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Supreme Court, Appellate Division, Second Department, New York.

AMERICAN INTERNATIONAL LIFE ASSURANCE COMPANY OF NEW YORK, appellant,

v.

Paul F. ANSEL, s/h/a Paul J. Ansel, et al., respondents.

June 26, 2000.

Issuer of an annuity brought a stakeholder's interpleader action in connection with a dispute as to the proper beneficiary. The Supreme Court, Suffolk County, [Gowan](#), J., denied the issuer's motion for costs, disbursements, and an award of a reasonable attorney's fee, and the issuer appealed. The Supreme Court, Appellate Division, held that denial of the motion was an improvident exercise of discretion.

Reversed.

West Headnotes

### Interpleader 35

#### [222k35 Most Cited Cases](#)

Denial of annuity issuer's motion for costs, disbursements, and an award of a reasonable attorney's fee in the issuer's interpleader action was an improvident exercise of discretion; the issuer, a neutral stakeholder with no interest in the disputed matter of the proper beneficiary, was forced to participate in the dispute. [McKinney's CPLR 1006\(f\)](#).

**\*\*622 Israelson & Gold**, Plainview, N.Y. ([Jeffrey B. Gold](#) of counsel), for appellant.

[LAWRENCE J. BRACKEN](#), J.P., [DANIEL W. JOY](#), [WILLIAM C. THOMPSON](#), [GLORIA GOLDSTEIN](#) and [SANDRA J. FEUERSTEIN](#), JJ.

MEMORANDUM BY THE COURT.

\*421 In a stakeholder's interpleader action pursuant to [CPLR 1006](#), the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme

Court, Suffolk County ([Gowan](#), J.), dated October 12, 1999, as, in effect, denied that branch of its motion which was for costs, disbursements, and an award of a reasonable attorney's fee.

ORDERED that the order is reversed insofar as appealed from, with costs, that branch of the plaintiff's motion which was for \*422 costs, disbursements, and an award of a reasonable attorney's fee is granted, and the matter is remitted to the Supreme Court, Suffolk County, for a determination of the amount of the attorney's fee to be awarded.

The plaintiff issued an annuity to Paul W. Ansel, the father of the defendant Paul F. Ansel. Paul W. Ansel designated his beneficiaries under the annuity as the defendant Paul F. Ansel and the defendant Joan Ansel and identified them as son and daughter-in-law. Paul W. Ansel died, and the defendant Paul F. Ansel submitted a claim for the entire proceeds, claiming that Joan Ansel was a contingent beneficiary. The plaintiff admitted that a full death benefit was due and owing, but could not make full payment to Paul F. Ansel without subjecting himself to potential liability in the event that Joan made a claim. The plaintiff promptly commenced an interpleader action upon being advised that Paul F. Ansel would not accept a check made out to him and Joan Ansel.

The plaintiff moved for leave to pay the proceeds of the annuity to the Suffolk County Treasury and requested that its fees, costs, and disbursements be deducted from the proceeds. The Supreme Court granted the plaintiff partial relief, but, in effect, denied that branch of the motion which was for costs, disbursements, and an award of a reasonable attorney's fee.

The court's denial of that branch of the plaintiff's motion which was for costs, disbursements, and an award of a reasonable attorney's fee was an improvident exercise of discretion (*see*, [CPLR 1006\(f\)](#); [Republic Natl. Bank of N.Y. v. Lupo](#), 215 A.D.2d 467, 468, 627 N.Y.S.2d 402). The plaintiff, a neutral stakeholder with no interest in the disputed matter, was forced to participate in a dispute between the two de-

endants. We therefore grant that branch of the plaintiff's motion which was for costs, disbursements, and a reasonable attorney's fee.

273 A.D.2d 421, 709 N.Y.S.2d 621, 2000 N.Y. Slip Op. 06518

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- [2000 WL 35369741](#) (Appellate Brief) Brief for Plaintiff-Appellant (Feb. 3, 2000)

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