**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**

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| **DOE 6, FATHER, *et al.*,**<br><br>**Plaintiffs,**<br>**v.**<br><br>**WASHINGTON HEBREW CONGREGATION, INC., *et al.*,**<br><br>**Defendants.** | **2019 CA 002488 B**<br>**Judge Alfred S. Irving, Jr.**<br>**Next: Pretrial Conference**<br>**Date: March 1, 2023** |
| **PARENT 1-A, *et al.*,**<br><br>**Plaintiffs,**<br>**v.**<br><br>**WASHINGTON HEBREW CONGREGATION, INC.,**<br><br>**Defendant.** | **2019 CA 003193 B**<br>**Judge Alfred S. Irving, Jr.**<br>**Next: Pretrial Conference**<br>**Date: March 1, 2023** |

**ORDER**

Before the Court is Defendant Washington Hebrew Congregation's *Opposed Motion to Interplead and Deposit Funds with the Court and Be Discharged as a Party*, filed on January 10, 2023. On January 24, 2023, Plaintiffs filed an Opposition. Defendant Deborah Schneider Jensen ("Jensen") submitted a response to Plaintiffs' opposition on January 31, 2023. Defendant Washington Hebrew Congregation, Inc. ("WHC") filed a Reply on January 31, 2023.

In short, WHC seeks an order, pursuant to Rules 22 and 67 of the Superior Court Rules of Civil Procedure, authorizing the interpleader of an amount of funds equal to WHC's remaining maximum liability as established in the Court's October 13, 2022 Order, *i.e.*, $11 million less any funds already paid or committed to be paid. *See generally* Motion. WHC seeks to deposit

that amount into the Court Registry and then be discharged from this case. *Id.* The Court has considered the pleadings and will deny the Motion.

The Court heard brief arguments on the motion during a February 8, 2023 status hearing.

## I. Standard

Rule 22 of the Superior Court Rules of Civil Procedure governs interpleader. It provides, in full, as follows:

> **(a) Grounds.**
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> > **(1) By a Plaintiff.** Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Service of process within this rule must be accomplished in the manner and within the time limits provided by Rule 4. Joinder for interpleader is proper even though:
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> > > **(A)** the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or
> > >
> > > **(B)** the plaintiff denies liability in whole or in part to any or all of the claimants.
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> > **(2) By a Defendant.** A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.
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> **(b) Relation to other rules and statutes.** This rule supplements—and does not limit—the joinder of parties allowed by Rule 20.

Rule 67 of the Superior Court Rules of Civil Procedure permits Parties to deposit money into the court registry. It provides, in full, as follows:

> **(a) Depositing Property.** If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, 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.
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> **(b) Investing and withdrawing funds.** Money paid into court under this rule must be deposited and withdrawn in accordance with D.C. Code § 11-1723 (b) (2012 Repl.) or any like statute.

As an initial matter, Rule 22 is nearly identical to the corresponding provision in the Federal Rules of Civil Procedure. Super. Ct. Civ. R. 22 comment to 2017 amendments ("This rule is substantially similar to Federal Rule of Civil Procedure 22, as amended in 2007. . . ."). Indeed, the operative sections of Rule 22, at issue here, are identical. *Id.* "When one of our procedural rules is nearly identical to or the functional equivalent of a federal procedural rule, we look to cases interpreting the federal rule for guidance on how to interpret our own." *Estate of Patterson v. Sharek*, 924 A.2d 1005, 1009-10 (D.C. 2007); *Radbod v. Moghim*, 269 A.3d 1035, 1041 n.1 (D.C. 2022) ("[T]he interpretive gloss placed upon the federal rule by the federal courts guides our construction of the local rule."). "[B]oth the advisory note and the cases interpreting the federal rule provide guidance for the proper interpretation of the Superior Court rule." *Springs v. United States*, 311 A.2d 499, 500 (D.C. 1973). The Court therefore turns to the commentary and case law interpreting the corresponding federal rule to guide its interpretation and application of Rule 22 to decide WHC's requested relief.

An action for interpleader "is proper where a party is exposed to multiple claims on a single obligation, and wishes to obtain adjudication of such claims and its obligation in a single proceeding." *Star Ins. Co. v. Cedar Valley Express, LLC*, 273 F. Supp. 2d 38, 40 (D.D.C. 2002). It is "an equitable remedy that may be used to achieve an orderly distribution of a limited fund[.]" *Id.* The rule "is to be construed liberally." *United States v. Am. Film Inst.*, 79 F.R.D. 374, 376 (D.D.C. 1978). Its purpose "is not only to protect against multiple liability, but also to allow plaintiff to avoid the vexation of multiple lawsuits." *Id.* at 377. In addition, the party seeking interpleader bears the burden of proving its entitlement to the equitable remedy. *Dunbar v. United States*, 502 F.2d 506, 511 (5th Cir. 1974). "A court has broad discretion to order

interpleader relief[.]" *Metro. Life Ins. Co. v. Barbour*, 555 F. Supp. 2d 91, 93-95 (D.D.C. 2008).[1]

## II. Discussion

WHC argues that interpleader is "appropriate in this case" because WHC, as a disinterested stakeholder, is willing to tender in full to the Court Registry its "maximum liability[,]" based on this Court's October 13, 2022 Order capping liability at the extent of insurance coverage. Motion 5. WHC argues that it is "appropriate for the Court to administer the Fund and for the Plaintiffs to divide the Fund among themselves." *Id.* at 6. And, because "WHC has no interest in the allocation of the Fund among the remaining Plaintiffs[,]" it should be discharged from the case. *Id.* This course, according to WHC, would "obviate the need" for trial and save valuable judicial resources. *Id.* at 7.

Plaintiffs counter that the Motion is substantively and procedurally deficient. *See generally* Opposition. First, "WHC should be prohibited from taking advantage of interpleader relief" because it is a wrongdoer as it relates to the subject matter of the case. *Id.* at 6. Second, WHC is not a disinterested stakeholder. *Id.* at 7. Third, WHC cannot "demonstrate its control over the remaining insurance policy proceeds." *Id.* at 8. Fourth, there is "not a single identifiable fund to distribute," because Plaintiffs intend to appeal this Court's October 13, 2022 Order that capped WHC's damages at the extent of insurance coverage. *Id.* at 10. Fifth, interpleader is procedurally improper where the Parties whom the moving Party seeks to join "already commenced litigation in a single proceeding[.]" *Id.* at 12. Sixth, "WHC's unreasonable delay [in bringing this Motion] is reason alone to deny" it. *Id.* at 13. Seventh, a granting of

[1] "[A]cceptance of an interpleader action is not mandatory, and may be denied for equitable reasons." 44B AM. JUR. 2d Interpleader § 18.

WHC's request would not "eliminate the need for a trial[,]" and thus would not save judicial resources. *Id.* at 14.

WHC replies that interpleader is, in fact, substantively and procedurally proper because (1) WHC has no liability to Plaintiffs independent from the "fund" that represents its maximum policy coverage pursuant to this Court's Order capping liability; (2) WHC is "perfectly indifferent" to how that fund is divided among remaining Plaintiffs; (3) WHC is entitled to be discharged from the case once it tenders the fund to the court registry; (4) it is procedurally proper to request interpleader by motion when all relevant individuals are already parties to the action; (5) WHC did not delay in bringing this motion, as it has been actively engaged in settlement discussions with the remaining Plaintiffs; and (6) because "there is a limit on WHC's liability and WHC is offering the full amount that remains[,]" a trial would be unnecessary were the Court to grant its motion. *See generally* Reply.

The Court agrees with Plaintiffs. Interpleader is improper and would indeed be unprecedented given the facts of this case. The balance of the equities does not favor WHC's requested relief, and the Court will therefore exercise its discretion and deny the motion. A brief analysis follows.

**A. The purpose of interpleader is not implicated.**

"Interpleader is the means by which an innocent stakeholder, who typically claims no interest in an asset and does not know the asset's rightful owner, avoids multiple liability by asking the court to determine the asset's rightful owner." *In re Mandalay Shores Coop. Hous. Ass'n Inc.*, 21 F.3d 380, 383 (11th Cir. 1994). It is intended to protect against "a risk of inconsistent claims to the property . . . against the stakeholder that exceed the value of the property" and "permits the stakeholder to join all claimants and efficiently resolve their claims to

a corpus in a single forum and proceeding." *AmGuard Ins. Co. v. SG Patel & Sons II LLC*, 999 F.3d 238, 244 (4th Cir. 2021). Its purpose is "not only to protect against multiple liability, but also to allow plaintiff to avoid the vexation of multiple lawsuits." *Am. Film Inst.*, 79 F.R.D. at 376; *accord Bradley v. Kochenash*, 44 F.3d 166, 168 (2d Cir. 1995) (stating that "the goal of interpleader is to protect plaintiffs from multiple lawsuits involving singular liability"). Interpleader is "a joinder device by which all of those who claim or may claim some interest in a particular fund, known as the 'stake,' may be joined in one action and there assert and litigate their claims against the fund." 44B AM. JUR. 2d *Interpleader* § 1 (2023). Because of its purpose of protecting stakeholders from the risk of inconsistent judgments on finite property, "a stakeholder who is not subject to multiple adverse claims against a single fund or liability may not maintain an interpleader action." 44B AM. JUR. 2d *Interpleader* § 10 (2023).

The very purpose of Rule 22 is not implicated here, where all parties with claims to the property are already consolidated in a single action. There is no risk of inconsistent judgments and WHC is not exposed to multiple liability. There is no need to avoid the "vexation of multiple lawsuits." Indeed, Plaintiffs—*i.e.*, all claimants to whom WHC is potentially liable—are already joined in a single proceeding. WHC, therefore, does not properly invoke the equitable protection that interpleader is intended to provide.

**B. WHC is not a disinterested stakeholder.**

Because interpleader is an equitable action, the defense of unclean hands "could operate to prevent resolution of the lawsuit." *Am. Film Inst.*, 79 F.R.D. at 376. The party seeking interpleader relief "must not have or claim any interest in the subject-matter" and "must have incurred no independent liability to either of the claimants; that is, he must stand perfectly indifferent between them, in the position merely of a stakeholder." *Morgan v. Kraft*, 285 F. 906,

908-09 (D.C. Cir. 1922). Indeed, "[i]t is the general rule that a party seeking interpleader must be free from blame in causing the controversy, and where he stands as a wrongdoer with respect to the subject matter of the suit or any of the claimants, he cannot have relief by interpleader." *Farmers Irrigating Ditch & Reservoir Co. v. Kane*, 845 F.2d 229, 232 (10th Cir. 1988); *accord Network Sols., Inc. v. Clue Computing, Inc.*, 946 F. Supp. 858, 861 (D. Colo. 1996) (stating that the court "will not allow [the interpleading party] to use an interpleader action to invoke the equitable jurisdiction of this Court in order to escape adjudication of its contractual duties, and possible liability"); *Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830, 852 (Tex. 2018) (finding that "[i]nterpleader is not a vehicle to allow an interested party—an alleged tortfeasor/defendant—to escape the burdens of litigation").

WHC is not an indifferent stakeholder. Its argument claiming as much is belied by its actions in this matter: vigorously defending itself in this litigation, engaging in extensive settlement discussions (including evaluating how much of the fund to offer to each Plaintiff family), and, of course, ardently denying the claims against it. Furthermore, WHC has indeed "incurred independent liability" to the claimants. And, it is plainly a "wrongdoer with respect to the subject matter of the suit" and the claims against it. This is not a case where a disinterested stakeholder has been "forced to take the personal risk of evaluating" competing, adverse claims. 44B AM. JUR. 2d *Interpleader* § 1; *cf. DaimlerChrysler Corp. Healthcare Benefits Plan v. Durden*, 448 F.3d 918, 920-21 (6th Cir. 2006) (evaluating trial court's application of conflict of laws principles in determining the lawful surviving spouse entitled to pension benefits in interpleader action brought by pension plan against two spouse-claimants). Therefore, the equitable relief of interpleader is not available to WHC.

**C. WHC is not in control of the funds at issue.**

The party seeking interpleader relief must be "in control of [the] contested property[.]" *Comm. Union Ins. Co. v. United States,* 999 F.2d 581, 583 (D.C. Cir. 1993); *Star Ins. Co.* v. *Cedar Valley Express, LLC*, 273 F. Supp. 2d 38, 41 (D.D.C. 2002) **(**holding that the interpleading party must "have custody of the disputed property"). Where the interpleading party does "not maintain any control over the insurance proceeds" but is "merely the beneficiary of an insurance policy owned by" the insurer, that party does not "have control over the property or fund to which claims are being made," and therefore, cannot move to interplead. *Gaballa v. Tanner*, No. 4:11-CV-1718, 2013 U.S. Dist. LEXIS 83839, at *9 (M.D. Pa. June 14, 2013). Indeed, a "claimant not in possession or control of property cannot bring the action and thus force the stakeholder to interplead." *Bankers Tr. Co. v. Mfrs. Nat. Bank of Detroit*, 139 F.R.D. 302, 307 (S.D.N.Y. 1991).

WHC has provided no evidence that it, as the beneficiary of an insurance policy, actually has control over the "fund" here at issue. Its insurer, who presumably has control over the unused proceeds, did not bring the instant motion to interplead. Therefore, WHC cannot invoke the equitable relief.

**D. WHC unreasonably delayed in bringing the instant Motion.**

An unreasonable "delay in commencing an interpleader action" can independently warrant its denial. *Mendez v. Teachers Ins. & Annuity Ass'n & College Retirement Equities Fund*, 982 F.2d 783, 788 (2d Cir. 1992). In fact, the party moving for interpleader "must prove" that "there was no unreasonable delay in filing the interpleader action[.]" 44B AM. JUR. 2d *Interpleader* § 10.

WHC insists that it did not delay in bringing the instant Motion. However, it was on notice on October 13, 2022, the date of this Court's Order capping liability at the extent of

insurance coverage, that there existed a limited fund in this matter. It does not explain why it waited until the cusp of trial to bring this Motion, beyond stating that it wished to continue settlement discussions. By engaging in settlement negotiation, WHC demonstrated that it was, in fact, interested in the allocation of the fund. Were it truly disinterested, it would have brought the instant Motion immediately after the Court's October 13, 2022 Order—or even earlier.[2] The Court deems the delay unreasonable.

**E. Trial would still be necessary even if the Court granted WHC's Motion.**

WHC argues that if the Court were to grant its Motion, the need for trial would be obviated and the Court would save valuable resources. In fact, the opposite is true. If the Court were to grant the Motion, it would need to hold a trial to determine the allocation of proceeds among all remaining Plaintiffs. And, if the Court of Appeals were to reverse the Court's decision on the liability cap, the Court would have to hold a second trial to determine the extent of any damages against WHC. If the Court denies the Motion, however, it only need hold one trial, even if the Court of Appeals disagrees with its decision on the liability cap. Ever cognizant

[2] Assuming *arguendo* that WHC was in control of the funds at issue, and that there was no dispute over the exact amount of WHC's liability, the Court observes that the basis for WHC to seek interpleader by motion remains dubious, given that the plain text of Rule 22 provides that WHC, as a defendant, would have to "seek interpleader through a . . . counterclaim" against all Plaintiffs. Super. Ct. Civ. R. 22(a)(2). WHC cites to *Stern v. J. Nichols Produce Co.*, 486 A.2d 84 (D.C. 1984), for the proposition that interpleader by motion is procedurally proper. Motion 5 n.3. WHC's reliance on *Stern* is misplaced. In *Stern*, the party that moved for interpleader was neither a plaintiff nor a defendant in the underlying case, but rather a third-party who sought to determine the priority of creditors among existing parties.

Even treating WHC's instant *Motion* as a Rule 15(a)(3) amendment of its answer to include a counterclaim for interpleader, the Court finds that it must deny any such amendment because of "the length of time that the case has been pending" and the "prejudice" that Plaintiffs accordingly would suffer. *Crowley v. N. Am. Telcomms. Ass'n*, 691 A.2d 1169, 1174 (D.C. 1997).

of its limited resources, the Court finds that this factor weighs heavily against granting WHC's Motion.

The Court will not delve into the procedural concerns the Plaintiffs raised—regarding whether this Motion was properly brought—because there is a "preference for resolution of disputes on the merits," and the Court need not address those procedural issues to rule on the motion. *Whitener v. Wash. Metro. Area Transit Auth.*, 505 A.2d 457, 458 (D.C. 1986).

For all of the foregoing reasons, the Court finds that interpleader here is improper and inequitable, and the Court will deny WHC's requested relief.

**ACCORDINGLY**, it is by the Court this 14th day of February 2023, hereby

**ORDERED** that Defendant Washington Hebrew Congregation, Inc.'s *Opposed Motion to Interplead and Deposit Funds with the Court and Be Discharged as a Party* is **DENIED**.

**Judge Alfred S. Irving, Jr.**

**Copies to:**

All Counsel of Record
*Via Odyssey*