Federal Court Interpleader Actions

Cost-Efficient Resolution of Competing Claims to Life Insurance Proceeds

By James C. Castle

A correctly prosecuted interpleader action can absolve an insurer of the need to make very difficult factual determinations when the insurer receives more than one plausible claim for the same benefits.

It is not uncommon for someone who is not the named beneficiary on record of a life insurance policy to submit a claim for benefits upon the death of an insured. In many instances this claim will come from a spouse or a child of the insured who is shocked to learn that the insured had named someone else as the beneficiary of the insurance policy.

While many of these claimants are upset, in disbelief, and in need of the insurance proceeds, they will present evidence of various compelling justifications explaining why the insurer should not pay the named beneficiary, but should instead pay this third-party claimant. The named beneficiary will undoubtedly also assert his or her claim to the monies, noting the contractual obligation to pay the named beneficiary.

An interpleader action, if prosecuted correctly, can absolve the insurer of the need to make what would otherwise be very difficult factual determinations that would undoubtedly lead to expensive litigation, regardless of how the insurer decided the dispute between the claimants.

An interpleader action provides the insurer with the opportunity to be discharged of all liability as it pertains to the policy benefits and to enjoin the claimants from initiating their own actions against the insurer. Further, the insurer is entitled to recover attorney's fees and costs for having to bring the action.

Federal courts are the best forum to seek interpleader relief, if available. This article will discuss the prerequisites for initiating such an action, the jurisdictional requirements, and the best practices for obtaining a swift and cost-efficient resolution of the dispute that would lead to the action.

The Stake—Insurance Benefits Payable

Before an interpleader is proper, there must be the "stake," which is payable to whom-

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ever is legally entitled to it. These monies must still be in the possession and under the control of the "stakeholder," most typically the life insurer. *General Atomic Co. v. Duke Power Co.*, 553 F.2d 53, 56 (10th Cir. 1977) ("The essential aspect is that the res be under the control of the person bringing the lawsuit, so as to be deliverable to the registry of the court.").

A life insurer has the right to interplead whenever it is faced with competing claims to benefits and with the threat of liability to multiple parties pertaining to specific payable insurance benefits, regardless of its opinion about the merits of the conflicting claims.

Interpleader is improper if the life insurer is still determining whether these monies are payable, or if it has already paid the monies to one of the claimants. In short, the insurer must be sure that the benefits are payable, and the insurer must be ready to pay those monies to whomever is determined to be legally entitled to them.

Interpleader Requires a Reasonable Fear of Multiple Liability and Conflicting Claims

A life insurer has the right to interplead whenever it is faced with competing claims to benefits and with the threat of liability to multiple parties pertaining to specific payable insurance benefits, regardless of its opinion about the merits of the conflicting claims. *See John Hancock Mut. Life Ins. Co. v. Beardslee*, 216 F.2d 457 (7th Cir. 1954); *Tipps v. Metropolitan Life Ins. Co.* 768 F. Supp. 577, 578 (S.D. Tex. 1991).

If there are two plausible claims submitted for the same policy benefits, especially from persons related in any way to the insured, interpleader is almost always proper. The "reasonable fear of multiple liability" standard is used in the federal courts, which is not a hard standard to overcome. In theory, if there were two competing claims, but one of those claims was so outlandish or unmeritorious, a court could find that there was not a reasonable fear of liability for the insurer. *See, e.g.*, *Beardslee*, 216 F.2d 457 (finding there was no basis for interpleader relief because one of the competing claimants had disclaimed any interest in the insurance proceeds).

But, the overwhelming majority of reported cases from around the country hold that interpleader relief is to be "granted liberally," and any basis for fear of potential multiple liability or needing to defend two actions, will be sufficient to meet the reasonable fear of a "conflicting claim" standard. In fact, courts have held that the relative merits of the claims are not relevant. *See, e,g.*, *Marcus v. Dufour,* 796 F. Supp. 2d 386, 390 (E.D.N.Y. 2011).

By far the most common situation leading to conflicting claims is that an insured has named his or her spouse as the sole beneficiary of the life insurance policy, but the marriage then ends in divorce, and after the divorce, the insured never changed the beneficiary from his or her ex-spouse. When the children or new spouse (or any other next of kin) of the insured submits a claim to the insurance company after the insured's death, the insurer will write back indicating that it is unable to pay the claimant who was not the named beneficiary. Usually at this time, the insurance company also writes to the ex-spouse and invites him or her to submit a claim as the named beneficiary. The ex-spouse will usually then submit a claim as the named beneficiary.

The children or the new spouse will then further correspond, indicating that they dispute any payment to the ex-spouse, as that is not what the insured intended. Often, at this time, they will threaten legal action against the insurer; however, that is not a pre-requisite for the finding of conflicting claims. The mere assertion that the family member is challenging the ex-spouse's status as the rightful beneficiary or as the person who the insured intended to receive the monies is more than sufficient to establish conflicting claims to the insurance benefits, allowing the insurer to initiate an interpleader action.

A similar situation would be that an insured has named a beneficiary and then dies with a will or other testamentary document that contradicts the beneficiary designation. For example, the insured may have a will claiming to "leave all of the insurance benefits from XYZ Insurance Company to Sally" (who is not the last named beneficiary on file with the insurer). The named beneficiary and the person or persons identified in the will (here, Sally) both pursue claims with the insurer.

The insurer should not be put in the perilous position of determining which document, the beneficiary designation or the will, trumps the other. Similarly, the insurer should not be required to determine the validity of the will. As such, this is a situation presenting conflicting claims that can be resolved via interpleader.

Another common competing claims situation is when there is a change in the beneficiary designation late in the insured's life. The original beneficiary will claim, or submit medical documentation indicating, that the insured was in such a bad medical or mental condition that he or she lacked the requisite legal capacity to change the beneficiary of the life insurance policy legitimately. Again, the insurer is in no position to determine whether the insured was or was not able to make that change legally, especially when it would potentially subject the insurer to multiple liabilities under the policy. So here, the original beneficiary and the purportedly subsequently named beneficiary would be the competing claimants.

A variation of the preceding situation is that the original beneficiary claims that the insured was either fraudulently induced to change the beneficiary of the policy, or the signature on the beneficiary change form was forged. Again, the insurer need not make those factual determinations (such as hiring a handwriting expert to ascertain whether there was a forgery) because the interpleader process absolves the insurer of the need to resolve the competing claims.

While less common, although it occurs more often than one would typically hope

or expect, an insurer also can be subjected to competing claims as the result of a homicide of the insured. Under all state laws, if the named beneficiary is responsible for the death of the insured, he or she cannot receive the insurance benefits that became payable because of the death. An insurer should be reluctant to pay benefits to anyone who has been implicated or investigated in the death of an insured, even if he or she is not convicted or even charged.

In either situation involving a homicide, the insurer should seek to interplead the funds so that the court will determine whether or not the beneficiary was involved in the death of the insured, and if so, who should be entitled to the funds instead of the named beneficiary. In this situation, the conflicting claims are generally presented by (1) the named beneficiary who has been implicated in the homicide, and (2) either the contingent beneficiary or the person who would take over the policy in the event of the death of the named beneficiary, such as the insured's next of kin.

Other possible competing claims can arise from purported assignments, validity of trusts, and community property claims. As with all of the preceding situations, the insurer should not have to resolve factually complex disputes between claimants when no matter what the insurer would decide, the insurer would still likely be subject to a lawsuit from the dissatisfied claimant.

Mechanics of Filing the Action

Once confident that there are (1) monies payable to some person legally entitled to them, *i.e.*, the "stake," and (2) there is a "reasonable fear of multiple liability" as it pertains to the stake, the next step is to initiate the interpleader action. As with any action, the operative document is the complaint, but before one can draft that document, one must determine whether to file in the federal or the state court.

Almost all states have a statute providing for the right to interpleader relief. However, especially when there are potential claimants from different states, it is preferable to initiate the action in the federal court due to nationwide service of process, federal judges' familiarity with interpleader relief, and the federal courts' willingness to grant an award of attorney's fees for an interpleading insurer.

Federal Jurisdiction Generally

There are two types of interpleader actions in federal court. The first is referred to as "rule interpleader," and the second is referred to as "statutory interpleader." The preferred method, given its liberal service of process rules, along with a lower stake requirement, is the statutory interpleader method. However, "rule interpleader" has its own benefits and can be the only basis for establishing federal jurisdiction in some situations.

Rule Interpleader

The rule being referred to in "rule interpleader" is Federal Rule of Civil Procedure 22. Rule 22 does not provide its own means of establishing subject matter jurisdiction, but instead it provides interpleader as a remedy. An interpleader plaintiff, *i.e.*, an insurer, must still establish normal federal court subject matter jurisdiction, either by establishing (1) federal question jurisdiction, or (2) diversity of citizenship jurisdiction.

In the life insurance context, the primary federal statute that may confer federal question subject matter jurisdiction is the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001, *et seq.* While ERISA jurisdiction falls outside of the purview of this article, one should be cognizant of the possibility of ERISA's application if the life insurance policy at issue was offered to an employee as part of a group benefit plan and the employment was not in connection with a church or governmental entity. The policy or "certificate of insurance" will typically note that it is governed by ERISA.

Similarly, if the insurance was provided as part of a federal employee's benefit package, it may fall under the Federal Employees Group Life Insurance Program (FEGLI), which may also be sufficient to confer federal subject matter jurisdiction. Again, the policy or the plan documents will likely note that it is governed by FEGLI. If the coverage is governed by either FEGLI or ERISA, one will plead such in the interpleader complaint. For example, under the jurisdictional portion of the complaint, one would state:

> This is an Interpleader action brought pursuant to Rule 22 of the Federal Rules of Civil Procedure. This Court has original jurisdiction of this action pursuant to 28 U.S.C. §1331 because this action arises under the laws of the United States, specifically the Federal Employees Group Life Insurance Act (FEGLIA), 5 USC §8701, *et seq.*

More typically in the rule interpleader context, an insurance policy will not be governed by ERISA or FEGLI, and one will need to establish complete diversity between the plaintiff (the insurer) and the defendants (the competing claimants). Therefore, for example, if the insurer is a Delaware corporation with its principle place of business in New York, none of the claimants can be from either Delaware or New York. As required by diversity actions in federal court, the amount at issue (here the "stake," or the insurance benefits) will need to be in excess of $75,000 to meet jurisdictional minimums.

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If the amount of the life insurance benefit is $100,000 and Claimant 1 and Claimant 2 are both residents of California, and the insurer is a New York corporation, there is subject matter jurisdiction for a "rule interpleader" action. However, if the insurance benefit is $50,000, there would not be subject matter jurisdiction because the amount in controversy would not be met. Likewise, if the insurer is from California, and the two claimants also are from California, a rule interpleader action will not stand because there is not complete diversity between all plaintiffs and all defendants.

It is of no consequence that any two claimants or defendants are from the same state for rule interpleader purposes; it only

matters that there is complete diversity between (1) the insurer plaintiff and (2) the claimant defendants. If proceeding by rule interpleader and diversity jurisdiction, the complaint may include language similar to the following: "This Court also has jurisdiction pursuant to 28 U.S.C. §1332 because Plaintiff and all of the Defendants are completely diverse from one another and the amount in controversy exceeds $75,000, as the life insurance benefits at issue exceed $1,000,000."

Given that minimal diversity is really quite minimal in its requirement, one may expect that this basis for jurisdiction would be found in most interpleader situations. Unfortunately, that is not the case.

Unfortunately, the establishment of subject matter jurisdiction under rule interpleader does not end the analysis. The major pitfall of rule interpleader, which can at times be hard to anticipate, is the lack of ability to obtain personal jurisdiction over one of the competing claimants. Assume that Claimant 1 is from California, Claimant 2 is from Arizona, the insurance company is a citizen of New York, and that the jurisdictional minimums have been met. Subject matter jurisdiction, via diversity of citizenship, has been established.

The insurance company files its interpleader in California where one of the claimants resides. But how does the federal court in California exercise personal jurisdiction over Claimant 2 in Arizona, if that claimant has never been to California, has never taken action to recover the benefits in California, or has no interest in litigating in California?

When proceeding under rule interpleader, one must establish personal jurisdiction and serve the summons and complaint in accordance with Federal Rule of Civil Procedure 4, as one would in any federal action. One may assume that because there are monies at issue when a claimant has a potential claim, he or she would voluntarily appear, personally or through counsel, in whatever state the action was pending, given the potential for the recovery of funds.

But that is not the case. In fact, in many instances, a claimant may not want to be bothered, does not believe that he or she can afford an attorney, is overwhelmed by the process, or otherwise refuses to participate or travel to the forum state. At the same time, he or she is not willing to disclaim his or her interest in the insurance proceeds in an act of wishful thinking, imagining that the court or the insurance company will find that he or she is entitled to the funds without his appearance or participation. Without being able to obtain personal jurisdiction over both claimants, there is no justiciable dispute, and the court will likely dismiss the action. Again, there must be two competing claimants to proceed.

Statutory Interpleader

The above example highlights the huge benefit of statutory interpleader, which resolves the personal jurisdiction problem. However, statutory interpleader is not available in all instances. Unlike rule interpleader, statutory interpleader provides its own subject matter jurisdiction requirements. 28 U.S.C. §1335 ("The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more…").

The statute allows federal courts to hear cases with (1) minimal diversity among the competing claimants, and (2) when the property in dispute is worth more than $500 (as opposed to $75,000 for rule interpleader). Minimal diversity here means that at least two competing claimants are citizens of different states. When analyzing statutory interpleader jurisdiction, one completely disregards the stakeholder's citizenship. As such, if there are six claimants, and five of them are from California, but one is from Nevada, there is minimal diversity. It does not matter where the insurer is a citizen.

Given that minimal diversity is really quite minimal in its requirement, one may expect that this basis for jurisdiction would be found in most interpleader situations. Unfortunately, that is not the case. Many, if not most, of the disputes that arise between claimants are between family members. Not surprisingly, many family members are from the same towns, cities, and states. As such, often all of the claimants will be from the same state, and there will be no minimal diversity jurisdiction between any two claimants. In that situation, one would need to rely upon rule interpleader, but if the stake did not exceed $75,000, the insurer would be relegated to the state courts where the claimants reside.

However, when there is minimal diversity between claimants, and the stake is in excess of $500, statutory interpleader will apply, and 28 U.S.C. §2631 will provide the substantial benefits of nationwide service and personal jurisdiction over the competing claimants. In stark contrast to the previously discussed example for which one could not achieve personal jurisdiction for the federal court in California over the Arizona claimant, under statutory interpleader, once the Arizona claimant is served with the summons and the complaint, he or she is obligated to appear and to assert his or her entitlement to the funds, and if he or she does not, the Arizona claimant will risk forever giving up his or her right to do so.

If the Arizona claimant chooses not to participate, the insurer is able to still maintain the interpleader action and to obtain a discharge of liability for the policy proceeds through the default judgment process. This completely solves the personal jurisdiction problem discussed in the "Rule Interpleader" section. This makes proceeding under statutory interpleader the best option, if it is available.

If proceeding by statutory interpleader, the complaint may include language simi-

lar to the following: "This Court has jurisdiction pursuant to 28 U.S.C. §1335 because two or more adverse claimants of diverse citizenship are claiming entitlement to life insurance benefits in Plaintiff's custody the value of which exceeds $500."

To the extent that both means of establishing jurisdiction are present, it is the best practice to plead both in the jurisdictional sections of the complaint.

The Complaint

After setting forth the jurisdictional allegations, the next step is to set forth enough information for the court to identify the stake and the competing claims. One wants to also establish that the stakeholder is disinterested in the monies, *i.e.*, that the insurer is not claiming entitlement to the funds or claiming that the funds are not payable, and then to set forth the relief requested.

After describing the grounds under which the court has jurisdiction, the complaint should set forth:

1. Background facts regarding the issuance of the policy, including policy number, face amount, term or whole life, date of issuance, and names of the insured, the owner, and the named beneficiary of the policy at the time of issuance;
2. Any changes in the beneficiary between issuance and death of the insured;
3. Information about the death of the insured (date and location, usually is sufficient); and
4. The facts explaining the competing claims, including who submitted claims, any correspondence from the claimants and their attorneys, and a summary of why the claimants believe that they are entitled to the insurance benefits.

To the extent possible, it is the best practice to include as exhibits the pertinent documents, such as copies of the policy, change in beneficiary forms, claim forms, correspondence, and the death certificate. However, for privacy reasons, it is necessary to redact any personal identifying information, such as addresses, phone numbers, and Social Security numbers.

After alleging all of the foregoing, one should summarize why interpleader is proper and set forth the requested relief. This can be done by alleging something similar to the following:

Plaintiff cannot determine the proper beneficiary of the Policy Benefits without the risk of exposure to double liability. As a mere stakeholder, Plaintiff has no interest in the Policy Benefits. Plaintiff therefore respectfully requests that this Court determine to whom said Policy Benefits should be paid.

Plaintiff is ready, willing, and able to pay the Policy Benefits, in accordance with the terms of the Policy, in such amounts and to whichever Defendants the Court shall designate.

Plaintiff will deposit into the Registry of the Court the Policy Benefits, plus any applicable interest due and owing under the terms of the Policy, for disbursement in accordance with the Judgment of this Court.

WHEREFORE, Plaintiff demands judgment as follows:

(i) Restraining and enjoining the Defendants by Order and Injunction of this Court from instituting any action or proceeding in any state or United States court against Plaintiff for the recovery of Policy Benefits, plus any applicable interest, by reason of death of the Decedent;

(ii) Requiring that Defendants litigate or settle and adjust between themselves their claims for the Policy Benefits, or upon their failure to do so, that this Court settle and adjust their claims and determine to whom the Policy Benefits, plus applicable interest, if any, should be paid;

(iii) Permitting Plaintiff to pay into the Registry of the Court the Policy Benefits, plus applicable interest, if any;

(iv) Dismissing Plaintiff with prejudice from this action, and discharging Plaintiff from any further liability upon payment of the Policy Benefits, plus any applicable interest, payable as a consequence of the death of the Decedent.

(v) Awarding Plaintiff such other and further relief as this Court deems just, equitable and proper.

Along with filing the complaint, as in all federal cases, one will also need the following documents: (1) civil coversheet; (2) summons; and (3) corporate disclosure statement.

While filing the complaint before any of the claimants initiate their own action is the most straightforward and cost-effective means of resolving entitlement to the insurance benefits for the insurer, there are instances in which one or more of the claimants may file their action first. In those situations, the insurer can answer the complaint and then counterclaim or cross-claim for interpleader relief. Fed. R. Civ. P. 22 ("A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim."). This is done with two separate documents; however, the counterclaim or cross-claim must be filed at the same time as filing the answer. Fed. R. Civ. P. 13(a).

Obtaining Cost-Efficient Relief

The goal after filing the interpleader action must be to obtain the relief requested through the complaint as cost efficiently as possible, which means obtaining the discharge of all liability for the client and dismissal from the action as quickly as possible. The need for quick resolution of an interpleader action is three-fold: (1) the longer that the insurer is involved in the action, the more likely that the claimant will decide to file a counterclaim against the insurer for extra-contractual monies (even if it is not warranted); (2) the insurer client will expect that the interpleader action will be resolved quickly; and (3) there is less likelihood of complete recovery of attorney's fees from the interpleader funds if the potential fee award takes up a substantial percentage of those monies.

The simplest, cheapest, and thus the most ideal means of obtaining the relief sought in the complaint is to have the parties stipulate to it. As such, the goal from the outset must be to prime the claimants for the discussion in which counsel for the insurer asks the parties to consider such a stipulation. To do so, one must educate the claimants about what an interpleader action is and explain that the insurance company does not have any interest in the monies, it has taken these actions to protect the monies for whoever is legally entitled to them, and the insurer is simply asking the judge to decide who gets the policy benefits. In short, counsel should avoid painting the insurer as adverse to any of the claimants, but instead explain that the insurance com-

pany is a facilitator for the parties to resolve their issues.

The first contact with the claimant by counsel for the insurer is usually to effect service of the summons and the complaint. In many instances, if the claimant did not engage counsel during the claims process, the formal personal service of a federal summons and a complaint is intimidating and overwhelming to an individual claimant. So it is the best practice to send each of the claimants a federal waiver of service of process package, which includes the complaint and a request for waiver of formal service. One can also include a letter explaining what an interpleader is and that such an action has been initiated to resolve the dispute over the insurance proceeds.

In short, counsel should avoid painting the insurer as adverse to any of the claimants, but instead explain that the insurance company is a facilitator for the parties to resolve their issues.

This letter can be followed by a phone call to each claimant several days later, in which counsel can introduce him- or herself, ascertain whether each claimant is represented by counsel, and then answer any questions that the claimants may have about the action and what they need to do to (1) waive service of process, and (2) respond to the complaint. At this time, it is important to not provide legal advice to the claimants, but one can note the importance of obtaining counsel to assist with the process. Also, one can mention that the action is not truly an action between the insurer and each claimant, but an action between the claimants, and thus the insurer's ongoing participation in the action is unnecessary and could result in fees that would be taken from the interpleader funds. This discussion will be helpful when raising the stipulation issue later in the action, in which the insurer will likely ask for recovery of fees.

Obviously, to the extent that the claimants do not agree to waive service of the summons and the complaint, one will need to serve personally any non-waiving claimant. In most instances, the parties obtain counsel, waive service, and file answers in which they assert their entitlement to the funds.

It is also during this time frame that the insurer should deposit the funds into the registry of the court. This is typically done with a request for leave to deposit funds with a proposed order, and then once the order is signed by the court, a check in the amount of the insurance benefits is delivered to the court's clerk. It is of note that under rule interpleader, an insurer can hold the funds until there is a judgment directing payment to one of the claimants, but there is no benefit to doing so. Under statutory interpleader, one must deposit the funds into the registry of the court to perfect jurisdiction. 28 §U.S.C. 1335.

After an answer is filed by each of the claimants, the insurer's counsel should be solely focused on exiting the case as quickly and efficiently as possible. Typically, the court will issue a scheduling order shortly after the case is "at-issue" and will require the parties to engage in the Federal Rule 26 meet and confer and joint report preparation process. During these discussions with counsel, or with the claimants themselves if they are not represented, counsel for the insurer should reiterate that the insurer intends to seek discharge of all liability, dismissal, and recovery of attorney's fees for needing to file the action. This is also noted repeatedly in the Rule 26 joint report.

To further facilitate the claimants' willingness to stipulate to the insurer's dismissal, the insurer should provide its initial disclosures—primarily the production of the claim file—as early as possible so that the claimants are able to review the file, ask questions about any documents, and feel that they do not need the insurer to continue to participate in the action to make their arguments explaining why they are entitled to the insurance benefits. The production of the file hopefully will forestall the claimants from engaging in costly written discovery.

Only if a claimant is hesitant to stipulate can counsel explain and provide citations for the fact that the insurer is entitled to the relief requested, and if the claimant does not stipulate, the insurer will likely succeed on its motion and need to incur additional fees that would be potentially recoverable from the interpleader funds. When these actions are taken, in practice, it is estimated that 80 percent of claimants will stipulate.

As for those instances in which all of the claimants do not stipulate to the discharge of liability, dismissal, and recovery of fees (an amount which is often negotiated), a motion for the same relief will need to be filed. As long as there are no jurisdictional concerns of the court, these motions are routinely granted; there are numerous reported cases establishing that an insurer is entitled to complete interpleader relief, which can be summarized as follows and tend to fall into three categories.

Discharge of Liability: The disinterested stakeholder may be discharged of all liability under the policy unless serious charges exist that interpleader action was commenced in bad faith. *New York Life Ins. Co. v. Connecticut Dev. Auth*., 700 F.2d 91, 96 (2d Cir. 1983).

Injunctive Relief: The court in an interpleader action may "enter its order restraining [the claimants] from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action…." 28 U.S.C. §2361; *United States v. Major Oil Corp*., 583 F.2d 1152 (10th Cir. 1978) (federal courts have inherent equitable power to enjoin other lawsuits in Rule 22 interpleaders).

Award of Fees: When a disinterested stakeholder has acted in good faith, the court may award attorney's fees and costs to that stakeholder. *Gelfgren v. Republic Nat'l Life Ins. Co*., 680 F.2d 79 (9th Cir. 1982). The stakeholder will typically be compensated from the interpleader fund deposited in the court. *Massachusetts Mut. Life Ins. Co. v. Morris*, 61 F.2d 104, 105 (9th Cir. 1932). As with attorney's fee awards in other contexts, the propriety and the amount of a fees award is committed to the sound discretion of the court, based upon the equities in the

particular case. *Murphy v. Travelers Ins. Co.*, 534 F.2d 1155, 1164 (5th Cir. 1976).

Potential Roadblocks

While the above discussion explains the ideal means to extricate an insurer from an action and from any further liability, as with most forms of litigation, interpleader actions can be unpredictable.

One source of potential delay is when a claimant is not represented by counsel, which is not uncommon. In many instances, a claimant is immediately overwhelmed by the prospect of obtaining an attorney, or he or she believes that he or she does not have money to pay for an attorney. One can advise a claimant in this situation of the benefits of hiring an attorney and the general availability of retaining an attorney on a contingency basis, but one also can advise the claimant of the local district court's assistance programs, which can assist them in proceeding *pro per*.

If a claimant proceeds without an attorney, getting an answer on file, the Rule 26 process, and getting an agreement to stipulate to an insurer's dismissal can take substantially longer and lead to additional costs for the insurer in carrying the litigation forward. Communicating with the claimant is the key to educating the claimant about the process so that the action continues forward toward the insurer's dismissal and discharge.

Unfortunately, on occasion, claimants will not ever appear in the action, despite maintaining that they are entitled to some portion of the funds. When this happens, to absolve the insurer of liability, the default judgment process is the only means to proceed. Without entry of a default judgment, the competing claims cannot be finally resolved. *See Sun Life Assurance Co. of Canada v. Kimble*, 2007 WL 3313448, at *2 (E.D. Cal. Nov. 6, 2007). If filing such a motion pertaining to one or more claimants becomes necessary, it will result in a discharge of all liability for the insurer corresponding to each defaulting claimant. *See General Accident Group v. Gagliardi*, 593 F. Supp. 1080, 1089 (D. Conn. 1984) ("The failure of a named interpleader defendant to answer the interpleader complaint and assert a claim to the res can be viewed as forfeiting any claim of entitlement that might have been asserted.").

The participating claimant or claimants would then proceed to take the entirety of the insurance proceeds. If there are multiple participating claimants, they could continue to litigate among themselves without any concern for the non-appearing claimant or claimants. The insurer, in either of these circumstances, could seek its dismissal and discharge of liability by way of the previously discussed stipulation or motion procedures.

When represented by an attorney, often a claimant will file a counterclaim against the interpleading insurer, claiming negligence, breach of contract, or bad faith for not paying the monies for what he believes is a righteous claim to the funds. This is exactly what the interpleader action was designed to prevent. If the allegations of the counterclaim are that the insurer should have rejected one claimant's claim in favor of the others or that the insurer erred in proceeding via interpleader, such causes of action should be subject to a motion to dismiss. *See, e.g.*, *Minnesota Mut. Life Ins. Co. v. Ensley*, 174 F.3d 977, 981 (9th Cir. 1999) (an insurer's good-faith belief it faces the possibility of multiple claims forecloses a claimant's breach of contract counterclaim because the insurer "satisfied its obligation under the contract by instituting the interpleader action."). *See also Daniels v. Equitable Life Assurance Soc'y of the U.S.*, 35 F.3d 210, 214–15 (5th Cir. 1994) (where interpleader is found proper, breach of contract and tort claims are collaterally estopped); *Lutheran Bro. v. Comyne*, 216 F. Supp. 2d 859, 862–63 (E.D. Wis. 2002) ("[The] counterclaims are essentially based on the plaintiff's [sic] having opted to proceed via interpleader complaint rather than having chosen from among competing adverse claimants.").

As a means of having the counterclaim withdrawn or precluded in the first case, the immediately preceding authorities can be provided to counsel before one filing the opposition and note that the insurer will be entitled its fees from the interpleaded funds for needing to oppose the baseless motion.

Interpleader actions, as with any litigation, are inherently unpredictable. However, interpleader actions provide a valuable and substantial benefit to an insurer when prosecuted correctly and efficiently. Maintaining open communication with the claimants and their attorneys as well as proceeding with a sense of urgency to resolve the insurer's involvement and liability are the best means of cost effectively dealing with any interpleader action. FD