

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 SUN LIFE ASSURANCE COMPANY
10 OF CANADA,

11 Plaintiff-in-Interpleader,
12 v.

13 MARYANNAH O'CONNOR and
14 THERESA WYSONG,

15 Defendants-in-Interpleader.

CASE NO. C16-0799-JCC

ORDER OF DISMISSAL

16 This matter comes before the Court on the motion to dismiss by Plaintiff-in-Interpleader
17 Sun Life Assurance Company of Canada (Dkt. No. 22). Having thoroughly considered the
18 parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby
19 GRANTS the motion for the reasons explained herein.

20 **I. BACKGROUND**

21 Plaintiff-in-Interpleader Sun Life Assurance Company of Canada issued a group
22 insurance policy to Rockwood Service Corporation as part of an employee welfare benefit plan.
23 (Dkt. No. 1 at 2.) The Insured, David O'Connor, was a Rockwood employee and acquired
24 coverage for certain benefits under this plan, including life insurance. (*Id.*) The Insured's wife,
25 Defendant-in-Interpleader Theresa Wysong, was the primary beneficiary for his group life
26 insurance benefit. (*Id.*)

1 On May 29, 2015, the Insured turned 65 and lost coverage under the Rockwood group
2 policy. (*Id.*) On June 16, 2015, Sun Life sent the Insured a letter and application allowing him to
3 convert his group coverage into an individual policy. (*Id.*) The Insured had until July 16, 2015, to
4 return this application to Sun Life. (*Id.* at 3.)

5 On July 2, 2015, the Insured signed the application. (*Id.*) On July 13, 2015, the Insured
6 submitted the application converting the group coverage to an individual policy (“the Policy”)
7 and paid the associated premium. (*Id.*) The primary beneficiary listed on the Policy was the
8 Insured’s daughter, Defendant-in-Interpleader Maryannah O’Connor. (*Id.*) The contingent
9 beneficiary was the Insured’s son, John O’Connor. (*Id.*) The Policy was issued to the Insured in
10 the amount of \$150,000.00. (*Id.*)

11 On July 22, 2015, the Insured passed away. (*Id.*) On July 23, 2015, Sun Life received a
12 fax from the Insured’s son, Israel O’Connor. (*Id.*; *see also* Dkt. No. 24-1 at 4.) The fax included
13 a copy of the Insured’s July 2 conversion application, as well as the Insured’s signed and
14 notarized declaration purporting to revoke “any and all power of attorney documents” that
15 Wysong had over the Policy. (Dkt. No. 1 at 3.) The Insured indicated that he wanted to keep his
16 daughter Maryannah as the Policy’s primary beneficiary and his son John as the secondary
17 beneficiary.¹ (*Id.*) The Insured’s declaration is dated July 22, 2015. (*Id.*) Three witnesses attested
18 to witnessing the declaration: John O’Connor, Israel O’Connor, and Jeff Heckman. (*Id.*)

19 On August 21, 2015, Sun Life sent a letter to Maryannah O’Connor providing her
20 instructions on how to file a claim under the Policy. (*Id.* at 3.) That day, Sun Life also sent the
21 same instructions to Wysong, at Wysong’s request. (*Id.* at 3-4.)

22 On August 31, 2015, Wysong sent a letter to Sun Life making a claim for the Insured’s
23 life insurance proceeds. (*Id.* at 4.) Wysong stated that she was the primary beneficiary under the
24 group policy; that she had been removed as a beneficiary when the group policy was converted;
25 that the Insured was incapable of changing the beneficiaries because of his declining physical

26 ¹ At times, the Court uses first names for the sake of clarity. No disrespect is intended.

1 and mental health; and that the Insured’s children took advantage of the Insured’s condition to
2 influence him to remove Wysong as the primary beneficiary on the group policy and replace her
3 with his children on the individual policy. (*Id.*)

4 On October 12, 2015, Maryannah O’Connor also made a claim to the insurance proceeds
5 under the Policy. (*Id.*)

6 Sun Life was thus unsure as to the proper recipient of the Policy proceeds. (*Id.* at 4-5.)
7 Sun Life filed a complaint for interpleader on May 31, 2016. (*Id.*) On September 9, 2016, per the
8 Court’s order, Sun Life deposited the insurance proceeds plus interest into the court registry.
9 (Dkt. No. 14 at 1.) Sun Life now asks the Court to dismiss Sun Life from this case with
10 prejudice, to “enter an order discharging Sun Life from any and all liability arising out of the
11 subject life insurance policy and proceeds,” and to award Sun Life its reasonable fees and costs.
12 (Dkt. No. 22 at 1.)

13 Wysong opposes the motion, arguing that Sun Life may have been negligent in
14 processing the change of beneficiary request. (Dkt. No. 24 at 2.) Wysong asks the Court to
15 dismiss Sun Life without prejudice, to find that Sun Life is not discharged from future liability,
16 and to deny Sun Life fees and costs. (*Id.* at 1.) In the alternative, Wysong asks the Court to “stay
17 any dismissal for a period of 90 days so that Ms. Wysong can better assess through discovery the
18 nature of the information Sun Life had at its disposal when it accepted improperly obtained
19 documents that changed [the Insured]’s insurance policy to Ms. Wysong’s detriment.” (*Id.* at 3.)

20 **II. DISCUSSION**

21 “In an interpleader action, the ‘stakeholder’ of a sum of money sues all those who might
22 have claim to the money, deposits the money with the district court, and lets the claimants
23 litigate who is entitled to the money.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1265 (9th
24 Cir. 1992). The Court first determines whether there is a single fund at issue with two or more
25 adverse claims to the fund. *Mack v. Kuckenmeister*, 619 F.3d 1010, 1023 (9th Cir. 2010). The
26 Court then determines the respective rights of the claimants. *Id.* at 1023-24.

1 The purpose of this type of action is to shield the uninterested stakeholder from the cost
2 of multiple litigations by parties with competing claims. *Aetna Life Ins. Co. v. Bayona*, 223 F.3d
3 1030, 1034 (9th Cir. 2000). “Once the adverse parties are interpleaded to a single fund,
4 disinterested stakeholders may be dismissed, and courts may issue injunctions to protect
5 stakeholders from duplicative litigation from the adverse parties.” *N.Y. Life Ins. Co. v. Bostwick*,
6 2015 WL 4484305 at *2 (W.D. Wash. July 22, 2015); *see also* 28 U.S.C. § 2361.

7 However, the “federal interpleader remedy does not shield a negligent stakeholder from
8 tort liability for its creation of a conflict over entitlement to the interpleaded funds.” *Lee v. W.*
9 *Coast Life Ins. Co.*, 688 F.3d 1004, 1014 (9th Cir. 2012). Rather, “a claimant may seek to
10 recover all damages directly and proximately caused by the negligent stakeholder’s conduct.” *Id.*
11 This is “consistent with the general principles of interpleader, namely, that a disinterested
12 stakeholder may not be subjected to liability for its failure to resolve the controversy over
13 entitlement to the stake in one claimant’s favor, but that a stakeholder whose alleged tort caused
14 the controversy is not absolved of liability by filing an interpleader action.” *Id.*

15 It is clear that Sun Life should be discharged from any liability as to payment of the
16 proceeds, given that it has deposited such funds into the Court Registry. (Dkt. No. 14.) However,
17 according to Wysong, Sun Life’s negligence might have caused the conflict over the funds, and
18 Wysong “is presently considering a counterclaim against Sun Life” under theories such as breach
19 of contract, violation of the Consumer Protection Act, and violation of the Insurance Fair
20 Conduct Act. (Dkt. No. 24 at 6.) Under *Lee*, a party may properly bring such counterclaims in an
21 interpleader case.

22 However, this case has been pending for over nine months with no definitive indication
23 from Wysong that she would file any counterclaims and, if so, what such counterclaims would
24 be. (*See* Dkt. No. 1) (complaint filed May 31, 2016). Wysong did not file an answer asserting
25 any counterclaims within 21 days of being served with the summons and complaint. *See* Fed. R.
26 Civ. P. 12(a)(1)(A)(i). And the pleading amendment deadline—which was set on October 18,

1 2016—passed on March 3, 2017. (*See* Dkt. No. 17.) Any counterclaims asserted at this time
2 would plainly be untimely. *See* Fed. R. Civ. P. 15(a)(2) (once 21 days have passed after service,
3 “a party may amend its pleading only with the opposing party’s written consent or the court’s
4 leave”); Fed. R. Civ. P. 16(b)(4) (“A schedule may be modified only for good cause and with the
5 judge’s consent.”).

6 Wysong offers no reason for her untimeliness or any good cause to extend these
7 deadlines. Nor can the Court envision any. Wysong’s concerns about the propriety of the
8 beneficiary change were evident before this action was filed, as shown in her August 2015 letter
9 to Sun Life. (*See* Dkt. No. 1-1 at 30-31.) And Wysong has been on notice since May 2016 that
10 Sun Life sought to be discharged of any liability. (*See* Dkt. No. 1 at 5.) Due to her untimeliness,
11 Wysong waived her right to assert counterclaims against Sun Life in this action. Accordingly, the
12 Court declines to issue a stay and finds it appropriate to dismiss Sun Life from this case with
13 prejudice.

14 The Court further finds it appropriate to award Sun Life its reasonable attorney fees and
15 costs. *See Schirmer Stevedoring Co. Ltd. v. Seaboard Stevedoring Corp.*, 306 F.2d 188, 194 (9th
16 Cir. 1962) (“We think that the proper rule, in an action in the nature of interpleader, is that the
17 plaintiff should be awarded attorney fees for the services of his attorneys in interpleading.”); *Trs.*
18 *of Dirs. Guild of Am.-Producer Pension Benefits Plan v. Tise*, 234 F.3d 415, 426 (9th Cir. 2000)
19 (“[T]he availability of attorneys’ fees for interpleader plaintiffs recognizes that by bringing the
20 action, the plaintiff benefits all parties by promoting early litigation on the ownership of the
21 fund, thus preventing dissipation.”). This award shall include “those fees that are incurred in
22 filing the action and pursuing the plan’s release from liability,” *Tise*, 234 F.3d at 426, which here
23 would also include the fees and costs incurred in bringing the present motion. The Court
24 particularly finds such an award appropriate where Wysong’s lack of diligence required further
25 litigation on Sun Life’s part.

1 **III. CONCLUSION**

2 For the foregoing reasons, Sun Life's motion to dismiss (Dkt. No. 22) is GRANTED. Sun
3 Life is DISMISSED from this action with prejudice. Sun Life is discharged from all further
4 liability to the Defendants-in-Interpleader with respect to the Policy proceeds.²

5 Sun Life is AWARDED its reasonable fees and costs in bringing this action and in
6 moving to dismiss. Sun Life is DIRECTED to submit an accounting of its fees within 7 days of
7 this order's issuance and to note the accounting as a third-Friday motion, *see* W.D. Wash. Local
8 Civ. R. 7(d)(3), to give Defendants-in-Interpleader an opportunity to be heard on reasonableness.

9 DATED this 9th day of March, 2017.

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13 John C. Coughenour
14 UNITED STATES DISTRICT JUDGE

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24 _____
25 ² Although the Court concluded that Wysong may not assert counterclaims in this case, the Court
26 makes no determination as to whether her potential claims based on Sun Life's negligence were
compulsory counterclaims that must have been brought in this proceeding. The parties did not
brief that issue and it was not necessary to resolve at this time.