

Kentucky District Court Denies Insurer's Motion to Intervene and Interplead Policy Limits

March 2009

The United States District Court for the Eastern District of Kentucky, applying federal law, has denied an insurer's motion to intervene in litigation pending against its insureds and file a complaint for interpleader pursuant to 28 U.S.C. § 1335. In *re ClassicStar Mare Lease Litigation*, 2009 WL 159152 (E.D. Ky. Jan. 22, 2008).

The insurer issued a policy containing a directors and officers liability coverage part that provided coverage for several defendants in the multi-district litigation pending in the district court. Under the terms of the policy, payment of defense costs reduced the available limits. In addition, certain plaintiffs in the underlying litigation had made settlement demands that together exceeded the available limits under the policy.

The insurer agreed to defend the insureds under a reservation of rights and subsequently filed a motion to intervene and file a complaint for interpleader in the underlying litigation. Two parties opposed the insurer's motion on the grounds that it was untimely and that the relief requested would prejudice the insureds. These parties also argued that it would be inequitable to excuse the insurer from performing under its policy and to shift the administrative costs of reviewing and approving payment of defense expenses.

The court denied the insurer's motion on the grounds that intervention under Federal Rule of Civil Procedure 24(b) was inappropriate because the insurer had not identified any common question of law or fact with the litigation already pending before the court. The court explained that "none of the underlying disputes . . . arise under the contract of insurance . . . nor do they concern themselves with the enforcement or breach of that contract." The court further found that the fraud exclusion coverage issues raised by the insurer in connection with its effort to intervene were "at best, tangentially related and, ultimately, irrelevant to the resolution" of the pending litigation. In addition, the court noted that the proposed complaint in interpleader stated that the insurer had no interest in policy funds. The court reasoned that "[t]here can be no common question of law and fact where the party seeking to intervene would, in its intervening complaint in interpleader, effectively disavow the only arguable common question of law or fact between the consolidated matters and the proposed intervention."