

Penn Lyon contends that permitting Viking to intervene will needlessly complicate and delay its attempt to recover on the surety bond issued by Liberty Mutual and will also enable Viking to bypass an arbitration clause in the parties' subcontract. Penn Lyon will not be unduly prejudiced or delayed in its attempt to recover on the surety bond if Viking is permitted to intervene to oppose that effort. Moreover, the strong federal policy in favor of arbitration must be weighed against Rule 24's "central" goal of "preventing a multiplicity of suits that involve common questions." 6 Moore's Federal Practice § 24.11 (3d ed.). If Viking is not permitted to intervene and Penn Lyon prevails in this action, Liberty Mutual will likely seek reimbursement from Viking, which in turn will likely seek to recover against Penn Lyon.

Penn Lyon also contends that the motion should be denied because Viking has not served a proposed pleading as required by Rule 24. "Whether to permit a procedurally defective motion to intervene is within the sound discretion of the district court." Retired Chicago Police Association v. City of Chicago, 7 F.3d 584, 595 (7th Cir. 1993). "[A] court may approve an intervention motion that is not accompanied by a pleading if the court is otherwise apprised of the grounds for the motion." 6 Moore's Federal Practice § 24.20. Viking has stated that its claims and defenses are that Penn Lyon has been paid in full and performed substandard work. Though somewhat vague, this description has not denied plaintiff the opportunity to argue how it would be prejudiced by Viking's

intervention. The failure to submit a pleading can be rectified after intervention is permitted. Spring Construction Co. v. Harris, 614 F.2d 374, 376 (4th Cir. 1980). Accordingly, Viking is ordered to file and serve within 30 days an answer and counterclaim limited to the defenses and/or counterclaims that plaintiff has been paid in full and performed substandard work on the project.¹

So ordered.

Dated at Hartford, Connecticut, this 14th day of May 2001.

Robert N. Chatigny
United States District Judge

¹ The action will proceed here unless and until Penn Lyon or Viking invokes arbitration, in which event the action will be stayed pending resolution of the arbitration. It bears noting that even if Liberty Mutual would not be bound by an arbitration award in Penn Lyon's favor, the award would be prima facie evidence of Liberty Mutual's liability on the surety bond.