

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

DONALD BERRY,)	
)	
Plaintiff,)	Action No. 5:12-CV-304-JMH
)	
v.)	
)	
NORFOLK SOUTHERN RAILWAY CO.)	MEMORANDUM OPINION AND ORDER
)	
Defendant.)	
)	
)	

** ** * * *

This matter is before the Court on Defendant's Motion for Leave to File a Third Party Complaint [DE 22]. Plaintiff has responded [DE 23] and the Defendant timely filed a reply [DE 24]. Thus, this matter is ripe for this Court's consideration.

Defendant seeks to add a claim for indemnity against Usher Transport, Inc., the plaintiff's employer pursuant to Fed. R. Civ. P. 14. In support, Defendant points to an agreement by Usher that it would indemnify and hold Defendant harmless. In response, Plaintiff argues that the addition is untimely under this Court's scheduling order and that Defendant has failed to properly allege a jurisdictional basis, a deficiency that has since been corrected.

Whether to grant leave for a third party complaint is within the discretion of the trial court. *General Elec. Co. v. Irvin*, 274 F.2d 175, 178 (6th Cir. 1960) The timeliness of such a motion is "an urgent factor governing the exercise of such discretion." *Irvin*, 274 F.2d at 178. Although the motion for leave is outside of the deadline set by the Court, Plaintiff has not demonstrated any prejudice caused by this delay. In fact, the parties have not yet taken any depositions. Thus, there can be little prejudice, if any, to Plaintiff.

Moreover, the Court notes that the addition of this Third-Party Defendant does *not* destroy this Court's jurisdiction in this instance. *Grimes v. Mazda N. American Operations*, 355 F.3d 566, 572 (6th Cir. 2004); see *Kemper/Prime Indus. Partners v. Montgomery Watson Americas, Inc.*, 487 F.3d 1061, 1063 (7th Cir. 2007).

IT IS ORDERED that the Motion for Leave to File a Third Party Complaint [DE 22] is **GRANTED**. Accordingly, the Clerk is directed to FILE the Third Party Complaint.

This the 23rd day of April, 2013.



Signed By:

Joseph M. Hood 

Senior U.S. District Judge