

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MICHAEL N. MANUEL

CIVIL ACTION

VERSUS

NO. 14-599-SDD-RLB

**TURNER INDUSTRIES
GROUP, LLC AND THE
PRUDENTIAL INSURANCE
COMPANY OF AMERICA**

ORDER

Before the court is Plaintiff's Motion for Leave to File Amended Complaint (R. Doc. 40) filed an Opposition on July 13, 2015. Defendant The Prudential Insurance Company of America ("Prudential") filed an Opposition (R. Doc. 44) on July 27, 2015.

In its Opposition, Prudential argues that to the extent Plaintiff seeks to add claims pursuant to Section 502(a)(3) of the Employee Retirement Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(3); Section 510 of ERISA, 29 U.S.C. § 1140; and state law, those amendments are futile and should not be allowed. (R. Doc. 44).

After the period for amending as a matter of course elapses, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires. *Id.*; see *Martin's Herend Imports, Inc. v. Diamond & Gem Trading U.S.A. Co.*, 195 F.3d 765, 770 (5th Cir. 1999) (Rule 15 "evinces a bias in favor of granting leave to amend."). The court may consider several factors when determining whether to grant leave to amend, including "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, [and] futility of amendment.” See *Rhodes v. Amarillo Hosp. Dist.*, 654 F.2d 1148, 1153 (5th Cir. 1981) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Plaintiff does not address whether the amendments sought are futile in support of his Motion for Leave to File Amended Complaint. (R. Doc. 40).

Accordingly,

IT IS ORDERED that Plaintiff shall file a Reply addressing the futility arguments raised in Prudential’s Opposition no later than **August 17, 2015**.

Signed in Baton Rouge, Louisiana, on August 4, 2015.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE