IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CBV, INC., Plaintiff, v. CHANBOND, LLC, DEIRDRE LEANE, and IPNAV, LLC, Defendants.	C.A. No. 21-1456-GBW

MEMORANDUM ORDER

Before the Court are non-parties Gregory Collins and Kamal Mian's (collectively, the "Proposed Intervenors") Motion to Intervene Derivatively on Behalf of UnifiedOnline, Inc. ("Unified") pursuant to Rule 24(a) of the Federal Rules of Civil Procedure or, alternatively, pursuant to Rule 24(b). D.I. 34. Defendants Deirdre Leane ("Leane") and IPNAV, LLC's ("IPNAV") (collectively, "Leane Defendants"), as well as Defendant ChanBond LLC ("ChanBond"), filed separate briefs in opposition. *See* D.I. 73; D.I. 76. For the reasons stated below, the Court DENIES the Proposed Intervenors' Motion to Intervene Derivatively on Behalf of Unified.[1] D.I. 34.

I. LEGAL STANDARD

"A motion to intervene . . . must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). Rule 24(a) provides as follows:

> On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that

[1] The Court writes for the benefit of the parties and assumes their familiarity with this action.

> 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.

Fed. R. Civ. P. 24(a). To intervene by right, a party must show (1) the application for intervention was timely; (2) it has a sufficient interest in the litigation; (3) its interest may be affected or impaired, as a practical matter, by the disposition of the action; ***and*** (4) its interest is not adequately represented by an existing party in the litigation. *See Commonwealth of Pennsylvania v. President United States of Am.*, 888 F.3d 52, 57 (3d Cir. 2018). "[A]n applicant's interests are not adequately represented if they diverge sufficiently from the interests of the existing party, such that 'the existing party cannot devote proper attention to the applicant's interests.'" *Id.* at 60 (citation omitted).

Alternatively, Rule 24(b) allows the Court to permit the intervention of any party who "(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." Fed. R. Civ. P. 24(b)(1). "[D]istrict courts have broader discretion in making a determination about whether permissive intervention is appropriate as opposed to intervention as of right." *United States v. Territory of Virgin Islands*, 748 F.3d 514, 524 (3d Cir. 2014). Notably, the Third Circuit has previously upheld the denial of permissive intervention for the same reasons that a district court denied a motion for intervention by right. *See id.* at 524–25 ("The District Court in this case denied [the] Rule 24(b) permissive intervention motion for the same reasons it denied the motion pursuant to Rule 24(a)."); *Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108, 1124 (3d Cir. 1992) ("[I]f intervention as of right is not available, the same reasoning would indicate that it would not be an abuse of discretion to deny permissive intervention as well.").

II. DISCUSSION

Assuming, without deciding, that the Court could exercise subject matter jurisdiction over the Proposed Intervenors' Derivative Cross-Complaint pursuant to 28 U.S.C. § 1367, *see* D.I. 76 at 4, the Proposed Intervenors are not entitled to mandatory or permissive intervention under Rule 24.[2]

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

The Proposed Intervenors are not entitled to intervention as a matter of right because they failed to establish (1) the application for intervention was timely; (2) it has a sufficient interest in the litigation; (3) its interest may be affected or impaired, as a practical matter, by the disposition of the action; and (4) its interest is not adequately represented by an existing party in the litigation. *See Commonwealth of Pennsylvania*, 888 F.3d at 57.

As to the first factor, timeliness, the Court considers (i) the stage of the proceeding; (ii) the prejudice that delay may cause the parties; and (iii) the reason for the delay. *See Mountain Top Condo Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 369 (3d Cir. 1995). Delay is measured "from the point at which the applicant knew, or should have known, of the risk to its rights." *Id.* at 370 (internal quotations omitted). Here, while Proposed Intervenors claim that they "just recently became aware of this case and the instant motion to intervene was filed as promptly as possible," *see* D.I. 34 at 13, the record reflects that the Proposed Intervenors were aware of the risks to their rights—that William R. Carter Jr.'s ("Carter") purported corporate governance mismanagement of Unified and ChanBond could affect ChanBond's litigation campaign to monetize its patent portfolio and distribute its recovered funds—by at least 2015. *See* D.I. 34 at

[2] Because the Court denies the Proposed Intervenors' Motion on the merits, the Court does not reach the question of whether the Proposed Intervenors' Derivative Cross-Complaint is permitted under Rules 13(h) or 14(a) of the Federal Rules of Civil Procedure. *See* D.I. 73 at 8-9.

10 ("[O]n June 15, 2015, [Unified] filed a Current Report on Form 8-K with the SEC announcing the resignation of two of the three board members 'selected' by Carter. They were not replaced leaving the [Unified] board without a quorum and therefore unable to take any action."). Stated another way, based on Unified's public filings with the SEC, the Proposed Intervenors knew, or at a minimum, should have known, that their rights—derivatively on behalf on Unified—in ChanBond's recovered funds from monetizing its patent portfolio were at risk by the alleged corporate governance deficiencies in Carter's representation as the sole board member of ChanBond. Yet, it was not until March 21, 2022, nearly seven years after the Proposed Intervenors knew that their purported rights were at risk, that the Proposed Intervenors sought to intervene in this action. *See* D.I. 34. Furthermore, to require ChanBond and non-party Carter to respond to the Proposed Intervenors, who raise "a myriad of complaints and grievances" questionably related to the present claims in this action, *see* D.I. 34 at Ex. A, would be "disruptive, burdensome, costly, and highly prejudicial" to all parties, especially at the advanced stage of this litigation. *See Ahmed Amr v. Greenberg Traurig LLP (In re Syntax-Brillian Corp.)*, C.A. No. 13-337-GMS, 2016 WL 5662074, at *10 (D. Del. Sept. 29, 2016). Finally, other than stating in a conclusory fashion that "it does not appear that this motion will prejudice the existing parties in any way," *see* D.I. 34 at 13, the Proposed Intervenors fail to proffer any justification for their delay in seeking to intervene as a matter of right.

Accordingly, because the risks to the Proposed Intervenors' alleged rights were known or should have been known by at least 2015, a motion to intervene filed nearly seven years later is untimely. Thus, the Court will deny the Proposed Intervenors' Motion under Rule 24(a).[3]

However, even if the Proposed Intervenors' motion were timely, the Court is unpersuaded that the Proposed Intervenors have "a sufficient interest in the litigation" or that they "might become affected or impaired . . . by disposition of the action in their absence" to satisfy the second factor. *Mountain Top*, 72 F.3d at 366. "An intervenor's interest must be one that is significantly protectable. This means that the interest must be a legal interest as distinguished from interests of a general and indefinite character." *Liberty Mut. Ins. Co. v. Treesdale, Inc.*, 419 F.3d 216, 220 (3d Cir. 2005) (internal citations and quotations omitted). The Proposed Intervenors must also demonstrate that there is a "tangible threat" to their interests to have the right to intervene. *See id.* Here, the Proposed Intervenors contend that Unified has a "direct and 'significantly protectable' legal interest in the settlement funds at issue" because "[Unified] is the sole member of Chanbond, so Chanbond's 50% share of the 'Net Recoveries' should flow directly to [Unified]." D.I. 34 at 14. In other words, the Proposed Intervenors' purported rights are "doubly derivative" to ChanBond's share of the Settlement Funds. *See Hamilton Partners, Ltd. P'ship v. Englard*, 11 A.3d 1180, 1199 (Del. Ch. 2010) ("In a double derivative action, the cause of action being pursued belongs to the subsidiary, and the subsidiary is therefore a necessary party for granting relief."). But this attenuated relationship to the claims at issue in this case are far from a "tangible threat"

[3] Because the Court denies the Proposed Intervenors' Motion based on a failure to establish the first factor, the Court is not required to address the remaining three factors. *See U.S. v. Terr. of V.I.*, 748 F.3d 514, 519 (3d Cir. 2014) ("Although these requirements are intertwined, each must be met to intervene as of right.") (citations omitted). However, for the benefit of the parties, the Court will evaluate the Proposed Intervenors' shortcomings with respect to the remaining three factors as if each prerequisite factor(s) was/were properly satisfied.

to the Proposed Intervenors' interests such that they may maintain a right to intervene. The Proposed Intervenors also ignore the well-established rule that, under Delaware law, separate corporate existences of a parent and subsidiary are generally upheld, even when the parent corporation owns all stock of the subsidiary. *See Roseton OL, LLC v. Dynegy Holdings, Inc.*, No. 6689-VCP, 2011 WL 3275965, at *15 n.110 (Del. Ch. July 29, 2011) ("As a rule, parent and subsidiary corporations are separate entities, having separate assets and liabilities. . . . The parent's ownership of all of the shares of the subsidiary does not make the subsidiary's assets the parent's."). Thus, on this record, there is no basis—nor do the Proposed Intervenors allege any—to support their contention that Unified, as the sole member of ChanBond, has any direct interest to the Settlement Funds. Accordingly, the Proposed Intervenors have failed to identify any significantly protectable interest in any claims Unified may have to the Settlement Funds.[4]

As to the third factor, even if the Proposed Intervenors' motion were both timely and established a significantly protectable interest, the Proposed Intervenors have failed to demonstrate that this interest would be impaired by the disposition of this action. Although the Proposed Intervenors claim that, if Plaintiff CBV Inc. successfully challenges the validity of Unified's ownership of ChanBond, "*res judicata* ***could*** bar Unified from bringing a separate action," *see* D.I. 34 at 14, this concern is purely speculative. *See Islamic Soc'y of Basking Ridge v. Twp. of Bernards*, 681 F. App'x 110, 112 (3d Cir. 2017) ("An interest that is too contingent or speculative—let alone an interest that is wholly nonexistent—cannot furnish a basis for

[4] To the extent the Proposed Intervenors argue that they have a protectable interest in defending Unified's ownership of ChanBond, or that it has a protectable interest in defending itself from claims made by the Leane Defendants, *see* D.I. 34 at 14, these allegations also fail to establish that there is a "tangible threat" to their interests such that they may maintain a right to intervene. *See Liberty Mut.*, 419 F.3d at 220. At best, these allegations are speculative, making it unclear to the Court which of the Proposed Intervenors' legal interests are at issue or threatened by the disposition of this action.

intervention as of right." (quoting *Ungar v. Arafat*, 634 F.3d 46, 51-52 (1st Cir. 2011))); *see also* 6 Moore's Federal Practice - Civil § 24.03 (2023) ("A movant's interest is plainly impaired if . . . [f]or example, [] the doctrine of res judicata ***would*** prohibit a movant from pursuing a claim in a separate action, a total obstruction of the interest would result.") (emphasis added). Additionally, there is no merit to the Proposed Intervenors' argument that, "[g]iven Carter's alleged conflicts and apparent lack of loyalty to [Unified], . . . ChanBond 'may' defend or settle this action in a manner that impairs [Unified's] interest." D.I. 34 at 15. Beyond mere speculation, the Proposed Intervenors' argument assumes that ChanBond is itself willing to impair its own interests in the Settlement Funds which, by the Proposed Intervenors' own logic, would be required to thereby impair Unified's interest. Thus, even assuming, *arguendo*, that the Proposed Intervenors' motion was both timely and established a significantly protectable interest, the Proposed Intervenors have failed to demonstrate that this interest would be impaired by the disposition of this action.

Finally, as to the fourth factor, the Proposed Intervenors have failed to establish that the existing parties do not adequately represent their interests. Notably, though the Proposed Intervenors concede that Unified's interest is entirely derivative of ChanBond's interest, *see* D.I. 34 at 15, the Proposed Intervenors argue that "ChanBond 'may' defend or settle this action in a manner that impairs Unified's Interest." *Id.* However, the Proposed Intervenors have not articulated any reason to suggest that ChanBond "cannot devote proper attention to the [Proposed Intervenors'] interests." *See Commonwealth of Pennsylvania*, 888 F.3d at 60 (citation omitted). That the Proposed Intervenors contend that ChanBond cannot adequately represent their interests because counsel for ChanBond also represents Carter in a related North Carolina action is also meritless. *See* D.I. 34 at 15. Not only is Carter not a party to this action, but the Proposed Intervenors' fears of self-dealing ignore counsel for ChanBond's ethical obligations to ChanBond

the corporate entity, not ChanBond's individual directors, officers, or managers. *See TransPerfect Glob., Inc. v. Ross Aronstam & Moritz LLP*, No. 2021-0065-KSJM, 2022 WL 803484, at *11 (Del. Ch. Mar. 17, 2022) ("Generally speaking, where an attorney is hired by a corporation, that attorney owes a duty to the corporate entity, not to the individual directors, officers and shareholders.") (citation omitted). Tellingly, counsel for the Proposed Intervenors even acknowledges that both Unified's and ChanBond's interests in this action are aligned, further supporting that the Proposed Intervenors' interests, derivatively on behalf of Unified, are adequately represented. *See* D.I. 88, Ex. 1 ¶ 14 ("Therefore, my clients have no assurance that any present party to this action can or will adequately protect ChanBond's and UOI's interests in the Settlement Fund. All parties are self-interested to the detriment of ChanBond and UOI."). That Unified may, in the future, have claims against ChanBond if ChanBond is successful in retaining a portion of the Settlement Funds does not render ChanBond's representation of Unified's interest here inadequate. Thus, the Proposed Intervenors have failed to establish that the existing parties do not adequately represent their interests to support intervening as a matter of right.

Accordingly, because the Proposed Intervenors have failed to establish any of the four factors required to support a right to intervene, let alone ***all*** of the requisite factors, the Court denies the Proposed Intervenors' Motion under Rule 24(a).

B. Rule 24(b) Permissive Intervention

Alternatively, the Proposed Intervenors request that the Court permit intervention under Rule 24(b). D.I. 34 at 16. For the reasons set forth above, the Proposed Intervenors have also failed to persuade the Court that it should exercise its discretion to permit intervention. *See Brody*, 957 F.2d at 1124 ("[I]f intervention as of right is not available, the same reasoning would indicate that it would not be an abuse of discretion to deny permissive intervention as well."). The Court's

conclusion that the Proposed Intervenors' motion is untimely applies with equal force to permissive intervention and is a sufficient basis on which to deny permissive intervention. *See In re Fine Paper Antitrust Litig.*, 695 F.2d 494, 500 (3d Cir. 1982) ("An application to intervene, whether of right or by permission, must be timely under the terms of Rule 24."). Furthermore, far from ***establishing*** that they are asserting claims or defenses that share common questions of law or fact that are the subject of this litigation, *see* Fed. R. Civ. P. 24(b)(1), the Proposed Intervenors merely state, in a conclusory fashion, that their claims and defenses "share common questions of fact." D.I. 34 at 16. And even assuming the Proposed Intervenors' claims were related to the present litigation, that at least some of these claims have been brought in another forum, i.e., California state court, demonstrates that the Proposed Intervenors have adequate alternative means of asserting their purported rights. *Compare* D.I. 34, Ex. A, *with* D.I. 76, Ex. 1; *see Luster v. Puracap Lab'ys, LLC*, C.A. No. 18-503-MN-JLH, 2023 WL 157638, at *3 (D. Del. Jan. 11, 2023); *7C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure* § 1913 (3d ed. 1998) ("If the would-be intervenor already is a party to other litigation in which the intervenor's rights can be fully determined, or if there is another adequate remedy available to protect the intervenor's rights, this may persuade the court to deny leave to intervene.") (collecting cases).

Accordingly, the Court will exercise its discretion to deny permissive intervention under Rule 24(b).

III. CONCLUSION

For the reasons stated above, the Court denies the Proposed Intervenors' Motion to Intervene Derivatively on Behalf of UnifiedOnline, Inc. pursuant to both Rule 24(a) and Rule 24(b) of the Federal Rules of Civil Procedure. *See* D.I. 34.

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WHEREFORE, at Wilmington this 1st day of June, 2023, **IT IS HEREBY ORDERED** that:

1. Proposed Intervenors Gregory Collins' and Kamal Mian's Motion to Intervene Derivatively on Behalf of UnifiedOnline, Inc. (D.I. 34) is **DENIED**.

GREGORY B. WILLIAMS
UNITED STATES DISTRICT JUDGE