

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

GUILLERMO A. ARGUETTA,

Plaintiff

v.

McGILL AIRFLOW, LLC, *et al.*,

Defendants

* * * * *

CIVIL NO. JKB-11-1102

MEMORANDUM AND ORDER

Guillermo Arguetta (“Plaintiff”) brought this suit against McGill Airflow, LLC, McGill Airsilence, LLC, United McGill Corporation, and Cincinnati Fan Co. (“Defendants”), alleging negligence, products liability, and breach of warranty, and seeking compensatory and punitive damages. The McGill Defendants now seek leave to file a crossclaim against Cincinnati Fan Co. for indemnification and contribution. The issues have been briefed and no oral argument is required. Local Rule 105.6. For the reasons set forth below, Defendants’ Motion for Joinder and for Leave to File Cross-Claim (ECF No. 44) is DENIED.

I. BACKGROUND

This products liability case arises from injuries that Plaintiff suffered while using a tool called a Leak Detective Testing Kit, allegedly designed and manufactured by Defendants. Plaintiff alleges that on June 13, 2008, while he was using the Leak Detective to locate and seal leaks at a biomedical facility in Frederick, Maryland, his hand was sucked through the machine’s air inlet and into its unguarded fan housing. The blade of the fan allegedly struck Plaintiff’s hand and crushed the bones in three of his fingers, which then had to be amputated.

Shortly after the accident, Plaintiff filed a worker's compensation claim against his employer, Hess Mechanical Corporation, and received a first award of compensation on August 18, 2008. About two-and-a-half years later, on March 16, 2011, Plaintiff filed this suit in the Circuit Court for Frederick County against McGill Airflow, LLC, McGill Airsilence, LLC, and United McGill Corporation (collectively "McGill"), whom he alleges designed, manufactured, and distributed the Leak Detective. The original Complaint asserted causes of action for negligence, strict products liability based on defective design and inadequate warnings, strict liability for abnormally dangerous activity, and breach of warranty. On April 27, 2011, Defendants removed the case to this Court.

During discovery, on August 12, 2011, the parties conducted a joint physical inspection of the Leak Detective, during which they discovered labels under the machine's fan indicating that the fan was manufactured by Cincinnati Fan Co. Plaintiff then filed an amended complaint on September 19, 2011, adding Cincinnati Fan Co. as a defendant. Cincinnati Fan Co. moved to dismiss the complaint as untimely, but the Court denied the motion. (Memorandum & Order, ECF No. 51). McGill now moves for leave to file a crossclaim against Cincinnati Fan Co. for indemnification and contribution.

II. LEGAL STANDARD

A. Fed. R. Civ. P. 15(a): Amended or Supplemental Pleadings

Leave to file an amended or supplemental pleading should be "freely give[n] where justice so requires." Fed. R. Civ. P. 15(a)(2). But, a district court may deny leave if the new pleading would prejudice the opposing party, if the moving party has acted in bad faith, or if the pleading would be futile. *See Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006). If a district

court chooses to deny leave, it must give justifying reasons. *See id* (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

B. Fed. R. Civ. P. 13(g): Crossclaims

Crossclaims in federal actions are governed by Federal Rule of Civil Procedure 13(g),¹ which provides that:

A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

III. ANALYSIS

Cincinnati Fan attacks McGill's motion on three grounds: (1) that the motion is untimely; (2) that the crossclaim would be more appropriately adjudicated in state court; and (3) that the crossclaim fails to allege sufficient facts to state claims for indemnification or contribution.² The first two of these arguments are plainly without merit. *See* CHARLES ALLAN WRIGHT, *ET AL.*, 6 FED. PRAC. & PROC. CIV. § 1431 (3d ed.) ("Rule 13(g) does not prescribe a time limit within which a party must present a crossclaim. The decision whether to allow a crossclaim that meets the test of subdivision (g) is a matter of judicial discretion.")("[T]he general policy behind allowing crossclaims is to avoid multiple suits and to encourage the determination of the entire controversy among the parties before the court with a minimum of procedural steps."). The Court agrees with Cincinnati Fan, however, that McGill's proposed crossclaim is factually deficient. It alleges no facts supporting an inference that McGill is entitled to the relief it seeks;

¹ Cincinnati Fan argued in its brief that if its Motion to Dismiss (ECF No. 40) were granted, then the McGill Defendants' claim should be treated as third-party practice under Fed. R. Civ. P. 14. The Court, however, has since denied that motion. (Memorandum & Order, ECF No. 51).

² Cincinnati Fan also asserts that McGill was required to "plead any affirmative defense . . . in its first Answer to Complaint [sic] within 21 days after service." (Resp. at 2, ECF No. 48). The Court is uncertain what the intended point of this assertion is, given that McGill has not sought leave to add any affirmative defenses.

indeed, it does little more than describe the parties and subject matter of the underlying action and make conclusory declarations that it is entitled to indemnification and contribution from Cincinnati Fan if it is found liable to Plaintiff. Courts, including this one, have repeatedly held such statements to be insufficient to support counterclaims for these remedies. *See, e.g., First Mount Vernon Industrial Loan Ass'n v. Smith*, Civil Action No. 8-08-cv-02085-AW, 2009 WL 2392132 at *3-4 (D. Md. July 31, 2009); *Energy Brands, Inc. v. Jorgensen*, No. 09-CV-591A, 2011 WL 282354 at *7 (W.D.N.Y. Jan. 25, 2011); *Southeastern Pennsylvania Transp. Authority v. AECOM USA, Inc.*, Civil Action No. 10-117, 2010 WL 4703533 (E.D. Pa. Nov. 19, 2010).

Because McGill's proposed crossclaim fails to meet the general pleading standards of Rule 8(c), it could not survive a motion to dismiss under Rule 12(b)(6) and would thus be futile. *See Perkins v. U.S.*, 55 F.3d 910, 917 (1995). McGill's motion for leave to file the crossclaim will therefore be denied. McGill remains free, of course, to renew its motion if and when it has drafted a crossclaim that sets out a plausible legal theory, and supporting factual allegations, under which Cincinnati Fan is liable to it for indemnity and contribution.

IV. ORDER

Accordingly, it is ORDERED that Defendants' Motion for Joinder and Leave to File Cross-Claim (ECF No. 44) is DENIED.

Dated this 4th day of January, 2012

BY THE COURT:

/s/
James K. Bredar
United States District Judge