

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL DAVIS,

Plaintiff,

v.

ZHOU LIANG,

Defendant.

CASE NO. C17-849-MJP

ORDER GRANTING MOTION TO  
INTERVENE AND DENYING  
MOTION FOR DEFAULT

THIS MATTER comes before the Court on Plaintiff's Renewed Motion for Default (Dkt. No. 23) and Empire Fire and Marine Insurance Company's Renewed Motion to Intervene to Oppose Default (Dkt. No. 27). Having reviewed the Motions, the Response (Dkt. No. 30), the Replies (Dkt. Nos. 32, 33), and the related record, the Court GRANTS the Motion to Intervene and DENIES the Motion for Default.

**Background**

The relevant factual and procedural background is set forth in detail in the Court's April 5, 2018 Order Denying Plaintiff's Motion for Default. (Dkt. No. 14.) Since that order was

1 entered, Plaintiff Michael Davis has made additional attempts to have Defendant Zhou Liang  
 2 served in the People's Republic of China. Pursuant to Federal Rule of Civil Procedure 55 and  
 3 Article 15 of the Hague Convention, Mr. Davis filed a renewed Motion for Default in October  
 4 2018. In response, Mr. Liang's insurer, Empire Fire and Marine Insurance Company ("Empire")  
 5 moved to intervene to oppose default judgment.

## 6 **Discussion**

### 7 **I. Motion to Intervene**

8 Federal Rule of Civil Procedure 24 provides for both intervention as a matter of right and  
 9 permissive intervention. Under Rule 24(a), a party may intervene as a matter of right if a federal  
 10 statute gives it an unconditional right to intervene, or if the party "claims an interest relating to  
 11 the property or transaction that is the subject of the action, and is so situated that disposing of the  
 12 action may as a practical matter impair or impede the movant's ability to protect its interest,  
 13 unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a). Under Rule  
 14 24(b), a party may intervene if its claim or defense shares a common question of law or fact with  
 15 the underlying action and intervention will not unduly delay or prejudice the adjudication of the  
 16 original parties' rights. Fed. R. Civ. P. 24(b).

17 Empire does not indicate whether it seeks to intervene under Federal Rule of Civil  
 18 Procedure 24(a) or (b). (Dkt. No. 27.) Under either rule, the Court finds that intervention is  
 19 proper. Empire provided liability coverage to Mr. Liang at the time of the accident, and has  
 20 indicated that it "stands ready to defend and indemnify" him in this action. (Id.) Empire's  
 21 motion is timely; it undoubtedly has a "'significantly protectable' interest relating to the property  
 22 or transaction which is the subject of the action"; it is situated such that "the disposition of the  
 23 action may as a practical matter impair or impede its ability to protect that interest"; and its  
 24

1 interest in opposing default is “inadequately represented by parties to the action.” United States  
2 v. Aerojet Gen. Corp., 606 F.3d 1142, 1148 (9th Cir. 2010) (citation omitted). Similarly, there is  
3 undoubtedly a common question of law or fact between Empire’s Motion to Oppose Default and  
4 the underlying action and, because Empire seeks to intervene for the limited purpose of opposing  
5 default only, its intervention will not unduly delay the action or prejudice Mr. Davis’ and Mr.  
6 Liang’s rights. See Dave Drilling Envtl. Eng’g, Inc. v. Gamblin, 2015 WL 4051968, at \*2-4  
7 (N.D. Cal. July 2, 2015) (allowing insurance company to intervene, both as a matter of right and  
8 permissively, for the purposes of setting aside default judgment).

9 The Court therefore GRANTS the Motion to Intervene, and will consider Empire’s  
10 opposition to the Motion for Default.

## 11 II. Motion for Default

12 Federal Rule of Civil Procedure 4(f) governs service upon individuals in a foreign  
13 country. The rule allows for service of process “by any internationally agreed means reasonably  
14 calculated to give notice, such as those means authorized by the Hague Convention.” Fed. R.  
15 Civ. P. 4(f)(1). Once the central authority has completed service, it must provide a certificate  
16 detailing “the method, the place, and the date of service” or explaining why service did not  
17 occur, and thereafter must forward the completed certificate “directly to the applicant.” Id., Art.  
18 6. Article 15 of the Hague Convention provides that a member state may permit its courts to  
19 enter default judgment in the absence of a returned certificate where at least six months have  
20 passed since the documents were sent to the defendant and the plaintiff has made “every  
21 reasonable effort” to obtain a certificate. Id., Art. 15.

22 In general, there is no time limit for serving a defendant in a foreign country. Fed. R.  
23 Civ. P. 4(m); see also Lucas v. Natoli, 936 F.2d 432, 432 (9th Cir. 1991). However, Mr. Davis  
24

1 instituted this diversity action alleging a state law negligence claim. (See Dkt. No. 1.) Under  
 2 Washington law, Mr. Davis' claim is subject to a three-year statute of limitations, and to  
 3 dismissal if not served within ninety days of filing. RCW 4.16.080(2); RCW 4.16.170. These  
 4 requirements apply when service is effected under the Hague Convention, irrespective of Rule  
 5 4(m). See Broad v. Mannesmann Anlagenbau AG, 196 F.3d 1075, 1075-76 (9th Cir. 1999).

6 In Broad, the plaintiff sued a German manufacturer for personal injuries. Id. Plaintiff  
 7 filed his complaint and transmitted the documents to the German Central Authority under the  
 8 Hague Convention. Id. Because the German Central Authority failed to serve the defendant  
 9 within ninety days, the district court dismissed his case as untimely under RCW 4.16.170. Id.  
 10 On appeal, the Ninth Circuit recognized a tension between Rule 4(m) and RCW 4.16.170, and  
 11 certified to the Washington Supreme Court the question of whether the state's ninety-day time  
 12 limit for service is extended where service is effected pursuant to the Hague Convention. Id.  
 13 The Washington Supreme Court held that "[b]ecause the plaintiff lacks control over the timing of  
 14 service once the documents are transmitted to a designated central authority," "the 90-day period  
 15 of RCW 4.16.170 should be extended once required documents are transmitted to the central  
 16 authority, *provided they are sent within 90 days of filing the complaint.*" Broad v. Mannesmann  
 17 Anlagenbau AG, 141 Wn.2d 670, 673, 683 (2000).

18 Here, while it appears that Mr. Davis has otherwise met the requirements for default  
 19 under Article 15 of the Hague Convention (i.e., no certificate has been issued by the Chinese  
 20 Ministry of Justice with respect to the April 11, 2018 transmission, which appears to have  
 21 included all required documentation)<sup>1</sup>, Mr. Davis failed to transmit the documents to the Chinese  
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23 <sup>1</sup> Though not relevant to its ruling on the Motion for Default, the Court notes the  
 24 following procedural irregularities in the record: On April 11, 2018, counsel for Mr. Davis  
 resubmitted his request to the Chinese Ministry of Justice, along with a check to cover the cost of

1 Ministry of Justice within ninety days of filing his complaint. The complaint in this action was  
 2 filed on June 1, 2017, just four days before the expiration of the three-year statute of limitations  
 3 on his negligence claim. (See Dkt. No. 1); RCW 4.16.080(2). Instead of promptly seeking to  
 4 effect service on Mr. Liang, Mr. Davis waited until September 28, 2017—more than 120 days  
 5 after filing the complaint—to transmit the complaint and summons to the Ministry of Justice.  
 6 Having delayed well beyond the 90-day period recognized in Broad, the statute of limitations has  
 7 elapsed, and Mr. Davis’ claim is now barred.<sup>2</sup>

8 The Court therefore DENIES the Motion for Default, and DISMISSES this matter with  
 9 prejudice.

### 10 Conclusion

11 It is ORDERED that Empire Fire and Marine Insurance Company’s Motion to Intervene  
 12 is GRANTED and Plaintiff’s Motion for Default is DENIED. Because the statute of limitations  
 13 has elapsed, the Court further ORDERS that this matter be DISMISSED WITH PREJUDICE.

14 The clerk is ordered to provide copies of this order to all counsel.

15 Dated November 21, 2018.



17 Marsha J. Pechman  
 18 United States District Judge

19 \_\_\_\_\_  
 20 service, dated April 9, 2018 and bearing No. 45151. (See Dkt. No. 25, Ex. 18.) In June 2018,  
 21 counsel received a certificate from the Chinese Ministry of Justice indicating that the address  
 22 provided for Mr. Liang was “not sufficient enough.” (Dkt. No. 25 at ¶ 18, Ex. 19.) While  
 23 counsel indicates that this certificate was received in response to the April 11, 2018 submission,  
 24 it is dated “Mar. 9, 2018,” and attaches the earlier state court complaint, not the federal  
 complaint. (Id.) Curiously, the certificate also attaches Check No. 45151.

<sup>2</sup> The Court acknowledges its role in previously directing Mr. Davis to continue his  
 efforts to have Mr. Liang served under the Hague Convention, and notes that, at the time it  
 issued its prior orders, it did not have before it any opposition or citation to Broad.