

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

COMPUWARE CORPORATION,

Plaintiff,

Civil No. 03-70247  
Hon. John Feikens

v.

MOODY'S INVESTORS SERVICES,  
INC.,

Defendant.

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**OPINION AND ORDER**

Computer Associates International, Inc. (Computer Associates) moves for leave to intervene to participate in discovery of this case pursuant to Fed. R. Civ. P. 24(a)(2) or alternatively (b)(2). This case arises out of a credit rating defendant Moody's Investors Services (Moody's) did of plaintiff Compuware Corporation (Compuware). Plaintiff alleges the credit rating constituted a breach of contract and defamation because defendant misrepresented its ability to repay potential borrowings. In its discovery requests, Compuware has requested that Moody's disclose "any and all documents of any kind, including, but not limited to, notes, memoranda, e-mails, analyses, forms, calculations, rating committee minutes, and the complete files [...] that in any way discuss and/or refer to credit ratings for [Computer Associates, Inc.] for the last five (5) years." (Request No. 1.) Moody's has objected to Compuware's request both on the grounds of relevance and by asserting that reporter's privilege protects these documents from disclosure. There is an outstanding "attorney eyes only"

confidentiality order in the case to which both parties have stipulated.

## ANALYSIS

### A. Intervention as a Matter of Right

Fed. R. Civ. P. 24(a)(2), which governs intervention as a matter of right, provides that leave to intervene shall be given “when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless that applicant’s interest is adequately represented by existing parties.” The comments to the 1966 amendments of this rule note that “[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.”

Since the timeliness of the motion to intervene is not in dispute, the Sixth Circuit has interpreted this rule to involve three factors the intervenor must demonstrate in order to prevail: (1) a substantial legal interest in the case; (2) impairment of the ability to protect that interest in the absence of intervention; and (3) inadequate representation of that interest by the parties already before the court. Michigan State AFL-CIO v. Miller, 103 F.3d 1240, 1245 (6<sup>th</sup> Cir. 1997).

The term “interest” in the rule is read broadly, and does not equate with an interest necessary for standing. Purnell v. City of Akron, 925 F.2d 941, 948 (1991). Compuware asserts that it has an interest in preventing disclosure of the materials that it provided Moody’s in order for Moody’s to conduct the bond rating, because

Compuware is a competitor. Logic, as well as laws protecting trade secrets, etc., recognize that disclosure of such material to a competitor is potentially damaging. Therefore, I find Computer Associates has satisfied this prong of the test.

The next factor to be considered is whether Computer Associates' ability to protect that interest is impaired by the absence of intervention. Compuware argues that an "attorney's eyes" confidentiality order in this case sufficiently protects the materials, and therefore, Computer Associates' ability to protect their interest is not impaired. (Br. at 5.) However, in a brief this Court would be able to consider if Computer Associates were allowed to intervene, Computer Associates argues that an "attorneys' eyes only" designation does not sufficiently protect these materials. (Resp. in Opp. at 6.) Absent intervention, Computer Associates currently is unable to move to alter an order it may object to but that both parties have assented to, even though the order would potentially apply to disclosure of materials regarding its financial state of affairs. Therefore, Computer Associates has successfully met the demands of the second prong of the test.

Finally, I must consider whether defendant Moody's is able to adequately represent the interests of Computer Associates in this matter. Given that Moody's has stipulated to a confidentiality order Computer Associates finds potentially inadequate, it clearly is not representing those interests. This alone would be sufficient to satisfy this prong. I note that in addition, although Moody's has currently chosen to assert reporter's privilege to protect the documents regarding Computer Associates, neither

the New York or Michigan reporter's privilege statutes require it to do so. Therefore, if it became in Moody's interest to disclose any of those materials (for instance, if it became clear in the course of litigation that a document bearing confidential material was key to rebutting one of the claims), Moody's would no longer represent Computer Associates' interests even to the extent it may be doing so now. If that were to happen, Computer Associates, although it might be unable to assert that privilege itself,<sup>1</sup> would likely wish to participate in discussions about the nature of the restrictions on such material. More simply put, Moody's interests and Computer Associates' interests are not the same. Therefore, I find Computer Associates has met its burden in demonstrating all factors for intervention under Fed. R. Civ. P. 24(a)(2), and I GRANT the motion to intervene.

**IT IS SO ORDERED.**

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John Feikens  
United States District Judge

Date: \_\_\_\_\_

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<sup>1</sup>See, e.g., State v. Ventura, 720 N.E. 2<sup>nd</sup> 1024, 1027 (Ohio Com.Pl. 1999) (reporter's privilege cannot be asserted by sources).