

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

LIBERTY LIFE ASSURANCE)
COMPANY OF BOSTON and)
LIBERTY MUTUAL INSURANCE)
COMPANY,)

Plaintiffs,)

vs.)

Case number 1:04cv0001 TCM

THE ESTATE OF SCOTTIE)
STEPHEN BARNETT, Deceased,)
SUSAN B. BARNETT, and)
LAURIE L. BARNETT-GANAWAY,)

Defendants-Counter-claimants,)

and)

J.G. WENTWORTH S.S.C.,)
LIMITED PARTNERSHIP,)

Defendant.)

MEMORANDUM AND ORDER

Pending in this interpleader action are two motions for summary judgment: one jointly filed by The Estate of Scottie Stephen Barnett, Susan B. Barnett, and Laurie L. Barnett-Ganaway (hereinafter collectively referred to as the "Barnett parties") and one filed by J.G. Wentworth, S.S.C., a Limited Partnership ("JGW"). [Docs. 118, 122]

Background

The remaining issue¹ in this case is whether JGW has a claim to the interpleaded funds paid by plaintiffs, Liberty Life Assurance Company of Boston ("Liberty Life") and

¹The disputes between plaintiffs, Liberty Life Assurance Company of Boston and Liberty Mutual Insurance Company, and the Barnett parties have been resolved, either by Court order or by settlement.

Liberty Mutual Insurance Company ("Liberty Mutual"), in satisfaction of their obligations under an annuity, Liberty Life Annuity NP3-472823 ("823 Annuity"). The facts relevant to a resolution of this issue are undisputed and are as follows.

Scottie Stephen Barnett (Scottie) was injured in an accident on December 13, 1987. (Barnett parties Stat. Mat. Facts ¶ 6; JGW Stat. Mat. Facts ¶ 6.)² He and his then-wife, Laurie Barnett-Ganaway (Ganaway), filed suit against the employer of the other driver. (Id.) They subsequently settled their suit. (Id.) The Settlement Agreement was entered into by Scottie and Ganaway as "Claimants," the employer as the "Insured," and Liberty Mutual as "Insurer." (Barnett parties Ex. 1 at 1.)³ In exchange for Scottie's and Ganaway's release of any and all claims arising from the 1987 accident, Liberty Mutual, on behalf of the employer, agreed to pay (1) \$226,000.00 within ten days of the execution of the Settlement Agreement, October 12, 1988; (2) \$196,995.00 on January 2, 1989; (3) \$1,600.00 per month for life, with twenty years guaranteed, beginning November 7, 1988; (4) \$20,000.00 on November 7, 1993; (5) \$30,000.00 on November 7, 1998; and (6) \$50,000.00 on November 7, 2003. (Id. at 3.) These last three lump sum payments were guaranteed. (Id.) The Settlement Agreement further provided, in part, that:

3. Claimants' Rights to Payments

Claimants are and shall be general creditors to the Insured and/or Insurer. Said payments cannot be accelerated, deferred, increased or decreased by the Claimants . . . nor shall the Claimants have the power to sell or mortgage or encumber same, or any part thereof, nor anticipate the same, or any part thereof, by assignment or otherwise.

²Only those material facts that are admitted by the opposing party or parties are cited unless otherwise noted.

³Unless otherwise noted, only those exhibits admitted by the opposing party or parties are cited.

4. . . . All rights of ownership and control of such annuity policy shall be vested in the Insured or the Insurer. The Insured or the Insurer may have the Annuity Carrier mail payments directly to Claimants.

5. Claimants' Beneficiary

Any payments to be made after the death of the Claimants pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in writing by said Claimants to the Insurer.

(Id. at 3, 4.) Additionally, the Settlement Agreement provided that it was to "be construed and interpreted in accordance with the laws of the State of Massachusetts." (Id. at 6.)

To fund its liability for a minimum of \$906,995.00, Liberty Mutual purchased two annuities. (Barnett parties Stat. Mat. Facts ¶ 8.) Only one of those annuities is at issue – the 823 Annuity. (Id.)

The 823 Annuity was issued on October 4, 1988, and provided for the monthly payment of the \$1,600.00 and the three lump sum payments to be made at five-year intervals beginning November 7, 1993. (Barnett parties Ex. 2; JGW Ex. 1.) Only one annuitant was listed, Scottie S. Barnett. (Id.) Only one owner was listed, Liberty Mutual. (Id.) The beneficiary was "Laurie L. Barnett (wife), if living; otherwise to the estate of the last surviving payee." (Id.) Ganaway avers that the attorney who represented them in their claims against the employer had her authority to request this designation of a beneficiary. (Barnett parties Ex. 18 ¶ 3.)

The 823 Annuity further provided that:

DEFINITIONS

. . .

We have not italicized the following words because they appear in so many places in your policy, but this is what they mean:

We, Our, Us. The Liberty Life Assurance Company of Boston.

You, Your. The Owner of this policy, who may be someone other than the Annuitant.

...

OWNER

...

During the Annuitant's lifetime, the rights and privileges stated in this policy may be exercised only by the Owner.

BENEFICIARY

The Beneficiary is as named in the application on the Date of Issue, and may be changed from time to time. . . .

CHANGE OF OWNERSHIP OR BENEFICIARY

You may change the Owner or any Beneficiary by *written request* during the Annuitant's lifetime. The change will take effect as of the date the request is signed if we acknowledge receipt in writing, whether or not you or the Annuitant is living at the time of acknowledgment. . . .

...

ASSIGNMENT

Your policy may be assigned. We will not be on notice of any assignment until a duplicate of the original assignment is filed at our Home Office. . . .

(Barnett parties Ex. 1; JGW Ex. 2.)

Scottie and Ganaway were divorced on July 1, 1997. (Compl. Ex. D.) Their divorce decree, entered in the Chancery Court of Pontotoc County, Mississippi, included the following provision: "The Parties acknowledge and agree that they are the beneficiaries of a certain annuity or annuities resulting from the settlement of an accident claim involving the

Husband and further agree that the wife shall be entitled to one third (1/3) of said payment beginning on November 11, 1998, and every five (5) years thereafter." (Id. at 6-7.)

Shortly thereafter, on August 15, Scottie and JGW⁴ entered into a "Purchase Agreement" whereby Scottie "purchased" \$10,780.00 from JGW. (Barnett parties Stat. Mat. Facts ¶ 13.) This Purchase Agreement further provided:

1. **Purchase and Sale.**

a. You now sell, transfer and assign to Us all of Your rights in the "Assigned Assets." . . . [T]he term "Assigned Assets" means . . . (2) the Payments listed in Exhibit "A" . . . and (5) all of Your present or future rights to sell, assign, transfer, cause an early termination of, modify, waive, settle, or receive value for, the Payments on Exhibit 'A'. . . .

(Barnett parties Ex. 5A at 1.) The Purchase Agreement specifically characterized the underlying transaction as a "purchase and sale of all of the Assigned Assets." (Id. at 2.) Contemporaneously with the signing of the Purchase Agreement, Scottie was to deliver to JGW "(1) a letter addressed to the Annuity Company directing that all payments of the Assigned Assets after [his] death shall be sent directly to [JGW], and (2) a Change of Beneficiary Form changing the beneficiary of the Assigned Assets, after [his] death, to '[JGW],' as sole beneficiary . . ." (Id.) The Change of Beneficiary Form was to include instructions that it could never be revoked nor could a change be made in the instructions or payments without JGW's prior written consent. (Id.) Also included were provisions that:

. . . You [Scottie] now represent and warrant to Us that:

⁴[JGW] is a factoring company – an entity which purchases future payments for a lump sum. [JGW's] business is the purchasing of the rights to receive payments coming from royalties, structured settlements . . ." **In re Kaufman**, 37 P.3d 845, 849 n.9 (Ok. 2001) (alterations added) (interim citations omitted). At least at one point in time, JGW accounted for approximately 75% of structured settlement purchases. Gregory Scott Crespi, Selling Structured Settlements, 28 Pepp.L.Rev. 787, 816 n.7 (2001).

- a. You own (and are selling and assigning to Us under this Agreement) all of the Assigned Assets, free and clear of all claims, liens, charges, security interests, encumbrances, and agreements of any nature (other than this Agreement), and when You and We sign this Agreement, no one other than Us shall have any present or future right to the Assigned Assets.

...

- c. The signing and performance of this Agreement by You and the transactions described in this Agreement:

- i. do not conflict with any other obligation of Yours;

- ii. will not cause a violation under (or create any right of termination, cancellation or acceleration or similar right under) any contract or agreement by which You or Your assets, including the Release are bound or may be affected; . . .

...

- j. The signing by You of this Agreement will not violate any other promise or agreement that you have made with anyone else. You understand that any and all restrictions on the assignability of the Scheduled Payments were included in the Release and/or Annuity at Your request, for Your benefit and not for the benefit of any other person. These restrictions, if any, were included by You as a precautionary measure of [sic] to make sure You were allowed favorable tax treatment under the Internal Revenue Code. Whether or not You needed to do this, You now agree to give up this favorable treatment. . . .

...

- n. The signing by You of this Agreement and the other documents, will not violate the Release, the Annuity, or any other agreements you have signed. . . .

- o. . . . You now give up forever all Your rights in any agreement that says You cannot assign or sell Your rights in the Assigned Assets to Us. . . .

...

- q. . . . [T]he Purchase Price is equal to or greater than the value of what You are selling to Us . . .
...
- s. The Purchase Price is not Your only or most important source of income and You do not have any mental or physical problems that would prevent You from having a paying job.
...
- 5. . . . You Promise to Us that:
 - a. . . . You will not say You still own the Assigned Assets.
...
 - d. You will not make any change in Your instructions to the Annuity Company regarding payments to be made to You. . . .
 - e. You understand that the Annuity and the Release may say that You agree not to sell Your rights to the Assigned Assets. You also understand that You have (both for You and all other persons who may claim under You): (1) agreed not to say that the Assigned Assets were not assignable; (2) agreed to protect Us from . . . any claim that the Assigned Assets were not assignable; . . . You agree to prevent any party from saying or claiming that the Assigned Assets were not assignable.

(Id. at 3-4; Barnett parties Ex. 5B at 6.) Scottie also promised that when he signed the Purchase Agreement he would give JGW "an opinion of [his] attorney about the sale of the Assigned Assets to [JGW], in a form acceptable to [JGW]." (Barnett parties Ex. 5B at 8.)

Exhibit "A" attached to the Purchase Agreement stated that JGW was purchasing from Scottie "36 monthly payments of \$1,600.00 each, with [JGW] retaining \$483.63 monthly, and returning the remainder to the client, beginning on 9/1/97 and ending on 8/7/2000." (Id. at 15.)

Pursuant to the Purchase Agreement, Scottie did write to the Structured Settlement department at Liberty Mutual that he had a change of address and future payments were to be sent to him at "Dept. 97927, Lexington, Kentucky, 40297." (Barnett parties Ex. 17.) He also executed an "Absolute Assignment and Waiver of Claim." (JGW Ex. 2.) This document provided that Scottie "irrevocably and absolutely waive[d] "any right, claim, interest, power and privilege to any benefits or proceeds" he had or would have under the annuity, including beneficiary rights and "irrevocably and absolutely assign[ed]" those rights to JGW. (Id.)

The same day Scottie signed this document, he sent another letter to the Structured Settlement Department requesting that the beneficiary on the 823 Annuity be changed to his Estate. (Barnett parties Ex. 4 at 2.) On October 2, Liberty Mutual changed the primary beneficiary on the 823 Annuity to the Estate of Scottie Barnett. (Id. at 1, 3.)

Three months after he first "purchased" a sum of money from JGW, Scottie returned to JGW and "purchased" an additional \$13,253.18. (Barnett parties Ex. 6.) Exhibit "A" to this First Amended Purchase Agreement stated JGW was purchasing from Scottie, in addition to the amounts listed in the original Purchase Agreement, (a) "an additional 33 monthly payments of \$316.37 each, from the remainder already being returned to [Scottie], beginning on 12/7/1997 and ending on 8/7/2000," [and (b)] 27 monthly payments of \$1,6000 each, with [JGW] retaining \$600.00 monthly and returning the remainder to [Scottie], beginning on 9/7/2000 and ending on 11/7/2002." (Id. at 7.) In other words, Scottie "purchased" \$13,253.19 from JGW at a price of \$26,640.21.

On August 11, 1998, the Purchase Agreement was amended a second time to provide for the "purchase" by Scottie of an additional \$4,155.84. (Barnett parties Ex. 7A at 1.)

Exhibit "A" to this Second Amendment provided that, in turn, JGW was purchasing from Scottie, in addition to the amounts set forth in the previous two Purchase Agreements, "[one] lump sum payment of \$30,000.00 due on November 7, 1998, with [JGW] retaining \$5,000.00 and returning the remainder to [Scottie]." (Barnett parties Ex. 7B at 4.)

The next month, Scottie "purchased" an additional \$5,000 from JGW. (Barnett parties Ex. 8.) In addition to the amounts listed in the previous Exhibits "A," this Third Amendment added a provision that JGW was "purchasing" from Scottie "[one] lump sum payment of \$50,000.00 due on 11/7/2003 with [JGW] retaining \$13,500.00 and returning the remainder to [Scottie]." (Id. at 7.)

In February 1999, this last provision was changed to reflect another purchase by Scottie of a sum, \$7,588.88, from JGW. (Barnett parties Ex. 9A at 1, Ex. 9B.) The Exhibit "A" attached to this Fourth Amendment provided that JGW was "purchasing" from Scottie an additional \$16,500.00 from the lump sum payment due him on November 7, 2003. (Barnett parties Ex. 9B.) Consequently, Scottie would be receiving less than one-half of the \$1,600.00 monthly payments through August 7, 2000; \$1,000 of the \$1,600 monthly payments from September 7, 2000, until November 7, 2002; and \$20,000 of the \$50,000 lump sum payment due on November 7, 2003.

Four months later, in June 1999, Scottie "purchased" \$3,082.65 from JGW. (Barnett parties Ex. 10A at 1.) In exchange, in addition to the amounts already "purchased,"⁵ JGW "purchased" from Scottie "27 additional monthly payments of \$200.00 from the remainder

⁵The Fifth Amendment to the Purchase Agreement lists \$5,800.00 as the sum being retained by JGW out of the November 7, 1998, lump sum payment of \$30,000 due Scottie. The previous three amendments listed \$5,000 as the amount. As the greater amount was included after the payment had been made, the Court assumes this was a typographical error. Regardless, the accuracy of the amount is not necessary to the disposition of the pending motions.

already being returned to [Scottie], beginning on 9/7/2000 and ending on 11/7/2002." (Barnett parties Ex. 10B at 4.) In other words, Scottie was "purchasing" \$3,082.65 for \$5,400.00.

The next month, Scottie "purchased" an additional \$9,689.44 from JGW. (Barnett parties Ex. 11A at 1.) The amount previously paid him was listed as \$43,385.93. (Id.) For this additional sum, JGW was to retain \$800 of each of Scottie's 36 monthly payments, beginning December 7, 2003. (Barnett parties Ex. 11B at 4.) The total paid Scottie to JGW for the \$9,689.44 would be \$28,800.

Scottie died on September 16, 2002. (Barnett parties Stat. Mat. Facts ¶ 11.) The cause of death was listed as cardiogenic shock due to a massive pulmonary embolism and deep vein thrombosis. (Barnett parties Ex. 3.) It was noted on his death certificate that he had an implanted pain pump and a right hip prosthesis. (Id.) He was 44 years' old at the time of death and his occupation was listed as drummer. (Id.)

At the time of Scottie's death, JGW had paid him \$52,076.36. (JGW Stat. Mat. Facts ¶ 18.) Scottie had paid JGW \$52,367.26. (Barnett parties Stat. Mat. Facts ¶ 21.) JGW claims that \$60,400.00, plus interest, remains owing. (Barnett parties Stat. Mat. Facts ¶ 22; JGW Stat. Mat. Facts ¶ 19.)

Liberty Life and Liberty Mutual ask in their complaint that the Court, among other things, order the Barnett parties and JGW to "settle among themselves their respective rights and claims to payments from the Annuity." (Compl. at 11.) The Barnett parties ask in their motion for summary judgment that the Court (a) find that JGW has no claim to the structured settlement payments that have, and will, accrued after Scottie's death and (b) direct that the funds in the registry of the court be paid to Ganaway to be distributed in accordance with the

Barnett parties' settlement agreement. In turn, JGW asks that the Court find that its claim for \$60,400.00, plus interest, is meritorious and direct that it be satisfied out of funds held in the registry of the court.

Discussion

Standard of Review of Summary Judgment Motions. "Rule 56(c) [of the Federal Rules of Civil Procedure] 'mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" **Erenberg v. Methodist Hosp.**, 357 F.3d 787, 791 (8th Cir. 2004) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)) (alteration added). An issue of material fact is genuine if it has a real basis in the record; and, a genuine issue of fact is material if it "might affect the outcome of the suit under the governing law." **Hartnagel v. Norman**, 953 F.2d 394, 395 (8th Cir. 1992) (citations omitted).

The initial burden is on the moving party to clearly establish the non-existence of any genuine issue of fact that is material to a judgment in its favor. See **City of Mt. Pleasant, Iowa v. Associated Elec. Co-op., Inc.**, 838 F.2d 268, 273 (8th Cir. 1988). After the moving party discharges this burden, the non-moving party must do more than show that there is some doubt as to the facts. See **Matsushita Elec. Indus. Co. v. Zenith Radio Corp.**, 475 U.S. 574, 586 (1986). "A [party] facing a summary judgment motion cannot 'get to the jury without any significant probative evidence tending to support the complaint[,]" but must "make a sufficient showing on every essential element of its claim on which it bears the burden of proof." **Buettner v. Arch Coal Sales Co.**, 216 F.3d 707, 718 (8th Cir. 2000) (alterations added) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)).

And, "in order to defeat a motion for summary judgment, the non-movant cannot simply create a factual dispute; rather, there must be a genuine dispute over those facts that could actually affect the outcome of the lawsuit." **Webb v. Lawrence County**, 144 F.3d 1131, 1135 (8th Cir. 1998).

Additionally, where the unresolved issues are primarily legal, rather than factual, summary judgment is particularly appropriate. See **Adams v. Boy Scouts of America - Chickasaw Council**, 271 F.3d 769, 775 (8th Cir. 2001); **Gordon v. City of Kansas City, Mo.**, 241 F.3d 997, 1002 (8th Cir. 2001).

In the instant case, the unresolved issues are legal: (1) whether Scottie could "sell" or assign to JGW his annuity payments and (2) whether Scottie's purported waiver of designating a beneficiary was effective. In the context of the instant interpleader case, in which no crossclaims have been filed, these issues must be resolved with reference to Liberty Life's and Liberty Mutual's obligations to Scottie pursuant to the Settlement Agreement and the 823 Annuity.

The Settlement Agreement. This Agreement provides that it is to be construed in accordance with the laws of Massachusetts. Under that law, "an agreement is to be construed so as to give it effect as a rational business instrument and in a manner which will effectuate the intent of the parties." **Kingstown Corp. v. Black Cat Cranberry Corp.**, 839 N.E.2d 333, 336 (Mass.Ct.App. 2005) (interim quotations omitted). See also **City of Haverhill, Mass. v. George Brox, Inc.**, 716 N.E.2d 138, 720 (Mass.Ct.App. 1999) ("Justice, common sense and the probable intention of the parties are guides to construction of a written instrument.") (interim quotations omitted). "Where the language of a contract is not ambiguous, the words will be given their plain meaning." **Id.** Accord **Fitzgerald v.**

John Hewitt & Assocs., 15 Mass.L.Rptr. 348, 2002 WL 31677199, *1 (Super.Ct. 2002); **Fried v. Fried**, 368 N.E.2d 1222, 1224 (Mass.Ct.App. 1977). This plain or common meaning can be reflected in dictionary definitions. **Empire Business Brokers of Mass. LLC v. ASC Family, Inc.**, 19 Mass.L.Rptr.637, 2005 WL 2010143, *2 (Super. 2005). Moreover, "the contract should be construed to give reasonable effect to each provision[.]" **Kingstown Corp.**, 839 N.E.2d at 336 (alteration added).⁶

Although the Court could not locate, nor did the parties cite, any Massachusetts cases interpreting structured settlement agreements similar to the one at issue, other courts have done so. The intent of such agreements was cogently summarized in **J.G. Wentworth v. Jones**, 28 S.W.3d 309 (Ky.Ct.App. 2000), as follows:

These [structured] settlement agreements were carefully crafted in contemplation of the strict provisions of the Internal Revenue Code (26 U.S.C. § 104(a)(2), 130) providing tax concessions to encourage such settlements between tort victims and tortfeasors. Underlying these "tax breaks" is the public policy purpose of providing income over the long term for an impaired class of citizens who would otherwise be in grave danger of indigency. The stability of their long-term financial security is assured by such agreements and, therefore, that very interest in stability serves as the motivator for the special tax considerations. A transfer or assignment of the character of Wentworth's was never contemplated nor authorized by the Internal Revenue Code and thus involves serious pre-emption implications.

Pursuant to 26 U.S.C. § 130(c)(2)(B), the payees had agreed not to "accelerate, defer, increase or decrease any payment . . ." In order that the payments not be treated as taxable income, the payees' only possessory interest in the proceeds had to consist of *periodic* payments as opposed to any other form of receipt – thus assuring a continuing cushion of income to prevent "binging away" of an asset that would effectively render tort victims indigent.

⁶These principles are similar to those governing contract interpretation under the laws of Missouri, the state in which the Settlement Agreement was entered into. See, e.g., **Baum v. Helget Gas Products, Inc.**, 440 F.3d 1019, 1023 (8th Cir. 2006); **Lyster v. Ryan's Family Steak Houses, Inc.**, 239 F.3d 943, 946 (8th Cir. 2001); **State ex rel. Vincent v. Schneider**, — S.W.3d —, 2006 WL 1883178, *5 (Mo. 2006).

In consideration for the ability to guarantee adequate income for this protected class of beneficiaries, the Internal Revenue Code provided for one qualified assignment of liability for making the periodic payments to a qualified assignee . . .

Id. at 313 (alterations added). **Accord Liberty Life Assur. Co. v. Stone Street Capital, Inc.**, 93 F.Supp.2d 630, 634-35 (D. Md. 2000); **Grieve v. General Am. Life Ins. Co.**, 58 F.Supp.2d 319, 323 (D. Vt. 1999); **In re Foreman**, 850 N.E.2d 387, 391-93 (Ill.Ct.App. 2006); **Owen v. CNA Ins./Continental Cas. Co.**, 771 A.2d 1208, 1217 (N.J. 2001); **In re Kaufman**, 37 P.3d 845, 848-49 (Okla. 2001).

Clearly, the intent of Scottie, Ganaway, and Liberty Mutual was to settle Scottie's and Ganaway's claims against Liberty Mutual's insured in a manner that would confer tax advantages to all and a constant source of income to Scottie and, arguably,⁷ Ganaway.⁸ To effectuate this intent, Liberty Mutual purchased two annuities from Liberty Life. To be eligible for the desired, beneficial tax treatment, these annuities had to be a qualified funding asset as defined by 26 U.S.C. § 130(d). See In re Kaufman, 37 P.3d at 848-49. In the annuity at issue, the 823 annuity, Liberty Mutual is identified as the owner of the annuity. Scottie and Ganaway are explicitly prohibited from selling, encumbering, or assigning the annuity payments. This prohibition is essential to the tax benefits and to the goal of

⁷The question of Ganaway's individual claims for a portion of the annuity proceeds is not now at issue.

⁸The Purchase Agreements attempt to diminish the importance of a constant source of income to Scottie by stating that the annuity payments were not his only, or most important, source of income and that he had no problems precluding him from having a paying job. The success of this attempt in a case in which the annuitant returns for additional lump sum payments six times and is a drummer with a right hip prosthesis is not at issue in this interpleader action.

providing a constant source of income to the annuitant.⁹ See 26 U.S.C. § 130(c)(2)(B); **J.G. Wentworth**, 28 S.W.3d at 313 (noting that the financial stability provided by a constant source of income to a tort victim "is assured by such [structured settlement] agreements and, therefore, that very interest in stability serves as the motivator for the special tax consequences").

Scottie attempted to do what the structured settlement agreement tried to prevent – decrease his future annuity payments, thereby diminishing the anticipated constant stream of income, by "selling" such payments to JGW in exchange for an immediate lump-sum payment. Scottie and JGW effectuated this transaction by taking Liberty Life and Liberty Mutual out of the loop. The address of where to mail the payments was changed, but Scottie remained as the payee and the addressee. He simply authorized JGW to have a stamp made of his signature; JGW then cashed the annuity checks and forwarded to Scottie the agreed-upon amount. However enforceable might be the agreements between JGW and Scottie, they do not confer any rights on JGW against Liberty Life or Liberty Mutual.¹⁰

Waiver of Beneficiary. JGW argues in the alternative that it is entitled to \$60,400.00, plus interest, of the remaining payments due on the 823 Annuity because it is the proper

⁹The importance of this goal to public policy is exemplified by statutes enacted by a number of states, including Massachusetts, Mass.Gen.Laws ch. 231C, § 2 (2000), and Missouri, Mo.Rev.Stat. § 407.1062 (1999), requiring court approval of transfers of structured settlement payment rights. The effective date of both statutes was after the JGW transactions at issue.

¹⁰As noted above, there are no cross-claims. Accordingly, the question of any rights that JGW might have against any of the Barnett parties is not before the Court. See Charles A. Wright, Arthur R. Miller, Mary Kay Kane, Federal Practice and Procedure v. 7, 632 (3rd ed. 2001) ("Conflicting claims to the [interpleaded] fund can be adjudicated on the pleadings, on summary judgment, or after a trial on the merits, depending on the circumstances of the particular case."). The only issue before the Court is to which of the parties Liberty Life and Liberty Mutual owe the annuity payments after Scottie's death.

beneficiary. Again, the question of any claims JGW might have against any of the Barnett parties pursuant to this waiver is not before the Court; what is before the Court is the question of how this waiver affects Liberty Life's and Liberty Mutual's obligations under the Settlement Agreement and the 823 Annuity. It does not affect them.

The Court first notes that although the Purchase Agreement between JGW and Scottie required that he execute a Change of Beneficiary Form designating JGW as his sole beneficiary after his death, there is no evidence that Scottie did so.¹¹ Indeed, the evidence is that he instead requested that the beneficiary on the 823 Annuity be changed to his Estate and that this change was effectuated by Liberty Mutual. Moreover, the 823 Annuity confers the right to change the beneficiary on its owner, Liberty Mutual.

What Scottie did execute was a form stating that he "irrevocably and absolutely waive[d] "any right, claim, interest, power and privilege to any benefits or proceeds" he had or would have under the annuity, including beneficiary rights and "irrevocably and absolutely assign[ed]" those rights to JGW. (JGW Ex. 2.) The Settlement Agreement, however, required that the payments made after the death of Scottie *and* Ganaway be to such "person or entity" as they designated to Liberty Mutual. ((Barnett parties Ex. 1 at 4.) In turn, the 823 Annuity required that the beneficiary be changed on its owner's *written request* during Scottie's lifetime and that this request would be effective only when its receipt was acknowledged in writing by Liberty Life. There is no evidence that Scottie and Ganaway designated a beneficiary. The only evidence is that Scottie made a written request to have the beneficiary changed to his Estate and that this request was acknowledged in writing by Liberty Life. Whether this request is effective against Ganaway is not before the Court.

¹¹See note 10, above.

Whether JGW has a claim against the Estate for Scottie's potential breach of his obligation to designate JGW as his beneficiary is not before the Court. Against Liberty Life and Liberty Mutual for failure to change the beneficiary to JGW, JGW has no claim.

Conclusion

The Settlement Agreement that gave rise to Liberty Mutual's obligation to make future payments to Scottie in specific amounts does not give rise to a claim against either Liberty Life Assurance Company of Boston or Liberty Mutual Insurance Company by JGW for any rights under the 823 Annuity.

Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that the motion for summary judgment jointly filed by The Estate of Scottie Stephen Barnett, Susan B. Barnett, and Laurie L. Barnett-Ganaway is **GRANTED** as set forth below [Doc. 118] and the motion for summary judgment filed by J.G. Wentworth, S.S.C., a Limited Partnership, is **DENIED** [Doc. 122].

IT IS FURTHER ORDERED that The Estate of Scottie Stephen Barnett, Susan B. Barnett, and Laurie L. Barnett-Ganaway shall submit a proposed pay-out order in compliance with Local Rule 13.04(D)(2)(d), (e), and (f) of the Eastern District of Missouri.

IT IS FURTHER ORDERED that plaintiffs Liberty Life Assurance Company of Boston and Liberty Mutual Insurance Company shall timely make any remaining unpaid past due and all future annuity payments to Laura Ganaway, the Estate of Scottie Barnett, and Susan Barnett.

The Court will withhold entry of final judgment until after a pay-out order has been issued.

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 9th day of August, 2006.