

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

USAA INVESTMENT MANAGEMENT	\$
COMPANY and	\$
USAA TRANSFER AGENCY	\$
COMPANY DBA	\$
USAA SHAREHOLDER ACCOUNT	\$
SERVICES	\$

Plaintiff/Stakeholder

V.

CAUSE NO: 4:16-CV-1049

DAVID HIBLER, in his individual §
Capacity and as Executor of the §
Estate of Reta Hibler, and §
KIMBERLY LYNN HIBLER, §

Defendants/Claimants

COMPLAINT FOR INTERPLEADER AND/OR DECLARATORY RELIEF

USAA Investment Management Company (“USAA IMCO”) and USAA Transfer Agency Company dba USAA Shareholder Account Services (“USAA SAS”), collectively referred to as USAA, file this Complaint for Declaratory Relief and/or Interpleader and would respectfully show as follows:

I. PARTIES

1 Plaintiff/Stakeholder USAA Investment Management Company is a Delaware corporation with its principal place of business in Bexar County, Texas. Plaintiff/Stakeholder USAA Transfer Agency Company dba USAA Shareholder Account Services is a Delaware corporation with its principal place of business in Bexar County, Texas.

2. Defendant/Claimant Kimberly Lynn Hicks is a natural person and citizen of Oklahoma who can be served at 4 Mojave Drive, Shawnee, OK 74801.

3. Defendant/Claimant David Hibler is a natural person who can be served at 2310 Faith Blvd, Shawnee, OK 74804

4. Defendant/Claimant David Hibler is also the executor of the Estate of Rita Hibler. Reta Hibler was a citizen of Texas at the time of her death and her Estate is currently pending in Texas. Pursuant to 28 U.S.C. § 1332(c) (2), Mr. Hibler is deemed in his capacity as executor to be a citizen of the State of Texas.

JURISDICTION

11. USAA IMCO and USAA SAS bring this interpleader action pursuant to 28 U.S.C. § 1335. Jurisdiction is proper because it involves a dispute between two adverse claimants to money in excess of the \$500 jurisdictional minimum required by 28 U.S.C. § 1355. The adverse claimants are minimally diverse: Kim Hibler is a citizen of Oklahoma, David Hibler in his individual capacity is a citizen of Oklahoma, and David Hibler, in his capacity as a representative of the Estate of Rita Hibler, is a citizen of Texas, where the Estate is pending. Thus, all requirements for interpleader jurisdiction under 28 U.S.C. § 1335 are satisfied, as there is diversity between the defendants and there is supplemental jurisdiction over USAA's declaratory judgment action pursuant to 28 U.S.C. § 1367.

12. In the alternative, in the event that David Hibler, in his capacity as representative for the Estate of Rita Hibler, is not a proper party, USAA IMCO also brings this interpleader and action for declaratory relief under Rule 22 and Rule 57 of the Federal Rules of Civil Procedure and the federal diversity statute, 28 U.S.C. § 1332. If David Hibler, as the representative of the Estate of Reta Hibler, is not a proper party, then there would be complete diversity between the

parties: (1) Plaintiff USAA IMCO and USAA SAS are corporations created under the laws of Delaware with their principal place of business in San Antonio, Texas, (2) David Hibler, in his personal capacity, is a citizen of Oklahoma, and (3) Kim Hibler is a citizen of Oklahoma, and (4) the amount in controversy exceeds \$75,000, exclusive of attorneys' fee.

VENUE

13. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), as a substantial portion of the events involving this case took place in Hood County, Texas. Venue is also proper under 28 U.S.C. § 1391(b)(3), as one of the Defendants – David Hibler – is subject to personal jurisdiction here, as he serves as the Executor of the Estate of Rita Hibler in Hood County, Texas.

III. FACTUAL BACKGROUND

14. On April 27, 2004, Reta Hibler opened a USAA Mutual Fund account.

15. In 2011, Reta Hibler sent USAA a Transfer on Death Registration and Beneficiary Designation form, designating David Hibler as her beneficiary for 100% of all her mutual fund shares in the event of her death.

16. USAA implemented the change to the USAA Mutual Fund Accounts showing that David Hibler would be the beneficiary of Reta Hibler's USAA Mutual Fund shares upon her death.

17. In 2013, Reta Hibler sent USAA a new a Transfer on Death Registration and Beneficiary Designation form, indicating that she wanted to open a new USAA mutual fund account designating Kim Lynn Hibler as beneficiary for 100% of Reta Hibler's USAA Mutual Fund shares.

18. However, Reta Hibler did not send USAA the required new account registration form needed to complete the transaction. Essentially, she sent USAA half of the paperwork necessary to complete the transaction. She also mis-identified the birthdate of Kim Lynn Hibler on the Transfer on Death Resignation and Beneficiary form she provided.

19. The new Transfer on Death Registration and Beneficiary Designation Form was received by USAA IMCO on September 3, 2013.

20. USAA subsequently tried to contact Reta Hibler repeatedly, but was unable to reach her. USAA then sent her a letter asking her to contact USAA about her accounts. USAA did not receive a response from Reta Hibler in this regard.

21. Reta Hibler died in November 2013. At the time of her death, her USAA Mutual Fund Accounts had a combined value of more than \$253,000.

22. USAA cannot determine from the documents the proper beneficiary of Reta Hibler's USAA Mutual Fund accounts. One argument may be made that the 2013 designation failed – in which case, David Hibler is the beneficiary. Another argument may be made is that the 2013 designation succeeded – in which case, Kim Hibler is the beneficiary. Finally, an argument maybe made that the 2013 designation succeeded in cancelling the 2011 designation, but because no new account form was provided, the assets now should pass to the Estate of Reta Hibler. In such case, the assets pass according to her will, or according to the intestacy laws of Texas.

23. USAA thus is concerned about multiple and inconsistent liability. If it pays the money to one party, the other two parties may sue USAA for the same assets. The only way to resolve the issue is for all the parties with a claim to litigate the issue in a single forum, so that justice might be done.

24. The assets in question are mutual fund shares, and thus, are difficult to place into the Court's registry directly. USAA therefore asks for minimal bond of \$500 to be set, so that the main corpus of the assets will not be wasted.

CAUSES OF ACTION

COUNT ONE – DECLARATORY JUDGMENT

25. Pursuant to Federal Rule of Civil Procedure 57, USAA seeks a declaration from the Court as to who among the Defendants/Claimants is entitled to the USAA Mutual Fund Account shares.

COUNT TWO -- INTERPLEADER UNDER 28 U.S.C. §§ 1335 & 2361

26. Pursuant to 28 U.S.C. § 1335 and § 2361, USAA IMCO requests the Court determine who among the Defendants/Claimants is the proper recipient of the USAA Mutual Fund Account shares.

27. 28 U.S.C. § 1335(a)(2) requires that the party seeking interpleader either deposit the interpleaded money with the Court or to give a bond payable to the clerk of the court in such amount and with such surety as the Court may deem proper.

30. The assets in question are mutual fund shares, and thus, are difficult to place into the Court's registry directly. USAA hereby requests bond set at \$500.

COUNT THREE —RULE 22 INTERPLEADER

31. In the alternative, pursuant to Federal Rule of Civil Procedure 22, USAA requests that the Court determine who among the Defendants/Claimants is the proper recipient of the USAA Mutual Fund Account shares.

32. Rule 22 interpleader does not require the deposit of a stake with the Court clerk. *Murphy v. Travelers Ins.*, 534 F.2d 1155, 1159 (5th Cir. 1976). In the event that the Court

chooses to proceed under Rule 22 Interpleader, USAA IMCO requests no bond be set, or, in the alternative, that bond be set at \$500.

33. However, in the event that the Court chooses to set bond, USAA will abide by the decision of the Court.

PRAYER

Wherefore, Plaintiff USAA prays for either a declaratory judgment from the Court, identifying who should have possession of the USAA Mutual Fund Account shares, or, in the alternative, judgment against Defendants in Interpleader, and each of them, as follows:

- (a) That the Defendants, and each of them, be required to litigate among themselves in this forum their claims to the USAA Mutual Fund Account shares described;
- (b) That the Court enter an order restraining Defendants, and each of them, from instituting or further prosecuting any other proceeding affecting the rights and obligations between and among the parties to the interpleader and their agents until further order of the Court;
- (c) That the Court enter an order either instructing that the USAA Mutual Fund Account shares be held at USAA without bond, or that the Court order that bond be set at \$500;
- (d) That the Court determine and enter an order setting forth the proper recipients of the USAA Mutual Fund Account shares;
- (e) That USAA be discharged from this action with prejudice; and
- (f) That the Court order that USAA may liquidate before distribution some portion of the USAA Mutual Fund Account, sufficient to cover reasonable costs and attorneys' fees for the filing of this action, in an amount as the Court may direct.

Dated: November 16, 2016.

Respectfully submitted,

LINDOW ▪ STEPHENS ▪ TREAT LLP

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