

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**DENNIS J. RANDALL, as Personal Representative
of the Estate of Georgia J. Cleer, Deceased,**

Plaintiff,

**Case No. 04-70648
Honorable John Feikens**

v.

ZIMMER, INC., a foreign corporation,

Defendant.

**OPINION AND ORDER
DENYING PLAINTIFF’S MOTION TO ADD
BOTSFORD GENERAL HOSPITAL AS A DEFENDANT**

This case was originally commenced by Dennis J. Randall, as Personal Representative of the Estate of Georgia J. Cleer, Deceased, against Zimmer, Inc., a foreign corporation and Zimmer Great Lakes, Inc., a Michigan Corporation.

After removal of this case to this court, upon agreement of the parties, Zimmer Great Lakes, Inc., a Michigan Corporation, was dismissed and an Order so providing was made on the record.

Before the court now is Plaintiff’s Motion to Add Botsford General Hospital, a Michigan Corporation, as a Co-Defendant.

I. FACTUAL BACKGROUND

The underlying action in this case is based on a claim of medical products liability. Plaintiff alleges that decedent died resulting from a failure of a bone fixation plate which was

designed by Defendant, Zimmer, Inc.

Plaintiff agrees that Defendant, Zimmer Great Lakes, Inc., was and is not a proper Defendant and as heretofore stated, an Order granting dismissal as to that Defendant, has been granted.

Plaintiff now seeks, through a Motion to Amend its Complaint, to add Botsford General Hospital as a non-diverse Defendant.

II. ANALYSIS

28 U.S.C. §1447(e) provides that “If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.”

A court’s decision to permit or deny joinder “is discretionary, and it must take into account the original defendant’s interest in its choice of forum.” Wells v Certainteed Corp., 950 F.Supp. 200, 201 (E.D. Mich., 1997). A court should consider several factors when deciding whether to allow joinder of a new defendant after removal, including:

- (a) the extent to which the purpose of the amendment is to defeat federal jurisdiction;
- (b) whether Plaintiff has been dilatory in asking for the amendment;
- (c) whether Plaintiff will be significantly injured if amendment is not allowed;
- (d) and any other factors bearing on the equities.

Wells, 950 F.Supp. at 201.

In Wells, the plaintiff filed an action in Michigan State Court, alleging that the defendant corporation had terminated her in retaliation for filing a worker’s compensation claim. Subsequently, the defendant corporation removed the action to Federal Court on the basis of diversity of citizenship. Thereafter, the plaintiff sought to join the defendant

corporation's human resources manager, a resident of Michigan, to the action. The court denied the plaintiff's motion because it believed "that Plaintiff's sole reason for seeking to add [Defendant]...is to defeat [diversity] jurisdiction,"and because "Plaintiff will not suffer prejudice as she will be able to obtain complete relief" without joining an additional defendant. Wells, 950 F.Supp. at 201.

Defendant argues that the present case is indistinguishable from Wells, because just as in Wells, here the Plaintiff could have joined Botsford as a Defendant, but did not seek to do so until after Defendant Zimmer removed this case to Federal Court. Defendant also notes that Plaintiff has not cited any new information, not learned until after removal, which may have prompted it to seek to join Botsford at this time. In addition, Defendant argues that Plaintiff will not suffer prejudice because in the event Plaintiff is successful in its claim against Zimmer, Inc., Plaintiff will receive complete relief.

Since it appears that Plaintiff's sole reason for bringing the Motion to Add Botsford General Hospital as a Co-Defendant is to defeat Federal diversity jurisdiction, that Motion should be and is hereby DENIED.

IT IS SO ORDERED.

**JOHN FEIKENS
UNITED STATES DISTRICT JUDGE**

DATED:

