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6                           IN THE UNITED STATES DISTRICT COURT  
7                           FOR THE DISTRICT OF ARIZONA

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9           Society Insurance,

No. CV-13-01007-PHX-NVW

10                                 Plaintiff,

**ORDER**

11  
12           v.

13           Donna Nystrom; Christine St. John,  
14           individually and on behalf of her minor  
15           children, S.S. & S.S.; Brenda DeGross;  
16           Daniel DeGross; Darren DeGross; Dean  
17           DeGross; the Estate of David DeGross;  
18           Mountain Vista Medical Center; State Farm  
19           Mutual Automobile Insurance Company;  
20           Western General Insurance Company; John  
21           and Jane Does I - X,

22                                 Defendants.

23           On May 15, 2013, Society Insurance filed this action in interpleader under 28  
24           U.S.C. § 1335. The action will be dismissed for two independent reasons: (1) the parties  
25           failed to make good faith efforts to comply with their stipulation to resolve this matter by  
26           agreement or state court adjudication, and (2) the action was filed prematurely.

27           **I.        BACKGROUND**

28           On February 6, 2013, a motor vehicle collision occurred in Pinal County, Arizona,  
          involving James Sparish, who was driving a truck insured by Society Insurance under a

1 business auto insurance policy issued to “James Sparish, Brian Keeler, Kyle Kraine,  
2 Gregory Weaver dba J J S Auto Body Clinic.” Society Insurance also provided a garage  
3 business owners policy to “James Sparish, Brian Keeler, Kyle Kraine, Gregory Weaver  
4 dba J J S Auto Body Clinic.” Sparish is a Wisconsin resident.

5 When Sparish was in Arizona, he ran a red light and collided with a vehicle driven  
6 by Christine St. John. She and her two passengers, Spencer St. John and S.S., are  
7 Arizona residents. All three received medical treatment after the accident at Mountain  
8 Vista Medical Center.

9 Donna Nystrom and David DeGross were passengers in Sparish’s truck and were  
10 injured and hospitalized. DeGross died in the hospital. Both were Wisconsin residents.

11 On February 7, 2013, Society Insurance received notice of the collision and  
12 shortly thereafter received communications from attorneys representing some of those  
13 injured in the collision. Society Insurance believed the claims could exceed the \$500,000  
14 bodily injury policy limit provided by a business automobile policy that protected the  
15 truck driven by Sparish. By letter to all of the claimants and potential claimants, former  
16 counsel for Society Insurance offered to “mediate the claim to divide up the \$500,000”  
17 from the business automobile policy bodily injury limits and stated that “if the parties did  
18 not agree to mediation, then Society Insurance would interplead the funds leaving the  
19 court to decide the division.” (Doc. 101 at 7.)

20 On May 15, 2013, Society Insurance filed this action in interpleader, seeking to  
21 deposit the business automobile policy limits with the Court. Neither the initial  
22 Complaint in Interpleader nor the First Amended Complaint in Interpleader admitted that  
23 its insured is liable for the damages caused by the February 6, 2013 collision or that the  
24 business automobile policy provides coverage for the collision. The following people  
25 were named as Defendants: David DeGross’s wife, Brenda DeGross, and his three sons,  
26 Daniel DeGross, Darren DeGross, and Dean DeGross; Donna Nystrom; Christine St.  
27 John, Spencer St. John, and S.S.; and Mountain Vista Medical Center. State Farm  
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1 Mutual Automobile Insurance Company and Western General Insurance Company were  
2 initially named as Defendants, but were dismissed upon stipulation.

3 On January 10, 2014, Society Insurance moved to vacate the Scheduling  
4 Conference set for January 31, 2014, because the parties had scheduled a global  
5 settlement conference before an independent mediator on January 27, 2014. The Court  
6 granted the motion and continued the Scheduling Conference to February 28, 2014. On  
7 February 7, 2014, Society Insurance filed a motion to stay proceedings because during  
8 the global settlement conference a conflict arose between Society Insurance and its  
9 insured, James Sparish, regarding coverage. Because then-counsel for Society Insurance  
10 represented Sparish for defense of claims made by the Defendants, it was necessary to  
11 substitute new counsel for Society Insurance. New counsel entered their appearance on  
12 February 21, 2014.

13 The Scheduling Conference was held on March 13, 2014, during which  
14 Defendants agreed to decide the allocation of the business automobile policy limits by  
15 either agreement or state court adjudication. On April 11, 2014, the parties filed a  
16 stipulation to permit Society Insurance to interplead the aggregate policy limits for bodily  
17 injury under the business automobile policy (“Disputed Funds”) to the registry of the  
18 Court, enjoin Defendants from bringing suit against Society Insurance relating to the  
19 business automobile policy or Disputed Funds, and discharge Society Insurance from any  
20 further liability arising from the dispute among the various Defendants relating to the  
21 business automobile policy or Disputed Funds. (Doc. 66.) The parties also stipulated  
22 that:

23 The parties will abide either (a) the agreement of the parties of the  
24 allocation of the Disputed Funds or (b) the adjudication of the state court  
25 system’s allocation of the Disputed Funds to the Defendants and agree that  
26 this Court will pay the Disputed Funds to the Defendants according to the  
27 agreement or allocation.

28 (*Id.*) There was no indication that the parties intended for this Court to decide how the  
Disputed Funds should be allocated.

1           The stipulation also amended the First Amended Complaint in Interpleader to  
2 correct the business automobile policy number and to change the name of the insured  
3 under the policy from “James Sparish” to “James Sparish, Brian Keeler, Kyle Kraine,  
4 Gregory Weaver dba J J S Auto Body Clinic.” The parties further agreed that the  
5 stipulation did not bar or limit the Defendants from “pursuing James Sparish personally  
6 as a result of the automobile incident that occurred on or about February 6, 2013” and did  
7 not bar or limit Defendants’ “rights or claims to pursue other insurance policies provided  
8 by Society Insurance for the automobile incident that occurred on or about February 6,  
9 2013.” (Doc. 66.)

10           On April 24, 2014, the Court granted the parties’ stipulation. (Doc. 67.) On May  
11 27, 2014, Plaintiff deposited the sum of \$500,000 with the Court. (Doc. 68.) On July 29,  
12 2014, pursuant to a second stipulation, Plaintiff was dismissed from this action and  
13 discharged from any further liability with respect to the February 6, 2013 automobile  
14 accident. (Doc. 71.)

15           More than a year later, on October 21, 2015, the Court ordered the remaining  
16 parties to file joint or separate status reports regarding the status of adjudication in the  
17 state court system or the status of stipulated agreements as to how the Disputed Funds  
18 should be divided. (Doc. 77.) The only status report filed provided almost no  
19 information. (Doc. 79.) Therefore, a status conference was held on December 17, 2015.  
20 Seeing no apparent progress toward reaching “(a) the agreement of the parties of the  
21 allocation of the Disputed Funds or (b) the adjudication of the state court system’s  
22 allocation of the Disputed Funds to the Defendants,” the Court ordered the parties to  
23 show cause why the stipulated orders should not be vacated and the Disputed Funds  
24 returned to Plaintiff. (Doc. 84.)

25           On July 25, 2016, after considering the parties’ briefing, the Court concluded the  
26 parties had not pursued diligently and in good faith their stipulation to conclude this  
27 matter by either agreement or state court adjudication. (Doc. 97.) It vacated the portion  
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1 of paragraph 3 of the April 24, 2014 order that stated, “The parties will abide either (a)  
2 the agreement of the parties of the allocation of the Disputed Funds or (b) the  
3 adjudication of the state court system’s allocation of the Disputed Funds to the  
4 Defendants.” (*Id.*) Anticipating that allocation of the Disputed Funds could be resolved  
5 in this action, the Court set a Rule 16 Scheduling Conference for September 1, 2016, and  
6 deadlines for disclosures, discovery, case management planning, and a settlement  
7 conference. (*Id.*) On September 1, 2016, counsel for Society Insurance and counsel for  
8 each of the Defendants participated in a status conference with the Court and continued  
9 settlement discussion outside of the presence of the Court. No settlement was reached.

## 10 **II. PENDING CLAIMS AND OTHER LITIGATION**

11 On January 23, 2015, Brenda DeGross filed a wrongful death lawsuit in Pinal  
12 County Superior Court under A.R.S. § 12-611 on behalf of all statutory beneficiaries of  
13 David DeGross, including Daniel DeGross, Darren DeGross and Dean DeGross. In the  
14 Pinal County Superior Court case, Society Insurance is defending Sparish “under a full  
15 reservation of rights.” Initially, it agreed to defend Sparish under a reservation of rights  
16 under the business auto insurance policy and denied coverage to Sparish under the garage  
17 business owners policy. As of August 14, 2015, Society Insurance is also defending  
18 Sparish in the Pinal County Superior Court case under a reservation of rights under the  
19 garage business owners policy. Sparish has admitted that he ran a red light, but denied  
20 that he drove negligently. He denied liability for damages arising out of the collision and  
21 alleged affirmative defenses, including assumption of risk and contributory negligence by  
22 the decedent and comparative fault of non-parties. Counsel for Sparish acknowledged  
23 that the parties agreed to stay the case twice while this interpleader action and another  
24 case were being decided, but in June 2016 a case scheduling order was issued.

25 Donna Nystrom asserts she was severely injured in the collision and has  
26 permanent disabilities as a result. Nystrom is not a party to any other lawsuit related to  
27 the February 6, 2013 motor vehicle collision.  
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1 Christine St. John, Spencer St. John, and S.S., claim damages for past/future pain,  
2 suffering, disability, and medical expenses. Christine St. John also claims lost wages and  
3 pension funds. The St. Johns are not parties to any other lawsuit related to the February  
4 6, 2013 motor vehicle collision.

5 Mountain Vista Medical Center recorded and perfected a medical lien in the  
6 amount of \$39,742.60 for hospital services provided to the St. Johns. The parties agree  
7 that Mountain Vista Medical Center can recover payment only through the St. Johns.

8 On August 11, 2015, Society Insurance filed a declaratory judgment action in a  
9 Wisconsin state court requesting the court to find there is no coverage under the garage  
10 business owners policy for the February 6, 2013 collision. Brenda DeGross and Sparish  
11 are named as defendants. A hearing on the coverage motion is set for November 28,  
12 2016.

### 13 **III. ANALYSIS**

#### 14 **A. The Parties Did Not Make Good Faith Efforts to Comply with Their** 15 **Stipulation to Resolve This Matter by Agreement or State Court** 16 **Adjudication.**

17 On April 11, 2014, the parties stipulated that:

18 The parties will abide either (a) the agreement of the parties of the  
19 allocation of the Disputed Funds or (b) the adjudication of the state court  
20 system's allocation of the Disputed Funds to the Defendants and agree that  
21 this Court will pay the Disputed Funds to the Defendants according to the  
22 agreement or allocation.

23 After signing this stipulation, the parties did not meet for a settlement conference. They  
24 did not file a state court action to adjudicate allocation of the Disputed Funds. No one  
25 attempted to resolve allocation of the Disputed Funds by either agreement or state court  
26 adjudication.

27 To ensure preservation of her claim within the statutory limitation period, on  
28 January 23, 2015, Brenda DeGross filed a wrongful death lawsuit in state court on behalf  
of the statutory beneficiaries of David DeGross against James Sparish. The suit does not

1 involve all of the parties to the April 11, 2014 stipulation, and it does not purport to  
2 adjudicate allocation of the Disputed Funds. Sparish and Brenda DeGross twice agreed  
3 to stay proceedings to see whether money from the garage business owners policy would  
4 be available and how the Disputed Funds would be allocated by this Court, even though  
5 they had stipulated that this Court would not decide how the Disputed Funds would be  
6 allocated. No one has explained how allocation of the Disputed Funds by agreement or  
7 state court adjudication was expected to occur when the parties never discussed  
8 settlement together and the DeGrosses and Society Insurance, through counsel defending  
9 Sparish, twice agreed to delay their state court action so this Court could allocate the  
10 interpleaded funds first.

11 The Court would not have granted the parties' stipulation to resolve allocation of  
12 the Disputed Funds if it had known the parties would not at least make good faith efforts  
13 to do so.

14 **B. This Action in Interpleader Was Filed Prematurely.**

15 Under 28 U.S.C. § 1335, the Court has original jurisdiction of a civil action of  
16 interpleader filed by an entity having issued a policy of insurance of value or amount of  
17 \$500 or more if two or more adverse claimants of diverse citizenship are claiming or may  
18 claim to be entitled to any of the benefits arising by virtue of the policy and the plaintiff  
19 has deposited the value of the policy into the registry of the court, there to abide the  
20 judgment of the court. "The purpose of interpleader is for the stakeholder to 'protect  
21 itself against the problems posed by multiple claimants to a single fund.'" *Lee v. W.*  
22 *Coast Life Ins. Co.*, 688 F.3d 1004, 1009 (9th Cir. 2012) (citation omitted).

23 Society Insurance filed this action in interpleader as though it conceded liability  
24 and coverage by its business auto insurance policy. It alleged, "Society is merely an  
25 innocent stakeholder and claims no beneficial interest in the Disputed Funds." (Doc. 6 at  
26 3.) It further alleged, "Society cannot make payment of the Disputed Funds without  
27 assuming the responsibility of determining doubtful questions of fact and law, and  
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1 without incurring the risk of being subjected to costs and expenses in defending itself or  
2 its insured in a multiplicity of suits or the possibility of multiple payments of the amount  
3 due.” (*Id.* at 3.) Perhaps, at the time, then-counsel for Society Insurance believed that  
4 liability and coverage would not be disputed.

5 But now Society Insurance is defending Sparish against claims by the DeGross  
6 parties in the Pinal County Superior Court case in which Sparish has denied that he was  
7 driving negligently, denied he was the sole cause of the collision and ultimate death of  
8 David DeGross, and denied he is liable for wrongful death. (Doc. 119-1 at 6.) It is  
9 defending Sparish under a reservation of rights under both the business automobile policy  
10 and the garage business owners policy, and it is contesting all coverage under the garage  
11 business owners policy. Although Society Insurance offered the \$500,000 bodily injury  
12 policy limit under the business automobile policy in this interpleader action, it did not  
13 explicitly concede coverage under the policy for the collision. Thus, Society Insurance  
14 interpled the Disputed Funds before its obligations to Sparish under the business  
15 automobile policy were clear.

16 Further, Society Insurance filed this action with respect to only the policy limits of  
17 its business auto insurance policy, ignoring potential obligations to Sparish under its  
18 garage business owners policy. Now it is contesting coverage under its garage business  
19 owners policy in the Wisconsin declaratory judgment action. The Court cannot equitably  
20 apportion the Disputed Funds, provided under the business automobile policy, without  
21 knowing which, if any, parties may receive additional compensation under the garage  
22 business owners policy.

23 Therefore, this action in interpleader is premature.

#### 24 **IV. LIMITATION PERIOD**

25 Under Arizona statute, “If an action is commenced within the time limited for the  
26 action, and the action is terminated in any manner other than by abatement, voluntary  
27 dismissal, dismissal for lack of prosecution or a final judgment on the merits, the  
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1 plaintiff, or a successor or personal representative, may commence a new action for the  
2 same cause after the expiration of the time so limited and within six months after  
3 termination.” A.R.S. § 12-504(A). The Defendants did assert claims against James  
4 Sparish in their pleadings in this case. This case will be terminated for reasons other than  
5 by abatement, voluntary dismissal, dismissal for lack of prosecution, or a final judgment  
6 on the merits. Therefore, under Arizona law, the statutes of limitations for any claims by  
7 the Defendants in this interpleader action against Sparish are extended until six months  
8 after the entry of this order.

9 In the alternative, even if the limitations for Defendants’ claims against Sparish  
10 were not extended by statute, the equitable nature of interpleader would require extension  
11 of the limitation period for parties who timely asserted claims in this action. Therefore,  
12 any party may commence a new action for the same cause within six months of the date  
13 this order is entered.

14 IT IS THEREFORE ORDERED that the Clerk shall pay to Society Insurance  
15 Company the sum of \$500,000.00, which Society Insurance Company deposited with the  
16 Court on May 27, 2014 (Doc. 68), plus any interest the deposit has accrued. The check  
17 shall be sent to Plaintiff’s attorney at the following address:

18 Timothy R. Hyland  
19 Cavanagh Law Firm PA  
20 1850 N. Central Avenue, Suite 2400  
21 Phoenix, AZ 85004

22 IT IS FURTHER ORDERED vacating the orders filed April 24, 2014, and July  
23 29, 2014 (Docs. 67, 71).

24 IT IS FURTHER ORDERED that the Request for Magistrate for Limited Purpose  
25 of Conducting Settlement Conference (Docs. 117, 118) is denied as moot.

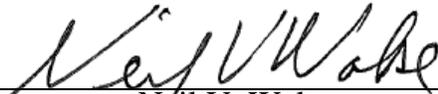
26 IT IS FURTHER ADJUDICATED that Defendants’ time to file actions against  
27 James Sparish for claims arising out of the February 6, 2013 motor vehicle collision is  
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extended pursuant to A.R.S. § 12-504(A) to six months from the date this order is entered.

IT IS FURTHER ORDERED that this case is dismissed without prejudice. The Clerk shall close the case.

Dated this 8th day of September, 2016.

  
\_\_\_\_\_  
Neil V. Wake  
Senior United States District  
Judge