

No. 17 - 1071

**IN THE SUPREME COURT  
OF THE UNITED STATES**

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Sharon M. Paige,  
*Petitioner,*

v.

Rebecca LeGault,  
*Respondent.*

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**ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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**PETITION FOR REHEARING**

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## GROUNDS FOR REHEARING

The district court abated and abridged petitioner's substantive right of due process and removed her fundamental right to redress guaranteed under the 5th and 1st amendments to the Constitution of the United States,

By interfering with the probate proceedings of the Commonwealth of the State of Pennsylvania where,  
1 - The court assumed general jurisdiction of and distributed subject matter annuity funds where the court had NO Subject Matter jurisdiction of property which should have been in review by a state probate court, Not a district court in opposite (*inter alia*), Markham v. Allen, 326 U.S.490 (1946) at 494; and,  
2 - The court lacked Citizenship Diversity required under statute, 28 USC §1332, to review the cause.

"Markham" and progeny(ies) make firm the principle that a federal court may not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court. 326 U.S. at 494.

The 3rd Circuit Court of Appeals, when-in accepting the cause for review and in failing to address petitioner's issues when raised on appeal,

Departed so far from the usual and accepted course of judicial proceedings and prior orders and opinions of the Supreme Court, the 3<sup>rd</sup> Circuit Court of Appeals, and other circuit courts of appeals so as to call for an exercise of this Court's supervisory power.

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**PETITION FOR REHEARING**

**THE COURT TOOK GENERAL JURISDICTION OF  
SUBJECT MATTER ANNUITIES AND REMOVED  
PETITIONER'S RIGHT TO REDRESS  
ONLY TO DISTRIBUTE  
ANNUITIES TO CO-DEFENDANTS**

Plaintiff New York Life (NYL) came before the district court with unclean hands when-in filing-  
Complaint for Interpleader ,

By presenting Samuels' Subject Matter Annuities, as "Death Benefits" [App.T, 137a, ¶¶16, 21, 22, 23, and App.N, Brief, p.83a, ¶1, l.2] and,

Naming Paige a putative beneficiary, [App. T, p. 134a, ¶5],

While averring at ¶17 of Complaint and \*\*\* Cross-Motion For Relief, the fact Paige based her claim to the annuities as:

"Sharon Paige asserted a claim to the Death Benefits, alleging that she was the [1] Annuitant's Attorney-in-Fact, [2] Executor of the Annuitant's Estate, and [3] sole beneficiary [heir] to the Annuitant's Estate..." [App.T, p.137a, ¶17, at App.N, p.72a, ¶8, at App.N, Brief, p.78a, ¶3, l.1-8],

Not as a beneficiary.

"[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Twombly*, 550 U.S. at

570)." Chipman v. Nelson No. 2:11-cv-2770-TLN-EFB PS (E.D. Cal. Sep. 11, 2015)

Moreover, during proceedings while co-defendants LeGault and Papaleo argued beneficiary(ies) and beneficiary claim forms, Paige made no reference to herself as a beneficiary and in fact,

The 3rd Circuit Court of Appeals took notice:

*"...[O]n appeal, Paige does not argue that Samuels named her as a beneficiary; instead, she disavows any argument that she or Samuels caused or sought to remove Legault as the beneficiary. See, e.g., Reply Brief at 8."*

The Court Noticed "...that in that motion for Reconsideration"<sup>6</sup>, as in this appeal, Paige stated that she did not assert to be a beneficiary." citing instead:

*"Her arguments for relief center on how New York Life should have treated information about Samuels' granting her power-of-attorney and on how New York Life should have given her access to the funds on the day before Samuels' death for Samuels' medical care and personal and legal needs."*

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<sup>6</sup>Paige's December 18, 2015, Motion For Reargument viewed as a (2<sup>nd</sup>) Motion For Reconsideration

The Court also noted:

*"After Paige filed an answer to the complaint, [July 29, 2015] Legault filed a motion for judgment on the pleadings. [August 31, 2015] The District Court granted the motion insofar as Paige was dismissed from the case and barred from asserting any claim to the annuities or any claim against Legault relating to the annuities, Paige twice sought reconsideration of the decision without success. Subsequently, Legault and Papaleo reached a settlement, and the District Court ordered the distribution of funds to them. Paige appeals."*

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<sup>2</sup> [omitted]

[Paige; Petition For A Writ Of Certiorari, p.14, ¶2 - p.15, fn.2]

Prior to the court dismissing Paige from the cause on October 23, 2015, [App.I,p.48a]

On September 11, 2015, NYL petitioned the court seeking to deposit the annuity funds and to release NYL from any future litigation in opposite and adverse NYL and corporate parents and principal(s) and, [App.N, p. 70a - 88a]

On September 14, 2015, the court Dismissed NYL and forever discharged NYL with prejudice from any and all liability, complaints, claims, counterclaims, cross-complaints, and cross-claims and,

[App.M, p. 68a, 69a, ¶¶7,8,9]

"[P]ermanently enjoined [Paige] from bringing any action or proceeding in any forum or making any further claims demands or cause of action... arising out of, in connection with, or relating to the Marvin Samuels' Annuities..." Without inquiring into Paige's claim to the annuities as Trustee or Executor of the Samuels/Paige Trust or Samuels' Estate,

In which any inquiry raised would destroy jurisdiction through probate exception.[App.M, p.68a, ¶8,1.5]

*"There are limited circumstances in which the federal courts lack jurisdiction... One such circumstance is the probate exception, "a jurisdictional limitation on the federal courts originating from the original grant of jurisdiction in the Judiciary Act of 1789." Three Keys Ltd. v. SR Util. Holding Co., 540 F.3d 220, 226 (3d Cir. 2008). While the bounds of the probate exception have changed over time, in its current manifestation in the Third Circuit, it deprives the federal courts of subject matter jurisdiction over actions endeavoring to "(1) probate or annul a will, (2) administer a decedent's estate, or (3) assume in rem jurisdiction over property that is in the custody of the probate court." Id. at 227.) New-jersey ex rel. McDonald v. Copperthwaite 3:18-cv-05559 (FLW)(LHG) (D.N.J. May. 28, 2014)*

#### ARGUMENT

"Every Due Process Clause analysis begins with the question "Has the government deprived some person of life, liberty, or property?" " [unknown]

**The Estate:**

In the instant cause the court released NYL from the cause Ordering Paige "permanently enjoined" over Paige's objections in papers that the "Subject Matter Samuels' Annuities" the "Res" cited by NYL as "Death Benefits" Were actually Samuels' "Annuity funds" Samuels and Paige sought from NYL on May 6, 2014, at time Paige placed NYL ON NOTICE as Samuels' power of attorney<sup>1</sup>, and were part of the Samuels' Estate from Samuels instructing Paige to obtain his annuities for his medical care, treatment and personal needs. (supra 3<sup>rd</sup> Cir., page 2, "*Her arguments for relief center on... power-of-attorney...*")

In doing so the the court removed from Paige any ability to petition the probate court, the First Judicial District of Pennsylvania, Orphans' Court Division, pursuant to PaCS Title 20, Chapter 7, PEF Code (Probate, Estates and Fiduciaries Code)

For determination as to estate ownership and control over the *Res*, or to move the district court for removal to the Orphans' court to certify any estate ownership or control over the *Res* and,

The 3<sup>rd</sup> Circuit affirmed the district court's Order dismissing Paige in opposite The Rights of petitioner by sanctioning such a departure constituting interference with a probate matter and,

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<sup>1</sup> The District court: On March 11, 2014, the Annuitant signed power of attorney over to Ms. Paige. (Dkt No. 1, Ex. F [hereinafter Power of Atty.].) [App.J; Memorandum, p.54a, ¶1, L2] petitioner note: [standing as Executrix based upon Philadelphia County, Pa. Register of Wills, *Letters Testamentary*.]

Thereby restricted and removed petitioner's access to the courts by removing from petitioner any viable access to courts, preventing petitioner from litigating any lawsuits pending or stemming from the cause [Judgment App.A, p.1a, Opinion, App.B, p.3a]

In doing so the circuit court removed from petitioner her fundamental right to redress by failing to provide petitioner due process when interfering with Pennsylvania probate proceedings in opposite longstanding Judicial Principle of Probate Exception:

*"In Marshall, [Marshall v. Marshall, 547 U.S. 293, 308 (2006)], The Court held that the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court...Id. at 311-12."*  
Wellin V. Wellin No. 2:14-cv-4067-DCN (D.S.C. Feb. 12, 2015) and,

Upset Paige's U.S. Consitution guarantee that a party will receive a fundamentally fair, orderly, and just judicial proceeding; Substantive Due Process.

Paige should have been joined as a FRCvP 19 "indispensable party" and when joining Paige as a Trustee or Executrix, and Paige maintaining a pecuniary interest in both Trust and Estate, both in and out of Trust, and Estate; Paige being the only and sole heir to the estate and a real party in interest,

As Exexutor and pursuant to 28 USC §1332 a Pennsylvania citizen, Joinder would destroy Citizen-

ship Diversity and remove the court's jurisdiction causing the interest to return to the Pennsylvania probate court as the court of first and original jurisdiction. (*Federal Rule of Civil Procedure 19 specifies the circumstances in which the joinder of a particular party is compulsory. "[A] holding that joinder is compulsory under Rule 19(a) is a necessary predicate to a district court's discretionary determination under Rule 19(b) that it must dismiss a case because joinder is not feasible (i.e., will defeat diversity) and the party is indispensable to the just resolution of the controversy."* Gen. Refractories Co. v. First State Ins. Co., 500 F.3d 306, 313 (3d Cir. 2007); See also Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 405 (3d Cir. 1993).

\* \* \*

Put another way, a finding of indispensability under Rule 19(b) necessitates dismissal for lack of subject matter jurisdiction. Under Rule 19(b), the four factors listed for the court's consideration, though not exhaustive, are "the most \*15 important considerations" in determining whether a party is indispensable. *Gardiner v. V.I. Water & Power Auth.*, 145 F.3d 635, 640 (3d Cir. 1998). These factors are:

first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-

*joinder. Fed. R. Civ. P. 19(b). Gen. Refractories, 500 F.3d at 319. Newjersey ex rel. McDonald v. Cop-perthwaite 3:13-cv-05559 (FLW)(LHG) (D.N.J. May. 28, 2014)*

Summarized:

Joinder destroys Citizenship Diversity, Nonjoinder prejudices petitioner in her every standing.

As "putative beneficiary"

The residuals of the estate, the Net Estate. Could only devise to Paige as an heir to the estate where any of the "Res" as part of the remainder of the estate, becomes first, PART OF the Estate before distribution BY the Estate TO Paige in the form of a net estate distribution containing all or any part of the "Res" annuities,

Hence Paige named a "putative beneficiary" by NYL in papers, May only be a "putative beneficiary" through contract terms and conditions "assignment" clause and subject to probate exclusion:

The district court, in MEMORANDUM, at:

### III. Discussion

"Pennsylvania law applies to determine which of the Defendants is entitled to the Annuities. *Federal Ins. Co. v. Areias*, 680 F.2d 962, 963 (3d Cir. 1982). Under Pennsylvania law, generally, to change the beneficiary of an insurance policy, the policyholder must strictly comply with the policy's terms for changing the beneficiary. *Manufacturers*

*Life Ins. Co. v. Dougherty*, 986 F.Supp. 928, 931 (E.D. Pa. 1997) (citing *Equitable Life Assurance v. Stitzel*, 299 Pa. Super. 199, 203, 445 A.2d 523, 525 (1982), superseded on other grounds by *In re Estate of Hoffman*, 54 A. 3d 903 (Pa. Super. Ct. 2012) (internal citations omitted)); see also *Alkhafaji v. TIAA-CREF Individual & Institutional Servs., LLC*, 69 A.3d 219, 222 (2013) (“[A] change of beneficiary requires strict or literal compliance with policy terms.”) [App. J, p.55a, III. Discussion].

When NYL named Paige a “putative beneficiary” NYL had to “assign” TO Paige, the annuities under contract terms and conditions in order for Paige to be a “putative beneficiary”:

“Under Pennsylvania law generally, to change the beneficiary of an insurance policy, the policyholder must strictly comply with the policy’s terms for changing the beneficiary... “[A] change of beneficiary requires strict or literal compliance with policy terms” (ibid. MEMORANDUM, III. Discussion),

Paige having never been a NYL “contract terms” “beneficiary”, (supra 3<sup>rd</sup> Cir., p.2, “...she dis avows any argument...” and “...she did not assert to be a beneficiary...”)

When named by NYL as a “putative beneficiary” would cause the annuities to first, under “strict or literal compliance with policy terms,” become part of the Samuels’ Estate and traverse through the estate, TO Paige as part of estate through a “strict or literal compliance with policy terms” of “contract assignment”

*terms and conditions*" (where no non-assignment clause exists) and,

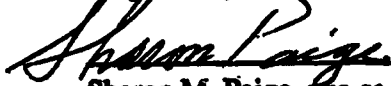
Where property disbursed by the court to co-defendants LeGault and Papaleo were an *"unjust enrichment"* through the court lacking Subject Matter Jurisdiction through both *"Probate Exception"*,  
AND,

Lack of Jurisdiction over the subject matter pursuant to 28 USC §1332 Citizenship Diversity jurisdiction; Samuels a Pennsylvania resident and citizen and all co-defendants were, or were considered 28 USC §1332(c)(2) Pennsylvania citizens.

#### REASONS FOR GRANTING THE PETITION

For these reasons petitioner prays this Honorable Supreme Court grant certiorari, vacate the decision below and remand with instructions.

Respectfully submitted,

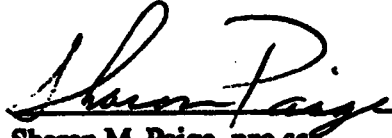


Sharon M. Paige, *pro se*.

April 13, 2018.

**CERTIFICATE REGARDING DELAY  
AND  
DECLARATION IN COMPLIANCE WITH  
28 U. S. C. § 1746; UNSWORN DECLARATIONS**

**I certify pursuant to 28 U.S.C. 1746; Unsworn Declarations Under Penalty Of Perjury this petition for rehearing is presented in good faith and not for delay.**

  
**Sharon M. Paige, pro se.**