

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

CHARLES AND JOANNE McCARTHY,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 00-CV-3418
	:	
KOMORI AMERICA CORP.,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Presently before the Court is Plaintiffs' Motion to Amend the Complaint to Include a Count for Punitive Damages. In response to Plaintiffs' Motion, Defendant argues that Plaintiffs unjustifiably delayed filing their Motion, that allowing amendment of the complaint at this late date would needlessly extend the discovery period, and that amendment would be prejudicial to Defendant. For the reasons that follow, we agree with Defendant and will deny Plaintiffs' Motion.

Motions to amend pleadings are governed by Fed. R. Civ. P. 15(a), which, except in some circumstances not presented here, requires a party to obtain "leave of court" or "written consent of the adverse party" to amend a pleading. In reviewing motions under Rule 15, courts are instructed that "leave shall be freely given when justice so requires." Id. As the United States Court of Appeals for the Third Circuit has explained:

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.'

Lorenz v. CSX Corp., 1 F.3d 1406, 1413 (3d Cir. 1993) (quoting Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)). With specific respect to delay, we note that "[t]he passage of time, without more, does not require a motion to amend a complaint be denied; however, at some point, the delay will become 'undue,' placing an unwarranted burden on the court." J.E. Mamiye & Sons, Inc. v. Fidelity Bank, 813 F.2d 610, 614 (3d Cir. 1987) (citations omitted).

Discovery in this case was originally scheduled to end on January 26, 2001. Subsequently, this Court approved a stipulation to extend the time to respond to certain interrogatories, and allowed two general thirty-day extensions for all discovery deadlines. After the second thirty-day extension, the Court indicated to the parties that no further extensions would be forthcoming. A later stipulation for another forty-five day discovery extension was denied. The pre-trial process in this case has been contentious, and both parties have continually raised picayune discovery and administrative matters for the Court's resolution. The result has been repeated and often unnecessary delays.

Despite the passing of the twice-extended discovery deadline, Plaintiffs filed the instant Motion on April 9, 2001.

As Defendant rightly points out, the factual core supporting Plaintiffs' proposed new claim was known to Plaintiffs at the time of the filing of the original Complaint in June 2000. Moreover, to the extent the discovery process unearthed additional, alleged support for a punitive damages claim, those facts were known nearly three, and in some cases over five, months prior to the filing of the Motion to Amend. In addition, Plaintiffs fail to offer any justification whatsoever for the delay. See, e.g., LePage's Inc. v. 3M (Minnesota Mining & Mfg. Co.), No. CIV.A. 97-3983, 1998 WL 631960, at \*4 (E.D. Pa. Sep. 2, 1998) ("The party seeking leave to amend bears the burden of explaining the reasons for the delay."). This lack of justification is especially conspicuous given that the factual foundation for the claim was long-known and that multiple extensions had already been granted by this Court. Other courts have rejected motions to amend under similar circumstances. See, e.g., Phoenix Techs., Inc. v. TRW, Inc., 154 F.R.D. 122, 123 (E.D. Pa. 1994) (denying motion to amend where defendant offered no explanation for seventeen month delay); Tarkett Inc. v. Congoleum Corp., 144 F.R.D. 289, 291 (E.D. Pa. 1992) (same, where defendant offered no explanation for nearly three month delay); see also McKnight v. School Dist. of Philadelphia, No. CIV.A. 00-573, 2001 WL 74772 (E.D. Pa. Jan. 29, 2001) (same, where plaintiff offered no explanation for delay and discovery had closed); Hewlett-Packard Co. v. Arch Assocs. Corp., 172 F.R.D.



BY THE COURT:

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J. CURTIS JOYNER, J.