

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHN'S COUNTY, FLORIDA

JAMES T. TREACE and ANGELINE
G. TREACE,

Plaintiffs,

v.

Case No.: CA-06-0815
Division: 55

HARBOR ISLAND JOINT VENTURE III,
JC DESIGN MANAGEMENT COMPANY, a
Florida corporation, HUNTINGTON
BUILDERS, INC., a Florida corporation,
DOESN'T MEAN ANYTHING, INC., a Florida
corporation, and STEVENSON
DESIGN AND DEVELOPMENT OF
JACKSONVILLE, INC., a Florida corporation,

Defendants.

STEVENSON DESIGN AND DEVELOPMENT
OF JACKSONVILLE, INC., a Florida
corporation,

Third-Party Plaintiff,

vs.

RYSKCON CONSTRUCTION, INC.,
A Florida corporation, RAKE BROTHERS
ENTERPROSES, INC., a Florida corporation,
BARRY K. CHERRY, an individual, and
ARCHITECTURAL WINDOWS & CABINETS,
INC., a Florida corporation,

Third-Party Defendants.

HARBOR ISLAND JOINT VENTURE III,
JC DESIGN MANAGEMENT COMPANY,
a Florida corporation, HUNTINGTON
BUILDERS, INC., a Florida corporation,
DOESN'T MEAN ANYTHING, INC.,

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CHERYL STRICKLAND
CLERK OF CIRCUIT COURT
ST. JOHNS COUNTY, FL

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CA 06-815

a Florida corporation,

Cross-Claim Plaintiffs,

vs.

STEVENSON DESIGN AND DEVELOPMENT
OF JACKSONVILLE, INC., a Florida
corporation,

Cross-Claim Defendant.

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MID-CONTINENT CASUALTY COMPANY'S MOTION TO INTERVENE

Movant, Mid-Continent Casualty Company (INSURER), by and through the undersigned counsel and pursuant to Rule 1.230, Fla. R. Civ. P., hereby moves to intervene for the limited purpose of obtaining special interrogatories in the above-captioned action, and states as follows:

1. INSURER moves to intervene in order to protect its interests as commercial general liability insurer of STEVENSON DESIGN AND DEVELOPMENT OF JACKSONVILLE, INC, (STEVENSON), under policies in effect during the time periods relevant to this litigation.
2. INSURER is defending STEVENSON under a reservation of rights to deny coverage as to some or all damages claimed by plaintiff.
3. The trial of this matter is set to begin on Monday, April 23, 2012.
4. The Pre-trial Conference is set for April 16, 2012.
5. INSURER seeks to intervene in this matter for the limited purpose of submitting special interrogatories to the Court to be used by the jury. Special interrogatories are necessary in the event of a Plaintiff's verdict, in order to determine

among other things, to what extent damages are awarded for damage to the insured's work vs. property other than the work, and with respect to each type of alleged property damage, when such property damage occurred. These factual determinations are necessary because, among other things, not all policies include the same terms and exclusions.

6. Only by obtaining special interrogatories or a special verdict can Plaintiffs (as potential judgment holders), the insured and INSURER obtain an allocation of damages in order to preserve any potential coverage disputes for determination in a subsequent declaratory judgment action.

7. The insured is required to seek special jury interrogatories in order to comply fully with the mandates of *Duke v. Hoch*, 468 F.2d 973 (Fla. 5th DCA 1972), which requires an insurer to make its insured aware that the insured bears the burden of proving what part of a verdict or judgment falls within a policy's coverage, and therefore, the necessity that the insured obtain an allocated verdict when the insurer is defending under a reservation of rights. See also, *Tri-State Ins. Co. of Minnesota v. Fitzgerald*, 593 So. 2d 1118 (Fla. 3d DCA 1992).

8. In addition, INSURER seeks to intervene to protect its own interests. See *U.S. Concrete Pipe Co. v. Bould*, 437 So. 2d 1061 (Fla. 1983).

9. This Court has the discretion to allow either (1) a special verdict or (2) special interrogatories to be given to the jury after the verdict. See e.g., *Employers Ins. of Wausau v. Lavender*, 506 So. 2d 1166 (Fla. 3d DCA 1987). No party's rights will be adversely affected by allowing special interrogatories after the jury returns a verdict. *Id.* at 1167.

10. In addition, plaintiffs will not be prejudiced by this intervention. Plaintiffs were fully advised long ago of each and every coverage defense asserted by INSURER.

12. INSURER will monitor trial at all times to determine what facts necessary to coverage have become undisputed facts based on the testimony of the parties and their experts. Following closing arguments and/or jury charges, INSURER will submit proposed post-verdict jury interrogatories for the consideration of the Court only with respect to those facts which are uncertain and/or remain in dispute, in order to minimize the number of interrogatories, and INSURER will make its best efforts to work with plaintiffs' counsel in an attempt to avoid excessive argument to the Court as to what questions need to be asked of the jury.

WHEREFORE, INSURER requests that this Motion to Intervene be granted.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2012, I served true and correct copies of the foregoing ***Motion to Intervene*** by hand to the following counsel of record:

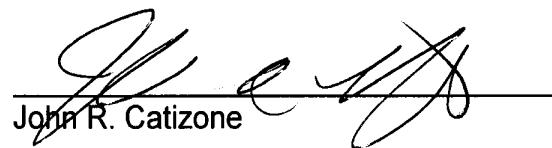
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