

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KELSEY-HAYES COMPANY,

Plaintiff,

Case No. 13-137746-CK

v

Hon. Wendy Potts

HUTCHINSON SEAL DE MEXICO, et al,

Defendants.

OPINION AND ORDER RE: KELSEY-HAYES COMPANY'S MOTION FOR LEAVE TO
FILE ITS FIRST AMENDED COMPLAINT

At a session of Court
Held in Pontiac, Michigan

On
DEC 15 2015

Plaintiff Kelsey-Hayes Company moves the Court to allow it amend its complaint to add additional allegations based on newly-discovered evidence. The Court is exercising its discretion to decide the motion without a hearing. MCR 2.119(E)(3). Leave to amend pleadings shall be freely given when justice so requires. MCR 2.118(A)(2). Amendment should only be denied for compelling reasons, such as undue delay, actual prejudice, or futility. *Weymers v Khera*, 454 Mich 639, 658-659; 563 NW2d 647 (1997).

Defendants contend, and the Court agrees, that Plaintiff's request is unduly delayed. Although delay alone is not normally grounds for denying a motion to amend, the Court has discretion to deny a late amendment that would unfairly prejudice the opposing party or prevent it from receiving a fair trial. *Weymers, supra* at 659. This case is more than two years old, discovery will be completed soon, the case is scheduled for facilitation in early January, the dispositive motion cutoff has passed, and the trial date is March 7. If the Court were to allow

Plaintiff to add allegations at this very late stage, Defendants would be limited in their discovery regarding those allegations, would not be able to move to dismiss the claims based on the new allegations, and could be precluded from receiving a fair trial. Extending the scheduling order to accommodate Plaintiff's late amendment request is unacceptable given the age of this case.

Moreover, adding allegations to the complaint would merely complicate the matter and would not have any significant impact on the outcome of Defendants' pending dispositive motions or the trial. Plaintiff asserts that the amendment is necessary to address Defendants' anticipated defenses to Plaintiff's claims. However, this case is far beyond the stage for evaluating the sufficiency of the pleadings, and Plaintiff cannot oppose a motion for summary disposition under MCR 2.116(C)(10) by relying on allegations in its complaint. MCR 2.116(G)(4). Thus, adding new allegations would also be futile.

For all of these reasons, the Court denies Plaintiff's motion to amend its complaint.

IT IS SO ORDERED.

Dated:

DEC 15 2015

Hon. Wendy Potts