

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO. 24-22142-CIV-GAYLES/SHAW-WILDER**

**FANNY B. MILLSTEIN and  
MARTIN KLEINBART,**

**Plaintiffs,**

**v.**

**WELLS FARGO BANK, N.A.,**

**Defendant.**

---

**PLAINTIFF'S DISCOVERY MEMORANDUM REGARDING  
PLAINTIFF'S REQUEST FOR NON-CENTURION POLICY ACTIONS**

The Scheme in this case involved selling Plaintiff and the Class Notes purportedly secured by collateral in the form of life insurance policies issued to third parties. D.E. 3, ¶4. WF knew the policies the Scheme Operators were purchasing were STOLIs and that those policies carried the risk of cancellation by insurers and clawback of benefits by insureds' estates rendering the policies worthless. WF knew of those risks because, among other things, it was involved in STOLI-related litigation ("Policy Actions"). Accordingly, WF's understanding of the value (or lack thereof) of the Class members' collateral derives in part from its participation in those actions. That understanding arises from Policy Actions concerning all policies in which it had played an administrative role, not merely those once associated with Centurion. Therefore, documents relating to Policy Actions involving any policies administered by WF are highly relevant and discoverable, as they are tied to WF's knowledge of the fraud.

The crux of Plaintiff's theory has always been that WF knew the Scheme Operators were selling Notes purportedly secured by life insurance policies and nevertheless substantially assisted the Scheme while knowing the Notes were not, in fact, properly secured. D.E. 3, ¶¶ 4-7, 33-35, 39-42, 45-46, 60-65, 70-75. Equally central is that WF knew the policies the Scheme Operators purchased were STOLIs, helped conceal that fact from the insurers, and intervened to facilitate assignments necessary to secure loans that perpetuated the Scheme when insurers raised STOLI concerns. D.E., ¶¶51-57, 68-69. Evidence bearing on WF's knowledge of the risks associated with STOLIs, and the value and impairment of the Class members' security interests, is therefore critical. Indeed, Judges Goodman and Gayles concluded that WF's knowing assistance in evading insurer prohibitions on STOLIs and pledging those STOLIs to secure new loans from third parties could establish aider-and-abettor liability. D.E. 53 at 56-62; D.E. 91.

The Scheme Operators' misrepresentations to the Class members that their Notes were "secured" by longevity assets were pivotal to the Scheme. D.E. 3, ¶¶4, 33-42. The Scheme Operators told the Class members that the policies securing their Notes were held by a collateral agent to protect their investments, when, as WF knew, no such agent held them. D.E. 3, ¶7. WF knew from documents it received not only that the policies the Scheme Operators purchased were supposed to be for the benefit of the Class, but also that many of the policies they were purchasing were STOLIs, which WF appreciated. D.E. 3, ¶¶50-60; B.Martin Tr., Ex.1, 77:18-21 ("My understanding from attending industry conferences is that the origination process of a policy could lack an insurable interest."). WF also knew that the Scheme was structured to conceal from the

insurance companies that the policies were STOLIs. D.E. 3, ¶¶50-60. And WF knew its securities intermediary (“SI”) services enabled the Scheme Operators to trade the policies through internal “book entries,” without ever alerting the insurers to the STOLI violations. Ex.1 at 215:8-217:6.

WF knew one risk associated with life policy investments was “financial distress associated with inaccurate life expectancy predictions.” Ex.1 at 43:25-45:10. But WF also knew that investing in STOLIs carried additional, more fundamental risks. STOLIs are prohibited in the insurance industry. D.E. 3, ¶52. WF knew that there was a “broad[] prohibition against” STOLIs because they amount to “gambling” on the life of “someone with whom you don’t have an interest in their survival” and “could cause problems in the insurance industry.” Ex.1 at 78:23-79:8. It also knew that insurers could contest the payment of death benefits. C.Connell Tr., Ex.2, 48:8-15. WF thus knew the policies purportedly collateralizing the Notes were potentially worthless because of the risk of legal challenges, either by the insurance companies or by the estates of the insureds, and thus the Notes were not actually “secured” as represented to Class members. And it knew of those risks from the outset of the Scheme from its involvement in STOLI-related litigation. In 2009, WF participated in litigation, in its capacity as trustee for certain insureds, in a matter where the insurer claimed “the policies were essentially a wager on the life of the insured by third-party investors and void for public policy reasons.” *Wells Fargo Bank, N.A. v. Lincoln Nat’l Life Ins. Co.*, 2009 WL 10672596, at \*2 (C.D. Cal. Apr. 13, 2009). In 2010, WF (again as trustee) “participated in litigation...related to a STOLI-type claim” in which the insurer raised “the possible sale or assignment of the Policies.” Ex.2 at 7:2-8, 50:20-54:24; *DiCesare CC*, Ex.3, ¶¶13-14, 18, 22. By that time, “conversation about STOLI was beginning to occur” at WF. Ex.2 at 52:8-11.

Relevancy is “construed broadly to encompass any matter that bears on, or that reasonably could lead to another matter that could bear on any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352 (1978). Discovery is not limited to the issues raised by the pleadings because it “is designed to help define and clarify the issues.” *Id.* at 352. Here, documents relating to the Policy Actions directly bear on what WF knew about the risks associated with the STOLIs the Scheme Operators were purchasing, and what it knew about the value of the collateral purportedly securing the Notes. To be sure, WF had a division within the bank dedicated to providing SI services to the Scheme Operators. Because WF’s knowledge is an element of Plaintiff’s claim that WF contests, she is entitled to discovery concerning its knowledge. *See Lesti v. Wells Fargo Bank, N.A.*, 2014 WL 12828852, at \*5 (M.D. Fla. Feb. 20, 2014).

Dated: January 15, 2026.

Respectfully submitted,

BUCKNER + MILES  
2020 Salzedo Street, Ste. 302  
Coral Gables, Florida 33134  
Tel.: (305) 964-8003  
Fax: (786) 523-0585

/s/Seth Miles

**Seth Miles, Esq.**

Fla. Bar No. 385530

[seth@bucknermiles.com](mailto:seth@bucknermiles.com)

**David M. Buckner, Esq.**

Fla. Bar No. 60550

[david@bucknermiles.com](mailto:david@bucknermiles.com)

**Brett E. von Borke, Esq.**

Fla. Bar No. 0044802

[vonborke@bucknermiles.com](mailto:vonborke@bucknermiles.com)

SILVER LAW GROUP  
11780 W. Sample Road  
Coral Springs, FL 33065  
Tel.: (954) 755-4799  
Fax: (954) 755-4684

**Scott L. Silver, Esq.**

Fla. bar No. 095631

[ssilver@silverlaw.com](mailto:ssilver@silverlaw.com)

**Ryan A. Schwamm, Esq.**

Fla. Bar No. 1019116

[rschwamm@silverlaw.com](mailto:rschwamm@silverlaw.com)

**Peter M. Spett, Esq., Of Counsel**

Fla. Bar No. 0088840

[pspett@silverlaw.com](mailto:pspett@silverlaw.com)

SALLAH ASTARITA & COX, LLC  
One Boca Place  
3010 N Military Trail, Suite 210  
Boca Raton, Florida 33431  
Tel.: (561) 989-9080  
Fax: (561) 989-9020

**James D. Sallah, Esq.**

Fla. Bar No. 0092584

[jds@sallahlaw.com](mailto:jds@sallahlaw.com)

**Joshua A Katz, Esq.**

Fla. Bar No. 0848301

[jak@sallahlaw.com](mailto:jak@sallahlaw.com)

*Counsel for Plaintiffs and the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by CM/ECF on January 15, 2026, on all counsel or parties of record on the Service List below.

/s/Seth Miles

Seth Miles, Esq., Fla. Bar No. 385530

[seth@bucknermiles.com](mailto:seth@bucknermiles.com)

**SERVICE LIST**

Nellie E. Hestin, Esq.  
Mark W. Kinghorn, Esq.  
Jarrod D. Shaw, Esq.  
Eric G. Olshan, Esq.  
McGuire Woods, LLP  
260 Forbes Avenue, Suite 1800  
Tower Two-Sixty  
Pittsburgh, Pennsylvania 15222  
[nhestin@mcguirewoods.com](mailto:nhestin@mcguirewoods.com)  
[mkinghorn@mcguirewoods.com](mailto:mkinghorn@mcguirewoods.com)  
[jshaw@mcguirewoods.com](mailto:jshaw@mcguirewoods.com)  
[eolshan@mcguirewoods.com](mailto:eolshan@mcguirewoods.com)

William O. L. Hutchinson  
Zachary L. McCamey  
McGuire Woods, LLP  
201 North Tryon Street, Suite 3000  
Charlotte, North Carolina 28202  
[whutchinson@mcguirewoods.com](mailto:whutchinson@mcguirewoods.com)  
[zmccamey@mcguirewoods.com](mailto:zmccamey@mcguirewoods.com)

Emily Yandle Rottmann, Esq.  
McGuireWoods LLP  
50 N. Laura Street, Suite 3300  
Jacksonville, Florida 32202  
[erottmann@mcguirewoods.com](mailto:erottmann@mcguirewoods.com)

*Counsel for Wells Fargo Bank, N.A.*

# **EXHIBIT 1**

**(To be filed under seal  
pursuant to the Court's  
Order D.E. 188)**

# **EXHIBIT 2**

**(To be filed under seal  
pursuant to the Court's  
Order D.E. 188)**

# **EXHIBIT 3**

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

WELLS FARGO BANK, AS TRUSTEE )  
OF THE JOE DICESARE 2008 )  
IRREVOCABLE LIFE INSURANCE )  
TRUST I AND AS TRUSTEE OF THE )  
JOE DICESARE 2008 IRREVOCABLE )  
LIFE INSURANCE TRUST II, )

Plaintiff, )

v. )

THE LINCOLN NATIONAL LIFE )  
INSURANCE COMPANY, )

Defendant. )

Case No. 10-CV-703-TCK-TLW

**DEFENDANT THE LINCOLN NATIONAL LIFE INSURANCE COMPANY'S  
COUNTERCLAIM FOR DECLARATORY JUDGMENT**

Defendant, The Lincoln National Life Insurance Company ("Lincoln"), for its Counterclaim against Plaintiff, Wells Fargo Bank, N.A., as Trustee of the Joe Dicesare Life Insurance Trust I and Trustee of the Joe Dicesare Life Insurance Trust II, hereby incorporates by reference Paragraphs 1-40 of its Answer to First Amended Petition and further alleges and states as follows:

**THE PARTIES**

1. Lincoln is a life insurance company organized and existing under the laws of the State of Indiana, with its principal place of business in Fort Wayne, Indiana.
2. Wells Fargo Bank, N.A. ("Trustee"), is the Trustee of the Joe Dicesare Life Insurance Trust I and the Trustee of the Joe Dicesare Life Insurance Trust II, with its principal place of business located in Sioux Falls, South Dakota.
3. The beneficiaries of the above-referenced trusts are all alleged in the First Amended Petition to be citizens of Oklahoma.

### **JURISDICTION AND VENUE**

4. Lincoln asserts a counterclaim for declaratory judgment under 28 U.S.C. § 2201 to establish its rights and obligations under two life insurance policies issued by Lincoln. An actual controversy exists concerning the rights and obligations of the parties under the Policies.

5. This Court has jurisdiction of this action under 28 U.S.C. § 1332(a)(1) because the parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this district under 28 U.S.C. § 1391(a) because a substantial part of the acts or omissions giving rise to this dispute occurred here.

### **FACTUAL BACKGROUND**

7. Lincoln is, and at all relevant times has been, in the business of underwriting and issuing policies of life insurance, and Lincoln is authorized to transact the business of insurance in the State of Oklahoma.

8. On or about July 16, 2008, Joe Dicesare, as the named insured ("Dicesare"), and the Trustee signed and submitted to Lincoln an application for life insurance ("Application I"), seeking the issuance of policy number JJ7042844 in the face amount of \$10,000,000 ("Policy I").

9. On or about July 16, 2008, Dicesare and the Trustee signed and submitted to Lincoln an application for life insurance ("Application II") (Application I and Application II collectively, the "Applications"), seeking the issuance of policy number JJ7042792 in the face amount of \$10,000,000 ("Policy II") (Policy I and Policy II collectively, the "Policies").

10. Each of the Applications contained an agreement and acknowledgment stating as follows:

Each of the Undersigned declares that:

\*\*\*

4. I HAVE READ, or have had read to me, the completed Application for Life Insurance before signing below. All statements and answers in this application are correctly recorded, and are full, complete and true to the best of my knowledge and belief.

11. In completing the Applications, Dicesare and the Trustee each knew that they were required to provide truthful, accurate and honest answers to the questions presented in the Applications.

12. In completing the Applications, Dicesare and the Trustee each knew that Lincoln would rely on the answers recorded in the Applications in determining whether Dicesare was insurable and qualified for the Policies.

13. In completing the Applications, Dicesare and the Trustee provided material information in response to questions presented in the Applications relating to, among other things, Dicesare's financial status and condition and the possible sale or assignment of the Policies.

14. In particular, Dicesare and the Trustee responded to clear and direct questions seeking material information regarding Dicesare's employment status, annual earned income, annual unearned income, total assets, total liabilities, net worth and discussions about the possible sale or assignment of the Policies.

15. On the basis of Dicesare's and the Trustee's representations in the Applications and in reliance on Dicesare's and the Trustee's complete candor, honesty and openness in disclosing information in response to questions presented in the Applications, Lincoln issued the Policies on or about August 12, 2008, with an aggregate face-amount death benefit of \$20,000,000.

16. As a result of issuing the Policies, Lincoln incurred commissions in the aggregate amount of \$1,627,132, as well as other expenses and costs related to the processing, issuance, and administration of each of the Policies.

17. Dicesare died on January 31, 2010. Thereafter, Lincoln received claims for payment under the Policies.

18. Because Dicesare died within the Policies' contestability periods, Lincoln initiated a routine investigation of Dicesare's and the Trustee's representations in the Applications. This investigation revealed that the Applications misrepresented Dicesare's true financial status and condition, and Lincoln has further learned that the Applications misrepresented whether Dicesare had been involved in any discussions regarding the possible sale or assignment of the Policies.

19. On September 28, 2010, Lincoln advised the Trustee that it was rescinding the Policies. On the same day, Lincoln tendered to the Trustee two checks, representing a refund of all premiums paid plus interest, as payment in full of all liability on or under the Policies.

20. Each of the checks issued on September 28, 2010, stated that it was not valid after 120 days. Accordingly, on January 26, 2011, Lincoln tendered to the Trustee two replacement checks, representing a refund of all premiums paid plus interest, as payment in full of all liability on or under the Policies.

21. To date, the Trustee has refused to accept Lincoln's tender of the premiums paid plus interest to effect a rescission of the Policies.

### **COUNTERCLAIM – DECLARATORY JUDGMENT**

Lincoln incorporates by reference Paragraphs 1-21 above and further states as follows:

22. During its contestability investigation following Dicesare's death, Lincoln discovered that Dicesare's and the Trustee's representations in the Applications concerning

Dicesare's financial status and condition were materially incorrect and/or fraudulent. Lincoln has further learned that the Applications misrepresented whether Dicesare had been involved in any discussions regarding the possible sale or assignment of the Policies. Upon information and belief, such material misrepresentations were knowingly and intentionally made for the purpose of inducing Lincoln to issue the Policies.

23. Lincoln justifiably relied on the misrepresentations in the Applications. Such misrepresentations were material, and but for the misrepresentations Lincoln would not have issued the Policies.

24. Accordingly, the Policies are void or voidable in accordance with applicable law.

25. Due to Dicesare's and the Trustee's misrepresentations, Lincoln is entitled to rescind the Policies and to an award of damages or other compensation as necessary or appropriate to restore Lincoln to its pre-contract position. In particular, Lincoln is entitled to offset or otherwise retain from the premiums paid under the Policies an amount equal to the commissions, costs and expenses Lincoln incurred relating to its processing, issuing and administering the Policies.

26. Because the Trustee has not agreed to rescission of the Policies, Lincoln is not obligated to tender a refund of the premiums paid under the Policies until the Court orders that the Policies are rescinded.

**RELIEF REQUESTED**

WHEREFORE, Lincoln respectfully requests the entry of judgment against the Trustee as follows:

(a) declaring and adjudging that each of the Policies are null and void and rescinded, *ab initio*;

(b) declaring and adjudging that Lincoln may retain from the premiums paid on the Policies an amount equal to the commissions, costs and expenses Lincoln has incurred as a result of the issuance of each of the Policies;

(c) declaring and adjudging that, because the Trustee has not agreed to rescission of the Policies, Lincoln is not obligated to tender a refund of the premiums paid under the Policies until the Court orders that the Policies are rescinded; and

(d) awarding Lincoln its costs, reasonable attorneys' fees and such other relief as this Court deems equitable and just.

June 15, 2011

Respectfully submitted,

s/Christopher B. Woods

Terry M. Thomas, OBA #8951

Christopher B. Woods, OBA #18881

Susan E. Huntsman, OBA #18401

Elliot P. Anderson, OBA #21098

CROWE & DUNLEVY

A Professional Corporation

500 Kennedy Building

321 South Boston Avenue

Tulsa, OK 74103-3313

(918) 592-9800

(918) 592-9801 (Facsimile)

ATTORNEYS FOR DEFENDANT THE  
LINCOLN NATIONAL LIFE INSURANCE  
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2011, I electronically transmitted the foregoing to the Court Clerk using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

John Ted Bonham  
jtedbonham@sbcglobal.net

Michael Sean Burrage  
sburrage@soonerlaw.com,lailey@soonerlaw.com

Stephen Gerard Foresta  
sforesta@orrick.com

Andrew Bruce Morsman  
morsmanlaw@aol.com,bashore527@sbcglobal.net,howardgc@b-htulsalaw.com

Clinton Derek Russell  
crussell@soonerlaw.com,ktaylor@soonerlaw.com

Philipp Smaylovsky  
psmaylovsky@orrick.com,nymao@orrick.com

and served the same document by:

U.S. Postal Service       Courier Service       In Person Delivery       Email

on the following, who are not registered participants of the ECF system:

Gene C Howard  
BONHAM & HOWARD  
15 W 6 St, Ste. 2066  
Tulsa, OK 74119

s/Christopher B. Woods  
\_\_\_\_\_  
Christopher B. Woods