

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT F. LYMAN, et al.,
Plaintiffs,
v.
UNION CARBIDE CORPORATION, et al.,
Defendants.

Case No. [07-cv-04240-WHO](#)

**ORDER GRANTING AND SEVERING
DEFENDANT MONTELLO INC.'S
MOTION FOR LEAVE TO AMEND
ANSWER TO ASSERT CROSS-CLAIM
AGAINST DEFENDANT UNION
CARBIDE**

Re: Dkt. No. 111

More than seven years after making its first appearance in this case, and less than a month before trial of the claims of the heirs of Robert Lyman, defendant Montello, Inc., moved to amend its answer so that it could assert an indemnity claim against co-defendant Union Carbide Corporation. This matter is capable of resolution without oral argument and the hearing set for June 4, 2014, is VACATED.

There are potentially valid grounds for Montello to seek indemnification based on a written agreement with Union Carbide. But until this motion was filed on May 20, 2014, nothing in Montello's pleadings indicated that it would be pursuing a cross-claim against Union Carbide. Montello contends that it acted promptly once this case was set for trial, but that is not the test for timeliness.

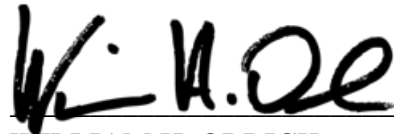
Fairness dictates that Union Carbide be given the opportunity to conduct discovery and consider its litigation and trial strategy prior to the presentation of the indemnification issue for decision. It is inappropriate at this late date to inject a fight between the co-defendants over indemnification into the trial of Mr. Lyman's heirs' claims for negligence and products liability arising from Mr. Lyman's alleged exposure to asbestos.

Accordingly, I GRANT Montello, Inc., leave to amend its answer to assert a cross-claim

1 for indemnification against Union Carbide. I SEVER trial of the indemnification issue and set a
2 Case Management Conference for August 5, 2014, at 2:00 p.m. to discuss an appropriate schedule
3 for discovery and trial. On or before July 29, 2014, the defendants shall file a Joint Case
4 Management Statement that includes a proposed case management schedule.

5 **IT IS SO ORDERED.**

6 Dated: June 2, 2014

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8 WILLIAM H. ORRICK
9 United States District Judge
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