

# Class Action Plaintiffs Not Permitted to Intervene in Coverage Action

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A federal district court in Alabama has held that class action plaintiffs were not entitled to intervene in a declaratory judgment action brought by insurers of the defendants seeking to rescind policies issued to the defendants because the class action plaintiffs did not have a legally protectable interest in the insurance dispute and because the interests of the plaintiffs were adequately represented by the policyholder defendants. *In re HealthSouth Corp. Ins. Litig.*, 2004 WL 231427 (N.D. Ala. Feb. 3, 2004).

The insurers had issued crime loss indemnity policies and fiduciary liability policies to the policyholders who were sued in an underlying ERISA class action alleging that they had breached fiduciary duties they owed to a health plan. The insurers filed this action against the policyholders, seeking a declaration that the policies were void *ab initio* due to fraud and misrepresentations in the underwriting process. The class action plaintiffs filed a motion to intervene in the rescission proceeding, asserting that they were entitled to intervene as of right or requesting that they be granted permissive intervention.

The court first considered the class action plaintiffs' motion to intervene as of right. The court held that the plaintiffs were not entitled to intervene because they did not have a protectable interest in the property or the transaction that was the subject of the rescission. Instead, the court concluded that the class action plaintiffs had only a contingent interest in the subject of the insurance dispute because no judgment had been obtained against the policyholders. The court also reasoned that the class action plaintiffs' interests were adequately represented by the policyholders. The court explained that the claimants and the policyholders had identical interests with respect to the insurers, which was to ensure that the policies were not rescinded and that the policies were available to provide coverage for any losses that may be covered.

The court also held that the class action plaintiffs should not be granted permissive intervention, reasoning that the would-be intervenors' claims and defenses did not have common questions of law or fact with the insurance dispute. The court explained that the underlying plaintiffs' federal ERISA allegations were unrelated to the insurers' state law allegations concerning misrepresentations in the insurance underwriting process. In addition, the court noted that, even if common questions existed, it was appropriate to deny permissive intervention in order to avoid unduly complicating and delaying the insurance dispute.

For more information, please contact us at 202.719.7130.