IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA, and MICHELLE JONES, Individually, and as Guardian and Next Friend of MIKAYLA JONES, and ANGELA MACON	)	
Plaintiffs,	)	
v.	)	**CIVIL ACTION NO. 05-295-KD-B**
BEULAH L. STEVENS,	)	
Defendant.	)	

ORDER

This matter is before the Court on the motion of non-party State Farm Fire and Casualty Company ("State Farm") to intervene in this matter pursuant to "Rule 24 and Rule 42 (b) of the Alabama Rules of Civil Procedure and pursuant to the procedure promulgated by the Alabama Supreme Court in Universal Underwriters Insur. Co., v. East Central Alabama Ford Mercury, Inc., 574 So. 2d 716 (Ala. 1990) " (Doc. 74) filed August 15, 2006 and the government's response in opposition thereto (Doc. 79) filed September 6, 2006. Upon consideration, and for the reasons set forth herein, State Farm's motion to intervene is **DENIED.**

I. Procedural Background

On May 18, 2005, the United States filed a complaint alleging that the defendant, Beulah

L. Stevens, violated the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 - 3619 ("the Fair Housing Act"), by discriminating on the basis of race or color with respect to the rental of single-family homes and mobile home lots located in Saraland, Alabama. (Doc. 1)

On May 20, 2005, plaintiff Michelle Jones filed a Motion to Intervene (Doc. 2) which was granted on November 17, 2005. (Doc. 15) On October 19, 2005, plaintiff Angela Macon filed a Motion to Intervene. (Doc. 11) On November 30, 2005 plaintiffs Jones and Macon filed complaints in intervention. (Docs. 18, 19) On August 1, 2005 the Court entered a Rule 16 (b) Scheduling Order (Doc. 10), which was amended on April 28, 2006 on the motion of the parties. (Doc. 50) [1] Defendant Stevens filed responses to the complaints on June 15, 2005. (Docs. 6, 7) On January 14, 2006, defendant Stevens filed answers to the complaints in intervention. (Docs. 29, 30) On May 22, 2006 plaintiffs Jones and Macon filed motions to amend their complaints in intervention (Docs. 53, 54). The motions were granted on May 26, 2006. (Doc. 61) Thereafter, on June 15, 2006, plaintiff Macon filed a second motion to amend her complaint in intervention (Doc. 64) which was followed by a similar motion by plaintiff Jones on June 16, 2006. (Doc. 67) Defendant lodged no objection to the motions to amend and they were subsequently granted by the Court on June 20, 2006. (See Docs. 68, 69, 70) Defendant Stevens filed answers to the second amended complaint in intervention on June 28, 2006. (Doc. 71)

On August 15, 2006, State Farm filed the instant motion for limited intervention. (Doc. 74) The United States filed its response in opposition on September 6, 2006. (Doc. 79)

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[1] Discovery was closed in this action on June 15, 2006. There are no pending dispositive motions before the Court and the time for filing such motions has passed. The final pre-trial conference is set for November 13, 2006, with jury selection set to begin on December 5, 2006. (Doc. 73)

II. Factual Background

Defendant Stevens owns and manages nineteen (19) rental properties located in Saraland, Alabama. (Complaint at ¶ 4) Intervenor plaintiff, Michelle Jones, who is Caucasian, maintains that in February of 2002 she rented an apartment from Ms. Stevens, upon the recommendation of her friend, Angela Macon, who is also Caucasian. (Id. at ¶ 6) Plaintiff Jones' daughter, Mikayla Jones, who is biracial, is also a party to this action. (Id.) Plaintiff contends that after she moved into the apartment in March 2002, Ms. Stevens indicated to her, in sum, that she did not "allow" African Americans on her property and that Ms. Stevens used racial epithets when speaking about African American persons. (Id. at ¶¶ 10-13) Plaintiffs further contend that once Ms. Stevens learned that plaintiff's daughter was bi-racial she began a campaign to get plaintiff to move out. (Id. at ¶¶ 12-14) In sum, Ms. Stevens denies making any racial slurs and maintains that plaintiff advised her that she needed to find a more economical apartment. (Doc. 9, Report of Parties)

III. Motion to Intervene

State Farm moves the Court pursuant to Rules 24 and 42(b) of the Alabama Rules of Civil Procedure. However, a motion to intervene is a purely procedural right and the Federal Rules of Civil Procedure, rather than state rules, dictate the procedures to be followed. Fed. R. Civ. P. 24 provides, as follows:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Rule 42(b) of the Federal Rules of Civil Procedure, provides:

> (b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

In its motion to intervene, State Farm maintains that it issued a rental dwelling policy to Beulah Stevens which may, or may not, afford insurance coverage to Ms. Stevens with respect to the claims asserted against her in this action. (Doc. 74) As such, State Farm is furnishing a defense to plaintiff in this action subject to a reservation of rights. (Id.) State Farm now seeks to intervene on a limited basis. Specifically, State Farm maintains that it will not participate in the trial, that the jury will not be informed of the intervention or the existence of the Policy, that the intervention will require no additional discovery, and that it will not delay the trial of this action. (Id. at ¶ 5). Rather, State Farm "requests that it be allowed to file written interrogatories with the court for submission to the jury, but only after the jurors have reached their verdict following the primary trial, and then only in the event that the jury's verdict is against Beulah Stevens." (Id. at ¶ 3)

The government has filed an objection to the motion on the grounds, in sum, that the motion is "untimely and has the potential to cause delay and raise conflicts of interest." (Doc. 79 at 2) In addition, the government argues that the motion is procedurally deficient and fails to satisfy the requirements of Fed. R. Civ. P. 24. (Id.)

Timeliness

First, the government argues that State Farm knew from the inception of the litigation that it could be responsible for providing a defense to Ms. Stevens or for indemnifying her if a jury found her liable for discrimination under the Fair Housing Act but fails to provide an explanation for its delay in seeking intervention. (Id. at 3) The government maintains that had State Farm moved to intervene earlier in this action, the parties could have taken appropriate discovery on issues affecting the insurance coverage claims. (Id.) The government further argues that since State Farm has tendered a defense to Ms. Stevens, the intervention could pose a conflict, prejudice the adjudication of her rights or cause needless delay should counsel need to withdraw. (Id. at 4) [2]

Rule 24 of the Federal Rules of Civil Procedure provides that a party may "[u]pon timely application," move to intervene in an action. Fed. R. Civ. P. 24. "A district court's discretion under Rule 24(b) is broad." High Plains Co-op. Ass'n v. Mel Jarvis Const. Co., 137 F.R.D. 285, 287 (D.Neb.1991) (citing SEC v. Everest Management Corp., 475 F.2d 1236, 1240 (2nd

[2] The government also notes an earlier issue resulted in "confusion and delay" in May 2006 when counsel for defendant moved (and was granted leave) to withdraw as counsel in this case because of a preliminary non-coverage determination by State Farm. (Docs. 56, 57) Shortly thereafter, counsel moved to reappear on behalf of Ms. Stevens. (Doc. 60) The docket sheet reflects that this series of events occurred over the course of a four day period.

Cir.1972)). However, the rule cautions that "[i]n exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Id.

In determining whether a motion to intervene is timely, courts consider the following: "(1) the length of time during which the proposed intervenor knew or reasonably should have known of the interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor's failure to move for intervention as soon as it knew or reasonably should have known of its interest; (3) the extent of prejudice to the proposed intervenor if the motion is denied; and (4) the existence of unusual circumstances militating either for or against a determination that their motion was timely." Georgia v. U.S. Army Corps of Engineers, 302 F.3d 1242, 1259 (11th Cir. 2002) citing Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989). The Eleventh Circuit has tempered those requirements, noting that "[t]imeliness is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice." Id. (quoting McDonald v. E.J. Lavino Co., 430 F.2d 1065, 1074 (5th Cir.1970)) [3].

The Court takes note that State Farm provided a defense to its insured since the inception of this litigation, well over a year before seeking a declaration as to coverage. Moreover, as noted by the government, there is a risk of prejudice to the parties, including Ms. Stevens herself

[3] Decisions of the former Fifth Circuit rendered prior to October 1, 1981, are binding precedent on the Eleventh Circuit. Bonner v. City of Prichard, Alabama, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc).

that could result from this delayed intervention by State Farm. For instance, discovery was complete over three months ago; thus, the plaintiffs have no opportunity to discovery relevant information from State Farm or to file any timely motions on the issue.

State Farm will not suffer any prejudice as a result of the denial of the motion since it has the available remedy of filing a declaratory judgment action, which, in the Court's view is the proper procedure for determining coverage issues at this late stage of the litigation. Finally, the Court does not note any unusual circumstances militating in favor of granting State Farm's motion. Accordingly, the Court finds the motion is due to be denied on the grounds that it is untimely.

Procedurally Deficient

Even if the Court deemed the motion timely, it would still fail. The government further argues that State Farm's motion is procedurally deficient in that it fails to identify the specific grounds upon which it seeks to intervene. (Id. at 6) The government also argues that the motion is flawed in that State Farm seeks intervention without providing the Court a copy of the policy or policies in issue or a copy of its proposed intervention complaint. (Id. at 8-9) Rule 24 requires that a motion to intervene "shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c).

Rule 24 provides two vehicles by which a party may intervene in an action. The first, "intervention of right", is where the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical mater impair or impede the applicant's ability to protect that

interest, unless the applicant's interest is adequately represented by existing parties. Id. The second means of intervention, termed "permissive intervention," is allowed when an applicant's claim or defense and the main action have a question of law or fact in common.

As correctly noted by the government in its response in opposition to the motion, State Farm does not indicate under which provision of Rule 24 it is proceeding. It appears to the Court, however, that their motion is governed by Rule 24(b)(2), Fed.R.Civ.P., which provides in pertinent part that "anyone may be permitted to intervene in an action ··· when an applicant's claim or defense and the main action have a question of law or fact in common." Id. [4] State Farm is, in effect, asking that after the trial of the Fair Housing Act claim against its insured, Beulah Stevens, the jury answer interrogatories whereas to interpret the policy language as set forth in the rental dwelling policy.[5] However, the question of whether there is insurance coverage for the plaintiffs' claims is not an issue in this case. It does not appear to the Court that State Farm's proposed intervention has questions of fact in common with those of the pending action.

As noted by the government State Farm's request for intervention is not the same as was allowed by Judge Steele in Thomas v. Henderson, 297 F.Supp.2d 1311, 1323 (S.D. Ala. 2003). The request to intervene in Thomas was for the purpose of submitting interrogatories to the jury

[4] In addition, the Fair Housing Act Section 3614(e) permits "aggrieved persons" to intervene in cases filed by the United States. However, in its motion State Farm does not claim to be an "aggrieved person" under the Fair Housing Act.

[5] State Farm states that it is "seeking a determination as to whether State Farm is obligated to provide a defense to Beulah Stevens, and whether State Farm is obligated to make any payment of settlement, judgment or verdict, as may be entered against Beulah Stevens in the instant litigation." (Id. at 2)

to itemize which damage awards were made for which claims. This request was made to assist in the declaratory judgment action, not to take the place of a declaratory judgment action.

The scant precedential authority on the issue of whether an insurer should be allowed to intervene on such a limited basis reflects divergent holdings. See Fidelity Bankers Life Ins. Co. v. Wedco, Inc., 102 F.R.D. 41, 44-45 (D.Nev.1984) (allowing insurance company to intervene for the limited purpose of proposing special interrogatories and verdict forms for potential submission to the jury) and Plough, Inc. v. International Flavors and Fragrances, Inc., 96 F.R.D. 136, 137 (W.D.Tenn.1982) (similar) with Restor-A-Dent Dental Laboratories, Inc. v. Certified Alloy Products, Inc., 725 F.2d 871, 877 (2nd Cir.1984) (finding that district judge did not abuse discretion in denying insurer's request to intervene to submit proposed interrogatories) and High Plains, 137 F.R.D. at 285 (denying request for limited intervention where district court was skeptical of insurer's claimed policy limitations and exclusions and was concerned about potential conflict of interest for insured's counsel, who was hired by insurer); Ross v. Marshall, 456 F.3d 442, 443 (5th Cir., 2006) ("When an insurer defends under a full reservation of rights, their interest in the liability lawsuit is contingent upon the outcome of the coverage lawsuit. That interest, without more, is insufficient for intervention.").

Based on the timing of the motion, the prejudice to the parties, and the fact that State Farm has at its disposal a remedy in the form of an action for declaratory relief that will preserve its rights, the Court, in its discretion, finds that State Farm's Motion for Leave to Intervene should be denied.

IV. Conclusion.

For all of the reasons set forth herein, non-party State Farm's Motion for Leave to

Intervene is **DENIED.**

DONE this the 19th day of September 2006.

/s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE