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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BONNIE WINDSOR,
Plaintiff,
vs.
TRAVELERS COMPANIES, INC., ET
AL.,
Defendants.

No. CV 08-1174-PHX-JAT

ORDER

Pending before the Court are Defendants’ Motion to Amend Answer (Doc. #43) and Plaintiff’s Motion for Leave to Amend Complaint (Doc. #47). Plaintiff filed her Motion after Defendants moved to amend their Answer to include an affirmative defense based on ERISA preemption. Plaintiff’s Motion also comes after the deadline set in the Rule 16 Scheduling Order for amending the pleadings. Defendants have not filed a response to Plaintiff’s Motion to Amend. Plaintiff filed a response to Defendants’ Motion, but does not object to the Court granting Defendants’ Motion.

In her motion, Plaintiff discusses the Rule 15(a) standard for amending pleadings. But because she filed her motion after the date set in the Scheduling Order, Rule 16(b)’s “good cause” standard also applies. “Unlike Rule 15(a)’s liberal amendment policy which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the

1 party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609
2 (9th Cir. 1992).

3 Defendants have not filed an objection to Plaintiff’s Motion to Amend the Complaint.
4 Pursuant to Local Rule of Civil Procedure 7.2(c), the Court will construe Defendants’ non-
5 response as acquiescence in this particular case to a finding of both good cause and the three
6 Rule 15(a) factors. The Court will therefore grant Plaintiff’s Motion to Amend the
7 Complaint.

8 Also, because Defendants’ Answer will no longer respond to the operative complaint,
9 they will have leave to amend their Answer. The Court will not file the Lodged Amended
10 Answer because it does not respond to the additional causes of action in the First Amended
11 Complaint.

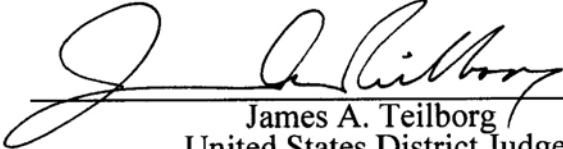
12 The Court notes that granting Plaintiff leave to amend outside of the time allowed in
13 the Scheduling Order may impact some other scheduling deadlines. The parties shall
14 immediately file requests for any other extensions they feel they might need as a result of this
15 Order.

16 Accordingly,

17 IT IS ORDERED GRANTING Plaintiff’s Motion for Leave to Amend Complaint
18 (Doc. #47). The Clerk shall file the First Amended Complaint currently lodged at Docket
19 #48.

20 IT IS FURTHER ORDERED DENYING AS MOOT Defendants’ Motion to Amend
21 Answer (Doc. #43) because it no longer addresses the operative complaint. Defendants shall
22 file their Amended Answer by April 10, 2009.

23 DATED this 17th day of March, 2009.

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26 
27 James A. Teilborg
28 United States District Judge