

2024 WL 4892666

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United States District Court, D. Massachusetts.

Kathleen F. HEBERT, Trevor P. Hebert,
and Zachary R. Hebert, Plaintiffs,

v.

OFFICE OF PERSONNEL MANAGEMENT,
Metropolitan Life Insurance Co., and Karissa Donahue,
as personal representative of the Estate of Tiffany Hebert,
a/k/a Tiffany Donahue Hebert, deceased, Defendants.

CIVIL ACTION NO. 18-11483-MPK

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Signed September 16, 2024

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NH, for Defendant Metropolitan Life Insurance Co.[Donald J. Correa](#), Quinn & Correa, Plymouth, MA, for
Defendant Karissa Donahue.MEMORANDUM AND ORDER ON CROSS-
MOTIONS FOR SUMMARY JUDGMENT (##138, 140)[KELLEY](#), United States Magistrate Judge**I. Introduction**

***1** This interpleader action concerns competing claims between the purported beneficiaries of decedent Gary Hebert's ("Gary's") Federal Employees' Group Life Insurance ("FEGLI") policy. Though more than six years have passed since his death and this case's inception, the proceeds of Gary's life insurance policy have yet to be disbursed.¹ Kathleen F. Hebert ("Kathleen"), Trevor P. Hebert, and Zachary R. Hebert (collectively, "plaintiffs")—Gary's former wife and his two sons—and defendant Karissa Donahue ("Karissa"), the daughter of Gary's widow Tiffany Hebert ("Tiffany") and the personal representative of her estate, have each filed interpleader applications for the funds. At the center

of this case is a dispute over the validity of a Designation of Beneficiary Form SF 2823 ("Form-2823") which designates plaintiffs as the policy's beneficiaries.

Plaintiffs have moved for summary judgment on the only issues remaining in this case: whether Gary's signature on the Form-2823 is authentic, and, if so, whether he had sufficient mental capacity when he signed it. Specifically, they claim that there is no evidence that Gary's signature is not his own or that he lacked such capacity. Aside from disputing these two issues—and thereby the validity of the Form-2823—Karissa has filed her own motion for summary judgment and raises two separate issues in an attempt to relitigate the form's completeness and establish herself as the policy's sole beneficiary.²

For the following reasons, plaintiffs' Motion (#138) is allowed and Karissa's Motion (#140) is denied. There are no genuine disputes in this case, and plaintiffs are entitled to the proceeds of Gary's life insurance policy as its properly-designated beneficiaries in accordance with FEGLIA's statutory order of precedence. *See* [5 U.S.C. § 8705\(a\)](#).

II. Background**A. Procedural Background**

This case began in July 2018 as an action for declaratory relief before it was "refashion[ed]" into "an interpleader proceeding" some years later. *See* ##1, 73 at 11. It has been treated by the parties as one since. On May 10, 2022,³ after Tiffany had challenged the validity and completeness of the Form-2823 in her Application for Interpleader Funds and Declaratory Relief (#55), the court entered a Memorandum and Procedural Order (#73) which issued certain procedural directives but, more importantly, found the form valid and in compliance "with the statutory requirements to designate a beneficiary set out in [FEGLIA]." ⁴ (#73 at 12) (emphasis in original). The Order expressed the court's inclination to enter final judgment for plaintiffs, but Tiffany's estate was given an opportunity to submit "any further substantive briefing, beyond that already submitted ... opposing such a final judgment[.]" ⁵ *Id.* at 19.

***2** Both parties submitted further pleadings and affidavits, with Tiffany's estate raising two issues concerning the authenticity of Gary's signature on the Form-2823 and his mental capacity at the time of signing it. ⁶ *See* #76 at 8-10.

Given certain “deficiencies” in these submissions and the new questions that had been raised with respect to Gary's capacity and the circumstances of his execution of the form, Judge Woodlock determined that an evidentiary hearing involving the parties and certain witnesses was necessary. (#87.) The matter was then referred to this court for, among other things, the evidentiary hearing (#96), which was held over the course of two days in January 2024.⁷ (##119, 126.)

During that hearing, which this court viewed as “akin to depositions[,]” the parties were permitted to examine and cross-examine a number of witnesses, including Kathleen and Karissa, on matters related only to the two issues which were outstanding—the authenticity of Gary's signature on the Form-2823 and his mental capacity at the time of its execution.⁸ (#116.) After the hearing, the court invited the parties to file a proposed schedule for briefing on summary judgment, and on June 28, 2024, these cross-motions followed.

B. Factual Background

The relevant facts are set out below and are undisputed, unless noted otherwise.⁹

Gary and Kathleen were married on April 13, 1991. (#139 ¶ 9.) Together, the couple had two sons—Zachary and Trevor—before they divorced on March 2, 2015, after nearly twenty-four years of marriage. *Id.* In 2016, Gary married Tiffany and, in the same year, was diagnosed with Stage IV [esophageal cancer](#). *Id.* ¶ 10; *see* #138-1 at 2. Throughout 2016 and into early 2017, Gary was in and out of the hospital. (#138-3 at 51.) During this same period, Tiffany experienced health troubles of her own and was hospitalized to treat a serious medical condition. *Id.* at 29-31. In the last of his hospital stays, Gary was admitted to Tobey Hospital in Wareham, Massachusetts sometime in mid-January 2017 after Karissa's sister Karen Adams (“Karen”) and her aunt Kim Donahue (“Kim”), with whom Gary was staying, came to believe he was experiencing confusion and decided to drive him there.¹⁰ (#138-3 at 36, 48-50, 58.) When Gary was discharged from Tobey Hospital later that same day, he was picked up by his long-time, childhood friend Kevin Levesque and driven to Kathleen's home in Wareham, where he moved back in with her and his two sons. (#139 ¶ 10; #138-2 at 38-39, 42-43; #138-3 at 47-48.)


*3 Through his employment with the United States Postal Service (“USPS”) and up to the time of his death, Gary

was enrolled in a FEGLI life insurance policy issued by the Metropolitan Life Insurance Company but administered by OPM.¹¹ According to plaintiffs, on January 26, 2017, during his stay at Kathleen's home, Gary prepared and signed a Form SF 2823 which named Kathleen, Zachary, and Trevor as the beneficiaries of his \$345,000 life insurance policy. (#139 ¶ 11; #140 at 5; *see* #140-3.)¹² As they explain, Gary signed this form in the presence of two witnesses: Lorraine Sawyer, a USPS administrative assistant and Gary's colleague of nine years, and Levesque, who was staying at Kathleen's home. (#139 ¶¶ 13, 17; #138-2 at 11, 46.) Both Levesque and Sawyer signed the Form-2823 under a section titled “D. Witnesses To Signature[,]” indicating their role as such. (#140-3.) Sawyer, whose duties with USPS included handling the completion of life insurance and retirement forms, then helped Gary fill out a disability retirement form and a light duty form in the event he was allowed to return to work. (#139 ¶ 17; #138-2 at 10-12, 14.) Together, the pair reviewed this paperwork, shared coffee, and spoke about work and the upcoming Super Bowl before Sawyer eventually left the home. (#138-2 at 34-35.)

Kathleen faxed the Form-2823 and sent it via overnight mail to a USPS facility in Greensboro, N.C. where it was marked as received the next day, on January 27, 2017. (#138-2 at 26; #138-3 at 6; #140-8 ¶ 5.)¹³ Gary remained with Kathleen at her home, together with his two sons and Levesque, until he succumbed to his illness less than three weeks later, on February 15, 2017.¹⁴ (#138-1 at 2.) Though neither she nor Kim nor Karen were present on January 26, 2017, Karissa disputes the authenticity of Gary's signature on the Form-2823 and his mental capacity at the time plaintiffs claim he signed it. *See* #138-3 at 41, 52, 63.

Additional facts will be added below, where appropriate.

III. Legal Standard

Summary judgment is intended “to pierce the boilerplate of the pleadings and assay the parties’ proof in order to determine whether trial is actually required.”  [Tobin v. Fed. Express Corp.](#), 775 F.3d 448, 450 (1st Cir. 2014) (additional citation and quotations omitted). It has been described as “a proper decisional vehicle” in an interpleader matter. [Metropolitan Life Ins. Co. v. O’Ferrall Ochart](#), 635 F. Supp. 119, 121 (D.P.R. 1986) (additional citation omitted). Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the

movant is entitled to judgment as a matter of law.” [Fed. R. Civ. P. 56\(a\)](#).

The moving party bears the initial burden of asserting “the absence of a genuine issue of material fact” and “support[ing] that assertion by affidavits, admissions, or other materials of evidentiary quality.” [Mulvihill v. Top-Flite Golf Co.](#), 335 F.3d 15, 19 (1st Cir. 2003) (additional citation omitted). “[A]n issue is ‘genuine’ if it ‘may reasonably be resolved in favor of either party.’” [Vineberg v. Bissonnette](#), 548 F.3d 50, 56 (1st Cir. 2008) (quoting [Garside v. Osco Drug, Inc.](#), 895 F.2d 46, 48 (1st Cir. 1990)). “A fact is ‘material’ only if it possesses the capacity to sway the outcome of the litigation under the applicable law.” [Id.](#) (quotations, citations, and alteration omitted). “Once the moving party avers the absence of genuine issues of material fact, the nonmovant must show that a factual dispute does exist, but summary judgment cannot be defeated by relying on improbable inferences, conclusory allegations, or rank speculation.” [Fontanez-Nunez v. Janssen Ortho LLC](#), 447 F.3d 50, 54-55 (1st Cir. 2006) (additional citation and quotations omitted).

*4 In assessing whether summary judgment is proper, the court must view the record in the light most favorable to the non-moving party and must draw all reasonable inferences in the non-movant's favor. [Ahmed v. Johnson](#), 752 F.3d 490, 495 (1st Cir. 2014). “Where, as here, the parties cross-move for summary judgment, the court must assay each motion ‘separately, drawing inferences against each movant in turn.’” [Lawless v. Steward Health Care Sys., LLC](#), 894 F.3d 9, 21 (1st Cir. 2018) (quoting [EEOC v. Steamship Clerks Union](#), 48 F.3d 594, 603 n.8 (1st Cir. 1995)). In this way, “[c]ross-motions for summary judgment do not alter the basic [Rule 56](#) standard, but rather simply require [the court] to determine whether either of the parties deserves judgment as a matter of law on facts that are not disputed.” [Adria Int'l Group, Inc. v. Ferre Dev., Inc.](#), 241 F.3d 103, 107 (1st Cir. 2001) (additional citation omitted). “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” [Scott v. Harris](#), 550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) (additional citation and quotations omitted).

IV. Discussion

A. Karissa's Motion for Summary Judgment (#140)



Karissa uses her Motion for Summary Judgment as an opportunity to argue issues which, as plaintiffs recognize in their Opposition (#148), have “already [been] considered and disposed of.” (#148 at 1.) While the Motion lists the authenticity of Gary's signature and his mental capacity as “two issues for trial[,]” it also raises two more issues “for adjudication by interpleader and declaratory relief.” (#140 at 5.)

Those issues are:

- (1) whether the “Form 2823 dated January 26, 2017, without Section C being completed, [was] legally effective, or did OPM have the right to reject it and return it because of the incomplete Section C”; and,
- (2) whether the form, “without being acknowledged or ‘signed off’ by the USPS, [was] complete and effective or did OPM have the right to reject it and return it[.]” *Id.* at 5-6.

These two issues were decided by the May 10, 2022 Memorandum and Procedural Order. The court there concluded that while Gary “did not completely fill out every aspect of the beneficiary form,”—that is, its Section C—“he executed all aspects required under the applicable statutory scheme, the Federal Employees’ Group Life Insurance Act of 1954[.]” (#73 at 1.) The Order thoroughly considered the applicable statutory sections, regulations, and the caselaw as it related to the form and unequivocally found Gary “in complete compliance” with FEGLIA's terms, concluding that he “made a valid designation of his beneficiaries under [Section 8705\(a\)](#).”¹⁵ *Id.* at 4 n.2, 14.

Even before the May 10, 2022 Order had been entered, Tiffany, for whom Karissa was later substituted, had made nearly identical arguments in her Application for Interpleader Funds. *Compare* #55 at 9 with #140 at 5-6. These arguments were before the court when it found, as a matter of law, that the Form-2823 represented a valid designation of Gary's beneficiaries. This court will not disturb that finding, which constitutes the law of this case. *See Redondo Constr. v. Izquierdo*, 929 F. Supp. 2d 1, 6 (D.P.R. 2012) (“[a] presumption exists that ‘a successor judge should respect the law of the case[.]’ ” a doctrine which “ ‘posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same

case.’ ”) (quoting  *Ellis v. United States*, 313 F.3d 636, 646 (1st. Cir. 2002) and  *Pepper v. United States*, 562 U.S. 476, 131 S. Ct. 1229, 1250, 179 L. Ed. 2d 196 (2011), respectively).

B. Plaintiffs’ Motion for Summary Judgment (#138)

*5 Plaintiffs have moved for summary judgment on what they describe in their supporting memorandum (#139) as “the two issues left for resolution” in this case: (1) “[w]hether Gary Hebert had the requisite mental capacity to execute the change of beneficiary designation form on January 26, 2017, and [(2)] whether Gary Hebert’s signature on the form is authentic.” (#139 at 2.) They assert that Karissa has failed to offer evidence sufficient to create a genuine dispute on either issue. For the reasons stated below, this court agrees.

1. Whether the Signature on the Form-2823 Is Gary’s

Citing the affidavits and the related testimony of Levesque and Sawyer that they personally witnessed Gary sign the form himself,¹⁶ plaintiffs claim that Karissa has not presented any evidence which might suggest that the signature on the Form-2823 is not Gary’s own. The regulations that accompany FEGLIA require that “[a] designation of beneficiary must be in writing, signed by the insured individual, and witnessed and signed by 2 people.” 5 C.F.R. § 870.802(b). FEGLIA itself “is silent” with respect to “challenges to determination of eligibility for benefits based on defenses such as forgery or mental incapacity[,]” and courts “typically rely on federal law” in resolving such disputes. *Beard*, 321 F. Supp. 3d at 184-85 (collecting cases).

When it comes to forgery, the caselaw is scarce, though as the only court in this circuit that has considered the issue has stated, “the [Uniform Commercial Code (“UCC”)] provides a helpful starting point” with respect to a party’s burden of proof. *Id.* at 185. “Under the UCC, a party must specifically deny a signature’s authenticity in the pleadings.” *Id.* (citing U.C.C. § 3-308(a)).

U.C.C. § 3-308(a) reads, in relevant part:

[i]n an action with respect to an instrument, the authenticity of, and authority to make, each signature




on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature.

Unlike in *Beard*, where the defendant had specifically denied the authenticity of the decedent’s signature on a FEGLI Form SF 2818 in his answer, in discovery materials, and then later in his summary judgment pleadings, Karissa first raised the issue of Gary’s signature and denied its authenticity nearly four years into this case and only after the court entered the May 10, 2022 Order signaling its inclination to enter final judgment for plaintiffs.¹⁷

Aside from claiming in the final paragraph of her affidavit that she “do[es] not believe that the signature that was presented on the beneficiary designation form dated January 26, 2017 is in fact Gary’s[,]” Karissa has not submitted any handwriting analysis, expert testimony, example signature comparisons, or any other form of evidence to support this contention.¹⁸ (#151-2 ¶ 12.) When she was cross-examined at the evidentiary hearing and asked about her statement, Karissa simply reiterated her belief that the signature was not Gary’s but also admitted that, because she was not actually present when the Form-2823 was signed, she could not answer definitively. (#138-3 at 41-42.)


*6 Perhaps more importantly, and irrespective of whether the provisions of U.C.C. § 3-308(a) apply to this case, Karissa has waived this issue by failing to further develop it in her Opposition to plaintiffs’ Motion for Summary Judgment. Instead, Karissa devotes a substantial portion of that submission to restating her need for additional discovery, an issue which this court previously considered and denied.¹⁹ The brief section of her response which addresses the relevant issues, however, hardly constitutes an opposition. *See* #151 at 4-7. Karissa merely summarizes the testimony of the witnesses at the evidentiary hearing, and—despite having six weeks to prepare an opposition—cites no caselaw and


includes no legal argument beyond the conclusory claim that “the pleadings, memorandums and [her] affidavit ... presents sufficient legal basis that said documents and evidence indicates to date creates sufficient factual controversy as to the issues of Gary Hebert’s mental competency and genuineness of the signature on Form 2823.” (#151 at 7.) “ ‘[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.’ ”



 *Photographic Illustrators Corp. v. Orgill, Inc.*, 118 F. Supp. 3d 398, 411 (D. Mass. 2015) (quoting   *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) and waiving party’s argument that had been “scarcely briefed”) (alteration in original); see *Delaney v. Mass. Bay Transp. Auth.*, 24 F. Supp. 3d 121, 125 n.7 (D. Mass. 2014) (argument not developed in party’s opposition to summary judgment motion was deemed to have been waived).



2. Whether Gary Had Sufficient Capacity When He Signed the Form-2823

FEGLIA is silent on the issue of mental capacity, as noted above, and federal law is once again instructive, as is *Beard*.

See  *Metro. Life Ins. Co. v. Beard*, No. 16-11782-PBS, 2019 U.S. Dist. LEXIS 20053, 2019 WL 480513, at *5 (D. Mass. Feb. 7, 2019) (comparing caselaw considering issues of mental capacity under the Servicemen’s Group Life Insurance Act (“SGLIA”) and concluding, when confronted with a capacity challenge under FEGLIA, that federal law supplied the necessary standard). Still, there appears to be no consistent federal standard for assessing mental capacity in this context, and the related caselaw is relatively undeveloped. “Where ‘federal common law is silent or not fully formed with respect to an issue,’ ” as is the case here, “ ‘it may be appropriate to borrow from state law principles in fashioning the federal common law.’ ” *Id.* (quoting *Forcier v. Forcier*, 406 F. Supp. 2d 132, 140 (D. Mass. 2005), *aff’d sub nom.*


 *Forcier v. Metro. Life Ins. Co.*, 469 F.3d 178 (1st Cir. 2006), and citing Massachusetts law with respect to a party’s capacity to contract).

Under Massachusetts law, the capacity to contract requires “the ability to ‘understand the nature and quality of the transaction’ and to ‘grasp its significance.’ ”  *Maimonides Sch. v. Coles*, 71 Mass. App. Ct. 240, 251, 881 N.E.2d 778 (2008) (quoting  *Krasner v. Berk*, 366 Mass. 464, 467, 319 N.E.2d 897 (1974)) (additional citation omitted). This

inquiry examines “a party’s understanding or conduct only at the time of the disputed transaction.” *Sparrow v. Demonico*, 461 Mass. 322, 331, 960 N.E.2d 296 (2012) (additional citations omitted). A party lacks the capacity to contract—and the attendant contract may thus be voidable—where he is “ ‘incapable of understanding and deciding upon the terms of the contract[.]’ ” *id.* at 328, 960 N.E.2d 296 (additional citation omitted), or where “ ‘by reason of mental illness or defect, [he] is unable to act in a reasonable manner in relation to the transaction and the other party has reason to know of his condition.’ ” *Id.* at 329, 960 N.E.2d 296 (additional citations omitted). Of particular importance here, “medical evidence is necessary to establish that a person lacked the capacity to contract due to the existence of a mental condition.” *Sparrow*, 461 Mass. at 332, 960 N.E.2d 296. Finally, “[u]nder federal law, there is a ‘presumption of mental capacity in the insurance context[.]’ ”  *Beard*, 2019 WL 480513, at *6 (quoting  *Rice v. Office of Servicemembers’ Grp. Life Ins.*, 260 F.3d 1240, 1248 (10th Cir. 2001)). “Similarly, under Massachusetts law, ‘[t]he burden is on the party seeking to void the contract to establish that the person was incapacitated at the time of the transaction.’ ” *Id.* (quoting *Sparrow*, 461 Mass. at 327, 960 N.E.2d 296) (alteration in original).

*7 As plaintiffs point out, both Levesque and Sawyer gave “very clear” testimony that Gary appeared mentally competent and able to fully understand the significance of his actions when they witnessed him sign the Form-2823 at Kathleen’s home on January 26, 2017. (#139 at 9.) As Levesque explained, Gary was at the time “very lucid and ... sitting up at the edge of the bed, talking and joking”—to him, there was “[n]o question at all” that Gary had the capacity to sign the Form-2823. (#138-2 at 39-40.) Likewise, Sawyer indicated that Gary “appeared good” and that she had “no question that he knew what he was signing.” *Id.* at 13. Kathleen, who also testified at the evidentiary hearing, stated that she had no concerns about Gary’s mental capacity at the time he signed the Form-2823. (#138-3 at 5-6.) According to Kathleen, during the period Gary lived with her and their two sons, he was visited by his co-workers, was able to care for himself and regularly interact with others, and was, in general, “fine mentally” and “knew what he was talking about.”²⁰ *Id.* at 22-23, 25-26.

Apart from her failure to develop the issue of Gary’s capacity in her Opposition, to the extent Karissa relies on her own observations or those of Kim and Karen to rebut plaintiffs’ evidence and the presumption of Gary’s capacity,

this approach fails. Karissa testified that the last time she saw Gary was after Kim and Karen brought him to Tobey Hospital sometime in mid-January, “about a month, month-and-a-half before he passed away” on February 15, 2017. *Id.* at 35-36. That Gary appeared “confused, distraught ... scared” or incompetent to Karissa during this hospital visit, at least a week-and-a-half before he signed the Form-2823 according to her chronology of the events—and four days before according to Levesque’s—is of no consequence.²¹ *Id.* The fact remains that Karissa has not presented any evidence with respect to Gary’s mental capacity on January 26, 2017—the date on which he signed the Form-2823 and the “only” date relevant to the capacity analysis. *Sparrow*, 461 Mass. at 331, 960 N.E.2d 296; see  *Beard*, 2019 WL 480513, at *6 (though there was evidence that decedent was intoxicated on a certain date, it was “not sufficient to prove that he was incompetent the day before” and thus lacked the capacity to sign a FEGLI Form SF 2818; bench trial resulted in finding of sufficient capacity).

Without any such evidence, “a jury could only speculate” how Gary’s alleged state at the time of his one-day stay at Tobey Hospital might have affected his capacity to sign the Form-2823 several days later. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Flanders-Borden*, 11 F.4th 12, 23-24 (1st Cir. 2021) (affirming summary judgment for party in interpleader action where decedent had been hospitalized prior to his

execution of the relevant agreements; a finding that he lacked capacity at a later date, “in the face of uncontroverted evidence of his mental lucidity at all relevant times, including most importantly during the transaction at issue -- would amount to mere speculation.”).

Moreover, despite her belief that the cancer “had gone to [Gary’s] brain” and incapacitated him,²² Karissa has failed to introduce Gary’s health records or any other form of medical evidence—the precise sort “necessary to establish that a person lacked the capacity to contract due to the existence of a mental condition.” *Sparrow*, 461 Mass. at 332, 960 N.E.2d 296. There is simply no evidence before this court which shows that Gary lacked the capacity to contract on the date he signed the Form-2823, and the testimony taken in this case indicates otherwise.

V. Conclusion


For the reasons stated above, plaintiffs’ Motion for Summary Judgment (#138) is allowed, and Karissa’s Motion for Summary Judgment (#140) is denied. The Clerk is directed to release the interpleaded funds, together with interest, to plaintiffs.

All Citations

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Footnotes

- 1 These funds were deposited with the court on November 22, 2019. (##60, 61.)
- 2 Under the Federal Employees’ Group Life Insurance Act (“FEGLIA”), 5 U.S.C. § 8701 et seq., where there is no properly-designated beneficiary, the proceeds are paid “to the widow or widower of the employee.” 5 U.S.C. § 8705(a).
- 3 At this time the case was still assigned to District Court Judge Woodlock.
- 4 The Order also allowed amendment with respect to Count III of plaintiffs’ proposed Amended Complaint (#66) but declined to permit amendment with respect to its proposed Counts I, II, and IV, finding these additional claims “futile” in light of the case’s status as an interpleader action. (#73 at 18-19.) Though it considered the United States defendant, the Office of Personnel Management (“OPM”), to have been “effectively since dismissed” from the case, the court elected to exercise its supplemental jurisdiction, concluding that plaintiffs’ claims “necessarily raise[d] a substantial question of federal law[.]” *Id.* at 10-11.
- 5 Tiffany had, by that time, passed away. See #69.

- 6 Tiffany had before raised Gary's capacity as a "collateral" issue in her Application for Interpleader Funds but had clarified that, without certain pretrial discovery and "[f]or purposes of [her] application for interpleader, a detailed discussion of Gary's competency [could] [not] be made." (#55 at 6-7.)
- 7 The parties later consented to the jurisdiction of this court in July 2024. (##142, 143.)
- 8 This court informed the parties at the start of the hearing that it understood the May 10, 2022 Order to have "settled the issue" of the Form-2823's validity and explained that it would not revisit issues which had already been decided. (#130 at 6-7.)
- 9 The facts in this case are drawn from: the (1) "Statement of Facts" listed in "Plaintiffs' Memorandum in Support of Summary Judgment" (#139) and exhibits attached to their Motion for Summary Judgment (#138), including the "Verified Affidavit of Kevin Levesque" (#138-1 at 1-3), the "Verified Affidavit of Lorraine Sawyer" (#138-1 at 4-5), and transcript excerpts from the two-day evidentiary hearing held on January 16, 2024 (#138-2) and January 30, 2024 (#138-3); and, from the (2) "Statement of Material Facts" listed in the "Motion for Summary Judgment of Defendant Karissa Donahue" (#140) and select exhibits attached to it, including the January 26, 2017 Form SF 2823 (#140-3) and the "Declaration of Chauncy L. Fuller" (#140-8).
- 10 According to Karissa, Gary's one-day stay at Tobey Hospital occurred "about a month, month-and-a-half before he passed away" on February 15, 2017. (#138-3 at 35-36.) In his affidavit, Levesque places this stay as having occurred on January 22, 2017. (#138-1 at 2.)
- 11 Under FEGLIA, OPM has the authority to regulate and administer such benefits. See *Metro. Life Ins. Co. v. Beard*, 321 F. Supp. 3d 181, 182 (D. Mass. 2018) (citing  5 U.S.C. § 8709).
- 12 The Form-2823 designates Kathleen as a 50% beneficiary and Gary's sons Zachary and Trevor as equal 25% beneficiaries. See #140-3.
- 13 Facts related to the circumstances of the Form-2823's receipt and its subsequent processing by USPS are described in detail in the May 10, 2022 Order which, despite USPS's decision to mark the form as invalid and incomplete, found that it was valid and that it had been properly received by the agency. See #73 at 3-4. As discussed below, this decision considers issues related to Gary's mental capacity and his signature, and does not consider issues which the May 10, 2022 Order resolved.
- 14 Tiffany died exactly three years later, on February 15, 2020. See #74 at 2.
- 15 As the court explained: "[t]hat Gary did not provide certain redundant and/or superfluous non-statutorily or regulations-based responses called for in Section C of the form does not invalidate his designation." (#73 at 14) (emphasis in original). Furthermore, and of particular importance to the issues raised by Karissa, the court clarified: "[t]he circumstance that the USPS service center, instead of processing the form, erroneously returned it to Gary so that he could provide superfluous information is immaterial to the question whether Gary met the governing statutory requirements for beneficiary designation." *Id.* at 17-18. Karissa admits that through this Order, the court "ruled that the incomplete Form 2823 was nonetheless valid." (#140 at 10.) Although she disputes, in the next line of her Motion, whether that Order "was a proper statement of the law[.]" she never moved for reconsideration of this Order. *Id.*
- 16 See #138-2 at 13, 39.
- 17 Specifically, this issue was first raised on June 23, 2022, in "Tiffany Donahue Hebert's Opposition to Final Judgment Pursuant to Memorandum and Order" (#76) and in "Karissa Donahue's Affidavit in Support of

Opposition to Final Judgment” attached to it. Karissa resubmitted this same affidavit as an exhibit (#151-2) to her Opposition (#151) to plaintiffs’ Motion for Summary Judgment.

- 18 In her Opposition to Final Judgment, Tiffany had attempted to distinguish Gary's signature on the Form-2823 from his signature on another FEGLI form (see #76 at 8), but Karissa failed to make any such argument or comparisons in her summary judgment pleadings or at the evidentiary hearing.
- 19 See #150 (denying the portion of Karissa's “Emergency Motion” (#145) seeking additional discovery).
- 20 As she explained, Gary attended a Super Bowl party, walked around the home and “up and down” a flight of thirteen stairs to use one of its bathrooms, and fed himself. (#138-3 at 23, 25.)
- 21 This is also the case for Kim and Karen's testimony that Gary appeared scared and confused before they decided to bring him to Tobey Hospital in mid-January. (#138-3 at 48, 58.)
- 22 See #138-3 at 37.

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