IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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Appeal No. 14-14745-C

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Palaxar Group LLC,
a Virginia Limited Liability Company,
Petitioner-Appellees,

--versus--

Roy Kolbert, Todd Norman, et al.,
Defendant-Appellees,

--versus--

Charles Rahn, Guardian for Frank L. Amodeo
Interested Party-Appellant

****

CONSOLIDATED INITIAL BRIEF AND REPLY TO APPELLEES' PLEADINGS

****

District Court Case No. 6:14-cv-00758-JA-GJK

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CERTIFICATE OF INTERESTED PERSONS

1. Aaron Carter Bates, Defendant/Appellee.

2. Allen McLean Estes, Defendant/Appellee.

3. AQMI Strategy Corporation, Defendant/Counter-Claimant below.

4. Balch & Bingham, LLP, Defendant/Appellee, and counsel for Allen McLean Estes, John Russell Campbell, Eric Langley, Lindsay Reese, and Balch & Bingham, LLP, Defendants/Appellees.

5. Broad and Cassel, P.A., Defendant/Appellee.

6. Charpentier Law Firm, P.A., counsel for Michael C. Maher, Matthew Scott Mokwa, Aaron Carter Bates, and The Maher Law Firm, P.A., Defendants/Appellees.

7. Christian Barton, LLP, counsel for Allen McLean Estes, John Russell Campbell, Eric Langley, Lindsay Reese, and Balch & Bingham, LLP Defendants/Appellees.

8. Christina L. Bredahl, counsel for Robert O'Malley, Defendant/Appellee.

9. Cole, Scott & Kissane, P.A., counsel for Robert O'Malley, Defendant/Appellee.

10. Cory Brian Kravit, former counsel for Palaxar Group, LLC, a Virginia Limited Liability Company, and Palaxar Holdings, LLC, a Virginia Limited Liability Company, Plaintiffs/Appellees.

11. Darren Marshall Hart, counsel for Palaxar Group, LLC, a Virginia Limited Liability Company, and Palaxar Holdings, LLC, a Virginia Limited Liability Company, Plaintiffs/Appellees.

12. David Brendan Lacy, counsel for Allen McLean Estes, John Russell Campbell, Eric Langley, Lindsay Reese, and Balch & Bingham, LLP, Defendants/Appellees.

13. Dennis J. Whelan, PC, counsel for Harrison T. Slaughter, Jr., Michael C. Maher, Matthew Scott Mokwa, and Aaron Carter Bates, Defendants/Appellees.

14. Dennis Joseph Whelan, III, counsel for Harrison T. Slaughter, Jr., Michael C. Maher, Matthew Scott Mokwa, Aaron Carter Bates, and Defendants/Appellees.

15. Dennis Parker Waggoner, counsel for Scott Shuker, Elizabeth Green, and Latham, Shuker, Eden & Beaudine, LLP, Defendants/Appellees.

16. Elizabeth Green, Defendant/Appellee.

17. Eric Langley, Defendant/Appellee.

18. Frank L. Amodeo, former counsel for interested party, Frank L. Amodeo, and counsel for AQMI Strategy Corporation and Nexia Strategy Corporation, in a related appeal.

19. Geremy Walden Gregory, counsel for Allen McLean Estes, John Russell Campbell, Eric Langley, Lindsay Reese, and Balch & Bingham, LLP, Defendants/Appellees.

20. Harman Claytor Corrigan & Wellman, former counsel for Roy Kobert, Defendant/Appellee.

21. Harrison T. Slaughter, Jr., Defendant/Appellee.

22. Hart & Assoc., P.C., counsel for Palaxar Group, LLC, a Virginia Limited Liability Company, and Palaxar Holdings, LLC, a Virginia Limited Liability Company, Plaintiffs/Appellees.

23. Hetz, Jones & Goldberg, LLC, counsel for Scott Marshall Goldberg, Defendant/Appellee.

24. Hill Ward Henderson, P.A., counsel for Scott Shuker, Elizabeth Green, and Latham, Shuker, Eden & Beaudine, LLP, Defendants/Appellees.

25. Holland & Knight, LLP, counsel for Robert W. Cuthill, Jr., Defendant/Appellee.

26. Honorable Gregory J. Kelly, U.S. District Court Magistrate.

27. Honorable John Antoon, II, U.S. District Court Judge.

28. Isaac Jaime Mitrani, counsel for Roy Kobert, Todd Norman, Nicolette Vilmos, and Broad and Cassel, P.A., Defendants/Appellees.

29. Jay Stollenwerk, Defendant/Appellee.

30. Jodi Donaldson Jaiman, Defendant/Appellee.

31. John Russell Campbell, Defendant/Appellee.

32. John Ryan Owen, former counsel for Roy Kobert, Todd Norman, Nicolette Vilmos, andBroad and Cassel, P.A., Defendants/Appellees.

33. Jonathan D. Kaney, III, counsel for Palaxar Group, LLC, a Virginia Limited Liability Company, and Palaxar Holdings, LLC, a Virginia Limited Liability Company, Plaintiffs/Appellees.

34. Julie Smith Palmer, former counsel for Roy Kobert, Todd Norman, Nicolette Vilmos, and Broad and Cassel, P.A., Defendants/Appellees.

35. Kaney & Olivari, PL, counsel for Palaxar Group, LLC, a Virginia Limited Liability Company, Plaintiff/Appellees.

36. Kenton V. Sands, counsel for Harrison T. Slaughter, Jr., Defendant/Appellee.

37. Kravit Law, P.A., counsel for Palaxar Group, LLC, a Virginia Limited Liability Company, and Palaxar Holdings, LLC, a Virginia Limited Liability Company, Plaintiffs/Appellees.

38. Latham, Shuker, Eden & Beaudine, LLP, Defendant/Appellee.

39. Palaxar Group Liability Company, and Palaxar Holdings, LLC, a Virginia Limited Liability Company, Plaintiffs/Appellees.

39. Ligon Law Group, counsel for Shane Williams and Jodi Donaldson Jaiman,Defendants/Appellees.

40. Lindsay Reese, Defendant/Appellee.

41. Loren H. Cohen, counsel for Roy Kobert, Todd Norman, Nicolette Vilmos, and Broad and Cassel, P.A., Defendants/Appellees.

42. Mark J. Criser, counsel for Scott Shuker, Elizabeth Green, and Latham, Shuker, Eden & Beaudine, LLP, Defendants/Appellees.

43. Massie Payne Cooper, former counsel for Scott Shuker, Elizabeth Green, and Latham, Shuker, Eden & Beaudine, LLP, Defendants/Appellees.

44. Matthew Scott Mokwa, Defendant/Appellee.

45. Michael C. Maher, Defendant/Appellee.

46. Michael Edward Lacy, former counsel for Scott Shuker, and Latham, Shuker, Eden & Beaudine, LLP, Defendants/Appellees.

47. Michael W. Smith, counsel for Allen McLean Estes, John Russell Campbell, Eric Langley, Lindsay Reese, and Balch & Bingham, LLP Defendants/Appellees.

48. Min K. Cho, counsel for Robert W. Cuthill, Jr., Defendant/Appellee.

49. Mitrani, Rynor, Adamsky & Toland, P.A., counsel for Roy Kobert, Todd Norman, Nicolette Vilmos, and Broad and Cassel, P.A., Defendants/Appellees.

50. Nexia Strategy Corporation, Defendant below.

51. Nicolette Vilmos, Defendant/Appellee.

52. Palaxar Group, LLC, a Virginia Limited Liability Company, Plaintiff/Counter Defendant/Appellee.

53. Palaxar Holdings, LLC, a Virginia Limited Liability Company, Plaintiff/Counter Defendant/Appellee.

54. Patricia Bugg Turner, former counsel for Robert O'Malley, Defendant/Appellee.

55. Patrick Ryan Ruttinger, counsel for Robert O'Malley, Defendant/Appellee.

56. Richard J. Knapp PC, counsel for Palaxar Group, LLC, a Virginia Limited Liability

Company.

57. Richard John Knapp, counsel for Palaxar Group, LLC, a Virginia Limited Liability Company, and Palaxar Holdings, LLC, a Virginia Limited Liability Company, Plaintiffs/Appellees.

58. Robert M. Tyler, former counsel for Robert O'Malley, Defendant/Appellee.

59. Robert O'Malley, Defendant/Appellee.

60. Robert T. Hicks, former counsel for Robert W. Cuthill, Jr., Defendant/Appellee.

61. Robert W. Cuthill, Jr., Defendant/Appellee.

62. Roy Kobert, Defendant/Appellee.

63. Sands, White & Sands, P.A., counsel for Harrison T. Slaughter, Jr., Defendant/Appellee.

64. Scott A. Cole, counsel for Robert O'Malley, Defendant/Appellee.

65. Scott Marshall Goldberg, Defendant/Appellee, representing himself.

66. Scott Shuker, Defendant/Appellee.

67. Shane Williams, Defendant/Appellee.

68. Shannon Alexis Ligon, counsel for Shane Williams and Jodi Donaldson Jaiman, Defendants/Appellees.

69. Spotts Fain PC, former counsel for Robert O'Malley, Defendant/Appellee.

70. Stephen G. Charpentier, counsel for Michael C. Maher, Matthew Scott Mokwa, Aaron Carter Bates, and The Maher Law Firm, P.A., Defendants/Appellees.

71. The Maher Law Firm, P.A., Defendant/Appellee.

72. Todd Norman, Defendant/Appellee.

73. Troutman Sanders LLP, former counsel for Scott Shuker, Elizabeth Green, and Latham, Shuker, Eden & Beaudine, LLP, Defendants/Appellees.

74. United States of America, U.S. Attorney's Office, Interested Party below.

75. William B. Wilson, counsel for Robert W. Cuthill, Jr., Defendant/Appellee.

76. Charles T Rahn, as Guardian for Frank Amodeo, Interested Party/Appellant.

77. Brian D. Horwitz, Counsel for Charles T. Rahn, as Guardian for Frank Amodeo, Interested Party/Appellant.

78. Frank Amodeo, Interested Party/Appellant

CORPORATE DISCLOSURE STATEMENT

Not applicable to Appellant Frank Amodeo. Appellant reserves the right to amend this Certificate of Interested Persons and Corporate Disclosure Statement.

STATEMENT REGARDING ORAL ARGUMENT

Frank L. Amodeo believes this court can dispose of the appeal on the subject-matter jurisdiction question without oral argument.

But Mr. Amodeo requests oral argument for the issue of intervention, because the resolution of the intervention is factually complex including the need to discuss several different records.

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STATEMENT OF JURISDICTION

A federal court is a court of limited jurisdiction. When an appellate court becomes aware that a district court exceeded its jurisdiction, the appellate court has the duty and the authority to examine the jurisdiction of the district court as well as its own. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)("Every federal appellate court has a special duty to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review ....").

Under the anomalous rule, an appeals court has jurisdiction to review a district court's resolution of a motion to intervene. See *Stone v. First Union*, 371 F.3d 1305, 1308 (11th Cir. 2004). This court has jurisdiction over the district court's failure to comply with Rule 17(c) under 28 U.S.C. §1291.

STATEMENT OF ISSUES

1. The Barton Doctrine prohibits a federal court from entertaining a lawsuit involving persons appointed by a receivership or bankruptcy court unless the plaintiff has sought and received permission of the appointing court. The District Court and the parties admit that the Plaintiffs did not comply, or even plead compliance, with the doctrine. Yet, the District Court accepted jurisdiction over the lawsuit under a hybrid theory involving both a federal question related to the Barton doctrine, and more generally that the action was related to a Title 11 matter. The Plaintiffs' failure to comply with the Barton doctrine foreclosed these alternative theories of jurisdiction. As such, the District Court should have dismissed the action on the complaint alone.

2. Federal Rule of Civil Procedure 24(a) gives certain persons the right to intervene in a lawsuit. In particular a nonparty who is in privity with a party has a right to intervene when the party is not adequately representing the nonparty's interests. At the time of the alleged tort, which is the core of the current lawsuit, Frank L. Amodeo was the sole officer, director, and shareholder of AQMI Strategy Corporation. AQMI, a named defendant in the underlying action, defaulted in rather than answer the complaint, arguably because AQMI was not properly served. Regardless

of why, however, AQMI was not adequately protecting Amodeo's interest in the proceedings, which included among other things the preclusive effect of an adverse ruling on Amodeo. The District Court should have allowed Amodeo to intervene in the lawsuit.

STATEMENT OF THE CASE

Frank L. Amodeo sought to intervene in the District Court action between the Palaxar plaintiffs (hereafter collectively "Palaxar" or "Plaintiffs") and 25 defendants. The District Court denied Amodeo's motion to intervene and his motion to appoint a guardian *ad litem*. The District Court reasoned (incorrectly) that Amodeo had no interest in the corporate defendants (and specifically AQMI) because Amodeo had forfeited his ownership of AQMI. Id. A review of the Preliminary Order of Forfeiture, however, reveals that Amodeo never forfeited his interests in the corporate defendants' stock. Furthermore, years after the purported forfeiture, the government requested that the corporation be returned to Amodeo, (to the extent that the government ever actually has an interest in AQMI, that interest was returned to Amodeo or his wife's and guardianship estate).

Most importantly, the issue of ownership was irrelevant to the intervention issue, because Amodeo, as AQMI's sole director, was in privity with AQMI, and thus had a right to intervene regardless of ownership. As mentioned, the District Court disregarded these facts and denied Amodeo's intervention motion. When the District Court denied Mr. Amodeo's motion, Amodeo appealed with notice to all parties. No party cross-appealed; Palaxar entered an appearance in the appellate proceeding.

The Court of Appeals issued two preliminary jurisdictional questions. Amodeo cross-noticed these questions to all the parties since the questions

involved whether the District Court had jurisdiction over the tort actions at all, and thus affected all of the parties. Thereafter, Amodeo and Palaxar answered the questions, but the named defendants did not. Based on the answers filed, this Court remanded the matter to the District Court for the limited purpose of determining if Palaxar could cure the diversity-jurisdiction flaw in the pleadings. If not, then the District Court was to dismiss the case. (See Order entered on September 2, 2015, in this appeal). The District Court chose a different course of action.

Despite the failure of the Defendants to join the appeal, the District Court invited all parties to comment on the diversity issue. Ultimately, all the parties and the District Court agreed that the District Court lacked federal diversity jurisdiction. But instead of dismissing the action as directed by the remand Order, the District Court found that it had federal-question jurisdiction via the Barton doctrine, and separately had jurisdiction related to a Title 11 case provision. (Dist. Doc. #138).

The District Court ruled as such despite the fact that Palaxar and Amodeo (the parties to the appeal) had agreed that the lack of diversity jurisdiction mandated dismissal. In effect, the District Court altered an Order in the favor of non-appealing parties.

SUMMARY ARGUMENT

The District Court lacked subject-matter jurisdiction over the lawsuit because the Plaintiffs did not comply with the Barton doctrine, did not plead any other basis for federal jurisdiction, and did not provide a justification for failing to comply with this circuit's controlling precedent regarding Barton. The District Court should have dismissed the lawsuit based on the jurisdictional deficiencies in the Complaint alone. The District Court erred in failing to dismiss the action either *sua sponte* or on remand from this Court.

Until the District Court recognized its lack of jurisdiction, however, it should have allowed Amodeo to intervene under Fed. R. Civ. P. 24(a). The District Court mistakenly focused its intervention inquiry on the extent of Amodeo's current ownership in AQMI Strategy Corporation, a party-defendant in the lawsuit, rather than Amodeo's relationship to AQMI at the time of the tort. The District Court should have, instead, focused on Amodeo's interest in the outcome of the tort action.

Amodeo's interest in the tort action is established because Amodeo was in privity with the corporate defendant, AQMI Strategy Corporation. At the time of the alleged tort, Amodeo was the sole shareholder, officer, and director of AQMI. This identity of control creates a privity relationship, which in turn causes an adverse decision against AQMI to have both *res judicata* and collateral estoppel

consequences for Amodeo. Because AQMI did not defend itself in the lawsuit[1], Amodeo had (has) a right to intervene in the proceeding to protect his own interests.

Ultimately, the Plaintiffs' concession that there is neither federal diversity jurisdiction nor Barton doctrine compliance should result in this Court dismissing the lawsuit as a nullity. Alternatively, this court should allow Amodeo to intervene.

ARGUMENT

"[F]ederal courts have an independent obligation to ensure they do not exceed their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press." *Henderson ex rel Henderson v. Shinseki*, 562 U.S. 428 (2011). This obligation includes an appellate court's duty to examine whether the district court had jurisdiction. This duty exists even if the jurisdictional issues are not raised by the parties and even if the district court expressly decided it possessed jurisdiction. See *Univ. of Ala. v. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999) (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)) ("An appellate federal court must satisfy itself not only of its own jurisdiction, but also of the lower courts in a cause under review.").

[1] It should be noted that AQMI has attempted to appear in the District Court action, but its Motion to Set Aside Default was denied. AQMI is pursuing its own appeal on that issue – which appeal would be moot, of course, if the action is dismissed as requested herein.

Amodeo shows the District Court misapprehended its subject-matter jurisdiction. This Court should review the District Court's jurisdictional decision *de novo*, whether via Amodeo's challenge, Palaxar's challenge, or *sua sponte*. If, as Amodeo contends, the District Court's federal-question-jurisdiction or Title-11-jurisdiction findings are erroneous, this Court should vacate the district jurisdictional finding and order the case dismissed. Moreover, the District Court misperceived the record relating to the forfeiture of AQMI Strategy Corporation. The District Court presumed that the Final Order of Forfeiture, rather than the Preliminary Order of Forfeiture, determined Amodeo's interest in AQMI. A review of the Preliminary Order of Forfeiture reveals that the stock of AQMI was not forfeited (just as Amodeo has asserted throughout all of his post-conviction proceedings) (Crim. Doc. 208). Regardless, the debate concerning Amodeo's ownership is of little import to whether Amodeo may intervene.

Additionally, the crux of the intervention decision should be whether Amodeo has an interest in the cause of action, rather than an interest in AQMI. In that regard, governing law provides that Amodeo has an interest in this action because of his privity with AQMI as its sole director and ultimate decision-maker Amodeo during the time of the alleged tort. Circuit precedent (discussed belwo) provides that a nonparty in privity with a party has a right to intervene in an action when the party is not adequately representing the nonparty's interest. None of the

parties to this action were defending Amodeo's decisions as AQMI's chief executive.

Finally, the District Court knew that Amodeo was incapable of self-representation, yet did not comply with Rule 17(c) and appoint a professional to assist Amodeo. If the District Court had done so then, like now, the guardian *ad litem* or attorney *ad litem* would have discovered that AQMI's ownership was not forfeited and that Amodeo's privity with AQMI entitled him to intervene in this action.

1. A federal district court that discovers it lacks subject-matter jurisdiction should dismiss the action without making any other ruling. On remand Palaxar conceded that federal-diversity jurisdiction did not exist. Palaxar also conceded that it failed to comply with the Barton Doctrine. The District Court should have dismissed the action for want of jurisdiction.

Plaintiffs alleged that the District Court had jurisdiction over the complaint based on federal diversity of the parties. They now concede that federal diversity jurisdiction does not exist. At no time have Plaintiffs ever alleged any other basis for jurisdiction, and none appear in the Complaint. More importantly, for this appeal, the Plaintiffs failed to comply with the circuit's governing authority and seek permission from the Bankruptcy Court before bringing this action.

This appeal seems to involve the question of how the case should be dismissed rather than whether it should be dismissed. It is undisputed that the Plaintiffs did not comply with the Barton Doctrine and did not plead or have

federal-diversity jurisdiction. See *Barton v. Barbour*, 104 U.S. 126 (1881). The Plaintiffs neither pleaded nor asserted any other basis for federal jurisdiction. The District Court's analysis should have begun and ended with the Plaintiffs' Complaint. See *Gadlin v. Sybron Int'l Corp.*, 222 F.3d 797, 799 (10th Cir. 2000) (district court should resolve subject-matter jurisdiction claims when identified and before addressing other issues).

On the existing record, including the Plaintiffs' Complaint, the Plaintiffs failed to comply with this circuit's governing precedent concerning the Barton Doctrine. This circuit holds that a party must obtain leave of a debtor's bankruptcy court and must plead that it sought such leave before the party may sue the debtor or its affiliates. *Carter v. Rogers*, 220 F.3d 1249, 1252 (11th Cir. 2000); see *Lawrence v. Goldberg*, 573 F.3d 1265, 1270 (11th Cir. 2009) ("It is undisputed that Lawrence did not obtain leave of the bankruptcy court before filing his amended complaint in the district court," thus the district lacked jurisdiction over the action); *Coen v. Stutz*, (In re CDC Corporation) 610 Fed. Appx. 918 (11th Cir. 2015) (affirming that *Barton* requires a plaintiff must have permission of the bankruptcy court before bringing an action in the district court).

Palaxar admits that it did not seek approval of the Bankruptcy Court before commencing the lawsuit. Similarly Palaxar admits that its original averment concerning diversity jurisdiction was wrong. Moreover, a review of the complaint

itself shows that the Plaintiffs failed to plead compliance with the Barton Doctrine or any other valid basis for federal jurisdiction. Under Supreme Court precedent, the pleadings' deficiency required the district court to dismiss the lawsuit.

The Supreme Court pronounced that a Barton Doctrine analysis is a threshold jurisdictional inquiry because, without leave of the appointing court, another court has "no jurisdiction to entertain the suit." *Barton*, 104 U.S. at 131. Significantly, even if an action filed in a district court were removed to the bankruptcy court that removal would not cure the pleading deficiency. See *Clark v. Bakst*, 520 B.R. 148, 155 (Bankr. S.D. Fla. 2014) (quoting In re *Summit Motels, Inc*., 477 B.R. 484, 497-98 (Bankr. D. Del. 2012)) (addressing "[w]hether a case filed without leave from the appointing court is void *ab initio* or whether such a jurisdictional defect could be remedied retroactively by obtaining (the bankruptcy) court's permission to sue"). The Clark court, like all other courts we have located, held that "leave of the appointing court cannot be rectified after the suit has been filed because the case is void *ab initio*." *Clark*, 520 B.R. at 150. Palaxar did not seek permission from the Bankruptcy Court and that should end the inquiry into jurisdiction.

This Court need proceed no further. On this basis alone, this Court should reverse the District Court's ruling and order this case dismissed as a nullity.

2. A nonparty who has privity with a party to a lawsuit has a right to intervene in the lawsuit when the party is not adequately representing nonparty's interest. Amodeo is in privity to AQMI Strategy Corporation (a party) because at the time of the alleged conduct, Amodeo was the sole director, officer, and shareholder of AQMI. AQMI did not adequately represent Amodeo's interest in the litigation. The district court should have allowed Amodeo to intervene.

Amodeo sought to intervene in the lawsuit because he owned a corporate party, and because if the corporate defendant was liable, then Amodeo necessarily was responsible. At the time of the alleged torts, Amodeo was the sole officer and director of corporate defendant, AQMI. Thus, in order for AQMI to be liable, Amodeo must have committed the tortuous acts. In sum, as to this complaint Amodeo was in privity with AQMI. And the privity entitled Amodeo to intervene.

A nonparty may intervene in a civil action when the person "claims an interest relating to the property or transaction which is the subject of the action and the [person] is so situated that the disposition of the action may as a practical matter impair or the [person's] ability to protect that interest ...." *Fed. R. Civ.* P. 24(a)(2). The Eleventh Circuit interprets that rule to require a person seeking intervention of right to demonstrate that: (1) the application to intervene is timely; (2) the applicant has an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that disposition of the action, as a practical matter may impede or impair his ability to protect the interest; and (4) his interest is inadequately represented by the existing parties to the suit. See

Worlds v. Dept. of Health Rehabilitative Servs., 929 F.2d 591, 593 (11th Cir. 1991).

The parties contended, and the District Court found, that Amodeo did not meet the test's third prong; that is, he did not have interest in the subject of the lawsuit. The district court's conclusion relied on a faulty factual premise: it (erroneously) concluded Amodeo had forfeited his ownership of AQMI to the United States. Additionally, the district court overlooked the privity analysis, and misapprehended the true issue, which was whether Amodeo had an interest in the outcome of the lawsuit – not whether Amodeo had an interest in AQMI at the time of the lawsuit (although Amodeo had such an interest anyway)

The District Court, however, overlooked the plain language of the Preliminary Order of Forfeiture, which did not provide for Amodeo to forfeit his AQMI stock. This issue was later nullified by the United States affirmatively surrendering any claim on AQMI, modifying the final order of forfeiture, and returning AQMI to Amodeo (to the extent that the government ever actually owned AQMI, given the language of the Preliminary Order of Forfeiture). (6:08-cr-00176, Doc # 208).

In essence the District Court concluded that no one has an interest in AQMI. But under Florida law, which governs the entity once it ceased to be part of the forfeiture, AQMI belongs to Amodeo's guardianship estate subject to his wife's

martial interest. Amodeo or his estate therefore owns AQMI, and thus Amodeo had a sufficient interest in protecting AQMI's assets from a frivolous judgment to intervene.

But this discussion is largely academic, since Amodeo's separate basis for intervening is uncontroverted by the other parties. At the time of the alleged tort, Amodeo was AQMI's sole decision-maker and agent. Correspondingly, Amodeo was in privity with AQMI, thus an adverse ruling against AQMI was an adverse ruling against Amodeo. The preclusive effects stemming from the AQMI-Amodeo relationship create a sufficient interest to manifest Amodeo’s right to intervene.

On the existing record, and in reality, during the events giving rise to the alleged tort, Amodeo was the sole shareholder, director, and officer of AQMI. In that capacity, Mr. Amodeo was in privity with AQMI. *Drier v. Tarpon Oil Co.*, 522 F.2d 199, 200 (5th Cir. 1975) ("president and major stockholder" who made "ultimate decisions" is in privity with the related corporation); 18 Moore's Federal Practice 3M, (131.40(3)(f)(Mathew Bender's ed.)(It is generally the case that "an employer or employee or agent-principal relationship will provide the necessary privity for claim preclusion with respect to matters within the scope of the relationship, no matter which party is sued."); see *Cahil v. Arthur Anderson and Co.*, 659 F.Supp. 1115, 1122 (S.D. N.Y. 1996) aff'd, 822 F.2d 14 (2nd Cir. 1987)

(corporations and their officers and directors are in privity for purposes of res judicata).

This Court should therefore reverse the District Court’s decision (if the case is not dismissed on jurisdictional grounds as requested herein), and permit Amodeo to intervene.

Conclusion

The District Court lacks subject-matter jurisdiction since it does not have diversity jurisdiction and because the Plaintiffs failed to comply with the Barton doctrine. If any other basis for subject-matter jurisdiction existed, then it was forfeited by the Plaintiffs' failure to plead it in the complaint, and failing to raise it in any of these appeals. This circuit's governing authority forecloses consideration of any alternative because of the Plaintiffs' non-compliance with Barton.

A final point is worth mentioning. The Defendants allude to it being unusual for a litigant to have to approach an "inferior" court for a superior court to gain jurisdiction. But this is not unusual at all in the bankruptcy context. The filing of a bankruptcy generates an automatic stay of all civil actions in all courts, including the district court that supervises the bankruptcy court, this court that supervises the district court, and even the Supreme Court that supervises all courts with leave of Congress. Succinctly, once a bankruptcy is filed, this court could not act without

bankruptcy court permission [lifting or modifying the stay]. Thus, this circuit's Barton Doctrine rules are neither odd or illogical.

Moreover, concerning the substantive issues: Amodeo's right to intervene and right to a guardian ad litem, the district court got it wrong on both facts and the law. Amodeo did not forfeit his ownership in AQMI and, regardless, his privity with AQMI gave him a right to intervene. Finally, under Rule 17(c) and the Constitution, the incapacitated Amodeo was entitled to professional assistance before the District Court disposed of his claims.

This Court should either dismiss the action for want of jurisdiction or allow Amodeo to intervene.

/s Brian D. Horwitz_____
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Certificate of Service

This Pleading was served to all parties to this action via the CM/ECF system, which sent a notice of electronic filing to all counsel of record in this action on January 24, 2017.

/s Brian D. Horwitz_____
Brian D. Horwitz, Esq.

Certificate of Compliance

The document complies with the type-volume limitation, and contains 3,381 words.

/s Brian D. Horwitz_____
Brian D. Horwitz, Esq.