Bureau of Justice Statistics
U.S. DEPARTMENT OF JUSTICE

MORTALITY IN CORRECTIONAL INSTITUTIONS

OMB No. 1121-0249 Exp. 06/30/2021

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What deaths should be reported?

INCLUDE deaths of ALL persons...

- ✓ Confined in your jail facilities, whether housed under your own or another jurisdiction
- ✓ Under your jurisdiction but housed in special jail facilities (e.g., medical/treatment/release centers, halfway houses, or work farms); or on transfer to treatment facilities
- ✓ Under your jurisdiction but out to court
- ✓ In transit to or from your facilities while under your jurisdiction

EXCLUDE deaths of ALL persons...

- X Confined in facilities operated by two or more jurisdictions or those held in privately operated jails
- X Under your jurisdiction but in nonresidential community-based programs run by your jails (e.g., electronic monitoring, house arrest, community service, day reporting, work programs)
- X Under your jurisdiction but AWOL, escaped, or on long-term transfer to another jurisdiction
- X In the process of arrest by your agency, but not yet booked into your jail facility

You may want to review the form prior to entering data. A PDF form is available **here**.

Existing Death Records

Name	Date of Death	Gender	Actions	Submitted?
Joseph, Keith	3/11/14	Male	{Print}	Submitted
Bowman, Princeton	8/29/14	Male	{Print}	Submitted
Hyde, Ernie	1/24/14	Male	{Print}	Submitted
Count=3				

BURDEN STATEMENT

Under the Paperwork Reduction Act, we cannot ask you to respond to a collection of information unless it displays a currently valid OMB control number. The burden of this collection is estimated to average 30 minutes per each reported death, including reviewing instructions, searching existing data sources, gathering necessary data, and completing and reviewing this form. Send comments regarding this burden estimate or any aspect of this survey, including suggestions for reducing this burden, to the Director, Bureau of Justice Statistics, 810 Seventh Street, NW, Washington, DC 20531. Do not send your completed form to this address.

If you need assistance or have any questions, please contact a member of the data collection team at 1-800-344-1387 or bjsmci@rti.org.

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OMB No. 1121-0249 Approval Expires 11/30/2016

Form CJ-9

DEATHS IN CUSTODY—2014
DEATH REPORT ON INMATES UNDER JAIL JURISDICTION

U.S. DEPARTMENT OF JUSTICE
BUREAU OF JUSTICE STATISTICS
AND ACTING AS COLLECTION AGENT:
RTI INTERNATIONAL

FORM COMPLETED BY:

Name	Dy. Sherry Thompson	Title	Asst. Administrator
Official Address	P.O. Box 727	Telephone	985 748-3363
City	Amite	FAX	985 748-4661
State	LA	Zip	70422
E-mail	thompsons@tpso.org		

Instructions for Completion

If no deaths occurred in 2014:

- You do not need to report anything at this time.
- At the beginning of 2015, you will be asked to complete a summary form whether or not you had a death occurrence in 2014.

If you had more than one death in 2014:

- Make copies of this form for each additional death.
- Complete the entire form for each inmate death.
- Once your death records are complete, there are several ways to submit a death report:

ONLINE: Complete the report online at: https://bjsdcrp.rti.org

E-MAIL: bjsdcrp@rti.org

FAX (TOLL-FREE): 1-866-800-9179

MAIL: RTI International, Attn: Data Capture
Project Number: 0213149.001.300.302.100
5265 Capital Boulevard
Raleigh, NC 27690-1652

If you need assistance, contact Kim Aspinwall of RTI International toll-free at 1-800-344-1387 or bjsdcrp@rti.org

What deaths should be reported?

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- Confined in your jail facilities, whether housed under your own or another jurisdiction
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«AGENCY ID»

LOCAL JAIL INMATE DEATH REPORT

1. What was the inmate's name?

LAST	FIRST	MI
Joseph	Keith	

2. On what date did the inmate die?

MONTH	DAY	YEAR
03	11	2014

3. What was the name and location of the correctional facility involved?

Facility Name: Tangipahoa Parish Jail

Facility City: Amite

Facility State: LA

4. What was the inmate's date of birth?

[redacted]

MONTH DAY YEAR

5. What was the inmate's sex?

- ☑ Male
- ☐ Female

6. Was the inmate of Hispanic, Latino, or Spanish origin?

- ☐ Yes
- ☑ No

7. In addition, what was the inmate's race? Please select one or more of the following racial categories:

- ☐ White
- ☑ Black or African American
- ☐ American Indian or Alaska Native
- ☐ Asian
- ☐ Native Hawaiian or Pacific Islander
- ☐ Some other race

→ *Please Specify:*

8. On what date was the inmate admitted to a facility under your jurisdiction?

MONTH	DAY	YEAR
02	19	2014

9. Was the inmate being confined in your jail facility on behalf of any of the following?

PLEASE PROVIDE A RESPONSE FOR EACH ITEM (a–c)

	YES	NO	DON'T KNOW
a. U.S. Immigration and Customs Enforcement	☐	☑	☐
b. U.S. Marshals Service	☐	☑	☐
c. State or federal prison, Bureau of Indian Affairs, or any other jail jurisdiction	☑	☐	☐

10. For what offense(s) was the inmate being held?

a. Serving Parish time

b.

c.

d.

e.

11. What was the inmate's legal status at time of death? *(For inmates with more than one status, report the status associated with the most serious offense.)*

- ☑ Convicted—new court commitment
- ☐ Convicted—returned probation/parole violator
- ☐ Unconvicted
- ☐ Other

→ *Please Specify:*

12. Since admission, did the inmate ever stay overnight in a mental health observation unit or an outside mental health facility?

- ☐ Yes
- ☑ No
- ☐ Don't Know

13. Where did the inmate die?

- ☑ In a general housing unit within the jail facility or on jail grounds
- ☐ In a segregation unit
- ☐ In a special medical unit/infirmary within the jail facility
- ☐ In a special mental health services unit within the jail facility
- ☐ In a medical center outside the jail facility
- ☐ In a mental health center outside the jail facility
- ☐ While in transit
- ☐ Elsewhere
  - → *Please Specify:*

14. Are the results of a medical examiner's or coroner's evaluation (such as an autopsy, postmortem exam, or review of medical records) available to establish an official cause of death?

- ☑ YES → ***CONTINUE TO Q15***
- ☐ Evaluation complete—results are pending
  - → ***SKIP REMAINING QUESTIONS AND SUBMIT THIS FORM—YOU WILL BE CONTACTED AT A LATER TIME FOR THE CAUSE OF DEATH***
- ☐ No evaluation is planned → ***CONTINUE TO Q15***

15. What was the cause of death? ****** Please SPECIFY cause of death—it is critical information ******

- ☑ Illness—Exclude AIDS-related deaths [*Specify*] →
- ☐ Acquired Immune Deficiency Syndrome (AIDS)
- ☐ Accidental alcohol/drug intoxication [*Describe*] →
- ☐ Accidental injury to self [*Describe*] →
- ☐ Accidental injury by other (e.g., vehicular accidents during transport) [*Describe*] →
- ☐ Suicide (e.g., hanging, knife/cutting instrument, intentional drug overdose) [*Describe*] →
- ☐ Homicide [*Describe*] →
- ☐ Other cause(s) [*Specify*] →

16. Where did the incident (e.g., accident, suicide, or homicide) causing the death take place?

- ☑ NOT APPLICABLE—Cause of death was illness, intoxication, or AIDS-related
- ☐ In the jail facility or on the jail grounds
  - *[PLEASE SPECIFY]* →
    - ☐ In the inmate's cell/room
    - ☐ In a temporary holding area/lockup
    - ☐ In a common area within the facility (e.g., yard, library, cafeteria)
    - ☐ In a segregation unit
    - ☐ In a special medical unit/infirmary
    - ☐ In a special mental health services unit
    - ☐ Elsewhere within the jail facility
      - → *Please Specify:*
- ☐ Outside the jail facility (e.g., while on work release or on work detail)
- ☐ Elsewhere
  - → *Please Specify:*

17. When did the incident (e.g., accident, suicide, or homicide) causing the death occur?

- ☑ NOT APPLICABLE—Cause of death was illness, intoxication, or AIDS-related

- ☐ Morning (6 am to Noon)
- ☐ Afternoon (Noon to 6 pm)
- ☐ Evening (6 pm to Midnight)
- ☐ Overnight (Midnight to 6 am)

18. Excluding emergency care provided at the time of death, did the inmate receive any of the following medical services for the medical condition that caused his/her death after admission to your correctional facilities?

- ☐ NOT APPLICABLE—Cause of death was accidental injury, intoxication, suicide, or homicide

a. Evaluation by physician/medical staff .....
b. Diagnostic tests (e.g., X-rays, MRI) .....
c. Medications .....
d. Treatment/care other than medications .....
e. Surgery .....
f. Confinement in special medical unit. .....

[redacted]

PLEASE PROVIDE A RESPONSE FOR EACH ITEM (a–f)

19. Was the cause of death the result of a pre-existing medical condition or did the inmate develop the condition after admission? *(If multiple conditions caused the death and any of the conditions were pre-existing, mark "Pre-existing medical condition.")*

- ☐ NOT APPLICABLE—Cause of death was accidental injury, intoxication, suicide, or homicide

- ☐ Pre-existing medical condition
- ☐ Deceased developed condition after admission
- ☑ Could not be determined

Please add any additional notes regarding this death here:

Recoded Q14 from from BLANK to basketball court, Q15 COD from "Other cause(s)" to "Illness", Q16 from "NOT APPLICABLE" to "In the jail facility or on the jail grounds-In a common area within the facil

Neutral
As of: February 19, 2021 8:52 PM Z

Joseph v. La. Dep't of Corr.

United States District Court for the Eastern District of Louisiana

October 2, 2015, Decided; October 2, 2015, Filed

CIVIL ACTION NO: 15-0759

Reporter
2015 U.S. Dist. LEXIS 134777 *; 2015 WL 5797830

JERRY JOSEPH AND MERLINE JOSEPH VERSUS LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL

Prior History: *Joseph v. La. Dep't of Corr., 2015 U.S. Dist. LEXIS 67166 (E.D. La., May 22, 2015)*

Core Terms

grant leave to amend, undue delay, amended complaint, opposing party, bad faith, dilatory, repeated, futile, motive, amend, cure

Counsel: **[*1]** For Jerry Joseph, Merline Joseph, Plaintiffs: Willie Gene Johnson , Jr., LEAD ATTORNEY, Seale, Smith, Zuber & Barnette, Baton Rouge, LA; Alfreda Tillman Bester, Tillman Bester & Associates, LLC, Baton Rouge, LA; Lykisha R. Vaughan, Law Office of Lykisha R. Vaughan LLC, Baton Rouge, LA; Sophia Riley, Johnson Riley & Associates, LLC, Baton Rouge, LA.

For Louisiana Department of Corrections, Defendant: Michael Courtney Keller, LEAD ATTORNEY, Louisiana Department of Justice (New Orleans), New Orleans, LA.

For Daniel Edwards, Sheriff, Officer Brock, Alison L. Thornhill, Defendants: T. Jay Seale , III, LEAD ATTORNEY, Amy Lawler Gonzales, Glen Ray Galbraith, Seale & Ross, APLC (Hammond), Hammond, LA.

For Columbia Casualty Company, Defendant: Gustave A. Fritchie , III, LEAD ATTORNEY, Irwin Fritchie Urquhart & Moore, LLC (New Orleans), New Orleans, LA; T. Jay Seale , III, LEAD ATTORNEY, Amy Lawler Gonzales, Glen Ray Galbraith, Seale & Ross, APLC (Hammond), Hammond, LA.

Judges: KAREN WELLS ROBY, UNITED STATES MAGISTRATE JUDGE.

Opinion by: KAREN WELLS ROBY

Opinion

SECTION: "S" (4)

ORDER

Before the Court is a **Motion for Leave to File Second Supplemental and Amending Petition (R. Doc. 19)** filed by the Plaintiffs, Jerry Joseph and **[*2]** Merline Joseph. The Plaintiff's seek leave of court to file their Second Amended and Supplemental Petition to add Landmark American Insurance Company as a Defendant. R. Doc. 10, p. 1. The motion is unopposed. The motion was submitted on September 9, 2015, and heard without oral argument that day.

I. Background

This action arises out of the ***death*** of Keith Joseph while he was in the custody of Tangipahoa Parish Prison. *See*

R. Doc. 1, at 5. Plaintiffs, decedent's parents, allege that on March 3, 2014, the decedent initially complained of severe chest pains to Defendant Officer Brocks. Plaintiffs allege that on March 11, 2014, after a week of complaining of severe chest pains, he was seen by the on-duty nurse, who took his vital signs and returned him to his cell. *Id.* Once he returned to his cell, Plaintiffs contends that he continued to express his pain to Officer Brock who responded by stating "Aint nothing wrong with you, sit your motherfu***** as* down. *Id.* at 6.

Plaintiffs allege that shortly after this exchange, the decedent collapsed. *Id.* at 6. Plaintiffs allege that the decedent was not administered cardiopulmonary resuscitation until thirty minutes after he collapsed. *Id.* The decedent passed away **[*3]** that same day, March 11, 2014. *Id.*

The Plaintiffs initiated this suit on March 9, 2015, against the Louisiana Department of Corrections, Officer Brock, Columbia Casualty Company, Sheriff Daniel Edwards, Schirra Finn, Brandon Pinon, Tangipahoa Parish Sheriff's Office, and Alison Thornhill.

Plaintiffs filed this action alleging that the Defendants violated the decedent's rights under the *Fourth*, *Eighth*, and *Fourteenth Amendments to the Constitution of the United States* and subjected Keith to discrimination in violation of the Rehabilitation Act. Plaintiffs also allege Louisiana state-law claims of negligence and wrongful ***death***. The Plaintiffs seek compensatory and nominal damages, as well as declaratory judgment under *42 U.S.C. §1983*, *Section 504* of the Rehabilitation Act, *29 U.S.C. §794*, and state law tort claims under Civil Code Articles 2315, 2315.1, and 2315.2. R. Doc. 1, p. 7.

On April 14, 2015, a Motion to Dismiss was filed on behalf of seven of the eight Defendants arguing that (1) the Plaintiffs did not establish standing; (2) the Sheriff's Office is not a proper party and not the proper agent of prison medical services; (3) Defendants Pinon and Finn should be dismissed; and (4) the Plaintiffs failed to state a claim under the *Fourth Amendment, Equal Protection Clause*, and the Rehabilitation Act. *See* R. Doc. 7.

On August 13, 2015, the District Court granted the **[*4]** motion and dismissed Plaintiffs' claims against Prison Medical Services, Lt. Brandon Pinon, and Lt. Shirra Finn in their individual and official capacities. The District Court also dismissed claims against all Defendants under the *Fourth Amendment to the Constitution of the United States*, all defendants under the *Equal Protection Clause of the Fourteenth Amendment*, and all defendants arising under the Rehabilitation Act. The District Court also dismissed Plaintiffs' claims against the State of Louisiana because of a lack of subject matter jurisdiction. *See* R. Doc. 7.

In the instant motion, Plaintiffs seek to add Landmark American Insurance Company ("Landmark") as a Defendant. R. Doc 19, p. 1. Plaintiffs allege that Landmark is an insurer of the Defendants' and provides applicable coverage for the instant causes of action and damages. R. Doc. 19, p. 1.

II. Standard of Review

Federal Rules of Civil Procedure ("Rule") 15(a), which governs the amendment of pleadings, provides that leave to amend pleadings "shall be freely given when justice so requires." *Rule 15(a)(2)*. This, and other federal rules, "reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson, 355 U.S. 41, 48, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)*. Thus, *Rule 15(a)* evinces a liberal amendment **[*5]** policy and a motion to amend should not be denied absent a substantial reason to do so. *See Jacobsen v. Osborne, 133 F.3d 315, 318 (5th Cir.1998)*. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. *Id.*

Leave to amend is by no means automatic, but is within the sound discretion of the trial court. ***Addington** v. Farmer's Elevator Mut. Ins. Co., 650 F.2d 663, 666 (5th Cir.1981)*. In exercising its discretion, the trial court must determine that there is a "substantial reason" for the delay. *Mayeaux v. Louisiana Health Service and Indemnity Co., 376 F.3d 420, 425 (5th Cir.2004)*. The Court may consider such factors as (1) undue delay, bad faith, or dilatory motive on the part of the movant; (2) repeated failure to cure deficiencies by amendments previously allowed; (3) undue prejudice to the opposing party by virtue of allowance of the amendment; and (4) futility of the amendment. *Gregory v. Mitchell, 634 F.2d 199, 203 (5th Cir.1981)*.

III. Analysis

In determining whether or not granting leave to amend is proper, the Court analyzes the *Gregory v. Mitchell* factors. The factors are: (1) undue delay, bad faith, or dilatory motive on the part of the movant; (2) repeated

failure to cure deficiencies by amendments previously allowed; (3) undue prejudice to the opposing party by virtue of allowance of the amendment; and (4) futility of the amendment. *Id.*

A. Undue Delay, Bad Faith, Dilatory Motive [*6] of Movant

The first factor the court considers when determining whether or not to grant leave to amend pursuant to 15(a) is whether the amendment will cause an undue delay, is in bad faith, or that the movant has some dilatory motive in filing the motion.

The Fifth Circuit has indicated that "[a] litigant's failure to assert a claim as soon as he could have is properly a factor to be considered in deciding whether to grant leave to amend. Merely because a claim was not presented as promptly as possible, however, does not vest the district court with authority to punish the litigant." *Carson v. Polley, 689 F.2d 562, 584 (5th Cir.1982)* (finding that delay of four months between time pro se attorneys were assigned to case and time second amended complaint was filed did not warrant denial of motion to amend).

On the other hand, the bare fact that an amendment is filed within the confines of the Court's Scheduling Order does not alone make a claim timely. *See Mayeaux, 376 F.3d at 427*. Instead, the Court must look to the "procedural posture" of the case to determine whether the delay actually prejudices the non-movant. *See id. at 426-27* ("The delay must be undue, i.e., it must prejudice the nonmoving party or impose unwarranted burdens on the court.") (emphasis in original). **[*7]** The Fifth Circuit has held that when leave to amend would cause severe prejudice to defendants, it should be denied. *Mayeaux, at 427*; *Smith v. RMC Corp., 393 F.3d at 595-97 (5th. Cir. 2004)*.

At the time of Plaintiffs' filing of the instant motion, no scheduling order has been issued in this matter, therefore no deadlines have been set. Thus, Plaintiff's motion is timely filed. Because no deadlines are set, there is no undue delay or bad faith on Plaintiffs' part in filing they amended complaint. Defendants' also have failed to oppose the motion and provide reasons why permitting Plaintiff's filing would cause an undue delay or that she has a dilatory motive or strategy behind her filing. Therefore, the Court finds that this factor weighs in favor of permitting leave to amend.

B. Repeated Failure to Cure Deficiencies by Amendments Previously Allowed

The second factor the court considers when determining whether or not to grant leave to amend pursuant to 15(a) is whether the party has previously filed repeated amendments before filing the instant motion.

Courts in the Fifth Circuit have found that where a party has been given multiple opportunities to cure a defect, denial of a 15(a) motion is proper. *See, e.g., Price v. Pinnacle Brands, Inc., 138 F.3d 602, 607-08 (5th Cir.1998)* (upholding district court's denial of **[*8]** 15(a) motion where plaintiffs had three prior opportunities to amend their complaint).

This is Plaintiffs' second motion for leave to amend its complaint; however, this is the first that relates to adding Landmark as a Defendant. Thus, there has not be been a "repeated" failure of the Plaintiffs to amend or "cure" alleged defects in its pleading; therefore, this factor weighs heavily in favor of granting the proposed amendments.

C. Undue Prejudice to the Opposing Party by Virtue of Allowance of the Amendment

The third factor the court considers when determining whether or not to grant leave to amend pursuant to 15(a) is whether the amendment will cause an undue prejudice to the opposing party.

The Fifth Circuit has cautioned that amendments should not be permitted where they would "fundamentally alter the nature of the case." *Hebert v. Specialized Environmental Resources, LLC, 2013 U.S. Dist. LEXIS 43452, 2013 WL 1288219, at *4 (E.D.La. Mar. 23, 2013)*; *In re American International Refinery, Inc., 676 F.3d 455, 467 (5th Cir. 2012)*(noting that new allegations of fraud in bankruptcy proceeding would have "fundamentally altered" the nature of a case which had previously been limited to determination of whether one party possessed a conflict of interest warranting disgorgement of monies paid); *Mayeaux, 376 F.3d at 427-28* (finding that complaint would be "fundamentally altered" where proposed amendment would destroy jurisdiction and "effectively reconstruc[ed] the case **[*9]** anew.").

Here, Plaintiffs' amended complaint alleges the same claims as their initial complaint, but seeks to add Landmark as a Defendant based on their reasonable

belief that Landmark provides applicable coverage for their causes of action and damages. Plaintiff argues that Landmark is liable in solido with its insureds, which have been identified in the original Complaint.[1] As such, the Court finds that permitting Plaintiffs amended complaint will not be unduly prejudicial to the opposing party. Therefore, the Court finds that this factor weighs in favor of granting leave to amend the complaint.

D. Futility of the Amendment

The fourth factor the court considers when determining whether or not to grant leave to amend pursuant to *15(a)* is whether the amendment, and or potential new claims are futile. Here, Plaintiffs' allegations in both complaints are virtually identical, and seek to add the insurance company, who is alleged to have provided recovery for the risk. The Louisiana Direct Action Statute, *La. R.S. 22:1269*, expressly provides **[*10]** for the filing as a direct action against the insurers, as done here. *La. Rev. Stat. § 22:1269*. Thus, the Court authorizes the filing of a direct action and finds that the filing of Plaintiff's amended complaint is not futile.

IV. Conclusion

Accordingly,

IT IS ORDERED that the Plaintiffs' **Motion for Leave to File Second Supplemental and Amending Petition (R. Doc. 19)** is **GRANTED**.

New Orleans, Louisiana, this 2nd day of October 2015.

/s/ Karen Wells Roby

KAREN WELLS ROBY

UNITED STATES MAGISTRATE JUDGE

End of Document

[1] As noted above, based on the District Court's order, Tangipahoa Parish Sheriff's Office, Brandon Pinon, and Schirra Finn, and State of Louisiana are no longer parties to this action. *See* R. Doc. 17.