

At the time of John Rapp's death on December 24, 1998, the City of Easton maintained a Law Enforcement Officer's Liability Policy with Titan Insurance Company (No. 90-HP-01971) which policy was in effect on December 24, 1998. Titan provided a defense to Officer Cameron but defended under a reservation of rights letter. In particular, Titan claims that the policy specifically excludes coverage for Officer Cameron's actions on December 24, 1998. In the event the Motion to Intervene is granted, Titan intends to file a declaratory judgment action seeking a declaration from the court that the shooting of John Rapp by Cameron is excluded from coverage under the Titan policy.

II. DISCUSSION

Federal Rule of Civil Procedure 24(b)(2) provides the following in pertinent part:

(b) Permissive Intervention: Upon timely application anyone may be permitted to intervene in an action: . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

In its Memorandum filed in Opposition to the Motion to Intervene, "[p]laintiff concedes that the proposed filing of the declaratory judgment action involves questions of fact common to the underlying litigation between the executor of the estate and Defendant Cameron." (Plaintiff's Mem. at 6). Nonetheless, plaintiff requests the court to deny the motion because the motion is "untimely" and the plaintiff will be prejudiced if the motion is granted.

Plaintiff argues that the motion to intervene is untimely because it was not filed until seventeen days after judgment was entered by the court. Rule 24(b) requires that an application to intervene be "timely." Whether a motion to intervene is timely should be decided in light of all the circumstances. Commonwealth v. Rizzo, 530 F.2d 501, 506 (3d Cir.), cert.

denied, 426 U.S. 921 (1976). The determination of the timeliness of a motion to intervene is entrusted to the sound discretion of the court. Halderman v. Pennhurst State School & Hospital, 612 F.2d 131, 134 (3d Cir. 1979). The timeliness requirement is a flexible one. As one court has aptly stated:

“Timeliness” is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice.

McDonald v. E.J. Lavino Co., 430 F.2d 1065, 1074 (5th Cir. 1970).

Under all the circumstances, this court finds that Titan’s motion for intervention is timely. While Titan could have filed a motion to intervene well before the entry of judgment, it did not do so because of the prejudicial effect upon its insured, Officer Cameron. Had Titan requested intervention earlier, it would have prejudiced Cameron because he would have had to defend against both plaintiff and Titan, at a time when Titan was defending him under a reservation of rights letter. Moreover, had there been a verdict in favor of Officer Cameron the need to intervene would have been moot. Thus, this court finds that Titan acted timely by filing a motion to intervene seventeen days after the jury’s verdict.

Plaintiff cites to several court decisions for the proposition that courts should be reluctant to allow intervention after the case has gone to judgment. See Id. at 1072 (“[A]n attempt to intervene after final judgment is ordinarily looked upon with a jaundiced eye”). However, the rationale for the decisions of these courts is based on “the assumption that allowing intervention after judgment will either (1) prejudice the right of the existing parties to the litigation or (2) substantially interfere with the orderly processes of the court.” Id. However, “[i]f neither of these results would occur the mere fact that judgment already has been entered

should not by itself require an application for intervention to be denied.” 7C Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d, § 1916 at 451 (1986).

There will be no undue prejudice to the plaintiff by granting the motion to intervene. The only prejudice identified by the plaintiff is his concern that the granting of the motion would “delay the Plaintiff’s ability to bring this matter to a close.” (Plaintiff’s Mem. at 4). As far as this court is aware, neither plaintiff nor defendant intend to file an appeal to the Third Circuit Court of Appeals. Therefore, allowing Titan to intervene will not delay any appeal. Furthermore, the court still has to decide plaintiff’s motion for attorney fees and costs which at this time has not been fully briefed. Thus, this case would not be closed even if the court denies the motion to intervene. More importantly, the issue of insurance coverage needs to be decided in one forum or another. Plaintiff may wish to have another court decide the issue, but judicial efficiency will be promoted if this court addresses the issue since it is familiar with the record and this court has jurisdiction to review any declaratory judgment action filed by Titan because of the diversity of citizenship between the parties. See 28 U.S.C. § 1332. To minimize any prejudice to plaintiff, this court will condition Titan’s intervention upon certain terms. See Carroll v. American Fed’n of Musicians of U.S. & Canada, 33 F.R.D. 353 (S.D.N.Y. 1963) (Permissive intervention was allowed subject to certain conditions limiting discovery and limiting the issues intervenors might assert). In order to insure that the matter of insurance coverage is decided expeditiously, this court will make Titan’s intervention subject to the following conditions:

1. Intervenor may not reopen any questions that have previously been decided by the court;

2. All evidence heretofore adduced, prior to intervention, shall stand and be read as evidence bearing upon the existence and enforceability of the alleged rights and claims of intervenor, so far as pertinent thereto, and shall be considered by the court in the determination of said rights and claims subject to such objections to said evidence as were made during the presentation thereof;
3. Discovery proceedings shall stand without duplication.
4. Intervenor shall execute a consent form pursuant to 28 U.S.C. § 636(c).¹

An appropriate order follows.

BY THE COURT:

THOMAS J. RUETER
UNITED STATES MAGISTRATE JUDGE

copies to:

Martin D. Cohen, Esquire
Daniel J. Dugan, Esquire
Robert R. Reeder, Esquire
(Via U.S. Mail)

¹ Some of these conditions were among those imposed upon the Intervenor in United States v. School District of Omaha, 367 F.Supp. 198, 201 (D. Neb. 1973).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREW RAPP, Executor of the	:	
Estate of John E. Rapp, Deceased	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 00-1376
SCOTT C. CAMERON	:	

ORDER

AND NOW, this 18th day of October, 2001, for the above reasons set forth in the accompanying Memorandum of Decision, Titan Indemnity Company's Motion for Intervention is hereby GRANTED, subject to the conditions as set forth in the Memorandum. The Clerk of the Court shall docket Intervenor's Complaint for Declaratory Judgment and by November 2, 2001, the Intervenor shall submit to the court a proposed scheduling order agreed upon by all parties for the filing of cross-motions for summary judgment on the issues raised in the Intervenor's Complaint.

BY THE COURT:

THOMAS J. RUETER
UNITED STATES MAGISTRATE JUDGE