UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Diocese of St. Cloud, et al.,

Plaintiffs,

Court File No. 17-cv-2002 (JRT/LIB)

v.

ORDER

Arrowood Indemnity Company, et al.,

Defendants.

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636, and upon Plaintiffs' Motion to Amend Their Complaint and Modify the Pretrial Scheduling Order. [Docket No. 170]. The Court held a motions hearing on August 20, 2018, and took Plaintiffs' Motion under advisement as of that date. (Minutes [Docket No. 183]).

For the reasons discussed herein, Plaintiffs' Motion to Amend Their Complaint and Modify the Pretrial Scheduling Order, [Docket No. 170], is **DENIED**.

I. Background

This is an insurance coverage action, originally brought in Minnesota State District Court in May 2017, and removed to this Court the following month. (Notice of Removal [Docket No. 1]; Complaint, [Docket No. 1-1], at 4–5, 22). The Complaint alleges that Plaintiffs the Diocese of St. Cloud and 30 individual parishes (hereinafter referred to collectively as "Original Plaintiffs") have each "been named in one or more lawsuits alleging [as related to sexual abuse claims], in whole or in part, public nuisance, private nuisance, negligence, negligent supervision, and negligent retention[.]" (Compl., [Docket No. 1-1], at 6). The Original Plaintiffs initially brought this case against their own alleged insurers—Arrowood Indemnity Company ("Arrowood"),

Church Mutual Insurance Company ("Church Mutual"), St. Paul Fire and Marine Insurance Company ("St. Paul"), and Hartford Accident and Indemnity Company ("Hartford")—and against another Catholic religious organization, The Order of St. Benedict, doing business as St. John's Abbey ("the Abbey"), and its alleged insurers, The Continental Insurance Company ("Continental") and Travelers Indemnity Company ("Travelers").

After removal, the Defendants either filed Motions to Dismiss, served Answers, or both. (Notice of Removal [Docket No. 1]; Continental Motion to Dismiss [Docket No. 32]; Church Mutual Answer and Counterclaim [Docket No. 35]; The Abbey Motion to Dismiss [Docket No. 43]; Travelers' Motion to Join Continental's Motion to Dismiss [Docket No. 52]; Arrowood's Answer to Counts One through Four of the Complaint [Docket No. 60]; Arrowood's Motion to Partially Dismiss [Docket No. 61]).

The Honorable John R. Tunheim, Chief District Court Judge for the District of Minnesota, held a hearing on the pending Motions to Dismiss (other than Arrowood's Motion for Partial Dismissal, which was considered on the parties' written submissions only, see, [Docket No. 108]), and on the Original Plaintiffs' pending Motion to Remand, [Docket No. 73], on November 7, 2017. (Minute Entry [Docket No. 104]).

On January 4, 2018, Chief Judge Tunheim issued his Memorandum Opinion and Order granting Continental's Motion to Dismiss, granting The Abbey's Motion to Dismiss, granting Travelers' Motion to join Continental's Motion to Dismiss, and denying the Original Plaintiffs' Motion to Remand. (Order [Docket No. 105]). He dismissed the claims against the Abbey and its insurers, Continental and Travelers. (Order, [Docket No. 105], at 4). Because dismissal of those parties resulted in complete diversity between the remaining parties, Chief Judge Tunheim also

denied the Original Plaintiff's Motion to Remand to State Court. (Id.). Chief Judge Tunheim did not rule on Arrowood's Motion for Partial Dismissal in the January 4, 2018, Order.

On March 6, 2018, Chief Judge Tunheim issued his Memorandum Opinion and Order regarding Arrowood's Motion for Partial Dismissal. [Docket No. 120]. Of the seven causes of action brought against Arrowood, Chief Judge Tunheim dismissed four: a promissory estoppel claim, a bad faith/breach of fiduciary duty claim; a fraudulent misrepresentation claim, and a tortious interference with contractual relations claim. (Id. at 3, 5–7). Chief Judge Tunheim found that the Original Plaintiffs had failed to allege facts sufficient to state a claim upon which relief could be granted with respect to those claims, so they were dismissed without prejudice pursuant to Rule 12(b)(6). (Id. at 9–20). The three claims against Arrowood that survived were a claim for breach of contract by Arrowood and two claims for declaratory relief regarding Arrowood's right and duty "to provide a defense and investigation and pay for defense and investigations with respect to [the state claims of sexual abuse] against the Plaintiffs" and Arrowood's indemnification obligations with respect to "all sums that the Plaintiffs have paid or will be obligated to pay in payment of settlements or judgments arising from past, present and future Claims." (Id. at 3, 5).

On May 10, 2018, pursuant to a stipulation by the relevant parties, the claims and counterclaims involving Church Mutual were dismissed. (Order [Docket No. 166]). Accordingly, on that date, Church Mutual was terminated as a Defendant on this Court's docket.

The Pretrial Scheduling Order in the present case was issued on May 11, 2018. (Scheduling Order [Docket No. 167]). That scheduling order set the deadline for hearing motions to amend the pleadings or add parties as August 1, 2018. (Id. at 3).

Nevertheless, on August 1, 2018, the Original Plaintiffs filed the present Motion to Amend the Complaint and Modify the Pretrial Scheduling Order, [Docket No. 170], now before the Court. Although the Original Plaintiffs only filed a single Motion, their Motion contains both a request to modify the current Pretrial Scheduling Order and a request for leave to amend the Complaint in the present case. (See, Plfs.' Mot. [Docket No. 170]).

On August 24, 2018, the parties filed a Stipulation, [Docket No. 186], asking the Court to dismiss the following Original Plaintiffs: Church of Saint Anthony of Padua, St. Cloud; Church of Saint Anne, Kimball; Church of Saint Boniface, Cold Spring; Church of Seven Dolors, Albany; Church of Saint Mary of the Presentation, Breckenridge; Church of the Holy Cross, Onamia; Church of Saint Gall, Tintah; Church of the Immaculate Conception, Osakis; Church of Saint Peter, Dumont; Church of Ave Maria, Wheaton; Church of the Holy Spirit, St. Cloud; Church of Saint Hedwig, f/k/a Church of All Saints, Holdingford; Church of Saint Paul, Sauk Centre; Church of Saint Joseph, Clarissa; Church of Saint Stanislaus, Sobieski; Church of Saint Peter, St. Cloud; and Church of Saint Edward, Bowlus. On September 19, 2018, Judge Tunheim entered an Order, [Docket No. 191], approving the parties' Stipulation and dismissing the seventeen listed Plaintiffs. That dismissal left only fourteen (14) Original Plaintiffs remaining in the present action.[1]

II. Request to Modify the Pretrial Scheduling Order

As observed above, Plaintiffs' present Motion seeks an Order of this Court amending the present Pretrial Scheduling Order to allow the portion of Plaintiffs' Motion requesting to amend

[1] The remaining Plaintiffs are the Diocese of St. Cloud; the Church of Saint Joseph, St. Joseph; the Church of the Sacred Heart of Jesus, Dent; the Church of Our Lady of Victory, Fergus Falls; the Church of Saint James Randall; the Church of St. Mary's Cathedral, of St. Cloud, St. Cloud f/k/a Church of Immaculate Conception, St. Cloud; the Church of Saint Louis Bertand, Foreston; the Church of the Assumption, Eden Valley; the Church of Saint Olaf, Elbow Lake; the Church of the Holy Angels of St. Cloud, St. Cloud f/k/a Holy Angels Congregation of St. Cloud, St. Cloud; the Church of Immaculate Conception, New Munich; the Church of the Sacred Heart, Staples; the Church of Saint Andrew, Elk River; and the Church of Saint Paul, St. Cloud (hereinafter referred to collectively as "Plaintiffs").

their Complaint to be considered timely so that it may be heard. (See, Plfs.' Mot. [Docket No. 170]). Prior to Plaintiffs filing their present Motion, the Pretrial Scheduling Order in the present case plainly required motions to amend pleadings to be "filed and the Hearing thereon completed on or before **August 1, 2018**." (Pretrial Scheduling Order, [Docket No. 167], at 3) (bolding in original) (underlining added). It is undisputed that Plaintiffs did not even file their present Motion until August 1, 2018; obviously this did not comply with the Pretrial Scheduling Order. Therefore, Plaintiffs' Motion is untimely.

Acknowledging this untimeliness, Plaintiffs' present Motion includes a request to extend the deadline after which their motion to amend their Complaint may be heard by this Court. Plaintiffs assert that their request to extend the deadline by which their motion to amend may be heard by this Court should be granted because Defendants have not yet produced any discovery in the present case, because finding the information upon which Plaintiffs now base their proposed amendments took "significant time," and because the amendment will not affect the other deadlines in the Pretrial Scheduling Order. (Plfs.' Mem., [Docket No. 172], at 8).

Rule 16(b) governs the Court's modification of pretrial scheduling orders and provides that "[e]xcept in categories of actions exempted by local rule, the" designated judge "must issue a scheduling order" which "must limit the time to join other parties, amend the pleadings, complete discovery, and file motions." Fed. R. Civ. P. 16(b). The Rule further provides that the "schedule may be modified only for good cause and with the judge's consent." Id. Because Plaintiffs' Motion is undeniably untimely, Rule 16(b)'s good-cause standard accordingly applies. See, Sherman, 532 F.3d at 716. "[W]hen a motion to amend is filed after the expiration of the applicable deadline in the Court's Scheduling Order, Rule 15(a)'s permissive test no longer

applies, and instead the tougher 'good cause' standard applies under Rule 16(b)(4)." Target Corp. v. LCH Pavement Consultants, LLC, 960 F. Supp. 2d 999, 1004 (D. Minn. 2013).

The Eighth Circuit Court of Appeals has clearly stated that "[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. Correctional Medical Services, 512 F.3d 488, 497 (8th Cir. 2008) (emphasis added). "When a party seeks to amend a pleading after the scheduling deadline for doing so, the application of Rule 16(b)'s good-cause standard is not optional." Sherman v. Winco Fireworks, Inc., 532 F.3d 709, 716 (8th Cir. 2008) (emphasis added).

"The primary measure of good cause is the movant's diligence in attempting to meet the order's requirements." Id. (quoting Rahn v. Hawkins, 464 F.3d 813, 822 (8th Cir. 2006)); see also, Fed. R. Civ. P. 16(b), advisory committee note (1983 Amendment) ("[T]he court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension."). "While the prejudice to the nonmovant resulting from modification of the scheduling order may also be a relevant factor, generally, [a court] will not consider prejudice if the movant has not been diligent in meeting the scheduling order's deadlines." Sherman, 532 F.3d at 717. "The Eighth Circuit Court of Appeal's "cases reviewing Rule 16(b) rulings focus in the first instance (and usually solely) on the diligence of the party who sought modification of the order." Id.

"The 'good cause' standard requires a demonstration that the existing schedule cannot reasonable be met despite the diligence of the party seeking the extension." Burris v. Versa Products, Inc., No. 7-cv-3938 (JRT/JJK), 2009 WL 3164783, at *4 (D. Minn. Sept. 29, 2009). Courts have continually noted that "[w]hen the moving party should reasonably have discovered the claim or defense it seeks to add is highly relevant to assessing diligence." Harris v. Chipotle

Mexican Grill, Inc., No. 13-cv-1719 (SRN/SER), 2016 WL 5952734, at *3 (D. Minn. Oct. 13, 2016) (citing Sherman, 532 F.3d at 715).

Thus, before they may even possible be granted leave to amend their Complaint, Plaintiffs must demonstrate good cause to modify the current Pretrial Scheduling Order to allow their untimely motion. Determining whether or not good cause through due diligence has been shown falls within the Court's broad discretion. See, Portz v. St. Cloud State Univ., No. 16-cv-1115 (JRT/LIB), 2017 WL 3332220, at *3 (D. Minn. Aug. 4, 2017).

Plaintiffs assert that good cause exists because Defendants have not yet produced any discovery in the present case, because finding the information upon which Plaintiffs base their motion to amend their pleading took "significant time," and because the scheduling amendment will not affect the other deadlines in the Pretrial Scheduling Order. (Plfs.' Mem., [Docket No. 172], at 8). The Court finds that these proffered assertions fail to establish either the requisite good cause to amend the Pretrial Scheduling Order or to demonstrate the requisite due diligence on behalf of the Plaintiffs in even attempting to meet the August 1, 2018, hearing deadline.

First, the Court notes that the amount of discovery as yet produced by Defendants has little, if any, effect on the due diligence which must be demonstrated on the part of the Plaintiffs because they fail to assert that any of the proposed amendments contained in their present Motion are necessarily based on any information which they received from Defendants. Plaintiffs fail to specifically articulate how the amount of discovery received from Defendants has any bearing on Plaintiffs demonstration that they diligently attempted to meet the August 1, 2018, motions to amend hearing deadline.

Likewise, the Court notes that the effect of extending the deadline by which motions to amend must be heard has on other deadlines in the Pretrial Scheduling Order has little, if any,

effect on the due diligence which must be demonstrated on the part of the Plaintiffs. This is more akin to arguing the lack of prejudice Defendants will suffer if the Pretrial Scheduling Order is amended. However, as the Court has previously noted "generally, [a court] will not consider prejudice if the movant has not been diligent in meeting the scheduling order's deadlines." Sherman, 532 F.3d at 717. "The Eighth Circuit Court of Appeal's "cases reviewing Rule 16(b) rulings focus in the first instance (and usually solely) on the diligence of the party who sought modification of the order." Id.

Accordingly, the Court's due diligence focus is more squarely on when Plaintiffs "should reasonably have discovered the" information supporting the proposed amendments to their pleadings. Harris, 2016 WL 5952734, at *3. Plaintiffs must demonstrate that the existing schedule deadline for motions to amend pleadings could not have reasonable been met despite their own due diligence. See, Burris, 2009 WL 3164783, at *4.

The sole assertion Plaintiffs make that is in any way relevant to this diligence requirement and inquiry is that finding the information upon which they now base their proposed amendments took "significant time." Specifically, Plaintiffs assert that one of its attorneys of record, John Gunderson, has "over the past two years" been "assisting insurance coverage counsel and Dioceses and parish clients with searching for insurance records involving claims under the Child Victim Act." (Gunderson Decl., [Docket No. 174], at ¶ 3). More recently, "on or about April 10, 2018," Mr. Gunderson and other members of his office "began [their] search of records for the Diocese." (Id. at ¶ 5). Plaintiffs' counsel asserts that due to the high number of Plaintiff parishes combined with the methods in which the parishes maintain their records, the search has taken a considerable amount of time, and as of the August 1, 2018, date the present Motion was filed, the search was in fact still ongoing. (Id. at ¶¶ 3–12). Plaintiffs' counsel merely

asserts that he "maintained a log of each parish visited, the date of the visit, and a brief description of the areas searched"; however, that log was not provided to the Court in support of the present Motion. (Id. at ¶ 12).

The Court finds that Plaintiffs' assertions fail to demonstrate their requisite due diligence. All of the information now related to the proposed amendment of their pleading has always been in their possession. Plaintiffs could and should likely have more diligently searched for the required information before they brought suit. None of the information upon which Plaintiffs now rely was in the possession of Defendants, and therefore, Plaintiffs were in the sole control of when that information would have been searched for.

Plaintiffs assert that they have been searching since the present case was removed to this Court, however, that search appears to have been conducted solely by parish staff as opposed to counsel. Counsel does not appear to have begun searching for the required documents until "on or about April 10, 2018." (See, Id. at ¶ 5). It was Plaintiffs, and Plaintiffs alone, who made the decision as to how and when to search in this manner. With a search of such potential magnitude and importance to Plaintiffs' putative claims, such conduct cannot be described as diligently attempting to meet the August 1, 2018, deadline.

Further illustrating this lack of diligence is the fact that Plaintiffs' current proposed amendments to their pleadings seek to add information related to the claims dismissed by Chief Judge Tunheim when he granted Defendant Arrowood's Partial Motion to Dismiss. Plaintiffs have been on notice of the deficiencies asserted by Defendant Arrowood since at least June 6, 2017. Nevertheless, Plaintiffs chose to not even begin to expand their search for the additional records by enlisting the direct review of their files by one of their counsel until ten months later. (See, Id. at ¶ 5) (providing that Plaintiffs' counsel and his office began their search "on or about

April 10, 2018"). Instead, as discussed above, prior to the suit and facing a partial motion to dismiss, Plaintiffs chose to rely on the search efforts of parish staff to locate the requisite records. Even after Chief Judge Tunheim's March 6, 2018, Order granting Defendant Arrowood's Partial Motion to Dismiss confirmed for Plaintiffs that several of their claims asserted against Defendant Arrowood were unsupported by sufficient facts, Plaintiffs waited an additional month before their counsel also began searching Plaintiffs' files for records. Such conduct cannot be described as diligently attempting to meet the August 1, 2018, motions to amend heard by deadline.

Moreover, Plaintiffs fail to specifically inform the Court when they discovered the information upon which they now base their present proposed pleadings amendments, and they further fail to inform the Court why any information found nearer the beginning of the search by counsel in April 2018, could not have been used to raise in a more timely manner their motion to amend. Presumably, counsel did not find all of the information upon which it bases its current proposed amendments at the exact same time. Therefore, Plaintiffs could have timely raised at least some of the proposed amendments in a timely motion to amend, and at the very least, Plaintiffs could have timely raised a motion to modify the scheduling order since they knew their counsel's search was also ongoing.

For the reasons discussed above, the Court finds that Plaintiffs have failed to demonstrate the requisite good cause to amend the Pretrial Scheduling Order to allow them now to bring a late motion to amend their Complaint. See, Sherman, 532 F.3d at 716; Rahn, 464 F.3d at 822; Harris, 2016 WL 5952734, at *3; Burris, 2009 WL 3164783, at *4.

Accordingly, to the extent it seeks an Order of this Court amending the present Pretrial Scheduling Order, Plaintiffs' Motion to Amend Their Complaint and Modify the Pretrial Scheduling Order, [Docket No. 170], is **DENIED**.

III. Request to Amend the Complaint

As observed above, Plaintiff's present Motion also seeks an Order of this Court allowing them to file an amended complaint. (See, Plfs.' Mot. [Docket No. 170]). Specifically, Plaintiffs seek to amend their Complaint as follows: (1) to remove certain Plaintiffs from the case caption;[2] (2) to rejoin Church Mutual as a Defendant; (3) to join three additional insurance companies as new Defendants to two of the causes of action (First and Second Cause of Action in the Proposed Amended Complaint) which seek declaratory relief—Nationwide Affinity Insurance Company of America, as successor to Western Casualty & Surety Company ("Nationwide"); Employers Insurance Company of Wausau ("Employers"); and Western National Mutual Insurance Company, as successor to Mutual Creamery Insurance Company ("Western National"); (4) to join Arrowpoint Capital Corp. and Arrowpoint Group, Inc., as new Defendants to Plaintiff's existing claim of tortious interference with contractual relations; and (5) to revive the claims Chief Judge Tunheim previously dismissed in his March 6, 2018, Order—a promissory estoppel claim; a bad faith/breach of fiduciary duty claim; a fraudulent misrepresentation claim; and a tortious interference with contractual relations claim—by alleging additional facts in support thereof as they claim they were instructed by Chief Judge Tunheim. (Plfs.' Mem., [Docket No. 172], at 2–9, Proposed Redlined Amended Compl. [Docket No. 173-2]). [3]

[2] On August 24, 2018, the parties filed a Stipulation, [Docket No. 186], and on September 19, 2018, Chief Judge Tunheim issued an Order, [Docket No. 191], which dismissed the Plaintiffs which the present Motion seeks to remove from the case caption. Chief Judge Tunheim's Order specifically noted that "[t]he caption of all future pleadings shall be amended" to reflect the dismissal of the seventeen Plaintiffs who were dismissed. Therefore, to the extent Plaintiffs' Motion to Amend Their Complaint and Modify the Pretrial Scheduling Order, [Docket No. 170], seeks to remove these seventeen Plaintiffs, the Motion is moot.

[3] Plaintiffs assert that their Proposed Amended Complaint "contains more detailed allegations against Arrowood in accordance with Judge Tunheim's March 6, 2018 Order granting Arrowood's motion to dismiss without prejudice to amend [sic]." (Mem. in Supp., [Docket No. 172], at 3). However, those claims were dismissed without prejudice. Chief Judge Tunheim's Order did not instruct Plaintiffs to make any specific amendments as Plaintiff's memorandum implies. Moreover, the additional facts plead in Plaintiffs' Proposed Amended Complaint do not cure the deficiencies upon which the partial dismissal by Chief Judge Tunheim was based. However, because the Court has found Plaintiffs' Motion untimely the Court will not further discuss the continued deficiencies of the claims previously dismissed in Chief Judge Tunheim's March 6, 2018, Order.

As discussed above, however, Plaintiffs' Motion to Amend Their Complaint and Modify the Pretrial Scheduling Order, [Docket No. 170], is untimely pursuant to the Pretrial Scheduling Order in the present case. Accordingly, as also discussed above, Plaintiffs have failed to demonstrate the required good cause to modify the current Pretrial Scheduling Order to allow their untimely motion.

Therefore, to the extent it seeks an Order of this Court allowing them to file an amended complaint, Plaintiffs' Motion to Amend Their Complaint and Modify the Pretrial Scheduling Order, [Docket No. 170], is **DENIED as untimely**. See, Target Corp. v. LCH Pavement Consultants, LLC, 960 F. Supp. 2d 999, 1007–10 (D. Minn. 2013) (denying motion to amend where plaintiff failed to show good cause "to disturb the deadlines established by the Scheduling Order"); Ewald v. Royal Norwegian Embassy, No. 11-cv-2116 (SRN/SER), 2012 WL 12895051, at *2–5 (D. Minn. Nov. 21, 2012); Weber v. Travelers Homes & Marine Ins. Co., 804 F. Supp. 2d 819, 831 (D. Minn. 2011); Luigino's Inc. v. Pezrow Companies, 178 F.R.D. 523, 526 (D. Minn. 1998).

The Court notes that additional reasons support denying Plaintiffs' Motion to Amend Their Complaint. [Docket No. 170]. The Court briefly discusses those reasons below.

Plaintiffs proposed amendments also seek to rejoin Church Mutual as a Defendant, as well as, to join three new additional insurance companies[4] as defendants regarding Plaintiffs' First and Second Cause of Action in the Proposed Amended Complaint which seek declaratory relief. However, Plaintiffs have not demonstrated a proper basis for rejoining or joining these proposed defendants.

[4] The three new insurance companies are Nationwide Affinity Insurance Company of America, as successor to Western Casualty & Surety Company ("Nationwide"); Employers Insurance Company of Wausau ("Employers"); and Western National Mutual Insurance Company, as successor to Mutual Creamery Insurance Company ("Western National").

"In order to amend a complaint to add additional parties . . . [a movant] must demonstrate compliance with either Rule 19 or Rule 20, the procedural rules pertaining to joinder of parties." Ikeri v. Sallie Mae, Inc., No. 13-cv-1943 (DSD/JSM), 2014 WL 12599634, *8 (D. Minn. Feb. 5, 2014) (citations omitted). Whether to allow permissive joinder of additional parties is a decision within the discretion of the Court. See, United States ex rel. Ambrosecchia v. Paddock Laboratories, LLC, 855 F.3d 949, 956 (8th Cir. 2017) (citing Mosley v. Gen. Motors Corp., 497 F.2d 1330, 1332 (8th Cir. 1974) ("reviewing the decision to allow parties to join litigation for abuse of discretion")).

Federal Rule of Civil Procedure 19 governs mandatory joinder of parties, and states:

> **(a)** Persons Required to Be Joined if Feasible.
> **(1)** ***Required Party*****.** A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
> **(A)** in that person's absence, the court cannot afford complete relief among existing parties; or
> **(B)** that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
> **(i)** as a practical matter impair or impede the person's ability to protect the interest; or
> **(ii)** leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

The re-joinder of the Church Mutual, and joinder of Nationwide, Employers, and Western National is not a circumstance of mandatory joinder. (See, Fed. R. Civ. P. 19). Without the addition of these parties the Court may still afford complete relief to all of the current, remaining Original Plaintiffs on all of the current claims against all of the current remaining Defendants in the present case. Although the claims asserted against the new proposed defendants may involve similar issues of law, and similar interpretations of insurance policies, there is no assertion in the record now before the Court that the claims against each of the

proposed defendants arise out the same purported insurance policy. Likewise, there is no claim before the Court that any remaining Original Plaintiff cannot be afford complete relief on its current claims against the current Defendants without the addition of these proposed defendants.[5] Despite Plaintiffs' assertions to the contrary, simply because possible claims against the new proposed defendants are in some ways of a similar type and nature is not a persuasive reason necessitating all proposed defendants be parties who must be joined under Rule 19(a)(1).

Moreover, as Plaintiffs acknowledge, the addition of proposed defendant Western National would destroy complete diversity of citizenship in the present case, and thus deprive this Court of its subject matter jurisdiction over the present case. (Proposed Amended Compl. [Docket No. 174-2], at ¶¶ 15, 17). Rule 19(a)(1), however, provides that "[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if" other additional conditions are met. Fed. R. Civ. P. 19 (emphasis added). Proposed defendant Western National cannot meet the threshold required showing by Rule 19 because proposed defendant Western National would in fact, if joined in this case, deprive this Court of subject matter jurisdiction.

For all of these reasons, joinder is not required under Rule 19(a)(1).

Plaintiffs also argue that permissive joinder of the proposed defendants is proper. Permissive joinder of parties is governed by Rule 20(a), and it states:

> **(1)** ***Plaintiffs*****.** Persons may join in one action as plaintiffs if:
> **(A)** they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

[5] The Court notes that Plaintiffs' entire argument with respect to Rule 19 focuses on the factors identified in Rule 19(b). (Plfs.' Mem., [Docket No. 172], 4–7). However, the factors in Rule 19(b) are, by the plain language of Rule 19(b), to be considered only "[i]f a person who is required to be joined . . . cannot be joined." In the present case, the Court finds that the proposed defendants are not required parties, and therefore, the Court need not consider the factors identified in Rule 19(b).

> **(B)** any question of law or fact common to all plaintiffs will arise in the action.
>
> **(2)** ***Defendants.*** Persons . . . may be joined in one action as defendants if:
>
> **(A)** any right to relief is asserted against them jointly severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
>
> **(B)** any question of law or fact common to all defendants will arise in the action.

To decide whether to allow permissive joinder of parties, the Court assesses whether claims are reasonably related on a case by case basis. See, Karasov v. Caplan Law Firm, P.A., 84 F. Supp. 3d 886, 915 (D. Minn. 2015).

In support of Rule 20 joinder, Plaintiffs' argue permissive joinder is proper because "all of the claims against the insurers are logically related as they are for insurance coverage based on and for the underlying Claims." (Plfs.' Mem., [Docket No. 172], at 7). However, the proposed additional defendants fail to meet either of the requirements for permissive joinder: there is no right to relief asserted against them jointly with any of the existing Defendants, and since this insurance coverage action is based upon the language of the alleged various insurance contracts separately issued by each Defendant, the fact that the several, underlying claims all generally involve alleged sex abuse is not alone sufficient to merit permissively joining the proposed additional defendants. Again the Court notes that despite Plaintiffs' assertions to the contrary, simply because the several possible claims against the various proposed defendants are generally similar in nature does not mean that the several and separate claims against each Defendant arise out of facts common to all Plaintiffs, and therefore, mere similarity in the type and nature of the various claims is not a persuasive reason necessitating all parishes be parties who must be joined to the present actions.

Additionally, as Defendant Arrowood argues, Plaintiffs' rationale that the proposed additional defendants must be added because they are insurers who are involved in similar

insurance coverage disputes does not apply to Arrowpoint Capital Corporation or Arrowpoint Capital Group, as the Proposed Amended Complaint fails to allege that either Arrowpoint Capital Corporation or Arrowpoint Capital Group is an insurer or that they at any time issued any insurance policies to any Plaintiff named therein. (Arrowood Mem. in Opp., [Docket No. 180], at 5 n.4; Proposed Amended Compl. [Docket No. 173-1]).

Thus, joinder is also not warranted under Rule 20.

Finally, Plaintiffs request to amend their Complaint to add proposed defendants Arrowood Capital Corporation and Arrowpoint Capital Group could also be denied as a futile amendment. A party may successfully challenge a motion to amend pleadings on grounds of futility if the claims created by the amendment would not withstand a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted. See, Cornelia I. Crowell GST Trust v. Possis Medical, Inc., 519 F.3d 778, 782 (8th Cir. 2008); Humphreys v. Roche Biomedical Lab., Inc., 990 F.2d 1078, 1082 (8th Cir. 1993). A proposed amendment must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," but in contrast, "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556–67 (2007)). In the present case, Plaintiffs merely add the names of the proposed defendants Arrowood Capital Corporation and Arrowpoint Capital Group. (Proposed Amended Compl., [Docket No. 173-1], at 82–85). Plaintiffs fail to make any specific factual assertions regarding the alleged actional conduct or either Arrowood Capital Corporation or Arrowpoint Capital Group. Plaintiffs fail to even allege how either Arrowood Capital Corporation or Arrowpoint Capital Group is associated with the present litigation except

to simply add the names of these two proposed defendants next to the name of Defendant Arrowood.

IV. Conclusion

For the foregoing reasons, and based on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT:**

Plaintiffs' Motion to Amend Their Complaint and Modify the Pretrial Scheduling Order, [Docket No. 170], is **DENIED.**

Dated: September 24, 2018

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE