UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, WESTERN DIVISION

Raymond Tarlton, as guardian ad litem for Henry Lee McCollum, et al. v. Leroy Allen, et al.

No. 5:15-CV-451-BO · No. No. 5:15-CV-451-BO · Decided March 9, 2026

SUMMARY

The United States District Court for the Eastern District of North Carolina ruled on motions to strike, compel discovery, and obtain judgment on the pleadings in litigation involving insurance coverage for judgment debtors. The court denied the motion to strike, adopted a magistrate judge’s recommendation concerning attorney-client privilege and work-product protection, and rejected Lexington Insurance Company’s argument that the plaintiffs lacked standing to assert unfair and deceptive trade practices and bad-faith claims. The order directs the parties to submit an updated proposed schedule.

CASE DETAILS

COURT	United States District Court for the Eastern District of North Carolina, Western Division
WRITING FOR THE COURT	Terrence W. Boyle
JURISDICTION	United States District Court for the Eastern District of North Carolina, Western Division
DECIDED	March 9, 2026
DOCKET	No. 5:15-CV-451-BO
DISPOSITION	other
PROCEDURAL POSTURE	The district court considered plaintiffs' and the receiver's motion to strike, plaintiffs' motion to compel discovery, and Lexington Insurance Company's motion for judgment on the pleadings.
STANDARD OF REVIEW	A Rule 12(c) motion is evaluated under the same standard as a Rule 12(b)(6) motion: the court accepts well-pleaded allegations as true, views them in the light most favorable to the plaintiff, and asks whether the complaint states a facially plausible claim. The court may consider the answer as well as the complaint, but cannot rely on answer allegations that contradict the complaint. A Rule 12(c) motion tests pleading sufficiency and does not resolve the merits or factual disputes. For a motion to compel, the resisting party bears the burden

	of showing why discovery should not be compelled. Motions to strike are disfavored and generally are not a vehicle for resolving factual disputes.
PRECEDENTIAL VALUE	unpublished
PARTIES	Raymond Tarlton, as guardian ad litem for Henry Lee McCollum, et al., Receiver v. Leroy Allen, et al., Jefferson Insurance Company, et al., Lexington Insurance Company

TOPICS

motion for judgment on the pleadings · discovery dispute · deceptive trade practices · insurance bad faith · civil procedure

PRACTICE AREAS

civil procedure · insurance · consumer protection · contracts

QUESTIONS PRESENTED

1. Whether portions of Lexington's answers and mutual-mistake defenses should be stricken under Federal Rule of Civil Procedure 12(f).
2. Whether plaintiffs were entitled under Federal Rule of Civil Procedure 37 to compel production of documents withheld under the attorney-client privilege or work product doctrine.
3. Whether plaintiffs plausibly alleged standing and claims for unfair and deceptive trade practices and common-law bad faith against an insurer of judgment debtors, such that Lexington was not entitled to judgment on the pleadings under Rule 12(c).

HOLDINGS

1. The motion to strike portions of Lexington's pleadings and mutual-mistake defenses was denied because the pending partial-summary-judgment motion addressed overlapping issues and striking the pleadings would be a drastic remedy.
2. The court adopted Magistrate Judge Meyers's memorandum and recommendation concerning the withheld documents and resolved the motion to compel in accordance with that recommendation.
3. Lexington was not entitled to judgment on the pleadings because plaintiffs plausibly alleged unfair and deceptive trade practices and common-law bad faith, and the court declined to hold that plaintiffs were categorically barred from proceeding as third-party beneficiaries or persons in sufficient privity with Lexington.

KEY QUOTATIONS

> *"Rule 12(f) motions are generally viewed with disfavor 'because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a dilatory tactic.'"* (Discussion § A)

> *“A Rule 12(c) motion tests only the sufficiency of the complaint and does not resolve the merits of the plaintiffs claims or any disputes of fact.”* (Discussion § C)

> *“where the policy of insurance is against liability . . . and the liability of the insured has been established by judgment, the injured person may maintain an action on the policy of insurance, that is, coverage attaches when liability attaches, regardless of actual loss by the insured at the time, and the coverage inures to the benefit of the party injured.”* (Discussion § C)

FACTUAL BACKGROUND

Plaintiffs obtained judgments against Kenneth Snead and Leroy Allen, attempted to execute on those judgments, and allege that the judgments remain unsatisfied. Snead and Allen, through POELIC, were the direct beneficiaries and named insureds under Lexington insurance policies; plaintiffs were not named insureds. Plaintiffs asserted unfair and deceptive trade practices and bad-faith claims against Lexington and sought discovery concerning Lexington's intent in issuing the policies, while Lexington withheld hundreds of documents based on attorney-client privilege and work product.

PROCEDURAL HISTORY

Plaintiffs and the receiver moved to strike portions of Lexington's answers and affirmative defenses. Plaintiffs also moved under Rule 37 to compel production of documents withheld as attorney-client privileged or work product, and the matter was referred for in-camera review to Magistrate Judge Meyers, whose memorandum and recommendation was adopted. Lexington moved under Rule 12(c) for judgment on the pleadings on plaintiffs' unfair and deceptive trade practices and common-law bad-faith claims. The court denied the motion to strike, denied the motion to compel as stated in the conclusion despite discussing partial relief in the body, and denied Lexington's Rule 12(c) motion.

DISPOSITION

other

REMAND INSTRUCTIONS

The parties were directed to file an updated proposed schedule for proceeding in the case within fourteen days of entry of the order. The court also indicated that an additional discovery period and time for additional dispositive motions appeared likely.

CASES CITED

- Bell v. Koss, 2020 WL 4570439, at *5 (S.D.N.Y. 2020)
- Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 347 (4th Cir. 2001)
- Mainstreet Collection, Inc. v. Kirkland’s, Inc., 270 F.R.D. 238, 241 (E.D.N.C. 2010)
- Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005)
- Dunlap v. TM Trucking of the Carolinas, LLC, 288 F. Supp. 3d 654, 662 (D.S.C. 2017)
- Alexander v. City of Greensboro, 801 F. Supp. 2d 429, 433 (M.D.N.C. 2011)

- Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Mendenhall v. Hanesbrands, Inc., 856 F. Supp. 2d 717, 724 (M.D.N.C. 2012)
- Drager v. PLIVA USA, Inc., 741 F.3d 470, 474 (4th Cir. 2014)
- Med-Trans Corp. v. Benton, 581 F. Supp. 2d 721, 728 (E.D.N.C. 2008)
- Gray v. N. Carolina Ins. Underwriting Ass'n, 352 N.C. 61, 68, 529 S.E.2d 676 (2000)
- Marshall, 302 N.C. at 548, 276 S.E.2d at 403
- Lovell v. Nationwide Mut. Ins. Co., 108 N.C. App. 416, 420 (1993)
- Hariri v. State Farm Mut. Auto. Ins. Co., No. 3:25-CV-00237-KDB-DCK, 2026 WL 279880, at *3 (W.D.N.C. Feb. 3, 2026)
- Wilson v. Wilson, 121 N.C. App. 662, 665 (1996)
- Murray v. Nationwide Mut. Ins. Co., 123 N.C. App. 1, 14-15 (1996)
- Taylor v. N. Carolina Farm Bureau Mut. Ins. Co., 181 N.C. App. 343, 345 (2007)
- Craven v. Demidovich, 172 N.C. App. 340, 341-43 (2005)
- USA Trouser, S.A. de C.V. v. Williams, 258 N.C. App. 192, 197 (2018)
- Seguro-Suarez by & through Connette v. Key Risk Ins. Co., 261 N.C. App. 200, 214-15 (2018)
- Nash Hosps., Inc. v. State Farm Mut. Auto. Ins. Co., 254 N.C. App. 726, 734 (2017)
- Hall v. Harleysville Mut. Cas. Co., 233 N.C. 339, 340 (1951)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION No. 5:15-CV-451-BO RAYMOND TARLTON, as guardian ad litem for _) HENRY LEE MCCOLLUM, et al.,)) Plaintiffs,)) v.) ORDER) LEROY ALLEN, et al.)) Defendants.)) and)) JEFFERSON INSURANCE COMPANY, ef ail., __)) Supplemental Defendants. __) This cause comes before the Court on plaintiffs' and receiver's motion to strike, plaintiffs' motion to compel, and Lexington Insurance Company's motion for judgment on the pleadings.

[DE 659]; [DE 665]; [DE 678]. The appropriate responses and replies have been filed, or the time for doing so has expired, and a hearing on the motions was held before the undersigned on November 5, 2025, at Raleigh, North Carolina. Additionally, United States Magistrate Judge Meyers has filed a memorandum and recommendation regarding the motion to compel [DE 709], and in this posture each of the foregoing motions is ripe for disposition.

DISCUSSION The Court dispenses with a recitation of the background of this action, as the parties are well-familiar with this case. A. Plaintiffs' and receiver's motion to strike [DE 659] Plaintiffs and receiver seek to strike Lexington Insurance Company's (Lexington) answers and defenses related to mutual mistake for failure to plead mutual mistake with particularity.

Plaintiffs and receiver cite numerous paragraphs in Lexington's answer to the supplemental complaint and answer to cross-claims, as well as Lexington's affirmative defense seven and affirmative defense eight to both the supplemental complaint and cross-claims, as containing material which should be stricken. Federal Rule of Civil Procedure 12(f) allows the court, swa sponte or on a motion by the parties, to "strike from a pleading an insufficient defense or any redundant, immaterial, or scandalous matter." Fed.

R. Civ. P. 12(f) A motion to strike is not an avenue through which parties are permitted to dispute, or the court is permitted to resolve, questions of fact. Be// v. Koss, 2020 WL 4570439, at *5 (S.D.N.Y. 2020). "Rule 12(f) motions are generally viewed with disfavor 'because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a dilatory tactic." Waste Mgmt.

Holdings, Inc. v. Gilmore, 252 F.3d 316, 347 (4th Cir. 2001) (citation omitted). Plaintiffs and receiver have moved for partial summary judgment against Lexington on two issues which concern Lexington's seventh and eighth affirmative defenses. See [DE 692].

In light of the filing of the motion for partial summary judgment, the Court will not consider the drastic remedy of striking portions of Lexington's pleadings. The motion to strike is therefore denied. B. Plaintiffs' motion to compel [DE 665] and memorandum and recommendation [DE 709] Plaintiffs have moved pursuant to Fed. R. Civ. P. 37 to compel Lexington to produce all documents relating to its intent in issuing insurance policies which covered defendants Kenneth Snead and Leroy Allen.

Lexington has refused to produce, in whole or in part, 570 documents which it contends are protected by attorney-client privilege or the work product doctrine. Lexington has responded in opposition to the motion to compel, and asserts that the subject documents were properly withheld and that it has provided plaintiffs with a sufficient privilege log. Rule 37(a) governs motions to compel. "The party resisting discovery bears the burden of showing why it should not be granted." Mainstreet Collection, Inc. v. Kirkland's, Inc., 270 F.R.D.

238, 241 (E.D.N.C. 2010). The Court referred in-camera review of these documents to United States Magistrate Judge Meyers and directed him to prepare a memorandum and recommendation (M&R) regarding whether the withheld documents are privileged or otherwise protected from discovery. No party has objected to the M&R, and the time for doing so has expired. See 28 U.S.C. § 636(b)(1)(C); Fed.

R. Civ. P. 72(b)(3). Magistrate Judge Meyers recommends that Lexington's attorney-client privilege and attorney work product designations be upheld with respect to the documents submitted for in- camera review, except Magistrate Judge Meyers recommends that Lexington be directed to provided to plaintiffs (1) redacted copies of any withheld document of which a duplicate version has already been provided to plaintiffs in redacted form, and (2) a redacted copy of “LEX_00018918” to the extent this document has not already been provided to plaintiffs.

The Court has engaged in a careful review of the M&R as well as the documents provided for in-camera review and finds no basis upon which to reject the recommendation of the magistrate judge. Accordingly, the Court adopts the M&R in full as its own. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Dunlap v. TM Trucking of the Carolinas, LLC, 288 F. Supp. 3d 654, 662 (D.S.C.

2017). Plaintiff's motion to compel is therefore granted in part and denied in part, and Lexington shall provide to plaintiffs particular documents as outlined in the M&R. C. Lexington Insurance Company’s motion for judgment on the pleadings [DE 678] Lexington seeks judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) on plaintiff's claims for unfair and deceptive trade practices and for common law bad faith.

A Rule 12(c) motion is considered under the same standard as a Rule 12(b)(6) motion. Alexander v. City of Greensboro, 801 F. Supp. 2d 429, 433 (M.D.N.C. 2011). Thus, “the court should accept as true all well-pleaded allegations and should view the complaint in a light most favorable to the plaintiff.” Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir.

1993). A complaint must allege enough facts to state a claim for relief that is facially plausible. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). However, this standard does not permit a plaintiff to merely plead the elements of a cause of action alongside legal conclusions; the Court need not accept those as true. /d. at 555.

The primary distinction between Rules 12(b)(6) and |2(c) is that Rule 12(c) permits a court to consider a defendant’s answer in addition to plaintiff's complaint. However, a defendant may not rely on allegations of fact as provided in the answer if they are contradictory to the facts presented in the complaint. Mendenhall v. Hanesbrands, Inc., 856 F. Supp. 2d 717, 724 (M.D.N.C.

2012). “A Rule 12(c) motion tests only the sufficiency of the complaint and does not resolve the merits of the plaintiffs claims or any disputes of fact.” Drager v. PLIVA USA, Inc., 741 F.3d 470, 474 (4th Cir. 2014). Judgment on the pleadings should be granted therefore only “where the moving party is clearly entitled to the judgment it seeks as a matter of law.” Med-Trans Corp. v. Benton, 581 F. Supp. 2d 721, 728 (E.D.N.C.

2008). Lexington argues that plaintiffs lack standing to pursue unfair and deceptive trade practice and bad faith claims against Lexington, an insurer of plaintiffs’ judgment debtors. Lexington contends that, as strangers to the insurance policies, plaintiffs lack the necessary contractual privity to assert an unfair and deceptive trade practices (UDTP) or bad faith claim against Lexington, and further that plaintiffs do not fit within any of the exceptions to this rule recognized by North Carolina law based on statutory privity.

To establish a violation of North Carolina's UDTP statute, N.C. Gen. Stat. § 75-I.1, "a plaintiff must show: (1) an unfair or deceptive act or practice, (2) in or affecting commerce, and (3) which proximately caused injury to plaintiffs." Gray v. N. Carolina Ins. Underwriting Ass'n, 352 N.C. 61, 68 (2000). An insurance company that engages in the act or practice of "[n]ot attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear," N.C.G.S. § 58-63—15(11)(f), also engages in conduct that embodies the broader standards of N.C.G.S. § 75—1.1 because such conduct is inherently unfair, unscrupulous, immoral, and injurious to consumers.

See Marshall, 302 N.C. at 548, 276 S.E.2d at 403. Thus, such conduct that violates subsection (f) of N.C.G.S. § 58-63—-15(11) constitutes a violation of N.C.G.S. § 75—1.1, as a matter of law[.] Id. at 71 (2000). An insurance company can also be liable for bad faith refusal to pay insurance benefits where it has in bad faith refused to pay a valid claim and engaged in aggravating or outrageous conduct.

See Lovell vy. Nationwide Mut. Ins. Co., 108 N.C. App. 416, 420 (1993). It is undisputed that plaintiffs are not the named insureds on Lexirigton's policies with POELIC, and that Snead and Allen, through POELIC, are the direct beneficiaries of Lexington's policies. It is further undisputed that plaintiffs have both obtained a judgment against Snead and Allen, have attempted to execute on that judgment, and that the judgment is unsatisfied. "North Carolina does not recognize a UDTP claim by a third-party against the insurance com pany of an adverse party until the third-party obtains a judgment against the insured." Hariri v. State Farm Mut.

Auto. Ins. Co., No. 3:25-CV-00237-KDB-DCK, 2026 WL 279880, at *3 (W.D.N.C. Feb. 3, 2026) (emphasis added) (citing Wilson v. Wilson, 121 N.C. App. 662, 665 (1996) and Murray v. Nationwide Mut. Ins. Co.,, 123 N.C. App. 1, 14-15 (1996)); see also Taylor v. N. Carolina Farm Bureau Mut. Ins. Co., 181 N.C. App. 343, 345 (2007) ("Plaintiff's privity with Farm Bureau and status as a third-party beneficiary to the insurance policy existed only until Defendant satisfied its contractual obligations to the extent of the insurance policy provisions.") (emphasis added). "The same rule applies to bad faith claims." /d. (citing Craven y. Demidovich, 172 N.C.

App. 340, 341- 43 (2005)). Citing USA Trouser, S.A. de C.V. v. Williams, 258 N.C. App. 192 (2018), Lexington argues that a judgment creditor lacks standing to bring a UDTP or bad faith cleim against the insurer because it is not an intended beneficiary of the contract.

In USA Trouser, the North Carolina Court of Appeals held that it has neither recognized nor implemented "a general rule that judgments against insureds provide claimants with rights to recover from insurers directly." /d. at 197.

The North Carolina Court of Appeals has recognized an injured party as a third-party beneficiary of a liability insurance policy in the context of, for example, the state's compulsory vehicle liability insurance laws, whose purpose it is to ensure victims are financially compensated, see id. at 197, and "has further recognized the imposition of privity between third parties and insurers sufficient to support a UDTP claim when similar statutory obligations exist for like purposes." Seguro- Suarez by & through Connette v. Key Risk Ins.

Co., 261 N.C. App. 200, 214-15 (2018) (citing Nash Hosps., Inc. v. State Farm Mut. Auto. Ins. Co., 254 N.C. App. 726, 734 (2017)). Contrary to Lexington's argument, however, the Court does not read USA Trouser to foreclose the possibility that plaintiffs cannot be recognized as third-party beneficiaries or otherwise in privity under these circumstances. Indeed, the policies at issue here provide thait Lexington will pay "all sums which [the insured] shall become legally obligated to pay as damages" even where the insured is bankrupt or insolvent.

[DE 595-30] at 6; 11. And, "where the policy of insurance is against liability... and the liability of the insured has been established by judgment, the injured person may maintain an action on the policy of insurance, that is, coverage attaches when liability attaches, regardless of actual loss by the insured at the time, and the coverage inures to the benefit of the party injured." Hall v. Harleysville Mut.

Cas. Co., 233 N.C. 339, 340 (1951). The Court has considered the parties' arguments and determines that plaintiffs have plausibly alleged their UDTP and bad faith claims. Lexington's motion for judgment on the pleadings is therefore denied. CONCLUSION Accordingly, for the foregoing reasons, plaintiffs' and receiver's motion to strike [DE 659] is DENIED, plaintiffs' motion to compel [DE 665] is DENIED, and Lexington's motion for judgment on the pleadings [DE 678] is DENIED.

In light of the Court's decision on the motion to compel, it appears that an additional period for discovery is to commence as well as a time for filing additional dispositive motions. See [DIE 683]. The parties are hereby DIRECTED to file an updated proposed schedule for proceeding in this case within fourteen (14) days of the date of entry of this order. SO ORDERED, this | day of March 2026. emcees, Moye TERRENCE W. BOYLE UNITED STATES DISTRICT JUDGE