

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

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

v.

Civil Action No. 19-0450  
Judge Louis H. Blood

FILED  
2021 FEB 25 PM 2:22  
CATHY S. GREGSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**AIR CARGO CARRIERS, LLC;  
UNITED PARCEL SERVICE, CO.;  
UPS AIRLINES, INC.; and  
SHERIFF OF KANAWHA COUNTY, as  
Administrator of the Estate of  
JONATHAN PABLO ALVARADO,  
Defendants.**

**ORDER DENYING MOTION TO INTERVENE**

Pending before the Court is a *Motion to Intervene as of Right* filed on February 10, 2021, by Praetorian Insurance Company, by counsel Don C.A. Parker. The *Motion* seeks intervention as of right in this action pursuant to Rule 24(a)(2) of the West Virginia Rules of Civil Procedure. Rule 24(a)(2) provides as follows:

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this State confers an unconditional right to intervene; or (2) 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.

The Supreme Court of Appeals of West Virginia has interpreted Rule 24(a)(2) as permitting intervention as of right if (1) the motion is timely; (2) the applicant claims an interest in the subject of the action; (3) disposition of the action may impair or impede the applicant's ability to protect that interest; and (4) the interest will not adequately be represented by existing parties.<sup>1</sup>

<sup>1</sup> Syl. Pt. 2, *State ex rel. Ball v. Cummings*, 208 W. Va. 393, 396, 540 S.E.2d 917, 920 (1999).

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Here, Praetorian Insurance Company insured Defendant Air Cargo Carriers, LLC, at the time of the subject aircraft crash. Praetorian seeks to intervene in this action in order to litigate its own rights and obligations under the insurance policy. The Court first notes that this exact issue is currently pending in an action before a Court of competent jurisdiction. On September 15, 2020, Praetorian Insurance Company filed a *Declaratory Judgment Complaint* in the Circuit Court of Kanawha County. This action was given Civil Action No. 20-C-800 and assigned to the Court of the Honorable Tod J. Kaufman. The *Declaratory Judgment Complaint* "requests a declaration of legal rights and responsibilities owed to Air Cargo Carriers, LLC, under a workers' compensation and employer's liability insurance policy that Praetorian provided to Air Cargo Carriers." This request is clearly the same as the request made to this Court in the instant *Motion to Intervene*. The Court thus **CONCLUDES** that Praetorian Insurance is not entitled to intervention as of right because disposition of this action will not impair or impede Praetorian's protection of its interests, as Praetorian may protect that interest through the action before Judge Kaufman.

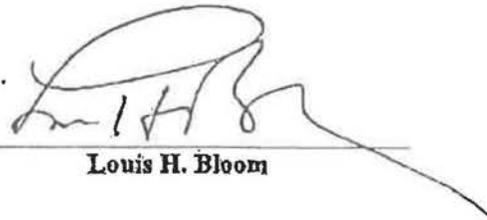
Praetorian further argues that intervention is necessary because both Air Cargo Carriers and the Plaintiff, Virginia Chau, have filed motions to dismiss the declaratory judgment action. However, Praetorian also states that "Praetorian is confident that Judge Kaufman will deny Air Cargo's and Ms. Chau's motions." Regardless, the mere fact that motions have been filed to dismiss Praetorian's declaratory judgment action is not sufficient to entitle Praetorian to intervention as of right in this Court. Again, Praetorian is able to protect its interests via the action currently pending before Judge Kaufman.

Moreover, the Court **CONCLUDES** that Praetorian Insurance Company failed to timely move to intervene. This action was filed on May 3, 2019; removed to the United States District Court for the Southern District of West Virginia on June 13, 2019; and remanded back to this Court on February 12, 2020. Nevertheless, Praetorian Insurance waited to file its motion to

intervene until nearly a full year later, on February 10, 2021. Praetorian argues that it filed the declaratory judgment with a "reasonable expectation" that it would be permitted to transfer and consolidate that action with the instant action before this Court because "all parties to both this matter and the Declaratory Judgment Action had consented to such a transfer." The Court first notes that decisions are made by this Court regardless of the consent the parties' consent. Praetorian's expectation that it would be permitted to transfer and consolidate the declaratory judgment action is of little value. If Praetorian believed that it needed to be made a party to this action in order to protect its interests, Praetorian could have moved to intervene soon after the action was filed in May 2019, or at the very latest, soon after the action was remanded in February 2020. Instead, Praetorian waited until September 15, 2020, to file the Declaratory Judgment Action and seemingly proceeded forward with a mistaken belief that the Court was bound to grant the motion to transfer and consolidate because the parties had consented. However, the Court concluded that the motion to transfer and consolidate was untimely and thus ordered that it be denied. Likewise, the Court **CONCLUDES** that the *Motion to Intervene as of Right* was not timely filed by Praetorian Insurance because this action was filed on May 3, 2019, and has been pending here uninterrupted since February 12, 2020.

Accordingly, the Court **ORDERS** that the *Motion to Intervene as of Right* be **DENIED**. The Clerk is **DIRECTED** to send a copy of this *Order Denying Motion to Intervene* to all parties and counsel of record.

ENTERED this 25 day of February 2021.



Louis H. Bloom

2/25/21  
 Wm Steer  
 G Gardner  
 E. Lee  
 D. Costa  
 B. Moore  
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