

Jehan A. Patterson (pro hac vice application pending)
Adina H. Rosenbaum (pro hac vice application pending)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
jpatterson@citizen.org

Lester A. Perry, Utah Bar No. 02571
Hoole & King
4276 South Highland Drive
Salt Lake City, UT 84124
(801) 272-7556
lap@hooleking.com

Attorneys for Proposed Intervenor Joseph M. Belth

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

PHL VARIABLE INSURANCE
COMPANY,

Plaintiff,

v.

THE SHELDON HATHAWAY
FAMILY INSURANCE TRUST,
by and through its Trustee, DAVID
HATHAWAY

Defendant,

-and-

WINDSOR SECURITIES, LLC,
a Nevada limited liability company,

Intervenor Defendant.

**JOSEPH M. BELTH'S MOTION TO
INTERVENE PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 24(b) AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Case No. 2:10-cv-00067-RJS-BCW

Honorable Robert J. Shelby

Magistrate Judge Brooke C. Wells

**STATEMENT OF PRECISE RELIEF SOUGHT
AND SPECIFIC GROUNDS FOR MOTION**

Pursuant to Federal Rule of Civil Procedure 24(b), Joseph M. Belth moves the Court to intervene in this action for the limited purposes of seeking public access to portions of the summary judgment record that were filed under seal in accordance with the stipulated protective order entered in this case. This motion is supported by the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Joseph M. Belth moves for leave to intervene pursuant to Federal Rule of Civil Procedure 24(b) for the limited purposes of unsealing portions of the court record in this case—specifically, documents in connection with the cross-motions for summary judgment filed by plaintiff PHL Variable Insurance Co. (PHL) and intervenor defendant Windsor Securities, LLC (Windsor).

Belth has enjoyed a long and varied career in the insurance industry, including a stint as a life insurance agent and later a professor (now emeritus) of insurance at the Kelley School of Business at Indiana University. He has authored numerous books and scholarly articles on life insurance. Nearly forty years ago, he founded *The Insurance Forum*, a monthly periodical, a publication that he now maintains via blog (www.josephmbelth.com). In 1990, he received the George Polk award for “intense scrutiny of the insurance business” in the Special Publications category for his work on *The Insurance Forum*.

A copy of Belth’s proposed motion to unseal is attached as Exhibit A to this motion. That proposed motion asserts a public right of access under the common law and First Amendment to unredacted copies of all filings and court documents concerning the motions for summary judgment.

BACKGROUND

This case seeks to rescind a life insurance policy that PHL issued to Sheldon Hathaway in the amount of four million dollars because defendants Hathaway and Windsor made material misrepresentations in Sheldon Hathaway's application for the policy. The complaint alleges that Hathaway and Windsor perpetrated a stranger-originated life insurance (STOLI) scheme, in which a third-party investor (here, Windsor) typically agrees to pay the premiums on an insurance policy on the life of an elderly individual in exchange for the insured transferring the rights to the death benefits payable on the policy after the period to contest the validity of the policy has expired. PHL alleged that, as a result of this agreement, Sheldon Hathaway's insurance application falsely represented that he would not use financing to pay the premiums on the policy and that he had no intention of transferring the policy to a third party who had no continued interest in his life. Further, PHL alleged that the application overstated Sheldon Hathaway's income and net worth.

In recent years, STOLI transactions have become breeding grounds for fraud, as insurance brokers and agents work in concert with investors to obtain life insurance policies that far exceed an individual's net worth and income, two factors that insurers consider when underwriting policies.¹ By acquiring life insurance policies on the elderly and continuing to pay the premiums, these third parties increase the likelihood that insurers will have to pay benefits upon the death of the insured. The rise in fraudulent STOLI transactions effectively increases the

¹ See Leslie Scism, *Regulators Rein in Murky Life Policies*, The Wall Street Journal, June 21, 2010, http://online.wsj.com/news/articles/SB10001424052748704324304575306440620747882?mod=WSJ_PersonalFinance_PF2&mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052748704324304575306440620747882.html%3Fmod%3DWSJ_PersonalFinance_PF2#articleTabs%3Darticle.

cost of obtaining life insurance for all consumers and makes it more difficult for the elderly who have fallen prey to such schemes to later obtain life insurance policies for legitimate purposes, such as providing financial protection for their families.² As a result, insurance regulators and prosecutors—in addition to private insurers such as PHL—have taken steps to combat this fraud.³

On August 22, 2011, this Court entered a stipulated protective order governing discovery in this action but made no findings of fact that good cause existed to allow documents deemed “confidential” during discovery to be filed under seal with the Court. In September 2012, and in the following months, the parties filed—under seal—portions of their cross-motions for summary judgment, including declarations and exhibits, followed by oppositions and reply memoranda. Other than the stipulated protective order, there is no indication in the public record why significant portions of the parties’ cross-motions for summary judgment are filed under seal.

On December 2, 2013, this Court granted PHL’s motion for summary judgment, denied defendants’ motion for summary judgment, and allowed PHL to retain the premiums already paid on the policy. Defendants’ motion to alter or amend the judgment is pending.

On January 8, 2014, PHL filed a notice stating that it intended to request, by January 21, 2014, that the Court redact the transcript of the January 3, 2013 hearing on the parties’ cross-motions for summary judgment. As of the date of this motion, PHL does not appear to have filed its request.

² See Ohio Department of Insurance, *Consumer Tips*, <http://www.insurance.ohio.gov/Newsroom/Tips/Pages/STOLI.aspx>; California Department of Insurance, *Seniors: Senior Advisory on STOLI or Spinlife Life Insurance Schemes*, <http://www.insurance.ca.gov/0150-seniors/0100/alerts/strangerownedlifeins.cfm>.

³ Scism, *supra* n.1.

ARGUMENT

The Tenth Circuit has held that permissive intervention under Federal Rule of Civil Procedure 24(b) is the appropriate mechanism for non-parties to an action to seek access to judicial records. *See United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990) (citing *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 783 (1st Cir. 1988)). Rule 24(b)(1) provides, in pertinent part, that “[o]n timely motion, the court may permit anyone to intervene who: ... (B) has a claim or defense that shares with the main action a common question of law or fact.” The Tenth Circuit, following other courts of appeals, has held that “no particularly strong nexus of fact or law need exist” where a non-party seeks to intervene to gain access to court records. *See United Nuclear*, 905 F.2d at 1427 (citation omitted) (evaluating motion for intervention by non-party who sought discovery material for use in a collateral litigation); *see also San Jose Mercury News, Inc. v. U.S. District Court – N. District (San Jose)*, 187 F.3d 1096, 1100 (9th Cir. 1999) (holding that “strong nexus of fact or law [is] not required where intervenor merely seeks to challenge a protective order” (citation omitted)).

Here, the motion to intervene is timely, as “the adjudication of the rights of the existing parties” will not be prejudiced by Belth’s intervention at this time. *United Nuclear*, 905 F.2d at 1427 (timeliness “to be determined from all the circumstances”) (quoting *NAACP v. New York*, 413 U.S. 345, 365-66 (1973)). Because Belth seeks to intervene for the limited purpose of unsealing the summary judgment record, rather than to contest the merits of the litigation, intervention will not affect the parties’ ability to litigate the merits of the case. *See Public Citizen*, 858 F.2d at 786 (“The fact that a suit has gone to judgment does not in any sense militate against the public’s right to prosecute a substantiated right to see the records of a particular

case.”); *San Jose Mercury News*, 187 F.3d at 1101 (noting that “delays measured in years have been tolerated where an intervenor is pressing the public’s right of access to judicial records.”); *United Nuclear*, 905 F.2d at 1427 (permitting intervention three years after action settled).

Further, Belth is well positioned to represent the public’s right of access. Belth has a strong interest in educating consumers about the life insurance industry, and frequently reports on legal developments and court cases involving life insurance, including the type of allegedly fraudulent STOLI transaction at issue in this case. Further, as part of his reporting efforts, Belth regularly requests records from state insurance regulators through various state freedom of information laws.

CONCLUSION

For the foregoing reasons, the Court should grant Belth’s motion to intervene under Federal Rule of Civil Procedure 24(b) for the limited purposes of moving to unseal the summary judgment record in this case.

Respectfully submitted,

/s/ Jehan A. Patterson
Jehan A. Patterson, DC Bar No. 1012119
(pro hac vice application pending)
Adina H. Rosenbaum, DC Bar No. 490928
(pro hac vice application pending)
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
jpatterson@citizen.org

Lester A. Perry, Utah Bar No. 02571
Hoole & King
4276 South Highland Drive
Salt Lake City, UT 84124
(801) 272-7556
lap@hooleking.com

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*Counsel for Proposed Intervenor
Joseph M. Belth*