

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re WESTERN ASBESTOS COMPANY,
et al.,

Debtors.

HON. CHARLES RENFREW (RET.), FUTURES
REPRESENTATIVE TO THE WESTERN
ASBESTOS SETTLEMENT TRUST, AND THE
TRUST ADVISORY COMMITTEE TO THE
WESTERN ASBESTOS SETTLEMENT TRUST,

Plaintiffs/Appellees,

v.

HARTFORD ACCIDENT AND INDEMNITY
COMPANY,

Defendant/Appellant.

No. C 08-4127 PJH/08-4376 PJH
Bankr. Case No. 02-46284
Adv. Case No. 07-4141

**ORDER DENYING MOTION TO
STRIKE; PERMITTING
SUPPLEMENTAL BRIEF**

On January 9, 2009, trustees of the Western Asbestos Settlement Trust (“the Trust”), plaintiff-intervenors in the adversary proceeding below, filed a “joinder” in appellees’ opposition brief on appeal, in which the Trust raised arguments not raised by appellees. On January 14, 2009, appellant Hartford Accident and Indemnity Company (“Hartford”), moved to strike the Trust’s brief because the Trust is not a party to the appeal and because Hartford did not have an adequate opportunity to respond to the arguments raised by the Trust in its brief. The Trust filed an opposition to Hartford’s motion to strike on January 15, 2009.

Neither the Trust nor Hartford have addressed the real issue raised by the Trust’s

1 filing of its brief. The issue before this court is the Trust's status on appeal given the fact
2 that the bankruptcy court granted intervenor status below. The Ninth Circuit has held that
3 although Federal Rule of Civil Procedure 24, the rule governing intervention, itself does not
4 apply on appeal, the policies and standards underlying Rule 24 are applicable to
5 intervention in appellate courts, and that the appellate court considers the same factors that
6 the district court considered under Rule 24. *See Warren v. CIR*, 302 F.3d 1012, 1014 (9th
7 Cir. 2002). The court finds that because the Trust continues to satisfy Rule 24 standards, it
8 retains its intervenor status on appeal and is therefore permitted to file the January 9, 2009
9 brief. *See id.*

10 Accordingly, the court DENIES Hartford's motion. However, the court will permit
11 Hartford to file and serve **no later than Friday, February 20, 2009**, a ten-page
12 supplemental brief responsive to the arguments raised by the Trust. No reply is permitted.

13 **IT IS SO ORDERED.**

14 Dated: February 5, 2009



16 _____
17 PHYLLIS J. HAMILTON
18 United States District Judge
19
20
21
22
23
24
25
26
27
28