UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION

# The Northwestern Mutual Life Insurance Company v. Mary Rhude Cross, as guardian of A.C., a minor, J.C., a minor, and L.C., a minor; and Any Unknown Children of Chaundre K. Cross

Cross · No. 2:23-cv-851-JES-DNF · Decided February 3, 2026

## SUMMARY

This Final Pretrial Conference Order governs the trial in Northwestern Mutual's action concerning rescission of a life insurance policy, a declaratory judgment regarding the insured's cause of death, and a breach-of-contract counterclaim. The court denies or resolves several pretrial motions, specifies the respective roles of the jury and court, addresses evidentiary and witness issues, and sets trial for February 23, 2026, in Fort Myers, Florida.

## CASE DETAILS

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| COURT | United States District Court for the Middle District of Florida, Fort Myers Division |
| WRITING FOR THE COURT | J. E. Steele |
| DECIDED | February 3, 2026 |
| DOCKET | 2:23-cv-851-JES-DNF |
| DISPOSITION | other |
| PROCEDURAL POSTURE | Final pretrial conference order in a diversity action involving claims for rescission of a life-insurance policy, declaratory relief concerning the insured's manner of death, and a counterclaim for breach of the insurance contract. The court ruled on trial structure, jury-trial entitlement, evidentiary motions in limine, deposition-use issues, and a request for remote witness testimony. |
| PRECEDENTIAL VALUE | Unpublished federal district court final pretrial order; persuasive rather than precedential value. |

## TOPICS

motion in limine · civil procedure · evidence · insurance · breach of contract

## PRACTICE AREAS

Civil procedure · Insurance law · Contracts · Evidence

## QUESTIONS PRESENTED

1. Whether the breach-of-contract counterclaim and declaratory-judgment claim are legal claims triable by a jury.
2. Whether the rescission claim is equitable and therefore triable by the court, while factual findings made by the jury on overlapping issues bind the court in deciding rescission.
3. Whether the death certificate was admissible under the public-record and vital-statistics hearsay exceptions and whether its contents could be used to establish a particular manner of death.
4. Whether Rule 30(b)(6) deposition testimony may be read to the jury and whether a corporate designee may testify about matters within the corporation's knowledge, including corporate positions and opinions.
5. Whether witnesses should be permitted to testify remotely because of work and school schedules.
6. Whether evidence concerning a prior $1.6 million life-insurance policy and its payout was relevant and admissible.
7. Whether the challenged expert testimony and proposed testimony concerning underwriting, rescission, waiver, fraud, and bad faith should be excluded before trial.

## HOLDINGS

1. The breach-of-contract counterclaim seeking monetary relief is a legal claim for which Cross is entitled to a jury trial.
2. The declaratory-judgment claim concerning whether Dr. Cross's death was a suicide is legal in this case and will be tried to the jury.
3. The rescission claim is equitable and will be tried by the court without a jury.
4. When legal and equitable claims are tried together and share factual issues, the court is bound by the jury's findings on issues necessarily decided in resolving the legal claim.
5. The death certificate is admissible as a public record, but neither party may argue that it establishes any particular manner of death.
6. Cross may read Northwestern Mutual's Rule 30(b)(6) deposition testimony to the jury, and the testimony may be used as substantive evidence. A Rule 30(b)(6) designee is not irrevocably bound to every deposition statement and may correct, explain, or supplement testimony.
7. A Rule 30(b)(6) corporate representative may testify about matters within the corporation's knowledge, including the corporation's factual positions, subjective beliefs, and opinions, even when the representative lacks personal knowledge acquired independently.
8. The request for remote witness testimony was denied because foreseeable work and school scheduling conflicts did not establish good cause and compelling circumstances under Rule 43(a).

## KEY QUOTATIONS

> *“The case will be tried before a jury as to the breach of contract claim and the declaratory judgment claim. The rescission claim will be tried by the Court simultaneously with the jury trial.”*

> *“The Death Certificate is a public record excluded from the definition of hearsay by Fed. R. Evid. 803(9)”*

> *“Nothing in the text of the Rule or in the Advisory Committee notes indicates that the Rule is meant to bind a corporate party irrevocably to whatever its designee happens to recollect during her testimony.”*

> *“The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition.”*

### FACTUAL BACKGROUND

Northwestern Mutual issued a life-insurance policy on the life of Dr. Chaundre K. Cross. Northwestern Mutual alleges that Dr. Cross made material misrepresentations in his insurance application and seeks rescission under Florida law; it also seeks a declaration that his death was a suicide. Dr. Cross was lost at sea, and his death certificate states that the manner of death could not be determined and the cause of death was lost at sea. Cross seeks policy benefits and damages for Northwestern Mutual's alleged breach of the insurance contract.

### PROCEDURAL HISTORY

Northwestern Mutual filed the complaint seeking rescission of the policy based on alleged misrepresentations in the insurance application and a declaration that Dr. Chaundre K. Cross died by suicide. Mary Rhude Cross answered, asserted affirmative defenses, and counterclaimed for breach of the insurance contract based on denial of benefits, repudiation, and attempted rescission; Northwestern Mutual answered the counterclaim and asserted that the policy was void ab initio and that Dr. Cross died by suicide. At the January 30, 2026 final pretrial conference, the court denied the parties' motions concerning jury trial, party realignment, bifurcation, and multiple evidentiary issues, and set the trial procedures.

### DISPOSITION

other

### CASES CITED

- Ford v. Citizens & S. Nat. Bank, Cartersville, 928 F.2d 1118, 1121 (11th Cir. 1991)
- Simler v. Conner, 372 U.S. 221, 222 (1963)
- Stewart v. KHD Deutz of Am. Corp., 75 F.3d 1522, 1526 (11th Cir. 1996)
- Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 504 (1959)
- Phillips v. Kaplus, 764 F.2d 807, 812 (11th Cir. 1985)
- Scheurenbrand v. Wood Gundy Corp., 8 F.3d 1547, 1551 (11th Cir. 1993)
- United Auto. Ins. Co. v. Salgado, 22 So. 3d 594, 599 (Fla. 3d DCA 2009)
- Miguel v. Metro. Life Ins. Co., 200 Fed. Appx. 961, 965 (11th Cir. 2006)
- Brown v. Alabama Dept. of Transp., 597 F.3d 1160, 1184 (11th Cir. 2010)
- Lincoln v. Bd. of Regents of Univ. Sys. of Georgia, 697 F.2d 928, 934 (11th Cir. 1983)

- Coughlin v. Capitol Cement Co., 571 F.2d 290, 308 (5th Cir. 1978)
- Keepers, Inc. v. City of Milford, 807 F.3d 24, 34–35 (2d Cir. 2015)
- Stein v. Reynolds Sec., Inc., 667 F.2d 33, 34 (11th Cir. 1982)
- Roberts v. Direct Gen. Ins. Co., 337 So. 3d 889, 892 (Fla. 2d DCA 2022)
- Lloyd v. Midland Funding, LLC, 639 Fed. Appx. 301, 305 (6th Cir. 2016)
- Brazos River Auth. v. GE Ionics, Inc., 469 F.3d 416, 433–34 (5th Cir. 2006)