

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ronald Cooke and Jinjer Cooke, husband
and wife,

Plaintiffs,

The State of Arizona ex rel. Thomas C.
Horne, the Attorney General; and the Civil
Rights Division of the Arizona Department
of Law,

Plaintiff-Intervenor,

v.

Town of Colorado City, Arizona; City of
Hildale, Utah; Hildale-Colorado City
Utilities (Hildale-Colorado City Power,
Water, Sewer and gas Department and
Twin City Water Authority); Twin City
Power,

Defendants.

No. CV-10-08105-PCT-JAT

ORDER

Pending before the Court is St. Paul Guardian Insurance Company’s and the
Travelers Indemnity Company’s (collectively, “Travelers”) Motion to Intervene pursuant
to Federal Rule of Civil Procedure 24(a) or, alternatively, 24(b). (Doc. 432).

I. BACKGROUND

Travelers seeks to intervene as a matter of right or permissively for the purpose of

1 submitting special interrogatories and special verdict forms to the jury.

2 Travelers issued insurance policies to Defendant Town of Colorado City in
3 February 2009, February 2010, and February 2011. On June 24, 2010, Plaintiffs Ronald
4 and Jinjer Cooke (the “Cookes”) filed a Complaint against the Town of Colorado City
5 and the City of Hildale, Hildale-Colorado City Utilities, and Twin City Power
6 (collectively, the “Hildale Defendants”) alleging, among other things, violations of the
7 federal and Arizona Fair Housing Acts. (Doc. 1). On December 20, 2010, after receiving
8 notice of the Cookes’ Complaint against the Town of Colorado City, Travelers sent a
9 reservation of rights letter (the “ROR”) to the Town of Colorado City. (Doc. 444-1). In
10 the ROR, Travelers acknowledged that it received notice of the Cookes’ Complaint on
11 October 26, 2009. (*Id.* at 2).

12 In February 2013, the Court ruled on the Parties’ cross-motions for summary
13 judgment. (*See* Doc. 318). Thereafter, on June 25, 2013, the Court held a Final Pretrial
14 Conference. (Doc. 433). At the Final Pretrial Conference, the Court ruled on motions in
15 limine and set trial for January 28, 2014. (*Id.*). In its Order setting the Final Pretrial
16 Conference, the Court set the deadline for submitting a joint list of jury instructions,
17 verdict forms, and proposed voir dire as June 17, 2013. (Doc. 434). The Parties timely
18 submitted their joint proposed jury instructions on June 17, 2013 (Doc. 415), their
19 proposed verdict forms on June 17, 2013 (Doc. 414; Doc. 410), and joint proposed voir
20 dire on June 17, 2013. (Doc. 416). Travelers filed its motion to intervene on June 24,
21 2013, the day before the Final Pretrial Conference. (Doc. 432). The Cookes, the State of
22 Arizona (collectively, “Plaintiffs”), the Town of Colorado City, and the Hildale
23 Defendants oppose Travelers’ motion to intervene. (*See* Doc. 444; Doc. 446).

24 **II. ANALYSIS**

25 Travelers moves to intervene to be permitted to submit special interrogatories
26 and/or special verdict forms to the jury that identify the basis for the jury’s verdict. In its
27 motion to intervene, Travelers claims that intervention will efficiently settle coverage
28 issues if the jury returns a verdict for the Plaintiffs. (Doc. 432).

1 certain, Travelers has offered no explanation for its delay in moving to intervene between
2 the time summary judgment was denied in February 2013 and the date its motion to
3 intervene was filed in June 2013. Indeed, Travelers has offered no explanation for
4 moving to intervene on the eve of the Final Pretrial Conference. The Final Pretrial
5 Conference is the last time prior to trial that the Court meets with the Parties and is the
6 time to entertain issues for trial. Travelers has been aware of this case since 2010 and
7 should have, at the very least, immediately moved to intervene when the motions for
8 summary judgment were denied.

9 Moreover, the Parties have jointly prepared voir dire and jury instructions and
10 have submitted their proposed verdict forms. It would be prejudicial to the Parties, who
11 have worked diligently to meet this Court's deadlines, to require them to start over
12 simply because of Travelers' untimely intervention. As a result, the second factor,
13 prejudice, weighs against Travelers because intervention prejudices the other Parties. In
14 addition, Travelers is not prejudiced by a denial of the motion to intervene because
15 Travelers will still have an opportunity to protect its interest in a declaratory judgment
16 action.¹

17 Finally, the third factor weighs against Travelers because Travelers has not offered
18 a satisfactory reason for the length of its delay. Travelers knew of its interests well
19 before it filed the motion to intervene, and yet waited until the Court had resolved many
20 substantive pretrial issues. Accordingly, Travelers' motion to intervene is untimely.

21 Moreover, Travelers does not have a "significantly protectable" interest in the
22 action. *See United States v. Alisal Water Corp.*, 370 F.3d 915, 920 (9th Cir. 2004)
23 (denying a creditor's motion for intervention in an action involving violations of the Safe
24 Drinking Water Act because the creditor's prospective interest in collecting a secured

25
26 ¹ Travelers' collateral estoppel argument is unpersuasive because Arizona law
27 permits an insurer to litigate coverage issues based on policy preclusions after a court has
28 resolved the insured's liability. *Arizona Prop. Cas. Ins. Guar. Fund v. Martin*, 113 P.3d
701, 703-05 (Ariz. Ct. App. 2005). Travelers will only be prohibited from relitigating
liability issues. *Id.*

1 debt was too far removed from the underlying claims of health and environmental
2 policies); *see also Restor-A-Dent Dental Labs., Inc. v. Certified Alloy Prods., Inc.*, 725
3 F.2d 871, 874 (2nd Cir. 1984) (finding that the applicant for intervention as of right must
4 have a direct interest in the case). This case involves federal and Arizona Fair Housing
5 Act claims, while Travelers’ interest exclusively involves an insurance coverage dispute.
6 Although Travelers’ insurance policy may cover some of the claims against the Town of
7 Colorado City, Travelers’ asserted interest depends upon two contingencies: (1) a jury
8 verdict against the Town of Colorado City and (2) a finding that Travelers’ policy
9 precludes coverage of the losses based on the underlying claims. As a result, Travelers’
10 interest is sufficiently removed from the underlying claims between Plaintiffs, the Town
11 of Colorado City, and the Hildale Defendants such that Travelers does not have a
12 “significantly protectable” interest in this case. Based on Travelers’ failure to
13 demonstrate that Travelers fulfills factors one and two of the threshold requirements for
14 intervention as of right, Travelers’ motion to intervene under Rule 24(a) is denied.

15 **B. PERMISSIVE INTERVENTION**

16 Federal Rule of Civil Procedure 24(b) relevantly states, “[o]n timely motion, the
17 court may permit anyone to intervene who . . . has a claim or defense that shares with the
18 main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1). An applicant
19 seeking permissive intervention must show that: (1) the applicant’s claim or defense
20 shares a common question of law or fact with the main action; (2) the applicant’s motion
21 is timely; and (3) the court has an independent basis for jurisdiction over the applicant’s
22 claims. *LULAC*, 131 F.3d at 1308 (citing *Nw. Forest Res.*, 82 F.3d at 839). As in the
23 intervention as of right analysis, timeliness is a threshold requirement. *Id.* To determine
24 whether a motion to intervene is timely, the Court considers the same three factors: (1)
25 the stage of the proceeding at which an applicant seeks intervention; (2) the prejudice to
26 the other parties; and (3) the reason for and length of delay. *Id.* Although the factors are
27 the same, the Court analyzes the timeliness requirement more strictly than under
28 intervention as of right. *Id.* Accordingly, because Travelers’ motion to intervene is not

1 timely for the purpose of intervention as of right, it is also not timely when considered for
2 permissive intervention. Because Travelers does not satisfy the threshold requirements
3 for allowance of permissive intervention, Travelers' motion to intervene under Rule 24(b)
4 is denied.

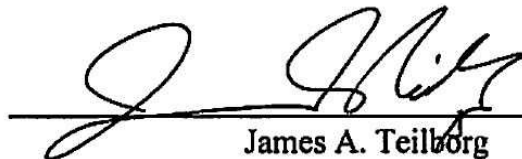
5 **III. CONCLUSION**

6 Based on the foregoing,

7 **IT IS ORDERED** that Travelers' Motion to Intervene (Doc. 432) is denied.

8
9 Dated this 19th day of September, 2013.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



James A. Teilborg
Senior United States District Judge