

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

SAFECO INSURANCE COMPANY  
OF AMERICA,

Plaintiff,

CIVIL ACTION

v.

Case No. 08-2489-CM-GLR

MARTIN O'NEAL, TONY BENTSEN,  
SHANE TREFETHEN, APRIL STODDARD,  
SARAH SULLIVAN, NOAH STODDARD,  
Unknown Heirs of HENRY WHITE, KEITH  
SHAFFER and PAMELA BLACKBURN,  
Co-Administrators of the Estate of CLEON  
BLACKBURN, deceased and WALL  
FUNERAL HOMES, INC.,

Defendants.

**MEMORANDUM AND ORDER**

This matter is before the Court on the Motion to Intervene (doc. 34) filed by Robert S. Tomassi. He moves to intervene as a matter of right, under Fed. R. Civ. P. 24(a)(2), in his capacity as administrator of the Estate of Clara Blackburn. No party has filed a response in opposition to the Motion. For the reasons set forth below, the Court sustains the Motion to Intervene.

**I. Background**

Plaintiff filed this interpleader action to distribute insurance benefits among the parties as a result of an August 7, 2008 automobile accident, involving vehicles operated by Henry White and Joseph Cleon Blackburn.<sup>1</sup> The movant states that Clara Blackburn was a passenger in the vehicle driven by Joseph Cleon Blackburn and later died from injuries sustained in the accident.<sup>2</sup> On May

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<sup>1</sup> See Compl. at 2.

<sup>2</sup> *Id.* at 2-3, Mot. to Intervene at 1.

22, 2009, Robert S. Tomassi filed the Motion to Intervene (doc. 34) as a matter of right, to represent the Estate of Clara Blackburn.

## **II. Standard**

Federal Rule of Civil Procedure 24(a) governs intervention in an action as a matter of right. Subsection 2 of that Rule provides that upon “timely motion, the court must permit anyone to intervene” in an action when the movant “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 the existing parties adequately represent that interest.”<sup>3</sup> Thus, a movant may intervene as of right if: “(1) the application is timely; (2) the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) the applicant’s interest may as a practical matter be impaired or impeded; and (4) the applicant’s interest is not adequately represented by existing parties.”<sup>4</sup>

## **III. Analysis**

In support of his motion, Mr. Tomassi states that “he was appointed administrator of the estate of Clara Blackburn in case no. 09 PR 000003 PA filed in the District Court of Labette County, Kansas,” and that “Clara M. Blackburn died on August 7, 2008 as a result of injuries suffered in a car accident caused by the negligent operation of the motor vehicle by Joseph Cleon Blackburn.”<sup>5</sup>

Movant Robert S. Tomassi has met the requirements of Rule 24(a)(2) for intervention as a

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<sup>3</sup> Fed. R. Civ. P. 24(a)(2).

<sup>4</sup> *S.E.C. v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 667 (D. Kan. 2004) (citing *Coalition of Ariz./N.M. Counties for Stable Econ. Growth v. Dep’t of the Interior*, 100 F.3d 837, 840 (10th Cir. 1996)).

<sup>5</sup> Mot. to Intervene at 1-2.

matter of right. First, the Motion to Intervene (doc. 34) appears to have been timely filed. The Motion was filed five months after the Amended Complaint and prior to any discovery. No party has filed a response in opposition to the Motion to Intervene.

Second, the Estate of Clara Blackburn claims an interest relating to the property that is the subject of the action, the insurance benefits arising from the accident in which she allegedly was a passenger in the vehicle driven by Joseph Cleon Blackburn and from which she allegedly died. No other party in this action appears to be representing the interests of the Estate of Clara Blackburn. Thus, those interests would be impaired were the administrator of the estate not allowed to intervene.

Accordingly, the Court finds that Robert S. Tomassi has established all elements required under Fed. R. Civ. P. 24(a)(2) for intervention as a matter of right. It sustains the Motion to Intervene.

IT IS THEREFORE ORDERED that the Motion to Intervene (doc. 34) is sustained. **Within 10 days of the date of this Order**, Intervenor Robert S. Tomassi, as administrator of the Estate of Clara Blackburn, shall file an Answer.

Dated in Kansas City, Kansas on this 25<sup>th</sup> day of June, 2009.

s/ Gerald L. Rushfelt

Gerald L. Rushfelt  
United States Magistrate Judge