

Since the decision regarding whether to allow joinder of this additional party will determine whether the Court will continue to maintain jurisdiction, “the addition of a nondiverse party must not be permitted without consideration of the original defendant’s interest in the choice of forum.” *Hensgens v. Deer & Co.*, 833 F.2d 1179, 1182 (5th Cir. 1987) “The district court, when faced with an amended pleading naming a new nondiverse defendant in a removed case, should scrutinize that amendment more closely than an ordinary amendment.” Ordinarily, Federal Rule of Civil Procedure Rule 15(a) provides that leave to amend “should be freely given when justice so requires.” “In this situation, justice requires that the district court consider a number of factors to balance the defendant’s interests in maintaining the federal forum with the competing interests of not having parallel lawsuits.” *Hensgens*, 833 F.2d at 1182. Several things the Court should consider 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.” *Id.*

In this case the Plaintiffs filed their original Petition in state court on February 24, 2009. The case was later removed by Defendant State Farm in August, 2009. On September 21, 2009, the Plaintiffs filed a Motion to Remand in this case. On November 10, 2009, this Court entered an Opinion and Order denying Plaintiffs’ Motion to Remand. This Court held that despite Plaintiffs’ attempt to conceal the actual amount in controversy from the Defendant and this Court, statements made by the Plaintiffs confirmed that jurisdiction was proper in federal court. Then on November 16, 2009, Plaintiffs filed the current Motion to Amend seeking to add a nondiverse party. Not only does the delayed timing of the amendment suggest that the purpose of the amendment is solely to defeat diversity jurisdiction, but in depositions, the Plaintiffs have already stated they do not have any claims against the agent which they now seek to assert a claim against. In a deposition taken prior to the Defendant’s removal to federal court the Plaintiff, Celia Boehmer testified:

Q. Okay. Do you have any complaints against your State Farm agent that are part of this lawsuit?

- A. I don't know my agent. Never met him until the day he walked in and handed me a check saying he was sorry about the fire.
- Q. So is that a no?
- A. That would be a no.
- [Doc No. 20-5]

Plaintiffs' attempt to join the insurance agent now as a party adding negligence claims against him after stating that she not only didn't know him, but had no claims against him can only be construed as an attempt to join him solely as an effort to destroy the Court's subject matter jurisdiction; therefore, this Court finds Plaintiffs' Motion to Amend is improper and is **DENIED**.

CONCLUSION

For the reasons stated herein Plaintiffs' Motion is **DENIED**. The Court retains jurisdiction over this case.

IT IS SO ORDERED this 12th day of April, 2010.


James H. Payne
United States District Judge
Eastern District of Oklahoma