

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ARCH INSURANCE COMPANY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:09-CV-2917-RWS
DOUGLAS ASPHALT	:	
COMPANY., <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	

ORDER

This case comes before the Court on Fidelity and Deposit Company of Maryland and Zurich American Insurance Company’s (collectively “F&D”) Motion to Intervene [25]. After considering the record, the Court enters the following Order.

The background for this garnishment action was set forth in this Court’s July 6, 2010 Order [22] and will not be repeated here. F&D and Plaintiff Arch Insurance Company (“Arch”) are unrelated sureties that each issued payment and performance bonds on behalf of one of the Defendants in this case. Like Arch, F&D has obtained judgments against Douglas Asphalt Company

(“Douglas”) and Joel Spivey.¹ F&D asserts that it has a claim to the property that is the subject of this garnishment action and that it’s claim is superior to that of Arch. The Court need not determine which party possesses a superior claim in order to determine whether F&D may intervene at this time.

Federal Rule of Civil Procedure 24(a)(2) states:

On timely motion, the court must permit anyone to intervene who:
 . . . (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.

The Georgia Code speaks specifically to intervention in garnishment actions, stating:

At any time before judgment is entered on the garnishee’s answer or money or other property subject to garnishment is distributed, any person may file a claim in writing under oath stating that he has a claim superior to that of the plaintiff to the money or other property in the hands of the garnishee subject to the process of garnishment; and the claimant shall be a party to all further proceedings upon the garnishment.


O.C.G.A. § 18-4-95. F&D has filed a claim under oath stating that it’s claim to the property that is the subject of this action is superior to that of Arch. (Dkt. [25-3]). The Court also finds that the existing parties do not adequately protect

¹ Unlike Arch, F&D does not have a judgment against Kyle Spivey.

F&D's claimed interest in the property at issue and that disposing of this action may impede F&D's ability to protect that interest.

Therefore, F&D's Motion to Intervene [25] is **GRANTED**. Arch did not challenge F&D's Motion to Intervene for failure to file an accompanying pleading that sets out the claim for which intervention is sought as required by Federal Rule of Civil Procedure 24(c). F&D shall file its complaint in intervention within fourteen (14) days of the date of this Order.

SO ORDERED, this 3rd day of January, 2011.



RICHARD W. STORY
United States District Judge