

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,
Plaintiff-Counterdefendant, v. BEATRICE FOODS CO.,
Defendant-Counterplaintiff and Third-Party Plaintiff, v.
TRANSPORT INSURANCE COMPANY; NATIONAL SURETY CORPORATION;
CALIFORNIA UNION INSURANCE COMPANY; NORTHBROOK INSURANCE
COMPANY; ALLIANZ UNDERWRITERS, INC.; ARTHUR J. GALLAGHER &
CO.; GALLAGHER BASSETT INSURANCE SERVICES, INC. and LIBERTY
MUTUAL INSURANCE COMPANY, Third-Party Defendants

No. 86 C 1874

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

1988 U.S. Dist. LEXIS 14866

December 23, 1988, Decided

OPINION: MEMORANDUM OPINION
AND ORDER

ANN CLAIRE WILLIAMS, UNITED
STATES DISTRICT JUDGE

On September 17, 1986, final judgment was entered in favor of Beatrice in a case in the District of Massachusetts entitled *Anderson, et al. v. Beatrice Foods Co.* The Anderson case concerned a tort claim for polluting a municipal water supply. The present case is a dispute between Beatrice and its insurers over the costs of Beatrice's defense in the Anderson case. The Anderson plaintiffs seek to intervene in this case. Their motion is denied.

In order to intervene as of right under Fed. R. Civ. P. 24(a)(2), a party must meet a four-part test:

(1) the application must be timely; (2) the applicant must have a direct and

substantial interest in the subject matter of the litigation; (3) the applicant's interest must be impaired by disposition of the action without the applicant's involvement; and (4) the applicant's interest must not be represented adequately by one of the existing parties to the action.

Keith v. Daley, 764 F.2d 1265, 1268 (7th Cir. 1985). Failure to establish any one of these elements is sufficient to deny the motion to intervene, *Keith* at 1268, and [*2] the Anderson plaintiffs have not shown the second element: "a direct and substantial interest in the subject matter of the litigation." The subject matter of this case are the contractual responsibilities of Beatrice and its insurers, matters in which the Anderson plaintiffs can claim no interest. The Anderson plaintiffs also characterize their interest as one of insuring the integrity of the discovery process. The basis for this claim is the Anderson

plaintiffs' argument that Beatrice concealed vital information during discovery in Anderson. This argument carries no weight in the present context. Any remedy for such a violation would have to be presented to the Anderson court, not this one. Apparently, this was done as part of the Anderson plaintiffs' 60(b) motion for a new trial, a motion which that court rejected. Anderson is now on appeal, which is the appropriate route for the Anderson plaintiffs to take in order to achieve whatever remedy they may be entitled to. "Protecting the integrity of the discovery process" is not the type of "interest in the subject matter of the litigation" that Fed. R. Civ. P. 24(a) was designed to protect.

Permissive [*3] intervention under

Fed. R. Civ. P. 24(b) is also not appropriate. In order to intervene under 24(b) there must be "a question of law or fact in common" between the intervenor's claim and the main claim. That is not the case here. The questions of law in Anderson concerned liability in tort, while in this case the legal issues revolve around the insurance contract between Beatrice and its insurers. The questions of fact are likewise dissimilar, with the Anderson litigation focusing upon Beatrice's knowledge and conduct regarding the pollution of a municipal water supply, and in this case focusing upon Beatrice's conduct of the Anderson litigation.

The Anderson plaintiffs' motion to intervene in this case is denied.