

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

SAMUEL K. LIPARI,)
<i>Plaintiff,</i>)
)
v.) No.07-0S49-CV-W-FJG
)
GENERAL ELECTRIC COMPANY, <i>et al.</i> ,)
<i>Defendants.</i>)

**FIRST MOTION FOR LEAVE
TO AMEND PETITION UNDER F.R. CIV. P. RULE 15(a)(2)**

Comes now the plaintiff Samuel K. Lipari appearing pro se and makes the following motion for leave to amend his initial petition under F. R. Civ. P. Rule 15(a)(2) to add necessary parties under F. R. Civ. P. Rule 19(a)(1)(A). The plaintiff respectfully requests leave of the court to amend his petition to include the new defendants Sprint, Inc.; AT&T; and KMPG. LLP. The plaintiff supports his requests with the following statement of facts and suggestion:

STATEMENT OF FACTS

1. The defendant Bradley J. Schlozman and Assistant US Attorney Jeffrey P. Ray of that the Office of John Wood, the US Attorney for the Western District of Missouri have declined to answer or otherwise respond to the plaintiff's petition.
2. The defendant Bradley J. Schlozman has specific knowledge of the clandestine warrantless wiretapping alleged to be used by the IS U.S.c. § 1962(d) co-conspirators to obstruct the plaintiff's entry into the hospital supply market and to interfere in the plaintiff's federal antitrust litigation.
3. The proposed new defendants Sprint, Inc. and *AT&T* are alleged to have participated in the clandestine warrantless wiretapping with the existing defendants as § 1962(d) co-conspirators and share the specific knowledge of the defendant Bradley J. Schlozman.
4. The proposed new defendants Sprint, Inc. and AT&T as publicly traded corporations are without Fifth Amendment immunity Bradley J. Schlozman and John Wood, the US Attorney for the Western District of Missouri are mistakenly trying to exercise in civil litigation.
5. The plaintiff believes the proposed new defendants Sprint, Inc. and *AT&T* would uphold their duty to their shareholders in responding to civil litigation.
6. The existing defendant Jeffrey R. Immelt at the informed direction of Brackett B. Denniston III ,

General Electric's Senior Vice President & General Counsel and Alexander Dimitrief, General Electric's Vice President, Litigation & Legal Policy Vice President, has intentionally committed subsequent predicate acts of 18 U.S.c. § 1961 Fraud under the plaintiff's theory of the case when starting on February 20, 2008 Jeffrey R. Immelt issued an annual report for the defendant General Electric Company and did not disclose the corporation's liability to the plaintiff.

7. The existing defendant Jeffrey R. Immelt committed these subsequent predicate acts of 18 U.S.C. § 1961 Fraud with the participation of and in an association in fact enterprise under 18 U.S.c. § 1962(c) with the proposed new defendant KPMG LLP. See Exb I.

8. Joinder of the proposed new defendants Sprint, Inc.; AT&T; and KPMG LLP will not deprive this court of custody over the action.

9. The plaintiff has attached the proposed amended petition as Exb. 2.

SUGGESTION IN SUPPORT

The Federal Rules of Civil Procedure provide for amendment of the plaintiff's petition before trial under F. R. Civ. P. Rule 15. Rule 15 (a)(2) states:

"Rule 15. (a) Amendments Before Trial.

(2) Other Amendments.

In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." [Emphasis added]

Leave to amend under Federal Rule of Civil Procedure 15(a) should not be denied "[u]nless there is a good reason for denial, 'such as undue delay, bad faith, or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of the amendment, leave to amend should be granted.'" *Becker v. Univ. of Nebraska at Omaha*, 191 F.3d 904, 907-908 (8th Cir. 1999) (quoting *Brown v. Wallace*, 957 F.2d 564, 566 (8th Cir. 1992)). Delay alone is not enough to deny a motion to amend; prejudice to the nonmovant must also be shown. *Bell v. Allstate Life Ins. Co.*, 160 F.3d 452, 454 (8th Cir. 1998). See also *In re K-Tel Intern., Inc. Securities Litigation*, 300 F.3d 881 at fn 23 (Fed. 8th Cir., 2002).

Questions of indispensable party joinder are procedural issues governed by federal law. *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 125 n.22 (1968). Rule 19 of the Federal Rules of Civil Procedure governs the joinder issue in this case. In proceeding with its inquiry into both necessity and

indispensability, a district court should keep in mind the policies that underlie Rule 19, "including the public interest in preventing multiple and repetitive litigation, the interest of the present parties in obtaining complete and effective relief in a single action, and the interest of absentees in avoiding the possible prejudicial effect of deciding the case without them." *Acton Co. v. Bachman Foods, Inc.*, 668 F.2d 76, 78 (1st Cir. 1982).

Settlement position is a valid consideration in the practical inquiry required by Rule 19(a)(2)(i) because, even without a direct preclusive effect, an adverse judgment could be "persuasive precedent in a subsequent proceeding, and would weaken [the absent party's] bargaining position for settlement purposes." *Acton*, 668 F.2d at 78; see also *Gonzalez v. Cruz*, 926 F.2d 1,6 (1st Cir. 1991) (holding that although a ruling against the absent party would not be binding in the state court, it "could, as a practical matter, impair [the absent party's] probability of success in a future proceeding and reduce its ability to reach a favorable settlement").

The plaintiff has been prejudiced by the absence of Bradley J. Schlozman's answer to the petition and availability for discovery. The plaintiff will therefore be prejudiced by the absence of the proposed new defendants Sprint, Inc., and AT&T that also have the specific knowledge of the warrantless surveillance employed by the RICO conspiracy.

"Rule 19(b) embodies practical considerations that go beyond the rules of *res judicata* and the binding effect of judgments. *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 110, 88 S.Ct. 733, 738, 19 L.Ed.2d 936 (1968). In a proper case the prejudice from the unavailability of the absent person's testimony may be clear enough to be a substantial consideration in the balancing undertaken in the course of an indispensability calculation under Rule 19(b). In addition, the factors set out in Rule 19(b) are not intended to exclude other relevant considerations. Advisory Committee's Note to Rule 19, 39 F.R.D. 88,92 (1966)."

Pasco Intern. (London) Ltd. v. Stenograph Corp., 637 F.2d 496 at pg. 504 (C.A.7 (Ill.), 1980).

The plaintiff has also been prejudiced by the unwillingness of the defendant General Electric to honor its contract or participate in good faith in litigating or settling the dispute with the plaintiff. KPMG LLP has a duty to report General Electric's risks and liabilities and has instead adopted the § 1962(d) conspirators' criminal goals through the infiltration of General Electric and has participated in § 1962(c) predicate acts contrary to the interests of General Electric's shareholders and prejudicing the plaintiff.

The proposed new defendants Sprint, Inc. , AT&T and KPMG LLP have contracts with the existing RICO defendants to perform the conduct the plaintiff is suing over and as such are necessary parties having interests that will be impacted by the subject of the plaintiff's litigation:

"[N]ecessary parties under Rule 19(a)(2)(i) are only those parties whose ability to protect their interests would be impaired because of that party's absence from the litigation. See Fed.R.Civ.P. 19(a)(2) (defining necessary party as one with an "interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may ... as a practical matter impair or impede the person's ability to protect that interest" (emphasis added)."

Mastercard Intern. v. Visa Intern. Service Ass'n, 471 F.3d 377 at 387 (2nd Cir., 2006).

Sprint, Inc. , AT&T and KPMG LLP will suffer injuries to their shared property interests with the existing defendants and be impeded in their ability to protect their contract interests with the existing defendants.

"We agree with the district court that Rite Aid is a necessary party to this action for two reasons. First, permitting this action to go forward without Rite Aid would impair or impede Rite Aid's ability to protect a "claim[ed] ... interest relating to the subject of the action." Fed. R. Civ. P. 19(a)(2)(i)."

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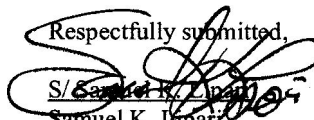
Rule 21, entitled "Misjoinder and Non-Joinder of Parties," provides in relevant part: "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Fed.R.Civ.P. 21.

"7 Wright, Miller & Kane, § 1688.1 at 510. Cf. *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 214 F.R.D. 152, 154 (S.D.N.Y.2003) (holding that District Courts have broad discretion to drop or add parties under Rule 21 "when doing so would serve the ends of justice and further the prompt and efficient disposition of the litigation" (quotation omitted)."

City of Syracuse v. Onondaga County, 464 F.3d 297 at pg. 308 (2nd Cir., 2006).

CONCLUSION

Whereas for the above stated reasons the plaintiff respectfully requests the court grant his motion to amend his complaint and to join the defendants Sprint, Inc. , AT&T and KPMG LLP.

Respectfully submitted,

S/ Samuel K. Ippari
Samuel K. Ippari

CERTIFICATE OF SERVICE

I certify I have sent a copy via email to the undersigned and opposing counsel via email on 4/25/08.

And served the following counsel for Jeffrey R. Irmelt, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling, LLC, and General Electric Company via email at the following addresses:

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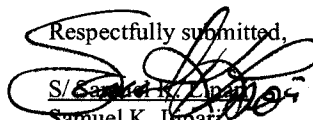
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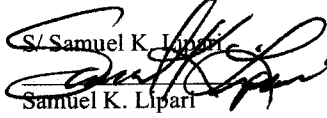
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