

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

GERALD LEVESQUE, et al.,)	
)	
Plaintiff)	
)	
v.)	Civil No. 97-32-B
)	
NATIONAL ALUM CORPORATION,)	
)	
Defendant)	

ORDER

The Court has before it the plaintiff's motion pursuant to Federal Rules of Civil Procedure 15(a), (c), to amend the original complaint in this matter, as well as his motion pursuant to Federal Rules of Civil Procedure 20(a), 42(a), to consolidate this action with two similar cases. The Court grants the motion to amend the complaint, and grants the motion to consolidate the cases at least through the discovery period.

Plaintiff's motion to amend the complaint

The plaintiff seeks to amend his initial complaint, which alleged an amount in controversy in the matter to be in excess of \$50,000, to allege damages in excess of \$75,000, as required by 28 U.S.C. § 1332(a) (Supp. 1997) for this Court to have jurisdiction. The defendant opposes the motion, contending that: (1) the plaintiff has given no reason as required by Federal Rule of Civil Procedure 15(c) why the amended complaint should relate back to its original date; (2) the plaintiff has failed to incorporate a memorandum of law with the motion as required by Federal Rule of Civil Procedure 7(a); and (3) the plaintiff has failed to give adequate reasons in support of the amendment to constitute good cause for the Court to grant the motion.

The Court finds that leave to amend is proper in this matter. Federal Rule of Civil Procedure 15(a) provides that "leave [to amend] shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). In determining whether a party should be given leave to amend, a court should consider: (1) the hardship to the moving party if leave to amend is denied; (2) the reasons for the moving party's failure to include the proposed material in the original pleading; and (3) the injustice resulting to the party opposing the motion should it be granted. *Thibodeau v. Fujisawa USA, Inc.*, 151 F.R.D. 502, 503 (D. Me. 1993) (citing 6 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1487 (2d ed. 1990)). Considering the first of the above factors, the plaintiff indeed would encounter a great hardship if the Court were to deny the motion; in view of the recent amendment to the former amount in controversy requirement, the Court would be without jurisdiction if the complaint only alleged damages in excess of \$50,000. The Court also is satisfied with the plaintiff's stated reason for the failure to allege a proper amount in controversy--that the plaintiff's counsel inadvertently used an outdated complaint form--as to grant the motion. Finally, although the defendant now will be required to defend the action in court, the Court sees no prejudice or injustice resulting to the defendant as a result of the Court's ruling.

Plaintiff's motion to consolidate the cases

The plaintiff also moves the Court for a permissive joinder of the parties in three separate cases or to consolidate this case with the two other matters, *James J. Cyr, et al. v. National Alum Corporation*, No. 97-33-B, and *Lionel O. Lavoie, et al. v. National Alum Corporation*, No. 97-34-B, in the interests of judicial efficiency and convenience to the parties. The defendant opposes the motion, contending that discovery ultimately may show that the cases are sufficiently

distinguishable to require separate trials, and that prejudice to the defendant and confusion to the jury may result should the Court consolidate the cases. The defendant requests the Court to deny the motion outright or, in the alternative, to delay a ruling on the motion until discovery between the parties has occurred and that their respective roles and fault in the underlying incident may be determined.

Having reviewed the separate complaints in the three cases, and in the interests of efficiency and convenience, the Court is satisfied for the time being that the cases are sufficiently similar to permit a consolidation at least for purposes of discovery. Mindful of the defendant's concerns of prejudice to it and of possible confusion of the jury, the Court is willing, following the completion of discovery, to review prior to trial its ruling regarding consolidation.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated this 14th day of July, 1997.