

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

TONY O. LaVINE and GAYLE M.
LaVINE,

Plaintiffs,

v.

CITY of HAYWARD, a fourth class
Wisconsin municipality, THOMAS J.
DUFFY, JR., individually and in his
official capacity as Mayor of the City
of Hayward, JOHN METCALF,
individually and in his official capacity
as Director of Public Works for the
City of Hayward, MICHAEL A.
KELSEY, individually and in his
official capacity as City Attorney for
the City of Hayward, LUCY
GUNTHER, individually and in her
capacity as City Clerk for the City of
Hayward, and CHESTER A.
BONCLER, JR.,

Defendants

and

WEST BEND INSURANCE COMPANY,

Intervening Defendant.

MEMORANDUM

04-C-0201-C

Presently before the court are intervening defendant West Bend Insurance Company's motion for summary judgment and plaintiffs Tony O. LaVine and Gayle M. LaVine's motion to amend the complaint. Defendants have advised the court that they will probably stipulate to the amendment and will so advise the court this week. Intervening defendant West Bend has written to ask the court to proceed with resolution of its motion for summary judgment and has filed the proposed findings of fact it omitted from its submissions in support of its motion. (West Bend says that it was not provided a copy of the preliminary pretrial order; in the order entered on September 22, 2004, United States Magistrate Judge says that he is sending a copy of the order to West Bend with the order. If West Bend did not receive the copy or its attachments, it should advise the clerk's office promptly.)

West Bend believes that the first amended complaint does not affect its motion for summary judgment. Therefore, the motion will be considered ready for resolution by the court.

Entered this 6th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge