

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

CARL N. POSTON,)	
)	
Plaintiff,)	Case No. 2:00CV00129
)	
v.)	OPINION AND
)	ORDER
DAVID SKEWES, ET AL.,)	
)	By: James P. Jones
Defendants.)	United States District Judge

*Scott N. Brown, Spears, Moore, Rebman & Williams, Chattanooga, Tennessee and
Bubby H. Wallen, Clintwood, Virginia, for Plaintiff; James N. L. Humphreys, Hunter,
Smith & Davis, Kingsport, Tennessee, for Defendants.*

Decided: April 20, 2001

The defendants have filed a Motion Pursuant to Fed. R. Civ. P. 17(a), which was argued on April 18, 2001, and taken under advisement. Upon consideration of the motion, it will be denied.

This diversity action seeking damages for bodily injury is set for trial on April 30, 2001. On April 17, 2001, the defendants filed the present motion, by which they seek an order adding the United States as a party plaintiff based on the fact that certain of the plaintiff's medical expenses have been paid by the Medicare program. Since there is a lien in favor of Medicare for any such payments, the defendants contend that

the United States is a real party in interest and must be joined. *See Travelers Ins. Co. v. Riggs*, 671 F.2d 810, 814 (4th Cir. 1982) (holding that a partially subrogated insurer must be added as a real party in interest under Fed. R. Civ. P. 17(a) in a diversity action, regardless of state law.)

Regardless of the merits of whether the United States must be joined under Rule 17(a) as an involuntary plaintiff because of its Medicare lien, it is clear that the court has the discretion to refuse any joinder under the rule when it is untimely. *See* 4 James Wm. Moore et al., *Moore's Federal Practice* § 17.12[2][a] (3d ed. 2000). To add another party now, directly before trial, would likely necessitate a postponement of the trial to allow the new party¹ an opportunity to adequately prepare. Moreover, there is no good reason why joinder could not have been sought at an earlier date in this case.

For these reasons, it is **ORDERED** that the Motion Pursuant to Fed. R. Civ. P. 17(a) [Doc. No. 39] is denied.

ENTER: April 20, 2001

United States District Judge

¹ The appropriate party would likely be the Health Care Financing Administration, an agency of the Department of Health and Human Services, which administers Medicare liens. *See United States v. Sosnowski*, 822 F. Supp. 570, 572 (W.D. Wis. 1993).