

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CITY OF BANGOR,)	
)	
Plaintiff,)	
v.)	Civil No. 02-183-B-S
)	
CITIZENS COMMUNICATIONS)	
COMPANY,)	
)	
Defendant/Third-party)	
Plaintiff,)	
v.)	
)	
BARRETT PAVING MATERIALS,)	
INC., et al.)	
)	
Third-party Defendants.)	

**ORDER ON THIRD-PARTY PLAINTIFF'S
MOTION TO JOIN MAINE CENTRAL RAILROAD COMPANY**

On June 30, 2003, Defendant and Third-Party Plaintiff Citizens Communication Company filed a motion to join Maine Central Railroad Company as a third-party defendant. (Docket No. 75.) The Court's Scheduling Order of January 29, 2003, subsequently amended by endorsement on Citizens's letter motion of April 14, 2003 (Docket No. 14), established the deadline for joinder of third parties as April 30, 2003. (Docket No. 5.) Well prior to this deadline, Citizens subpoenaed Maine Central, seeking various documents pertaining to Maine Central's ownership of a piece of riverside property in Bangor, which served for many years as a rail yard where substantial quantities of coal and tar were stored and loaded onto railroad cars and where tar and other pollutants were allegedly discharged directly in to the Penobscot River. Guilford's litigation counsel represented Maine Central in connection with a motion to quash the subpoena.

In a third-party complaint filed April 30, 2003, Citizens asserted third-party claims against Guilford Transportation Industries, Inc., the parent of Maine Central, seeking, among other things, contribution toward any liability that Citizens might bear in connection with the City of Bangor's CERCLA action against it. Citizens neither named Maine Central in this third-party complaint nor filed a separate third-party complaint against Maine Central Railroad, even though it is uncontested that Maine Central owned and operated the rail yard for some 100-plus years. According to Citizens, it assumed that Maine Central ceased to exist as an independent entity when its stock was purchased by Guilford in 1981. On June 30, 2003, two months after the deadline for joinder, Citizens filed the instant motion to join Maine Central as a third-party defendant on Citizens's third-party complaint against Guilford. Thus, Citizens asks the Court to read the existing third-party complaint against Guilford as asserting identical allegations and claims against Maine Central. In an objection filed July 21, 2003, Guilford argues that the motion to join its subsidiary must be denied because the motion is not timely, is not supported by a formal motion for enlargement pursuant to Rule 6(b)(2) and makes no showing of excusable neglect. (Docket No. 94.)

Federal Rule of Civil Procedure 21 addresses the non-joinder of parties. Pursuant to Rule 21, "Parties may be . . . added by order of the court on motion of any party . . . at any stage of the action and on such terms as are just." "A determination on the question of joinder of parties lies within the discretion of the district court." Puricelli v. CNA Ins. Co., 185 F.R.D. 139, 142 (N.D. N.Y. 1999). See also Hyplains Dressed Beef, Inc. v. EE Operating Corp., 142 F.R.D. 174, 176 (D. Kan. 1992) (same); 7 C. Wright & A. Miller, Federal Practice and Procedure § 1688, at 342 (1972) ("The grant or denial of a motion to bring in or drop a party lies in the discretion of the

judge. The trial court's exercise of discretion will not be disturbed on appeal unless an abuse [of discretion] is shown.").

I am in agreement with Citizens that it would be counterproductive to deny the motion to join Maine Central given that there is nothing preventing Citizens from instituting a separate suit against Maine Central and because joinder at this date will not prejudice Maine Central's ability to defend Citizens' third-party action. Accordingly, Citizens may file a third-party complaint against Maine Central Railroad Company seeking identical relief as is sought from Guilford on the basis of the same material allegations (ownership and operation of the subject rail yard). The Court will not construe the existing third-party complaint against Guilford as asserting claims against Maine Central. The third-party complaint must be filed within three days of this Order becoming a final order of the Court. Maine Central shall file its Answer in accordance with Rule 14.

CERTIFICATE

- A. The Clerk shall submit forthwith copies of this Order to counsel in this case.
- B. Counsel shall submit any objections to this Order to the clerk in accordance with Rule 72 of the Federal Rules of Civil Procedure.

So ordered.

August 21, 2003

Margaret J. Kravchuk
U.S. Magistrate Judge

COMPLEX

**U.S. District Court
District of Maine (Bangor)
CIVIL DOCKET FOR CASE #: 1:02-cv-00183-GZS
Internal Use Only**

BANGOR, CITY OF v. CITIZENS COMMUNICA

Assigned to: Judge GEORGE Z. SINGAL

Referred to:

Demand: \$0

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 42:6901 Environmental Cleanup Expenses

Date Filed: 11/22/02

Jury Demand: Defendant

Nature of Suit: 893 Environmental
Matters

Jurisdiction: Federal Question

Plaintiff

BANGOR, CITY OF

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V.

Defendant

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Interested Party

Counter Claimant

V.

Counter Defendant

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ThirdParty Plaintiff

**CITIZENS COMMUNICATIONS
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V.

ThirdParty Defendant

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ThirdParty Plaintiff

**CITIZENS COMMUNICATIONS
COMPANY**

V.

ThirdParty Defendant

**UNITED STATES ARMY CORPS
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ThirdParty Plaintiff

**CITIZENS COMMUNICATIONS
COMPANY**

V.

ThirdParty Defendant

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ThirdParty Plaintiff

**CITIZENS COMMUNICATIONS
COMPANY**

V.

ThirdParty Defendant

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ThirdParty Plaintiff

CITIZENS COMMUNICATIONS

COMPANY

V.

ThirdParty Defendant

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COMPANY**

V.

ThirdParty Defendant

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ThirdParty Plaintiff

**CITIZENS COMMUNICATIONS
COMPANY**

V.

ThirdParty Defendant

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COMPANY

V.

ThirdParty Defendant

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ThirdParty Plaintiff

**CITIZENS COMMUNICATIONS
COMPANY**

V.

ThirdParty Defendant

**NORTH AMERICAN UTILITY
CONSTRUCTION CORP**

ThirdParty Plaintiff

**CITIZENS COMMUNICATIONS
COMPANY**

V.

ThirdParty Defendant

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ThirdParty Plaintiff

**CITIZENS COMMUNICATIONS
COMPANY**

V.

ThirdParty Defendant

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WILLIAM L. PLOUFFE
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Counter Claimant

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COMPANY**

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(See above for address)

V.

Counter Defendant

BANGOR, CITY OF

Counter Claimant

UGI UTILITIES INC

represented by **DOUGLAS A. GRAUEL**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JAY VARON
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

E. TUPPER KINDER
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V.

Counter Defendant

**CITIZENS COMMUNICATIONS
COMPANY**

represented by **JULIE ANNA POTTS**
(See above for address)

Counter Claimant

**S E MACMILLAN COMPANY
INC**

V.

Counter Defendant

BANGOR, CITY OF

Counter Claimant

**HONEYWELL
INTERNATIONAL INC**

V.

Counter Defendant

**CITIZENS COMMUNICATIONS
COMPANY**

V.

Cross Defendant

**HONEYWELL
INTERNATIONAL INC**

Counter Claimant

**BARRETT PAVING
MATERIALS INC**

V.

Counter Defendant

**CITIZENS COMMUNICATIONS
COMPANY**

Counter Claimant

**BARRETT PAVING
MATERIALS INC**

V.

Counter Defendant

BANGOR, CITY OF

V.

Cross Claimant

**BARRETT PAVING
MATERIALS INC**

V.

Cross Defendant

BEAZER EAST INC

**CENTERPOINT ENERGY
RESOURCES CORP**

DEAD RIVER COMPANY

**GUILFORD TRANSPORTATION
INDUSTRIES, INC**

**NORTH AMERICAN UTILITY
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH
CORPORATION**

represented by **GRAYDON STEVENS**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

**S E MACMILLAN COMPANY
INC**

UGI UTILITIES INC

**UNITED STATES ARMY CORPS
OF ENGINEERS**

Cross Claimant

BEAZER EAST INC

V.

Cross Defendant

**BARRETT PAVING
MATERIALS INC**

**CENTERPOINT ENERGY
RESOURCES CORP**

DEAD RIVER COMPANY

**GUILFORD TRANSPORTATION
INDUSTRIES, INC**

**HONEYWELL
INTERNATIONAL INC**

**MAINE CENTRAL RAILROAD
COMPANY**

**NORTH AMERICAN UTILITY
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH
CORPORATION**

**S E MACMILLAN COMPANY
INC**

UGI UTILITIES INC

**UNITED STATES ARMY CORPS
OF ENGINEERS**

Cross Claimant

UGI UTILITIES INC

V.

Cross Defendant

**BARRETT PAVING
MATERIALS INC**

BEAZER EAST INC

**CENTERPOINT ENERGY
RESOURCES CORP**

DEAD RIVER COMPANY

**GUILFORD TRANSPORTATION
INDUSTRIES, INC**

**HONEYWELL
INTERNATIONAL INC**

**MAINE CENTRAL RAILROAD
COMPANY**

**NORTH AMERICAN UTILITY
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH
CORPORATION**

**S E MACMILLAN COMPANY
INC**

**UNITED STATES ARMY CORPS
OF ENGINEERS**

Cross Claimant

DEAD RIVER COMPANY

V.

Cross Defendant

**BARRETT PAVING
MATERIALS INC**

BEAZER EAST INC

**CENTERPOINT ENERGY
RESOURCES CORP**

**GUILFORD TRANSPORTATION
INDUSTRIES, INC**

**MAINE CENTRAL RAILROAD
COMPANY**

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CONSTRUCTION CORP**

**NORTHWESTERN GROWTH
CORPORATION**

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UGI UTILITIES INC

**UNITED STATES ARMY CORPS
OF ENGINEERS**

Cross Claimant

**HONEYWELL
INTERNATIONAL INC**

V.

Cross Defendant

**BARRETT PAVING
MATERIALS INC**

BEAZER EAST INC

CENTERPOINT ENERGY

RESOURCES CORP

DEAD RIVER COMPANY

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INDUSTRIES, INC**

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CONSTRUCTION CORP**

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Counter Claimant

**HONEYWELL
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**BARRETT PAVING
MATERIALS INC**

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Cross Claimant

**HONEYWELL
INTERNATIONAL INC**

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Cross Defendant

**BARRETT PAVING
MATERIALS INC**

BEAZER EAST INC

**CENTERPOINT ENERGY
RESOURCES CORP**

DEAD RIVER COMPANY

**GUILFORD TRANSPORTATION
INDUSTRIES, INC**

**NORTH AMERICAN UTILITY
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH
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**UNITED STATES ARMY CORPS
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