IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 21-0243

PRAETORIAN INSURANCE COMPANY,

Petitioner,

v.

VIRGINIA CHAU, Administratrix of the Estate of ANH KIM HO,

Plaintiff Below, Respondent

and

AIR CARGO CARRIERS, LLC,

Defendant Below, Respondent.

AIR CARGO CARRIERS, LLC'S RESPONDENT'S BRIEF

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Response to Assignment of Error No. 1: The Circuit Court correctly concluded that disposition of this matter will not impair or impede Praetorian's protection of its own interests because Praetorian has no standing or "substantial interest" in the tort action and because it has failed to assert a justiciable controversy.

Response to Assignment of Error No. 2: The Circuit Court properly denied Praetorian's motion to intervene as untimely under a deferential abuse of discretion standard given Praetorian's unexplained and unreasonable delay in filing the motion coupled with advancement of the underlying litigation.

II. STATEMENT OF THE CASE

A. Statement of Facts

Air Cargo is a Wisconsin Limited Liability Company which runs certain air cargo operations out of Charleston's Yeager Airport. (AR 005). On May 5, 2017, Anh Ho, an employee of Air Cargo and first officer, was killed in an airplane crash during a regularly scheduled cargo route while the pilot was attempting to land at Yeager Airport. (AR 010-011). The airplane involved in the crash was owned by Air Cargo, and the pilot was Captain Jonathan Alvarado, who was also killed in the crash. *Id.*

On May 3, 2019, Virginia Chau, Administratrix of the Estate of Anh Ho, filed this wrongful death lawsuit against Air Cargo and others. AR 005-20. In the Complaint, Ms. Chau asserts a negligence claim against Air Cargo and also asserts a cause of action for "deliberate intent" pursuant to West Virginia Code Section 23-4-2(d)(2). (AR 011-014). Air Cargo denies any liability for the claims asserted against it.

Praetorian had previously issued a Worker's Compensation and Employers' Liability insurance policy to Air Cargo that was in effect at all relevant times. Under that policy, Praetorian has been providing Air Cargo a defense to this case under a reservation of rights with counsel selected solely by Praetorian. (AR 183-186). Under the Policy, Praetorian has a duty to defend all claims asserted against Air Cargo since it acknowledges that at least one of the claims (the negligence claim) is covered. (AR 185).

B. Procedural History

This tort action was removed to Federal Court on June 13, 2019 and later remanded to Judge Bloom on February 10, 2020. (AR 001). Praetorian made no effort to intervene in the Tort Action during the period of removal and remand.

On September 20, 2020, more than seven months after the remand, rather than moving to intervene in the Tort Action, Praetorian filed a separate Declaratory Judgment action in the Circuit Court of Kanawha County (Civil Action No. 20-C-800). ("Declaratory Judgment Action"). (AR 206-211). Under Count I of the Declaratory Judgment Action, Praetorian seeks a declaration with respect to the scope and extent of its duty to defend and/or indemnify Air Cargo for the "deliberate intent" cause of action. (AR 209-209). Under Count II of the Declaratory Judgment action, Praetorian does not seek any declaration of its rights or duties under the applicable policy. Rather, Praetorian seeks to have the Circuit Court make a substantive ruling on the ***merits*** of the negligence claim, namely the question of Air Cargo's alleged immunity. (AR 185). As discussed below, there is no law that allows Praetorian to attempt to litigate the merits of a tort claim against its insured.

On November 24, 2020, Air Cargo filed a motion in the Declaratory Judgment Action to dismiss Count II of Plaintiff's Complaint. Contemporaneously, Virginia Chau filed a similar

motion to dismiss Count II. (AR 120-124). Both the Air Cargo motion to dismiss and the Chau motion to dismiss assert that Count II of Praetorian's Declaratory Judgment action improperly seeks relief well beyond a mere declaration as to the scope of Praetorian's duty to defend and/or indemnify Air Cargo because in Count II, Praetorian actually seeks to litigate the underlying merits of the plaintiffs' negligence claim. Respondents contend that the question of Air Cargo's negligence is a dispute solely between the Estate of Anh Ho and Air Cargo and that Praetorian lacks standing to directly litigate a negligence claim pending between the plaintiff and defendant in this Tort Action. (AR 129 – 131).

As of November 30, 2020, the parties had already engaged in written discovery requests and responses. (AR 001-002; AR 146). On December 17, 2020, Judge Bloom denied a motion to consolidate the tort action and the Declaratory Judgment action. (AR 140-142). Praetorian again chose not to seek to intervene in the tort action after denial of the motion to consolidate.

On December 23, 2020, Judge Bloom entered an Amended Scheduling Order in the tort action, setting, among other deadlines, fact witness disclosures for February 19, 2021, plaintiff expert disclosures by April 1, 2021, defendant expert disclosures by May 3, 2021, discovery completion by July 15, 2021, dispositive motions deadline of July 30, 2021, and a trial date of October 4, 2021. (AR 297-298). Despite readily available information that the tort action was set to proceed at an expedited pace as a result of entry of the December 23, 2021 Amended Scheduling Order, Praetorian again chose not to seek to intervene in the tort action at that time.

On February 1, 2021, Virginia Chau noticed the video depositions of two fact witnesses. which were subsequently conducted. (AR 003). Moreover, 21 months after the filing of this tort action, and more than 1 year after the remand of the tort action back to Circuit Court, and nearly

two months after denial of consolidation and Judge Bloom's entry of an amended scheduling order, Praetorian finally filed its motion to intervene in the tort action. (AR 143-186).

When Praetorian filed its motion to intervene, it attached a newer "Declaratory Judgement Complaint" as its proposed pleading in the event that intervention was permitted. (AR 158-164). This newer Declaratory Judgement Complaint contains the same allegations as set forth in Count II of the original Declaratory Judgment Action filed before Judge Ballard, i.e. that Praetorian should be permitted to directly litigate the merits of a defense to the negligence claim on behalf of its insured. Praetorian argued in its motion that "Praetorian stands to directly lose a substantial amount of money if this Court finds that Air Cargo is not immune from Ms. Chau's simple negligence claim." (AR 152). Thus, at that time, Praetorian had the exact same issue pending before two Circuit Courts at the same time.

On February 22, 2021, Air Cargo and Ms. Chau filed fact witness disclosures in the Tort Action. (AR 003). On February 25, 2021, Judge Bloom denied Praetorian's Motion to Intervene by entering the Order which is the subject of this appeal. (AR 187-189). Praetorian filed its Notice of Appeal on March 26, 2021 (AR 235-256) and filed its Petitioner's Brief on June 25, 2021.

On July 28, 2021, after the filing of the Notice of Appeal and Petitioner's Brief, Judge Ballard entered an order in the original Declaratory Judgment Action dismissing Count II of Praetorian's Declaratory Judgment Complaint.[1] On July 28, 2021, Judge Ballard also entered an Order denying Praetorian's Motion for Summary Judgment and holding that the "deliberate intent" exclusion relied upon by Praetorian is void as it directly violates Wisconsin law.[2] *See* Order at ¶ 16. Judge Ballard also determined that even if the exclusion were legal, the "deliberate intent"

[1] *See* Petitioner's previously filed Motion for Judicial Notice and corresponding Dismissal Order. Air Cargo does not object to the motion.

[2] Air Cargo and Ms. Chau are contemporaneously filing a Motion for Judicial Notice of this Order as well.

claim is covered by a separate employer's liability endorsement attached to the policy that is not subject to the "deliberate intent" exclusion relied upon by Praetorian. *Id.* at ¶¶ 30-50. The practical effect of the Order denying Praetorian's motion for summary judgment is a finding that the "deliberate intent" claim is covered by the Praetorian policy.

III. SUMMARY OF ARGUMENT

This Court may quickly dispense with this appeal based solely upon the fact that the motion to intervene was untimely. The motion was made 21 months after the filing of the civil action and more than a year after the removal and remand back to circuit Court. Praetorian has offered no reasonable excuse for this delay.

However, to the extent that this Court decides to venture further into *de novo* review of the substance of Praetorian's efforts as an insurance carrier to litigate the merits of the underlying negligence claim between the plaintiffs and defendants, there are other valid reasons to uphold Judge Bloom's Order denying intervention.

First, under *de novo* review, Praetorian has no standing and no "substantial interest" that would allow it to litigate the merits of the underlying negligence claim that would support intervention as of right. While Praetorian generally has a right to seek clarification from a Court regarding its contractual rights and duties under the insurance policy at issue, it does not have any right whatsoever to intervene directly in the underlying tort litigation to attempt to litigate the ***merits*** of a defense for its insured. Praetorian has cited no law which would allow it to litigate the merits of a tort claim against its insured which is already being litigated by defense counsel of Praetorian's own choosing. Air Cargo also contends that in light of Judge Ballard's recent ruling that the "deliberate intent" claim is covered, Praetorian has not asserted a justiciable case or

controversy to serve as a basis for intervention of right. Finally, Praetorian is not entitled to litigate the exact same claim in two courts.

IV. STANDARD OF REVIEW

This Court reviews Judge Bloom's ruling that the motion to intervene was untimely with the deference afforded under an abuse of discretion standard. However, if this Court reaches the substantive elements of intervention, the Court may look at the record with fresh eyes under the *de novo* standard.

As previously noted by this Court:

> the question of the timeliness of a motion to intervene is a threshold issue. In regard to timeliness of intervention, this Court has held: "[w]hile Rule 24 of the West Virginia Rules of Civil Procedure provides for the intervention of parties upon a timely application, the timeliness of any intervention is a matter of discretion with the trial court." Syl. pt. 3, *State ex rel. Ball v. Cummings*, 208 W.Va. 393, 396, 540 S.E.2d 917, 920 (1999) (citing *Pioneer Co. v. Hutchinson*, 159 W.Va. 276, 278, 220 S.E.2d 894, 897 (1975), overruled on other grounds, *State ex rel. E.D.S. Federal Corp. v. Ginsberg*, 163 W.Va. 647, 259 S.E.2d 618 (1979)).

SWN Prod. Co., LLC v. Conley, 850 S.E.2d 695, 2020 W. Va. LEXIS 841, 2020 WL 7090525 (W. Va. 2020). This Court has also previously held that:

> the standard of review of circuit court rulings on the elements governing a timely motion to intervention as a matter of right under Rule 24(a) of the West Virginia Rules of Civil Procedure is *de novo*.

Id.

V. STATEMENT REGARDING ORAL ARGUMENT

Air Cargo joins Petitioner in requesting oral argument.

VI. ARGUMENT

A. The Circuit Court did not Abuse its Discretion in Holding that the Petition to Intervene was Untimely and Praetorian has Offered no Reason for its Unreasonable Delay.

The first requirement under Rule 24(a) of the West Virginia Rules of Civil Procedure, Intervention of Right, is "Upon ***timely*** application . . . ." *Id.* (emphasis added). As a result, if the application is untimely, the application may be denied on that basis. *In re P.H.*, 2015 WL 6181417 (W. Va. 2015).

As set forth above, the timeliness of intervention is reviewed under an abuse of discretion standard. "Ordinarily, when a circuit court is afforded discretion in making a decision, this Court accords great deference to the lower court's determination." *Rollyson v. Jordan*, 518 S.E.2d 372, 1999 W. Va. LEXIS 78 (W. Va. 1999).

> Typically, a grant of discretion to a lower court commands this Court to extend substantial deference to such discretionary decisions." *State v. Allen, W. Va.* , , S.E.2d , , 1999 W. Va. LEXIS 134, *27 (No. 25980 Nov. 17, 1999). In other words, "'under the abuse of discretion standard, we will not disturb a circuit court's decision unless the circuit court makes a clear error of judgment or exceeds the bounds of permissible choices in the circumstances.'" *Hensley v. West Virginia Dep't of Health & Human Resources*, 203 W. Va. 456, 461, 508 S.E.2d 616, 621 (1998) (quoting *Gribben v. Kirk*, 195 W. Va. 488, 500, 466 S.E.2d 147, 159 (1995)).

In re Michael Ray T., 525 S.E.2d 315, 1999 W. Va. LEXIS 167 (W. Va. 1999).

Under the circumstances, Judge Bloom did not exceed the bounds of permissible choices or abuse his discretion in ruling that Praetorian's motion to intervene, filed more than 21 months after the filing of the underlying civil action, and more than one year after the civil action was remanded to Circuit Court, was untimely. As set forth above, there were numerous opportunities for Praetorian to seek intervention and it chose instead to wait, and then pursue the Declaratory

Judgment Action. As of the date of the intervention application, Judge Bloom had already entered a scheduling order, the parties had exchanged fact witnesses, and depositions were noticed and moving forward. Moreover, if this Court upholds Judge Bloom's ruling that the motion to intervene was untimely, this Court does not even need to reach the merits of the applicable intervention standard.

In *In re P.H.*, this Court reviewed an appeal of an order denying a motion to intervene that was filed more than one year after the initiation of the underlying proceedings. This Court found that denial of the intervention as untimely was not an abuse of discretion. Thus, this Court aptly reasoned:

> it is undisputed that petitioners did not file their motion to intervene until more than one year after the initiation of the underlying proceedings, and that the circuit court held a hearing on petitioners' motion to intervene on January 28, 2015. In its order denying petitioners' motion to intervene, the circuit court found that petitioners' motion "was untimely filed" . . . . Given the circumstances of this case, we find no abuse of discretion in the circuit court's order denying petitioners' motion to intervene as untimely.

In re P.H., 2015 WL 6181417 (W. Va. 2015). In contrast, in *State ex rel. Ball v. Cummings*, 208 W. Va. 393, 399, 540 S.E.2d 917, 923, 1999 W. Va. LEXIS 135, *13, 49 ERC (BNA) 2006, this Court upheld the circuit court's ruling that timeliness of an intervention application was satisfied because less than two months passed before intervention was requested.

Praetorian attempts to rely on *SWN Prod. Co., LLC v. Conley*, 850 S.E.2d 695, 2020 W. Va. LEXIS 841, 2020 WL 7090525 (W. Va. 2020) in advancing an argument that this Court should find that Judge Bloom abused his discretion in finding the intervention application untimely. However, the facts of *SWN* were markedly different from the facts here and *SWN* provides no

meaningful basis to override the deference afforded to Judge Bloom under the abuse of discretion standard.

In *SWN*, the Circuit Court had previously denied an intervention application, in part, on the grounds that it was untimely. In reversing, this Court found it "compelling that no scheduling order had been entered, no trial date had been set, and no discovery deadline imposed." *Id.* at *21. As this Court further stated: "Our review of the record fails to illuminate any prejudice or harm to Respondents, and, given the lack of advancement of the case for trial proceedings, it is not apparent that the case would suffer from delay caused by intervention." *Id.*

By contrast, in the instant case, by the time the intervention application was filed, a number of parties had already engaged in written discovery. (AR 001-002). Judge Bloom's scheduling order in the underlying action had been entered in December of 2020, nearly three months prior to Praetorian's intervention application on February 10, 2021. (AR 297-298). Additionally, all parties had already identified fact witnesses under the Scheduling order by February 19, 2021, prior to Judge Bloom's entry of the order denying intervention. (AR 003). Moreover, Expert disclosures were quickly approaching in April and June, respectively, and a discovery cutoff deadline was set for July 15, 2021. (AR 297-298). In addition, two depositions were noticed in the case prior to the filing of the intervention application and one of the depositions was conducted on the date of the entry of Judge Bloom's order denying intervention. (AR 003; AR 147). Permitting intervention would have been prejudicial to the extent that (1) the existing parties had to reverse course and back up to accommodate Praetorian's entry into the case; and (2) Praetorian sought to re-depose those fact witnesses already deposed or noticed for deposition.

Review of the time frames for the intervention application - more than 21 months after the filing of the underlying civil action, and more than one year after the civil action was remanded to

Circuit Court, coupled with the existence of a scheduling order, the exchange of written discovery, the noticing of fact witness depositions and additional facts showing advancement of the case, establish fundamental differences in the facts of this case versus the *SWN* case. As a result, Air Cargo asserts that, under the circumstances presented, Judge Bloom did not exceed the bounds of permissible choices or otherwise abuse his discretion in denying the Intervention Application. Under the deferential abuse of discretion standard, this Court should uphold Judge Bloom's Order denying intervention on the basis that it was untimely.

B. Under *de novo* Review of the Merits of the Circuit Court's Denial of Praetorian's Application for Intervention, Praetorian does not Satisfy the Elements to Intervene as a Matter of Right as Praetorian does not have Standing or a Substantial Interest in the tort case.

As set forth above, review of the substantive elements of an order denying intervention is *de novo*. *SWN Prod. Co., LLC v. Conley*, 850 S.E.2d 695, 2020 W. Va. LEXIS 841, 2020 WL 7090525 (W. Va. 2020). In discussing the *de novo* standard, this Court has stated: "[W]e look at the record with fresh eyes to see whether we would make the same findings as the circuit court. If not, our findings prevail." *Sergent v. City of Charleston*, 209 W. Va. 437, 442, 549 S.E.2d 311, 316, 2001 W. Va. LEXIS 65, *11 (W. Va. 2001).

Under Rule 24(a)(2) of the West Virginia Rules of Civil Procedure, the elements for intervention as matter of right include: (1) the application must be timely; (2) the applicant must claim an interest relating to the property or transaction which is the subject of the action; (3) disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant must show that the interest will not be adequately represented by existing parties. *Id.* A "substantial interest" is one that is capable of definition, protectable under some law, and specific to the intervenor. *State ex rel. Ball v. Cummings*, 540 S.E.2d 917 (W.Va. 1999).

Praetorian has failed to demonstrate that it has standing to directly litigate the actual merits of the negligence claim made against its own insured. The United States Constitution provides that courts have the power only to hear "cases" and "controversies". U.S. Const Art. III, §2. The doctrine of standing is designed to ensure that courts do not exceed those constitutionally circumscribed powers. *Spokeo, Inc. v. Robins*, 135 S.Ct. 1540, 1547 (2016); *A. H. v. CAMC Health System, Inc.*, 2020 WL 1243608, (W.Va. 2020). "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno,* 126, S.Ct. 1854 (2006). "For all relief sought, there must be a litigant with standing, whether that litigant joins the lawsuit as a plaintiff, a co-plaintiff, or an intervenor of right." *Town of Chester, New York v. Laroe Estates, Inc.* 137 S. Ct. 1645 (2017).

In cases where a party attempts to vindicate their own rights, to establish Article III standing, they must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo*, *supra* at 1547. Therefore, if Praetorian seeks to establish standing through its own right, it must articulate an injury in fact traceable to the challenged conduct of the Estate and/or its own insured.

In cases where a party attempts to vindicate the rights of a third party through a declaratory judgment action, West Virginia courts require the party to establish the existence of *jus tertii* standing by demonstrating a three-factor test is met. To demonstrate *jus tertii* standing the party must "(1) have suffered an injury in fact; (2) have a close relation to the third party; and (3) demonstrate some hindrance to the third party's ability to protect his or her own interests. *Kanawha County Public Library Board v. Board of Education of the County of Kanawha*, 745 S.E.2d 424, 435-36 (W.Va. 2013); and *Powers v. Ohio*, 499 U.S. 400, 411 (1991). "Courts have

been reluctant to allow persons to claim standing to vindicate the rights of a third party on the grounds that third parties are generally the most effective advocates of their own rights and that such litigation will result in an unnecessary adjudication of rights which the holder either does not wish to assert or will be able to enjoy regardless of the outcome of the case." *Snyder v. Callaghan*, 284 S.E.2d 241, 250 (W.Va. 1981). Further, the United State Supreme Court has acknowledged the third prong requires a showing of a genuine obstacle to the third party's ability to protect its own interest. "Under the third prong of *Powers*, it must be shown that there is some genuine obstacle to the third party's assertion of his rights." *Singleton v. Wulff*, 428 U.S. 106, 116 (1976). Therefore, Praetorian must demonstrate a genuine obstacle that prevents Air Cargo from protecting its own interest in the negligence claim. Praetorian has not been able to articulate any such "genuine obstacle."

Praetorian has also failed to articulate its own injury in fact to establish standing in its own right. Praetorian is in effect asking this Court to open tort litigation to direct actions between an injured party and the alleged tortfeasor's insurer. However, West Virginia is not a "direct action" state and it does not permit a plaintiff to choose to directly sue the insurer instead of the insured tortfeasor. *Robinson v. Cabell Huntington Hospital, Inc.*, 498 S.E.2d 27, 31-32 (W.Va. 1997) ("As a general rule, in the absence of policy or statutory provisions to the contrary, one who suffers injury which comes within the provisions of a liability insurance policy is not in privity of contract with the insurance company and cannot reach the proceeds of the policy for the payment of his claim by an action directly against the insurance company"). Reciprocally, an insurer cannot sue an injured plaintiff to litigate the tort claim.

Furthermore, this Court acknowledged in *O'Neal v. Pocahontas Transp. Co.*, 129 S.E. 478, 481 (W.Va. 1925) that:

> [t]he inherent difference between a breach of an agreement between parties, and that sort of breach of duty which we call a tort, is as old as the law itself....There is no privity of contract between the injured person and the insurance company. The remedy, well established, is by a suit against the tort-feasor alone.

Id. Moreover, "[i]t is well-established that a contract of insurance is a personal contract between the insurer and the insured named in the policy." *Woodford v. Glenville State College Hous. Corp.*, 225 S.E.2d 671, 674 (W.Va. 1976). Based upon the above, Praetorian has no standing to seek to litigate the merits of a tort claim against its insured.

Praetorian also does not have a "substantial interest" in the tort action that would support intervention within the meaning of Rule 24(a)(2). Praetorian argued in its motion to intervene that it was seeking to intervene "for the sole, limited purpose of seeking a ruling on the immunity issue . . . ." (AR 152). Clearly, Praetorian is not seeking to litigate insurance coverage issues in the tort action (which is generally permissible) but rather it has directly argued that it is attempting to litigate the ***merits*** of a defense on behalf of its insured. This type of claim is unprecedented in West Virginia and Praetorian cites no law from any jurisdiction that would allow it to litigate the merits of a claim against its insured. In fact, all of the supposed "substantial interest" cases cited by Praetorian in footnote 7 of Petitioner's Brief involved insurers attempting to intervene to seek resolution of coverage issues regarding the insurer's duty to defend or indemnify which is not what we have here. Because Praetorian has no legal basis to litigate the merits of a defense on behalf of its insured, it does not have a "substantial interest" in this tort action under the applicable standard.

C. Praetorian Asserts no Justiciable Controversy Between Petitioner and Respondents Related to the Resolution of the Negligence Claim.

In conjunction with its motion to intervene, Praetorian filed a proposed "Declaratory Judgment Complaint" as its pleading should the intervention be permitted. (AR 158-164). This

Court has directed that the following four factors should be considered to determine whether a declaratory judgment action presents a justiciable controversy sufficient to confer jurisdiction:

> "(1) whether the claim involves uncertain and contingent events that may not occur at all; (2) whether the claim is dependent upon the facts; (3) whether there is adverseness among the parties; and (4) whether the sought after declaration would be of practical assistance in setting the underlying controversy to rest."

A.H. v. CAMC Health System, Inc., at pg. 2, quoting, *Hustead on Behalf of Adkins v. Ashland Oil, Inc.*, 475 S.E.2d 55, 62 (W.Va. 1996). Also, "whether a justiciable controversy exists depends upon the facts present at the time the proceeding is commenced." *A.H.*, at Id., quoting *Robertson v. Hatcher*, 135 S.E.2d 675, 681 (W.Va. 1964).

Praetorian argues in its motion to intervene that "[b]ecause there is not insurance coverage under the Policy for deliberate intent actions, a declaration from this Court that Air Cargo is entitled to the protections of W.Va. Code §23-2-6 would effectively eliminate the possibility of any payments to Ms. Chau from the Policy" and further argues that there would be no duty to defend. (AR 161). However, as described above, Judge Ballard recently entered an Order in the original Declaratory Judgment action finding that there is in fact coverage under the Praetorian policy for the "deliberate intent" cause of action asserted by Ms. Chau against Air Cargo. Accordingly, resolution of the negligence issue does not put to rest Praetorian's duty to defend or indemnify Air Cargo and Praetorian has failed to assert a justiciable controversy that would support intervention. In fact, the intervention motion is now effectively moot as its primary purpose has been frustrated.

CONCLUSION

Respondent Air Cargo respectfully submits that the Circuit Court did not err in denying Petitioner's motion to intervene for the reasons described above. Respondent requests that this Court affirm the ruling of the Circuit Court in this matter.

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Plaintiff Below, Respondent

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AIR CARGO CARRIERS, LLC,

Defendant Below, Respondent.

CERTIFICATE OF SERVICE

I, James C. Stebbins/Spencer D. Elliott, hereby affirm that on this date, August 9, 2021, I caused the foregoing **AIR CARGO CARRIERS, LLC'S RESPONDENT'S BRIEF** to be served on the following attorneys by depositing a true and accurate copy of the same in the regular United States Mail, first class, postage prepaid, in an envelope addressed to them at their last known address as follows:

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