

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**METROPOLITAN LIFE
INSURANCE COMPANY,**

10-CV-552(Sr)

Plaintiff,

v.

CINTHIA HUTTON, et al.,

Defendants.

DECISION AND ORDER

The undersigned was assigned the responsibility of handling this interpleader action and thereafter, in accordance with 28 U.S.C. § 636(c), the parties consented to have the undersigned conduct all further proceedings in this case, including entry of final judgment. Dkt. #37. The Court issued its Decision and Order on May 10, 2011 directing the disbursement of the interpleader funds and the payment of attorneys fees and costs, thereby concluding this Court's involvement in the matter. Earlier this month, this Court was advised that in or about December 2012, the Clerk of Court for the United States District Court for the Western District of New York received a check in the amount of \$396.32 as a settlement payout pursuant to the Federal Employees' Group Life Insurance ("FEGLI") Class Action Settlement. This Decision and Order sets forth this Court's proposal with respect to the disbursement of the \$396.32 received.

On or about July 1, 2010, Metropolitan Life Insurance Company (“MetLife”) commenced this interpleader action against Cinthia Hutton, Nicole Hutton, Gabriel Hutton, J.E.H. and I.S.H. The sum of \$202,426.96 was deposited in the Registry of this Court on December 20, 2010 by MetLife, representing the deposit of interpleader funds. By Decision and Order filed May 10, 2011, this Court ordered that the Clerk of Court, United States District Court for the Western District of New York disburse the interpleader deposit including accrued interest as follows.

First, the Clerk of Court was ordered to direct First Niagara Bank, this Court’s designated depository, to issue a bank draft payable to Clerk, U.S. District Court equal to the sum of 10% of the interest earned while such funds were held. Such fee was paid to the Treasury of the United States in accordance with law. From the remaining balance of the interpleader deposit including accrued interest, the sum of \$4,251.20 was paid to Schröder, Joseph & Associates, LLP, 766 Ellicott Street, Buffalo, New York 14203, as attorneys for MetLife. With respect to the remaining balance of the interpleader deposit including accrued interest, \$198,550.49, 62.5% or \$124,094.06 (\$123,859.86 in principal and \$234.20 in interest) was paid to James I. Myers, Esq., Myers, Quinn & Schwartz LLP, 5500 Main Street, Suite 312, Williamsville, New York 14221, as attorneys for, Gabriel Hutton and Nicole Hutton. As to the remaining 37.5%, \$15,000 was paid to Bradley A. Hoppe, Esq., Jaeckle, Fleischmann & Mugel LLP, 12 Fountain Plaza, Suite 800, Buffalo, New York 14202, as attorneys for Cinthia Hutton and the balance of the remaining 37.5% or \$59,456.43 was paid to Geoffrey Gismondi,

Esq., HoganWillig, 2410 North Forest Road, Suite 301, Getzville, New York 14068, as attorneys for J.E.H. and I.S.H., minors.

In or about December 2012, the United States District Court for the Western District of New York received a check in the amount of \$396.32 as a settlement payout pursuant to the FEGLI Class Action Settlement. According to information received from the FEGLI Class Action Settlement Administrator, the United States District Court for the Western District of New York received the above-referenced settlement check because it was identified as a class member of the settlement because it was a beneficiary of a Federal Employee Group Life Insurance policy administered through MetLife. The insured's name was Kenneth Hutton, the decedent.

In an effort to handle the disbursement of the recently received funds as expeditiously as possible and without necessitating that the parties incur additional attorneys fees, the Court proposes the following method to disburse the recently received funds. Consistent with the calculation reflected in its May 10, 2011 Decision and Order: 62.5% of the \$396.32 funds received, an amount equal to \$247.70, shall be paid to James I. Myers, Esq., Myers, Quinn & Schwartz LLP, 5500 Main Street, Suite 312, Williamsville, New York 14221, as attorneys for, Gabriel Hutton and Nicole Hutton; as to the remaining \$148.62, \$29.72 (representing 7.5% of the amount received) shall be paid to Bradley A. Hoppe, Esq., Jaeckle, Fleischmann & Mugal LLP, 12 Fountain Plaza, Suite 800, Buffalo, New York 14202, as attorneys for Cinthia Hutton; and the

balance of the remaining 37.5%, \$118.90 (representing 30% of the amount received) shall be paid to Geoffrey Gismondi, Esq., HoganWillig, 2410 North Forest Road, Suite 301, Getzville, New York 14068, as attorneys for J.E.H. and I.S.H., minors.

The parties shall have ten (10) business days from the date of entry of this Decision and Order to file written objections to the disbursements proposed above. If, after the expiration of ten (10) business days, the Court has not received any written objections from counsel, the funds will be disbursed as described above. Any objections shall be electronically filed.

SO ORDERED.

DATED: Buffalo, New York
January 14, 2013

s/ H. Kenneth Schroeder, Jr. _____
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge