation, and application of the Group Policy.

Our authority includes, but is not limited to:

1. The right to resolve all matters when a review had been requested;
2. The right to establish and enforce rules and procedures for the administration of the Group Policy and any claim under it;
3. The right to determine:
 - a. Eligibility for insurance;
 - b. Entitlement to benefits;
 - c. Amount of benefits payable;
 - d. Sufficiency and the amount of information we may reasonably require to determine a., b., or c., above.

Subject to the review procedures of the Group Policy any decision we make in the exercise of our authority is conclusive and binding.

(Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00024; Apdx. Ex. B, SPD, pg. 21).

The Decedent's Coverage and Designation of Beneficiaries

16. The Decedent, John F. Lyons, was a partner with the law firm of Barrett & McNagny, LLP and an insured under the Standard Group Policy at the time of his death. (R. 11, Third Pty Comp., ¶ 9; Apdx., Ex. C, Admin. Rec. at STND 1448-00195).

17. The Decedent died on March 31, 2009. (Apdx. Ex. C, Admin. Rec. at STND 1448-00198).

18. A Partnership Schedule K-1 Form for the year 2008 submitted to Standard by Barrett & McNagny identifies the Decedent's annual ordinary business income as \$265,980, and the Decedent's annual self-employment earnings as \$268,889. (Apdx. Ex. C, Admin. Rec. at STND 1448-00174).

19. At the time of his death, the Decedent had the maximum \$500,000 in life insurance coverage under the Standard Group Policy. (Apdx. Ex. C, Admin. Rec. at STND 1448-00174; Apdx. Ex. A, Standard Group Policy, pg. STND 1448-00006 & 00008).

20. The Administrative Record contains a Standard Insurance Company Enrollment and Change Form signed by "John E. Lyons" dated April 2, 2007. The Enrollment and Change Form signed by the Decedent designates the following primary beneficiaries:

<u>Primary-Full Name</u>	<u>Relationship</u>	<u>% of Benefit</u>
Cynthia K. Lyons	Wife	50%
John E. Lyons	Son	25%
Michael B. Lyons	Son	25%

(Apdx. Ex. C, Admin. Rec. at STND 1448-00195).

21. On April 30, 2009, Standard received a Proof of Death Claim Form signed by Anthony M. Stites, a partner with Barrett & McNagny and the law firm's benefits administrator,

which identifies the beneficiaries of the Decedent's life insurance coverage under the Standard Group Policy as Cynthia Lyons (the Decedent's wife) and John and Michael Lyons (the Decedent's sons). The Proof of Death Claim Form identified \$500,000 as the amount of basic life insurance claimed. (Apdx. Ex. C, Admin. Rec. at STND 1448-00187).

22. On April 30, 2009, Standard received Beneficiary Statements signed by Cynthia Lyons, John Lyons and Michael Lyons, and the Decedent's Certificate of Death. (Apdx. Ex. C, Admin. Rec. at STND 1448-00190 to 00193).

Standard's Determination of Lake City Bank's Claim

23. On April 20, 2009, Standard received a letter dated April 16, 2009 from Lake City Bank's attorney, J. Rickard Donovan of Rothberg Logan & Warsco LLP, stating:

In connection with the Bank's commercial lending relationship with John F. Lyons and related Settlement Agreement executed on or about December 15, 2008 by Mr. Lyons and the Bank, Mr. Lyons pledged and assigned to the Bank an interest in benefits payable from Policy No. 645290-A. We hereby notify Standard Life Insurance Company [sic] of the Bank's interest in said benefits and request that you contact us immediately upon receipt hereof to discuss with us additional information, if any, needed to ensure the Bank's interest is duly satisfied upon any distribution of benefits under the Policy.

(Apdx. Ex. C, Admin. Rec. at STND 1448-00211).

24. On May 6, 2009, Kim Smothers, a Life Benefits Analyst with Standard, noted in the Administrative Record that she left a voicemail message with Anthony Stites, Barrett & McNagny's benefits administrator, asking if Barrett & McNagny had received a beneficiary designation form naming Lake City Bank as a beneficiary under the Standard Group Policy. Ms. Smothers noted that Mr. Stites responded that Barrett & McNagny did not have any beneficiary changes on file other than the original beneficiary designation previously submitted to Standard.

(Apdx. Ex. C, Admin. Rec. at STND 1448-00065).

25. By letter dated May 6, 2009, Standard informed Lake City Bank, through its counsel, that the Policyholder has not received a beneficiary designation form signed by the Decedent designating the Bank as a beneficiary of his coverage under the Standard Group Policy, and that the Standard Group Policy states that rights and benefits under the Standard Group Policy cannot be assigned. (Apdx. Ex. C, Admin. Rec. at STND 1448-00177 to 00178).

26. In the May 6, 2009 letter, Standard advised Lake City Bank as follows:

We are in possession of your letter dated April 16, 2009. In your letter you state that Mr. Lyons assigned to the Lake City Bank of Warsaw, Indiana (The Bank) an interest in benefits payable from Policy No. 645290-A.

We have not received a copy of this Settlement Agreement. However, we do not believe that The Bank has a claim to any portion of this life insurance benefits, based on the Barrett & McNagny, LLP Group Policy, which reads as follows:

ASSIGNMENTS

The rights and benefits under the Group Policy cannot be assigned.

(Apdx. Ex. C, Admin. Rec. at STND 1448-00177).

27. In the May 6, 2009 letter to Lake City Bank, Standard stated: “As noted in the Assignments provision above, this Group Policy does not allow assignments.” (Apdx. Ex. C, Admin. Rec. at STND 1448-00178).

28. In the May 6, 2009 letter to Lake City Bank, Standard quoted the following provision of the Standard Group Policy titled “Naming a Beneficiary”:

B. Naming a Beneficiary

Beneficiary means a person you name to receive death benefits. You may name one or more Beneficiaries.

You must name or change Beneficiary in writing. Writing includes a form signed by you or a verification from the Policyholder or Employer of an electronic or telephonic designation made by you.

Your designation:

1. Must be dated;
2. Must be delivered to the Policyholder or Employer during your lifetime;
3. Must relate to the insurance provided under the Group Policy; and
4. Will take effect on the date it is delivered to the Policyholder or Employer.

(Apdx. Ex. C, Admin. Rec. at STND 1448-00177 to 00178).

29. In the May 6, 2009 letter to Lake City Bank, Standard stated:

The Policyholder has confirmed that they have not received a beneficiary designation form signed by Mr. Lyons naming The Bank as a beneficiary of this policy.

The Policyholder did provide us with a beneficiary form signed by Mr. Lyons naming individuals who are still living as beneficiaries of this Group Policy. Therefore, we intend to release the entire Life Insurance benefit to the named beneficiaries, as noted above.

(Apdx. Ex. C, Admin. Rec. at STND 1448-00178).

30. On May 26, 2009, Standard received a letter dated May 21, 2009 from Lake City Bank's attorneys enclosing a Settlement Agreement signed by Lake City Bank, J. Frederick Development, LLC, the Decedent and others. (Apdx. Ex. C, Admin. Rec. at STND 1448-00155 to 00171).

31. In the May 21, 2009 letter, Lake City Bank stated:

This office represents Lake City Bank of Warsaw, Indiana, which is asserting an equitable lien on the life insurance proceeds on the above referenced policy [*i.e.*, the Standard Group Policy]. I am enclosing with this letter a copy of the Settlement Agreement executed by Mr. Lyons on or about December 15, 2008. Under paragraph 5(b) of the Agreement, Mr. Lyons agreed to execute an Assignment of the above-referenced life insurance policy benefits to Lake City Bank.

(Apdx. Ex. C, Admin. Rec. at STND 1448-00155).

32. Paragraph 5(b) of the Settlement Agreement states, in relevant part, as follows:

Upon execution of this Agreement Lyons [the Decedent] shall execute certain Assignments of Life Insurance Policy (collectively, the “Assignments”) in favor of Bank, assigning, transferring and setting over to Bank the following insurance policies, owned by and insuring the life of John Lyons, and the benefits payable therefrom, pursuant to the terms and conditions of each Assignment thereof:

- (i) Policy No. 00645290 0001 issued by The Standard Insurance Company;
- (ii) Policy No. GL136322 issued by Reliance Standard Insurance;
- (iii) Policy No. SGM600231 issued by Cigna Group Insurance; and
- (iv) Policy No. 21652545 issued by Lincoln Financial Group.

(Apdx. Ex. C, Admin. Rec. at STND 1448-00162).

33. In the May 21, 2009 letter, Lake City Bank stated, “Mr. Lyons died before the written Assignment naming the Bank as the beneficiary could be executed.” (Apdx. Ex. C, Admin. Rec. at STND 1448-00155).

34. In the May 21, 2009 letter, Lake City Bank stated:

According to the Settlement Agreement executed by Mr. Lyons in December 2008, Lake City Bank is entitled to life insurance benefits not to exceed \$500,000. Therefore, Lake City Bank is asserting its rights to the life insurance proceeds payable under your policy in an amount up to \$500,000.

(Apdx. Ex. C, Admin. Rec. at STND 1448-00157).

35. In the May 21, 2009 letter, Lake City Bank stated, “By this letter, we are placing you on notice of Lake City Bank’s equitable lien on the life insurance proceeds.” (Apdx. Ex. C, Admin. Rec. at STND 1448-00157).

36. In the May 21, 2009 letter, Lake City Bank stated, “[w]e believe the most prudent step for your company to take is to initiate an interpleader action in Fort Wayne, Indiana naming

all of the claimed beneficiaries, including Lake City Bank, as defendants with the proceeds of the life insurance policy deposited with the Clerk of the Court.” (Apdx. Ex. C, Admin. Rec. at STND 1448-00157).

37. In the May 21, 2009 letter, Lake City Bank stated, “Should your company refuse to honor the lien or refuse to initiate an interpleader action, Lake City Bank intends to enforce its equitable lien directly against your company.” (Apdx. Ex. C, Admin. Rec. at STND 1448-00157).

38. On June 8, 2009, Lake City Bank sent a second letter to Standard stating that if Standard refuses to honor Lake City Bank’s equitable lien or refuses to initiate an interpleader action, Lake City Bank “[i]ntends to enforce its equitable lien directly against your company.” (Apdx. Ex. C, Admin. Rec. at STND 1448-00147).

39. On June 16, 2009, Standard informed Lake City Bank of its determination that no life insurance benefits are payable to Lake City Bank pursuant to ERISA and the terms of the Standard Group Policy. (Apdx. Ex. C, Admin. Rec. at STND 1448-00124 to 00125).

40. In the June 16, 2009 determination letter, Standard advised Lake City Bank of the following basis for its determination that no benefits are payable to Lake City Bank under the Standard Group Policy:

ERISA requires us to pay the benefit to the named beneficiaries pursuant to the terms of the group policy. The settlement agreement executed by Mr. Lyons did not effect a beneficiary change under the terms of the Barrett & McNagny, LLP Group Policy.

The settlement agreement does not operate as an assignment of the benefit. Even if Mr. Lyons had executed an assignment, the Barrett & McNagny, LLP Group Policy does not permit assignments.

ERISA case law supports that the Barrett & McNagny, LLP Group Policy’s anti-assignment provision prevents the Bank from claiming the benefit as an assignee/beneficiary.

Finally, ERISA would preempt application of any state law equitable lien theory against payment of the benefit to the named beneficiaries.

Therefore, we intend to release the Life Insurance benefit to the named beneficiary(ies) of the Group Policy.

(Apdx. Ex. C, Admin. Rec. at STND 1448-00124 to 00125).

41. On July 6, 2006, Lake City Bank's attorneys provided Standard with a "courtesy copy" of its Third Party Complaint. (Apdx. Ex. C, Admin. Rec. at STND 1448-00081 to 00117). In the accompanying cover letter, Lake City Bank stated that "[t]he Third Party Complaint shall constitute the Bank's written opposition to The Standard's decision regarding the Bank's claim to the life insurance proceeds" under the Standard Group Policy. (Apdx. Ex. C, Admin. Rec. at STND 1448-00081).

42 All administrative remedies have been exhausted and/or further administrative proceedings would be futile, making this case ripe for decision by the Court.

ARGUMENT

The Federal Rules of Civil Procedure mandate that motions for summary judgment be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Rule 56(c) mandates entry of summary judgment against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The Court is to assume that the facts claimed by the moving party and supported by admissible evidence are admitted to exist without controversy, except to the extent such facts are controverted in a "Statement of Genuine Issues" filed in opposition to the motion and supported by admissible evidence. N.D. Ind. L.R. 56.1(b).

I. Standard’s Determination Is Reviewed Under The “Arbitrary And Capricious” Standard.

When an ERISA plan confers discretionary authority upon the administrator, the court reviews the administrator’s benefit determination under the highly deferential “arbitrary and capricious” standard. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). “If ... discretion is clear from the language of the plan, [a court] will set aside an administrator’s decision only if it is arbitrary and capricious.” *Black v. Long Term Disability Ins.*, 582 F.3d 738, 743-44 (7th Cir. 2009).

An ERISA plan confers discretionary authority when its language conveys that the administrator “has the latitude to shape the application, interpretation, and content of the rules in each case.” *Diaz v. Prudential Ins. Co. of America*, 424 F.3d 635, 637-638 (7th Cir. 2005). The Standard Group Policy’s “Allocation of Authority” provision satisfies *Diaz* by granting to Standard the exclusive authority to interpret the Group Policy, to establish rules and procedures for the administration of claims, and to determine entitlement to benefits. Any decision Standard makes “in the exercise of [its] authority is conclusive and binding.” (Stmt, ¶ 15).

The Seventh Circuit repeatedly has held that exactly the same Allocation of Authority provision in a group policy issued by Standard “unambiguously communicates the message that payment of benefits is subject to Standard’s discretion.” *Black*, 582 F.3d at 744; *Gutta v. Standard Select Trust Ins. Plans*, 530 F.3d 614, 619 (7th Cir. 2008).

As in *Black* and *Gutta*, the Standard Group Policy’s Allocation of Authority provision clearly conveys that Standard has the latitude to shape the application, interpretation, and content of the rules in each case, consistent with the requirements of *Diaz*. Accordingly, Standard’s benefit determination is properly reviewed under the arbitrary and capricious standard.

II. Lake City Bank's State Law "Equitable Lien" Claim Is Preempted By ERISA.

Lake City Bank's third party claim against Standard appears to be based on an amalgam of ERISA and state law theories. The Bank alleges that the Standard Group Policy is governed by ERISA and that jurisdiction is based on ERISA. But the Bank also alleges that the court has pendent jurisdiction "over Lake City's state law claims." (R. 11, Third Pty Comp., ¶¶ 5-6). To the extent Lake City Bank relies on state law in asserting a right to recover the proceeds of the Standard Group Policy, the Bank's claim is preempted by ERISA.

The Supreme Court has emphasized the "deliberately expansive" nature of ERISA preemption. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46 (1987). All state law claims that "relate to" an employee welfare benefit plan are preempted by §514 of ERISA, 29 U.S.C. §1144. A state law claim "relates to" an employee welfare benefit plan when the court is called upon to interpret the provisions of the plan. *Egelhoff v. Egelhoff*, 532 U.S. 141, 146 (2001). The Seventh Circuit has held that ERISA preempts state law claims relating to the designation of beneficiaries under an employee welfare benefit plan. *Metropolitan Life Ins. Co. v. Johnson*, 297 F.3d 558 (7th Cir. 2002). See also *Riordan v. Commonwealth Edison Co.*, 953 F.Supp. 952, 957 (N.D. Ill. 1996), *aff'd*, 128 F.3d 549 (7th Cir. 1997) (noting that Seventh Circuit precedent "indicates that when determining who is the proper beneficiary, state law that results in a different beneficiary than would be found under federal law is preempted"); *MacLean v. Ford Motor Co.*, 831 F.2d 723 (7th Cir. 1987) (ERISA preempts Indiana testamentary transfer law in determining the beneficiary of the testator's employee pension plan).³

³ There is an exception to preemption, not applicable to Lake City Bank's third party claim, for enforcement of a designated beneficiary under a Qualified Domestic Relations Order that satisfies the requirements of 29 U.S.C. §1144(b)(7).

The civil enforcement provisions of ERISA §502(a), 29 U.S.C. §1132(a), provide the exclusive vehicle for actions by “beneficiaries” to assert a claim for benefits under an employee benefit plan governed by ERISA. “Any state-law claim that ‘Duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted.’” *Carter v. Honeywell Intern., Inc.*, No. 3:07-CV-512 JVB, 2009 WL 2750255, at *2 (N.D. Ind. Aug. 25, 2009) (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004)).

Lake City Bank’s alleged “competing claim” to the proceeds of the Standard Group Policy must arise, if at all, under 29 U.S.C. §1132(a). To the extent that Lake City Bank bases its third party claim for an equitable lien on state law theories, therefore, the Bank’s claim is preempted by ERISA.

III. Lake City Bank Is Not A “Beneficiary” Under ERISA.

ERISA authorizes suits to recover benefits only by participants, beneficiaries, fiduciaries or the Secretary of Labor. *Morlan v. Universal Guaranty Life Ins. Co.*, 298 F.3d 609, 615 (7th Cir. 2002), *cert. denied*, 537 U.S. 1160 (2003) (citing 29 U.S.C. §1132(a)). “[A]n assignee who does not come under one of these descriptions is ineligible to maintain the suit.” *Id.* at 615.

Lake City Bank claims to have an interest in the proceeds of the Standard Group Policy that “competes with the claims of the beneficiaries named thereunder,” specifically, the Decedent’s wife and two sons. (R. 11, Third Pty Comp., ¶ 19). The Bank clearly is not a “participant” as defined by 29 U.S.C. §1002(7) because it is not a present or former employee of the plan sponsor, Barrett & McNagny. Nor does the Bank qualify as a fiduciary as defined by 29 U.S.C. §1002(21)(A) because it does not exercise discretionary authority over the management

of the ERISA plan. So the legal viability of the Bank’s “competing claim” hinges on whether it qualifies as a “beneficiary” under ERISA.

ERISA defines a “beneficiary” as “a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.” 29 U.S.C. §1002(8). In cases involving a participant’s assignment of benefits, the assignee lacks statutory standing to sue as a beneficiary under ERISA when “[t]he language of the plan is so clear that any claim as an assignee must be frivolous....” *Id.* (quoting *Kennedy v. Connecticut Gen. Life Ins. Co.*, 924 F.2d 698, 700 (7th Cir. 1991)).

The language of the Standard Group Policy, in the section titled “Assignments,” clearly and unequivocally prohibits all assignments: “The rights and benefits under the Group Policy *cannot be assigned.*” (Stmt, ¶ 14) (emphasis added). Lake City Bank’s alleged competing claim arises from an agreement for the Decedent to execute an Assignment to the Bank of the Decedent’s rights and benefits under the Standard Group Policy. (R. 11, Third Pty Comp., ¶¶ 13-15). That is precisely the type of transaction that the Standard Group Policy expressly prohibits.

Under ERISA, courts are to enforce the written terms of employee welfare benefit plans. *Riordan v. Commonwealth Edison Co.*, 128 F.3d 549 (7th Cir. 1997). “One of ERISA’s purposes is to protect the financial integrity of pension and welfare plans by confining benefits to the terms of the plans as written” *Downs v. World Color Press*, 214 F.3d 802, 805 (7th Cir. 2000) (quoting *Pohl v. National Benefits Consultants, Inc.*, 956 F.2d 126, 128 (7th Cir. 1992)). Further, because ERISA instructs courts to strictly enforce the terms of ERISA plans, an assignee cannot collect as beneficiary unless the assignment complies strictly with the plan terms. See

Neurological Resources, P.C. v. Anthem Ins. Cos., 61 F.Supp.2d 840, 845 (S.D. Ind. 1999); *Kennedy*, 924 F.2d at 700.

Lake City Bank cannot assert a claim to benefits as an assignee of the Decedent's interests in the Standard Group Policy, because the written terms of the Standard Group Policy expressly prohibit such assignments. The Bank's "competing claim" is frivolous because it is premised on an invalid Assignment that is prohibited by the Standard Group Policy and ERISA. Indeed, the allegations of the Third Party Complaint establish that Lake City Bank was never designated as a beneficiary of the Standard Group Policy. Lake City Bank alleges that the Decedent "failed to execute and deliver" an Assignment naming the Bank as a beneficiary of the Standard Group Policy. (R. 11, Third Pty Comp., ¶ 16). The Bank admits, therefore, that the instrument that purportedly confers it with beneficiary status under ERISA—the Assignment—was never executed or delivered by the Decedent.

The Standard Group Policy establishes specific procedures for designating a "Beneficiary," which the Group Policy defines as "a person you [the insured] name to receive death benefits." (Stmt, ¶ 12). The Standard Group Policy requires that a Beneficiary must be designated (i) by the insured, (ii) in writing, (iii) dated, (iv) delivered to the Policyholder or Employer during the insured's lifetime, (v) the designation must relate to the insurance proceeds provided under the Group Policy, and (vi) the designation does not become effective until it is delivered to the Policyholder or Employer. (Stmt, ¶ 13).

ERISA requires substantial compliance with a benefit plan's requirements for naming beneficiaries. An insured substantially complies with an ERISA plan's beneficiary designation provisions when the insured evidences his intent to change beneficiaries, and "attempts to effectuate the change by undertaking positive actions which is for all practical purposes similar

to the action required by the change of beneficiary provisions of the policy.” *Phoenix Mut. Life Ins. Co. v. Adams*, 30 F.3d 554, 564 (4th Cir. 1994) (adopted by the Seventh Circuit in *Metropolitan Life Ins. Co. v. Johnson*, 297 F.3d 558 (7th Cir. 2002)).

In *Johnson*, the insured completed and signed a change of beneficiary form but erroneously checked the wrong box on the form. The insured submitted the beneficiary form to the employer, which accepted the form and confirmed the change of beneficiary in a letter to the insured. The Seventh Circuit held that the insured substantially complied with the plan’s requirements for changing beneficiaries.⁴

By contrast, the court in *Life Ins. Co. of North America v. Justak*, No. 2:06-cv-246 JVB, 2008 WL 905970 (N.D. Ind. Mar. 31, 2008) held that the plaintiff was not a beneficiary under ERISA because the insured failed to substantially comply with the plan’s change of beneficiary procedures. The insured filled out a change of beneficiary form and signed the form, but never submitted it to his employer or the insurer. The court found that the failure to submit the form was a “crucial step,” and not a minor error, which constituted a “failure to undertake positive action to effectuate the change” as a matter of law. *Id.* at *3.

The Decedent never undertook positive action to effectuate a change in beneficiaries from his wife and sons to Lake City Bank. None of the procedures required by the Standard Group Policy for designating a new beneficiary was accomplished. Lake City Bank was not designated as a beneficiary in writing, signed by the Decedent, dated, and delivered to the Policyholder during the Decedent’s lifetime. The Bank alleges that the Decedent agreed to execute an Assignment transferring all rights in the group policies to the Bank, but the Bank also

⁴ See also *Davis v. Combes*, 294 F.3d 931, 942 (7th Cir. 2002) (holding that the insured substantially complied with the benefit plan’s change of beneficiary provisions when the insured took the necessary steps to designate a beneficiary by completing the beneficiary change form in its entirety in her own handwriting, dating the form, submitting the form to the insurance company which processed the form as though it were complete, even though the insured by oversight neglected to sign the form).

alleges that the Assignment was never executed or delivered. (R. 11, Third Pty Comp., ¶¶ 14-16). By its own admission, Lake City Bank was never designated as a beneficiary of the Decedent's life insurance coverage under the Standard Group Policy. The Bank's competing claim to life insurance benefits is premised on an Assignment that does not even exist. The Bank's effort to use a fictional Assignment as its basis for asserting a competing ERISA claim against the Decedent's wife and sons is frivolous.

Lake City Bank's tactic of coercing the insurers to initiate an interpleader action, or incur the legal costs of resisting the Bank's demands, warrants the additional remedy of an award of reasonable attorneys' fees and costs under 29 U.S.C. §1132(g). Factors to consider in awarding fees under ERISA include the offending party's "culpability or bad faith," the "ability to satisfy an award of attorneys' fees" and "the degree to which such an award would 'deter other persons acting under similar circumstances.'" *Fritcher v. Health Care Service Corp.*, 301 F.3d 811, 819 (7th Cir. 2002) (quoting *Quinn v. Blue Cross & Blue Shield Ass'n*, 161 F.3d 472, 478 (7th Cir. 1998)).

Lake City Bank sent letters to Standard and the other insurers demanding recognition of its equitable lien or the Bank would assert its lien directly upon the insurers' corporate assets. The Bank presented Standard, Reliance and LINA with the Hobson's choice of either ceding to an interpleader proceeding or incurring the legal expense of exposing the frivolousness of the Bank's third party claim. Standard chose the latter route, and as a consequence incurred attorneys' fees in briefing its Motion to Dismiss and Motion for Summary Judgment. An award of attorneys' fees under ERISA will deter financial institutions such as Lake City Bank from attempting to leverage a collection action against the decedent's estate into an ERISA claim that delays payment to the proper beneficiaries.

CONCLUSION

Standard reasonably and permissibly determined that Lake City Bank's effort to enforce an unsigned, non-existent Assignment through imposition of an "equitable lien" violates the terms of the Standard Group Policy and ERISA. Standard's decision to decline Lake City Bank's claim for benefits, and to refuse to recognize its purported "equitable lien," was reasonable and not arbitrary and capricious. Accordingly, Standard requests entry of judgment in its favor and against Lake City Bank, dismissal of the Third Party Complaint with prejudice, and an award to Standard of costs and reasonable attorneys' fees pursuant to 29 U.S.C. §1132(g).

WHEREFORE, third party defendant, STANDARD INSURANCE COMPANY, respectfully requests entry of summary judgment in its favor, and award of its costs and attorneys' fees pursuant to 29 U.S.C. §1132(g).

Respectfully submitted,

Warren von Schleicher
SMITH, VON SCHLEICHER & ASSOCIATES
39 S. LaSalle St., Suite 1005
Chicago, Illinois 60603
(312) 541-0300
Warren.vonSchleicher@svs-law.com

By: /s/ Warren von Schleicher
Attorney for Third Party Defendant,
Standard Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing on the following attorneys of record:

Sherrill W. Colvin
Haller & Colvin PC
444 East Main Street
Fort Wayne , IN 46802-1910
scolvin@hallercolvin.com

Edna S. Bailey
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
120 N. LaSalle St.
Chicago, IL 60602
edna.bailey@wilsonelser.com

Frank J. Gray
Travis S. Friend
Gray & Friend LLP
927 S. Harrison, 2nd Floor
Fort Wayne , IN 46802
fjg@grayandfriend.com
tsf@grayandfriend.com

J. Rickard Donovan
Mark W. Baeverstad
Jared C. Helge
Rothberg Logan & Warsco LLP
110 West Barry Street, Suite 2100
Fort Wayne, Indiana 46802
rdonovan@rlwlawfirm.com
mbaeverstad@rlwlawfirm.com
jhelge@rlwlawfirm.com

John W. Woodard, Jr.
Wyatt, Tarrant & Combs, LLP
500 West Jefferson St., Suite 2800
Louisville, Kentucky 40202-2898
Jwoodard@wyattfirm.com

/s/ Warren von Schleicher
Smith, von Schleicher & Associates
39 South LaSalle Street, Suite 1005
Chicago, Illinois 60603
(312) 541-0300
(312) 541-0933 – Facsimile
warren.vonschleicher@svs-law.com
Illinois Bar No. 6197189