

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

RONALD JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:13cv916-WHA
)	
LIBERTY LIFE ASSURANCE COMPANY))	(wo)
OF BOSTON,)	
)	
Defendant.)	

ORDER

This cause is before the court on the Defendant’s Motion for Attorneys’ Fees and Costs (Doc. #33).

ERISA provides that in an action “by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney’s fee and costs of action to either party.” 29 U.S.C. § 1132(g)(1). District courts consider five factors in determining whether to award attorney’s fees: (1) the degree of the opposing parties’ culpability or bad faith; (2) the ability of the opposing parties to satisfy an award of attorney’s fees; (3) whether an award of fees against the opposing party would deter other persons acting under similar circumstances; (4) whether the parties requesting fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and (5) the relative merits of the parties’ positions. *Byars v. Coca-Cola Co.*, 517 F.3d 1256, 1268 (11th Cir. 2008). Courts must also “bear in mind ERISA’s essential remedial purpose: to protect the beneficiaries of [employee benefit] plans. Adherence to this policy often counsels against charging fees against ERISA beneficiaries since private actions by beneficiaries seeking in good faith to secure their rights

under employee benefit plans are important mechanisms for furthering ERISA's remedial purpose.” *Nachwalter v. Christie*, 805 F.2d 956, 962 (11th Cir.1986) (citation omitted).

The court has considered the motion, the submissions in favor of the motion, and the entire record in this case before it. Applying all of the relevant factors, the court declines to exercise its discretion to award attorneys’ fees and costs in this case. Accordingly, the Motion for Attorneys’ Fees and Costs is hereby ORDERED DENIED.

Done this 18th day of May, 2015.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE