



## THE HORSE IS STILL IN THE BARN: INTERPLEADER ACTIONS IN THE CONTEXT OF RETAINED ASSET ACCOUNTS

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Interpleader actions by insurers faced with adverse claimants to life insurance policy proceeds are commonplace. Insurers typically file such suits before paying the proceeds, while they remain stakeholders faced with rival claims. But can an insurer obtain relief in an interpleader action when the life insurance proceeds have been paid – before the insurer learns there are adverse claimants to the proceeds – into a Retained Asset Account? In a case of first impression, the United States District Court for the Eastern District of California in [\*Primerica Life Insurance Company v. Davila\*, No. 1:10-CV-1924 AWI SMS, 2011 WL 202437 \(E.D. Cal. Jan. 19, 2011\)](#) ruled that an insurer can do so. Specifically, the court denied a motion to dismiss by one of the adverse claimants who argued that Primerica was not “a stakeholder holding a fund to which there are competing interests.” [\*Id.\* at \\*2.](#)

### Retained Asset Accounts

“Retained Asset Accounts,” also known as “Total Control Accounts” and other monikers, are “vehicles life insurers use to hold beneficiaries’ benefits until the beneficiaries withdraw cash with checks or payment cards.”<sup>2</sup> [\*Clark v. Metro. Life Ins. Co.\*, No. 3:08-cv-00158-LRH-VPC, 2010 WL 3636194 \(D. Nev. Sept. 10, 2010\)](#) provides a useful explanation of how such accounts work. In that case, MetLife offered a Total Control Account Money Market Option (TCA) as a settlement option for the beneficiary of a life insurance policy. [\*Id.\* at \\*1.](#) MetLife’s life insurance policy stated that: “[u]nless otherwise requested, we may pay the insurance proceeds when the insured dies, or the cash value on surrender of the policy in one sum, or by placing the amount in an account that earns interest. The payee will have immediate access to all or part of the account.” [\*Id.\* at \\*2.](#) The TCA agreement between the beneficiary and MetLife stated that the TCA was:

a settlement option at MetLife . . . which credits money market interest rates on life insurance, annuity, and matured endowment proceeds, and other amounts payable to the Account holder.

. . . You have total control of the money in your Account in that you can make withdrawals of \$250 or more anytime, without penalty or loss of interest. MetLife fully guarantees the principal and all of the interest you have earned.

[\*Id.\*](#)

### *Primerica Life Ins. Co. v. Davila*

In [\*Primerica Life Ins. Co.\*](#), the insurer issued a life insurance policy to Jill Davila (“Jill”) that insured her and Larry Davila (“Larry”), her husband. [\*Primerica Life Ins. Co.\*, No. 1:10-CV-1924 AWI SMS, 2011 WL 202437, at \\*1.](#) Jill was the primary insured and the beneficiary of the policy on Larry’s life. Because they initiated divorce proceedings, Jill and Larry sent a letter to the insurer requesting that Larry be named the owner and new primary insured, and that the insurer retroactively delete coverage on Jill’s life. Larry also submitted a policy change application to name him the primary insured, to change the beneficiary from Jill to Larry’s mother, Maycelle Davila (“Maycelle”), and to delete coverage on Jill’s life. One month later, Larry died. Several weeks after his death, Maycelle submitted a claim for the policy benefits and chose to be paid through a “Primerica Estate Account” (“Account”). The next month, Primerica approved Maycelle’s claim for the benefits and opened the Account in Maycelle’s name, in the amount of “\$500,000 plus applicable interest.” [\*Id.\*](#)

Three days after Primerica informed Maycelle that it approved the claim and opened the Account, Jill’s attorney informed Primerica that Jill had an interest in the death benefits. The attorney asserted that Jill and Larry, who were in the process of divorcing, “were prohibited from making changes to the Policy without Court approval, any changes to the Policy that did not benefit Jill or her children were disputed as a violation of court orders, and any distribution of the Policy proceeds were to be held in trust.” [\*Id.\*](#) Approximately one week later, Primerica froze the Account.

Primerica then filed an interpleader action pursuant to Rule 22 of the Federal Rules of Civil Procedure ([FED.](#)

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<sup>2</sup> Allison Bell, *Retained Asset Account Frenzy Continues*, NAT’L UNDERWRITER, July 30, 2010.

R. Civ. P. 22), deposited \$508,690.58 in the registry of the court, and sought an order determining “the proper recipient of the funds.” *Id.* Maycelle moved to dismiss Primerica’s Complaint, pursuant to Rule 12(b) (6) ([FED. R. CIV. P. 12](#)), arguing that Primerica was not a stakeholder that held a fund subject to competing interests because it already paid the benefits into an account that Maycelle owned and controlled. Maycelle requested dismissal and repayment of the funds.<sup>3</sup>

The court denied Maycelle’s motion, reasoning that:

Primerica maintained control of the stake and it deposited the stake with the Court. The existence of Maycelle’s Primerica Account does not defeat Primerica’s right of interpleader. Courts have held that the interpleading of funds held in an account, even in an account held by one of the competing claimants, is appropriate.

*Id.* at \*2. “Specifically, [Primerica] was the custodian of those funds by virtue of Maycelle depositing those funds in a Primerica Estate Account.” *Id.* at \*3; *contra Lincoln Nat’l Life Ins. Co. v. Barton*, 250 F.R.D. 388 (S.D. Ill. 2008) (court dismissed [Rule 22](#) interpleader action because life insurer already paid the death benefits and retained no control over the benefits, noting that if insurer “were unsure of whether it should pay the proceeds . . . it should have filed an interpleader action *before* it paid out the money”). In addition, the court noted that it “has not found a case that is directly on point.” The court was “unaware of a case in which an insurance company has paid a claim, but

the proceeds were then invested in a new account with the insurance company . . . [but] believ[ed] that this case [was] properly brought as an interpleader action.” *Id.* The court distinguished all of the cases upon which Maycelle relied, noting that in each of those cases, “the would-be-stakeholder paid one of the claimants and no longer exercised any control over the funds in any form . . . [and] had no further connection to the proceeds whatsoever.” *Id.* The court analogized the facts of the case to the situation of a bank facing adverse claims to funds held in one of its accounts. See [T.D. Bank, N.A. v. JP Morgan Chase Bank, N.A., No. 10-CV-2843 \(JG\) \(ARL\), 2010 WL 3310262, at \\*6 \(E.D.N.Y. Aug. 19, 2010\)](#) (court denied motion to dismiss interpleader action brought by bank holding funds in an account and permitted bank to deposit the contested funds with the court); see also [Aaron v. Mahl, 550 F.3d 659 \(7th Cir. 2008\)](#) (Seventh Circuit affirmed granting of interpleader to Merrill Lynch, which held IRA accounts on which a state court had placed a “freeze order”).

### Conclusion

Given that “Retained [A]sset [A]ccounts have existed since the early 1980s,”<sup>4</sup> it is surprising that courts have not addressed this specific set of facts previously. Possible explanations are that many insurers simply have not pursued interpleader actions in this context, or that if they have, they have gone unchallenged. Regardless, insurers should be aware of the *Primerica Life Ins. Co.* decision and any progeny to follow. ⚖️

<sup>3</sup> Because she made another argument – that Primerica had no reasonable fear of multiple liability – for the first time in her reply brief, the court refused to address it. *Id.* at \*2 n.1.

<sup>4</sup> ACLI Statement To The NAIC On Retained Asset Accounts, American Counsel of Life Insurers (Aug. 16, 2010), <http://www.acli.com/ACLI/Newsroom/News+Releases/NR10-040.htm>.

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