

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

JAMES WESTERFIELD

CIVIL ACTION

VERSUS

**BRAND SERVICES, INC.,
ABC INSURER**

NO. 08-174-C

RULING ON MOTION TO ALTER OR AMEND JUDGMENT

This matter is before the court on a Motion to Alter or Amend Judgment (Doc. No.15) filed by plaintiff, James Westerfield. Defendants, Brand Services, Inc. and ABC Insurer, have not filed opposition. Jurisdiction is allegedly based on 28 U.S.C. § 1332, diversity. There is no need for oral argument.

This matter involves plaintiff, James Westerfield, suing his employer, Brand Energy Solutions, LLC ("Brand") as a result of injuries suffered when plaintiff fell while at work.¹ Plaintiff claims that defendant owe a duty to indemnify him for damages that resulted from the intentional acts of Brand's employees. On January 21, 2009, Brand filed a motion for summary judgment, alleging that plaintiff's exclusive remedy was provided by Louisiana Workers' Compensation Act and plaintiff's intentional tort claims are barred. Plaintiff failed to file opposition. After finding merit in the motion, the Court issued a ruling, granting the motion. On April 20, 2009, plaintiff filed this motion to alter or amend judgment, asserting that after additional review, the court will find genuine issues of material fact in this case. Plaintiff seeks relief pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.


¹ The defendant was incorrectly named in the suit as "Brand Services, Inc."

Under Rule 59(e), the court may grant a motion to alter or amend only upon the movant's showing of: 1) an intervening change of controlling law; 2) the availability of new evidence; and/or 3) the need to correct a clear and manifest error of fact or law.² The purpose of a motion pursuant to Rule 59 is to correct manifest errors of law or fact, or in some limited circumstances to allow the party to present newly discovered evidence.³

Plaintiff's motion does not satisfy any of the requirements for obtaining relief under Rule 59(e). After reviewing plaintiff's opposition to the motion for summary judgment, the court does not find any clear error of fact or law which would preclude summary judgment. Accordingly,

IT IS ORDERED that plaintiff's Motion to Alter or Amend Judgment (Doc. No. 15) is **DENIED**.

Baton Rouge, Louisiana, this 25th day of June, 2010.


**RALPH E. TYSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

² See **Washington v. CSC Credit Services, Inc.**, 180 F.R.D. 309, 311 (E.D. La. 1998), rev'd and vacated on other grounds, 199 F.3d 263 (5th Cir. 2000)

³ See **Simon v. United States**, 891 F.2d 1154, 1159 (5th Cir. 1990)(citations omitted).