

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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In re: BRIDGESTONE/FIRESTONE, INC. )  
TIRES PRODUCTS LIABILITY LITIGATION ) Master File No. IP 00-9373-C-B/S  
\_\_\_\_\_) MDL No. 1373  
THIS ORDER APPLIES TO: ) (centralized before Hon. Sarah Evans  
) Barker, Judge)  
GABRIELA RODRIGUEZ, et al., Plaintiffs, )  
v. ) Individual Case No. IP 01-5491-C-B/S  
BRIDGESTONE/FIRESTONE, INC., et al., )  
Defendants. )

**ORDER DENYING LEAVE TO AMEND AND LEAVE  
TO FILE AMENDED MOTION FOR REMAND**

Following the defendants' removal of this action to federal court, the plaintiffs sought leave to amend their complaint to add as a defendant the driver of the vehicle in the accident at issue. On the basis of the proposed amendment, they ask the Court to remand this action to state court for lack of subject matter jurisdiction. For the reasons set forth below, the plaintiffs' Motion for Leave to File Amended Motion for Remand and Motion for Leave to File First Amended Complaint ("Motion") is DENIED.

**Discussion**

Plaintiffs seek to add Daniel Rodriguez Reyes, the driver of the vehicle involved in the accident at issue, as a defendant in this lawsuit. He, like the plaintiffs, is alleged to be a

citizen of Mexico, so his joinder would divest this court of subject matter jurisdiction.

When an action has been removed to federal court and the additional defendant sought to be joined by the plaintiff would destroy subject matter jurisdiction, 28 U.S.C. §1447(e) establishes that the Court has one of two options. We “may deny joinder, or permit joinder and remand the action to the State court.” 28 U.S.C. §1447(e). The Court notes that the plaintiffs have attempted to justify amendment based on the liberal standards of Fed.R.Civ.P. 15(a). A number of courts have held, however, that when an amendment will destroy diversity, analysis should proceed under 28 U.S.C. §1447(e), rather than under Fed.R.Civ.P. 15(a). See, e.g., Mayes v. Rapoport, 198 F.3d 457, 462 n.11 (4<sup>th</sup> Cir. 1999); Ascension Enterprises, Inc. v. Allied Signal, Inc., 969 F. Supp. 359, 360 (M.D. La. 1997).

In order to permit joinder and remand the action, the Court need not find that the additional party is indispensable to just adjudication of the lawsuit. Vasilakos v. Corometrics Medical Sys., Inc., 1993 WL 390283, at \*2 (N.D. Ill. Sept. 30, 1993); Goutanis v. Mutual Group, 1995 WL 86588, at \*6 (N.D. Ill. Feb. 24, 1995). Instead, courts base their decisions to permit or deny joinder on a balance of the equities. See Clinco v. Roberts, 41 F. Supp. 2d 1080, 1083 (C.D. Cal. 1999); Hensgens v. Deere & Company, 833 F.2d 1179, 1182 (5<sup>th</sup> Cir. 1987); County of Cook v. Philip Morris, Inc., 1997 WL 667777, at \*2 (N.D. Ill. Oct. 17, 1997). While the Seventh Circuit has not enumerated factors to be considered in balancing the equities, district courts in the Seventh Circuit look to a number

of factors to make this determination.<sup>1</sup> The factors examined include:

(1) the extent to which the joinder of the nondiverse party is sought merely to defeat federal jurisdiction; (2) whether plaintiff has been dilatory in asking for amendment; (3) the balance between the risk that the plaintiff will experience significant injury by pursuing multiple lawsuits if the amendment is not allowed and the risk that the defendant will be prejudiced if the amendment is allowed; and (4) any other equitable considerations, including defendants's [sic] interest in maintaining a federal forum.

Vasilakos, 1993 WL 390283, at \*3. See also Goutanis, 1995 WL 86588, at \*6.

In considering these factors, we find that the circumstances presented here point even more clearly to denial of leave to amend than those that warranted denial of leave to amend in Fehmers v. Bridgestone/Firestone, Inc., et al., 129 F.Supp.2d 1202 (S.D. Ind. 2001). The plaintiffs have sought leave to amend over five months after the filing of their original complaint, and only after removal and the dismissal of a non-diverse defendant they had earlier named. Here, as in Fehmers, the plaintiffs have offered no reason for amendment at this stage, and their filings make clear that their objective in amendment is to defeat federal subject matter jurisdiction. Moreover, their delay in seeking to name Mr. Reyes as a defendant is particularly noteworthy, because he was the driver of the car in which plaintiff Gabriela Rodriguez was a passenger, and the plaintiffs obviously knew of the basis for a claim against him at the time they filed their complaint. Finally, the plaintiffs

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<sup>1</sup> Seventh Circuit law applies to the issues presented by the plaintiffs' motion. See Fehmers v. Bridgestone/Firestone, Inc., et al., 129 F.Supp.2d 1202, 1204 n.2 (S.D. Ind. 2001).

have not demonstrated that they will be unduly prejudiced or that the equities tilt in favor of allowing amendment.

For all of these reasons, the plaintiffs' Motion is DENIED.

It is so ORDERED this \_\_\_\_\_ day of November, 2002.

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SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

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