

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

COMBUSTION ENGINEERING, INC., )  
Plaintiff/Counterclaim )  
Defendant )

v. )

MILLER HYDRO GROUP, )  
Defendant/Counterclaim )  
Plaintiff )

v. )

Civil No. 89-0168 P

KANSALLIS-OSAKE-PANKKI, )  
Party-in-Interest )

and )

ALDEN RESEARCH LABORATORY, )  
INC., )  
Counterclaim Defendant )

**MEMORANDUM DECISION AND ORDER ON DEFENDANT'S  
MOTION FOR RECONSIDERATION**

I have carefully considered the defendant's motion for reconsideration and supporting memorandum and DENY the motion. In doing so, I take this opportunity to comment briefly on the key points raised by the defendant in its supporting memorandum.

First, I am satisfied that, had the motion to amend been timely filed, on the "good cause" showing made and in the absence of any discernable prejudice to the plaintiff the defendant would have been entitled to an allowance of the amendment. See Fed. R. Civ. P. 15(a).

Second, the liberal amendment policy stated in and underlying Rule 15(a) cannot itself excuse a late filing of a motion to amend. If it could, Fed. R. Civ. P. 6(b) would not distinguish between a request for enlargement made before and after the expiration of the operative deadline and, in the case of a request made after the deadline expiration, impose the additional requirement that the movant show that the failure to act prior to the deadline was the result of

excusable neglect. Indeed, if it were otherwise the court's scheduling orders, which routinely establish deadlines for filing motions to amend pleadings (and which deadlines are central to the conduct of orderly discovery), would be unenforceable and its ability to manage its docket severely hampered.

Third, the filing of papers occurs only when they are placed in the possession of the Clerk; the mailing of papers does not constitute filing. See Fed. R. Civ. P. 5(e); see also 4A C. Wright & A. Miller, Federal Practice and Procedure ' 1153 and n.2 (1987).<sup>1</sup>

Finally, if neither intraoffice delays nor an attorney's busy schedule can form the basis for a finding of excusable neglect, see Grover v. Commercial Ins. Co., 104 F.R.D. 136 (D. Me. 1985), a one working-day late filing surely cannot. As the Court of Appeals for the First Circuit has indicated:

Excusable neglect calls for "circumstances that are unique or extraordinary." If this includes a mere palpable mistake by experienced counsel, the requirement would be meaningless.

Spound v. Mohasco Indus., Inc., 534 F.2d 404, 411 (1st Cir.), cert. denied, 429 U.S. 886 (1976) (citations omitted).

In taking this action on the reconsideration motion I intimate no opinion on whether the defendant should be allowed to file its proposed amended counterclaim as a partial or complete sanction for the plaintiff's failure to produce discovery in a timely manner. That issue is not now before the court.

Dated at Portland, Maine this 23rd day of July, 1990.

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David M. Cohen  
United States Magistrate

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<sup>1</sup>The defendant apparently concedes that the twice-extended filing deadline was June 8, 1990 and that it was not entitled to an additional three days for mailing under Fed. R. Civ. P. 6(e). Of course, if filing were deemed to be accomplished upon mailing, there would be no need for Rule 6(e) under any circumstances.

