

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IN RE: COPPER ANTITRUST LITIGATION

M.D.L. Docket No. 1303

SOUTHWIRE COMPANY and GASTON
COPPER RECYCLING CORPORATION,

ORDER

Plaintiffs,

02-C-0707-C

v.

J.P. MORGAN CHASE & CO., as successor
to J.P. MORGAN & CO., INC.; MORGAN
GUARANTY TRUST COMPANY OF NEW
YORK; SUMITOMO CORPORATION;
SUMITOMO CORPORATION OF AMERICA;
YASUO HAMANAKA; and GLOBAL MINERALS
AND METALS CORPORATION,

Defendants.

This civil action for damages is before the court on the motion of plaintiffs Southwire Company and Gaston Copper Recycling Corporation to extend the time for serving defendant Sumitomo Corporation. Plaintiffs contend that they are entitled to more than 120 days for service because defendant is a foreign corporation. Plaintiffs are asking for an

additional 120 days in which to complete service on Sumitomo. Defendant Sumitomo opposes the motion, asserting that plaintiffs made no real effort to serve defendant in the first four months after they commenced this suit.

I agree with defendant that plaintiffs have not shown that they have made any effort to serve defendant until just recently. They speak in their motion about actions they *are* taking to accomplish service, but say nothing about any actions they *have* taken. Their lack of effort does not demonstrate much interest in moving this case to resolution. As regular practitioners in this court, plaintiffs' counsel have no justification for dawdling when they know that this court sets strict and short deadlines for litigation. However, Rule 4(m) does not set a 120-day deadline for service of defendants in a foreign country. "This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1)." The comments in 4B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1137 (2002), persuade me that plaintiffs are entitled to additional time despite their dilatory behavior at the outset of the case. "The exception in Rule 4(m) for service in a foreign country that places that class of cases outside the 120-day time constraint applies even if there has been no attempt at service of the summons and the complaint within the 120-day period." Id. at 387-88. Accordingly, I will give plaintiffs 120 days, or until August 28, 2003, in which to accomplish service on Sumitomo Corporation. With the loss of so much time at the outset of the case, the parties will face very tight deadlines once service has

been made on Sumitomo.

ORDER

IT IS ORDERED that plaintiffs' motion for an extension of time in which to serve defendant Sumitomo Corporation is GRANTED. Plaintiffs may have until August 28, 2003, in which to accomplish service.

Entered this 30th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge