

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

PETER THORSON, MANAGED
INVESTMENTS INCORPORATED,
CONSTRUCTION MANAGEMENT,
INC., GERKE EXCAVATING, INC., and
ACUITY,

Defendants.

ORDER

03-C-74-C

On September 26, 2003, this court issued an opinion and order granting defendant Acuity's motion to intervene pursuant to Fed. R. Civ. P. 24 in order to seek a declaratory judgment pursuant to 28 U.S.C. § 2201 to establish whether it has an obligation to defend or indemnify defendant Gerke. Pursuant to that order, the magistrate judge established a new schedule for this case to allow the court to resolve the insurance coverage issues before determining liability. That order established October 24, 2003 as the deadline for the parties to file motions to determine insurance coverage.

Now Rural Mutual Insurance Company, insurer for defendants Peter Thorson, Construction Management, Inc., and Managed Investments, Inc., wants to intervene for the

same reasons as Acuity. Rural Mutual asserts that its insured only recently tendered to it the defense of this lawsuit.

Although I am not convinced that Rural Mutual could not have sought to intervene before Thorson formally submitted a claim, I will nonetheless grant the motion for the reasons stated in the order of September 26, 2003. However, Thorson and Rural Mutual will pay a price for their delay in the form of tight deadlines on the insurance coverage issue.

ORDER

IT IS ORDERED that:

1. The motion of Rural Mutual Insurance Company to intervene pursuant to Fed. R. Civ. P. 24(a)(2) is GRANTED.
2. The existing scheduling order is AMENDED as follows:

Rural Mutual has until November 14, 2003, within which to file a motion to determine insurance coverage. The response of defendants Thorson, Managed Investments, Inc. and Construction Management, Inc. is due November 24, 2003. Rural Mutual's reply is due December 1, 2003.

Defendants Thorson, Managed Investments, Inc., Construction Management, Inc. and Rural Mutual have until November 24, 2003 to disclose their experts. Plaintiff has until December 4, 2003 within which to disclose experts in rebuttal to the experts of these defendants.

3. All other provisions of the Amended Preliminary Pretrial Conference Order dated October 10, 2003 remain in effect.

Entered this 29th day of October, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge