

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

APPLIED UNDERWRITERS, INC., a Nebraska
Corporation;

Plaintiff,

vs.

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC., a Delaware Corporation;

Defendant.

8:17CV401

ORDER

This matter is before the Court on Plaintiff's Motion for Leave to File an Amended Complaint. ([Filing No. 25.](#)) The motion will be granted.

DISCUSSION

On May 4, 2018, Chief United States District Court Judge John Gerrard entered a Memorandum and Order granting Defendant's Motion for Partial Dismissal. ([Filing No. 14.](#)) Judge Gerrard dismissed Plaintiff's claims for breach of fiduciary duty; breach of the covenant of good faith and fair dealing; and unjust enrichment. Plaintiff was given until May 18, 2018 to file an amended complaint to replead its tortious interference claim.

On May 23, 2018, Plaintiff filed an interlocutory appeal with the Eighth Circuit Court of Appeals from the May 4, 2018 Memorandum and Order. On October 9, 2018, the Eighth Circuit dismissed the appeal for lack of jurisdiction.

The parties submitted a report on December 13, 2018, advising the Court as to the status of this action. ([Filing No. 23.](#)) Upon review of the parties' report, the Court ordered that Plaintiff file a motion to amend its complaint by December 21, 2018. ([Filing No. 24.](#)) Plaintiff filed the instant motion on December 20, 2018. Defendant opposes the motion.

DISCUSSION

Under Federal Rule of Civil Procedure 15, the Court should “freely give leave” to amend a pleading “when justice so requires.” [Fed. R. Civ. P. 15](#). Nevertheless, a party does not have an absolute right to amend and “denial of leave to amend may be justified by undue delay, bad faith on the part of the moving party, futility of the amendment or unfair prejudice to the opposing party.” [Amrine v. Brooks, 522 F.3d 823, 833 \(8th Cir. 2008\)](#) (quotation omitted). Also, “[i]f a party files for leave to amend outside of the court’s scheduling order, the party must show cause to modify the schedule.” [Popoalii v. Corr. Med. Servs., 512 F.3d 488, 497 \(8th Cir. 2008\)](#). Whether to grant a motion for leave to amend is within the sound discretion of the district court. *Id.*

In opposition to Plaintiff’s motion, Defendant argues that Plaintiff abandoned its option to amend its Complaint by filing an appeal with the Eighth Circuit. The Court is unpersuaded by Defendant’s argument. The Court will not penalize Plaintiff for choosing to file an appeal, rather than file an amended complaint. Plaintiff’s decision to appeal does not show that Plaintiff acted in bad faith or tried to delay these proceedings.

Moreover, this litigation is still in its initial stages. Defendant has not filed an Answer to Plaintiff’s Complaint. The Court has not issued a scheduling order. The parties have not submitted a Rule 26(f) Report, nor, to the Court’s knowledge, have they undertaken any discovery. Defendant will not be prejudiced through amendment.

Accordingly,

IT IS ORDERED that Plaintiff’s Motion for Leave to File an Amended Complaint ([Filing No. 25](#)) is granted. Plaintiff shall file its amended complaint by February 5, 2019.

Dated this 1st day of February, 2019.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge