

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KEVIN L. BILLBE, *et al.*,

Plaintiffs,

v.

Case No. 06-4050-RDR

URETEK USA, INC.,

Defendant.

**ORDER DENYING WITHOUT PREJUDICE DEFENDANT'S MOTION TO ADD
ADDITIONAL DEFENDANTS**

This matter comes before the court upon defendant Uretex USA, Inc.'s Motion to Add Red Line, Inc. and J.B. Miser as Additional Defendants (Doc. 18). No responses have been filed in opposition to defendant's motion and the time for doing so has expired. The court therefore finds that this matter is ripe for disposition.

In its motion, defendant moves to join additional defendants pursuant to Fed. R. Civ. P. 19(a). Specifically, defendant seeks to add Red Line, Inc., and J.B. Miser "for comparative fault purposes and to promote efficient discovery."

According to the Scheduling Order in this case (Doc. 14) entered on July 7, 2006, any motions for leave to join additional parties or otherwise amend the pleadings were to be filed on or before August 14, 2006. Additionally, the Scheduling Order provided that any party seeking comparative fault shall identify all persons or entities whose fault is to be compared on or before

October 16, 2006. The court notes that defendant's motion is timely as to both of these deadlines. However, because defendant termed its current motion as a "Motion to Add Red Line, Inc. and J.B. Miser as Additional Defendants," yet seeks to do so "for comparative fault purposes," it is not abundantly clear to the court whether defendant is seeking to formally amend its pleadings to add Red Line and J.B. Miser as party defendants to this action or whether defendant is seeking to merely identify Red Line and J.B. Miser as parties whose fault is to be compared in this action.

Without further guidance from defendant on this issue, and because defendant has clearly labeled its filing as a "Motion to Add Red Line, Inc. and J.B. Miser as Additional Defendants" the court shall construe defendant's motion as a motion to amend to join additional parties. As such, the court finds that defendant has failed to comply with the District of Kansas' Local Rules of Civil Procedure regarding motions to amend. Specifically, D. Kan. R. 15.1 requires all motions to amend to be accompanied by the proposed amended pleading. Defendant Uretex USA, Inc. has failed to attach its proposed pleading to its motion. Therefore, the court will deny defendant's motion without prejudice.

Additionally, the court, in light of its decision to deny defendant's motion without prejudice, finds that good cause exists to extend the deadline contained in the Scheduling Order for filing motions to amend in order to provide defendant the opportunity to re-file its motion in full compliance with the court's local rules.

As a final matter, the court observes that in the event defendant seeks to join as defendants Red Line and J.B. Miser – both Kansas citizens – to this diversity action, federal subject matter jurisdiction would rest on tenuous grounds, as the court additionally observes that

there appears to be at least one plaintiff who is also a citizen of the State of Kansas in this case.¹

Therefore, for good cause shown,

IT IS THEREFORE ORDERED that defendant Uretex, USA, INC.'s Motion to Add Red Line, Inc., and J.B. Miser as Additional Defendants (Doc. 18) is hereby denied without prejudice. The court hereby extends the deadline for filing motions to add additional parties or otherwise amend the pleadings to and including **September 15, 2006**. All other deadlines contained in prior orders remain in full effect and shall not be modified except by leave of court for good cause shown.

IT IS SO ORDERED.

Dated this 1st day of September, 2006, at Topeka, Kansas.

s/ K. Gary Sebelius
K. Gary Sebelius
U.S. Magistrate Judge

¹See Notice of Removal (Doc 1) at 3 ("Plaintiffs are citizens of the state of Kansas and the state of Ohio"); *see also* defendant's Motion to Add ...Additional Defendants (Doc. 18) at 1 ("Miser is an adult residing in Kansas...[and] Red Line is a Kansas, for-profit corporation.").