

38 A.D.3d 529, 831 N.Y.S.2d 497, 2007 N.Y. Slip Op. 01861
(Cite as: 38 A.D.3d 529, 831 N.Y.S.2d 497)

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

SUN LIFE INSURANCE AND ANNUITY COMPANY OF NEW YORK, appellant,

v.

Dean G. BRASLOW, etc., et al., respondents.

March 6, 2007.

Background: Issuer of annuity brought stakeholder's interpleader action after being subjected to conflicting claims to annuity. The Supreme Court, Westchester County, [Tolbert, J.](#), denied issuer's motion to be discharged from all further liability under annuity upon payment of proceeds of annuity into court, and for award of attorney's fee and costs. Issuer appealed.

Holdings: The Supreme Court, Appellate Division, held that:

(1) issuer had to be discharged from all further liability under annuity upon payment of proceeds of same into court, and

(2) issuer of annuity was entitled to award of attorney's fee and costs.

Reversed and remitted.

West Headnotes

[1] Annuities 29 ↪ 22

29 Annuities

[29k22](#) k. Payment and satisfaction, in general.
[Most Cited Cases](#)

Interpleader 222 ↪ 10

222 Interpleader

[222I](#) Right to Interpleader

[222k5](#) Grounds of Relief

[222k10](#) k. Interest or independent liability of person in possession or debtor. [Most Cited Cases](#)

After being subjected to conflicting claims to

annuity, insurer had to be discharged from all further liability under annuity upon payment of proceeds of same into court, in stakeholder interpleader action, where insurer demonstrated that it was neutral stakeholder with no interest in disputed annuity and no claimant raised issue of independent liability of insurer. [McKinney's CPLR 1006\(f\)](#).

[2] Interpleader 222 ↪ 35

222 Interpleader

[222II](#) Proceedings and Relief

[222k35](#) k. Costs and fees. [Most Cited Cases](#)

Issuer of annuity, as neutral stakeholder that was forced to participate in dispute between claimants over annuity, was entitled to award of attorney's fee and costs. [McKinney's CPLR 1006\(f\)](#).

**498 Butler, Fitzgerald, [Fiveson](#) & McCarthy, New York, N.Y. ([David K. Fiveson](#) of counsel), for appellant.

McLaughlin & Stern, LLP, New York, N.Y. ([Bruce Langer](#) and [Arthur H. Brown, Jr.](#), of counsel), for respondents Dean G. Braslow and Judith Entes.

[Alfred T. Renauto](#), White Plains, N.Y., for respondent Zelle Whitmarsh Andrews.

HOWARD MILLER, J.P., [ROBERT W. SCHMIDT](#), [DAVID S. RITTER](#), and [DANIEL D. ANGIOLILLO](#), JJ.

*529 In a stakeholder's interpleader action pursuant to [CPLR 1006](#) (f), the plaintiff appeals from an order of the Supreme Court, Westchester County (Tolbert, J.), dated October 30, 2006, which denied its motion to be discharged from all further liability under an annuity upon the payment of the proceeds of the annuity into court, and for an award of an attorney's fee and costs.

ORDERED that the order is reversed, on the law, with costs, the motion is granted, and the matter is remitted to the Supreme Court, Westchester County, for a determination of the amount of the attorney's fees

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and costs to be awarded.

[1][2] The plaintiff commenced this interpleader action after being subjected to conflicting claims to an annuity (see [CPLR 1006](#)). In support of that branch of its motion which was to be discharged from all further liability under the annuity upon the payment of the proceeds of the same into the court, the plaintiff demonstrated that it was a neutral stakeholder with no interest in the disputed annuity (see [CPLR 1006](#)[f]; [American Intl. Life Assur. Co. of N.Y. v. Ansel](#), 273 A.D.2d 421, 709 N.Y.S.2d 621; [Republic Natl. Bank of N.Y. v. Lupo](#), 215 A.D.2d 467, 627 N.Y.S.2d 402). In opposition, no *530 claimant raised an issue of an independent liability of the plaintiff (see [CPLR 1006](#)[e]; cf. [Inovlotska v. Greenpoint Bank](#), 8 A.D.3d 623, 780 N.Y.S.2d 358). Because the plaintiff is a neutral stakeholder forced to participate in the dispute between the claimants over the annuity, an award of an attorney's fee and **499 costs is warranted (see [CPLR 1006](#)[f]; [American Intl. Life Assur. Co. of N.Y. v. Ansel](#), *supra*; [Republic Natl. Bank of N.Y. v. Lupo](#), *supra*).

N.Y.A.D. 2 Dept.,2007.
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