

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

ELIZABETH MICHAELS, Individually and
as Special Administrator of the Estate of
Travis J. Michaels, Deceased,

Plaintiff,

v.

MR. HEATER, INC., ADMIRAL INDEMNITY
CO., COPRECI, S. COOP, WESTCHESTER FIRE
INSURANCE COMPANY and ABC INSURANCE CO.,

Defendants,

OPINION AND
ORDER

and

03-C-355-C

MR. HEATER, INC. and ADMIRAL
INDEMNITY CO.,

Third-Party Plaintiffs,

v.

DANIEL JEROD MICHAELS, RURAL MUTUAL
INSURANCE CO., COPRECI, S. COOP and
ZURICH ESPANA CAMPANIA DE SEGUROS Y
REASAGUROS, S.A.

Third-Party Defendants.

This is a civil action for monetary damages brought by Plaintiff Elizabeth Michaels, individually and as special administrator for the estate of her late husband, Travis J. Michaels. On May 19, 2003, plaintiff filed an amended complaint against defendants Mr. Heater, Inc., Admiral Indemnity Co., Copreci, S. Coop (“Copreci, S. Coop” is the name of one defendant) and ABC Insurance Company relating to the design, manufacture and distribution of a portable heater and safety shut off valve in the Circuit Court of St. Croix County. After removing the case to this court on July 2, 2003, defendants Mr. Heater, Inc. and Admiral Indemnity Co. filed third-party complaints against defendants Daniel Jerod Michaels, Rural Mutual Insurance Company, Copreci, S. Coop and Zurich Espana Campania de Seguros y Reasaguros, S.A. for contribution or indemnification should defendants Mr. Heater, Inc. and Admiral Indemnity Co. be required to pay any sum to plaintiff.

Presently before the court is defendant Mr. Heater, Inc.’s motion for summary judgment on all of plaintiff’s claims against it or, in the alternative, for partial summary judgment on plaintiff’s claims that Travis Michaels’s death was caused by the burns he sustained on March 5, 2002. In addition, defendant Mr. Heater, Inc. has moved for summary judgment as third-party plaintiff, seeking a declaration that defendant Daniel Michaels’s commercial business and homeowner’s policies, secured through defendant Rural Mutual Insurance Company, provide coverage for damages related to Travis Michaels’s

death. Third-party defendant Rural Mutual Insurance Company has moved for summary judgment, seeking a declaration that it has no duty to defend or indemnify defendant Daniel Michaels for the claims relating to Travis Michaels's death. Finally, plaintiff has moved to amend her complaint under Fed. R. Civ. P. 15(a) to make a direct claim against third-party defendant Rural Mutual Insurance Company.

Rule 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.” In addition, the rule states that “leave shall be freely given when justice so requires.” Because defendants have filed an answer to plaintiff's complaint, plaintiff must obtain leave of the court in order to amend her complaint. The Court of Appeals for the Seventh Circuit has enumerated four conditions that justify denying a motion to amend: undue delay; dilatory motive on the part of the movant; repeated failure to cure previous deficiencies; and futility of the amendment. Cognitest Corporation v. Riverside Publishing Company, 107 F.3d 493, 499 (7th Cir. 1997). In addition, a motion to amend should not be granted if it will unduly prejudice the opposing party. Samuels v. Wilder, 871 F.2d 1346, 1351 (7th Cir. 1989).

Defendants Mr. Heater, Inc. and Rural Mutual Insurance Company have filed briefs opposing plaintiff's motion to amend her complaint because such amendment would destroy diversity jurisdiction and require a remand of this case to the Circuit Court for St. Croix

County. It is undisputed that both plaintiff and defendant Rural Mutual Insurance Company are citizens of Wisconsin. Defendant Mr. Heater, Inc. argues that this court should deny plaintiff's motion to amend because under 28 U.S.C. § 1447(e), the court has discretion to deny or permit joinder of an additional defendant and plaintiff's motion is an attempt to destroy federal court jurisdiction. Dft.'s Br., dkt. #96, at 2-3.

Defendant Mr. Heater's argument fails to acknowledge that it brought defendant Rural Mutual Insurance Company into the case by filing a third-party complaint against it. Hence, defendant Rural Mutual Insurance Company is not an "additional defendant," as argued by defendant Mr. Heater, Inc., but a third-party defendant. Fed. R. Civ. P. 14, which governs third-party practice, states that "[t]he plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13." Plaintiff's claim against third-party defendant Rural Mutual Insurance Company arises from the same occurrence that is the subject matter of plaintiff's claim against defendant Mr. Heater, Inc.: the accident on March 5, 2002 involving Travis Michaels. Therefore, plaintiff may assert a claim against defendant Rural Mutual Insurance Company under Fed. R. Civ. P. 14. However, Rule 14 "must be construed in conjunction with the other federal rules to give as much effect to all of them as is possible." 6 Charles

Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1442, at 296 (2d ed. 1990)).

According to defendant Mr. Heater, the factors that the court should consider when deciding whether to grant or deny joinder under 28 U.S.C. § 1447(e) include whether the movant has been dilatory or whether defendant will be prejudiced if the amendment is allowed. These factors are similar to those one considers under Fed. R. Civ. P. 15(a), the rule under which plaintiff moves to amend her complaint. Defendant contends that plaintiff has been dilatory in her request to amend her complaint because she waited nine months after defendant Rural Mutual Insurance Company was made a party to the action before filing her motion to amend.

Plaintiff states that she did not have a good faith basis for maintaining any claim against defendant Daniel Michaels or his insurer, defendant Rural Mutual, until defendants Mr. Heater Inc., and Copreci, S. Coop provided the reports in which defendants' experts maintain that defendant Daniel Michaels is liable for the March 5, 2002 accident. Plt.'s Br., dkt. #94, at 2-3. These reports became available on April 30, 2004. Plaintiff filed the motion to amend her complaint on May 21, 2004. Plaintiff does not acknowledge the August 21, 2003 third-party complaint that defendant Mr. Heater, Inc. filed, which makes clear that defendant placed all blame on Daniel Michaels for the accident. The complaint alleges that "Daniel Michaels failed to properly maintain and/or repair the heater, failed to

instruct and supervise and failed to warn Travis J. Michaels that the heater was not in proper working order, which ultimately resulted in the injuries sustained by Travis J. Michaels on March 5, 2002.” Thus, I agree with defendant that plaintiff could have moved to amend her complaint earlier than May 21, 2004.

However, Rule 15(a) requires courts to allow leave to amend a complaint “when justice so requires.” Defendant Mr. Heater, Inc. contends that it would be unduly prejudiced by a grant of plaintiff’s motion to amend because such an amendment would destroy diversity jurisdiction, result in a remand to state court and ultimately delay the trial until sometime in 2005. Furthermore, defendant may have to duplicate some of its discovery and motions in state court. (I note that defendant Rural Mutual Insurance Company fails to state any reasons why it would be prejudiced by granting plaintiff’s motion to amend other than such amendment would require a remand to state court.)

As significant as defendant’s concerns are about delay in the trial date and duplication of effort, those concerns do not outweigh the principles of judicial economy in allowing plaintiff to litigate one action against all relevant defendants. If I denied plaintiff’s motion to amend her complaint to assert a direct claim against defendant Rural Mutual Insurance Company and this court ultimately concluded that defendant Daniel Michaels and his insurer were fully liable for the March 5, 2002 accident, plaintiff would have to file a separate action against defendant Rural Mutual Insurance Company, causing plaintiff more

delay and duplication of effort in resolving this case.

On the other hand, the most defendant Mr. Heater, Inc. would suffer is a delay in trial date. (I disagree with defendant's argument that it would have to duplicate much of the effort it has put forth in this court. If defendant were on track in preparing for trial in this court, most of its discovery should be complete.) Defendant Mr. Heater, Inc. has not argued that such a delay would create problems with getting essential witnesses to testify or that defendant's business may not exist by the time trial occurs. It contends that it has a strong interest in keeping the case in federal court and out of a court in plaintiff's hometown. Any concerns defendant has about juror bias can be addressed during its opportunity to screen the potential jurors during voir dire. Defendant's concern does not override the prejudice that plaintiff may face if, by denying her motion to amend, she must litigate two separate actions rather than one. As a result, justice will be served best by granting plaintiff's motion to amend her complaint to assert a direct claim against defendant Rural Mutual Insurance Company.

With the amendment allowed, diversity jurisdiction ceases to exist. Therefore, I will remand this case to the Circuit Court for St. Croix County. Fed. R. Civ. P. § 1367(b); Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 377 (1978) (neither convenience of litigants nor considerations of judicial economy can suffice to justify extension of ancillary jurisdiction doctrine to plaintiff's cause of action against citizen of same state in diversity

case); Fidelity and Deposit Co. of Maryland v. City of Sheboygan Falls, 713 F.2d 1261, 1266 (7th Cir. 1983) (if plaintiff sues nonresident in federal forum under diversity jurisdiction and later brings in resident by filing third-party complaint, entire suit will be dismissed for lack of complete diversity).

ORDER

IT IS ORDERED that

1. Plaintiff Elizabeth Michaels's motion to amend her complaint to assert a direct claim against defendant Rural Mutual Insurance Company is GRANTED;
2. This case is to be REMANDED to the Circuit Court for St. Croix County;
3. The motions for summary judgment filed by defendants Mr. Heater, Inc. and Rural Mutual Insurance Company are DENIED as moot because this court no longer has subject matter jurisdiction over those claims;

4. The clerk of court is directed to return the record of this case to the Circuit Court for St. Croix County, Wisconsin.

Entered this 1st day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge