

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

ALFRED E. SCHMIDT,

Plaintiff,

v.

PETER KACHEL, P.E. Highway Commissioner,

Defendant.

OPINION AND
ORDER

02-C-286-C

This is a civil action for monetary relief. The case is proceeding to trial on the sole issue of damages because plaintiff prevailed on summary judgment with respect to liability on his claim that defendant violated his rights under the First Amendment by refusing to sell him road salt or other materials in retaliation for comments he made at a county board meeting. The case is scheduled for trial beginning April 21, 2003. Presently before the court is plaintiff's motion to file a third amended complaint. The motion was filed on April 7, 2003. The purpose of the third amended complaint is to add Wisconsin County Mutual Insurance Corporation as a defendant.

Fed. R. Civ. P. 15(a) states that "a party may amend [its] pleading once as a matter of course at any time before a responsive pleading is served" and that otherwise amendments are

permissible "only by leave of court." Plaintiff requires leave of the court to amend his complaint because he has already amended his complaint. Whether to grant leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court. Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995). According to the rule, leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a).

Plaintiff has not explained why justice requires that he be allowed to add a new defendant at this late date. Plaintiff states only that he "wishes to add Wisconsin County Mutual Insurance Corporation because it rightfully should be a party to this action. The company provides insurance for [defendant Kachel]; accordingly, it should be a party to this action." Affid. of Paul A. Kinne, dkt. #68, at ¶3. This is nothing but a conclusory statement that fails to demonstrate why the interests of justice would be served by adding a new defendant to this case two weeks before trial. Adding a new defendant would necessitate a significant postponement of the trial date so that the insurance company could be served with the amended complaint, answer it and conduct discovery to establish the extent of its coverage and liability, if any. Plaintiff's submission does not shed any light on why such a time consuming delay is necessary. Accordingly, plaintiff's April 7, 2003 motion to file an

amended complaint is DENIED.

Entered this 8th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge