

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

SURETY ADMINISTRATORS, INC., et al.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	NO. 04-05177
	:	
v.	:	
	:	
MOHAMMED H. SAMARA, et al.,	:	
	:	
Defendants.	:	

**MEMORANDUM AND ORDER**

Stengel, J.

June 20, 2006

An insurance company seeks to intervene in this contract dispute between a subagent bondsman and his principal. An applicant seeking to intervene in an existing action must meet the requirements of Rule 24 of the Federal Rules of Civil Procedure. I find that the applicant in this case seeks to intervene as of right, but has failed to meet the requirements of Rule 24(a) and binding Third Circuit authority.

**I. BACKGROUND**

On November 5, 2004, plaintiffs Surety Administrators, Inc. ("SAI"), Harco National Insurance Company ("Harco"), and Capital Bonding Corporation ("CBC") (collectively "Plaintiffs") filed a complaint against defendants Mohammed H. Samara and Mohammed Samara Bail Bonds, Inc. (collectively "Defendants"). Plaintiffs amended their complaint on March 16, 2005. The First Amended Complaint raises claims for breach of contract, breach of fiduciary duty, conversion of trust funds, and unjust enrichment.

Highlands Insurance Company ("HIC") was an insurer domiciled in Texas that issued stock, fire, and casualty insurance policies in Texas and other states. In addition to issuing insurance policies, HIC also wrote criminal bail bonds and immigration bonds throughout the United States. HIC entered into two Program Administrator Agreements (collectively the "PAA") with CBC on December 15, 1999 and September 28, 2000 in furtherance of its bond business. The PAA appointed CBC as HIC's general agent to solicit applications for HIC's criminal court bail bonds and immigration/naturalization services surety bonds.<sup>1</sup> On November 6, 2003, the District Court of Travis County, Texas entered a permanent injunction placing HIC in receivership. HIC discontinued issuing any new insurance policies as of that date, but numerous HIC bonds issued by CBC were still in force. In addition, the state of New Jersey allegedly entered into a settlement with CBC to recover \$72 million in defaulted county bail bonds that CBC had failed to pay (the "New Jersey Settlement").<sup>2</sup>

Harco formed SAI in August of 2004 to handle the run-off and collection efforts for a number of insurance companies who had entered into bail bonds programs with CBC. A number of these insurers contracted with SAI to perform their run-off and

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<sup>1</sup>CBC acted as the general agent for a number of insurance companies engaged in issuing bail and immigration bonds, including HIC. CBC also contracted with various subagents (such as Defendants) to solicit and write bail bonds on behalf of CBC in civil and criminal actions. These subagency contracts obligated CBC's subagents to solicit business (and to collect and transfer bail bond premiums) on behalf of CBC and, consequently, the insurance companies who had contracted with CBC. CBC eventually ran out of funds, and SAI obtained the rights to collect various debts owed to CBC.

<sup>2</sup>The allegations in HIC's papers relating to the New Jersey Settlement are vague and unsupported by any documentation before the Court. However, HIC appears to allege that it is entitled to certain monies from the parties in this case on account of the New Jersey Settlement.

collections, including Harco, Aegis Security Insurance Co., and Sirius Insurance Company. HIC, however, chose to do its own run-off and collections despite SAI's offer to perform these duties on HIC's behalf.

HIC alleges that SAI has continued to collect debts due on HIC bonds written through CBC. HIC also alleges that it has attempted to collect from SAI the amounts owed by CBC under the PAA, but that SAI has failed to remit any payments for these debts. HIC therefore filed an application to intervene in this action on May 18, 2006. HIC's application appears to base its right to intervene on two primary premises. First, HIC states that "the Court may decide that [Plaintiffs] are entitled to collection of amounts due HIC" or that "the Court may absolve [Defendants] from . . . any amounts due HIC" if it is not allowed to intervene.

Second, HIC alleges that it is entitled to monies relating to a number of bonds written by Defendants through CBC pursuant to the PAA. Specifically, HIC alleges that:

HIC's records show that 337 of the 878 bonds approved in [the New Jersey Settlement] were either written by [Samara] directly or by posting agents appointed through [Samara's] agreement with CBC. These 337 bonds accounts for \$8,599,928 of [HIC's] \$22,939,910 total liability; \$1,162,155 of the \$3.1 million cash portion and \$7,437,773 of the approved general creditor proof of claim portion.<sup>3</sup>

HIC Motion to Intervene at ¶ 15. HIC thus appears to argue that it has a property interest in the premiums Plaintiffs seek to recover in the underlying action.

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<sup>3</sup>HIC has failed to provide any background information for these allegations, and I have been unable to locate any documentation in the record to support or more fully explain them.

## **II. LEGAL STANDARD**

Rule 24 of the Federal Rules of Civil Procedure governs an applicant's intervention into an existing lawsuit. Rule 24 provides for two distinct types of intervention: (1) intervention as of right, governed by Rule 24(a); and (2) permissive intervention, governed by Rule 24(b). See FED. R. CIV. P. 24. Rule 24 also provides that an applicant must meet several procedural requirements to intervene. See FED. R. CIV. P. 24(c).

### **A. Intervention as of Right**

Federal Rule of Civil Procedure 24(a) governs an applicant's intervention as of right, and provides in pertinent part:

Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

FED. R. CIV. P. 24(a).

Courts in the Third Circuit apply a four-part test to determine whether an applicant may intervene in an action as of right. An applicant is entitled to intervene as of right when: "(1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately

represented by an existing party in the litigation" (collectively the "Harris Test"). Harris v. Pernsley, 820 F.2d 592, 596 (3d Cir. 1987), cert. denied 484 U.S. 947 (1987) (citation omitted). The applicant bears the burden of demonstrating that it has met all four prongs of the Harris Test. See United States v. Alcan Aluminum, Inc., 25 F.3d 1174, 1181 n.9 (3d Cir. 1994).

## **B. Permissive Intervention**

Federal Rule of Civil Procedure 24(b) governs permissive intervention, and provides in pertinent part:

Upon timely application anyone may be permitted to intervene in an action . . . 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.

FED. R. CIV. P. 24(b).

Rule 24(b) by its terms leaves the decision of whether to grant permissive intervention to the discretion of the court. See FED. R. CIV. P. 24(b). See also Hoots v. Pennsylvania, 672 F.2d 1133, 1135-36 (3d Cir. 1982). Similar to Rule 24(a), courts deciding whether to grant an application for permissive intervention consider the timeliness of the application. See FED. R. CIV. P. 24(b); NAACP v. New York, 413 U.S. 345, 365-66 (1973); Kitzmiller v. Dover Area Sch. Distr., 229 F.R.D. 463, 465 (M.D. Pa. 2005).

### **C. The Procedural Requirements of Rule 24(c)**

Federal Rule of Civil Procedure 24(c) provides a number of procedural requirements that an applicant must meet before being permitted to intervene under either Rule 24(a) or 24(b). First, Rule 24(c) requires the applicant to identify the type of intervention sought—intervention as of right or permissive intervention. See FED. R. CIV. P. 24(a)–(b). See also Gaskin v. Pennsylvania, 231 F.R.D. 195, 196 (E.D. Pa. 2005). Second, the applicant must file a motion stating the grounds for its proposed intervention. FED. R. CIV. P. 24(c). Finally, the applicant's motion must include a pleading "setting forth the claim or defense for which intervention is sought." Id.

### **III. DISCUSSION**

#### **A. HIC's motion is denied for failure to follow the procedural requirements of Rule 24(c).**

Courts in this Circuit have denied motions to intervene when an applicant fails to meet the procedural requirements of Rule 24(c). See, e.g., SEC v. Investors Sec. Leasing Corp., 610 F.2d 175, 177-78 (3d Cir. 1979) ("Because the requirements of [R]ule 24(c) were not complied with, the owners were not proper parties in the district court"); Sch. Dist. of Phila. v. Pa. Milk Mrktg. Bd., 160 F.R.D. 66, 67 (E.D. Pa. 1995) (denying motion to intervene because applicant failed to attach "pleading setting forth the claim or defense for which intervention is sought" as required by Rule 24(c)). In Gaskin, 231 F.R.D. at 196, the applicant's motion to intervene failed to identify the type of intervention sought. Moreover, the applicant did not state the grounds for its

intervention and did not provide a pleading setting forth the claim or defense for which intervention was sought. Gaskin, 231 F.R.D. at 196. Accordingly, Judge Robreno found that "[s]uch utter disregard for Rule 24(c) warrants denial of the motion." Id.

In this case, HIC's motion does not specify the type of intervention sought. Nor does the motion include a pleading "setting forth the claim or defense for which intervention is sought." HIC has therefore failed to comply with the procedural requirements of Rule 24(c), and I will deny its motion to intervene under Investors and Gaskin.

**B. HIC's motion is also denied because it has failed to meet the requirements for intervention as of right.<sup>4</sup>**

Even if HIC had followed the procedural requirements of Rule 24(c), I will deny HIC's motion because it has not met three of the four Harris Test requirements. Applicants must satisfy all four prongs of the Harris Test to intervene as of right in the

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<sup>4</sup>As described supra, HIC has not identified whether it seeks to intervene as of right or if it seeks permissive intervention. The language contained in HIC's papers, however, suggests that it seeks to intervene as of right. For example, HIC's motion states that "[Rule 24] provides that anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction." This language more closely resembles that of intervention as of right under Rule 24(a) than permissive intervention under Rule 24(b). Compare FED. R. CIV. P. 24(a) ("Anyone may be permitted to intervene in an action . . . when the applicant *claims an interest relating to the property or transaction* which is the subject of the action . . .") (emphasis added) with FED. R. CIV. P. 24(b) ("Anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common"). Moreover, other language in HIC's motion suggests that HIC seeks to intervene as of right. See HIC Mot. to Intervene ¶ 19 ("Intervention in this suit is necessary and *a matter of right . . .*") (emphasis added). Accordingly, I will treat HIC's motion as an application to intervene as of right pursuant to Rule 24(a).

Third Circuit. See Harris, 820 F.2d at 596. Specifically, HIC has not demonstrated that: (1) its application was timely; (2) it has a "sufficient interest" in this action; or (3) any interest it has in this litigation may be impaired by the Court's disposition of the case.

**1. HIC's motion to intervene is untimely.**

The first prong of the Harris Test requires that the application to intervene be timely. Harris, 820 F.2d at 596. In Mountain Top Condo. Assoc. v. Dave Stabbert Master Bldr., Inc., 72 F.3d 361, 369 (3d Cir. 1995), the Third Circuit delineated three factors that courts should consider when determining whether an application to intervene is timely. Courts in the Third Circuit are to consider: "(1) the stage of the proceeding; (2) the prejudice that delay may cause the parties; and (3) the reason for the delay" (collectively the Mountain Top Factors"). Id. (citation omitted).

I find that HIC's motion to intervene is untimely in this case after considering the Mountain Top Factors. First, HIC has sought to intervene at a late stage in these proceedings. HIC filed its motion to intervene on May 18, 2006. This case, however, commenced on November 5, 2004, and discovery closed on September 26, 2005. The Court also denied a motion for summary judgment on April 6, 2006, and the case is scheduled to be placed into the trial pool on August 30, 2006. HIC has essentially waited until the proverbial "eve of trial" to file its application to intervene.

Second, allowing HIC to intervene at this stage of the litigation would prejudice the parties to the underlying action. In particular, permitting HIC to intervene would cause additional delay in an already aging lawsuit, burden the Court, and force Plaintiffs and Defendants to incur additional legal expenses with regard to the claims and defenses proffered by HIC.

Third, and perhaps most importantly, HIC's papers do not provide any reason for why it has delayed in filing its application to intervene more than one and a half years after Plaintiffs commenced the lawsuit and nearly a year since discovery closed. Accordingly, I find that the Mountain Top Factors weigh in favor of finding that HIC's application to intervene is untimely. HIC therefore fails the first prong of the Harris Test.

**2. HIC does not have a sufficient interest in this litigation to warrant intervention as of right.**

The second Harris Test prong provides that an applicant seeking to intervene as of right must demonstrate that it has a "sufficient interest" in the litigation. Harris, 820 F.2d at 596. The Third Circuit has explained that "sufficient interest" means that the asserted interest "must be a legal interest as distinguished from interests of a general and indefinite character." Id. (quotation and citation omitted). An applicant may not simply show that its interests may be affected in some incident manner. Id. at 601. Instead, the applicant must "demonstrate that there is a tangible threat to a legally cognizable interest

to have the right to intervene." Harris, 820 F.2d at 601. In particular, the Third Circuit has noted that an applicant has a sufficient interest in a litigation when its contractual rights could be directly affected by a proposed remedy. See id. (citations omitted).

In this case, I agree with Plaintiffs' argument that any amount HIC has paid on bonds issued by or through the parties to the underlying action is irrelevant. As expressly stated in their Pretrial Memorandum, Plaintiffs seek to recover amounts owed to them by Defendants and not any monies that Defendants may owe to HIC. Plaintiffs seek only the premiums, subagent services charges, and unaccounted-for powers of attorney that Defendants allegedly owe to the sureties that contracted with SAI to handle the run-off and collection efforts of the sureties' respective bail bonds programs. HIC has not argued or presented any evidence that SAI had a contractual or other duty to handle HIC's run-off or collections. The monies sought by Plaintiffs in this case, therefore, are separate and distinct from any amounts that the parties to the underlying action may owe to HIC.

HIC has not demonstrated a sufficient interest in this litigation to permit intervention as of right. While HIC may have separate legal claims against one or both of the parties in the underlying action, that fact alone is insufficient to intervene as of right in this case. See Harris, 820 F.2d at 601 ("the applicant must do more than show that his or her interests may be affected in some incidental manner"). At most, HIC has demonstrated that its alleged interest in this case may be affected in some incidental manner by its disposition. HIC may still attempt to recover from Plaintiffs, Defendants,

or both regardless of which party prevails at trial in the underlying action.<sup>5</sup> HIC's contractual rights under the PAA will not be directly affected by the disposition of this action. Accordingly, disposition of this case would not directly affect HIC's legal interests and HIC has not met the second prong of the Harris Test.

**3. There is no potential impairment because HIC does not have a sufficient interest in this litigation.**

Once an applicant for intervention has established that it has a sufficient legal interest in an underlying action, the third Harris Test prong requires the applicant to show that its interest is in jeopardy. Harris, 820 F.2d at 596. I have already found that HIC does not have a sufficient interest in this litigation to meet the second prong of the Harris Test. The logical extension of that conclusion is that HIC's interest cannot be jeopardized by the underlying action because it is insufficient. Accordingly, HIC has not met the third Harris Test prong.

**IV. CONCLUSION**

HIC has failed to meet the procedural requirements to intervene codified in Federal Rule of Civil Procedure 24(c). Moreover, even if it had met the requirements of Rule 24(c), HIC has failed to satisfy three of the four Harris Test requirements to intervene as of right in the Third Circuit. I will therefore deny HIC's motion to intervene. An appropriate Order follows.

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<sup>5</sup>Should HIC choose to pursue its claims against Plaintiffs or Defendants, it must raise these claims in a separate action.

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v.	:	
	:	
MOHAMMED H. SAMARA, et al.,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 20th day of June, 2006, upon consideration of HIC's Motion to Intervene (Docket No. 55) and the parties' responses thereto, it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.