

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ROSEMERIE S. LAMONTAGNE
and DONALD LAMONTAGNE,

Plaintiffs

v.

Civil No. 04-192-P-C

NORTH AMERICAN SPECIALTY
INSURANCE CO.,

Defendant

Gene Carter, Senior District Judge

ORDER GRANTING PLAINTIFFS' MOTION TO AMEND COMPLAINT

Now before the Court is Plaintiffs' Motion to Amend Complaint (Docket Item No. 24) pursuant to Fed. R. Civ. P. 15(a). Rule 15(a) states in pertinent part:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Leave to amend is to be "freely given," ... unless it would be futile ... or reward, *inter alia*, undue or intended delay. *Resolution Trust Corp. v. Gold*, 30 F.3d 251, 252 (1st Cir. 1994); *see also Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962) ("[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.").

Defendant opposes Plaintiffs' proposed amendment on the ground that it would be futile. *See* Defendant's Objection and Memorandum in Opposition to Plaintiffs' Motion to Amend Complaint (Docket Item No. 33) at 3. Defendant bases this futility contention on the same arguments set forth in its Motion for Summary Judgment (Docket Item No. 19), and on the ground that when a plaintiff files a motion to amend the complaint subsequent to the filing of a defense motion for summary judgment, a court should hold a plaintiff to a heightened standard when considering the proposed amendment. *See Torres-Matos v. St. Lawrence Garment Co.*, 901 F.2d 1144, 1146 (1st Cir. 1990) (“[g]iven the pendency of the summary judgment motion, appellants were required to show that these proposed amendments had substantial merit and were supported by substantial and convincing evidence.”) (internal citation omitted).

As evidenced by this Court's Order Denying Defendant's Motion for Summary Judgment (Docket Item No. 34), Defendant's futility argument does not support a denial of Plaintiffs' Motion. The Court is satisfied that Plaintiffs' proposed amendment generates issues having merit and that the new claims are supported by evidence already in the record. Defendant will suffer no prejudice as a result of the amendment as no additional discovery appears to be necessary. Accordingly, Plaintiffs' Motion to Amend Complaint be, and it is hereby, **GRANTED**.

/s/ Gene Carter
GENE CARTER
United States Senior District Judge

Dated at Portland, Maine this 1st day of February, 2005.

Plaintiff

**ROSEMERIE S
LAMONTAGNE**

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Plaintiff

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V.

Defendant

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INSURANCE COMPANY**
TERMINATED: 12/09/2004

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Defendant

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