

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE AETNA INC. : CIVIL ACTION
SECURITIES LITIGATION : MDL NO. 1219
: (All Cases)

MEMORANDUM

Padova, J.

March 17, 2000

This case arises out of the acquisition by Aetna, Inc. ("Aetna") of U.S. Healthcare ("USHC") in July of 1996. Plaintiffs' claims arise under Section 10(b), Section 20(a), and Section 20A(a) of the Securities and Exchange Act of 1934, 15 U.S.C.A. § 78j(b), 78(t)(a), and 78A(a) (West 1997), and Rule 10b-5, promulgated thereunder, 17 C.F.R. § 240.10b-5 (1999). Plaintiffs bring this action on behalf of all persons who purchased Aetna common stock on the open market between March 6, 1997 and 7:00 a.m. (EDT) on September 29, 1997, inclusive, and two subclasses of persons who purchased Aetna common stock contemporaneously with the sales of such stock by Defendants Abramson and Compton.

Before the Court is Plaintiffs' Motion for Leave to File a Third Consolidated and Amended Class Action Complaint. The Motion has been extensively briefed, complete with oral argument on March 15, 2000. For the reasons that follow, the Court grants Plaintiff's Motion.

I. Standard of Review

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading after a responsive pleading is served only by leave of the court, and "leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Although decisions on motions to amend are committed to the sound discretion of the district court, Gay v. Petsock, 917 F.2d 768, 772 (3d Cir. 1990), courts liberally allow amendments when "justice so requires," and when the non-moving party is not prejudiced by the allowance of the amendment. Thomas v. State Farm Ins. Co., No. CIV. A. 99-CV-2268, 1999 WL 1018279, at *3 (E.D.Pa. Nov. 5, 1999). An applicant seeking leave to amend a pleading has the burden of showing that justice requires the amendment. Id.

In Foman v. Davis, 371 U.S. 178 (1962), the United States Supreme Court identified a number of factors to be considered in ruling on a motion to amend under Rule 15(a):

In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc - the leave sought should, as the rules require, be "freely given."

Id. at 182; accord Lorenz v. CSX Corp., 1 F.3d 1406, 1413 (3d Cir. 1993). Thus, leave to amend may be denied where there is undue delay or prejudice. Lorenz, 1 F.3d at 1413. The question

of undue delay and bad faith centers on the plaintiffs' motives for not amending their complaint earlier, while the issue of prejudice focuses on the effect of amendment on the defendant. Mamiye & Sons, Inc. v. Fidelity Bank, 813 F.2d 610, 614 (3d Cir. 1987).

The United States Court of Appeals for the Third Circuit has emphasized that "prejudice to the non-moving party is the touchstone for the denial of the amendment." Cornell & Co. v. Occupational Safety and Health Rev. Comm'n, 573 F.2d 820, 823 (3d Cir. 1978). Prejudice in the context of Rule 15(a) means "undue difficulty in prosecuting [or defending] a lawsuit as a result of a change in tactics or theories on the part of the other party." Deakyne v. Comm'rs of Lewes, 416 F.2d 290, 300 (3d Cir. 1969). The non-moving party must do more than simply claim prejudice; rather "it must show that it was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the ... amendments been timely." Heyl v. Patterson Int'l Inc., 663 F.2d 419, 426 (3d Cir. 1981).

In the absence of substantial prejudice, denial instead must be based on "truly undue or unexplained delay ... or futility of amendment." Lorenz, 1 F.3d at 1414; see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434-35 (3d Cir. 1997). Courts agree that "[a]t some point, delay will become 'undue' placing an unwarranted burden on the court, or will become

'prejudicial,' placing an unfair burden on the opposing party." Adams v. Gould, Inc., 739 F.2d 858, 868 (3d Cir. 1984), cert. denied, 469 U.S. 1122 (1985). The party seeking leave to amend bears the burden of explaining the reasons for the delay. LePage's Inc. v. 3M, No. CIV. A. 97-3983, 1998 WL 631960, at *4 (E.D.Pa. Sept. 2, 1998).

II. Discussion

Defendants primarily contest the inclusion of allegations regarding two types of reserves: FAS 60 and Extended/Maternity reserves. To understand how these allegations fit into the case, a review of Plaintiffs' basic claims is necessary.

The essence of Plaintiff's case is that (1) Defendants falsely represented that Aetna was successfully integrating its operations with the operations of US Healthcare ("USHC") following their merger; and (2) Aetna issued false and misleading financial statements for the first and second quarters of 1997. According to Plaintiffs, Aetna concealed the integration problems and inflated its reported earnings until September 29, 1997. On that date, Aetna announced that its third quarter earnings would be below analysts' consensus estimates and that it would increase its medical claims reserves because of the problems arising from the merger. Upon this announcement, the share price of Aetna common stock fell, allegedly causing substantial losses to Plaintiffs. These fundamental claims remain the same in both the

Second and Third Amended Complaints.

In the Third Amended Complaint, Plaintiffs allege that Aetna failed to disclose the release of portions of the company's FAS 60 and Extended/Maternity insurance reserves into earnings that were reported on Aetna's first and second quarter 1997 financial statements. This release allegedly resulted in the overstatement of Aetna's earnings during those two quarters.

The contested assertions relate to and integrate with the allegations in the Second Amended Complaint regarding Aetna's falsification of its financial statements and inflation of earnings. In essence, they deal with the integrity of Aetna's financial statements for the relevant time periods and the underlying disclosure allegations.

The Court concludes that no prejudice, in terms of undue difficulty in defending the lawsuit, will result to Defendants from granting leave to amend the complaint. The newly-asserted information comes from Defendants' own records, thus obviating any prejudice arising from surprise. Defendants will suffer no undue difficulty in defending this lawsuit as long as they are given adequate opportunity for additional discovery and preparation for trial. See Deakyne, 416 F.2d at 300.

The Court also concludes that Plaintiffs did not unduly or

inexplicably delay in filing their motion.¹ Although Plaintiffs' Motion was not filed until February 2, 2000, the bulk of the relevant facts were not fully uncovered until the end of the discovery period in late December of 1999 and January of 2000. See Furman Lumber v. Mountbatten Surety Co., Inc., Nos. CIV. A. 96-7906, CIV. A. 96-8168, CIV. A. 96-8352, 1997 WL 397496, at *4 (E.D.Pa. July 9, 1997) (rejecting request to amend complaint in part because plaintiff filed motion two months after discovering the operative facts); Prevent, Inc. v. WNCK, Inc., No. CIV. A. 93-4516, 1994 WL 530144, at *2 (E.D.Pa. Sept. 28, 1994)(denying leave to amend where moving defendant could have asserted proposed affirmative defense in its answer). This adequately explains the timing of Plaintiffs' Motion. C.f. Thomas, 1999 WL 1018279, at *4 (refusing to allow amendment requested after the close of discovery where the moving party failed to offer any reasons for its delay); Diabiase v. SmithKline Beecham Corp., No. Civ. A 93-3171, 1994 WL 85680, at *1 (E.D.Pa. Mar. 17, 1994)(disallowing amendment where party gave no explanation for

¹Defendants argue that the Court should deny the Motion since it was filed after the close of discovery and on the eve of summary judgment. The timing of the filing of a motion to amend, however, is not necessarily indicative of delay. Courts have allowed amendment as late as after the filing of summary judgment motions or on the eve of trial. Schofield v. Trustees of Univ. of PA, 894 F. Supp. 194, 197 (E.D.Pa. 1995)(allowing addition of claim one month before trial); BMB Assoc. v. Ortwein, No. CIV. A. 93-1644, 1994 WL 314330, at *8 (E.D.Pa. June 29, 1994)(allowing amendment of complaint just prior to trial during pendency of summary judgment).

delay).

The circumstances presented here are unlike those in other cases in which this Court has denied the moving party's request for leave to amend a pleading. In Yeager's Fuel, Inc. v. Pennsylvania Power & Light Co., Civ. A. Nos. 91-5176, 92-2359, 1996 WL 180704 (E.D.Pa. Apr. 5, 1996), I denied a motion by plaintiff to amend the complaint to add new causes of action. Id. at *1; see also Furman Lumber, 1997 WL 397496, at *5. In this case, Plaintiffs is not attempting to add any new causes of action.

Most importantly, the litigation in Yeager's Fuel was extremely protracted and complex, having been initiated five years prior to the plaintiff's motion. Yeager's Fuel, 1996 WL 180704, at *1. In such an extraordinary situation, allowing the addition of new causes of action and theories of recovery would have "completely disrupt[ed] the case's time table and indefinitely suspend[ed] a trial date on the horizon which ha[d] taken nearly one half of a decade to secure." Id. at *2. The case at bar presents no similarity to Yeager's Fuel. Due to the diligence of all parties, this case has proceeded readily and smoothly. Even if leave to amend the complaint is granted, the case will nonetheless be on track for trial within the year. Unlike Yeager's Fuel, granting leave to amend in these circumstances will not place "an unwarranted burden on the

court." Adams, 739 F.2d at 868.

Having found no substantial prejudice to Defendants and no undue delay on the part of Plaintiffs, the Court grants Plaintiffs' Motion. The Court will establish a new case management order designed to give Defendants a full opportunity to conduct all necessary additional discovery with respect to the new allegations in the Third Amended Complaint and adequate time within which to prepare for trial.

An appropriate Order follows.

motion papers by May 31, 2000;

4. Depositions of all experts shall commence on June 5, 2000, and be completed by June 28, 2000;
5. Plaintiffs shall file any response to Defendants' motions for summary judgment by July 5, 2000;
6. Defendants shall file their reply memoranda by July 19, 2000;
7. Oral argument on summary judgment shall take place following the July 19, 2000 filing of Defendants' reply memoranda and will be scheduled by the Court;
8. Plaintiffs shall file a pretrial memorandum in accordance with this Order and Local Rule of Civil Procedure 16.1(c) by August 7, 2000;
9. Defendants shall file pretrial memoranda in accordance with this Order and Local Rule of Civil Procedure 16.1(c) by August 21, 2000;
10. In addition to compliance with Local Rule of Civil Procedure 16.1(c), the parties shall include the following in or attach to their pretrial memoranda:
 - a. A listing of the identity of each expert witness to be called at trial by the party;
 - b. a curriculum vitae for each expert witness listed;
 - c. a listing of each fact witness to be called at trial with a brief statement of the nature of their expected testimony (witnesses not listed may not be called by that party in its case-in-chief);
 - d. an itemized statement of claimant's damages or other relief sought;
 - e. a statement of any anticipated important legal issues on which the Court will be required to rule, together with counsel's

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single best authority on each such issue.

11. All proposed jury instructions², motions in

²In addition to two courtesy copies, the parties shall submit all proposed jury instructions on a 3.5" computer disk in

limine, and jury voir dire questions shall be filed by August 21, 2000;

12. A Final Pretrial Conference is scheduled for September 5, 2000, at 9:30 a.m.;
13. Trial shall commence on September 18, 2000, in Courtroom 6-A at 10:00 a.m.

BY THE COURT:

John R. Padova, J.