

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-03257-REB-BNB

JAMES R. GONGAWARE, and  
LIBERTY MUTUAL FIRE INSURANCE COMPANY, a Wisconsin corporation,

Plaintiffs,

v.

FERRELLGAS, INC., a Delaware corporation,  
PW EAGLE, INC., a Minnesota corporation, d/b/a JM Eagle, and  
J-M MANUFACTURING COMPANY, INC., a Delaware corporation, d/b/a JM Eagle,

Defendants.

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**ORDER**

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This matter arises on the following:

- (1) **Plaintiffs' Notice of Written Consent to File an Amended Complaint to Add Uponor, Inc. and Uponor North America, Inc. as Defendants** [Doc. # 44] (the "Notice"); and
- (2) **Plaintiffs' First Amended Complaint** [Doc. # 45] (the "Amended Complaint").

This action was removed to this court on December 13, 2011. Notice of Removal [Doc. # 1]. Defendant Ferrellgas answered the complaint on December 14, 2011, and defendants PW Eagle and J-M Manufacturing answered on January 11, 2012.

The plaintiffs attempt to amend the complaint to add the Uponor defendants. No motion to amend has been made, however. To the contrary, the plaintiffs purport to rely on Rule 15(a)(2) as allowing the amendment without the necessity of court action.

In general, a party may amend its complaint once as a matter of course and without court order at the following times:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Fed. R. Civ. P. 15(a)(1). Here, the proposed Amended Complaint was received on March 22, 2012, beyond any of the 21 day periods allowed in Rule 15(a)(1). Under these circumstances, amendment is governed by Rule 15(a)(2), which provides:

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.

Although the plaintiffs recite that "counsel for the current defendants have consented in writing to Plaintiffs' First Amended Complaint," Notice [Doc. # 44] at ¶5, no such written consent has been filed with the court.

IT IS ORDERED that the Amended Complaint [Doc. # 45] is STRICKEN for failure to comply with the requirements of Rule 15(a).

Dated March 26, 2012.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge