

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

NATIONWIDE LIFE AND ANNUITY
INSURANCE COMPANY, an Ohio company,

Plaintiff,

v.

JAY P. DUNSHIE, individually; and DOUG
MIDDLESTETTER, as personal representative of
the Estate of Sharon P. Mares Hudinchia,

Defendants.

Case No. 6:22-cv-00995-MK

**FINDINGS AND
RECOMMENDATION**

KASUBHAI, United States Magistrate Judge:

Plaintiff Nationwide Life and Annuity Insurance Company (“Nationwide”) filed this interpleader action against Defendants Jay P. Dunshie (“Mr. Dunshie”) and Doug Middlestetter

(“Mr. Middlestetter”) after receiving competing claims for death benefits under an annuity contract. *See* Compl. ¶¶ 1-2, ECF No. 1. Nationwide now moves for discharge of its liability.¹ For the reasons that follow, the Court should GRANT Nationwide’s motion.

BACKGROUND

On November 27, 2018, Nationwide issued “Nationwide New Heights 9 Fixed Annuity Contract 07-0477955” (“the Contract”) to Sharon P. Mares Hudinchia. Compl. ¶ 2, ECF No. 2. After Ms. Hudinchia passed away on October 10, 2022, Nationwide received two separate claims for her death benefits under the Contract. *Id.* ¶¶ 15-17. First, Nationwide received a beneficiary claim by Mr. Dunshie—who was listed as the primary beneficiary under the Contract with a 100% beneficiary interest—on January 10, 2022. *Id.* at 14, 16. Second, Nationwide received a beneficiary claim from Mr. Middlestetter—who, as executor of Ms. Hudinchia’s estate, challenged Mr. Dunshie’s designation as beneficiary—on January 18, 2022. *Id.* at ¶¶ 17-18.

On July 8, 2022, Nationwide filed this interpleader action pursuant to [Fed. R. Civ. P. 22](#) based on the conflicting claims of Defendants. On March 3, 2023, this Court granted Nationwide’s unopposed motion to deposit funds, and \$404,920.94—the total death benefits due under the Contract—was deposited into the Court Registry. *See* ECF No. 32. Having deposited the funds, Nationwide now seeks discharge from liability.

STANDARD OF REVIEW

“The purpose of interpleader is for the stakeholder to protect itself against the problems posed by multiple claimants to a single fund.” [Lee v. W. Coast Life Ins. Co.](#), 688 F.3d 1004, 1009 (9th Cir. 2012) (internal quotations and citations omitted). An interpleader action takes place in

¹ Nationwide further sought an order to deposit funds. That motion was granted separately on March 3, 2023. ECF No. 32.

two stages. First, “the district court decides whether the requirements for a rule or statutory interpleader action have been met by determining if there is a single fund at issue and whether there are adverse claimants to that fund.” *Id.* If so, then the Court proceeds to the second stage to determine the respective rights of the claimants to the single fund. *Id.*

To be entitled to interpleader relief, a stakeholder “must have a good faith belief that there are or may be colorable competing claims to the stake.” *Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 894 (9th Cir. 2012). Absent filing in bad faith, an interpleader is entitled to be discharged from liability after filing a complaint alleging that competing claims might expose it to multiple liability or multiple litigation. *First Interstate Bank of Oregon, N.A. v. United States*, 891 F. Supp. 543, 547 (D. Or. 1995) (internal citation omitted); *Primerica Life Ins. Co. v. Ross*, No. CV06-763-PK, 2006 WL 3170044, at *2 (D. Or. Nov. 1, 2006); *see also In re 1563 28th Ave., San Francisco, CA 94112*, 333 F.R.D. 630, 635 (N.D. Cal. 2019) (“A court may discharge an interpleader plaintiff from further liability after it deposits the disputed property with the court and where it has no interest in the disputed property or how claimants might want to divide the disputed property”) (citing 28 U.S.C. § 2361).

DISCUSSION

There is no dispute as to this Court’s jurisdiction, whether Nationwide acted in good faith, or as to the existence of competing claims. Instead, Middlestetter argues that discharging Nationwide would be inappropriate because Nationwide “may be liable in negligence for failing to notice that one of its producers, [Defendant Dunshie], named himself the primary beneficiary on the Annuity he sold” and for “failing to collect a wet-ink signature.” Middlestetter Resp. 3,

ECF No. 28. Middlestetter contends that because of this possible liability, Nationwide is not “a disinterested party.”² *Id.* at 5.

However, the authority Defendant Middlestetter relies on in support of this contention involve parties which have asserted a crossclaim against the stakeholder. See *Lee*, 688 F.3d at 1012 (evaluating the effect of a counterclaim for negligence against a stakeholder in an interpleader case); *Prudential Ins. Co. of Am. v. Hovis*, 553 F.3d 258, 264 (3d Cir. 2009) (“...**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”) (emphasis added). Neither Defendant has asserted any counterclaims against Nationwide. and Defendant Middlestetter has cited no authority which holds that speculation about possible negligent conduct renders a stakeholder no longer “disinterested” so as to preclude discharge.³

Accordingly, the Court finds that Nationwide is entitled to interpleader relief including a final judgment discharging it from liability related to the Contract. Nationwide also seeks permission to recover fees and costs but states that it intends to file a separate motion requesting them. See Pl.’s Mot. 7, ECF No. 26; Pl.’s Reply 8, ECF No. 35. Nationwide may file a motion for attorneys’ fees and costs and the Court will rule on it in due course.

² The Court notes that Defendant Middlestetter had previously conceded that Nationwide is a “disinterested” stakeholder. See Compl. ¶ 26 (“Nationwide Life is a disinterested stakeholder...”), ECF No. 1; Middlestetter Answer ¶ 6 (admitting same), ECF No. 9.

³ Nationwide makes the additional argument that such a counterclaim would, essentially, be futile. Pl.’s Reply 4-8. However, there is no counterclaim in this case, and no motion to amend. The viability of a hypothetical counterclaim is not an issue that is before the Court. The Court therefore does not address this argument.

RECOMMENDATION

For the reasons above, Nationwide's Motion for Interpleader Relief and Final Judgment of Discharge, Fees and Costs (ECF No. 26) should be GRANTED.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to [Federal Rule of Appellate Procedure 4\(a\)\(1\)](#) should not be filed until entry of the district court's judgment or appealable order.

The Findings and Recommendation will be referred to a district judge. Objections to this Findings and Recommendation, if any, are due fourteen (14) days from today's date. See [Fed. R. Civ. P. 72](#). Failure to file objections within the specified time may waive the right to appeal the District Court's order. [Martinez v. Ylst](#), 951 F.2d 1153 (9th Cir. 1991).

DATED this 21st day of April 2023.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI (He / Him)
United States Magistrate Judge