

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
Plaintiff :
 :
 :
 v. : 3:99-CV-2590 (EBB)
 :
 :
 :
 ONE 1995 TURBO COMMANDER AIRCRAFT :
MODEL 114TC, SERIAL NO. 20002, :
ETC, ET AL., :
Defendants :

UNITED STATES OF AMERICA, :
Plaintiff :
 :
 :
 v. : 3:99-CV-2589 (EBB)
 :
 :
 :
 \$11,014,165.20 IN U.S. CURRENCY :
CONVERTED FROM GOLD COINS, ETC., :
ET AL., :
Defendants :

RULING ON MOTIONS TO INTERVENE

INTRODUCTION

Peoples Benefit Life Insurance Company ("Peoples") and Veterans Life Insurance Company ("Veterans") have moved this Court to grant them the right to intervene, pursuant to Rule 24 of the Federal Rules of Civil Procedure, as parties with a direct interest in the outcome of the above-referenced litigations, which arise out of the looting of insurance companies by Martin

Frankel. The Receivers of the estates have filed timely objection thereto.

STATEMENT OF FACTS

The Court sets forth only those facts deemed necessary to an understanding of the issues raised in, and decision rendered on, these Motions.

In approximately 1993, Martin Frankel established one Thunor Trust in Franklin, Tennessee. The Thunor Trust was established to acquire ownership of insurance companies, including First National Life Insurance Company ("FNLIC") and Franklin American Life Insurance Company ("FALIC").

In June, 1998, a broker of blocks of insurance business put Peoples and Veterans in touch with FALIC to explore the possibility of FALIC reinsuring certain blocks of insurance business that were originally underwritten by Peoples and Veterans.

Peoples and Veterans rejected the proposal due to the fact that FALIC's financial rating was not high enough to assure regulatory approval of the proposed transaction. As an alternative, FALIC officials offered a substitute deal with FNLIC, FALIC's highest rated affiliate under the folds of the Thunor Trust. Based on a series of representations regarding the financial condition of FNLIC and its statutory financial statements, Peoples and Veterans entered into a set of agreements

with FNLIC.

The Agreements entered into included a Master Agreement, a Reinsurance Agreement and an Assumption Agreement. The Agreements were to transfer the initial blocks of insurance business from Peoples and Veterans to FNLIC, as well as the corresponding \$14,689,593.00 Reserve Fund which accompanied those blocks of insurance business.

The Agreements provided that they would not and could not become effective until the Mississippi Commissioner of Insurance approved the Assumption Agreement. The documents also provided that FNLIC would immediately return any portion of the insurance business -- and the concomitant portion of the Reserve Fund -- that was not approved for transfer by the appropriate regulatory authorities.

The Agreements failed because certain conditions set forth in the Agreements did not occur. However, rather than returning the business and the Reserve Fund, Peoples and Veterans assert that Frankel absconded with the Reserve Fund. As a consequence, Peoples and Veterans lost the Reserve Fund but remained liable for all claims and expenses for the corresponding insurance business.

LEGAL ANALYSIS

Intervention as a matter of right under Federal Rule of Civil Procedure 24(a)(2) is permitted when the party proposing to

intervene meets the following requirements: (1) the motion to intervene must be timely filed; (2) the party must demonstrate an interest in the property or transaction which is the subject of the underlying action; (3) the party must show that a prejudice to that interest will result if intervention is not permitted; and (4) the applicant's interest must not be adequately protected by any of the existing parties. Security Pacific Mortg v. Republic of the Philippines, 962 F.2d 204, 208 (2d Cir. 1992). "Failure to satisfy any of these requirements is a sufficient ground to deny the application." Farmland Dairies v. Comm'r of N.Y. Dep't of Agriculture, 847 F.2d 1038, 1043-44 (2d Cir. 1988)(emphasis in original).

The Supreme Court has held that the "interest" referred to in factor two is required to be a "significantly protectible interest." Donaldson v. United States, 400 U.S. 517, 531 (1970)(denying intervention for lack thereof). Here, although the interest of Peoples and Veterans is of significant interest to them, it is not within the meaning the Donaldson and its progeny. See, e.g. Mountain Top Condominium Ass'n v. Dave Staubbart Master Builder, 72 F.2d 361 (3d Cir. 1995); Conservation Law Foundation of New England, Inc. v. Mosbacher, 966 F.2d 39 (1st Cir. 1992). This can be recognized by the acknowledgment, oft repeated in their moving papers, that they "may" have an interest in the seized assets.

In fact, the monies in the Reserve Funds which were stolen were stolen from the insurance companies, and not from Peoples or Veterans themselves. In a parallel vein:

[T]he injury . . . is primarily to the corporation. . . and is an injury to the creditor . . . only insofar as it decreases the assets of the corporation to which he must look for satisfaction of his debt. . . the suit is for a tort suffered by the corporation, and properly brought by the trustee.

University of Maryland at Baltimore v. Peat Marwick Main & Co.,
923 F.2d 265, 273 (3d Ci. 1991).

In a sense, Peoples and Veterans realize this flaw in their reasoning, as they have filed appropriate proofs of claim with the Mississippi and Tennessee receivership actions. With this motion, they intend to "leapfrog" over every other worthy (and sometimes worthier) claimant to an as yet limited amount of funds. This the Court cannot allow.

CONCLUSION

The Receivers in these actions are the appropriate parties to be pursuing these actions against the monies liquidated out of the seizures to date of the Frankel assets. Hence, the Court will not grant permissive intervention. Too, inasmuch as they do not meet the standards for intervention as of right, the Motions to Intervene [Doc. No. 36, 3:99-CV-2589 and 32, 3:99-CV-2590) are hereby DENIED.

SO ORDERED

ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ____ day of October, 2000.