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# Insurer Denied Leave to Intervene in Underlying Action It Was Defending Under Reservation of Rights

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October 8, 2021, the United States District Court for the District of New Jersey recently denied an insurer's unopposed motion for leave to intervene in an underlying tort action that the insurer was defending pursuant to reservation of rights. In *Castracane-Sedlac v. Mason*, No. 20-cv-6080, 2021 WL 4710513 (D.N.J. Oct. 8, 2021), the insured was sued in connection with a motor vehicle accident. The insurer assigned defense counsel under reservation of rights. When the insurer determined in its investigation that the involved vehicle was not an insured auto under the policy, the insurer sought leave to intervene in the auto accident case in order to secure a judicial determination that no coverage was available. The court denied the insurer's motion under Fed. R. Civ. P. 24(a), which applies to intervention as of right, holding that the insurer did not have a sufficiently protectable interest in the underlying case. In this regard, the court held that, due to the reservation of rights, the insurer's interest in the accident case was merely contingent upon resolution of the coverage issue such that the insurer's interest was not sufficiently direct as required under the Rule. The court also denied the insurer's motion under Rule 24(b), which governs permissive intervention. This was because the court determined that the tort case and the coverage issues did not involve common questions of law or fact under the Rule. While not expressly stated in the opinion, it is likely that the factual issues involving insured vehicle status had nothing to do with the tort liability issues in the accident litigation. In this regard, the court stated that it was "reluctant to infuse . . . interpretations of an insurance policy . . . where the main cause of action concerns alleged negligence surrounding an automobile accident." Thus, the insurer was left to pursue a declaration of coverage in separate litigation, if it chose to do so. This probably was more appropriate in any event, in our view. We do not routinely recommend to our insurer clients that they seek to intervene in a case where the underlying plaintiff is party, as such can cause practical difficulties in obtaining declaratory judgment under an insurance policy.