

A mail clerk domiciled in State A slipped and fell on ice that had formed near the loading dock of the building in State B where the clerk's State B employer leased space for its headquarters. The building was owned and operated by a State C corporation. As a result of the fall, the clerk was injured and the employer's expensive computer he was carrying was badly damaged.

The clerk sued the building owner for negligence in a federal district court in State B, seeking \$100,000 in personal-injury damages. The employer has filed a timely motion to intervene, asserting an \$80,000 negligence claim against the building owner for the damage to its computer.

Is the court likely to grant the employer's motion to intervene?

- A. No, because although the employer has an interest in the clerk's action, that interest is not likely to be impaired in the employer's absence.
- B. No, because the clerk chose not to join the employer as a co-plaintiff in his action.
- C. Yes, because the employer is an indispensable party.
- D. Yes, because the employer's claim shares common questions of law and fact with the clerk's action.

Explanation:

Intervention

(FRCP 24)

Intervention of right

- On timely motion, court *must* permit intervention when either:
 - nonparty's interest in case not adequately represented by existing parties & deciding case may impair nonparty's ability to protect that interest
 - federal statute gives *unconditional* right to intervene

Permissive intervention

- On timely motion, court *may* permit intervention when either:
 - nonparty's claim or defense shares common question of law or fact with main action
 - federal statute gives *conditional* right to intervene
- Court must consider whether intervention will unduly delay or prejudice adjudication of original parties' rights

FRCP = Federal Rule of Civil Procedure.

A **nonparty can join** a case to protect his/her interest by timely filing a **motion to intervene** under Federal Rule of Civil Procedure (FRCP) 24.* There **are two types** of intervention:

- **Intervention of right** – the court *must* permit an intervention when (1) the nonparty's **interest is inadequately represented** by the existing parties and (2) deciding the case may **impair** the nonparty's **ability to protect** that interest.
- **Permissive intervention** – the court *may* permit an intervention when the nonparty's claim or defense shares a **common question of law or fact** with the main action. But a court may deny permissive intervention if it would unduly delay or prejudice the adjudication of the original parties' rights.

Here, the employer timely moved to intervene in the clerk's action against the building owner. Although the employer's interest (property-damage claim) is inadequately represented by the existing parties, deciding the clerk's personal-injury action is not likely to impair the employer's ability to protect its interest (no intervention of right). But since both actions are based on the owner's alleged negligence (common questions of law and fact), the court will likely allow the employer to *permissively* intervene (**Choice A**).

*To determine if a motion to intervene is timely filed, the court considers (1) the length of time the movant knew or should have known about its threatened interest, (2) the prejudice to the parties if intervention is permitted, and (3) the prejudice to the movant if intervention is denied.

(Choice B) The clerk's decision to exclude the employer as a co-plaintiff does not affect the employer's ability to intervene.

(Choice C) Under FRCP 19, an indispensable party must be joined in a lawsuit. But the employer is not an indispensable party because the employer's absence would not affect the court's ability to provide relief to the clerk or the employer's ability to protect its related property interest.

Educational objective:

Intervention *must* be permitted when the nonparty's interest is inadequately represented and deciding the case may impair his/her ability to protect that interest (ie, intervention of right). And intervention *may* be permitted when the nonparty's claim or defense shares a common question with the main action (ie, permissive intervention).

References

- Fed. R. Civ. P. 24 (intervention).

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.