

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

BARBARA A. RAYBURN, Individually	)	
and as Next of Kin of Kenneth W. Rayburn	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.: 10-1002-JDB-egb
	)	
MARS PETCARE US, INC., et al.,	)	
	)	
Defendants.	)	

**ORDER GRANTING PLAINTIFF’S MOTION TO AMEND COMPLAINT**

Before the Court on referral for determination is Plaintiff’s Motion to Amend Complaint [D.E. 20]. For the reasons set forth below, the Magistrate Judge GRANTS the motion.

Plaintiff Barbara A. Rayburn, individually and as next of kin of Kenneth W. Rayburn, deceased (“Plaintiff”), filed a Complaint against Defendants in the Circuit Court of Weakley County, Tennessee on November 19, 2009, seeking damages from the wrongful death of her husband while at work at defendant Mars Petcare US Inc. (“Mars”). Also named as defendants are American Hoist & Manlift, Inc. (“American”), Harris Companies d/b/a Harris International Elevator, Inc. (“Harris”) and Lewis-Goetz and Company, Inc. (“Lewis”).

Pursuant to 28 U.S.C. §§ 1441(a), (b) and 1446, Mars filed a notice of removal on January 6, 2010 [D.E. 1]. Defendants Harris [D.E. 1-3B] and Lewis [D.E. 1-3C] consented to the removal. Defendant American was the last defendant to be served with process on March 16, 2010 [D.E. 16] and filed its answer on April 6, 2010 [D.E. 22]. Plaintiff’s original motion to amend [D.E. 17] was misfiled on March 29, 2010, and following a deficiency notice [D.E. 19], Plaintiff filed the motion to amend her Complaint which is before this Court [D.E. 20]. It appears that the Plaintiff is seeking leave from this Court to amend her Complaint pursuant to

Fed. R. Civ. P. 15(a)(2).

Fed. R. Civ. P. 15(a)(2) addresses the issue of amending pleadings after a party has amended a pleading once as of course or the time for amendments of that type has expired. The Rule permits a party to amend his or her pleading only with the opposing party's written consent or the court's leave. By stating, "the court should freely give leave when justice so requires," subdivision (a)(2) encourages the court to look favorably on requests to amend. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); *Hayden v. Ford Motor Co.*, 497 F.2d 1292, 1293–94 (6th Cir. 1974). Rule 15 reinforces the principle that cases "should be tried on their merits rather than the technicalities of pleadings." *Tefft v. Seward*, 689 F.2d 637, 639 (6th Cir. 1982); *see also Foman*, 371 at 182 ("If the underlying facts or circumstances relied upon by the plaintiff may be a subject of relief, he ought to be afforded an opportunity to test his claim on the merits."). The Sixth Circuit has cautioned, however, that the right to amend is not absolute or automatic. *Tucker v. Middleburg-Legacy Place, LLC*, 539 F.3d 545, 551 (6th Cir. 2008). District courts should consider a number of factors when determining whether to grant a motion to amend under Rule 15(a)(2) including, "[u]ndue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment." *Foman*, 371 at 182; *Pedreira v. Ky. Baptist Homes for Children, Inc.*, 597 F.3d 722, 729 (6th Cir. 2009).

Here, Defendant Mars opposes Plaintiff's Motion to amend, contending that the amendments Plaintiff seeks would prove futile based on the exclusivity of remedy provision provided under the Tennessee Workers' Compensation Act [D.E. 23]. The Court, however, finds Defendant's argument unpersuasive. The Amended Complaint contains allegations of

intentional action on the part of Defendant, seeking to fall within the exception to the exclusive remedy provision of the Tennessee Workers' Compensation Act. Defendant's argument that Plaintiff's claims are not cognizable under Tennessee law will be addressed when the Court rules on Defendant's Motion to Dismiss. As for this Motion seeking to amend the Complaint, justice requires leave to be given. There has been no undue delay in filing the Motion and the Court can find no bad faith on the part of the Plaintiff. The amendment seeks to bolster and clarify Plaintiff's allegations. Further, extensive discovery has not taken place, and the Magistrate Judge does not believe the amendment will prejudice Defendants. For these reasons, the Court GRANTS Plaintiff's Motion to Amend.

IT IS SO ORDERED.

**s/Edward G. Bryant**  
EDWARD G. BRYANT  
UNITED STATES MAGISTRATE JUDGE

Date: **June 11, 2010**

**ANY OBJECTIONS OR EXCEPTIONS TO THIS ORDER MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE ORDER. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.**