

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

THE PRUDENTIAL INSURANCE :  
COMPANY OF AMERICA, :  
Plaintiff, :  
v. : CA 10-245 S  
MARY KUHN and CAROL RYAN, as :  
trustee of the Richard E. :  
Kuhn, Jr. Trust, :  
Defendants. :

**MEMORANDUM AND ORDER**  
**GRANTING MOTION TO DEPOSIT MONIES**  
**AND DISCHARGING PLAINTIFF FROM FURTHER LIABILITY**

Before the Court is Plaintiff The Prudential Insurance Company of America's ("Prudential") Motion for Entry of Order Permitting Prudential to Deposit Monies into Court's Registry, Discharging Prudential from Further Liability and Awarding Prudential Attorney's Fees (Docket ("Dkt.") #15) ("Motion to Deposit and Discharge" or "Motion"). A hearing was held on November 8, 2010.

**Introduction**

By the Motion, Plaintiff The Prudential Insurance Company of America ("Plaintiff" or "Prudential") seeks an order allowing it to deposit into the Court's registry life insurance benefits in the amount of \$485,910.00 and survivor income benefits in the amount of \$184,577.00, together with accrued claim interest, if any, payable under a group life insurance policy insuring the

life of Richard E. Kuhn, Jr. (the "Insured"). See Motion at 1. Prudential further seeks to be dismissed from this action and discharged from any further liability to Defendants Mary Kuhn ("Mrs. Kuhn") and Carol Ryan, as trustee of the Richard E. Kuhn Trust ("Ms. Ryan"). See id. Lastly, Prudential seeks an award of attorney's fees. See id.

Ms. Ryan has filed an opposition objecting to the Motion in part. See Defendant Carol Ryan as Trustee of the Richard E. Kuhn, Jr. Trust's Opposition in Part to Plaintiff Prudential Life Insurance Company of America's ("Prudential") Motion for Entry of Order Permitting Prudential to Deposit Monies into Court's Registry, Discharging Prudential from Further Liability and Awarding Prudential Attorney's Fees (Dkt. #21) ("Opposition"). While Ms. Ryan does not object to the monies being deposited into the Court's registry, she opposes (i) the dismissal of Prudential from this interpleader action, (ii) the discharge of Prudential from any further liability to the Richard E. Kuhn, Jr. Trust, and (iii) the award of attorney's fees to Prudential. See Opposition at 1.

### **Facts**

Prudential provided group life insurance coverage through a policy issued to the Bristol-Myers Squibb Company (the "Group Policy"). See The Prudential Insurance Company of America's Interpleader Complaint (Dkt. #1) ("Complaint") ¶ 6. The Insured

was covered under the Group Policy for optional life insurance benefits in the amount of \$485,910.00 and survivor income benefits which have a present value of \$184,577.00 (collectively the "Death Benefit"). See id. ¶¶ 7, 9.

On or about May 8, 1995, the Insured submitted a form designating Mrs. Kuhn as the sole primary beneficiary of the Death Benefit. See id. ¶ 10. On or about September 10, 2009, the Insured submitted conflicting beneficiary designation forms, one naming the trustee of the Richard E. Kuhn, Jr. Trust as the sole primary beneficiary of the Death Benefit and the other naming Mrs. Kuhn as the sole primary beneficiary and the trustee as the sole contingent beneficiary. See id. ¶ 11. Eleven days later, on September 21, 2009, the Insured died. See id. ¶ 8.

On or about September 25, 2009, Ms. Ryan, in her capacity as trustee, wrote to Prudential and submitted a claim to the Death Benefit on behalf of the Trust. See id. ¶ 12. Just over two weeks later, on or about October 10, 2009, Mrs. Kuhn also submitted a claim to the Death Benefit, and she included a copy of an ex parte order from the Providence County Family Court ordering that any beneficiaries on any life insurance policies formerly for her benefit and her minor children be changed back immediately. See id. ¶ 13.

Because of the competing claims submitted by Ms. Ryan and Mrs. Kuhn, Prudential filed the instant interpleader action on

June 7, 2010. See Dkt.; see also Complaint. Prudential represents that it claims no title or interest in the benefits payable under the Group Policy and that it is ready and willing to pay the Death Benefit to the person(s) entitled to it, but that Prudential is unable to make a determination of who is entitled to the Death Benefit without exposing itself to double or multiple liability on account of the potential competing claims made by Defendants. See Complaint ¶ 14.

### **Discussion**

Ms. Ryan objects to Prudential's Motion to be dismissed from this action and discharged from further liability on the ground that such dismissal is premature and that the requested discharge goes beyond appropriate interpleader relief. See Defendant Carol Ryan as Trustee of the Richard E. Kuhn, Jr. Trust's Memorandum of Law in Support of Its Opposition in Part to Plaintiff Prudential Life Insurance Company of America's ("Prudential") Motion for Entry of Order Permitting Prudential to Deposit Monies into Court's Registry, Discharging Prudential from Further Liability and Awarding Prudential Attorney's Fees ("Opposition Mem.") at 4. Ms. Ryan contends that "[a]t this preliminary stage of the litigation, prior to commencement of discovery and without the benefit thereof, [she] cannot dutifully satisfy her fiduciary obligations to the Trust by consenting to the dismissal of Prudential from this action and to the discharge and release of

any and all potential claims against Prudential related to the [Group] Policy or entitlement to the proceeds." Id.

***Discovery Concerns***

With respect to Ms. Ryan's claim that Prudential should remain in this action while she conducts discovery, the Court is unpersuaded that this is a valid reason to deny the Motion. Prudential validly points out that even if Prudential is no longer a party, Ms. Ryan can still seek discovery via a subpoena. See The Prudential Insurance Company of America's ("Prudential") Memorandum of Law in Reply to Defendant Carol Ryan's Opposition to Prudential's Motion for Entry of Order Permitting Prudential to Deposit Monies into Court's Registry, Discharging Prudential from Further Liability and Awarding Prudential Attorney's Fees (Dkt. #22) ("Reply Mem.") at 5.

Prudential also notes that it "delayed filing this action for many months at the request of the parties while they attempted to settle this action," Memorandum of Law in Support of Plaintiff The Prudential Insurance Company of America's ("Prudential") Motion for Entry of Order Permitting Prudential to Deposit Monies into Court's Registry, Discharging Prudential from Further Liability and Awarding Prudential Attorney's Fees ("Plaintiff's Mem.") at 7 n.1, and also that Ms. Ryan "has had copies of the relevant policy documents and other relevant documents (which were attached to the Complaint), upon receipt of

the Complaint and Exhibits in June 2010,” Reply Mem. at 5. Thus, the question arises as to what additional information Ms. Ryan could expect to obtain through discovery that she does not already have. See id. (“Prudential is simultaneously producing to Defendants its Rule 26(a)[(1)(A)] Initial Disclosures, including documents that consist of the relevant policy documents as well as Prudential’s claim file in this matter.”); see also id. (“The ERISA Statement to the Group Policy clearly indicates that Prudential is solely the Claims Administrator and therefore there is no other relevant discovery that Prudential would be able to provide to Ryan.”). Given the brief eleven day period between execution of the beneficiary designation forms and the Insured’s death, it is difficult to imagine what more could be obtained in discovery from Prudential. Accordingly, to the extent that Ms. Ryan seeks to keep Prudential in this action because of a claimed need to obtain discovery from it, such argument is rejected.

***Potential Counterclaim***

Ms. Ryan next argues that because she has filed a motion seeking permission to add counterclaims for declaratory judgment and reformation against Prudential, see Defendant Carol Ryan as Trustee of the Richard E. Kuhn, Jr. Trust’s Motion for Leave to File an Amended Answer to Add Counterclaims (Dkt. #20) (“Motion for Leave”), “[p]rinciples of equity and fairness demand that

Prudential remain in this action and answer these counterclaims, as well as any additional counterclaims that may be uncovered through proper discovery," Opposition Mem. at 5. In support of this argument she cites Fed. R. Civ. P. 13 and Provident Mutual Life Insurance Co. of Philadelphia v. Erlich, 374 F.Supp. 1134, 1138 (E.D. Pa. 1973). See id.

The Court is unpersuaded that Prudential's request for dismissal should be denied because Ms. Ryan seeks to assert counterclaims. The Erlich decision, which she cites, see id., "strongly emphasize[d]," 374 F.Supp. at 1139, that the counterclaim at issue sought damages as a result of the insurer's actions and did not seek the funds deposited with the registry of the court, see id. Here, in contrast, Ms. Ryan is seeking only the funds which Prudential seeks to deposit into the registry of this Court, and, unlike the counter-claimant in Erlich, Ms. Ryan articulates no theory on which Prudential could be liable for damages other than its failure to pay the life insurance benefits at issue to her. Cf. id. ("In her counterclaim, [the claimant] charges that if she is determined not to be the legal beneficiary of the policy, then she is still entitled to recover an amount equal to the proceeds of the policy because of her reliance upon the communications of Provident to her attorney.").

Thus, what distinguishes the counterclaim in Erlich from Ms. Ryan's potential counterclaim here is that the Erlich

counterclaim "allege[d] a separate and independent liability," id. at 1138, of the insurer which was not dependent upon the determination of who was entitled to the funds deposited into the court's registry. Indeed, the Erlich court found in favor of the other claimant on the interpleader action but also found in favor of the counter-claimant on her claim. See id. at 1140. As a result, the insurer was liable for an additional \$25,000 over and above what it had already deposited into the court's registry. See id. In the instant matter, no such scenario appears possible.

**Forcier v. Metropolitan Life Ins. Co.**

Ms. Ryan suggests that the First Circuit decision in Forcier v. Metropolitan Life Insurance Co., 469 F.3d 178 (1<sup>st</sup> Cir. 2006), supports her opposition to the Motion. See Opposition Mem. at 7. In Forcier, the First Circuit was critical of an insurer who, despite having "a perfectly acceptable route-payment to the estate-which seemingly, given the plain tenor of the policy language, would have shielded it from liability," id. at 182, "eschewed the use of that reserved power and chose instead to burden the district court," id., with an interpleader action, see id. The Forcier court also held that the parties asserting competing claims to the insurance proceeds had acquiesced to the dismissal of the insurer from the action and, therefore, they could not challenge the district court's assumption of the same

discretion in allocation of benefits that the policy conferred upon the insurer. See id. at 183 (“We therefore hold that, by acquiescence of the parties, the district court enjoyed the same latitude as the insurer for purposes of making the initial benefits determination.”). Ms. Ryan posits that, given the First Circuit’s chastisement of the competing beneficiaries for their assent to the insurer’s departure from the scene in Forcier, her fiduciary duties preclude a compliant response to Prudential’s requested departure here.<sup>1</sup> See Opposition Mem. at 7.

This Court does not find the Forcier case to be on point. There is no suggestion that the Group Policy provides Prudential with a route by which it can avoid being subject to competing claims.<sup>2</sup> Rather, the instant matter presents the classic

---

<sup>1</sup> This Court notes, however, that the longer Prudential remains in this action, the greater its attorney’s fees. Since those fees will be paid from the funds at issue (unless the fees are attributable to Prudential’s defense of counterclaims which allege a theory of liability separate and independent of Prudential’s failure to pay the funds to the trustee), an argument could be made that the trustee’s fiduciary duties also include an obligation not to act in a manner which will diminish the funds the Trust may ultimately receive, at least where the trustee is unable to articulate a separate and independent basis for the proposed counterclaims.

<sup>2</sup> Prudential’s distinguishment of the Forcier case bears noting:

Unlike Forcier, in the case at bar, there are two conflicting beneficiary designations, dated on the same day, completed by the Insured approximately eleven days prior to his death. The Group Policy at issue does not provide for an alternate route of payment in this situation that would allow Prudential to avoid double liability without filing an interpleader action. Rather, if Prudential had paid the Death Benefit to Ryan as she suggests, it clearly would have faced liability to the other claimant in this matter, Defendant Mary Kuhn.

circumstance for the use of interpleader. Prudential makes no claim to the funds payable pursuant to the Group Policy. It merely wishes not to be subjected to multiple claims and to be allowed to withdraw after depositing the funds in the Court's registry. Cf. Prudential Ins. Co. of Am. v. Hovis, 553 F.3d 258, 262 (3<sup>rd</sup> Cir. 2009) ("The purpose of the interpleader device is to allow 'a party who fears being exposed to the vexation of defending multiple claims to a limited fund or property that is under his control a procedure to settle the controversy and satisfy his obligation in a single proceeding.'" (quoting 7 Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure § 1704, at 540-41 (3<sup>rd</sup> ed. 2001)); id. ("[I]nterpleader allows a stakeholder, who 'admits it is liable to one of the claimants, but fears the prospect of multiple liability[,] ... to file suit, deposit the property with the court, and withdraw from the proceedings.") (quoting Metro. Life Ins. Co. v. Price, 501 F.3d 271, 275 (3<sup>rd</sup> Cir. 2007)) (second and third alterations in original); id. (explaining that "'[t]he competing claimants are left to litigate between themselves,' while the stakeholder is discharged from any further liability with respect to the subject of the dispute") (alteration in original).

---

Reply Mem. at 8.

### ***Extent of Protection Provided by Interpleader***

It is true that the presence of a counterclaim in some circumstances may be grounds for denying dismissal to the party bringing the interpleader action. See Hovis, 553 F.3d at 264 (“[W]here 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 also id. (“[T]he normal rule is that interpleader protection does not extend to counterclaims that are not claims to the interpleaded funds.”).

In Hovis the Third Circuit considered how far the protection of interpleader should extend. Id. at 259. The Hovis court held “that where a stakeholder is blameless with respect to the existence of the ownership controversy, the bringing of an interpleader action protects it from liability to the claimants both for further claims to the stake and for any claims directly relating to its failure to resolve that controversy.” Id. at 265; see also id. at 259 (holding that a valid interpleader action shields a stakeholder “where the stakeholder bears no blame for the existence of the ownership controversy and the counterclaims are directly related to the stakeholder’s failure to resolve the underlying dispute in favor of one of the claimants”). These are exactly the circumstances presented by

the instant matter. There is no suggestion that Prudential bears any blame for the dispute between Ms. Ryan and Mrs. Kuhn, and Ms. Ryan's proposed counterclaims are directly related to Prudential's failure to resolve the dispute in her favor as trustee.

This Court finds the Hovis case to be well reasoned and does not share the reservations expressed at the hearing by Ms. Ryan's counsel as to whether the First Circuit would follow it. Accordingly, Hovis provides strong support for dismissing Prudential from this action, see id., and First Circuit law does not suggest that dismissal should be delayed, see Hudson Sav. Bank v. Austin, 479 F.3d 102, 107 (1<sup>st</sup> Cir. 2007) ("[I]n an interpleader action in which the stakeholder does not assert a claim to the stake, the stakeholder should be dismissed immediately following its deposit of the stake into the registry of the court."). Accordingly, Prudential should be discharged.

### ***Scope of Discharge***

Ms. Ryan contends that the language of Prudential's proposed order is overly broad because "Prudential's shield from liability at this stage should be limited to double liability on the [Group] Policy." Opposition Mem. at 6-7. The Court, however, has reviewed the proposed order and finds that the language

comports with that contemplated by 28 U.S.C. § 2361.<sup>3</sup> Prudential is not seeking to be released from all claims which Ms. Ryan and Mrs. Kuhn may have against the company, but only those which relate to the Group Policy. Accordingly, Ms. Ryan's objection to the wording of the proposed order is rejected.

### **Attorney's Fees**

Ms. Ryan objects to the award of Prudential's attorney's fees on the ground that "[a]t this stage of the litigation, it is too early to determine if Prudential is entitled to an award of its fees." Opposition Mem. at 8. She also notes that Fed. R. Civ. P. 22 contains no express authority for the award of fees and costs and that the award of reasonable attorney's fees to the stakeholder in an interpleader action is within the discretion of the court. See id. (citing Sun Life Assurance Co. of Canada v.

---

<sup>3</sup> 28 U.S.C. § 2361 provides:

In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining **them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action** until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.

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 (bold added).

Sampson, 556 F.3d 6, 8 (1<sup>st</sup> Cir. 2009)).

In Sun Life Assurance Co., the First Circuit provided the following guidance with respect to attorney's fees in interpleader actions:

It is settled that "[a] federal court has discretion to award costs and counsel fees to the stakeholder in an interpleader action ... whenever it is fair and equitable to do so." 7 Wright, Miller & Kane, [Federal Practice and Procedure] § 1719, at 675 [(3d ed. 2001)].

The test for awarding fees and costs is a typical equitable one that is very similar to the standard used to determine whether interpleader relief ought to be granted—should the interpleading party be required to assume the risk of multiplicity of actions and erroneous election. If not, then the stakeholder should be made whole. The test is not satisfied if the stakeholder has contributed to the need for interpleader by acting in bad faith or by unduly delaying in seeking relief.

Sun Life Assurance Co. of Canada, 556 F.3d at 8 (first and second alterations in original).

This Court has previously noted that:

It is admittedly the general rule, in the absence of a statute making provision to the contrary, that a party who is confronted with conflicting claims to a fund in his possession and who claims no interest therein, may in good faith interplead the several claimants, deposit the fund involved in the registry of the Court, and recover his reasonable costs and counsel fees out of such fund.

Narragansett Bay Gardens, Inc. v. Grant Constr. Co., 176 F.Supp. 451, 454 (D.R.I. 1959).

Applying the above law to the instant matter, the Court finds that Prudential's request for an award of reasonable attorney's fees should be granted. The Court does not find that

such award is premature for the same reasons that it rejected Ms. Ryan's arguments opposing dismissal and discharge. In addition, Prudential's representations that it is only seeking to recover "its local counsel fees in this action," Reply Mem. at 9, and that its out-of-state counsel "did the majority of the day-to-day work in this matter," id. at 8, also influences the Court in its decision to grant this portion of the Motion. Accordingly, to the extent the Motion seeks an award of reasonable attorney's fees, the Motion is granted.

#### **Conclusion**

For the reasons stated above, the Motion to Deposit and Discharge is GRANTED.

So ordered.

ENTER:

/s/ David L. Martin  
DAVID L. MARTIN  
United States Magistrate Judge  
November 10, 2010