EXHIBIT A

United States District Court,
E.D. Louisiana.
Carlo J. DELIBERTO
v.
WYNDHAM CANAL PLACE, INC. et al.
No. Civ.A. 03-3271.

June 10, 2004.

Andrew Martin Edwards, II, T. Jay Seale, III, Seale & Ross, PLC, Hammond, LA, for Plaintiff.

Mark John Spansel, Laurie Briggs Young, Adams & Reese, J. McCaleb Bilbro, Kay Barnes Baxter, Barfield & Associates, New Orleans, LA, for Defendants.

ORDER AND REASONS

WILKINSON, Magistrate J.

***1** Plaintiff Carlo J. Deliberto, a Louisiana citizen, originally filed this suit for damages in the Civil District Court for the Parish of Orleans, State of Louisiana. He sought damages for personal injuries allegedly suffered when loaded laundry carts rolled off a hydraulic lift and fell on him. The lift was part of the loading dock in the garage at the Wyndham Hotel.

Deliberto filed suit on December 23, 2002 against Wyndham Canal Place, Inc., later properly identified as Wyndham International, Inc. ("Wyndham"), the alleged owner/operator of the garage, loading dock and hydraulic lift; and Asher Cleaners and Laundry, Inc. ("Asher"), the alleged owner of the laundry carts. Wyndham is a Delaware corporation with its principal place of business in Texas and Asher is a Louisiana company. Plaintiff later discovered that Gulf Coast Laundry Services of Mississippi, LLC ("Gulf Coast"), a Mississippi company, rather than Asher, owned the laundry carts. Plaintiff dismissed Asher and added Gulf Coast as a defendant in the state court proceeding. Defendants then removed the action to this court on November 20, 2003, based on diversity of citizenship jurisdiction.

Plaintiff has filed a motion to amend his complaint. Record Doc. No. 10. The amendment seeks to add as a defendant The Garage at Canal Place, LLC ("The Garage"), a Louisiana limited liability company, which is allegedly the actual owner of the garage, loading dock and hydraulic lift. Deliberto asserts that he was not in a position to identify The Garage as the correct defendant until very recently, when counsel for Wyndham for the first time disclosed the identity of the actual owner of the garage, loading dock and hydraulic lift.

Gulf Coast filed a timely opposition memorandum. Record Doc. No. 11. Wyndham does not oppose the motion. The parties concede that permitting the amendment to name The Garage as a defendant would destroy this court's diversity jurisdiction. Gulf Coast argues that the motion should be denied because Deliberto has been dilatory in asserting his motion to amend and the original defendants will be prejudiced by the delay that will inevitably accompany the addition of a new defendant.

Having considered the complaint, the record, the applicable law and the submissions of the parties, and for the following reasons, IT IS ORDERED that plaintiff's motion to amend the complaint is GRANTED.

Federal Rule of Civil Procedure 15(a) provides that leave to amend pleadings "shall be freely given when justice so requires."The policy of the Federal Rules of Civil Procedure is liberal in favor of permitting amendment of pleadings, and the trial court's discretion is not broad enough to permit denial of leave to amend "unless there is a substantial reason" to do so. *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594, 598 (5th Cir.1981). Thus, leave to amend "shall be freely given when justice so requires,"Fed.R.Civ.P. 15(a), but "is by no means automatic." *Wimm v. Jack Eckerd Corp.*, 3 F.3d 137, 139 (5th Cir.1993) (quotation omitted). Relevant factors to consider include "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party,

and futility of amendment."*Id.* The party seeking to amend bears the burden of showing that delay in bringing the amendment was due to oversight, inadvertence or excusable neglect. *Parish v. Frazier,* 195 F.3d 761, 763 (5th Cir.1999).

***2** In addition, where-as here-the court has entered a scheduling order setting a deadline for the amendment of pleadings, Record Doc. No. 6, the schedule "shall not be modified except upon a showing of good cause."Fed.R.Civ.P. 16(b)."Rule 16(b) governs amendment of pleadings after a scheduling order deadline has expired. Only upon the movant's demonstration of good cause to modify the scheduling order will the more liberal standard of Rule 15(a) apply to the district court's decision to grant or deny leave." *S & W Enters., L.L.C. v. South Trust Bank of Ala., NA,* 315 F.3d 533, 536 (5th Cir.2003)."In determining good cause, we consider four factors: '(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice." ' *Southwestern Bell Tel. Co. v. City of El Paso,* 346 F.3d 541, 546 (5th Cir.2003) (citing Fed.R.Civ.P. 16(b); quoting *S & W Enters.,* 315 F.3d at 535).

However, when an amendment to add a party would destroy diversity jurisdiction, the court must apply the factors enunciated by the Fifth Circuit in *Hensgens v. Deere & Co.,* 833 F.2d 1179, 1182 (5th Cir.1987), and approved in *Tillman v. CSX Transp., Inc.* 929 F.2d 1023, 1029 n. 11 (5th Cir.1991), to determine whether the amendment should be permitted. Those factors are: "the extent to which the purpose of the amendment is to defeat federal jurisdiction, whether plaintiff has been dilatory in asking for amendment, whether plaintiff will be significantly injured if amendment is not allowed, and any other factors bearing on the equities." *Hensgens,* 833 F.2d at 1182. In large part, the *Hensgens* factors overlap the Rule 16 "good cause" factors.

I first note that the language of 28 U.S.C. § 1447(e), which addresses proposed amendments to add a non-diverse defendant after removal, is entirely permissive. I *may*-but am certainly not required to-deny plaintiff's proposed amendment. Rather, Section 1447(e) vests broad discretion in the trial court by expressly providing the following choice: "the court *may* deny joinder, *or permit joinder* and remand the action to the State court."(Emphasis added). Exercise of this discretion depends upon application of the *Hensgens* factors. I find that application of the *Hensgens* factors in this case establishes that the motion to amend should be permitted.

The first *Hensgens* factor is the extent to which joinder of the non-diverse party is sought to defeat federal jurisdiction. Plaintiff clearly intended, from the outset of this lawsuit and prior to removal of this litigation from state court, to name the actual owner of the garage, loading dock and hydraulic lift as a defendant. Deliberto asserts that only his lack of knowledge of the actual owner's identity and the very recent discovery of the proper defendant prevented him from naming The Garage as a defendant when he originally filed his petition or earlier in the pendency of this action.

***3** It makes legal and practical sense that the entity that is specifically responsible for the garage, loading dock and hydraulic lift be a defendant in this action. Moreover, procedural and discovery advantages are available to plaintiff if The Garage is a party defendant rather than a mere non-party witness. There is no suggestion that plaintiff's joinder of The Garage as a defendant is fraudulent or that plaintiff has no cause of action against The Garage. Under these circumstances, I cannot find that plaintiff's principal motivation in adding The Garage as a defendant is to defeat federal jurisdiction. Thus, this factor weighs in favor of permitting the amendment.

The second *Hensgens* factor is whether plaintiff has been dilatory in asking for the amendment. Deliberto states that he assumed that the Wyndham owned the garage, loading dock and hydraulic lift and that counsel for Wyndham first revealed the true identity of the owner during depositions about one week before plaintiff filed the instant motion.

Gulf Coast suggests that plaintiff has been dilatory in seeking to amend his petition for two reasons. First, defendant contends that "Wyndham, by virtue of its answer to the plaintiff's petition and responses to his discovery, advised him over a year ago that it neither owned nor maintained the lift."Record Doc. No. 11, Gulf Coast's opposition memorandum, at p. 4. Second, Gulf Coast argues that plaintiff was dilatory because the deadline for filing amended pleadings,

pursuant to the court's scheduling order, was February 17, 2004. Record Doc. No. 6.

Gulf Coast bases its first argument that plaintiff was dilatory on Wyndham's denial of certain allegations in plaintiff's original petition. Paragraph 17 of plaintiff's petition states in pertinent part that "Wyndham is also liable for Plaintiff's injuries as: (A) Wyndham had *garde* of the loading dock and hydraulic lift having a vice or defect."Record Doc. No. 1, Petition, attached to Notice of Removal. In its answer, Wyndham responded, "The allegations contained in Paragraph 17(A-F) of the Petition for Damages are denied."Record Doc. No. 1, Wyndham's Answer, attached to Notice of Removal.

Wyndham's broad denial of all six allegations listed in Paragraph 17 could reasonably be read in ways other than as an affirmative showing by Wyndham that it did not own the loading dock and hydraulic lift. Wyndham's statement could be taken as a generic denial of all claims; a denial as to Wyndham's liability, but not to its garde over the loading dock and hydraulic lift; or a denial that the loading dock and hydraulic lift have a vice or defect, but not to Wyndham's garde over them. In sum, Gulf Coast's argument that the denial amounts to a plain declaration that Wyndham does not own the loading dock and hydraulic lift is unconvincing.

Gulf Coast also points to two responses by Wyndham to plaintiff's interrogatories and request for production of documents in which Wyndham states that it "does not perform maintenance on [the] lift" and "Wyndham has no maintenance records on [sic] the lift as it does not perform maintenance work on the lift."Defendant's Exh. B, Answer to Interrogatory No. 6; Response to Request for Production of Documents No. 3. Gulf Coast submitted to the court only its responses, but not the interrogatory and document requests themselves, so I am left to wonder what the discovery requests specifically asked. Nonetheless, the responses could be read to state that Wyndham contracts with outside, rather than in-house, mechanics to perform maintenance on the lift and therefore has no *records* of the maintenance performed. Wyndham did not affirmatively state in either instance that it does not *own* the lift. Thus, Wyndham's responses to these discovery requests are ambiguous on this point and would not necessarily lead plaintiff to conclude that Wyndham is not the owner of the garage, loading dock and hydraulic lift.

***4** Gulf Coast also argues that plaintiff has been dilatory because the court-ordered deadline for filing amendments to pleadings has passed and plaintiff's motion may be denied solely because it was filed after the deadline had passed.

I find that Deliberto's assumption that Wyndham was owner of the garage was reasonable and that plaintiff filed the motion promptly after learning in recent days that The Garage is the actual owner of the garage, loading dock and hydraulic lift that are central to his claims. Under these circumstances, good cause exists under Rule 16 for permitting the amendment after the deadline, and I find that plaintiff has *not* been dilatory in seeking the amendment. Thus, the second *Hensgens* factor weighs in favor of permitting the amendment.

The third *Hensgens* factor is whether the plaintiff would be significantly injured if the requested amendment is not allowed. Gulf Coast concedes that "inasmuch as the Louisiana law applicable to this matter requires that The Garage's fault be quantified, ... the plaintiff may be injured if the amendment is not allowed."Record Doc. No. 11, Gulf Coast's opposition memorandum, at p. 4. In addition, considerations of cost, judicial efficiency and possible inconsistency of results militate in favor of not requiring plaintiff to prosecute two separate claims in two forums when both arise from the same set of facts and circumstances. Thus, this factor weighs heavily in favor of permitting the amendment.

The final *Hensgens* consideration is any other factor bearing on the equities. Defendant submits that the trial date will be lost and that much, if not all, of the significant discovery already performed will have to be revisited if this amendment is granted. This case has not previously been continued in this court and has been pending here less than seven months. Whatever delay in trial that might occur as a result of the amendment will not be inordinate.

Also, according to plaintiff's memorandum, "[o]nly two fact witnesses have been deposed" and "[n]o doctors' depositions have been scheduled and defendants are still gathering medical records."Record Doc. No. 10, at p. 5. Thus, discovery has not been completed. Furthermore, any discovery that was al-

ready undertaken would be useful in any further proceedings.

For all of the reasons discussed above, I find that the equities favor permitting plaintiff's amendment in this case to add The Garage.

Accordingly, because the *Hensgens* factors weigh in favor of permitting the amendment and because plaintiff has shown good cause to permit the amendment after the expiration of the court-ordered deadline, plaintiff's motion to amend is GRANTED. Whether the case should now be remanded from this court to the state court from which it was removed, as provided in 28 U.S.C. § 1447(e), is a matter solely within the province of the presiding district judge.

E.D.La.,2004.
Deliberto v. Wyndham Canal Place, Inc.
Not Reported in F.Supp.2d, 2004 WL 1290774 (E.D.La.)

END OF DOCUMENT

HOnly the Westlaw citation is currently available.

United States District Court,
E.D. Louisiana.
Emery Elizabeth ORDEMANN, et al.
v.
UNIDENTIFIED PARTY.
CIvil Action No. 06-4796.

March 12, 2008.

Margaret Emily Woodward, Margaret E. Woodward, Attorney at Law, New Orleans, LA, for Emery Elizabeth Ordemann, et al.

G. THOMAS PORTEOUS, JR., District Judge.

*1 Before the Court is Motion for Reconsideration (Rec.Doc.64). The matter was taken under submission on. The Court, having considered the arguments of the parties, the Court record, the law and applicable jurisprudence, is fully advised in the premises and ready to rule.

ORDER AND REASONS

I. BACKGROUND

The Original Complaint in this matter was filed on August 25, 2006 by plaintiffs, Emery Elizabeth Ordemann ("Ordemann") and Nancy Backus Ordemann Roniger ("Roniger"). On September 1, 2006, plaintiffs' First Supplemental and Amending Complaint was filed (Rec .Doc. 6). The defendant, Milton M. Livingston, Jr. ("Livingston") subsequently filed a Motion to Dismiss and the parties filed extensive supporting and opposing memoranda. (E.g., Rec. Doc. 17, et seq.). On April 17, 2007, the Court entered a Scheduling Order (Rec.Doc.51) setting May 10, 2007 as the deadline for filing amendments and pleadings. Ultimately, the Court entered its April 25, 2007 Order and Reasons dismissing all of plaintiffs' claims with the one exception (Rec.Doc.52).

After their Rule 54(b) motion was denied by the Court on June 7, 2007 (Rec.Doc.61), plaintiffs filed a number of pleadings, among which were there motions for leave to file a second, and then third amended complaint (Rec.Docs.91, 104).

This motion at issue today pertains to a decision rendered by Magistrate Judge Chasez on plaintiff's Motion for Leave to File Third Amended Complaint (Rec.Doc.125).

II. LAW AND ANALYSIS

FED. R. CIV. P. 72 provides, *inter alia,* a mechanism by which a party may object to an order entered by a magistrate judge to whom certain issues are referred for hearing and determination. The plaintiffs' objection, which is brought pursuant to Rule 72(a), acknowledges that motions for leave to amend are non-dispositive in nature and subject to the "clearly erroneous or contrary to law" standard of review. 28 U.S.C. § 636(b)(1)(A); FED. R. CIV. P. 72(a); (Plaintiffs' *Objection* (Docket No. 125), p. 1); *e.g., Moody v. Callon Petroleum Operating Co.,* 37 F.Supp.2d 805, 807 (E.D.La.1999) (motion to amend complaint is a nondispositive matter and magistrate's order is subject to clearly erroneous/contrary to law standard of review); *see also Pagano v. Frank,* 983 F.2d 343, 346 (1st Cir.1993) (same). A District Court may not undertake a *de novo* review of the magistrate's disposition. *See, e.g., Merritt v. Int'l Brotherhood of Boilermakers,* 649 F.2d 1013, 1017 (5th Cir. Unit A 1981).

"Under the 'clearly erroneous' standard of review of Rule 72(a), the magistrate judge's findings should not be rejected merely because the court would have decided the matter differently." *Rubin v. Valicenti Advisory Svcs., Inc.,* 471 F.Supp.2d 329, 333 (W.D.N.Y.2007). Rather, "[t]he 'clearly erroneous' standard requires that the [district] court affirm the decision of the magistrate judge unless 'on the entire evidence [the court] is left with a definite and firm conviction that a mistake has been committed.' " *Moody,* 37 F.Supp.2d at 807 (quoting *United States v. United States Gypsum Co.,* 333 U.S. 364, 68 S.Ct. 525, 92 L.Ed. 746 (1948); *Seitel Geophysical, Inc. v. Greenhill Petroleum Corp.,* 1996 WL 11779 (E.D.La.1996)). Similarly, a magistrate judge's order

is "contrary to law" only if it fails to apply or misapplies relevant statutes, case law, or rules of procedure. *E.g .*, *DeFazio v. Wallis*, 459 F.Supp.2d 159 (E.D.N.Y.2006) (cited in FED. R. CIV. P. 72, "Notes of Decisions," n. 10).

A. Rule 16(b)

***2** A motion for leave to amend filed after the expiration of deadlines for seeking amendment established in a scheduling order potentially invokes the differing standards provided in Rule 15 and 16. However, the Fifth Circuit has "ma[d]e clear that Rule 16(b) governs amendment of pleadings after a scheduling order deadline has expired." *S & W Enter., LLC v. SouthTrust Bank of Alabama, NA*, 315 F.3d 533, 536 (5th Cir.2003); *see also Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 5th Cir.2003). Accordingly, the plaintiffs' "first hurdle" is a showing of "good cause"-"[o]nly upon the movant's demonstration of good cause to modify the scheduling order will the more liberal standard of Rule 15(a) apply to the district court's decision to grant or deny leave."FRCP 16(b); *S & W Enter.*, 315 F.3d at 536;*see also Deghand v. Wal-Mart Stores, Inc.*, 904 F.Supp. 1218, 1221 (D.Kan.1995).

The "good cause" standard requires the "party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing extension." *Southwestern Bell*, 346 F.3d at 546 (quoting 6A Charles Alan Wright, et al., Federal Practice and Procedure § 1522.1 (2d ed.1990)). In determining good cause, the Fifth Circuit "consider[s] four factors: (1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice." *Southwestern Bell*, 346 F.3d at 546. However, "the good cause showing unambiguously centers on [the mover's] diligence." *STMicroelectronics, Inc. v. Motorola, Inc.*, 307 F.Supp.2d 845, 851 (E.D.Tex.2004). *"[C]arelessness is not compatible with a finding of diligence and offers no reason for a grant of relief."* *Smith v. United Parcel Svc., Inc.*, 902 F.Supp. 719, 721 (S.D.W.Va.1995) (emphasis in original) (also holding that "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment."); *see also Dilmar Oil Co, Inc. v. Federated Mut. Ins. Co.*, 986 F.Supp. 959, 980 (D.S.C.1997) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir.1992) (same); *Metro Produce Distribs., Inc. v. City of Minneapolis*, 473 F.Supp.2d 955, 964 (D.Minn.2007) (same). Ultimately, the Court has "broad discretion to preserve the integrity and purpose of the pretrial [scheduling] order." *Southwestern Bell*, 346 F.3d at 547.

The defendant argues, and the Court agrees, that the first factor weighs heavily against "good cause." Plaintiffs explained that their "interest in refining their complaint" was triggered by the "Court's first look at and pronouncement upon" the originally asserted claims; however, even though "the need to amend was made apparent by Judge Feldman's [April 25, 2007] ruling [, t]he third amendment came about when [plaintiffs'] counsel ... stumbled upon" a previously unasserted federal statute. (Plaintiffs' *Reply to Opposition Memorandum to Motion to Amend Complaint* (Docket No. 122), p. 6). This Court has specifically considered-and explicitly rejected-"explanations" similar to that proffered by the plaintiffs herein. *Curol v. Energy Resource Technology, Inc.*, No. 03-3126 (E.D.La. Nov. 16, 2004), *at* 2004 WL 2609963. As in *Curol,* plaintiffs have made no showing that, prior to the expiration of the deadline, they were (1) diligent in the identification and assertion of all potential theories of liability and, (2) that despite such diligence, the amendment deadline could not reasonably have been met. *Curol*, 2004 WL 2609963 at *4;*see Southwestern Bell*, 346 F.3d at 546. Instead, even though "the need to amend was made apparent by Judge Feldman's [April 25, 2007] ruling," the plaintiffs inexplicably delayed for months before "stumbling" upon a new theory; this lack of diligence simply does not establish the requisite "good cause," and "a party's failure to timely move for leave to amend due to inadvertence 'is tantamount to no explanation at all." *Curol*, 2004 WL 2609963 at *4 (quoting *S & W Enter.*, 315 F.3d at 536).

***3** The remaining factors also weigh against a finding of "good cause" to permit the belated amendment. As Magistrate Chasez explained, the futile federal claims simply would add redundant claims under federal law based on the same underlying facts as the previously-asserted state claims and, therefore, the proposed amendment is not important. Moreover, Livingston would be prejudiced by having to file another motion to dismiss a third amended complaint and the additional discovery that might be necessary as a result of

the additional claim. *See S & W Enter.*, 315 F.3d at 536-37; (*Order* (Docket No. 124), p. 3). The fourth factor, the availability of a continuance to cure such a prejudice, is not at issue now, as this case has been continued.

Significantly, the plaintiffs do not identify any purported error in the Magistrate's analysis of the "good cause" considerations and they do not offer any substantive rebuttal thereof; instead, they argue that the Magistrate was clearly erroneous *in her consideration of*Rule 16 simply because they "assumed that the scheduling order was dead."(*Objection* (Docket No. 125-3), p. 2). The Court is under no obligation to respond to informal, *ex parte* requests for clarification of a *Scheduling Order* that has not been withdrawn or superseded (and, thus, remains in effect), and the absence of a response does not constitute a repudiation of the order.

Ultimately, "[i]n view of district judges' 'power to control their dockets by refusing to give ineffective litigants a second chance to develop their case,' " the Magistrate's analysis of the good cause factors set forth in the Magistrate's *Order* is not "clearly erroneous or contrary to law," and leave to amend was properly denied. *Id.* at 537 (quoting *Reliance Ins. Co. v. La. Land & Exploration Co.*, 110 F.3d 253, 258 (5th Cir.1997); *see Rushing v. Kansas City Southern Ry. Co.*, 185 F.3d 496, 508 (5th Cir.1999) ("[A] party who ignores any case-management deadline does so at his own peril."); *Bradford v. Dana Corp.*, 249 F.3d 807, 809 (8th Cir.2001) ("As a vehicle designed to streamline the flow of litigation through our crowded dockets, we do not take case management orders lightly, and will enforce them."). The significant deference accorded to the Magistrate in determining nondispositive matters should be respected.

B. Rule 15(a)

Even if plaintiffs managed to clear the first hurdle (Rule 16(b)) and the Court proceeded to a Rule 15(a) analysis, the application of that standard supports denial of leave to file the proposed Third Amended Complaint. Importantly, this Court is not limited to consideration of the grounds discussed by the Magistrate; rather, it may affirm the underlying decision on any ground sustainable in the record. *Helvering v. Gowran*, 302 U.S. 238, 245, 58 S.Ct. 154, 158 (1937) ("In the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason."). Accordingly, as set forth in *Defendant's Opposition to Plaintiffs' Motion to File Third Supplemental and Amending Complaint* (Docket No. 117), an analysis under Rule 15(a) provides abundant grounds for denying the proposed amendment.

***4** Although "leave shall be freely given" under Rule 15(a), this "is not a mechanical absolute and the circumstances and terms upon which such leave is to be 'freely given' is committed to the informed, careful judgment and discretion of the Trial Judge as he superintends the development of a cause toward its ultimate disposition." *Freeman v. Continental Gin Co.*, 381 F.2d 459, 468 (5th Cir.1967).*See also Chitimacha Tribe of Louisiana v. Harry L. Laws Co., Inc.*, 690 F.2d 1157, 1163 (5th Cir.1982) ("leave to amend should not be given automatically."). Considerations aiding in this determination include "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also, e.g., Adrian v. Regents of the Univ. of California*, 363 F.3d 398 (5th Cir.2004). Other considerations might be relevant under the particular circumstances presented. *E.g., Dorn v. State Bank of Stella*, 767 F.2d 442, 443 (8th Cir.1985) ("different considerations apply to motions [to amend] after dismissal").

> All of this leads us to the difficult task of "assur(ing) a party a fair opportunity to present his claims and defenses," while at the same time protecting a "busy district court (from being) imposed upon by the presentation of theories seriatim.

Gregory v. Mitchell, 634 F.2d 199, 203 (5th Cir.1981)."Pleadings review is not a game where the plaintiff is permitted to file serial amendments until he finally gets it right." *Adrian*, 363 F.3d at 404. Taking all of these factors into consideration, the Court upholds the decision of the Magistrate.

The Court has reviewed the record and finds that Magistrate Chasez's ruling was not clearly erroneous or contrary to law and, as such, plaintiffs' Objection to Magistrate's Order Denying Leave to File Third

Amended Complaint is **DENIED.**

Accordingly,

IT IS ORDERED that Defendant's Motion to Review the Magistrate's Order of November 19, 2007 is hereby **DENIED.**

E.D.La.,2008.
Ordemann v. Unidentified Party
Slip Copy, 2008 WL 695253 (E.D.La.)

END OF DOCUMENT