

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 NAVIGATORS INSURANCE COMPANY,  
5 Plaintiff,  
6 v.  
7 UNION PACIFIC RAILROAD COMPANY,  
8 Defendant.

No. C 11-2601 CW  
ORDER GRANTING  
DEFENDANT'S MOTION  
FOR LEAVE TO FILE  
A THIRD-PARTY  
COMPLAINT  
(Docket No. 24)

9 \_\_\_\_\_/  
10 Defendant Union Pacific Railroad Company seeks leave to file  
11 a third-party complaint against Third-Party Defendant Pine Ridge  
12 Farms (PRF). Plaintiff Navigators Insurance Company opposes  
13 Defendant's motion. The Court took Defendant's motion under  
14 submission on the papers. Having considered the papers filed by  
15 the parties, the Court GRANTS Defendant's motion.

16 BACKGROUND

17 Plaintiff instituted the underlying action on May 4, 2011 in  
18 the Alameda County Superior Court. In its complaint, Plaintiff  
19 alleges that it is the insurer of a shipment of cargo of frozen  
20 pork received and transported by Defendant in July 2010.  
21 Defendant purportedly agreed to maintain the cargo at -10°F during  
22 carriage and to deliver the cargo in the same good order,  
23 condition and quantity as when received. Defendant allegedly  
24 delivered the cargo in a damaged condition, which depreciated the  
25 value of the cargo by \$100,187.81, including mitigation expenses.  
26 Plaintiff made payment to PRF, the cargo owners and shippers,  
27 under the terms of its insurance policy with PRF and seeks  
28 reimbursement from Defendant.

1 Defendant removed the case to federal court on June 1, 2011.  
2 A case management conference was held on November 22, 2011, and  
3 the Court subsequently entered a case management order setting  
4 January 17, 2012 as the deadline to add additional parties or  
5 claims and February 1, 2012 as the fact discovery deadline.

6 Defendant filed the present motion seeking leave to file a  
7 third-party complaint on December 21, 2011 and noticed it for  
8 hearing on January 26, 2012. In its proposed filing, Defendant  
9 seeks to assert claims for breach of contract, breach of express  
10 duty to indemnify and declaratory relief against PRF. Defendant  
11 alleges that it had a contract with PRF that specified that PRF  
12 had a duty to load the cargo properly onto the railcar and that  
13 this contract required PRF to indemnify Defendant for losses  
14 relating to damages stemming from the failure of PRF, including  
15 its agents, to do so.

16 LEGAL STANDARD

17 Generally, Federal Rule of Civil Procedure 15(a) provides for  
18 liberal allowance of amendments to pleadings. Federal Rule of  
19 Civil Procedure 15(a) provides that leave of the court allowing a  
20 party to amend its pleading "shall be freely given when justice so  
21 requires." Because "Rule 15 favors a liberal policy towards  
22 amendment, the nonmoving party bears the burden of demonstrating  
23 why leave to amend should not be granted." Genentech, Inc. v.  
24 Abbott Laboratories, 127 F.R.D. 529, 530-531 (N.D. Cal. 1989)  
25 (citing Senza-Gel Corp. v. Seiffhart, 803 F.2d 661, 666 (Fed. Cir.  
26 1986)). Courts generally consider five factors when assessing the  
27 propriety of a motion for leave to amend: undue delay, bad faith,  
28 futility of amendment, prejudice to the opposing party and whether

1 the party has previously amended the pleadings. Ahlmeier v. Nev.  
2 Sys. of Higher Educ., 555 F.3d 1051, 1055 n.3 (9th Cir. 2009).

3 If a party seeks to amend the pleadings after the deadline to  
4 do so as established by a case management order, Rule 16(b)  
5 applies. Under Rule 16(b), “[a] schedule shall not be modified  
6 except upon a showing of good cause and by leave of the district  
7 judge.” Fed. R. Civ. Pro. 16(b).

8 DISCUSSION

9 The parties dispute whether the scheduling order set January  
10 17, 2012 as the date by which Defendant’s motion had to be filed  
11 or the date by which it had to be heard, and thus whether the  
12 motion is governed by Rule 15 or Rule 16. Even if the minute  
13 order were read to require that a hearing take place before  
14 January 17, 2012, Defendant noticed the motion for a hearing less  
15 than ten days later. Further, this Court determined that the  
16 parties’ briefing, which was completed on January 9, 2012, was  
17 sufficient to decide this motion, and took it under submission on  
18 the papers. Thus, any delay beyond January 17, 2012 was minimal,  
19 and the Court will consider the motion under Rule 15.

20 Plaintiff argues that Defendant has unduly delayed in filing  
21 its motion, because Defendant knew of the contractual terms of the  
22 agreement between Defendant and PRF prior to the inception of this  
23 action. Defendant states that it waited to file a complaint  
24 against PRF until its expert had reviewed relevant documents  
25 received in discovery and advised Defendant that it had a claim  
26 against PRF based on the improper loading practices of PRF’s  
27 designated agent. Plaintiff provides no argument or evidence that  
28 Defendant knew or should have known of PRF’s agent’s improper

1 loading practices, which are central to its third-party complaint.  
2 Thus, Plaintiff has not shown undue delay by Defendant.

3 Plaintiff also asserts that it and PRF are prejudiced by  
4 Defendant's delay in filing this motion. Plaintiff argues that,  
5 for PRF to be able to defend the case adequately, the discovery  
6 deadline and other upcoming deadlines will have to be continued,  
7 and that PRF may re-take certain Rule 30(b)(6) depositions,  
8 leading to duplication of effort and expense. Prejudice to PRF is  
9 a proper subject for consideration in connection with Defendant's  
10 motion. See Howey v. United States, 481 F.2d 1187, 1190-1191 (9th  
11 Cir. 1973) (considering prejudice to the proposed third-party  
12 defendant when evaluating whether to grant leave to file third-  
13 party complaint). PRF has had ample notice of this litigation and  
14 the claims made and has participated in the discovery process and,  
15 while the fact discovery deadline may need to be extended, it is  
16 not clear that filing of the third-party complaint will adversely  
17 impact other case deadlines. Further, only one Rule 30(b)(6)  
18 deposition has been noticed thus far. The Court finds that any  
19 prejudice to the parties from the possible adjustment of case  
20 management deadlines or limited duplicative discovery is  
21 outweighed by the additional time and expense that would ensue if  
22 Defendant filed a new lawsuit against PRF arising out of the same  
23 events at issue here.

24 Finally, Plaintiff argues that Defendant would not be  
25 benefited by filing the third-party complaint, because Plaintiff,  
26 as PRF's subrogated insurer, stands in PRF's shoes for the  
27 purposes of this case, and that Defendant may assert the defenses  
28 it would have against PRF against Plaintiff in PRF's stead. Thus,

1 Plaintiff claims that Defendant's motion is intended to create  
2 trouble between PRF and Plaintiff, increase litigation costs, and  
3 to pressure Plaintiff to settle. However, Plaintiff speculates as  
4 to Defendant's motivations and provides no evidence of bad faith.  
5 Further, Defendant points out that it is benefited by filing the  
6 third-party complaint, because it may not directly sue Plaintiff  
7 to enforce its indemnity agreement with PRF without first  
8 obtaining judgment against PRF. Accordingly, Plaintiff has not  
9 demonstrated that Defendant has filed this motion in bad faith.

10 CONCLUSION

11 For the reasons set forth above, the Court GRANTS Defendant's  
12 motion for leave to file a third-party complaint (Docket No. 24).  
13 Defendant shall file it forthwith and serve it as soon as  
14 possible.

15 IT IS SO ORDERED.

16 Dated: 2/1/2012

17   
CLAUDIA WILKEN  
United States District Judge