

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CORI RIGSBY et al

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:06CV433-LTS-RHW

STATE FARM INSURANCE COMPANY et al

DEFENDANTS

ORDER GRANTING MOTION TO AMEND

Before the Court is Defendant's State Farm Mutual Insurance Company's [320] Motion to Amend [95] Answer to Amended Complaint. In the motion, Defendant requests leave to include in its answer the affirmative defense that Plaintiffs released all claims against State Farm by virtue of their execution and delivery of a Settlement Agreement and Mutual Release dated April 21, 2009. In their response, Plaintiffs argue that the motion should be denied because amendment would be futile. Plaintiffs argue that the April 21, 2009, settlement did not release any claims with respect to State Farm.

Rule 15(a)(2) provides that leave to amend should be freely given when justice so requires. Rule 15 evinces a bias in favor of amendment. *Southern Constructors Group, Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir. 1993). An amendment is considered futile if it would not withstand a motion to dismiss pursuant to Rule 12(b)(6). *See Briggs v. Mississippi*, 331 F.3d 499, 508 (5th Cir. 2003). To determine futility, the Court applies the same standard of legal sufficiency as applies under Rule 12(b)(6). *Stripling v. Jordan Productions Co.*, 234 F.3d 863, 872-73 (5th Cir. 2000).

The Court finds that the motion to amend should be granted. Plaintiffs offer little in the way of argument or legal authority explaining why the amendment would be futile other than the

conclusory statement that the release did not apply to Plaintiffs claims against State Farm. In the absence of a compelling explanation for why the amendment would be futile, the Court finds that issue of the scope and application of the April 21, 2009, release should be allowed to proceed.

IT IS THEREFORE ORDERED AND ADJUDGED that the [320] Motion to Amend is GRANTED.

SO ORDERED, this the 18th day of June, 2009.

s/ Robert H. Walker
UNITED STATES MAGISTRATE JUDGE