

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

SHARON MONDRY,

Plaintiff,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY and
AMERIPREFERRED PPO PLAN,

Defendants.

ORDER

06-cv-320-bbc

Under the September 22, 2010 judgment in this case, defendants American Family Mutual Insurance Company and AmeriPreferred PPO Plan were ordered to pay plaintiff statutory penalties in the amount of \$9,270 and \$603.27 for violation of their fiduciary duty. Dkt. #140. By an order dated February 16, 2011, defendants were ordered to pay plaintiff \$37,500 for attorney fees and \$1,917.83 for costs in the action. Dkt. #174. Defendants have attempted to pay the order and judgment by issuing checks to plaintiff, but plaintiff rejected the payments and returned the checks.

Now before the court is defendants' motion under Fed. R. Civ. P. 67 to deposit with the clerk of courts all funds due plaintiff pursuant to the final judgment and order for costs

and attorney fees. Dkt. #183. Additionally, defendants seek an order directing the clerk of court to satisfy the order and judgment for costs and fees upon deposit of funds with the court. Defendants wish to deposit the funds with the court in order to satisfy the judgments and to prevent additional interest from accruing on the judgments. Plaintiff does not oppose the motion, so long as it is clear that any deposit with the court is not a payment to plaintiff, does not affect her appellate or other rights and does not represent a settlement.

I will grant defendants' motion. Rule 67 of the Federal Rules of Civil Procedure allows a party "by leave of court" to deposit a monetary judgment into the registry of the court. Specifically, Rule 67 states that "[i]f any part of the relief sought is a money judgment or the disposition of a sum of money . . . , a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit." Fed. R. Civ. P. 67.

The purpose of Rule 67 is to relieve the depositor of responsibility for a fund in dispute. Alstom Caribe, Inc. v. George P. Reintjes Co., 484 F.3d 106, 113 (1st Cir. 2007) ("The core purpose of Rule 67 is to relieve a party who holds a contested fund from responsibility for disbursement of that fund among those claiming some entitlement thereto."); Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, 12 Federal Practice and Procedure § 2991 (2010). Thus, it has most often been applied in cases in which a

debtor seeks to satisfy a judgment over which others have conflicting claims. E.g. Garrick v. Weaver, 888 F.2d 687, 694 (10th Cir. 1989); Kalmanovitz v. G. Heileman Brewing Co., 649 F. Supp. 638, 642 (D. Del. 1986) (Rule 67 is “used to give a judgment debtor the opportunity to deposit a judgment over which others had conflicting claims into the registry of the court to obtain a satisfaction of that judgment”); United States Overseas Airlines, Inc v. Compania Aerea Viajes Expresos de Venezuela, 161 F. Supp. 513, 515-16 (S.D.N.Y. 1958) (judgment debtor was ready, willing and able to pay judgment but creditors of judgment creditor were making conflicting claims to fund).

Although there are not multiple creditors making claims on the judgment in this case, plaintiff has refused to accept the judgment because she contends that she is entitled to more. Meanwhile, defendants have a legitimate interest in satisfying the judgment and preventing interest from accruing. Kotsopoulos v. Asturia Shipping Co., 467 F.2d 91, 92 (2d Cir. 1972) (upon payment of amount of judgment into court, clerk of court enters satisfaction of judgment and defendants are released from further liability on judgment); In Matter of Arbitration between Apex Towing Corp. v. Trading Corp. of Pakistan, 1986 WL 10713, *1 (S.D.N.Y. Sept. 18, 1986) (interest on judgment stops running against depositing party “upon payment into court of amount of judgment and interest to date of such payment”). Under such circumstances, I conclude that it is appropriate to allow defendants to deposit the amount of the order and judgment into the court. Authorizing the fund to

be deposited into court will not affect plaintiff's rights to the amount of the judgment or her rights on appeal.

ORDER

IT IS ORDERED that the defendants American Family Mutual Insurance Company's and AmeriPreferred PPO Plan's motion under Fed. R. Civ. P. 67, dkt. #183, to deposit the amount of the judgment, dkt. #140, and order for costs and fees, dkt. # 174, is GRANTED. The instrument to be deposited into the court shall be made payable to "Clerk, U.S. District Court." Interest on the judgments shall stop running upon payment into court of the amount of the judgments and interest to date. The clerk of court shall enter satisfaction of the judgments upon receipt of the payments.

Entered this 9th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge