

How to Effectively Manage Competing Death Benefit Claims

LEGAL
NEWS

A Creative Alternative to Classic Interpleaders

Robert R. Pohls, Pohls & Associates
10940 Wilshire Boulevard, Suite 1600, Los Angeles, California 90024
Tel: 310.694.3092 / Fax: 310.694-3093
www.califehealth.com

INTRODUCTION

In theory, interpleaders are simple. There is no question that a benefit is payable, and there usually is no dispute about the amount that should be paid. The only obstacle to making a prompt payment is a set of competing claims that, in most cases, the insurer does not have to resolve. In light of the competing claims, the insurer can instead pay the benefit to the court and force the claimants to litigate (or settle) their differences without further involvement by the insurer.

In practice, interpleaders are messy. For several reasons, they can be particularly messy when they involve the proceeds of a life insurance policy. For example, the claimants almost always are highly emotional, especially if they are still grieving over the insured's death. If the insured's intent to benefit one claimant seems well-documented, that claimant may quickly dismiss a competing claim as a posthumous attack on the insured's judgment. If a claimant views the beneficiary designation as a symbol of the insured's desire to provide for him or her, a competing claim sometimes will be viewed as a challenge to their beliefs about how much the insured loved them. When that challenge is made by another family member, there may be some deep-rooted and pre-existing animosity that prompts both claimants to oppose the other out of spite, if not some genuine suspicion that the other claimant tried to take advantage of the insured shortly before his or her death.

Managing those circumstances can be difficult. Indeed, the competing claimants often have no legal counsel, do not appreciate the legal "technicalities" of each other's positions and – quite simply – are not ready to listen to each other.

The traditional approach – filing a complaint in interpleader – eventually forces the claimants to address each other's claims. However, it also adds fuel to the fire by forcing the claimants to become unwilling parties to a lawsuit. When they hire attorneys and realize that the attorneys

need to be paid — either out of the proceeds or independently — competing claimants often resent the insurer for filing a lawsuit. In turn, they tend to be uncooperative about letting the insurer conclude its role in the lawsuit and stubborn when asked to stipulate that some portion of the proceeds be used to reimburse the insurer for its litigation expenses. Too often, then, the result is a complicated and expensive lawsuit that consumes an inordinate amount of time and energy to manage.

As explained in this article, there is an alternative that will promote the chances of promptly resolving benefit disputes without litigation. When properly executed, it also will focus the competing claimants on the dispute that separates them, reinforce the insurer's role as a disinterested stakeholder, and ultimately maximize the insurer's chances of concluding any related litigation in a timely and cost-effective manner.

Step 1: Offer to Help the Competing Claimants.

In a perfect world, an insurer can promptly make payment to the person(s) its policy identifies as the primary beneficiary without fear that someone else may claim those proceeds for themselves. When a competing claim arises, though, holding onto the proceeds indefinitely may not be a workable solution. See, e.g., *United Investors Life Ins. Co. v. Grant*, No. 05-CV-01716-MCE-DAD (E.D.Cal. 2/15/2007) [awarding \$1 million in extra-contractual damages for delay in interpleading proceeds]. The insurer facing competing claims therefore must make a hard choice: (1) pay the proceeds to one claimant and risk having to pay the proceeds a second time to the competing claimant; (2) ask the claimants to reach an agreement about how the proceeds should be paid; or (3) hire outside counsel to file and prosecute an action in interpleader.

Continued on next page.

Committee Chairs

Administrative Management Committee

Karen Riendeau, FLHC, ARA, ACS
Munich American Reassurance Company

Annual Conference Team

Lester L. Bohnert, ALHC, FLMI
Modern Woodmen of America

Disability Committee

Co-chairs

Chad Cunningham, FLMI, ACS
Munich American

Robert Leveque
UNUM

Education Committee

Co-chairs

Jim Brown, FLMI, ALHC, HIA, ACS
Swiss Re Life & Health America Inc.

Candice McGrath, ALHC, HIA
UNUM

Judy Skloney, ALHC, ACS, LTCP
Combined Insurance Company

Executive Committee

Antoinette Mortensen, ALHC, ACS, HIA
Prudential Financial

Finance Committee

Marlon D. Nettleton, FLHC, FLMI, ACS, CLU, ChFC, HIA, FFSI
State Farm Insurance Companies

Fraud and Claim Abuse Committee

Walter M. Boyd, ALHC, JD
New York Life

Health Committee

Keith Winfield, FAHM
CareSource

Law Committee

Co-chairs

David Koth, JD, ALHC, CLU, ChFC, FLMI, CPCU
State Farm Insurance Companies

Annette M. Tephly, JD, FLHC, FLMI, AAPA, ARA
Modern Woodmen of America

Life Committee

Erin Worthington, ALHC, ACS
Allstate Financial

Marketing & Strategic Planning Committee

Co-chairs

Lester L. Bohnert, ALHC, FLMI
Modern Woodmen of America

Dave W. Grannan, CFE
Golden Rule Insurance Company

Nominating Committee

Lester L. Bohnert, ALHC, FLMI
Modern Woodmen of America

Oversight Committee

Marlon D. Nettleton, FLHC, FLMI, ACS, CLU, ChFC, HIA, FFSI
State Farm Insurance Companies

Reinsurance Committee

Co-Chairs

Mary Beaufait, ACS, AIRC, ARA
Hanover Life Reinsurance Company

Lucille Chatham
Munich Re Group

An insurer which has not received notice of a competing claim to the subject proceeds may be able to avail itself of the first option. Indeed, many states have statutes which fully discharge an insurer that pays the named beneficiary before written notice of a competing claim is received in its home office. See, e.g., *Cal. Ins. Code* §10172. However, proceeding in that way still involves some risk that the insurer will be forced to join a lawsuit, even if only to assert and establish its statutory right to be discharged.

Most insurers therefore choose to interplead, sometimes after inviting the claimants to communicate with each other about their competing claims and exhaust the possibility of reaching some agreement about how the proceeds should be paid. Usually, though, the competing claimants are too emotional to engage in meaningful settlement discussions. Likewise, unless they receive good legal counsel, the competing claimants usually fail to appreciate that they will be forced to participate in expensive litigation if a mutually acceptable agreement cannot be reached. When left to their own devices, then, competing claimants rarely are able to put aside their differences and agree to a compromise that will yield them anything less than full payment.

In that situation, the competing claims would greatly benefit from the involvement of a mediator who is familiar with insurance benefit disputes, understands how interpleaders are handled in the courts, and can help the competing claimants see the wisdom of reaching an agreement about how the proceeds should be paid.

To that end, an insurer which faces competing claims should consider retaining outside counsel who is equally skilled at mediation and litigation. The insurer should then instruct its retained counsel to offer his or her services as a mediator to the competing claimants – at no cost to them – before filing a complaint in interpleader.

Proceeding in such a way offers the insurer numerous advantages. First, it reminds the competing claimants that the only obstacle to the insurer's payment of the proceeds is a dispute between them in which the insurer has no interest. Second, it provides the insurer with an opportunity to explain (through the mediator) that the alternative to a negotiated resolution is litigation that will prove costly to both claimants. Finally, it makes the insurer part of the competing claimants' solution by giving them access to a knowledgeable intermediary who can help them explore the possibility of resolving their differences.

Step 2: Reinforce Your Role as a Disinterested Stakeholder.

Mediation is a largely unregulated process. Nevertheless, an attorney who will be handling an interpleader action in the absence of a settlement should not mediate the underlying benefit dispute until his or her role has been clearly explained to the competing claimants.

Those disclosures can (and should) be made to the claimants in the initial written communications about the benefit dispute resolution program in which they are being asked to participate. Specifically, each claimant should receive a written communication which identifies the attorney the insurer has retained in connection with the benefit dispute, explains that the insurer has asked the attorney to mediate their dispute, and explains that the same attorney will be representing the insurer in any litigation that may take place after the mediation. To eliminate any claim that the attorney has a conflict of interest, the insurer should also formally offer to pay for the mediation and waive any claim against the proceeds for the related costs. In that way, the written documentation will establish that the mediation will not involve any claim by the insurer but, instead, only the competing claims being made to the proceeds.

After those disclosures have been made, the claimants should be asked to agree in writing that the insurer's attorney may conduct the mediation. If the parties refuse to mediate under those circumstances, the insurer will have lost only the modest cost associated with making those disclosures. At the same time, though, it will have gained another set of documents that its attorney can use in an interpleader action to establish that the only obstacle to the insurer's payment of the proceeds is a dispute between the claimants in which the insurer has no interest.

If the parties agree to mediate and fail to resolve their differences, the insurer will have lost some additional costs associated with the attorney's service as a mediator. Importantly, though, the insurer will have gained the opportunity for its attorney to communicate directly with the competing claimants about the consequences of a failed mediation: specifically, the likelihood that an interpleader action will be filed, the costs associated with serving the summons and complaint, and the wisdom of stipulating to a judgment in interpleader that discharges the insurer before the litigation expenses for which it will seek reimbursement become substantial. Even in the absence of a settlement, then, the

competing claimants' participation in a benefit dispute resolution program that is sponsored by the insurer can make any related litigation less costly and hasten the insurer's dismissal from the case.

Finally, if the parties agree to mediate and reach a resolution, the insurer's attorney can contemporaneously memorialize their agreement in a set of documents that is acceptable to the insurer. He or she also can forward those documents directly to the insurer so that the proceeds can promptly be paid in accordance with the claimants' agreement. Thereafter, the insurer's file regarding the competing claims can be closed without having to resort to the courts.

Step 3: Be Prepared to Follow-Through.

If the competing claimants cannot (or will not) resolve their differences — whether by themselves or with a mediator's assistance — the insurer should be prepared to proceed with an action in interpleader. Under such circumstances, there is no reason for the insurer's attorney to file and serve the complaint, then allow the competing claimants time to reassess the landscape of their disputes. Rather, once a complaint is filed, the insurer's attorney should serve it on the competing claimants, along with a proposed stipulation which provides for the entry of both a judgment in interpleader and an order directing that a portion of the proceeds be used to reimburse the insurer for the attorneys' fees and costs associated with filing and serving its complaint.

If the proper groundwork was laid during the mediation, the competing claimants should realize that their best chance of economically concluding the interpleader action involves signing that stipulation. In that event, the insurer will have ended its involvement with the dispute in an extraordinarily prompt (and cost-effective) fashion. If a stipulation that makes the insurer whole (or nearly so) is not forthcoming, though, the insurer's attorney should promptly file a formal motion that seeks the same relief, as well as reimbursement for any additional expenses the insurer incurs for the attorney's work on that motion. See, e.g., *Cal. Code of Civ. Pro.* §386.6.

In most cases, copies of the non-privileged letters and other documents relating to the insurer's benefit dispute resolution program should be filed in support of that motion. Indeed, each of those documents should be designed to clarify that:

Continued on next page.

- 1) The insurer explained to the competing claimants that the only obstacle to its payment of the proceeds is a dispute between them and in which the insurer has no interest;
- 2) The insurer explained to the claimants that the alternative to a negotiated resolution is costly litigation, then paid for (or at least offered to pay for) a mediator to help them resolve their differences; and
- 3) Despite the insurer's efforts to help them resolve their differences, the claimants still make competing claims to the proceeds.

Adding documentation about the claimants' refusal to stipulate at the outset of the case to a judgment in interpleader which would have preserved more of the proceeds also should maximize the chances of getting a judgment in interpleader that more fully reimburses the insurer for its litigation expenses.

Step 4: Prepare a Litigation Budget with Confidence.

Because the statutes often provide a mechanism by which they can eventually recover some portion of the related expenses, many insurers are content with paying their retained counsel an hourly rate to file and prosecute an interpleader action. To be sure, any good attorney who is retained to file and prosecute an interpleader action works hard to minimize the time and expense associated with successfully concluding it. Despite those efforts, though, most insurers can expect to receive monthly billing statements for varying and unpredictable amounts for so long as it takes to secure a judgment in interpleader.

There is, however, a way to enable insurers to budget a sum certain for all of the work its attorney must perform to resolve each claim involving competing claimants: pay their retained counsel a flat fee for both their efforts to mediate the claimants' dispute and a specified set of tasks designed to secure a judgment in interpleader.

Such an arrangement would give the attorney an extra incentive to help the competing claimants resolve their differences through mediation. If a negotiated resolution cannot be had, a flat fee arrangement also should prompt the attorney to minimize the additional time invested in the case by promptly seeking a judgment in interpleader. If the attorney requires more than

the budgeted time to secure a judgment that fully discharges the insurer, the fee arrangement could be structured to let the attorney recover additional compensation from any proceeds the judgment awards to the insurer. Absent exceptional circumstances, then, the attorney will be fairly compensated and the insurer will not be asked to write more than one check for the attorney's fees and costs.

CONCLUSION

If properly structured and executed, the benefit dispute resolution program outlined above can let insurers write just one check to compensate their retained counsel, then effectively wash their hands of the headaches normally associated with competing benefit claims. At the same time, it allows an insurer to don a white hat by offering competing claimants a cost-effective means of ending their dispute before they must hire lawyers or participate in a lawsuit.

By reinforcing the notion that the insurer is a disinterested stakeholder who stands ready to pay the proceeds once the claimants resolve their dispute, such a benefit dispute resolution program also will promote the insurer's chances of concluding any interpleader action promptly and on economically favorable terms. A flat fee arrangement also will give that the insurer's retained counsel an extra interest in efficiently pursuing that result, while ensuring both that the attorney is fairly compensated and that the expenses associated with the insurer's handling of the competing claims are fixed.

ABOUT THE AUTHOR

Rob Pohls is the Managing Attorney of *Pohls & Associates*, a California law firm that he established in 1999 to represent life, health, disability and long term care insurance companies in bad faith, ERISA and other complex forms of litigation. A litigator by trade, Rob has earned a national reputation for his distinctive ability to achieve favorable outcomes in disputes that involve challenging facts and/or novel legal questions. However, he is equally skilled at helping his insurance clients manage their claims litigation and, when possible, avoid litigation altogether.

To find out more about Rob, his firm's practice, or his firm's Fixed-Fee Benefit Dispute Resolution Program, visit their website at www.califehealth.com or send him an e-mail at rpohls@califehealth.com. ■

If You Have Not Already Made Your Hotel Reservations for the 2010 Annual Education Conference, Please Do So Today!



The room rate for this year's conference is \$199 plus tax.

Please make your room reservations early to ensure you are able to obtain the ICA group rate and to guarantee a room at the Austin Renaissance!

To take advantage of the special ICA rate, reservations must be made by August 31, 2010.

Please call the Renaissance Austin Hotel directly at 800-468-3571, be sure to mention the ICA Rate. You can also make your reservation on-line directly with the hotel by visiting the Annual Conference page of the ICA website.

About the Facility

Unique, distinct, hi-tech, luxurious – all words that describe the Austin Renaissance. The hotel is perfectly situated in the Arboretum, which features 95-park-like acres of more than 50 specialty shops, movie theatres, and nature trails. From the cutting-edge Fitness Studio to Banderas-A Texas Bistro, the hotel will delight you!