

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

NORTH AMERICAN COMPANY)
FOR LIFE AND HEALTH)
INSURANCE,)
)
Plaintiff)
)
v.)
)
GERALDINE MALMSTROM,)
et al.,)
)
Defendants)

CIVIL No. 00-83-B-H

RECOMMENDED DECISION

This matter is before me on Plaintiff's motion for award of costs and attorney fees (Docket No. 20).¹ Plaintiff seeks costs in the amount of \$457.60 and attorney fees in the amount of \$16,125.39, and requests that payment be made from the fund deposited with the Court in this interpleader action. I now recommend that the Court **DENY** this motion on the basis of accord and satisfaction. If the Court determines that Maine's accord and satisfaction law relating to releases is not applicable to this case, I would recommend that Plaintiff's fee request be substantially reduced. I do not believe that the requested fees are indicative of the conduct of a truly "disinterested stakeholder" in an interpleader action.

¹By Order dated October 25, 2000, Judge Hornby awarded Plaintiff attorney fees and costs in connection with Defendant Geraldine Malmstrom's failure to accept a waiver of service of process. The pleadings on file suggest that the award should be in the amount of \$450.11 in attorney fees and \$1,560.47 in investigative costs. According to Plaintiff's Memorandum this amount remains unpaid.

STANDARD FOR AWARD OF FEES AND COSTS IN INTERPLEADER ACTIONS

The well settled principle in the First Circuit is that a disinterested stakeholder is usually awarded an interpleader fee:

An interpleader fee is usually awarded out of the fund to compensate a totally disinterested stakeholder who had been, by reason of the possession of the fund, subjected to conflicting claims through no fault of its own. By its very nature it is of a relatively small amount, simply to compensate for initiating the proceedings.

Ferber Co. v. Ondrick, 310 F.2d 462, 467 (1st Cir. 1962). This rule has been applied in this District when a disinterested stakeholder brought an action based on its good faith belief that there was a “threat of possible multiple litigation.” Centex-Simpson Constr. Co. v. Fidelity & Deposit Co., 795 F. Supp. 35, 42 (D. Me. 1992). The rule allowing the interpleader fee has been called “the customary practice in this circuit.” Foxborough Savings Bank v. Petrosian, 84 F. Supp. 2d 172, 174 (D. Mass. 1999) (allowing just over \$2,000 in attorney fees for bringing the action into the federal district court).

FACTUAL BACKGROUND

The Plaintiff, who is in the business of issuing life insurance policies, insured the life of John A. Malmstrom under four separate policies in the total amount of \$445,000.00. Malmstrom’s wife, Geraldine, was the primary beneficiary and his three children, Jennifer, Juliette, and Jordan, were the contingent beneficiaries. Malmstrom died as a result of homicide on January 27, 1997.

Geraldine Malmstrom was indicted for the murder. After the indictment was returned Plaintiff filed this action pursuant to the Federal Interpleader Statute, 28 U.S.C. § 1335. Malmstrom, as primary beneficiary, and the three children, as contingent beneficiaries, were named as defendants. Five months later Malmstrom was acquitted of the murder charge. The proceeds of the policies were deposited with the Court.

Two of the children, Jennifer and Juliette, have attained the age of majority. Through counsel they answered the complaint and disavowed any claim to the policy proceeds. Jordan remains a minor and I appointed a *guardian ad litem* to represent his interests. He has also disavowed any interest in the policy proceeds. All parties have now stipulated to the dismissal of this action with the funds on deposit to be paid over to Geraldine Malmstrom. The only question that remains in dispute is whether the Plaintiff should be allowed to recover additional attorney fees and costs from the fund.

DISCUSSION

Defendant Geraldine Malmstrom, joined by her daughters Jennifer and Juliette, has raised four arguments in support of her position that fees should not be awarded in this case or, if they are awarded, should be substantially reduced.

1. Plaintiff's Motion is Barred by the Doctrine of Accord and Satisfaction

Malmstrom cites to Maine negligence law in support of her contention that Plaintiff is barred from seeking attorney fees under the doctrine of accord and satisfaction. Butters v. Kane, 347 A.2d 602 (Me. 1975). Butters concerned the releasee's right to maintain a third party action against the releasor in a case where the parties had settled their negligence claim and then the releasee attempted to maintain an action for contribution against the releasor. The Maine Law Court held that "the making of a settlement without any express reservation of rights constitutes a complete accord and satisfaction of all claims of immediate parties to the settlement." Id. at 604.

In the present case, Plaintiff obtained from Malmstrom a release of all claims relating to the payment of the proceeds of the life insurance policies covering the life of John Malmstrom. The release recites that it "contains the entire agreement between the parties hereto." It does not

contain any express reservation of rights by Plaintiff. Under Maine law, when there is no express reservation of rights, the only natural inference that can be drawn is that all claims between the parties have been resolved. Cyr v. Cyr, 560 A.2d 1083, 1084 (Me. 1989) (holding that implicit in the bargain of accord and satisfaction is a reciprocal release by the party who has procured the express release of any claims inconsistent with the settlement effected by the release).

To be sure, the Cyr Court recognized there are circumstances in which parties might rationally choose to settle one aspect of a case while proceeding on another aspect of the claim. The Court also recognized that there might be cases involving circumstances presenting a dispute of material fact as to the scope of the implied discharge arising by operation of law. Plaintiff has presented neither argument in this case. Nor has Plaintiff argued that Maine law is inapplicable to this aspect of a federal interpleader action. In fact, the issue of accord and satisfaction is first raised in Malmstrom's response to Plaintiff's Motion. Plaintiff chose to file no reply memorandum. In these circumstances, it appears to me that the general principle of Maine law should govern this release and the motion should be denied under principles of accord and satisfaction.

2. Plaintiff's Failure to Meet the Standard for an Award of Fees in Interpleader Action

In addition to her argument that the doctrine of accord and satisfaction bars recovery for attorney fees, Malmstrom also argues that Plaintiff's action does not meet the established standards for an award of attorney fees in an interpleader action. She further argues that even if this Court were to exercise its discretion and allow Plaintiff to recover an interpleader fee, its request is inappropriate because Plaintiff did not conduct itself as a "disinterested stakeholder." Finally Plaintiff argues that the fees requested are not reasonable.

Relying primarily upon Traveler's Indem. Co. v. Israel, 354 F.2d 488, 490 (2nd Cir. 1965) (indicating that an interpleader action should not be used to transfer a part of the ordinary cost of doing business to the claimants), Malmstrom argues that this Court would abuse its discretion if it allowed the award of any fees or costs in the present situation. I do not believe that the present case is a situation arising in the "ordinary course of doing business," as was the case in Traveler's. At the time Plaintiff brought this action, Malmstrom was under indictment for murder. Despite her subsequent acquittal, under Maine law, 18-A M.R.S.A. § 2-803, the so-called "Slayer Statute," a civil court might have determined under the clear and convincing evidentiary standard that Malmstrom was indeed guilty of felonious and intentional killing for purposes of determining to whom the proceeds of this policy should be paid. Given that three individuals were named as contingent beneficiaries, Plaintiff faced the real possibility of multiple claims to the proceeds. Plaintiff's concerns at the time it initiated the action were legitimate ones.

By instituting this action rather than immediately paying the proceeds to Malmstrom, Plaintiff gave all interested parties, including the minor child, the opportunity to raise any objection to payment of the proceeds. The children made clear that they were laying no claim to the proceeds. The case should have ended there. Instead, Plaintiff chose to devote a great deal of time and attention to investigating and researching the merits of a nonexistent subsequent civil proceeding in which a case of intentional killing might be determined. (See, e.g., Tucker & Dostie, P.A., Accounts Receivable entry dated 10/24/00, reflecting 7.70 hours of research on that issue.) Indeed, at the conference held in front of me on November 3, 2000, (Docket No. 13), Plaintiff's counsel suggested that this Court had an obligation to conduct an adversary proceeding to determine Malmstrom's entitlement to the fund in spite of the fact that it was

apparent by that time that none of the contingent beneficiaries were claiming any interest in the proceeds. Yet, the only party adverse to Malmstrom was the self-proclaimed “disinterested stakeholder.”

Clearly the interpleader action was no longer appropriate; if Plaintiff believed that there was sufficient evidence to deny the claim, they could have denied coverage and litigated the issue. They cannot be both a “disinterested stakeholder” and a proponent of the position that Malmstrom committed an intentional killing of the insured. Once Plaintiff began investigating the merits of Malmstrom’s claim it no longer was performing legal work qualifying for an “interpleader fee.”

A review of billing records indicates that a draft complaint was prepared by April 19, 2000 and filed with the Court on April 26, 2000. After the complaint was filed considerable time and energy was expended in completing service. Presumably Plaintiff has been compensated for those efforts by Judge Hornby’s prior order. If the Court were to award any fees and costs in association with this case, those fees should be limited to the fees and costs associated with bringing the action into Court and insuring that the minor child was represented by a *guardian ad litem*. My review of the billing records supports the award of \$2,375.00, plus the costs of suit as computed by the clerk. I have allowed the bulk of the time billed for preparation of the complaint, the Motion for Order Pursuant to 28 U.S.C. § 2361, and the review of the motion and order appointing the *guardian ad litem* for the minor child. I do not believe that Plaintiff should recover its fees expended on other issues such as research or investigation of the merits of an action pursuant to the “slayer statute” or the benefits of obtaining general releases from the named defendants.

CONCLUSION

Based on the foregoing, I recommend that the Court **DENY** the request for additional attorney fees and costs because of the doctrine of accord and satisfaction. I do recommend that the Court enter an Order for specific payment of the fees and costs previously ordered and that payment should be made from the fund on deposit as Plaintiff's contention that it remains unpaid is not disputed. I also recommend that in the event the Court determines that the doctrine of accord and satisfaction is inapplicable, the amount of attorney fees awarded should be substantially reduced from the amount requested in accordance with my review of the billing submissions on file.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated: March 1, 2001

Margaret J. Kravchuk
U.S. Magistrate Judge

U.S. District Court

District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-83

NORTH AMERICAN LIFE v. MALMSTROM, et al

Filed: 04/26/00

Assigned to: JUDGE D. BROCK HORNBY

Demand: \$0,000

Nature of Suit: 110

Lead Docket: None

Jurisdiction: Diversity

Dkt# in other court: None

Cause: 28:1335 Interpleader Action

NORTH AMERICAN COMPANY FOR JOHN G. BATHERSON, ESQ.

LIFE AND HEALTH INSURANCE [COR]

plaintiff RICHARD D. TUCKER, Esq.

TUCKER & DOSTIE, P.A.

P.O. BOX 696

BANGOR, ME 04402-0696

(207) 945-4720

v.

GERALDINE MALMSTROM, DANIEL A. PILEGGI, ESQ.

Individually and as [term 02/21/01]

administrator and personal [COR]

representative of the Estate ROY, BEARDSLEY, WILLIAMS &

of John A. Malmstrom Jr. and GRANGER, LLC

as mother of Jordan Malmstrom, P.O. BOX 723

a minor ELLSWORTH, ME 04605

defendant (207)667-7121

JAMES S. NIXON, ESQ.

GROSS, MINSKY & MOGUL, P.A.

P.O. BOX 917

23 WATER ST.

BANGOR, ME 04401

207-942-4644

JENNIFER MALMSTROM PAUL W. CHAIKEN

defendant 947-4501

RUDMAN & WINCHELL

84 HARLOW STREET

P.O. BOX 1401

BANGOR, ME 04401

(207) 947-4501

JULIETTE MALMSTROM PAUL W. CHAIKEN

defendant (See above)