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Clerk, U.S. District Court, ILCD

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

JUDY TOTTEN AND RICHARD)	
TOTTEN,)	
)	
Plaintiffs,)	
)	Case No. 09-cv-1411
v.)	
)	
LOWE'S HOME CENTERS, INC.,)	
)	
Defendant.)	

O P I N I O N and O R D E R

Before the Court is the Motion to Intervene filed by Petitioner, Catholic Diocese of Peoria (Doc. 18). The Motion is GRANTED IN PART.

Plaintiff Richard Totten alleges that he slipped and fell on ice outside of a Lowes' store in Galesburg, Illinois. At the time of Plaintiff's injuries, he was an employee of the Costa Catholic Academy, a Catholic school that is part of the Catholic Diocese of Peoria. Also at the time of the injury, Petitioner asserts that Plaintiff was working within the scope of his employment such that his injuries gave rise to a worker's compensation claim under a policy issued to the Diocese by the Catholic Mutual Group. The policy paid a total of \$341,670.26 to Plaintiff as compensation for the injuries and disability he allegedly suffered as a result of the fall.

Illinois' Workers' Compensation Act, 820 ILL. COMP. STAT. § 305/1, *et seq.*, provides that if Plaintiff receives a judgment or settlement in this matter, his

employer may recover from that judgment monies paid pursuant to the Act. *Id* at § 305/5(b). The Act further provides that an employer “may have or claim a lien upon any award, judgment or fund out of which such employee might be compensated from such third party” and may join the action by order of court. *Id*. Federal Rule of Civil Procedure 24(a)(2) provides for intervention as of right to a party that claims an interest in the subject of the action and whose ability to protect its interests may be impaired (unless existing parties may adequately represent its interests). The Diocese claims that the interests of the existing parties are adverse to its interests and that it may be entitled to be compensated from any funds that Plaintiff may receive. No party has filed a response or objection to the Motion to Intervene. The Diocese is therefore GRANTED leave to intervene.

The Diocese also seeks an Order directing Plaintiff to pay to it the amount indicated above, plus interest, out of any judgment or settlement he may receive. At this point, such a directive will be reserved until conclusion of trial or settlement of this action.

Entered this 25th day of June, 2010

s/ Joe B. McDade

JOE BILLY MCDADE
United States Senior District Judge