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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

8	EVELYN C. ADA and)	Civil Action No. 92-674
9	ISIDRO T. ADA,)	
10	Plaintiffs,)	DECISION AND ORDER ON
11	v.)	MOTION FOR INTERVENTION
12	SAIPAN SANKO TRANSPORTATION,)	BY AMERICAN HOME
13	INC., TOKIO MARINE & FIRE)	ASSURANCE CO.
14	INSURANCE CO., LTD., and)	
15	YASUDA FIRE & MARINE)	
16	INSURANCE CO., LTD.,)	
	Defendants.)	

This matter came before the Court on December 15, 1993 on the motion of American Home Assurance Co. ("American") to intervene in this personal injury action under Com. R. Civ. P. 24. Defendant Yasuda Fire & Marine Insurance Co., Ltd. ("Yasuda") opposes the motion. Defendants Saipan Sanko Transportation, Inc. ("Saipan Sanko") and Tokio Marine & Fire Insurance Co., Ltd. do not oppose the motion.

I. FACTS

This action arises out of a collision between a sightseeing bus and a taxi on the Marpi Road on November 4, 1990. Plaintiff

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1 Evelyn Ada was a tour guide on the bus. She filed this action on
2 June 18, 1992, naming as Defendants Saipan Sanko (the owner of the
3 bus), Tokio (its insurer), and Yasuda (the insurer of the taxi).
4 Intervenor American is the workers' compensation carrier for Ms.
5 Ada's employer, R & C Tours. The statute of limitations in this
6 case ran on November 4, 1992.

7 According to the evidence submitted by the parties, American
8 has paid \$10,675.24 in workers' compensation arising from Ms.
9 Ada's injuries. See Intervenor's Exhibit B. The exact dates of
10 payment are not before the Court. However, by February 15, 1991,
11 American claimed to have paid over \$4000.00. Defendant's Exhibit
12 A. That date also apparently marked American's first assertion of
13 its subrogation claim, by letter to Yasuda's agent. *Id.* On
14 February 4, 1993, American's counsel wrote to Ms. Ada's attorneys,
15 seeking a reimbursement agreement in the event that she is
16 successful in this action. See Intervenor's Exhibit A. Ms. Ada
17 declined by letter on February 9, 1993. On June 10, 1993, a new
18 counsel for American contacted attorneys for Saipan Sanko,
19 offering a \$6000 settlement. The record does not indicate any
20 response to this letter. American filed this motion, along with
21 a complaint in intervention, on November 9, 1993. Trial in this
22 action is scheduled to begin on January 20, 1994.

23 24 **II. ANALYSIS**

25 Com. R. Civ. P. 24 provides for intervention "upon timely
26 application." As in the corresponding Federal Rule, "timely" is
27 not defined. However, a substantial body of cases have discussed
28

1 the subject, to which we turn in the absence of Commonwealth
2 authority. 7 CMC § 3401.

3 American correctly asserts that the statute of limitations in
4 the original action does not preclude intervention by a workers'
5 compensation asserting subrogation rights in an ongoing suit.
6 *Geneva Construction Co. v. Martin Transfer & Storage Co.*, 122 N.E.
7 2d 540, 546 (Ill. 1954) (common law subrogation doctrine gives
8 workers' compensation carrier right of intervention in suit by
9 injured employee despite running of statute); 2B Larson, *Workers'*
10 *Compensation Law* § 75.33. The rationale behind this rule is that
11 the injured plaintiff has already given defendants notice of the
12 claim within the limitations period, and that the insurer's
13 presence does not inject substantial new factual issues into the
14 suit. See *Jordan v. Superior Court of Orange County*, 172 Cal.
15 Rptr. 30, 34 (Cal. App. Ct. 1981). Therefore, the running of the
16 limitations period does not bar American's application here.

17 However, this holding does not end the inquiry. Federal
18 courts have developed a three-part test to assess whether a given
19 application for intervention of right is "timely." As most
20 recently enunciated by the Ninth Circuit, the factors are:

21 (1) the stage of the proceeding at which the applicant
22 seeks to intervene; (2) the prejudice to the other
parties; and (3) the reason for and length of the delay.

23 *McGough v. Covington Technologies Co.*, 967 F.2d 1391, 1394 (9th
24 Cir. 1992), citing *County of Orange v. Air California*, 799 F.2d
25 535, 537 (9th Cir. 1986), cert. den. 107 S.Ct. 1605 (1987).

26 1. Stage of the Proceeding. Here, as noted above, the case
27 is rapidly approaching trial. The immediate pre-trial stage is
28 one of the most sensitive in litigation. American has indicated

1 that its interest may be somewhat at variance to those of Ms. Ada.
2 See Intervenor's Memorandum at 5-6. Under these circumstances,
3 the Court finds this factor to weigh against allowing
4 intervention.

5 2. Prejudice to Parties. Yasuda asserts that allowing
6 intervention now will expose it to additional pretrial motions,
7 potential new causes of action, additional litigation support to
8 Ms. Ada, and motions for attorney's fees. The Court questions
9 whether American is likely to fulfill this nightmare scenario.
10 However, because of the time at which intervention is sought, it
11 does appear that some prejudice would result from intervention.

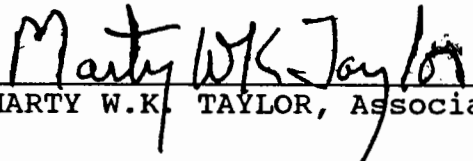
12 3. Length of and Reasons for Delay. Here, American has
13 failed to justify an inordinately long delay in seeking to enter
14 this suit. The record shows no evidence of efforts by American to
15 assert its interests between February 15, 1991 and February 4,
16 1993, nor of any action by American between June 10 and November
17 9, 1993. Judged against the federal cases assessing length of
18 delay, this period of unexplained inaction is too long. See,
19 e.g., *Shelter Framing Corp. v. Pension Benefit Guaranty Corp.*, 705
20 F.2d 1502, 1508 (9th Cir. 1983), *rev'd on other grounds*, 104 S.Ct.
21 2709 (1984) (one-month delay in seeking intervention untimely
22 where litigation was at critical stage); *Garrity v. Gallen*, 697
23 F.2d 452, 456 (1st Cir. 1983) (six-month delay in seeking
24 intervention untimely where media coverage should have put
25 intervenor on notice of its interest in outcome of litigation);
26 *Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. 1977)
27 (application timely where made less than one month after
28 intervenors discovered interest in litigation).

1 American seeks to justify its delay by pointing to its
2 attempts at informal settlement and its frequent change of counsel
3 in the past year. The desultory settlement efforts cited do not
4 justify such a long period of delay. But even if these reasons
5 did justify delay during 1993, they do nothing to excuse
6 American's inaction during 1991 and 1992.

7
8 **III. CONCLUSION**

9 Viewed in their totality, the circumstances here clearly
10 indicate that American's motion to intervene fails to satisfy the
11 timeliness requirement of Com. R. Civ. P. 24. Accordingly, the
12 motion to intervene is DENIED.

13
14
15 So ORDERED this 14th day of January, 1994.

16
17 
18 MARTY W.K. TAYLOR, Associate Judge