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When a stakeholder is faced with the "vexation of conflicting claims," there are two types of interpleaders available to it in the federal courts. Perhaps the more commonly used interpleader is provided by Fed.R.Civ.P. 22, known as "rule interpleader." The other is authorized by 28 U.S.C. § 1335 and is called "statutory interpleader." This article provides an overview of some of the characteristics of the latter. Statutory interpleader has different provisions relating to subject matter jurisdiction, personal jurisdiction and injunctions than rule interpleader, while sharing some of the same procedural elements, such as confronting claimants' counterclaims and seeking reimbursement for legal expenses incurred in interpleading the funds at issue.

Statutory Interpleader in Federal Court– A Cure for Conflicting Claims

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Entities such as banks, escrow agents, and insurers that hold assets or proceeds on behalf of others can find themselves dealing with claimants competing for the same funds. An interpleader allows a stakeholder that "fears the prospect of multiple liability to file suit, deposit the property with the court, and withdraw from the proceedings."[1] Courts typically describe the threshold for bringing such an action this way: "So long as there exists a 'real and reasonable fear of exposure to double liability or the vexation of conflicting claims, jurisdiction in interpleader is not dependent upon the merits of the claims of the parties interpleaded.'"[2]

There are two types of interpleaders in the federal courts. Perhaps the more commonly used interpleader is provided by Fed.R.Civ.P. 22 and known as "rule interpleader." The other is authorized by 28 U.S.C. § 1335, and known as "statutory interpleader." This article provides an overview of some of the characteristics of the latter. Statutory interpleader has different provisions relating to subject matter jurisdiction and personal jurisdiction than rule interpleader, while sharing some of the same procedural elements.

A statutory interpleader is allowed when "[t]wo or more adverse claimants, of diverse citizenship as defined in subsection (a) or (d) of [28 U.S.C. § 1332], are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation."[3] As suggested by the language in the statute (*i.e.*, "are claiming or may claim"), the actual assertion of competing claims typically is not a prerequisite to filing an interpleader.[4]

Unlike an interpleader action based upon Fed.R.Civ.P. 22, which requires that the court otherwise have subject matter jurisdiction (such as diversity jurisdiction under 28 U.S.C. § 1332),[5] statutory interpleader provides its own jurisdiction. First, with statutory interpleader, the amount in controversy can be less than $75,000; the res can be as small as $500.[6] Second, a stakeholder does not need to establish complete diversity for statutory interpleader. There need be only two adverse claimants of diverse citizenship as defined in 28 U.S.C. § 1332, who are claiming or may claim to be entitled to the funds at issue.[7] This is referred to as minimal diversity, "[t]hat is, diversity of citizenship between two or more claimants without regard to the circumstances that other rival claimants may be cocitizens."[8] Indeed, courts have noted that there need not be diversity between the stakeholder and all of the claimants as long as minimal diversity exists between at least two of the claimants.[9]

Third, a prerequisite for jurisdiction under 28 U.S.C. § 1335(a)(2) is that a stakeholder must deposit with the court either the funds at issue

[1] *Metropolitan Life Ins. Co. v. Price*, 501 F.3d 271, 275 (3d Cir. 2007).
[2] *The Union Central Life Ins. Co. v. Hamilton Steel Products*, 448 F.2d 501, 504 (7th Cir. 1971) (quoting *Bierman v. Marcus,* 246 F.2d 200, 202 (3d Cir. 1957), *cert. denied sub nom*., *Milmar Estate, Inc. v. Marcus,* 356 U.S. 933 (1958)).
[3] 28 U.S.C. § 1335.
[4] *National Life Ins. Co. v. Alembik-Eisner*, 582 F. Supp. 2d 1362, 1366 (N.D. Ga. 2008); 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1701 (2001) ("Federal Practice and Procedure").
[5] *Correspondent Services Corp. v. First Equities Corp. of Florida*, 338 F.3d 119, 124 (2d Cir. 2003).
[6] 28 U.S.C. § 1335(a).
[7] 28 U.S.C. § 1335(a)(1).
[8] *State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 530 (1967).
[9] *See, e.g., Blue Cross & Blue Shield v. Nooney Krombach Co.*, 170 F.R.D. 467, 471 (E.D. Mo. 1997).

or a bond payable to the clerk of the court in such amount and with surety as required by the court. It creates a jurisdictional defect when a stakeholder fails to deposit the funds in question into the registry of a court, but the stakeholder can cure that defect.[10] This simultaneous deposit requirement can present a bit of a "chicken and egg" situation; the funds must be deposited into the court for the court to have jurisdiction, but Fed.R.Civ.P. 67, which governs the deposit of funds into court, requires that the party making such a deposit provide "notice to every other party" and secure "leave of court."[11] One way to deal with this situation is to file, along with a complaint for interpleader, a draft order to deposit the funds as well as the funds themselves. Counsel should consider contacting the clerk's office before filing to make sure that the draft order has the necessary language about how the court will hold the funds. It also may be a good idea for the stakeholder to serve copies of the pleadings regarding the deposit of the funds on the claimants along with copies of the complaint.

Another difference between rule interpleader and statutory interpleader is nationwide service. With statutory interpleader, a district court may issue its process, which "shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found."[12] As one court has noted, "28 U.S.C. § 1335, and the nationwide service of process provision of 28 U.S.C. § 2361, empowers federal district courts to entertain interpleader actions irrespective of an individual claimant's contacts (or lack of contacts) with the forum state."[13] Whereas a stakeholder might have difficulty rounding up the claimants if it were to rely solely on a state long arm statute or state law means of service, it should have no such difficulty with a statutory interpleader in a federal court under 28 U.S.C. § 2361.

Service under 28 U.S.C. § 2361 probably can be made through a waiver of service of summons. The statute provides that defendants are to be served by "the United States marshals for the respective districts where the claimants reside or may be found."[14] This is not the typical means of service under Fed.R.Civ.P. 4.[15] However, under federal rules, "filing a waiver of service establishes personal jurisdiction over a defendant . . . when authorized by federal statute."[16] As one court has explained:

> [U]nder the Rules Enabling Act [28 U.S.C. § 2072], all federal statutes that are inconsistent with the Federal Rules of Civil Procedure are to be considered modified to the extent necessary to harmonize the two. Thus, when the federal interpleader statute provides for service by a U.S. Marshal, "that statute should be considered modified by the 1983 revision of Fed.R.Civ.P. 4 to authorize service by adult nonparties under Rule

[10] *Lincoln Gen'l Ins. Co. v. State Farm Mut. Auto. Ins. Co*., 425 F. Supp. 2d 738, 742 (E.D. Va. 2006).
[11] Fed.R.Civ.P. 67.
[12] 28 U.S.C. § 2361.
[13] *McGuckin v. Metropolitan Life Ins. Co.*, 1996 U.S. Dist. Lexis 2826, at *3 (E.D. Pa. 1996). *See also The Equitable Life Assur. Society v. Miller*, 229 F. Supp. 1018, 1020 (D. Minn. 1964) ("The availability of nationwide service of process under the Federal interpleader (28 U.S.C. § 2361) provides a party who may be subjected to multiple liability with a remedy in Federal courts which would be otherwise unavailable to him in any State court").
[14] *Id*.
[15] *See, e.g.*, Fed. R. Civ. P. 4(c)(3) (service by U.S. marshal is only allowed by court order).
[16] Fed.R.Civ.P. 4(k)(1)(C).

4(c)(2)(A) . . . by mail under Rule 4(c)(2)(C)(ii)."[17]

Another benefit of a statutory interpleader is that the court can enjoin the claimants from seeking the *res* in other litigation. "In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court."[18] However, the injunction authorized by statute generally cannot extend to litigation involving a fund that is not within the jurisdiction of the interpleader.[19]

Interpleaders under Fed.R.Civ.P. 22 and 28 U.S.C. § 1335 do share some characteristics. For example, sometimes claimants assert counterclaims against the stakeholder. Fortunately, the interpleader process can offer a stakeholder some protection from affirmative claims if they are based on a claimant's assertion that the stakeholder should have paid him or her as opposed to the other claimants.[20] Yet the interpleader process is less likely to afford a stakeholder protection if a claimant asserts a claim that is based on liability other than a contention that the stakeholder should have made a decision to pay him or her.[21]

Also, although neither Fed.R.Civ.P. 22 nor 28 U.S.C. § 2361 contains an express provision authorizing the reimbursement of interpleader costs and expenses, most courts recognize that they have the discretion to do so.[22] Courts reimbursing stakeholders have done so for several reasons, including that an interpleader is "brought for the benefit of resolving the dispute between the claimants and Plaintiff is a disinterested party."[23] On the other hand, some courts have declined to reimburse a stakeholder when they have found that the expenses to interplead funds are the ordinary cost of doing business.[24]

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[17] *McGuckin,* 1996 U.S. Dist. Lexis 2826, at *4–5 (citations omitted)

[18] 28 U.S.C. § 2361. *See Cordner v. Metropolitan Life Ins. Co*., 234 F. Supp. 765, 767 (D.C. N.Y. 1964) ("Section 2361 also provides, as Rule 22(1) does not, for the issuance of injunctions . . ."). However, some courts have found that under a rule interpleader, a court may grant an injunction under 28 U.S.C. § 2283 where it is "necessary in aid of its jurisdiction, or to protect or effectuate its judgments." *Standard. Ins. Co. v. Nelson*, 2007 U.S. Dist. LEXIS 36197 (W.D. Wash. May 17, 2007); *see also* Federal Practice and Procedure, § 1717.

[19] *United States Fire Ins. Co. v. The North River Ins. Co*., 182 F.3d 201, 211 (3rd Cir. 1999).

[20] *The Prudential Ins. Co. of Am. v. Hovis*, 553 F.3d 258, 265 (3d Cir. 2009) (rule interpleader) ("[t]o allow [the insurer] to be exposed to liability under these circumstances would run counter to the very idea behind the interpleader remedy—namely, that a 'stakeholder should not be obliged at his peril to determine which claimant has the better claim.'"). *See also Lexington Ins. Co. v. Jacobs Industrial Maintenance Co*., 435 Fed. Appx. 144, 149 (3d Cir. 2011) (statutory interpleader) ("counterclaims [that] merely recapitulate the ownership dispute . . . fall within the discharge of liability").

[21] *United States of America v. High Technology Products, Inc.*, 497 F.3d 637 (6th Cir. 2007) (rule interpleader).

[22] *See, e.g., Trustees of the Plumbers & Pipefitters Nat'l Pension Fund v. Sprague*, 251 Fed. Appx. 155, 156 (4th Cir. 2007) ("Despite the lack of an express reference in the interpleader statute to costs or attorney's fees, federal courts have held that it is proper for an interpleader plaintiff to be reimbursed for costs associated with bringing the action forward").

[23] *Jefferson Pilot Fin. Ins. Co. v. Buckley*, 2005 U.S. Dist. Lexis 44067, at *6 (E.D. Va. 2005) (rule interpleader). *See*, *e.g.*, *Prudential Ins. Co. v. Robinson-Downs,* 2011 U.S. Dist. Lexis 30563 (M.D. La. 2011) (noting five different factors to consider).

[24] *See, e.g., Travelers Indem. Co. v. Israel,* 354 F.2d 488, 490 (2d Cir. 1965) (statutory interpleader) ("We are not impressed with the notion that whenever a minor problem arises in the payment of insurance policies, insurers may, as a matter of course, transfer a part of their ordinary cost of doing business of their insureds by bringing an action for interpleader.").

Rather than benefiting the claimants by filing an interpleader, some courts view stakeholders as having benefited themselves.[25]

If a court reimburses a stakeholder, an award typically does not involve a great deal of money because "all that is necessary is the preparation of a petition, the deposit in court or posting of a bond, service on the claimants, and the preparation of an order discharging the stakeholder."[26] Courts have also noted that "there is an important policy interest in seeing that the fee award does not deplete the fund at the expense of the party who is ultimately deemed entitled to it."[27]

The last step for a stakeholder is to be dismissed from the interpleader. A dismissal can include a discharge of the stakeholder from further liability and an order permanently "restraining [the claimants] from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action . . . ."[28] The dismissal of the stakeholder will not likely disturb a court's jurisdiction under 28 U.S.C. § 1335 because it is based on the minimal diversity of the claimants.

In sum, interpleaders in the federal courts can offer relief to stakeholders as long as the stakeholders can articulate a reasonable fear of exposure to double liability or the vexation of conflicting claims. Between rule interpleader and statutory interpleader, the latter offers the advantages of a lower amount of the res, minimal diversity, nationwide service and the injunction against the claimants from prosecuting other litigation involving the same *res*. Most courts will reimburse a stakeholder for the costs and fees associated with filing an interpleader, but the reimbursement can amount to less than the total that a stakeholder actually incurred. At the end of the day, even without full reimbursement, statutory interpleader remains a valuable tool for stakeholders to avoid the expense of double litigation and the risk of double liability.

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[25] *See, e.g., Companion Life Ins. Co. v. Schaffer*, 442 F. Supp. 826, 830 (S.D.N.Y. 1977) (statutory interpleader) ("[c]onflicting claims to the proceeds of a policy are inevitable and normal risks of the insurance business. Interpleader relieves the insurance company of multiple suits and eventuates in its discharge. Accordingly the action is brought primarily in the company's own self-interest."). *Accord, N.Y. Life Ins. Co. v. Apostolidis,* 2012 U.S. Dist. Lexis 7995 (E.D.N.Y. 2012) (statutory interpleader); *Unum Life Ins. Co. of Am. v. Scott,* 2012 U.S. Dist. Lexis 8869 (D. Conn. 2012) (rule interpleader).

[26] Federal Practice and Procedure, § 1719.

[27] *Trustees of Directors Guild of America-Producer Pension Benefits Plans v. Tise*, 234 F.3d 415, 426 (9th Cir. 2000) (ERISA).

[28] 28 U.S.C. § 2361.

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