**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** |
| | ) | **Hon. Theresa L. Springmann** |
| **Defendants,** | ) | |
| **LAKE CITY BANK,** | ) | |
| **Third Party Plaintiff / Cross Claimant,** | ) | |
| **v.** | ) | |
| **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 RESPONSE IN OPPOSITION TO LAKE CITY BANK'S 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 Response in Opposition to Lake City Bank's Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56, and states as follows:

## INTRODUCTION

During the pleading phase of this litigation, Standard moved to dismiss Lake City Bank's Third Party Complaint on the basis that the Bank is not a "beneficiary" of the Standard Group Policy. Therefore, Lake City Bank lacked statutory standing to sue for benefits under ERISA. To survive Standard's Motion to Dismiss, Lake City Bank had to show that at the time it filed suit, it had a "colorable claim" to vested benefits, which is not a stringent requirement.

In its Summary Judgment Memorandum, Lake City Bank contends that it has asserted a colorable claim to vested benefits, albeit an "arguable" claim. (Bank Mem., pgs. 6-7). But whether Lake City Bank satisfied the pleading requirement of a "colorable claim" is not the issue on summary judgment. To survive Standard's Motion for Summary Judgment, Lake City Bank must prove that Standard's decision to award benefits to the Decedent's wife and two sons, and to decline the Bank's competing claim for the same benefits, was arbitrary and capricious.

The Standard Group Policy establishes specific procedures for designating beneficiaries. Lake City Bank was never designated as a beneficiary in accordance with the Standard Group Policy. None of the requirements for changing beneficiaries from the Decedent's wife and two sons to Lake City Bank was accomplished. Nor may Lake City Bank claim to be an assignee of the Decedent's life insurance coverage, because the Standard Group Policy expressly prohibits assignments. Standard, therefore, reasonably determined that Lake City Bank is not entitled to benefits under the Standard Group Policy. Under the applicable arbitrary and capricious standard of review, Standard's decision to decline Lake City Bank's claim should be respected and upheld by the Court.

Lake City Bank nevertheless argues that it is entitled to recover benefits based on state law equitable theories. Professing equity as its ally, the Bank proclaims with crocodile

generosity that it "only" wants *half* a million dollars, leaving the other half to divide among the Decedent's wife and sons. Lake City Bank's state law equitable theories, however, are preempted by ERISA. The terms of the Standard Group Policy mandate distribution of benefits only to the Decedent's wife and sons, and not to Lake City Bank. Lake City Bank is simply a general creditor of the Decedent's estate. Accordingly, summary judgment should be entered in favor of Standard and against Lake City Bank.

## STATEMENT OF GENUINE ISSUES

Standard submits this Statement of Genuine Issues pursuant to N.D. Ind. L.R. 56.1(b), with respect to the following "Statement of Material Facts" asserted in Lake City Bank's Memorandum:

1. On December 26, 2007, J. Frederick Development, LLC, executed and delivered to Lake City a certain Promissory Note by which it promised to pay to Lake City the original principal amount of $1,368,905.49 (the "Company Note") (Gavin Aff. ¶ 5, Ex. "A"). Repayment of the Company Note is secured by, without limitation, a certain Guaranty executed by John F. Lyons dated July 24, 2006 (the "Lyons Guaranty") (Gavin Aff. ¶ 6, Ex. "B").

**RESPONSE:** Disputed. Standard states that Lake City Bank's statements of fact are outside the administrative record that was before Standard and therefore should be stricken. See Standard's Motion to Strike, filed herewith.

2. On December 26, 2007, John F. Lyons also executed and delivered to Lake City a certain Promissory Note by which he promised to pay to Lake City Bank the original principal amount of $83,026.87 (the "Lyons Note") (Gavin Aff. ¶ 7, Ex. "C").

**RESPONSE:** Disputed. Standard states that Lake City Bank's statements of fact are outside the administrative record that was before Standard and therefore should be stricken. See Standard's Motion to Strike, filed herewith.

3. As of October 27, 2009, the outstanding principal balance on the Company Note was $1,198,905.49 and accrued and unpaid interest amounted to $126,666.61 (Gavin Aff. ¶ 8). Interest continues to accrue on the Company Note at the rate of $141.537454 per diem (Gavin Aff. ¶ 8).

**RESPONSE:** Disputed. Standard states that Lake City Bank's statements of fact are outside the administrative record that was before Standard and therefore should be stricken. See Standard's Motion to Strike, filed herewith.

4. As of October 27, 2009, the outstanding principal balance on the Lyons Note was $85,087.68, accrued and unpaid interest amounted to $2,353.85, and accrued and unpaid late fees amounted to $350.00 (Gavin Aff. ¶ 9). Interest continues to accrue on the Lyons Note at the rate of $9.45418 per diem Gavin Aff. ¶ 9). [sic]

**RESPONSE:** Disputed. Standard states that Lake City Bank's statements of fact are outside the administrative record that was before Standard and therefore should be stricken. See Standard's Motion to Strike, filed herewith.

5. Under Section 5(b) of the Settlement Agreement, upon John F. Lyon's death, Lake City has the right to exercise its rights under the Assignments (Gavin Aff. ¶ 12). However, as set forth in Section 5(b) of the Settlement Agreement, the amount of benefits recoverable by Lake City from the Policies may not exceed $500,000.00 (Gavin Aff. ¶ 13).

**RESPONSE:** Disputed. Lake City Bank does not have any "rights" under the Assignments because the Assignments were never executed and do not exist. 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). By letter dated May 21, 2009, 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).

## ARGUMENT

### I. Standard Reasonably Determined That Lake City Bank Is Not Entitled To Benefits Under The Standard Group Policy.

The arbitrary and capricious standard is the least demanding form of judicial review. Under this highly deferential standard, "we may overturn a benefit administrator's decision only if the decision is 'downright unreasonable.'" *Black v. Long Term Disability Ins.*, 582 F.3d 738, 745 (7th Cir. 2009). In reviewing the administrator's benefit decision, the court looks "only to ensure that the decision has rational support in the record." *Id.* (citing *Speciale v. Blue Cross & Blue Shield Ass'n*, 538 F.3d 615, 621 (7th Cir. 2008)).

Standard declined Lake City Bank's claim for benefits on two grounds. First, Standard reasonably determined that Lake City Bank was not designated as a beneficiary as required by the terms of the Standard Group Policy. The Standard Group Policy specifies 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. *Metropolitan Life Ins. Co. v. Johnson*, 297 F.3d 558 (7th Cir. 2002); *Vandenberghe v. Ciura*, No. 07 C 6400, 2008 WL 5082998, at *2 (N.D. Ill. Nov. 25, 2008).

The Decedent failed to take any of the steps required to change beneficiaries under the Standard Group Policy. Lake City Bank was never designated as a beneficiary in writing, signed by the Decedent, dated, and delivered to the Policyholder during the Decedent's lifetime, all of which are required to change beneficiaries under the Standard Group Policy. The Bank alleges that the Decedent agreed to execute an Assignment transferring all rights in the Standard Group Policy to the Bank, but the Bank also admits 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 a fictional Assignment that the Decedent never signed.

Second, Standard reasonably determined that Lake City Bank cannot assert a claim to benefits as an assignee of the Decedent's coverage or life insurance benefits because the Standard Group Policy expressly prohibits assignments. Lake City Bank's alleged competing

claim arises from the Decedent's agreement to execute an Assignment assigning his rights and benefits under the Standard Group Policy to the Bank. That is precisely the type of transaction that the Standard Group Policy prohibits. The Standard Group Policy, in the section titled "Assignments," clearly states, "The rights and benefits under the Group Policy cannot be assigned." (Stmt., ¶ 14).

Non-assignment provisions in ERISA plans are valid and enforceable. *DeBartolo v. Blue Cross/Blue Shield of Illinois*, No. 01 C 5940, 2001 WL 1403012, at *5 (N.D. Ill. Nov. 9, 2001) ("An assignment is not valid and enforceable if the plan contains an anti-assignment provision."); *Physicians Multispecialty Group v. Health Care Plan of Horton Homes, Inc.*, 371 F.3d 1291, 1295 (11th Cir.), *cert. denied*, 543 U.S. 1002 (2004) ("Because ERISA-governed plans are contracts, the parties are free to bargain for certain provisions in the plan-like assignability. Thus, an unambiguous anti-assignment provision in an ERISA-governed welfare benefit plan is valid and enforceable.").; *LeTourneau Lifelike Orthotics & Prosthetics, Inc. v. Wal-Mart Stores, Inc.*, 298 F.3d 348, 352 (5th Cir. 2002) (upholding the validity of an ERISA plan's anti-assignment clause). Lake City Bank cannot assert a claim to benefits as an assignee of the Decedent's interests in the Standard Group Policy, therefore, because the Standard Group Policy prohibits assignments.

Under ERISA, benefits must be paid to a beneficiary who is designated by a participant in accordance with the plan's written terms. *Essick v. Essick*, No. 07 CV 0795, 2008 WL 5487904, at *3 (S.D. Ind. Dec. 17, 2008) (citing *Johnson*, 297 F.3d at 566, quoting 29 U.S.C. § 1002(8)). Indeed, "[o]ne 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)). Standard reasonably determined that Lake City Bank is not a designated beneficiary under the Standard Group Policy, and that Lake City Bank's claim for benefits as a purported "assignee" is prohibited by the Standard Group Policy's anti-assignment provision. Standard's benefit determination reflects a reasonable interpretation of the terms of the Standard Group Policy based on the evidence contained in the administrative record. See *Houston v. Provident Life and Accident Ins. Co.*, 390 F.3d 990, 995 (7th Cir. 2004) (the court will not overturn the administrator's decision where "it is possible to offer a reasoned explanation, based on the evidence for a particular outcome").

Accordingly, Standard's decision to decline Lake City Bank's claim for benefits was not arbitrary and capricious and should be upheld by the Court.

**II. Lake City Bank Is Not Entitled To "Equitable Relief" Under §502(a)(3) Of ERISA.**

Lake City Bank seeks to enforce an equitable lien on ERISA benefits based on Indiana state law. But the Bank faces an impediment, because even the Bank acknowledges that state law theories are preempted by ERISA. See, e.g., *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46 (1987). So the Bank argues that its Indiana equitable lien claim arises under §502(a)(3) of ERISA. Here we encounter delicious irony. According to the Bank, §502(a)(3) functions like a vacuum that engulfs state law equitable theories, federalizing them in the process. Having federalized state law through the vortex of §502(a)(3), the Bank feels free to assert a state law equitable lien safe from ERISA preemption. The Bank then string cites a litany of Indiana state court cases on equitable remedies, and asks the Court to "complete the transaction" through the magic of equity by deeming Lake City Bank to have been designated as the beneficiary of the Group Policies.

But the premise of the Bank's argument is fundamentally flawed. Section 502(a)(3) does not engulf and federalize state law equitable theories. In enacting ERISA, Congress authorized the federal judiciary to create a federal common law of ERISA, to fill the "gaps" on topics in which ERISA is silent. In creating a federal common law of ERISA, courts may look to state law theories for guidance, but only to the extent that state law does not conflict with ERISA's goals. See, e.g., *Pilot Life Ins. Co.* 481 U.S. at 56; *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989). See also *Thomason v. Aetna Life Ins. Co.*, 9 F.3d 645, 647 (7th Cir. 1993) (where ERISA is silent, courts may develop a federal common law and, in so doing, may draw upon state law concepts to the extent that state law does not conflict with congressional policy concerns).

State laws that conflict with ERISA's goals and the written terms of the ERISA Plan, however, are preempted by ERISA. In *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001), the Supreme Court held that a state law statute was preempted by ERISA because the statute required plan administrators to pay benefits according to state family law rather than according to the terms of the ERISA plan. The state statute conflicted with ERISA's command that fiduciaries administer plans "in accordance with the documents and instruments governing the plan," 29 U.S.C. §1140(a)(1)(D). *Id.* at 148. While Lake City Bank cites *Grabois v. Jones*, 77 F.3d 574, 576 (2nd Cir. 1996) as authority that federal courts may apply state law in determining the rightful beneficiary under ERISA, *Grabois* was abrogated by *Egelhoff* and is not followed in the Seventh Circuit, or in any other federal circuit.

In *Johnson*, 297 F.3d 558, the Seventh Circuit applied *Egelhoff* to uphold the distribution of benefits to the beneficiary named by the decedent in the plan documents. The Seventh Circuit

stated that "*Egelhoff* stands for the proposition that a state law cannot invalidate an ERISA plan beneficiary designation by mandating distribution to another person." *Johnson*, 297 F.3d at 566.

In *Melton v. Melton*, 324 F.3d 941 (7th Cir. 2003), the Seventh Circuit held that ERISA preempts the Illinois equitable doctrine of constructive trusts. "We therefore hold that ERISA preempts Illinois state law with respect to determining the rightful beneficiary of [the decedent's] ERISA-regulated group term life insurance policy." *Id.* at 945. The *Melton* court rejected the state law constructive trust claim asserted by the decedent's daughter and awarded benefits to the decedent's ex-wife, who was specifically named as the beneficiary in the plan documents. *Id.* See also *Orlando v. United of Omaha Life Ins. Co.*, No. 06 C 3758, 2007 WL 2875241, at *2 (N.D. Ill. Sept. 30, 2007) (holding that state common law can only be used in formulating a federal common law of ERISA where state law is not inconsistent with congressional policy in enacting ERISA).

Lake City Bank was never designated as a beneficiary under the terms of the Standard Group Policy. The Bank's basis for seeking an equitable lien—the unexecuted, non-existent Assignment—is expressly prohibited by the Standard Group Policy's anti-assignment clause. Lake City Bank's "complete the transaction" theory, therefore, is preempted by ERISA because it conflicts with ERISA's goal of enforcing ERISA plans according to the plans' written terms.[1]

Lake City Bank's claim for equitable relief under Indiana law, which the Bank purports to assert under the rubric of §502(a)(3), suffers from another fatal defect. Section 502(a)(1)(B)

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[1] By contrast, in *Gutta v. Standard Select Trust Ins. Plans*, 530 F.3d 614 (7th Cir. 2008)—cited by Lake City Bank on page 8 of its Memorandum—the Seventh Circuit held that Standard Select was entitled to recover overpaid benefits paid to the plaintiff, but which the plaintiff was not entitled to receive under the terms of the Plan, pursuant to §502(a)(3). The Plan specifically required the plaintiff to repay overpaid benefits. The equitable lien, therefore, enforced the written terms of the Plan, which is consistent with ERISA's goals. The relief was "equitable" because Standard Select sought the return of its *own funds* that were improperly held by the plaintiff. Accord *Sereboff v. Mid Atl. Med. Servs.*, 547 U.S. 356 (2006).

provides the *exclusive* remedy for claimants who seek to recover benefits under the terms of an ERISA plan. The Supreme Court in *Varity Corp. v. Howe*, 516 U.S. 489 (1996) held that a claimant who may assert a claim for benefits under §502(a)(1)(B) is prohibited from seeking equitable relief under §502(a)(3). *Varity Corp*. held that §502(a)(3) is a catchall provision designed to act as a "safety net" offering appropriate equitable relief when there is no other adequate remedy under §502(a)(1)(B). *Id*. at 512. Section §502(a)(1)(B) "specifically provides a remedy for breaches of fiduciary duty with respect to the interpretation of plan documents and the payment of claims ... that runs directly to the injured beneficiary." *Id*. at 512. When a plaintiff can assert a claim for benefits under §502(a)(1)(B), then the plaintiff is legally barred from seeking equitable relief under §502(a)(3). *Id*. See also *Clark v. Hewitt Associates LLC*, 294 F.Supp.2d 946, 950 (N.D. Ill. 2003) ("[P]laintiff…does have the *right* to bring a claim under §1132(a)(1)(B), regardless of its merits; therefore, she may not seek relief under §1132(a)(3).").

Moreover, §502(a)(3) authorizes only equitable relief and not legal relief in the form of monetary damages. See *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209-210 (2002) (holding that a plaintiff may not obtain legal relief under §502(a)(3)); *Loren v. Blue Cross & Blue Shield of Michigan*, No. 06-2090, 2007 WL 2726704, at *9 (6th Cir. Sept. 20, 2007) ("Plaintiffs may bring suit in their individual capacities under §1132(a)(3) for injunctive or other appropriate equitable relief, but not for monetary damages."). Of course, almost any *legal* claim can be cloaked in the language of equity. An action at law does not become "appropriate equitable relief" under ERISA simply because the claim is pled using the language of equity. See *Primax Recoveries, Inc. v. Sevilla*, 324 F.3d 544, 548 (7th Cir. 2003) ("[A]lmost any legal claim can be given the form of an equitable claim (that is, a claim seeking an order to do or not do something)," and cautioning that "[s]uch games with form should be discouraged.").

The same analysis applies to Lake City Bank's request for "equitable relief" under §502(a)(3). Quintessentially, Lake City Bank wants an award of money. Lake City Bank's claim for enforcement of an "equitable lien" is simply a claim for money damages, which is the classic form of legal relief. See *Fox v. Special Agents Mut. Ben. Assoc.*, No. 1:05-cv-755, 2006 WL 3613308, at *8 (S.D. Ind. Sept. 19, 2006) ("[B]oth Fox and Roy seek to have the life insurance proceeds paid to them to the exclusion of the other claimant. Thus, Fox and Roy are seeking relief under section 1132(a)(1)(B) to recover benefits that they believe are owed to them. … Fox and Roy may not seek relief under subsection (a)(3)…."). Lake City Bank, therefore, is barred from asserting a claim to recover life insurance benefits under the Standard Group Policy under §502(a)(3).

**III. ERISA Preempts Lake City Bank's State Law Unjust Enrichment Claim.**

Lake City Bank contends that if its claim for benefits under ERISA is denied by the Court, then the Bank is entitled to obtain those benefits through a second route: by taking them from the Decedent's wife and sons based on a theory of "unjust enrichment" under Indiana law. (Bank Mem., pg. 16). The Bank's argument misses the point of preemption. If the Decedent's wife and sons are found to be the proper beneficiaries under ERISA of the Standard Group Policy (as well as the other ERISA-governed Group Policies), then the entitlement to benefits has been adjudicated. The issue is *res judicata*. Benefits belong to the wife and sons, and not to Lake City Bank.

Having lost on the merits of its ERISA claim, Lake City Bank does not get a second chance to lay claim to the same benefits under Indiana law. ERISA preempts state law claims that mandate distribution of benefits to someone other than the beneficiaries designated by the

terms of the ERISA plan. As stated in *Minnesota Life Ins. Co. v. Hamilton*, No. 07-cv-0056, 2008 WL 905909, at *3 (S.D. Ill. Apr. 2, 2008):

> So, ERISA--which requires that benefits be paid in accord with plan documents--preempts any state law that contradicts the terms of the plan. (Citations omitted). Which means this Court must respect an employee's designation of beneficiaries contained in plan documents under an ERISA-regulated benefit plan.

(Citing *Egelhoff*, 532 U.S. at 148).[2]

Courts consistently have held that ERISA preempts state law claims for unjust enrichment. See *Oplchenski v. Parfums Givenchy, Inc.*, No. 05 C 6105, 2007 WL 1933149, at *4 (N.D. Ill. June 27, 2007) ("[A]ny ERISA benefit that the Plaintiffs claim unjustly enriched the Defendants is preempted by ERISA and must be brought as an ERISA claim."); *Rizzo v. Bankers Life & Casualty Co.,* 04 C 292, 2004 WL 1093359 (N.D. Ill. April 28, 2004) (state law claim for unjust enrichment is preempted by ERISA); *Benjamin v. Marshal P. Morris, Ltd. Profit Sharing Plan And Trust*, 97 C 6714, 1998 WL 299434 (N.D. Ill. May 20, 1998) (Illinois state law claims for conversion, unjust enrichment and breach of contract are preempted by ERISA); *Gupta v. Freixenet, USA, Inc.*, 908 F.Supp. 557 (N.D. Ill. 1995) ("ERISA preempts state law tort or contract claims that are essentially suits for benefits.").

Lake City Bank's unjust enrichment theory, therefore, is preempted by ERISA. ERISA mandates distribution of benefits to the Decedent's wife and sons. The Bank cannot alter that result—and assert ownership of those funds through the back door—by invoking the state law theory of unjust enrichment.

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[2] See also *Singh v. Prudential Health Care Plan, Inc.*, 335 F.3d 278, 291 (4th Cir.), *cert. denied*, 540 U.S. 1073 (2003) ("[W]hen the validity, interpretation or applicability of a plan term governs the participant's entitlement to a benefit or its amount, the claim for such a benefit falls within the scope of § 502(a) ... and therefore [all related state law claims] are completely preempted."); *Gutta*, 530 F.3d at 620 ("ERISA preempts state-law theories of recovery.").

## IV. An Award Of Attorneys' Fees Is Appropriate Under §502(g) of ERISA.

ERISA is a fee-shifting statute that authorizes the award of costs and attorneys' fees to the prevailing party. 29 U.S.C. §1132(g); *Sullivan v. William A. Randolph, Inc.*, 504 F.3d 665, 670 (7th Cir. 2007); *Jacobson v. SLM Corp. Welfare Benefit Plan*, No. 1:08-cv-0267, 2009 WL 3787190, at *1 (S.D. Ind. Nov. 10, 2009). There is a "modest" presumption in favor of awarding costs and fees to the prevailing party. *Stark v. PPM America, Inc.*, 354 F.3d 666, 673 (7th Cir. 2004). In *Bittner v. Sadoff & Rudoy Industries*, 728 F.2d 820, 828-830 (7th Cir. 1984), the Seventh Circuit held that either party—plaintiff or defendant—is entitled to an award of fees unless the loser's position, though unsuccessful, had substantial justification. Accord *Sullivan*, 504 F.3d at 670-672 (holding that the plaintiff's position was not substantially justified, because the plaintiff failed to conduct an adequate pre-litigation investigation).

Lake City Bank's Third Party Complaint against Standard was not substantially justified. First, the anti-assignment provision of the Standard Group Policy precludes Lake City Bank from asserting rights to life insurance benefits based on a purported Assignment. Standard informed Lake City Bank, in its May 6, 2009 and June 16, 2009 determination letters, that the Standard Group Policy prohibits assignments, and that the Bank was never designated as a beneficiary of the Decedent's coverage. Despite this knowledge, the Bank nonetheless initiated a lawsuit against Standard to enforce an Assignment.

Second, Standard filed a Motion to Dismiss the Bank's Third Party Complaint, detailing the fatal deficiencies with the Bank's claims, including ERISA preemption, the Standard Group Policy's prohibition on assignments, and the fact that the Bank was never designated as a beneficiary of the Standard Group Policy. Sound judgment should have admonished Lake City

Bank to dismiss its claims against Standard. Instead, the Bank pressed their claims to summary judgment, causing Standard to incur additional fees.

Third, the basis for Lake City Bank's "equitable lien" is an Assignment that was never executed by the Decedent. Glossing over this deficiency, Lake City Bank nevertheless argues in its Memorandum that "Lake City has the right to exercise its rights under the Assignment and receive the benefits payable from the Policies." (Bank Mem., pg. 14). Lake City Bank's litigation effort to enforce an unexecuted, non-existent Assignment against ERISA-regulated benefits was not substantially justified.

Finally, 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. 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, was not substantially justified. The Bank calculated that all three insurers would 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 input from the insurer's ERISA-savvy counsel—a tactic that almost worked. Standard, however, refused to cede to the Bank's threat. The Bank's tactic of using the threat of costly litigation to coerce the insurers to deposit funds was not substantially justified and was implemented in bad faith.[3]

Lake City Bank is merely a general creditor of the Decedent's estate. An award of attorneys' fees under ERISA is appropriate recompense for Lake City Bank's effort to leverage a

[3] To nullify the impact of the Bank's threat of costly litigation, Standard's counsel agreed to represent Standard's interests on contingency. Counsel's only compensation for work performed in this case is through an award of fees under §502(g).

simple collection action—that should have been asserted against the Decedent's estate—into an ERISA claim that delayed payment to the proper beneficiaries and was not substantially justified.

**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 was reasonable and not arbitrary and capricious. Accordingly, Standard requests entry of judgment in its favor and against Lake City Bank, 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,

By: /s/ Warren von Schleicher
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 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:

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