

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**KEARNEY CONSTRUCTION COMPANY,
LLC,**

Plaintiff,

v.

Case No. 8:09-cv-1850-T-30TBM

**TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, et al.,**

Defendants.

ORDER

THIS CAUSE comes before the Court upon Travelers Casualty & Surety Company of America's ("Travelers") Motion to Dismiss Kearney Construction Company, LLC's Second Amended Complaint Pursuant to Federal Rule of Civil Procedure 17(a) as Kearney Is No Longer the Real Party in Interest to Assert the Claim (Dkt. 83) and the Third Party Defendants' Response to Same (Dkt. 90).

In their response, the Third Party Defendants concede that, due to Kearney Construction Company, LLC's ("Kearney") bankruptcy filing on August 26, 2009, Kearney is no longer the real party in interest on its claim of tortious interference against Travelers. However, Kearney requests that the Court grant the Trustee ninety (90) days to join this action, as opposed to the thirty (30) days that Travelers suggests in its motion to dismiss. Kearney also states that if the Trustee does not join this action within ninety (90) days, the

action should be dismissed without prejudice, so that the action may still be pursued in the event that the Trustee later abandons the cause of action.

The Court concludes that ninety (90) days is a reasonable period of time to allow the Trustee to join this action. If the Trustee fails to join this action by that time, Kearney's claim (Count II of Kearney's Second Amended Complaint) should be dismissed without prejudice.

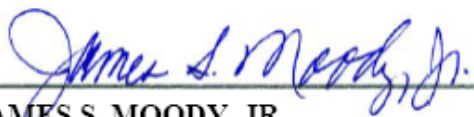
It is therefore ORDERED AND ADJUDGED that:

1. For the reasons set forth herein, Travelers' Motion to Dismiss Kearney Construction Company, LLC's Second Amended Complaint Pursuant to Federal Rule of Civil Procedure 17(a) as Kearney Is No Longer the Real Party in Interest to Assert the Claim (Dkt. 83) is hereby GRANTED IN PART.

2. The Trustee shall have ninety (90) days from the date of this Order to join this action. If the Trustee fails to join this action by that time, Count II of Kearney's Second Amended Complaint shall be dismissed without prejudice.

3. The parties should provide the Trustee with a copy of this Order.

DONE and **ORDERED** in Tampa, Florida on August 23, 2010.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

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