

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

QUINTON D MARTINEZ and
REBECCA MARTINEZ

PLAINTIFFS

v.

No. 3:16-cv-257-DPM

CINCINNATI INCORPORATED
and MARTIN MACHINE & TOOL INC.

DEFENDANTS

PLAZA INSURANCE COMPANY

INTERVENOR

ORDER

1. Cincinnati's motion for summary judgment is denied without prejudice. This case just started. Neither the legal issues nor the material facts are clear and certain enough to pull the plug now. The Marley affidavit and incorporated report satisfies Federal Rule of Civil Procedure 56(c)(4), and the Martinezes have made a sufficient showing for discovery under Rule 56(d). *Verson Allsteel Press Co. v. Garner*, 261 Ark. 133, 547 S.W.2d 411 (1977) is illuminating authority. But as the Martinezes point out, there are some differences in this case, most importantly that there was a full factual record in *Verson*, including testimony subject to cross examination. We'll all see the legal issues more clearly after some discovery.

2. Plaza Insurance's motion to intervene is granted as modified. The workers compensation carrier for Mr. Martinez's employer will have a statutory lien if Mr. Martinez is made whole by the case. *Riley v. State Farm Mutual Automobile Insurance Company*, 2011 Ark. 256, 11-16, 381 S.W.3d 840, 848-50. Until then, the insurer's interest is uncertain. The Court exercises its discretion in these circumstances and grants Plaza Insurance permissive intervention, FED. R. CIV. P. 24(b)(1)(B), to participate only on these issues: settlement, the terms of any judgment, and the existence and enforcement of any lien. *Amos v. Stroud*, 252 Ark. 1100, 1104, 482 S.W.2d 592, 594-95 (1972).

3. The joint motion to extend the Rule 26(f) report deadline is granted for good cause.

* * *

Motion for summary judgment, *No 11*, denied without prejudice. Amended motion to intervene, *No 20*, granted as modified. Revised complaint in intervention due by 25 January 2017. (The Clerk should retitle *No 20* in the docket.) Original motion to intervene, *No 18*, denied as moot. Joint motion for extension, *No 27*, granted. Rule 26(f) report due by 6 February 2017.

So Ordered.

DP Marshall Jr.
D.P. Marshall Jr.
United States District Judge

11 January 2017