

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NORA J. SEBORA,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE
CO., MICHELLE PETERSON ZINSER,
LEAH H. PETERSON-CZEERWONKA
and KIRSTIN PETERSON,

Defendants.

ORDER

02-C-0153-C

This is an action for declaratory relief, brought in state court by plaintiff Nora J. Sebora. Plaintiff seeks a declaration of her right to the proceeds of an insurance policy on the life of her deceased husband, John Peterson. Defendant Metropolitan Life Insurance Co. removed the action to federal court, alleging federal question jurisdiction, 28 U.S.C. § 1331, because the insurance policy at question was issued pursuant to an employee benefit plan regulated by the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461.

After the action was removed, defendant Metropolitan Life deposited the insurance proceeds into the court and was dismissed from the case. It now seeks an award of attorney

fees of \$1,376.00 and litigation costs of \$332.50, contending that such awards to the stakeholder are usual in interpleader actions. In support of its request, defendant has cited two cases, one from the Eleventh Circuit and one from the Fifth Circuit, discussing awards of attorney fees. Defendant has not cited a case on point from this circuit and I have been unable to find one.

Neither Fed. R. Civ. P. 22 nor the interpleader statute, 28 U.S.C. § 1335, makes any reference to an award of attorney fees. Those courts that have awarded fees have not generally explained why awards are proper. The usual rule in litigation is the “American rule” that parties bear their own costs of litigation in the absence of a statutory or contractual provision for fee shifting. According to Professors Wright, Miller and Kane, the practice of making awards of attorney fees is a carryover from equity courts and should be followed when the interpleading party would otherwise be forced to assume the risk of multiplicity of actions and erroneous election. 7 Charles Alan Wright et al. Federal Practice & Procedure § 1719 at 674, 682 (Civil 3d ed. 2001). Consistent with the equitable origins of the authority is the discretion the courts retain to grant or withhold awards and to determine who should bear the costs of the award. Id. at 675, 689.

In this case, defendant Metropolitan Life did not initiate the interpleader action but responded to it promptly by removing it to federal court and depositing the contested funds into the court. Equitable considerations support its request for fees and costs. It did

nothing that would undercut its claim to reimbursement for its fees or costs. It did not prolong or delay the litigation, cf. John Hancock Mutual Life Ins. v. Doran, 138 F. Supp. 47, 50 (S.D.N.Y. 1956) (insurer waited ten months after filing of adverse claims to file bill of interpleader); it did not have its own claim to any of the proceeds, cf. Beaufort Transfer Co. v. Fischer Trucking Co. 357 F. Supp. 662 (E.D. Mo. 1973) (fees denied to party bringing interpleader action who was not mere disinterested stakeholder but claimant to about 39% of fund deposited); and its claim for fees is modest and appropriate for the amount of work involved. None of the claimants to the insurance proceeds has registered any objection to defendant's requests, although they were given an opportunity to do so. Accordingly, I will award defendant Metropolitan Life \$1,376.00 in attorney fees and \$222.70 in costs for its filing fee and photocopies. Its claim for reimbursement for telephone and telecopier charges is denied.

ORDER

IT IS ORDERED that defendant Metropolitan Life Insurance Co. is awarded attorney fees in the amount of \$1,376.00 and costs in the amount of \$222.70, for a total award of

\$1598.70. The award is to be assessed against the proceeds deposited into the court.

Entered this 21st day of August, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge