



**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

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**INFINITY PROPERTY & CASUALTY
CORPORATION,**

Plaintiff,

MICHELE M. WOODARD,
J.S.C.
TRIAL/IAS Part 24
Index No.: 9505/04

-against-

**DONNA MOOR, MICHAEL M. MOOR, MICHAEL
F. MOOR, ESTATE OF PATRICK BUTLER,
PATRICK DONALDSON, by his father and
natural guardian, JAMES DONALDSON,
TIM MONTGOMERY, by his father and natural
guardian, WILLIAM MONTGOMERY and THOMAS
GAEBLER, by his mother and natural guardian,
ELISABETH GAEBLER**

**DECISION & ORDER
MOTION SEQ. : 01**

Defendants.

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Papers Read on this Motion:

Notice of Motion 01

Continental Insurance Company, hereinafter referred to as "Continental",
moves by Notice of Motion for permission to intervene in the above referenced
matter pursuant to CPLR § 1013.

The Court did not receive any opposition papers to the motion.

This case arises out of a February 23, 2004 motor vehicle accident in
which defendants Michael F. Moor, ("Moor"), Patrick Donaldson ("Donaldson"),
Thomas Gaebler and Timothy Montgomery were injured and Patrick Butler was
killed.

The Complaint states that Infinity issued a policy of liability insurance to

Donna and Michael M. Moor. The policy contains liability limits of \$250,000/\$500,000 for bodily injury, \$50,000 for basic personal injury protection and \$100,00 for additional personal injury protection. Infinity has alleged in the Complaint that the Moors made material misrepresentations and engaged in fraudulent conduct in the procurement of the policy. Based upon the alleged misrepresentations and fraudulent conduct, Infinity is seeking to reduce the bodily injury policy limits from \$250,000/\$500,000 to \$25,000/\$50,000. Continental states that on July 21, 2004 the attorneys for the defendant Donaldson notified them that there would be a Supplementary Underinsured Motorist ("SUM") claim based upon the plaintiff, Infinity Property & Casualty Corporation, hereinafter referred to as "Infinity", seeking to minimize its liability exposure under the policy.

Continental seeks to intervene because it issued a policy of insurance to James and Diana Donaldson. Patrick Donaldson, as a resident relative of James and Diana Donaldson, is an insured individual under the policy. The Continental policy provides up to \$250,000/\$500,000 in SUM benefits. The insured must exhaust available policy limits before seeking SUM benefits. Further, any amounts received by the insured under the Infinity policy would be an offset to the available limits under the SUM policy coverage from Continental.

Continental argues that if Infinity is found to provide \$250,000/\$500,000 in liability coverage to Donaldson then Continental could have a complete offset and no exposure under the SUM policy. Continental contends that if Infinity is found to only provide \$25,000/\$50,000, the obligation of Continental under its

SUM endorsement will be triggered and Continental could have larger exposure under its policy.

CPLR §1013 provides that a person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the Court. In the case at bar, Continental is a proper intervenor due to the possibility of its liability for damages sustained in the subject motor vehicle accident. Hence, Continental is a real party in interest in this litigation which will adversely affect its rights and obligations under its SUM coverage. No prejudice or delay will be incurred by the instant named parties by allowing Continental to participate in the litigation.

Based on the foregoing, Continental's application is granted to the extent of permitting it to intervene as a co-defendant. The proposed answer attached to Continental's Notice of Motion shall be deemed served and filed. It is hereby

ORDERED, the caption on the herein matter shall be as follows:

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**INFINITY PROPERTY & CASUALTY
CORPORATION,**
Plaintiff,

-against-

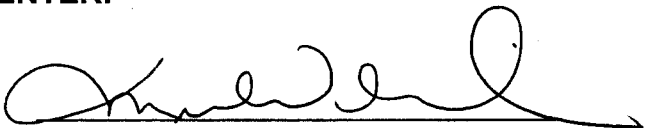
**DONNA MOOR, MICHAEL M. MOOR, MICHAEL
F. MOOR, ESTATE OF PATRICK BUTLER,
PATRICK DONALDSON, by his father and
natural guardian, JAMES DONALDSON,
TIM MONTGOMERY, by his father and natural
guardian, WILLIAM MONTGOMERY and THOMAS
GAEBLER, by his mother and natural guardian,
ELISABETH GAEBLER and
CONTINENTAL INSURANCE COMPANY,**
Defendants.
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All parties are directed to appear before the undersigned for a
Compliance Conference on February 14, 2005 at 9:30 am.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
February 2, 2005

ENTER:



**HON. MICHELE M. WOODARD
J.S.C.**

ENTERED
FEB 08 2005
NASSAU COUNTY
COUNTY CLERK'S OFFICE