THE HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

LINCOLN NATIONAL LIFE INSURANCE COMPANY, Plaintiff, v. CLAUDIA RIDGWAY; *et. al.*, Defendants.	Civil No. 2:17-cv-01490 RSM DEFENDANT RIDGWAY'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDER-ATION OF COURT'S SUMMARY JUDGMENT ORDER ON ISSUE OF INTERPLEADER **NOTE ON MOTION CALENDAR:** **FRIDAY, MARCH 23, 2018**

I. SUMMARY OF RESPONSE

This motion for reconsideration (MFR) should be denied. The bifurcation as to the interpleading of funds and discharge was correct. Ms. Ridgway can maintain a separate action for bad-faith and/or mismanaged claim handling or breach of fiduciary duty under 29 U.S.C. § 1132(a), which she has generically pled.

II. ARGUMENT AND AUTHORITY

A. <u>The bifurcation and denial of discharge was correct.</u>

The primary objection of LLI to the court's ruling, citing *Prudential Ins. v. Hovis*, 553 F.3d 258 (3rd Cir. 2009), and *Lee v. West Coast Life Ins.*, 688 F.3d 1004 (9th Cir. 2012), is that the issue of discharge was connected-at-the-hip to the finding of good faith with respect to the issue of whether LLI reasonably believed there were colorable competing claims. First, ironically, both of those cases go on to recognize that independent claims

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existing against a stakeholder, beyond the contested fund, may survive, precluding some form of two-birds-with-one-stone automatic discharge. *Lee*, 688 F.3d 1009 et seq.; *Hovis*, 553 F.3d 264 et seq.:

> Under the old interpleader practice, if a claimant alleged that the stakeholder was independently liable to him or her, the stakeholder would lose its right to bring the interpleader action. *See Libby, McNeill & Libby v. City Nat'l Bank*, 592 F.2d 504, 507 (9th Cir.1978); Note, *The Independent Liability Rule as a Bar to Interpleader in the Federal Courts*, 65 Yale L.J. 715, 716 (1956). **The modern approach, however, is that, where a claimant brings an independent counterclaim against the stakeholder, the stakeholder is kept in the litigation to defend against the counterclaim, rather than being dismissed after depositing the disputed funds with the court.** *See High Technology*, 497 F.3d at 643; *Wayzata Bank & Trust Co. v. A & B Farms*, 855 F.2d 590, 593 (8th Cir.1988); *Libby*, 592 F.2d at 507.

Hovis, 553 F.3d 258, (Cir. 2009)(bold and underlining added). The threshold for denying the interpleader in the first place is different from the threshold for a counterclaim. *Lee*, 688 F.3d at 1012 (allowing counterclaim based on negligence; no need to support counterclaim with assertions of bad faith, distinguishing *Hovis)*.

Second, the federal interpleader statute expressly provides discretion on this issue:

> Such district court shall hear and determine the case, *and may discharge the plaintiff from further liability*, make the injunction permanent, and make all appropriate orders to enforce its judgment.

28 U.S.C. § 2361 (italics added).

Third, other authorities seem to uniformly support the court's bifurcation decision here, including specifically ERISA claims based upon mismanagement and nonpayment of policy proceeds. *NY Life Ins. v. Conn. Dev. Auth.*, 700 F.2d 91, 96 (2nd Cir. 1983)("Judgment discharging the stakeholder . . . may, of course, be delayed or denied if there are serious charges that the stakeholder commenced the action in bad faith."), citing 3A J. Moore & J. Lucas, *Moore's Federal Practice*, p. 22.02, at 22-7; *see also Mendez v. Teachers Ins.*, 982

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F.2d 783 (2nd Cir. 1992)(in ERISA interpleader contest, court denies multiple motions for reconsideration denying discharge and granting attorney fees under 29 U.S.C. § 1132(g)(1), where ERISA insurer delayed payment and failed to investigate certain simple legal issues).

Fourth, in this case by definition, LLI is trying to deplete the fund at issue by seeking attorney fees, as stated in its prior briefing to this court, through its demand for interpleader related attorney fees. Similarly, by making such demand, and by objecting to Ms. Ridgway's request for attorney fees from it, and by seeking discharge *ab initio* and as to the counterclaim, LLI should be foreclosed from a discharge at this point. A somewhat similar situation occurred in *Bell v. Nutmeg Airways*, 66 F.R.D. 1 (D. Conn. 1975). The novel stakeholder argument rejected by the *Bell* court was that it was not an "opposing party," precluding any form of counterclaim. 66 F.R.D. at 3. To this the *Bell* court made specific reference to Professor Moore:

> The weakness in this analysis rests in the basic assumption that any adversarial relationship, actual or potential, in an interpleader action can only be based upon conflicting claims to the interpleaded fund. As recognized by Professor Moore in his treatise, the Rule 13 requirement of a claim by the stakeholder 'is clearly satisfied by the stakeholder's request for discharge from the proceeding and for judicial protection against any further claims by the claimant in question.' 3A J. Moore, Federal Practice ¶ 22.15, at 3130 (2d ed. 1966); *see also John Hancock Mut. Life Co. v. Beardslee*, 216 F.2d 457 (7th Cir. 1954), cert. denied, 348 U.S. 964, 75 S.Ct. 523, 99 L.Ed. 751 (1955). That such a claim that he should be discharged and judicially protected can be the subject of dispute between the plaintiff-stakeholder and one or more of the defendant-claimants is potentially illustrated by the instant case. Although pleaded in terms of a counterclaim, the defendants Futtner and Nutmeg's allegation that the plaintiff acted wrongfully in refusing to turn over the insurance proceeds to them upon demand may also constitute a defense to the plaintiff's request for discharge. As interpleader is an equitable remedy, the doctrine of unclean hands can, in extreme circumstances, bar a stakeholder from successfully invoking it. *Cf. Royal School Laboratories, Inc. v. Town of Watertown*, 358 F.2d 813, 817 n.3 (2d Cir. 1966); *Holcomb v. Aetna Life Ins. Co.*, 228 F.2d 75, 81-82 (10th Cir. 1955), cert. denied, 350 U.S. 986, 76 S.Ct. 473, 100 L.Ed. 853 (1956); *B. J. Van Ingen & Co. v. Connolly*, 225 F.2d 740, 744-745 (3d Cir. 1955); *Mallory S. S. Co. v. Thalheim*, 277 F. 196, 201-202 (2d Cir. 1921).

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66 F.R.D. at 4 (underlining added). And further, again referencing Professor Moore, "the plaintiff-stakeholder 'having initiated the interpleader action, and subjected itself thereby to the personal jurisdiction of the court, cannot complain if a claimant's answer seeks to interpose a counterclaim for relief in excess of or different from the subject matter of the interpleader dispute.' 3A J. Moore, Federal Practice ¶ 22.15, at 3130 (2d ed. 1966)." *Bell,* 66 F.R.D. at 5.

Fifth, to be certain, Ms. Ridgway's claim here extends beyond the disputed fund.[1] Ms. Ridgway has been compelled to incur substantial legal costs related to her response to this case, including specifically her right to have the policy proceeds paid to her. She maintains that her right to such funds was established by LLI on August 24, 2017, as on such date LLI validated and certified her claim application, under both of the policies and under ERISA, as the sole beneficiary of the policies; all that came later, including the attendant legal costs, represent a separate fund, a liability that would not exist but for the interpleader. Tempting as it may be to think of this as "the same fund" because Ms. Ridgway necessarily has to fund this liability by payment from funds she would receive from the policies, from a legal standpoint, it should be treated as a separate fund. Indeed, if the court determines that LLI is responsible for some or all of such costs, it will have to remit additional funds beyond the amount of the policies.[2]

[1] Which apparently was deposited with this court on March 16, 2018.

[2] Equally important here, as this court pointed out, this involves assessments of material facts at issue, and LLI's motion was one of summary judgment; tie goes to the nonmoving party.

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Sixth, another principle in terms of stakeholder discharge is whether the stakeholder played a hand in, or augmented, or facilitated, the development of a claim by one of interplead defendants; if so then interpleader *or* a discharge may be denied.

> The threat of future liability cannot be contrived, however, as it was in this case. One of the plaintiff's employees caused the Town of Greenwich to initiate the action in Connecticut Probate Court, and thus whatever future liability the plaintiff may suffer in Connecticut will be the result of its own actions. The Court therefore concludes that no realistic threat of multiple liability exists. . . . The evidence of the plaintiff's bad faith in bringing this action also supports the Court's refusal to exercise interpleader jurisdiction. An interpleader action is equitable in nature, and the doctrine of unclean hands can thus bar a stakeholder from successfully invoking it. *See Bell*, 66 F.R.D. at 4. While lack of good faith alone generally is an insufficient basis to dismiss an interpleader complaint, see 7 Wright, Miller & Kane, § 1704 at 504, interpleader will not be allowed where it might reward inequitable or improper conduct. *Id.* Such conduct includes any efforts by a stakeholder to develop adverse claims. *See Mallory S.S. Co. v. Thalheim*, 277 F. 196 (2d Cir.1921); *Wasserman v. Fidelity & Deposit Co. of Maryland, Inc.*, 490 F.Supp. 564 (S.D.N.Y.1979). The plaintiff could have avoided liability simply by complying with the orders of the New York Surrogate Court prior to its June 24, 1992 decision. Instead, the plaintiff made the existence of the Mercedes known to the Assessor of the Town of Greenwich, thereby generating the Connecticut action. See Deft.'s Mem., Exh. I. The plaintiff has failed to dissuade the Court that this sequence of events demonstrates the plaintiff's effort to evade the action in New York Surrogate Court.

Truck-A-Tune, Inc. v. Re, 856 F.Supp. 77, 80-81 (D. Conn. 1993)(underlining added); *Lee*, 688 F.3d at 1012(discharge may be denied where stakeholder stands as wrongdoer as to subject matter of controversy or any of the claimants, citing cases). Here LLI's employees, *after* certifying Ms. Ridgway's claim, took it upon themselves to instruct Amanda Gonzales on how create a cognizable objection – not a claim itself -- so that LLI could interplead. Carter told her subordinate Beck to do this, expressly. In doing so, they did not follow the claims procedures in the policies, nor ERISA, in blatant disregard of the fact that Ms. Ridgway was the unambiguously designated ERISA beneficiary who was more-than-presumptively entitled to the policy proceeds, as this court has now reaffirmed. At the time

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LLI was helping Amanda Gonzales and her sister get their objection up and running, in anticipation of interpleader, LLI was avoiding communications from Ms. Ridgway's counsel, which included the evidence which supported what this court found, that there was no basis in fact or law for any charge of undue influence. LLI's motivation in fostering the objection of the daughters was to substantiate its desire to run the case up the interpleader flagpole so that it could secure a get-out-of-jail-free card, all the while necessarily realizing that such would expose Ms. Ridgway to significant delay in receiving the funds and cost in terms of the ensuing litigation. *Lee,* 688 F.3d at 1013.

B. Ridgway can maintain an action for surcharge under § 1132(a)(3)

According to LLI, Ms. Ridgway has no remedy under §1132(a)(1)-(2). *MFR,* 4, n. 17; 6, n.27. Ms. Ridgway does not necessarily agree with that argument,[3] but, according to *Varity v. Howe*, 516 U.S. 489 (1996), such condition *allows* for the invocation of the equitable remedies of §1132(a)(3). 516 U.S. at 515. And indeed, the decision LLI uses to support its restrictive ERISA argument here, *Mass. Mutual v. Russell*, 473 U.S. 134 (1985), is overruled by *Varity* on this very point. *See Varity*, 516 U.S. at 516-525 (dissent of Thomas and Scalia discussing clear conflict with *Russell*). Similarly, the cases cited by LLI for the more restrictive approach largely predate *Varity. MFR,* 4, n.18. The equitable remedies available to Ms. Ridgway here include "surcharge." *CIGNA v. Amara*, 563 U.S.421 (2011); *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 957-58 (9th Cir. 2014); *Zisk v. Gannett Co. Inc. Prot. Fund*, 73 F.Supp.3d 1115, 1118-21 (N.D. Cal. 2014). Furthermore, she need

[3] Our reading of *Varity* indicates that remedies from *both* sections are cognizable simultaneously because, in part, the statute is designed to be remedial for participants and beneficiaries. *See infra.*

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not show that she is seeking redress for anyone but herself. *Zisk*, 73 F.Supp. at 1118 (citing cases) and 1120-21(discussing redress for individualized fiduciary breaches). Ms. Ridgway was the one and only designated beneficiary on these policies, by all accounts, and now by this court's order. As such, LLI owed her certain fiduciary duties; similarly the children were not ERISA beneficiaries:

> Plaintiffs' status as children of a participant in an ERISA plan does not provide them with standing as "beneficiaries." In *Coleman v. Champion Intern./Champion Forest Prod.*, 992 F.2d 530, 533-34 (5th Cir.1993), the court held that a pension plan participant's son was not a "beneficiary" of the plan with standing to sue under ERISA because the participant never designated the son to receive benefits under the plan. *See also Keys v. Eastman Kodak Co.*, 739 F.Supp. 135, 137-38 (W.D.N.Y.), aff'd, 923 F.2d 844 (2d Cir.1990); *Lerra v. Monsanto Co.*, 521 F.Supp. 1257, 1263 (D.Mass.1981). In all three cases, as in the present case, the court rejected the plaintiff's claim to be a beneficiary because the plaintiff had not been designated a beneficiary, despite the fact that the plaintiff was either a child or spouse of the plan participant.

Crawford v. Roane, 53 F.3d 750, 755 (6th Cir. 1995).

Ms. Ridgway was the sole beneficiary of these policies *ab initio*, entitling her to payment on them, in this case, shortly after August 24, 2017. What she got instead from LLI was a morass of litigation, compelling her to incur significant and substantial costs, including but not limited to legal costs. The delay in receiving those funds, in and of itself is sufficient to countenance – especially on summary judgment – her counterclaim. *See, e.g. Bell*, 66 F.R.D. at 3(counterclaim for withholding funds). But here, as this court's decision pointed out, there is more at issue, bringing the apropos language of *Lee* into focus once again, namely that an insurer cannot refuse to communicate with its insured, fail to process claims in a timely manner, force its insured to file suit (or respond to suit) to secure coverage, and then "by mere deposit of the principal amount of cash surrender value wash its hands of

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all other claims that have accumulated in the interim." 232 F.2d at 814. [4] In equity she is entitled to seek redress which makes her whole, especially if it includes some form of money judgment which extends beyond the parameters of her ERISA benefit, namely the insurance proceeds. The surcharge remedy is precisely of this nature, under §1132(a)(3).

III. CONCLUSION

This court's ruling was spot-on, literally striking the nail on its head. The motion for reconsideration must be denied.

DATED this 17th day of March, 2018,

/s/ Thomas E. Seguine

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[4] A secondary point here is that LLI's embedded argument for preemption is off the mark. *MFR*, 4-5. Ms. Ridgway is decidedly *not* advancing any state claims; her counterclaim is based exclusively on the federal ERISA remedial provisions found in §1132. Moreover, the counterclaim invokes the entire section generically, such that a breach of fiduciary duties is cognizable.

Certificate of Service

I am employed in Skagit County, Washington, State of Washington. I am over the age of 18 and am not a party to the within action; my business address is 1023 South 3rd, Mount Vernon, WA 98273.

On Saturday, March 17, 2018 I served the following document(s) described as:

DEFENDANT RIDGWAY'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION ON ISSUE OF DISCHARGE IN INTERPLEADER

on the interested parties in this action in one of more of the following manner(s):

_X__**BY REGULAR MAIL**: I placed copies of the document in sealed envelopes and caused such envelopes to be deposited in the United States mail with postage thereon fully prepaid and addressed as stated in the attached service list.

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I hereby certify that the foregoing is true and correct.

Dated this 17th day of March 2018,

__/s/ Thomas E. Seguine_____

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