

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

SUN LIFE ASSURANCE COMPANY,)	
)	
Plaintiff,)	Civil Action No. 6:06-cv-00010
)	
v.)	
)	
Sandra Tinsley, <u>et al.</u>,)	By: Hon. Michael F. Urbanski
)	United States Magistrate Judge
Defendants.)	
)	

Report and Recommendation

This matter is before the court on Sun Life Assurance Company’s (“Sun Life”) motion for attorneys’ fees. Sun Life seeks \$11,000 in costs and fees, to be paid from the proceeds of a \$30,877.40 life insurance policy deposited with the Clerk of the Court. Defendant Sandra Tinsley (“Tinsley”) opposes an award of costs and attorneys’ fees from the proceeds and counters that any such award ought to be taxed against defendants Louis A. Smith and Louise G. Smith, whom the court found exercised undue influence over the policy holder as regards the change of beneficiary form, necessitating the interpleader action.

I.

This action arises out of a dispute as to the beneficiaries of a \$30,877.40 life insurance policy (“the policy”) issued by Sun Life to insure the life of Rowland Lee Smith (“Rowland”), deceased. (Compl. ¶ 23, Docket No. 1.) Rowland designated Tinsley, his longtime companion, as the sole beneficiary of the policy at its issuance in 2002. (Compl. ¶ 11, Docket No. 1.) On October 31, 2005, two weeks prior to his death, Rowland, who was battling cancer, signed a change of beneficiary form presented to him

by his brother and sister, defendants Louis Smith and Louise Smith. (Compl. ¶ 13, Docket No. 1.) The change of beneficiary form provided that funeral services would be paid out of the policy to the Hutcherson Funeral Home and that any remaining funds would be divided equally among Evelyn Turner¹ (Rowland's mother), Louise Smith, and Tinsley. (Id.) Sun Life, facing the possibility of multiple claims against the policy, filed a complaint of interpleader on March 27, 2006. (Compl. ¶ 25, Docket No. 1.) On January 1, 2007, Sun Life moved to deposit the interpleader funds and to be discharged from the suit. (Pl.'s Mot. to Deposit Funds 1, Docket No. 16; Pl.'s Mot. for Discharge 1, Docket No. 18.) The motions were granted and Sun Life was discharged on January 22, 2007. (Order Dismissing Pl. 2, Docket No. 25.) Sun Life then moved for payment of costs and attorneys' fees in conjunction with the interpleader action. (Pl.'s Mot. for Costs and Attys.' Fees 1, Docket No. 27.)

Tinsley, proceeding pro se, challenged the change in beneficiary on the grounds of incompetence and undue influence. (Def.'s Answer to Compl. 1, Docket No. 9.) Although Louis and Louise Smith filed answers to the complaint, the Hutcherson Funeral Home never responded to its summons and appears to have received payment from another source. (Mem. Op. 2, Docket No. 43.) Following a bench trial on March 12 and 14, 2007, the court determined that Louis and Louise Smith exercised undue influence over Rowland as to the change in beneficiary form executed on October 31, 2007, and therefore, that the beneficiary form of that date was ineffective. (Id. at 11.) Accordingly,

¹Turner died intestate two months after Rowland Smith. (Docket No. 43) On January 27, 2006, Louis and Louise Smith qualified as the administrators of her estate. (Id.)

the court held the previous beneficiary designation was valid and, thus, the entirety of the policy was to be paid to Tinsley. (Id.)

The case was then referred to the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure to determine a just allocation of costs and attorneys' fees. (Order Referring Case 1, Docket No. 42.) At this juncture, the court must consider (1) the amount of any award of costs and attorneys' fees and (2) from where such an award will be drawn.

II.

Although the interpleader statute and Rule 22 of the Federal Rules of Civil Procedure are silent with respect to costs and attorneys' fees, courts frequently award them to stakeholders in successful interpleader actions so as to avoid the cost of multiple lawsuits. See, e.g., Powell Valley Bankshares Inc. v. Wynn, No. 2:01cv00079, 2002 WL 728348, at *1 (W.D. Va. Apr. 11, 2002). Today, the practices of the federal courts are substantially the same as those of the federal courts of equity. 7 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1719 (3d ed. 2001). Federal courts may award costs and attorneys' fees to stakeholders in interpleader actions when it is fair and equitable to do so, Weber v. Rivanna Solid Waste Auth., No.3:98cv0109, 2001 WL 1516737, at *2 (W.D. Va. Nov. 21, 2001), and may "make all appropriate orders to enforce [their] judgment." 28 U.S.C. § 2361 (1949). Some courts have barred insurance companies' recoveries for costs and attorneys' fees associated with interpleader actions, finding those costs are non-recoverable as the "cost of doing business." Travelers Indem. Co. v. Israel, 354 F.2d 488, 490 (2d Cir. 1965). Other courts have denied stakeholders recovery of costs and attorneys' fees when they

substantially contributed to the need for the interpleader or failed to act in good faith.

John Hancock Mut. Life Ins. Co. v. Doran, 138 F. Supp 47, 50 (S.D.N.Y. 1956).

When an award of costs and attorneys' fees to a stakeholder in a successful interpleader action is equitable, it should also be modest. "By its very nature [an interpleader fee] is of a relatively small amount." Ferber Co. v. Ondrick, 310 F.2d 462, 467 (5th Cir. 1962). Only a limited recovery is available to stakeholders because the interpleader process "does not usually involve any great amount of skill, labor or responsibility." Lewis v. Atlantic Research Corp., 1999 WL 701383, at *7 (W.D. Va. Aug. 30, 1999) (quoting Hunter v. Fed. Life Ins. Co., 111 F.2d 551, 557 (8th Cir. 1940)). Thus, the stakeholder's recovery is properly limited to: the preparation of the petition for interpleader, the deposit of the contested funds with the court, and the preparation of the order discharging the stake holder. See, e.g., Reliastar Life Ins. Co. of NY v. Lemone, No. 7:05cv00545, 2006 WL 1133566, at *2 (W.D. Va. Apr. 25, 2006); Wright, Miller, & Kane, supra, at § 1719. Furthermore, when such a recovery would substantially deplete the interpleader funds at issue, an additional reduction to the amount awarded is appropriate. Reliastar, 2006 WL 1133566, at *3. (reducing costs and attorneys' fees from \$13,794.79 to \$2,883.49 when the proceeds constituted only \$28,456.91).

In order to calculate the stakeholder's award of costs and fees, the court considers: (1) whether the case is simple or involved; (2) whether the stakeholder performed any unique services for the claimants or the court; (3) whether the stakeholder acted in good faith and with diligence; (4) whether the services rendered benefited the stakeholder; and (5) whether the claimants improperly protracted the proceedings. Wright, Miller, & Kane, supra, at § 1719.

After determining the amount of the stakeholder's recovery, the court must determine the source of such funds. Traditionally, the stakeholder's costs and attorneys' fees are deducted from the interpleader funds, but in some instances, the award may be assessed directly against losing claimants. Prudential Ins. Co. of Am. v. Boyd, 781 F.2d 1494, 1497-98 (11th Cir. 1986). A direct assessment against a losing claimant is appropriate only when that claimant clearly acted in bad faith or engaged in misconduct with respect to claims against the funds at issue. In Re: The Kelly Group, 159 B.R. 472, 481 (Bankr. W.D. Va. 1993).

III.

The undersigned recommends that Sun Life be awarded costs and attorneys' fees associated with this interpleader action, but not in the full amount requested. To deny insurance companies all recovery for costs and attorneys' fees in interpleader actions simply because insurance companies frequently litigate and file interpleader actions denies the fact-sensitive analysis required for suits in equity. See Weber, 2001 WL 1516737, at *2. Furthermore, there is no evidence in this case that Sun Life acted in bad faith. To the contrary, Sun Life promptly filed this interpleader action when it found itself subject to multiple potential claims for the proceeds of the policy. (See Compl., Docket No. 1.)

An award of costs and attorneys' fees for stakeholders should be modest. At the hearing on the instant motion, Sun Life's counsel claimed to have performed \$14,800 of services to Sun Life in the interpleader action, of which \$413 were court costs, but has agreed to charge no more than \$11,000 for all services rendered. (Decl. of A. Tevis Marshall ¶ 4, Docket No. 19.) An \$11,000 award would deplete the interpleader funds

by over thirty-five percent. Further, the facts of this case demonstrate such a fee is not warranted. This is a straightforward case with few parties involved, and there is no suggestion that counsel provided any unique services. In fact, counsel concede their actions in this case are common in the insurance industry. Sun Life clearly acted with diligence and good faith, and counsel's services were of substantial benefit in that the interpleader limited potential liability and protracted litigation in the face of multiple claimants. In light of the foregoing, the undersigned concludes Sun Life's recovery should be limited to the modest sum of \$2,413 (\$2,000 in legal fees, representing approximately 10 hours of work at counsel's listed rate of \$200 per hour and \$413 for court costs).

Further, the undersigned recommends that the award of costs and attorneys' fees be taxed against Louis and Louise Smith. Louis and Louise Smith exercised undue influence over the policy holder as to the change of beneficiary form, naming themselves as beneficiaries, either directly or through Turner's estate. (Mem. Op. 11, Docket No. 43.) Thus, it would be inequitable to penalize Tinsley by awarding funds from the policy proceeds. As Louis and Louise Smith's undue influence necessitated the underlying action, the undersigned recommends the award of \$2,413 for costs and fees be assessed against Louis Smith and Louise Smith.

The Clerk is directed immediately to transmit the record in this case to the Hon. Norman K. Moon, United States District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note any objections to this Report and Recommendation within ten (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law

may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1)(C) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection.

The Clerk is directed to send certified copies of this Report and Recommendation to all counsel of record.

Enter this 7th day of May, 2007.

/s/ Michael F. Urbanski
United States Magistrate Judge