

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

JAMES EISCHEID,
Plaintiff,

vs.

DOVER CONSTRUCTION, INC.,
WOODS MASONRY, INC., and OTIS,
KOGLIN, WILSON ARCHITECTS,
INC. f/k/a OTIS ASSOCIATES, INC.,
Defendants,

and

DOVER CONSTRUCTION, INC.,
Third-Party Plaintiff,

vs.

WOODS MASONRY, INC.,
Third-Party Defendant.

No. C00-4100-MWB

**MEMORANDUM OPINION AND
ORDER REGARDING DEFENDANT
OTIS ASSOCIATE, INC.'S MOTION
TO DISMISS**

On September 15, 2000, plaintiff James Eischeid (“Eischeid”) filed this tort action against Dover Construction (“Dover”) for personal injuries sustained while working at a Dover construction site in Spencer, Iowa. At the time of his injuries, Eischeid was employed by a subcontractor, Woods Masonry, Inc. (“Woods Masonry”). Eischeid asserts that he sustained severe and permanent injuries in the course of his employment when he fell from a wall which collapsed. The wall was designed by Otis, Koglin, Wilson Architects, Inc. (“Otis”). In his original complaint, Eischeid alleged that his injuries were the result of Dover’s negligence and failure to provide a safe work environment.

On December 20, 2000, Dover filed a third-party complaint against Woods Masonry,

claiming a breach of contract. Dover, the general contractor, argues, *inter alia*, that under its subcontract agreement with Woods Masonry, Woods Masonry agreed to defend and indemnify Dover for any injury claims arising out of their relationship and, furthermore, agreed to carry workers' compensation liability coverage prior to beginning work at the Dover construction site.¹ Woods Masonry answered Dover's third-party complaint on December 21, 2000.

After Woods Masonry was added as a third-party defendant and after Eischeid learned that Woods Masonry's workers' compensation liability carrier would deny coverage of his injuries, Eischeid moved on March 16, 2001, for leave to amend his original complaint to add Woods Masonry and Otis as defendants in this personal injury action. The court granted Eischeid's motion on March 19, 2001 and ordered the Clerk of Court to file Eischeid's amended complaint. In his amended complaint, Eischeid alleges his injuries were caused by the negligence of Dover, Woods Masonry, and Otis. Woods Masonry answered the amended complaint on March 21, 2001, and Dover, after this court granted an extension, answered on April 13, 2001. On June 27, 2001, counsel for Otis appeared *pro hac vice* and, in lieu of filing an answer, filed a motion to dismiss for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Specifically, Otis argues that Iowa's two-year statute of limitations for personal injury claims expired on March 17, 2001—two days before Eischeid filed his amended complaint, joining Woods Masonry and Otis as defendants.

In ruling on a motion to dismiss for failure to state a claim upon which relief can be

¹Woods Masonry's workers' compensation liability carrier denies that Woods Masonry's policy covers employees in Iowa. In a separate action before this court, C01-4045-MWB, Woods Masonry filed suit on May 9, 2001 against its workers' compensation liability carrier, seeking a declaratory judgment that would result in coverage of Eischeid's injuries. Woods Masonry has also sought a motion to stay this personal injury action (Doc. No. 29) pending disposition of its workers' compensation declaratory judgment action.

granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court must “accept the complaint’s factual allegations as true and construe them in the light most favorable to [the plaintiff].” *Whitmore v. Harrington*, 204 F.3d 784, 784 (8th Cir. 2000); *Anderson v. Franklin County, Mo.*, 192 F.3d 1125, 1131 (8th Cir. 1999); *Gross v. Weber*, 186 F.3d 1089, 1090 (8th Cir. 1999). A complaint should be dismissed under Rule 12(b)(6) only if, taking the allegations as true, “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Knapp v. Hanson*, 183 F.3d 786, 788 (8th Cir. 1999) (“A motion to dismiss should be granted only if ‘it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief.’”) (quoting *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986), and citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

The Iowa Supreme Court recently explained:

Generally, the defense of statute of limitations is affirmatively asserted by a responsive pleading. *Davis v. State*, 443 N.W.2d 707, 708 (Iowa 1989); *Pride v. Peterson*, 173 N.W.2d 549, 554 (Iowa 1970). However, the statute of limitations bar may be raised by a motion to dismiss. *Clark v. Miller*, 503 N.W.2d 422, 423 (Iowa 1993). “[W]hen it is obvious from the uncontroverted facts shown on the face of the challenged petition that the claim for relief was barred when the action was commenced, the defense may properly be raised by a motion to dismiss.” *Davis*, 443 N.W.2d at 708.

Rieff v. Evans, 630 N.W.2d 278, 289 (Iowa 2001). Consequently, if Eischeid’s personal injury claims against Otis truly are time-barred, an order dismissing Eischeid’s complaint against Otis would be appropriate.

Iowa Code § 614.1(2) provides a two-year limitations period for personal injury actions. Because Eischeid’s lawsuit is such an action, it is subject to the two-year limitations period. Eischeid’s accident occurred on March 17, 1999. Otis contends that the

statute of limitations barred Eischeid's claim on March 17, 2001. The thrust of Otis's argument relies heavily on Iowa Rule of Civil Procedure 69(e),² which governs the relation back of amendments to pleadings. Otis contends that pursuant to Iowa's relation back principles, an amended complaint will not relate back to the filing of the original complaint unless added defendants receive notice within the statutory time period. According to Otis, notice in this context means nothing less than the actual filing of the amended complaint. Otis claims that, because Eischeid's amendment was not filed until March 19, 2001, Otis did not receive notice of the complaint within the limitations period. Consequently, Otis contends that Eischeid's amended complaint against Otis is time-barred. Moreover, Otis argues that the limitations period on Eischeid's claim was not tolled when Eischeid filed his motion for leave to amend his complaint.

Eischeid, on the other hand, argues that the limitations period on his claims had not run and that, even if it had, because Dover consented to Eischeid's motion to amend his original complaint, the amended complaint should have been filed as a matter of course with

²Rule 69(e) provides the following:

(e) Making and Construing Amendments. . . . Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Iowa R. Civ. P. 69(e).

the motion for leave to amend pursuant to Federal Rule of Civil Procedure 15(a), which provides that a plaintiff may amend his complaint by leave of court or by written consent of the adverse party. Thus, Eischeid argues that because Dover was the only adverse party of record and because Dover consented to the amendment, March 16, 2001 should be considered the date of filing of the amended complaint.

While the court could go into an exhaustive discussion of the parties' arguments,³

³As stated above in the body of this opinion, Otis's argument that the statute of limitations had run on Eischeid's complaint against Otis is primarily premised on its argument that the amended complaint did not relate back to the filing of either the original complaint or the motion for leave to amend the complaint. The court finds ample support for the proposition that amendments will not relate back unless notice is received prior to the expiration of the limitations period.

In construing rule 69(e), Iowa's rule governing relation back, the Iowa Supreme Court recently held that notice of the institution of the action prior to expiration of the period of time for commencing the action is required when changing parties named in the original complaint. *Estate of Kuhns v. Marco*, 620 N.W.2d 488, 492 (Iowa 2000). "[A]n amendment can relate back only if an added defendant receives notice of the institution of the action 'within the period provided by law for commencing the action. . . .' This period beings 'on the day the cause of action accrues' and ends when the appropriate statute of limitations expires." *Alvarez v. Meadow Lane Mall Ltd. Partnership*, 560 N.W.2d 588, 592 (Iowa 1997) (quoting *Grant v. Cedar Falls Oil Co.*, 480 N.W.2d 863, 865-66 (Iowa 1992)).

The Iowa Supreme Court in *Kuhns* examined the relation-back doctrine:

Our rules of civil procedure consider the competing interests that can clash when pleadings are amended after the statute of limitations has expired. See Iowa R. Civ. P. 69(e). To balance these interests, rule 69(e) applies two separate tests to determine if an amendment to a pleading will relate back. The first test applies to amendments that add claims. . . . The second test applies to amendments that add parties and is comprised of four prongs. See *Porter v. Good Eavespouting*, 505 N.W.2d 178, 181 (Iowa 1993); 3 James Wm. Moore *et al.*, Moore's Federal Practice § 15.19[3][a], at 15-85 (Matthew Bender 3d ed.2000) [hereinafter Moore]. First, the same

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relation back test for amendments that add claims is considered [*i.e.*, it must arise out of the conduct, transaction, or occurrence set forth in the original pleading]. *Porter*, 505 N.W.2d at 181. Second, a party against whom a claim is asserted must receive such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits. *Id.* Third, the party against whom the claim is asserted must know or should have known that, but for a mistake concerning the identity of the proper party, that the action would have been brought against the party. *Id.* Finally, the second and third factors must occur within the period provided by law for commencing the action against the party. *Id.*

Kuhns, 620 N.W.2d at 491-92.

Further, the court noted the difference between the federal relation-back rule and its Iowa counterpart. *See id.* at 492. The court stated the following:

The relation back doctrine is also found in the Federal Rules of Civil Procedure and existed as a common law principle. *See* Clif J. Shapiro, Note, *Amendments That Add Plaintiffs Under Federal Rule of Civil Procedure 15(c)*, 50 Geo. Wash. L.Rev. 671, 673 (1982). Similarly, the doctrine was recognized in Iowa prior to the adoption of our rules of civil procedure. *See Schofield v. White*, 250 Iowa 571, 583, 95 N.W.2d 40, 46-47 (1959). The federal rule applies the same test as the Iowa rule, but now employs a different time period in which notice of the institution of the action . . . must occur. Under federal rule 15(c), these conditions must occur “within the [time] provided . . . for service of the summons and complaint.” Fed. R. Civ. P. 15(c). By contrast, under rule 69(e), these conditions must occur “within the period provided by law for commencing the action against the party.” Iowa R. Civ. P. 69(e).

Id. Thus, the critical distinction between the Iowa and federal relation back rules concerns notice. Under Iowa law, rule 69(e) requires notice of the institution of the action prior to expiration of the period of time for commencing the action. *Id.* Moreover, a petition is the
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it need only address Eischeid’s argument that he filed his amended complaint within the limitations period. If the amendment was indeed filed within the statutory time period, relation back principles are not implicated because all parties received notice within the limitations period at the time the amendment was filed.

Under Rule 69(e), a defendant must have notice of an amendment “within the statutory time period.” IOWA R. CIV. P. 69(e); *see also Schiavone v. Fortune*, 477 U.S. 21, 31 (1986) (interpreting identical language of Federal Rule of Civil Procedure Rule 15(c) and refusing to permit relation back when the party being added did not receive notice of the

³(...continued)

document that serves to notify an added defendant of a claim for purposes of the notice period. *Id.* (citing *Porter*, 505 N.W.2d at 181-82; *Grant v. Cedar Falls Oil Co.*, 480 N.W.2d 863, 865-66 (Iowa 1992)).

In 1967, the Eighth Circuit Court of Appeals stated that “the issue of relation back is one of procedure and is controlled by the Federal Rules of Civil Procedure.” *Crowder v. Gordons Transports, Inc.*, 387 F.2d 413, 416 (8th Cir. 1967), *rev’d on other grounds*, 419 F.2d 480 (8th Cir. 1969). The *Crowder* case, however, antedated the 1991 amendments to the Federal Rules of Civil Procedure. In 1991, rule 15(c)(1) was added as an amendment to the rule and expressly allows for relation back of amendments when “permitted by the law that provides the statute of limitations applicable to the action.” The Eleventh Circuit recently held that state law relation back principles apply in actions based on diversity:

[B]oth the language of Rule 15(c)(1) and its accompanying advisory committee notes indicate that Rule 15(c)(1) does incorporate state law relation-back rules. . . . Therefore, we join the other circuits in holding that Rule 15(c)(1) allows federal courts sitting in diversity to apply relation-back rules of state law where, as here, state law provides the statute of limitations for the action.

Saxton v. ACF Industries, Inc., 254 F.3d 959 (11th Cir. 2001) (citing *Arendt v. Vetta Sports, Inc.*, 99 F.3d 231, 236 (7th Cir. 1996); *Lundy v. Adamar of New Jersey, Inc.*, 34 F.3d 1173, 1184 (3d Cir. 1994); *McGregor v. Louisiana State University Bd. of Sup’rs*, 3 F.3d 850, 863 n. 22 (5th Cir. 1993)). It appears, therefore, that the *Crowder* decision is no longer viable after the 1991 amendments and that, if implicated in this case, Iowa relation back principles would apply.

institution of the action until after the statute of limitations expired); *Alvarez v. Meadow Lane Mall Ltd. Partnership*, 560 N.W.2d 588, 592 (Iowa 1997) (affirming lower court's dismissal of complaint on ground amended complaint did not relate back to the filing of the original complaint because added defendants did not receive actual notice of the action within the two-year period); *Porter v. Good Eavespouting*, 505 N.W.2d 178, 181 (Iowa 1993) (strictly construing plain language of relation back rule as requiring notice within the statutory time period in order to satisfy relation back rule); *Grant v. Cedar Falls Oil Co.*, 480 N.W.2d 863, 865 (Iowa 1992) (recognizing anomaly that the notice language of Rule 69(e) gives added defendants the right to receive notice within the statute of limitations, while a properly named defendant has no similar right to be served within the statute of limitations); *Butler v. Woodbury County*, 547 N.W.2d 17, 19 (Iowa Ct. App. 1996) (“[N]otice to the party to be brought into the action must be notice of the institution of the action, not simply notice of the possibility of the lawsuit) (citing *Jacobson v. Union Story Trust & Sav. Bank*, 338 N.W.2d 161, 164 (Iowa 1983)). Moreover, under Iowa law, the filing of the complaint is the document that serves to notify a defendant of a claim for purposes of the statute of limitations. *Kuhns*, 620 N.W.2d at 494. Read together, these rules indicate that a plaintiff must file amendments that add defendants within the statutory time period in order to satisfy Rule 69(e)'s requirement that added defendants receive notice of the institution of an action “within the period provided by law for commencing the action.” *Alvarez*, 560 N.W.2d at 592. Accordingly, if Eischeid filed his amended complaint within the period provided by section 614.1(2) of the Iowa Code, Otis also had notice of the action within the limitations period because the filing of Eischeid's amended complaint served the dual purpose of instituting an action against the added defendants, Otis and Woods Masonry, and of providing the added defendants with notice of the action. See *Kuhns*, 620 N.W.2d at 494 (“A petition is the document that serves to notify the defendant of the claim for the purposes of the statute of limitations.”).

Otis's argument that it did not receive notice within the meaning of Rule 69(e), however, is incomplete. The Iowa Code provides that when a statutory deadline falls on a Saturday, Sunday, or legal holiday, "*the time shall be extended to include the next day which the office of the clerk of the court . . . is open* to receive the filing of a commencement of an action, pleading or a motion in a pending action or proceeding. . . ." IOWA CODE § 4.1(34) (emphasis added). Eischeid was injured at the Dover construction site on March 17, 1999. Iowa's two-year limitations period applies to his personal injury action, but March 17, 2001 was a Saturday. Consequently, the limitations period on his lawsuit did not expire until the following Monday, which was March 19, 2001. Otis admits it received notice when Eischeid filed his amended complaint on March 19, 2001. Therefore, because the statute of limitations did not run on Eischeid's claims until March 19, 2001 and because Otis received notice of Eischeid's complaint on March 19, 2001, Eischeid's complaint against Otis is timely.

Accordingly, Otis's motion to dismiss on the ground Eischeid's lawsuit is barred by section 614.1(2) of the Iowa Code, which establishes a two-year limitation period on personal injury actions, is **denied**.

IT IS SO ORDERED.

DATED this 6th day of September, 2001.

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA