

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

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MARTIN LeVAKE, MADELINE LeVAKE,  
CHARLES LeVAKE, ANNA UHDE,  
JOHN FAVELL, GERALD P. BLAKE,  
ROBERT ELLERBROOK, JAMES B. MILLER,  
JOAN L. MILLER, RANDY SWANSON,  
JUDY SWANSON, ALAN STEWART,  
BRANDON NOVAK, MARK D. AVERY and  
LOUIS THOMAS AUSTIN III,

Plaintiffs,

ORDER

v.

02-C-0657-C

WILLIAM ZAWISTOWSKI, a/k/a  
WILLIAM ZAWISTOWSKI, JR.,

Defendant,

and

RURAL MUTUAL INSURANCE  
COMPANY,

Intervening Defendant.

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This is a civil action for monetary relief in which plaintiffs allege that defendant's acts

of overspraying insecticide on his cranberry bogs is negligence per se and creates a public and private nuisance by discharging phosphorous into Musky Bay on Lac Courte Oreilles. Jurisdiction is present. 28 U.S.C. § 1332.

Presently before the court is plaintiffs' motion to for leave to file their third amended complaint, in which plaintiffs would like to (1) join the State of Wisconsin as a plaintiff as to their public nuisance claim; (2) add a claim for relief for general damages because of the public's loss of use and enjoyment of Musky Bay; and (3) delete references to Wis. Stat. § 844.01 because plaintiffs' public and private nuisance claims do not rest on this statute. (Plaintiffs filed their first amended complaint as of right and added Gerald Blake's name to the caption because his name had been omitted inadvertently. In their second amendment, plaintiff dismissed their negligence per se cause of action as to the personal injury claims of the LeVakes and Anna Uhde.) Defendant objects to plaintiffs' motion, arguing that (1) plaintiffs have not followed the statutory requirements for suing in the name of the State of Wisconsin; (2) the claim for damages to the general public would be futile; and (3) the proposed amendments would be prejudicial.

Plaintiffs filed this lawsuit on December 4, 2002. According to the pretrial conference order, amendments to the pleadings were due by March 3, 2003. Plaintiffs filed their present motion to amend on July 22, 2003, well over four months late. The deadline for dispositive motions was July 24, 2003, and trial is scheduled for November 17, 2003.

As the pretrial conference order explained, leave to amend the pleadings after the deadline will be granted “only upon a showing of good cause for the late amendment and lack of prejudice to the parties.” Pretrial Order, dkt. #7, at 2. In their brief in support of their motion for leave to amend, plaintiffs address the issue of prejudice but remain silent as to the issue of good cause. Because plaintiffs have failed to make the requisite showing of good cause for filing an amended complaint four months passed the deadline, their motion for leave to amend will be denied. Because the requested amendment was so untimely and plaintiffs failed to make any good cause argument in their brief, plaintiffs’ motion should have been denied outright without requesting further briefing from defendant.

ORDER

IT IS ORDERED that plaintiffs’ motion for leave to file a third amended complaint is DENIED.

Entered this 15th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge