

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-052753

08/10/2017

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT
W. Tenoever
Deputy

ESTATE OF LEROY HAEGER, et al.

DAVID L KURTZ

v.

GOODYEAR TIRE AND RUBBER COMPANY,
et al.

KERRY L HOLMAN

LISA G LEWALLEN
RICHARD P TRAULSEN
SUSAN M FREEMAN

RULING

The Court has read and considered the Motion to Intervene by the Center for Auto Safety, the response, and reply, in the context of the record in this case.

IT IS ORDERED defendant Goodyear's request for oral argument on the motion is denied as permitted by Maricopa County Local Rule 3.2(d).

Civil Rule 24(b) allows the court to permit intervention on timely motion by anyone who has a claim that shares with the main action a common question of law or fact. Rule 24(b) is a proper vehicle for nonparties to seek permissive intervention for purposes of challenging protective or confidentiality orders issued in the underlying lawsuit. Zenith Electronics Corp. v. Ballinger, 220 Ariz. 257, 204 P.3d 1106 (App. 2009).

In Zenith Electronics, the Court of Appeals found that a public-interest organization's post-judgment motion to intervene, filed six weeks after the judgment of dismissal following the

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settlement of the underlying tort case, *id.* at ¶¶ 6-7, was timely considering how long the intervenor had known or should have known that the parties no longer adequately protected its interest; prejudice to the existing parties; prejudice to the intervenor if no intervention were permitted, and specifically whether an existing party to the litigation represented the public interest in the discovery materials; and “extraordinary circumstances” relating to the public’s interest in the information at issue. *Id.*, ¶¶ 15-21. The court further held that the propriety of the protective order and the extent to which it should be modified presented a question of law in common with the underlying tort case. *Id.*, ¶¶ 22-25.

By the standards set in Zenith Electronics, the Center for Auto Safety easily qualifies for permissive intervention in this case. The motion to intervene was filed about eight weeks after the dismissal of the Haeger plaintiffs’ case against Goodyear -- not materially longer than the six weeks that elapsed in Zenith Electronics between dismissal and intervention. The intervenor’s Acting Director represents under oath that the intervenor did not become aware of this case until after it settled, and that the motion to intervene was filed immediately.

Even assuming that the intervenor “should have known” of the case earlier, it would not follow that the motion was untimely. See Public Citizen v. Liggett Group, Inc., 858 F.2d 775, 785 (1st Cir. 1988) (“simple fact of knowing that a litigation exists” not sufficient “to trigger obligation to file a timely application for intervention”). The question is whether the intervenor had reason to know that the plaintiffs had agreed to a blanket protective order that would prevent public access to the details about the allegedly defective tire even after the entry of judgment. It is not evident how that could have been known to a third party like the Center for Auto Safety that was not otherwise involved in the litigation.

The other factors mentioned in Zenith Electronics likewise favor permissive intervention. Litigation on the ancillary issue of disclosure of court records and discovery materials is unlikely to prejudice the parties to the underlying tort case. 220 Ariz. 257, 204 P.3d 1106, ¶ 21. The “burden” on Goodyear of “requiring it to continue policing access to confidential information” is not a reason for denying intervention, but rather a factor to be considered upon the evaluation of the merits of the applicant's motion. *Id.*, ¶ 18, citing Public Citizen v. Liggett, 858 F.2d at 787.

The Center for Auto Safety, on the other hand, will be substantially prejudiced if it is not permitted to intervene. None of the present litigants represents the public’s interest in disclosure of information about the tire. The plaintiffs apparently are not willing to advocate against the protective order because Goodyear says they would be in breach of the settlement agreement.

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The right of Spartan Chassis to ask for the protective order to be vacated is being challenged by Goodyear on procedural grounds, and also on the ground that “Goodyear [has] agreed that Spartan would have full access to all documents produced in the case subject only to the existing Protective Order.” Defendant The Goodyear Tire and Rubber Company’s Motion to Stay Proceedings Pending Appeal at 2. Spartan, for its part, may well decide to settle for access for itself, as opposed to public access, given that its interest in this case is economic at its core.

Finally, as in Zenith Electronics, the public here has a strong interest in access to the materials at issue in order to “understand the risks to the public health and welfare” that may be posed by Goodyear’s product. 220 Ariz. 257, 204 P.3d 1106, ¶ 21. Goodyear will have the right to advocate for the safety of the tire, as part of the substantive inquiry into whether the intervenor should be granted access to the sought-after information. Ariz. R. Civ. P. 26(c)(4)(B)(iii). But Goodyear does not have the right to cut off the inquiry simply by insisting the tire is safe. Nor does Goodyear have the right to limit the inquiry to NHTSA. The public interest here is not just in ensuring the safety of Goodyear tires. It is also in overseeing the work of the government in protecting safety, and in vindicating the right to access court records that bear on matters of public concern.

IT IS THEREFORE ORDERED the Motion to Intervene by the Center for Auto Safety is granted.

IT IS FURTHER ORDERED the intervenor shall file and serve its proposed Pleading in Intervention within ten days of the date on which the Clerk issues this order.