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**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

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CLERMONT COUNTY, OH

HEIDI Z. HUFFER, ET AL., :
 :
 Plaintiffs, : **CASE NO. 2017 CVA 00436**
 :
 vs. : **Judge McBride**
 :
 KAYLYN ROBINSON, ET AL., : **DECISION/ENTRY**
 :
 Defendants :

Dennis C. Mahoney, counsel for the plaintiffs Heidi Z. Huffer and Joseph E. Huffer, 600 Vine Street, Suite 1600, Cincinnati, Ohio 45202

William C. Dearbaugh, counsel for the defendant Kaylyn Robinson, 9277 Centre Pointe Drive, Suite 370, West Chester, Ohio 45069

Regan B. Tirone, counsel for the defendant Safeco Insurance Company of Illinois, 600 Vine Street, Suite 412, Cincinnati, Ohio 45202

This cause is before the court for consideration of a motion for leave to amend answer and assert cross-claim filed by the defendant Safeco Insurance Company of Illinois (hereinafter referred to as "Safeco") on August 11, 2017. The court held a hearing on the motion on September 15, 2017. At the conclusion of the hearing, the court granted the motion.

Upon consideration of the motion, the record of the proceedings, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision setting forth the court's reasoning for granting the motion.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

The present case stems from an automobile accident involving the plaintiff Heidi Z. Huffer and the defendant Kaylyn Robinson. The plaintiffs Heidi Z. Huffer and her husband Joseph E. Huffer filed suit against the defendants on April 14, 2017.

In their complaint, Heidi claims that Kaylyn negligently caused an automobile accident that resulted in Heidi suffering temporary and permanent injuries and pain and suffering. The plaintiffs allege that Heidi has incurred medical expenses and lost wages as a result. Joseph also asserts a claim for loss of consortium against Kaylyn.

The plaintiffs also include two subrogation causes of action, asserting that the defendants Anthem Blue Cross and Blue Shield and Safeco Insurance Company of Illinois (hereinafter referred to as "Safeco") may each have a subrogation interest in the proceeds of this litigation. Specifically, in the cause of action as to Safeco, the plaintiffs allege that Safeco, which issued an automobile insurance policy to Heidi, has paid some of her medical expenses and may be required to make future payments to her pursuant to the uninsured/underinsured motorist coverage in the insurance policy.¹

On May 18, 2017, Safeco filed its answer and affirmative defenses, and on May 30th Kaylyn did likewise. In her answer, Kaylyn moved for the plaintiffs to state in

¹ The complaint also included a subrogation claim for Anthem Blue Cross and Blue Shield, but the plaintiffs voluntarily dismissed that claim on July 24, 2017.

writing the amount of recovery sought against each plaintiff. On June 13th, the plaintiffs filed a reply to Kaylyn's motion for recovery sought. The plaintiffs stated: "At this time, the Plaintiff estimates her damages will not exceed \$250,000. This amount can be broken down as follows: \$6,985.90 in current economic damages and an unknown amount in future economic damages as Plaintiff's treatment is ongoing * * *."

On August 11, 2017, Safeco filed for leave to amend its answer and to assert a cross-claim against Kaylyn. The cross-claim is for Safeco's subrogated interest in any damages that its co-defendant Kaylyn may be required to pay if she is found liable for negligence. Kaylyn filed a motion contra to Safeco's motion on August 25, 2017.

The court held a hearing on the motion on September 15, 2017. During the hearing, counsel for Safeco explained that it filed the motion for leave to amend answer and assert cross-claim because it discovered in July, after filing its answer, that it had made payments to Heidi and therefore may have a subrogation claim. Following the plaintiffs' reply identifying their recovery sought, Safeco also learned that Heidi would need a future neck surgery. At the conclusion of the hearing, the court ruled that Safeco could file an amended answer and assert a cross-claim. That same day, Safeco filed its amended answer and cross-claim, and on September 28th Kaylyn filed an answer to Safeco's cross-claim.

LEGAL ANALYSIS

"Civ.R. 15(A) tells the litigant how and when to amend 'pleadings' * * *."² Once 28 days have passed for responsive pleading, a party may request leave of court under Civ.R. 15(A) to amend the complaint.³ In pertinent part, Civ.R. 15(A) provides:

"A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court shall freely give leave when justice so requires. * * *"⁴

The language of Civ.R. 15(A) "favors a liberal amendment policy."⁵ Such a policy "provides the maximum opportunity for each claim to be decided on the merits rather than on procedural deficiencies."⁶ The court may deny a motion to amend when "there is a showing of bad faith, undue delay, or undue prejudice to the opposing party."⁷ However, absent bad faith, undue delay, or undue prejudice, a motion to amend should

² *Hoover v. Sumlin*, 12 Ohio St.3d 1, 4, 465 N.E.2d 377 (1984).

³ *Scovanner v. Ohio Valley Voices*, 12th Dist. Clermont No. CA2012-01-017, 2012-Ohio-3629, ¶ 27.

⁴ Civ.R. 15(A).

⁵ *Wilmington Steel Products, Inc. v. Cleveland Electric Illuminating Co.*, 60 Ohio St.3d 120, 122, 573 N.E.2d 622 (1991).

⁶ *Hoover*, 12 Ohio St.3d at 5, citing 6 Wright & Miller, Federal Practice and Procedure (1971) 359, Section 471.

⁷ *Deutsche Bank Natl. Trust Co. v. Carter*, 12th Dist. Warren Nos. CA2014-01-001, CA2014-01-010, 2014-Ohio-5193, ¶ 28, quoting *Scovanner*, 2012-Ohio-3629 at ¶ 28.

be granted.⁸ Moreover, of these three factors, prejudice to the opposing party is the "most critical factor."⁹

Pursuant to Civ.R. 13(G), regarding cross-claims against a co-party, "[a] pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action * * *."¹⁰

In the present case, Safeco seeks to amend its answer and to add a cross-claim against Kaylyn. The proposed amended answer and cross-claim allege that Safeco may have a right to subrogation because it has paid medical payments for Heidi and may be required to make more medical payments under its automobile insurance policy with Heidi. Safeco also alleges in its cross-claim that it may be required to pay Heidi under the uninsured/underinsured motorist coverage of Heidi's insurance policy.

The court has not identified any prejudice to Kaylyn should Safeco be allowed to amend its complaint and add a cross-claim for subrogation. In oral argument, counsel for Kaylyn claimed that allowing the cross-claim could potentially increase Kaylyn's "exposure" to liability. However, if Kaylyn is found liable for the alleged injuries to the plaintiffs, allowing Safeco to have a subrogation claim would not increase Kaylyn's liability. It would instead affect how the parties share in the recovery proceeds that Kaylyn must pay. Kaylyn has not cited any legal authority demonstrating how her liability would be increased should Safeco amend its answer and add a cross-claim against her.

⁸ *Simmons v. Am. Pacific Ent., L.L.C.*, 164 Ohio App.3d 763, 2005-Ohio-6957, 843 N.E.2d 1271, ¶ 9 (10th Dist.), quoting *Hoover*, 12 Ohio St.3d at 6.

⁹ *Simmons*, 2005-Ohio-6957 at ¶ 9, citing *Frayar Seed, Inc. v. Century 21 Fertilizer & Farm Chem., Inc.*, 51 Ohio App.3d 158, 165, 555 N.E.2d 654 (3d Dist. 1988).

¹⁰ Civ.R. 13(G).

Moreover, there is no evidence of bad faith on the part of Safeco. Counsel for Safeco credibly explained that the reason it filed for leave to amend answer and assert cross-claim was due to the plaintiffs' revelation, after Safeco had already filed its answer, that Heidi will need a neck surgery in the future. Additionally, this litigation will not be unduly delayed by allowing the amendment. Counsel for Safeco represented that, as of the time of the hearing on September 15th, no discovery had occurred yet. Furthermore, there have been no dispositive motions filed to date.

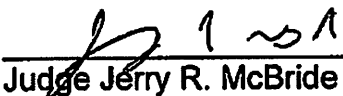
Given the liberal amendment policy in favor of granting motions for leave to amend, the early stage of these proceedings, and the absence of bad faith, undue delay, or undue prejudice to the plaintiffs, the court finds that Safeco may amend its answer and add a cross-claim against Kaylyn.

CONCLUSION

For the foregoing reasons, the court finds the defendant Safeco's motion for leave to amend answer and assert cross-claim is well-taken and is hereby granted.

IT IS SO ORDERED.

DATED: 11-2-17



Judge Jerry R. McBride