2024 CIT JUDICIAL CONFERENCE – ARTICLE SYNPOSIS

REVIEW OF THE CIT'S RECENT JURISPRUDENCE ON ACCESS TO THE COURT—STANDING AND INTERVENTION

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In the last few years, the U.S. Court of International Trade ("CIT") has seen a series of skirmishes—some of which have arisen to outright battles—over whether a particular litigant is properly before the Court. We have seen private parties try to expand, defend, or uphold federal agency action; we have rights-advocacy groups file cases in the hope of furthering their causes; etc. This paper addresses the legal hurdles confronting parties interested in participating in CIT litigation and focuses on recent examples of stumbling blocks confronting them in their path to court. We first discuss the requirements for establishing Article III standing, then turn to the related but distinct requirements for intervention.

I. ARTICLE III STANDING BURDEN

In the CIT, as in United States District Courts, Article III requires as a threshold matter that a plaintiff or a proposed intervenor—regardless of the basis upon which intervention is sought—demonstrate independent constitutional standing insofar as the proposed intervenor seeks any relief that is different from that sought by the existing parties to the case. *Town of Chester, N.Y. v. Laroe Estates*, 137 S. Ct. 1645 (2017); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020); *PrimeSource*, 494 F. Supp. 3d at 1319–20 (Baker, J.,

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concurring). In order to satisfy the independent constitutional standing, a litigant must demonstrate that (1) it is threatened with injury in fact, (2) from a decision of the court, (3) that is redressable by a ruling in favor of the party on whose side the proposed intervenor seeks to intervene. *Cf. Mojave Desert Holdings, LLC v. Crocs*, *Inc.*, 987 F.3d 1070, 1078 (Fed. Cir. 2021) ("[T]he irreducible constitutional minimum of standing contains three elements: injury in fact, causation, and redressability.") (cleaned up).

In view of this principle, a putative intervenor has the burden of demonstrating either its independent constitutional standing or its "piggyback standing" *i.e.*, standing based on seeking the same relief sought by an existing party to the case. A proposed intervenor must overcome this hurdle whether it is seeking to intervene as a plaintiff or a defendant. *See, e.g.*, *California Steel Industries, Inc. v. United States*, 48 F.4th 1336, 1343 (Fed. Cir., 2022). While the reason for this rule applying to proposed ***plaintiff***-intervenors is fairly self-evident, it may be less evident for proposed ***defendant***-intervenors. That is, a plaintiff has elected to file a case and challenge some legal outcome with which it disagrees. A plaintiff intervenor wants a piece of the action when the case is resolved. A defendant, on the other hand has been dragged in front of the Court based on a separate party's decision. So, one could think that a voluntary defendant intervenor would not need to satisfy a standing requirement to aide in the defense. But a defendant-intervenor does not fit the same mold as the traditional unwilling defendant. Rather, a defendant intervenor actively seeks to participate in the resolution of a case in which the plaintiff did not bring a claim against or request any relief from the proposed intervenor. Thus, "where a party tries to intervene as another defendant," that defendant-intervenor must "demonstrate Article III standing." *California Steel Industries, Inc. v. United States, 48 F.4th 1336*, 1343 (Fed. Cir., 2022) (citing *Crossroads Grassroots Pol'y Strategies v. Fed. Election Comm'n,* 788 F.3d 312, 316 (D.C. Cir. 2015).

II. INTERVENTION

As discussed above, even after a proposed intervenor has overcome the Article III standing hurdle, the proposed intervenor must also demonstrate that it satisfies the court's separate (albeit related) intervention requirements before the proposed intervenor can be granted party status. We discuss below both intervention as of right (Rule 24(a)(2)) and permissive intervention (Rule 24(b)(1)).

A. Intervention as of Right (Rule 24(a)(2))

The pertinent CIT rule provides:

> On timely motion, the court must permit anyone to intervene who . . . (2). . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

USCIT R. 24(a)(2). This text is borrowed from Rule 24 of the Federal Rule of Civil Procedure, which the Federal Circuit has interpreted as imposing a four-part test: (1) the motion must be timely; (2) the moving party must claim an interest in the property or transaction at issue that is "legally protectable—merely economic interests will not suffice"; (3) "that interest's relationship to the litigation must be of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment,"; and (4) "the movant must demonstrate that said interest is not adequately addressed by the government's participation." *Wolfsen Land & Cattle Co. v. Pac. Coast Fed'n of Fishermen's Ass'ns*, 695 F.3d 1310, 1315 (Fed. Cir. 2012); *see Am. Mar. Transp., Inc. v. United States*, 870 F.2d 1559, 1560-62 (Fed. Cir. 1989).[2]

[2] *Wolfsen* and *American Maritime* involved Court of Federal Claims Rule 24, whereas the Federal Circuit applied authorities that interpreted Federal Rule of Civil Procedure 24. *Compare Wolfsen*, 695 F.3d at 1315–16, *with Am. Mar.*, 870 F.2d at 1561. The relevant Court of Federal Claims rule

B. Permissive Intervention Under Rule 24(b)(1)

As an alternative to intervention as of right, a proposed intervenor may seek leave to intervene under Rule 24(b)(1), which provides as follows:

> (1) In General. On timely motion, the court may permit anyone to intervene who:
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> > (A) is given a conditional right to intervene by a federal statute; or
> >
> > (B) has a claim or defense that shares with the main action a common question of law or fact.

USCIT R. 24(b)(1).

Accordingly, Rule 24(b)(1) provides two pathways for permissive intervention. If a proposed intervenor is otherwise eligible to intervene under either pathway, in the exercise of its discretion the Court then "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." USCIT R. 24(b)(3).

C. Prudential Standing

This principle "limits access to the federal courts to those litigants best suited to assert a particular claim." *Wolfsen Land & Cattle Co.*, 695 F.3d at 1330 (cleaned up and quoting Starr Int'l Co., Inc. v. United States, 856 F.3d 953, 965 (Fed. Cir. 2017)). Assuming a litigant (or, as here, putative litigant) has constitutional standing (i.e., injury in fact), a court may nonetheless deny standing if the litigant seeks to vindicate not its own legal right or interest, but instead the "legal rights or interests of [a] third part[y]." *Id.*

Even when a litigant satisfies Article III's constitutional standing requirements, a federal court may refuse to adjudicate its claims for relief "under the prudential principles by which the

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is—like the CAFC's Rule 24—drawn verbatim from Federal Rule of Civil Procedure 24, making the rationale of *Wolfsen* and *American Maritime* directly controlling in the CIT.

Judiciary seeks to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to the federal courts to those litigants best suited to assert a particular claim."[3] The Supreme Court has applied these prudential principles to standing doctrine in several circumstances. A court may refuse to hear a case as a matter of self-restraint in at least three situations: (1) when the litigant seeks to assert the rights of third parties not before the court; (2) when the litigant seeks redress for a generalized grievance widely shared by a large number of citizens that is better addressed legislatively; and (3) when the litigant's asserted interests do not fall within the zone of interests arguably protected or regulated by the statute or constitutional provision underlying its claims.[4]

[3] *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99–100 (1979).

[4] *United States v. Windsor*, 570 U.S. 744, 760 (2013) ("Even when Article III permits the exercise of federal jurisdiction, prudential considerations demand that the Court insist upon that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004) (listing the three types of prudential restraints).