UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Diocese of St. Cloud, et al., Plaintiffs, v. Arrowood Indemnity Co., et al., Defendants.	Court File No. 17-cv-2002 (JRT/LIB) **ORDER**

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636(b)(1)(A), and upon Proposed Intervenor Doe 524's Motion to Intervene, [Docket No. 114]. The Court held a Hearing on the Motion on March 29, 2018. [Docket No. 147]. The Court took the Motion under advisement thereafter.

For the reasons set forth below, the Court **DENIES** Doe 524's Motion to Intervene, [Docket No. 114].

I. Background and Statement of Relevant Facts

This is an insurance coverage action, originally brought in Minnesota State District Court and then removed to this Court. (Notice of Removal, [Docket No. 1]; Complaint, [Docket No. 1-1], 4-5, 22). Plaintiffs, the Diocese of St. Cloud and 30 individual parishes (hereinafter referred to collectively as "Plaintiffs"), have each "been named in one or more lawsuits alleging [in relation to claims of sexual abuse], in whole or in part, public nuisance, private nuisance, negligence, negligent supervision, and negligent retention[.]" (Id. at 6). The Defendants now remaining in the case are: Arrowood Indemnity Company ("Arrowood"), St. Paul Fire and

Marine Insurance Company ("St. Paul Fire and Marine"), Church Mutual Insurance Company ("Church Mutual"), and Hartford Accident and Indemnity Company ("Hartford") (hereinafter collectively referred to as "the Defendant Insurance Companies"). (Id. at 5; see, Order, [Docket No. 105], 14-15 (dismissing claims against additional Defendants)). The Complaint alleges that each of the Defendant Insurance Companies at some point issued liability policies to one or more of the Plaintiffs. (Complaint, [Docket No. 1-1], 8-11).

Plaintiffs seek declaratory relief with regard to the Defendant Insurance Companies' duty to defend the previously referenced claims against the Plaintiffs. (Id. at 13-14, 20-21). Plaintiffs also seek declaratory relief in the form of a judicial determination of the Defendant Insurance Companies' duty to indemnify Plaintiffs for liabilities incurred in connection to the claims. (Id. at 15-16, 21). In addition, Plaintiffs bring a claim against Arrowood only for breach of contract. (Id. at 16; see, also, Order, [Docket No. 120], 20 (dismissing with prejudice the remaining claims)).

On March 1, 2018, Doe 524 filed the present Motion to Intervene. [Docket No. 114]. Doe 524 asserts that he is a survivor of sexual abuse with a claim[1] against Plaintiff Diocese of St. Cloud and, as such, Doe 524 argues that he has an interest in this case which "may not be adequately represented by the existing parties." (Mem. in Supp., [Docket No. 117], 1). Therefore, Doe 524 asserts that he is entitled to intervene in the present case as a matter of right or, in the alternative, that he should be allowed permissive intervention. (Id. at 1-2).

On March 8, 2018, Arrowood filed its Memorandum in Opposition to the present Motion to Intervene, by which it argues that Doe 524 lacks standing to intervene, he is not entitled to

[1] Doe 524 has submitted to the Court a summons, proof of service, and a complaint detailing Doe 524's Minnesota state claims against the "Diocese of St. Could and The Church of the Holy Cross of Onamia a/k/a Holy Cross Catholic Church" for public nuisance, private nuisance, negligence, negligent supervision, and negligent retention. ([Docket No. 118-1], 1-18; [Dockets No. 118-2 and 119-3]).

intervene as a matter of right because he lacks the requisite interest in the present action, and he should not be allowed to permissively intervene because there are no common questions of law or fact between the present case and Doe 524's potential state tort claims against Plaintiff Diocese of St. Cloud. (Mem. in Opp., [Docket No. 121], 3-4).

On March 8, 2018, St. Paul Fire and Marine filed its Memorandum in Opposition to the present Motion to Intervene. [Docket No. 128]. St. Paul Fire and Marine similarly argues that Doe 524 lacks the requisite interest to entitle him to intervention as a matter of right and that permissive intervention is inappropriate because there is no common question of law or fact between the present case and Doe 524's potential state tort claims against Plaintiff Diocese of St. Cloud. (Id. at 2-3).

Also on March 8, 2018, Hartford filed a Memorandum joining in the arguments made by Arrowood and St. Paul Fire and Marine in opposition to the present Motion to Intervene. [Docket No. 129]. Hartford additionally argues that Doe 524 has failed to show that his interests are not adequately protected by the existing parties, and it adds to the argument that Doe 524's potential state tort claims against Plaintiff Diocese of St. Cloud do not share any question of law or fact with the present case. (Id. at 1-3).

Church Mutual did not file any response to the present Motion to Intervene, nor did it appear at the March 29, 2018, Motion Hearing. (Digital Record, 2:42-44).

The Court took the Motion to Intervene, [Docket No. 114], under advisement on March 29, 2018.

II. Standards of Review

Federal Rule of Civil Procedure 24 states:

> **(a) Intervention of Right.** On timely motion, the court must permit anyone to intervene who:
>
> **(1)** is given an unconditional right to intervene by a federal statute; or
>
> **(2)** claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.
>
> **(b) Permissive Intervention.**
>
> **(1)** ***In General.*** On timely motion, the court may permit anyone to intervene who:
>
> **(A)** Is given a conditional right to intervene by a federal statute; or
>
> **(B)** has a claim or defense that shares with the main action a common question of law or fact.

"Rule 24 is construed liberally, and we resolve all doubts in favor of the proposed intervenors." United States v. Union Elec. Co., 64 F.3d 1152, 1158 (8th Cir. 1995). However, "'[t]he decision to grant or deny a motion for permissive intervention is wholly discretionary.'" Franconia Minerals (US) LLC v. United States, 319 F.R.D. 126, 266 (D. Minn. 2017) (quoting S.D. ex rel. Barnett v. U.S. Dept. of Interior, 317 F.3d 783, 787 (8th Cir. 2003)).

III. Doe 524's Motion to Intervene, [Docket No. 114]

As already set forth above, Doe 524 moves to intervene[2] as a matter of right under Rule 24(a) or, in the alternative, for permissive intervention under Rule 24(b). (Mem. in Supp., [Docket No. 117], 3-12).

A. Intervention as a Matter of Right

> Rule 24(a)(2) allows a party to timely intervene as a matter of right if: (1) the motion is timely; (2) the intervenor "claims an interest relating to the property or transaction that is the subject of the action": (3) disposition of the action "may as a practical matter impair or impede the movant's ability to protect its interest"; and (4) the existing parties do not "adequately represent" the interest. In deciding

[2] Although not entirely clear, it appears from his written submissions to the Court that Doe 524 wishes to intervene as a plaintiff in these matters so that he may participate in the determination of insurance coverage. (See, Mem. in Supp., [Docket No. 117], 11-12). At the March 29, 2018, Motion Hearing, when counsel for Doe 524 was asked to identify the role in which Doe 524 wishes to intervene in the present action, counsel stated that Doe 524 would "assist without cost to [*sic*] the discovery," "assist [St. Cloud] in prosecuting the action," "work with those who have aligned interest in helping assist in the process of discovery," and "be at the table whenever there is negotiation or discussion of settlement." (Mar. 29, 2018, Motion Hearing, Digital Record, 2:55-57).

> a motion to intervene, the ruling court should "be mindful that 'the interest test' is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.

George v. Uponor, Inc., 290 F.R.D. 574, 577 (D. Minn. 2013) (citations omitted).

With respect to the merits of the present Motion to Intervene, Doe 524 asserts that his Motion was timely and no other party disputes the timeliness of the Motion to Intervene; therefore, this Court may proceed to the second factor. (Mem. in Supp., [Docket No. 117], 4-5). See, e.g., Nat'l Parks Conservation Ass'n v. U.S. E.P.A., 759 F. 3d 969, 975 (8th Cir. 2014) (skipping timeliness factor of motion to intervene when timeliness not challenged). On this point, the Court agrees.

Doe 524 next asserts that he has a "significant protected interest in the outcome of this litigation"—namely, that the determination of the present cases "will substantially affect the funds available to compensate Doe 524 and the numerous other [sex abuse] survivors with claims." (Mem. in Supp., [Docket No. 117], 5-6).

As Doe 524 acknowledges, in Medical Liability Mut. Ins. Co. v. Alan Curtis LLC, 485 F.3d 1006, 1008 (8th Cir. 2007) (hereinafter referred to as "Alan Curtis"), the Eighth Circuit clearly held that a tort plaintiff's interest in "ensur[ing] that the defendants in her state lawsuit have sufficient resources to satisfy any judgment she might obtain against them" was an interest "too remote and indirect to qualify as a cognizable interest under Rule 24(a)(2)." (See, Mem. in Supp., [Docket No. 117], 6). However, Doe 524 attempts to distinguish the present cases by asserting that the interest alleged by the single proposed intervenor in Alan Curtis "was not as great as Doe 524's here" because the proposed intervenor in Alan Curtis sought to intervene in a federal declaratory action to determine insurance coverage only to protect her own interest in ensuring that the insured defendant to her state tort claims had sufficient resources to satisfy a

potential judgment against her. (Mem. in Supp., [Docket No. 117], 6). See, also, Alan Curtis, 485 F.3d at 1007-08 (setting forth factual background and arguments). Doe 524 asserts in his written submissions to the Court that he "is one of more than seventy survivors of sexual abuse with a current claim against the Diocese of St. Cloud in state court," all of whom "will be impacted by the outcome here." (Mem. in Supp., [Docket No. 117], 6). Moreover, Doe 524's counsel asserted at the March 29, 2018, Motion Hearing that Doe 524's counsel represents 52 other potential state tort plaintiffs who are "interested in" the outcome of the present case. (Mar. 29, 2018, Motion Hearing, Digital Record, 2:57-58). Therefore, Doe 524 contends, he has a greater interest in the present cases than did the proposed intervenor in Alan Curtis.

Doe 524's attempt to distinguish Alan Curtis from the case presently before the Court is unpersuasive.

As the Court noted without objection at the March 29, 2018, Motion Hearing, Doe 524 has not asserted in any part of this proceeding that he wishes to legally represent the interests of others in similar positions; in the present case, he represents only his own interests. (See, Mar. 29, 2018, Motion Hearing, Digital Record, 2:57-59). The mere existence of additional potential plaintiffs with discrete, but similar, claims against St. Cloud does not alter in any way Doe 524's posture as an individual proposed intervenor who wishes to intervene in the present declaratory actions to "ensure that the defendants in [his] state lawsuit have sufficient resources to satisfy any judgment [he] might obtain against them." See, Alan Curtis LLC, 485 F.3d at 1008 (emphasis added). Doe 524's interest in the present declaratory action is materially indistinguishable from that at issue in Alan Curtis; therefore, as the Eighth Circuit has clearly held, Doe 524's asserted interest in the present case is "too remote and indirect to qualify as a cognizable interest under Rule 24(a)(2)." See, Id.

Further, in Alan Curtis, the Eighth Circuit noted:

> [The proposed intervenor] was neither a party to nor intended beneficiary of the insurance contract between [the insurance provider and the entity who was the tort-claim defendant in the related state-court case]. Moreover, there is nothing in the record to indicate that she had obtained a judgment against [the defendant in her state-court case] at the time that she moved for intervention. Her interest in [the insurance provider's] liability to defendants is therefore contingent not only on obtaining such a judgment, but also on her inability to satisfy that judgment against any defendant to her action.

485 F.3d at 1009. Again, this is materially indistinguishable from the posture of Doe 524 in the case presently before the Court. Doe 524 has not obtained a judgment against the Diocese of St. Cloud in any Minnesota state court proceeding, and he is neither a party to nor an intended beneficiary of the insurance contracts at issue in the present Federal declaratory action. Thus, even the purely economic interest he asserts is especially speculative and indirect.[3]

At the March 29, 2018, Motion Hearing, Doe 524 additionally argued that his position is distinguishable from that of the proposed intervenor in Allen Curtis because his potential for economic recovery on his tort claims cannot be reduced to judgment because of the "imminent" filing of bankruptcy and reorganization by the Diocese of St. Cloud.[4] (Mar. 29, 2018, Motion Hearing, Digital Record, 2:44-46).

[3] Again, the fact that Doe 524's counsel represents additional potential Minnesota state court tort-claim plaintiffs with alleged claims against St. Cloud is irrelevant. On the record presently before the Court, neither Doe 524 nor any of counsel's additional alleged clients have any present cognizable interest in the litigation occurring in this Court. If Doe 524 has zero cognizable interest, the existence of 52 additional individuals in similar positions does not increase that interest.

[4] Doe 524 also argues that his position is further distinguishable from Allen Curtis because St. Cloud's "imminent" filing for reorganization and St. Cloud's inability to pay any future judgment Doe 524 obtains is a matter of record in this case. (See, Mar. 29, 2018, Motion Hearing, Digital Record, 2:45-49). This assertion is incorrect. Although that information may have been contained in the March 9, 2018, Supplemental Affidavit of Jeffrey Anderson and accompanying Exhibits submitted in support of Doe 524's Motion to Intervene, [Docket No. 134], the Supplemental Affidavit and Exhibits were stricken from the record for noncompliance with Local Rule 7.1, as clearly stated in this Court's Order of March 16, 2018. [Docket No. 139]. Therefore, any information contained therein was neither reviewed nor considered by the Court in the decision of the present Motion to Intervene, and it is not a part of the record now before the Court.

The Court disagrees with Doe 524's assessment of the impact any potential bankruptcy filing by the Diocese of St. Cloud might have on Doe 524's purported interest. Moreover, on the record presently before the Court, any such bankruptcy filing that might occur in the future and any impact it might potentially have on any Minnesota state court judgment Doe 524 might obtain against the Diocese St. Cloud is currently merely speculative. The Diocese of St. Cloud has not as of yet filed for bankruptcy protection of any kind. The possibility that the Diocese St. Cloud may at some point in the future file for bankruptcy does not justify Doe 524's intervention in the present Federal declaratory action.

Doe 524 cites cases from outside the Eighth Circuit in which other courts have found interests similar to his own are sufficient to justify intervention. (Mem. in Supp., [Docket No. 117], 6-8). However, in light of the extremely clear controlling authority provided by the Eighth Circuit on this question under materially indistinguishable facts, the existence of other merely persuasive authority carries no weight. Under Alan Curtis, Doe 524 has no cognizable interest in the present litigation of the sort that entitles him to intervene in the present case as a matter of right under Federal Rule of Civil Procedure 24(a).

Therefore, for all of the reasons stated above, to the extent that Doe 524 seeks to intervene in the present case as a matter of right under Rule 24(a)(2), Doe 524's Motion to Intervene, [Docket No. 114], is **DENIED**.

B. Permissive Intervention

"Normally, parties seeking permissive intervention pursuant to Rule 24(b) must show: (1) an independent ground for jurisdiction, (2) timeliness of the motion, and (3) that the applicant's claim or defense and the main action have a question of law or fact in common." Flynt v. Lombardi, 782 F.3d 963, 966 (8th Cir. 2015). Once again, "Rule 24 is construed

liberally, and we resolve all doubts in favor of the proposed intervenors." Union Elec. Co., 64 F.3d at 1158. Moreover, "'[t]he decision to grant or deny a motion for permissive intervention is wholly discretionary.'" Franconia Minerals (US) LLC v. United States, 319 F.R.D. 126, 266 (D. Minn. 2017) (quoting S.D. ex rel. Barnett v. U.S. Dept. of Interior, 317 F.3d 783, 787 (8th Cir. 2003)). The "principal consideration" in determining whether to grant intervention under Rule 24(b) "is 'whether the proposed intervention would unduly delay or prejudice the adjudication of the parties' rights.'" See, N.D. ex rel. Stenehjem v. United States, 787 F.3d 918, 923 (8th Cir. 2015) (quoting S.D. ex rel. Barnett, 317 F.3d at 787).

Citing a different version of the three factors required for permissive intervention, Doe 524 does not address in any way whether he has an independent ground for jurisdiction. (Mem. in Supp., [Docket No. 117], 10-11). Rather, he asserts that the Motions to Intervene are timely; permitting him to intervene would not unduly delay these cases, which is still in their early stages; and his "claim[s] share[] a question of law or fact in common with the main action[s] – specifically, questions as to the coverage provided by disputed insurance policies that may be available and needed to cover [Doe 524]'s state court claim[s]." (Id. at 11).

Doe 524 does not further explain his foregoing conclusory assertion regarding common questions of law or fact, and it is unpersuasive.

None of Doe 524's asserted Minnesota state court tort claims require the determination of whether there were insurance policies that covered the asserted tortious acts in question – the questions in the state tort claims go to the liability of the defendants therein, not their eventual ability or inability to satisfy a potential future judgment on such tort claims on the basis of available insurance coverage.

Practically speaking, the coverage determinations in the present cases may impact Doe 524's ability to recover on any state court judgment he may eventually obtain against the defendants in his yet-to-be-filed state court tort action, but that does not create a question of law or fact common to both the state tort and federal declaratory judgment cases which would support permissive intervention. The determinations in the federal declaratory judgment action presently before the Court will not affect the liability issues in the Minnesota state court actions.[5]

In addition, as St. Paul Fire and Marine argued at the March 29, 2018, Motion Hearing, previous orders entered in the present case provide support for the denial of permissive intervention by Doe 524. On January 4, 2018, Chief Judge John R. Tunheim granted Motions to Dismiss filed by former Defendants, The Order of St. Benedict, doing business as St. John's Abbey ("the Abbey"); the Continental Insurance Company ("Continental"), which insured the Abbey; and Travelers Indemnity Company ("Travelers"), which also insured the Abbey. (Order, [Docket No. 105], 7, 10).

The Abbey, a Catholic religious organization, assisted in choosing, supplying, and interacting with staff and priests for several parishes in the Diocese of St. Cloud, and some of the state tort actions alleging sexual abuse in the parishes argue that both the Diocese of St. Cloud and the Abbey are at fault. (Id. at 6). Accordingly, when Plaintiffs brought the case now before this Court, Plaintiffs initially sought to determine the "'respective rights and obligations'" of Plaintiffs, the Abbey, and the Defendant Insurance Companies "'as to the payment of liabilities jointly or separately incurred or to be incurred by the Plaintiffs and [the Abbey] in the past and

[5] The Court further notes that at the March 29, 2018, Motion Hearing, both St. Paul Fire and Marine and Hartford argued—without any opposition by Doe 524—that Doe 524 does not allege anything in his underlying Minnesota state court tort claims that would arguably trigger insurance policies by at least these two Defendant Insurance Companies which are at issue in this declaratory judgment action. (Mar. 29, 2018, Motion Hearing, Digital Record, 3:10-14 Thus, permitting Doe 524 to intervene in the present case would do nothing to aid the resolution of the claims present in this declaratory judgment action against St. Paul Fire and Marine and Hartford, and instead, it could serve to expect unnecessarily delay their resolution.

future with respect to the [C]laims.'" (Id.). The Abbey moved for dismissal of Plaintiffs' claim against it, and Chief Judge Tunheim held:

> To the extent that Plaintiffs seek a declaratory judgment regarding past liability, Plaintiffs have not alleged that any court has entered judgment against both parties or that the parties have jointly settled any claims. To the extent that Plaintiffs seek a declaratory judgment regarding the parties' potential future liability, the claim is based entirely on "contingent future events that may not occur as anticipated, or indeed may not occur at all." Plaintiffs are asking this Court to determine the rights and obligations of the parties on Claims that are still pending. The Supreme Court has long made clear that the declaratory judgment procedure "may not be made the medium for securing an advisory opinion in a controversy which has not arisen."

(Id. at 8-9 (citations omitted)). With respect to Plaintiffs' claims against the Abbey's insurers, Continental and Travelers, Chief Judge Tunheim found those claims similarly not ripe for decision, and he also held that Plaintiffs lacked standing to sue "because they are strangers to Continental and Travelers' contracts with the Abbey and thus have no rights or interests in the contracts." (Id. at 11). Moreover, Plaintiffs had not "alleged that they were assignees or third-party beneficiaries of the Abbey's contracts with its insurers. Thus, Plaintiffs do not have standing, and their claim against Continental and Travelers must be dismissed." (Id.).

Although it remains unclear exactly what relief Doe 524 wishes to obtain as an intervenor and what procedural role Doe 524 anticipates taking as an intervenor in this case, it is clear that Doe 524 is neither a party, an assignee, nor a third-party beneficiary of any of the insurance contracts currently at issue in this declaratory judgment action. Moreover, to the extent that Doe 524 seeks a determination here of the tort liability of the Diocese of St. Cloud and any resulting duty to indemnify of the Defendant Insurance Companies, there has not yet been a judgment entered on Doe 524's claims against St. Cloud. As already stated above, Chief Judge Tunheim has previously held in this case that entities who are neither parties, assignees, nor third-party

beneficiaries to insurance contracts do not have standing to bring claims regarding those contracts, and he has also held in this case that a claim to determine indemnity apportionment for an as-yet-undecided underlying state tort claim is not ripe for decision. That rationale is sound, and the Court sees no reason why Doe 524 should now be allowed to pursue the same type of claims which the Plaintiffs themselves could not bring against the Abbey and its insurers at the genesis of this declaratory judgment action.

Therefore, for all of the reasons stated above, to the extent that Doe 524 seeks permissive intervention in the present case under Rule 24(b), Doe 524's Motion to Intervene, [Docket No. 114], is **DENIED**.

IV. CONCLUSION

For the foregoing reasons, and based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. That Doe 524's Motion to Intervene, [Docket No. 114], is **DENIED**.[6]

Dated: April 23, 2018

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

[6] Doe 524 also sought to intervene in another declaratory judgment action before this Court, Catholic Mutual Relief Society of America v. Arrowood Indemnity Co., 17-cv-3141 (JRT/LIB). That motion was denied for similar reasons as set forth herein.