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English v. Taylor Appellant's Brief 1 Dckt. 42947

IN THE SUPREME COURT OF THE STATE OF IDAHO

CAROL ENGLISH and ERIC ENGLISH, wife and husband, Plaintiffs/Appellants, vs. JAMES TAYLOR, D.O.; EASTERN IDAHO HEALTH SERVICES, INC. dba EASTERN IDAHO REGIONAL MEDICAL CENTER, an Idaho Corporation, Defendants/Respondents.	SUPREME COURT CASE NO. 42947 Seventh Dist. Case No. CV-2013-4868

APPELLANTS BRIEF ON APPEAL

Appeal from the District Court of the Seventh Judicial District
For the County of Bonneville

Honorable Jon J. Shindurling, Presiding

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STATEMENT OF THE CASE

1. Nature of the case

This is a personal injury action for stroke injuries sustained when Plaintiff Carol English underwent a medical procedure performed by Defendants James Taylor, D.O., and Eastern Idaho Health Services, Inc., dba Eastern Idaho Regional Medical Center (the Medical Defendants). In performing the procedure, the Medical Defendants used a medical device designed, manufactured and sold by Defendants Cook Incorporated, Cook Medical Incorporated, and/or Cook Medical Technologies, LLC (the Cook Defendants). The question of liability turns on whether and to what extent the Cook Defendants' device was defective, and whether and to what extent the Medical Defendants negligently performed the procedure.

This appeal arises out of the trial court's dismissal of the Englishes' causes of action against the Medical Defendants on timeliness grounds.[1]

2. Course of proceedings below

The trial court granted the Medical Defendants' motions for summary judgment, dismissing the Englishes' medical negligence claims based upon the trial court's determination that Idaho Supreme Court precedent required the Englishes to serve a copy of their motion to amend the complaint on the Medical Defendants in order to commence the Englishes' claims

[1] This appeal concerns the trial court's dismissal of the Englishes' medical negligence causes of action only. The Englishes' claims against the Cook Defendants were not dismissed, and the Cook Defendants are therefore not parties to this appeal. The district court certified its dismissal orders as final, and the district court action against the Cook Defendants has been stayed pending this appeal.

against the Medical Defendants. The trial court then denied the Englishes' motion for reconsideration, which was based upon a ruling by the United States District Court for the District of Idaho that the Englishes' Second Amended Complaint was timely filed as of December 10, 2013, the date on which their motion for leave to amend the complaint was filed. The trial court certified its judgments of dismissal as final pursuant to Rule 54(b).[2]

3. Statement of facts

On September 17, 2011, Carol English went to the hospital with a nose bleed. After attempting other treatments to stop the nose bleed, the Medical Defendants attempted an epistaxis embolization procedure on Mrs. English, a procedure wherein PVA foam embolization particles are injected into the area of a nose bleed to create an embolus and stop the nose bleed. To accomplish this injection, the Medical Defendant used a device called the Cantata Superselective Microcatheter, which was designed, manufactured and sold by the Cook Defendants. While in the course of injecting the particles into Mrs. English's left internal maxillary artery, the catheter unexpectedly released all of the PVA particles into Mrs. English's arteries. The particles clotted and caused a stroke, resulting in permanent and disabling injuries.[3]

The cause of the release of all the PVA particles is at the heart of the liability question. The Medical Defendants recorded in their patient chart and contend in this case that the Microcatheter was defective by reason of a linear tear in the catheter, observed by

[2] R Vol. 2, p. 336 (Order Granting Motion for Rule 54(b) Certification of Judgments of Dismissal of Medical Defendant and Rule 54(b) Certification).

[3] R Vol. 1, pp. 10-11 (Complaint and Jury Demand, ¶¶ 1-6).

Defendant/Appellee Dr. James Taylor after the procedure, which caused the release of all the embolization particles. However, the Medical Defendants inadvertently disposed of the Microcatheter at issue after the procedure was completed.[4] Without having access to the Microcatheter for evaluation and analysis, the Englishes anticipated that the Cook Defendants would seek to avoid liability by placing blame on the Medical Defendants, contending that medical negligence in performing the procedure, not a defective product, caused Mrs. English's injuries and Plaintiffs' damages.

Believing this to be more likely a products liability case than a medical negligence case, the Englishes' counsel communicated at length with counsel for the Medical Defendants concerning the Englishes' claims, including the bases of possible medical negligence claims against the Medical Defendants, and proposed tolling agreements and cooperative investigation into the facts.[5] When the Medical Defendants declined these overtures, the Englishes concluded that they needed to pursue both products liability claims against the Cook Defendants and medical negligence claims against the Medical Defendants.

The Englishes' products liability claims and medical negligence claims were subject to different procedural rules, which is where the problems giving rise to this appeal began. Pursuant to the Idaho medical malpractice statutes,[6] in order for an injured patient to pursue a lawsuit against a medical provider, he or she must satisfy statutory prelitigation requirements,

[4] R Vol. 1, p. 89 (Affidavit of Ralph L. Dewsnup, ¶ 3).

[5] R Vol. 1, pp. 89-90 (Affidavit of Ralph L. Dewsnup, ¶¶ 4-6).

[6] IDAHO CODE §§ 6-1001 *et seq*.

which include submission of a written statement of the bases of the medical negligence claim, a hearing in which the plaintiff presents his or her claims and the defendant responds to those claims before a panel convened by the Idaho Board of Medicine for that specific purpose, and a written opinion concerning the merits of the claims from the panel.[7] The initiation of this prelitigation procedure tolls the statute of limitations until 30 days after the prelitigation panel files its written opinion.[8]

The Englishes filed suit against the Cook Defendants in the Idaho Seventh Judicial District Court on September 16, 2013,[9] the last day before the statute of limitations ran. They concurrently filed with the Idaho Board of Medicine and served upon the Medical Defendants a written statement of their claims against the Medical Defendants, setting forth the circumstances of the alleged malpractice and its consequences,[10] just as they had done during the preceding months in discussions with counsel for the Medical Defendants. Pursuant to statute, the Board of Medicine then appointed a panel, which held a hearing on Plaintiffs' claims. The Medical Defendants had an opportunity to respond to Plaintiffs' claims during the hearing.[11] On November 18, 2013, the panel filed a written opinion with the Board of Medicine concerning the

[7] *Id*. at § 6-1001 (setting forth the prelitigation hearing procedure, which is "compulsory as a condition precedent to litigation").

[8] *Id*. at § 6-1006; *James v. Buck*, 111 Idaho 708, 727 P.2d 1136, 1139-41 (1986).

[9] R Vol. 1, pp. 9-15 (Complaint and Jury Demand). The First Amended Complaint, making only formalistic and not substantive changes, was then filed September 18, 2013. R Vol. 1, pp. 16-23.

[10] IDAHO CODE § 6-1007.

[11] *Id*. at §§ 6-1001, 6-1002.

substance of the claims.[12] The 30-day statutory tolling period ended on December 18, 2013, and the limitations period expired on December 19, 2013.

While the Medical Defendants were proceeding through the prelitigation process, the Cook Defendants had removed the case pending in the Idaho Seventh Judicial District Court to federal court on the basis of diversity jurisdiction.[13] Although the Englishes had complied with the statutory prelitigation requirements, they were required to obtain leave of court in order to amend their complaint to name the Medical Defendants, pursuant to Rule 15 of the Federal Rules of Civil Procedure. Accordingly, the Englishes moved to amend their complaint on December 10, 2013, within the limitations period, filing their proposed Second Amended Complaint with the motion, which asserted the same claims that the Medical Defendants had discussed with the Englishes' counsel in the preceding months, and to which the Medical Defendants had just responded in the prelitigation hearing.[14] The Cook Defendants, as parties to the lawsuit, were served with the Motion to Amend and the Amended Complaint. As the Medical Defendants were not parties to the lawsuit yet, they were not served with a copy of the motion for leave to amend.[15]

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[12] R. Vol. 1, p. 47 (affidavit of Marvin M. Smith, ¶ 3).

[13] R Vol. 1, pp. 95-100 (Notice of Removal).

[14] R Vol. 1, pp. 102-17 (Plaintiffs' Motion and Supporting Memorandum for Leave to File Second Amended Complaint, as well as the Second Amended Complaint filed therewith).

[15] As counsel for the Hospital has acknowledged, "[a]t the time Plaintiffs filed their Motion for Leave to file Second Amended Complaint [the Medical Defendants were] not part[ies] to the lawsuit." R Vol. 1, p. 56 (Memorandum in Support of EIRMC's Motion for Summary Judgment, 2).

The effect of the filing of the motion for leave to amend is the central issue in this appeal. Idaho Supreme Court precedent provides that the filing of a motion for leave to amend with the proposed amended complaint commences a cause of action seeking to add new parties, where, as here, the new parties have knowledge of the substance of the claims against them. The Englishes, therefore, timely filed their motion for leave to amend and the amended complaint, knowing that if any defendant knew the substance of the claims against them, the Medical Defendants did, having not only engaged in discussions with the Englishes' counsel specific to the substance of potential medical negligence claims against them for many months, but also having been through the statutory prelitigation process that required the Medical Defendants' knowledge of and response to the substance of the very claims contained in the amended complaint, and even a written panel opinion concerning the substance of those claims.

The federal district court ultimately granted the Englishes' Motion to Amend on January 16, 2014,[16] and the Englishes formally filed their Second Amended Complaint in federal court that same day. As diversity was lost, the case was then remanded to state court.[17] The Medical Defendants filed motions for summary judgment, arguing that the Englishes' claims against them were untimely because they were formally filed on January 16, 2014, after the limitations period expired on December 19, 2013.

[16] R Vol. 1, p. 119 (Docket entry order granting Plaintiffs' Motion for Leave to File Second Amended Complaint).

[17] R Vol. 1, p. 121 (Order to Remand).

Puzzled at this challenge, given the clarity of the law, the Englishes requested clarification from the federal district court concerning its ruling granting the Englishes' motion for leave to amend relative to its effect on the commencement of their claims against the Medical Defendants. The federal district court clarified its ruling, stating: "Plaintiffs' Second Amended Complaint was effectively filed on December 10, 2013, the date it was filed with Plaintiffs' Unopposed Motion to Amend."[18]

Notwithstanding the clarity of Idaho law, the district court granted the Medical Defendants' summary judgment motions. When asked to reconsider in light of the federal court's clarification, the district court reiterated its prior ruling, with no analysis of the federal court's ruling or the applicable law. The Englishes appeal from these rulings.

ISSUES PRESENTED ON APPEAL

1. The Federal Rules of Civil Procedure apply in all actions in federal court, and in diversity cases, federal courts apply federal law on matters of procedure. Rule 15 of the Federal Rules of Civil Procedure governed the motion to amend the complaint in this case, and the effect of a motion to amend under that rule is a question of procedure governed by federal law. Where this case was pending in federal court at the time the motion to amend was filed, did the district court err in rejecting the federal court's determination under federal law that the action against the Medical Defendants was deemed filed as of the date the motion to amend was filed?

[18] R Vol. 2, p. 240 (Federal court's April 9, 2014 Order granting Plaintiffs' motion to clarify).

2. Under Idaho law, an action against a defendant named in an amended complaint is deemed filed as of the date a motion to amend the complaint to name the new defendant is filed if that defendant had notice of the substance of the proposed amendment within the limitations period. The Medical Defendants knew the substance of the Englishes' claims against them because they had discussed those claims with Plaintiffs' counsel and had gone through a statutory prelitigation procedure. Did the district court err in ruling that the Englishes' amended complaint adding the Medical Defendants as defendants was untimely because the motion to amend was not served on them?

3. Other jurisdictions that, like Idaho, deem actions commenced when a complaint is filed with the court do not require that a new defendant have notice of the substance of the proposed amendment before a motion to amend the complaint to name the new defendant is deemed to commence the action against that defendant. Should this Court depart from that line of cases and require notice of a motion for leave to amend to add new parties before the action against the new party is deemed commenced?

ATTORNEY FEES ON APPEAL

The Englishes do not seek attorney fees on appeal.

ARGUMENT

1. Summary of argument

This matter had been removed and was pending before the United States District Court for the District of Idaho at the time the Englishes moved for leave to amend their complaint under Rule 15 of the Federal Rules of Civil Procedure. The federal court properly applied federal procedural law and ruled that the complaint against the Medical Defendants was deemed filed as of the date the motion to amend pursuant to Rule 15 was filed. That ruling should decide this appeal.

Even if this case had not been governed by federal procedural law at the time the motion to amend was filed, Idaho law would likewise have deemed the amended complaint filed as of the date the Englishes filed their motion to amend. This Court has determined that an Idaho action against a new defendant is deemed commenced upon the filing of a motion to amend the complaint to add the new defendant where the new defendant has "notice of the substance of the amendment" within the limitations period. The trial court interpreted this language to mean that a plaintiff seeking to add a new defendant by way of a motion to amend is required to serve a copy of the motion to amend on the proposed new defendant (a non-party) within the limitations period, or else file a separate action and consolidate the two actions. The Medical Defendants had abundant notice of the substance of the claims against them within the limitations period, but because they were not parties and were therefore not served with the motion to amend, the trial court deemed the Englishes' action against the Medical Defendants untimely. This Court's pronouncement of Idaho law is clear that "notice of the substance of the amendment," not service

of a motion to amend, is the determinative factor in deciding whether the motion to amend commences the action, and the Englishes met that requirement.

The fact that the Medical Defendants had abundant notice of the substance of the claims against them within the limitations period should decide this appeal. But if not, the Englishes additionally urge the Court to consider both the necessity and practicality of the notice requirement, where the requirement causes non-uniform treatment of civil defendants, gives rise to unnecessary procedural problems, is not imposed in other jurisdictions with action commencement rules like Idaho's, and runs counter to Idaho's policy favoring procedures that allow claims to be decided on their merits.

2. Standard of review

On an appeal from a grant of summary judgment, this Court applies the same standard of review that a trial court applies in ruling on the motion.[19] "All disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party."[20]

Summary judgment is only appropriate in cases where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.[21] In the absence

[19] *Infanger v. City of Salmon*, 137 Idaho 45, 47, 44 P.3d 1100, 1102 (2002).

[20] *Conway v. Sonntag*, 141 Idaho 144, 146, 106 P.3d 470, 472 (2005) (citing *Infanger*, 137 Idaho 45, 44 P.3d at 1002).

[21] IDAHO R. CIV. P. 56(c).

of disputed issues of material fact, where only a question of law remains, "this Court exercises free review."[22]

3. The question of when the amended complaint was deemed filed is a procedural question governed by federal procedural law, under which an amended complaint is deemed filed as of the date a motion to amend is filed.

When the Englishes filed their motion to amend, this case was pending in federal court. The Federal Rules of Civil Procedure apply in all civil actions in federal court.[23] Of course, in cases such as this that are based on diversity of citizenship jurisdiction, the federal courts apply state substantive law, but they apply federal law on matters of procedure.[24] This is particularly true of matters covered by the Federal Rules of Civil Procedure:

> When a situation is covered by one of the Federal Rules, the question facing the Court is a far cry from the typical relatively unguided *Erie* choice: the court has been instructed to apply the Federal Rule, and can refuse to do so only if the Advisory Committee, this Court [i.e., the United States Supreme Court], and Congress erred in their prima facie judgment that the Rule in question transgresses neither the terms of the Enabling Act nor constitutional restrictions.[25]

"Thus, the full-blown *Erie* analysis--first determining whether a matter is substantive or procedural and then applying state law on substantive matters--does not apply if the matter in question is covered by a Federal Rule of Civil Procedure."[26]

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[22] *Infanger,* 137 Idaho 45, 44 P.3d at 1002.

[23] FED. R. CIV. P. 1.

[24] *E.g., Hiatt v. Mazda Motor Corp.,* 75 F.3d 1252, 1255 (8th Cir. 1996) (citing *Erie R.R. Co. v. Tompkins,* 304 U.S. 64 (1938)).

[25] *Hanna v. Plumer,* 380 U.S. 460, 471 (1965).

[26] *Hiatt,* 75 F.3d at 1258.

The United States Supreme Court made this principle clear in *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*:[27] "We must first determine whether [the federal rule in question] answers the question in dispute. If it does, it governs – [state] law notwithstanding – unless it exceeds statutory authorization or Congress's rulemaking power. We do not wade into *Erie's* murky waters unless the federal rule is inapplicable or invalid."[28] The Court went on to observe:

> The test is not whether the rule affects a litigant's substantive rights; most procedural rules do. *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 445, 66 S.Ct. 242, 90 L.Ed.185 (1946). What matters is what the rule itself regulates: If it governs only "the manner and the means" by which the litigants' rights are "enforced," it is valid; if it alters "the rules of decision by which [the] court will adjudicate [those] rights," it is not.[29]

Here, before the Englishes could amend their complaint in federal court to add the Medical Defendants as parties, they had to file a motion to amend their complaint under Federal Rule of Civil Procedure 15. The effect of a motion to amend under Federal Rule of Civil Procedure 15 is a question of procedure governed by federal law.[30] Indeed, this Court has also

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[27] 559 U.S. 393 (2010).

[28] *Id*. at 398 (citations omitted).

[29] *Id.* at 407 (citation omitted) (per Scalia, J., joined by Roberts, C.J.; Thomas, J.; and Sotomayor, J.)

[30] *E.g., Loudenslager v. Teeple,* 466 F.2d 249, 250 (3d Cir. 1972) ("the construction and application of Rule 15 of the Federal Rules of Civil Procedure . . . is entirely a matter of Federal practice," governed by federal law); *Meyers v. Am. States Ins. Co.*, 926 F. Supp. 904, 908-09 (D. S.D. 1996) ("A motion to amend is a procedural matter governed by federal law.") (citing *Hiatt*, 75 F.3d at 1258); *Heiser v. Ass'n of Apt. Owners*, 848 F. Supp. 1482, 1487 (D. Haw. 1993) (in diversity cases, state law applies on questions related to statutes of limitations, but the federal rule will generally apply in determining whether an amendment to a complaint relates back)

acknowledged that when an action is commenced is a procedural question,[31] and that federal courts have applied "analogous rules of federal procedure" in determining the effect of filing a motion for leave to amend.[32] Federal Rule of Civil Procedure 15 "is a truly procedural rule because it governs the in-court dispute resolution processes rather than the dispute that brought the parties into court; consequently it does not transgress the Rules Enabling Act," and "there is no credible basis for impugning its constitutionality."[33] Thus, federal law governed the question of whether the amended federal complaint was deemed filed as of the date the motion to amend was filed.

The applicable federal procedural law is clear: Where a motion to amend a complaint under rule 15 is granted, the amended complaint is deemed filed as of the date the motion to amend was filed.[34] This is the only date that the parties can control. Were the rule otherwise, a plaintiff seeking to add new parties shortly before the statute of limitations is about to run as to

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(citing 6A Charles Alan Wright et al., *Federal Practice and Procedure* § 1503 (1986)); *Fed. Leasing, Inc. v. Amperif Corp.*, 840 F. Supp. 1068, 1071 (D. Md. 1993) (the federal rule governs the relation back of amendments and controls in the face of a conflicting less generous state law).

[31] *See Terra-West, Inc. v. Idaho Mut. Trust, LLC*, 150 Idaho 393, 398, 247 P.3d 620, 625 (2010) ("While the legislature has the power to enact substantive laws, the Supreme Court has the inherent 'power to fashion the procedures necessary to perform [its] duties.' *City of Boise v Ada County*, 147 Idaho 794, 802, 215 P.3d 514, 522 (2009). . . . [B]ecause the legislature is silent on this issue, it is this Court's responsibility to apply a meaning of 'commence proceedings . . . .'").

[32] *Terra-West, Inc.*, 150 Idaho at 398.

[33] *Morel v. DaimlerChrysler AG*, 565 F.3d 20, 24 (1st Cir. 2009) (citing, *inter alia*, *Santana v. Holiday Inns, Inc.*, 686 F.2d 736, 740 (9th Cir. 1982)).

[34] *E.g., Buller Trucking Co. v. Owner Operator Indep. Driver Risk Retention Grp.*, 461 F. Supp. 2d 768, 776-77 (S.D. Ill. 2006) (collecting cases).

them would be required to file a separate action in every case rather than risk having the court grant the motion after the statute of limitations had run. And, in a case like this, where there would be no basis for federal jurisdiction in the separate action, those two cases would necessarily have to proceed down parallel tracks that could never meet--one in federal court and one in state court.

Here, the federal district court held that the Second Amended Complaint, adding the Medical Defendants as defendants, was deemed filed on December 10, 2013, within the statute of limitations. That should be dispositive of this appeal.

Walker v. Armco Steel Corp.,[35] the case the Medical Defendants principally relied on below, is distinguishable. That case involved a state statute of limitations that provided that an action was not deemed "commenced" for purposes of the statute of limitations until service of the summons on the defendant. The statute also provided that the action would be deemed commenced from the date of filing if the defendant was served within 60 days, even if the defendant was served outside of the limitations period. The defendant in that case was not served until long after the 60-day period had run. The Court held that the action was time-barred because the state statute of limitations, including its service requirement, which was "an integral part of the statute of limitations,"[36] governed, as opposed to Federal Rule of Civil Procedure 3 defining commencement of an action.

[35] 446 U.S. 740 (1980).

[36] *Id.* at 748.

This is not a case, like *Walker*, where a state statute that was "an integral part of the state statute of limitations"[37] would completely bar recovery if the suit were brought in state court. The state statute of limitations in this case is two years. But the state statute of limitations does not say what the effect of moving to amend a complaint is, especially a federal complaint in federal court. That is a question of federal procedural law, governed by the Federal Rules of Civil Procedure and their interpretation. The Court in *Walker* recognized that, "in diversity actions Rule 3 governs the date from which various timing requirements of the Federal Rules begin to run, but does not affect state statute of limitations."[38] Similarly, Federal Rule of Civil Procedure 15 does not affect the Idaho statute of limitations for medical malpractice actions but merely governs the date from which an amended complaint is deemed filed. The choice between the effect of a state rule on amended pleadings and the federal rule "would be of scant, if any, relevance to the choice of a forum," favoring application of state over federal law.[39] This court should therefore apply federal courts' interpretation of Federal Rule of Civil Procedure 15 (including the conclusion of the federal district court in this case) and hold that the Plaintiffs' amended complaint adding the Medical Defendants was filed as of December 10, 2013, the date the motion to amend was filed under Federal Rule of Civil Procedure 15, which was before the Idaho statute of limitations for an action against the Medical Defendants expired.

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[37] *Id.* at 752.

[38] *Id.* at 751 (footnote and citation omitted).

[39] *Cf. Hanna v. Plumer*, 380 U.S. 460, 469 & n.10 (1965).

4. The Englishes' amended complaint was timely because the Englishes satisfied the notice requirements under Idaho law.

The central question presented in this appeal is whether the filing of the motion for leave to file an amended complaint in the federal district court with a copy of the proposed amended complaint on December 10, 2013, commenced the Englishes' claims against the Medical Defendants.

If Idaho law governs that question, the relevant authority is *Terra-West, Inc. v. Idaho Mut. Trust, LLC,*[40] a 2010 Idaho Supreme Court decision wherein the Court was presented with the question whether a motion for leave to amend commences an action in cases not involving proposed new parties. The Court concluded without difficulty that "the filing of the motion to amend the complaint commenced proceedings."[41] In coming to that decision, this Court cited with approval "relevant state and federal case law on the issue," as collected in Corpus Juris Secundum:

> [W]hen a motion to amend a complaint and a proposed amended complaint are filed prior to the running of the statute of limitations, the motion to amend stands in place of the actual amended complaint while the motion is under review by the trial court, and the fact that an order granting the motion to amend is entered after expiration of the statute of limitations does not make the amended complaint untimely.[42]

[40] 150 Idaho 393, 247 P.3d 620 (2010).

[41] 150 Idaho at 396, 247 P.3d at 623.

[42] 54 C.J.S. LIMITATIONS OF ACTIONS § 329, *quoted in Terra-West,* 150 Idaho at 396, 247 P.3d at 623.

The Court acknowledged the sound policy considerations found in federal and state Rule 3[43] jurisprudence concerning this "settled rule:"[44] "[I]n the context of an amended complaint, the plaintiff only has unilateral control over the timing of the filing of the motion for leave to amend, but does not have unilateral control over when the motion may be granted."[45]

> If the [time limitations] cannot be satisfied until the later filing of the amended complaint after the motion to amend has been allowed, the [limitation] period will effectively be shortened by some unpredictable amount of time, as a plaintiff would have to file the motion to amend some considerable period in advance of the expiration of the [limitation] period and simply hope that the court's ruling would be sufficiently prompt. It is only the first step, the filing of the motion, that the plaintiff can control. Thus, the filing of the motion is comparable to the original filing of the complaint, both in the sense that each is the first step that a plaintiff takes and the first document that a plaintiff files with the court concerning the action, and in the sense that both the filing of the original complaint and the filing of the motion to amend are steps that remain unilaterally in the plaintiff's control.[46]

The party opposing the application of this rule in *Terra-West* posited an alternative rule, proposing that a plaintiff seeking to amend the complaint be required to file a separate action and then consolidate it with the prior action in order to satisfy the timeliness requirements.[47] The Court observed that this approach "is contrary to the principles of judicial economy and

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[43] IDAHO R. CIV. P. 3(a) ("Commencement of Action. A civil action is commenced by the filing of a complaint, petition or application with the court"); FED. R. CIV. P. 3 ("A civil action is commenced by filing a complaint with the court.").

[44] *Terra-West*, 150 Idaho at 396, 247 P.3d at 623.

[45] *Id*., 150 Idaho at 397, 247 P.3d at 624.

[46] *Nett v. Bellucci*, 774 N.E.2d 130, 136 (Mass. 2002), *quoted with approval in Terra-West*, 150 Idaho 393, 247 P.3d at 624.

[47] *Terra-West*, 150 Idaho at 397, 247 P.3d at 624.

practicality" and "would create needless confusion and duplication."[48] Under this approach, "a plaintiff would inevitably be forced to incur additional litigation costs associated with filing a separate action[,] and scarce judicial resources would be wasted by adding unnecessary cases to the court's calendar."[49]

Noting that "[t]his Court has previously recognized that federal case law provides persuasive authority when interpreting rules under the I.R.C.P. that are substantially similar to rules under the F.R.C.P.,"[50] this Court then reviewed applicable federal case law addressing the interplay between Rule 3 governing commencement of actions and the effect of filing a motion for leave to amend a complaint. The Court analyzed four federal cases, all of which concluded that the filing of a motion for leave to amend commenced an action under Rule 3.[51]

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[48] *Id*.

[49] *Id*. at 625.

[50] *Id*.

[51] *See id*. (citing *Mayes v. AT&T Info. Sys., Inc.*, 867 F.2d 1172 (8th Cir. 1989) (because filing an amended complaint requires leave of court, "the amended complaint [was] deemed filed within the limitations period" where the motion to amend was filed before the limitations period expired); *Moore v. State*, 999 F.2d 1125 (7th Cir. 1993) ("As a party has no control over when a court renders its decision regarding the proposed amended complaint, the submission of a motion for leave to amend, properly accompanied by the proposed amended complaint that provides notice of the substance of those amendments, tolls the statute of limitations, even though technically the amended complaint will not be filed until the court rules on the motion"); *Rademaker v. E.D. Flynn Export Co.*, 17 F.2d 15 (5th Cir. 1927) (a motion to amend "stands in the place of an actual amendment"); *Longo v. Pennsylvania Elec. Co.*, 618 F. Supp. 87 (W.D. Pa. 1985) ("The timely filing of [the] Motion to Amend and not the final court approval was sufficient to meet the requirement of FED. R. CIV. P. 3 that 'a civil action is commenced by the filing of a complaint with the court'").

Having answered the question of the effect of filing a motion to amend that did not involve addition of a new party, the Court briefly discussed cases wherein a motion to amend seeks to add a new party, as was the case in *Griggs v. Nash*,[52] a 1989 Idaho Supreme Court decision. The *Griggs* court did not address federal and other state jurisprudence concerning commencement of actions in the context of a motion for leave to amend. Instead, the Court in *Griggs* determined that because Rule 3 provides that an action is commenced by the filing of a complaint, the third-party action had commenced when the complaint was formally filed.[53] The distinction, said the Court in *Terra-West*, was that the third-party in *Griggs*, not yet being a party to the suit, had no notice of the "substance of the proposed amendment,"[54] while the party against whom the amended complaint was filed in *Terra-West* was already a party to the case and therefore knew the substance of the proposed amendment.[55] Presumably, then, if a non-party knew the "substance of the proposed amendment" before the motion to amend was filed, the amended complaint could relate back to the date of the motion, the same as if the amendment added a new claim for relief against an existing party.

In the present case, whether the Englishes' filing of the motion to amend commenced the action—that is, whether the "settled rule" adopted in *Terra-West* applied—turns on what the *Terra-West* Court meant by "notice of the substance of the proposed amendment."

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[52] 116 Idaho 228, 775 P.2d 120 (1989).

[53] *Id*. at 126.

[54] *Terra-West*, 150 Idaho at 400, 247 P3d. at 627.

[55] *Id*. at 626-27.

The trial court concluded that "the substance of the proposed amendment was either a copy of the proposed amendment or sufficiently descriptive text included in the amendment itself."[56] The trial court then reasoned that because the Englishes did not serve the Medical Defendants with a copy of the Englishes' motion to amend before the expiration of the statute of limitations, the "settled rule" of *Terra-West* did not apply.[57] Said differently, according to the trial court's interpretation of *Terra-West*, the filing of the motion to amend would never itself have commenced the Englishes' claims against the Medical Defendants, but had the Englishes *effectuated* service of the motion to amend on the Medical Defendants prior to the expiration of the limitations period, the date of service would have been the effective date the claims commenced, because that would have been the date the Medical Defendants had actual notice of the action that would be filed against them.

The Englishes disagree with this interpretation and urge this Court to evaluate the language it used instead of the language the trial court wishes it had used. *Terra-West* does not require service of a motion to amend on a non-party; it requires "notice of the substance of the proposed amendment," which could be given in any number of ways other than serving a copy of the motion to amend. The Englishes urge this Court to reject the trial court's reasoning and reverse its decision for three reasons.

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[56] R Vol. 2, p. 218 (Opinion and order granting Medical Defendants' Motions for Summary Judgment, citing *Terra-West*, 150 Idaho at 399, 247 P.3d at 626).

[57] *Id*. at R Vol. 2, pp. 218-19.

First, the trial court's conclusion is simply not supported by the plain language of *Terra-West*. This Court knows how to establish a rule of law. Had it intended to require a plaintiff to effectuate service of a motion for leave to amend as the sole means of providing "notice of the substance of the proposed amendment," it would have said as much. This Court did not dictate any one true way of providing notice of the substance of the proposed amendment; it simply required that notice be provided.

Second, the trial court's reasoning is not supported by the authorities this Court cited with approval in *Terra-West*,[58] which included *Mayes v. AT&T Info Sys., Inc.*,[59] *Moore v. State*,[60] *Rademaker v. E.D. Flynn Export Co.*,[61] and *Longo v. Pennsylvania Elec. Co.*[62] None of these cases held that serving a motion for leave to amend was the only way to provide notice of the substance of a proposed amendment. *Mayes* concerned a motion to amend the complaint to add a new party to the action, but in holding that the filing of the motion for leave to amend commenced the action,[63] the Eighth Circuit said nothing at all about notice to the new defendant. *Moore* involved a motion to amend that was defective not because it was not served on the proposed new defendants, but because it was not accompanied by a proposed amended complaint

[58] *See Terra-West*, 150 Idaho at 398, 247 P.3d at 625.

[59] 867 F.2d 1172 (8th Cir. 1989).

[60] 999 F.2d 1125 (7th Cir. 1993).

[61] 17 F.2d 15 (5th Cir. 1927).

[62] 618 F. Supp. 87 (W.D. Pa. 1985).

[63] *Mayes*, 867 F.2d at 1173.

setting forth the specifics of the claims. Because Rule 7(b) of the Federal Rules of Civil Procedure requires a statement of grounds supporting the motion, the court reasoned that because the motion was not accompanied by an amended complaint and did not explain the claims therein, the motion failed under Rule 7(b).[64] In both *Rademaker* and *Longo*, the new defendant incidentally had prior notice of the substance of the claims against him, but neither case held that such notice was a requirement in order to deem the complaint filed as of the date the motion to amend was filed. Rather, the *Rademaker* court held that "an application for leave to amend . . . stands in the place of an actual amendment,"[65] and the *Longo* court held that the timely filing of the motion to amend to add a new party was "sufficient to meet the requirement of FED. R. CIV. P. 3 that 'a civil action is commenced by the filing of a complaint with the court.'"[66]

Longo is particularly instructive because the new defendant who had notice of the substance of the claims within the limitations period did not have notice because of being served with a motion to amend, but because he had previously spoken with the plaintiff by phone after the motion vehicle accident at issue, and because the complaint had mistakenly named the wrong party, which was a business owned by his mother that shared the same office as the new defendant.[67] If this Court in *Terra-West* meant to require plaintiffs to effectuate service of motions to amend on proposed new parties in order to commence claims against those new

[64] *Moore*, 999 F.2d at 1131.

[65] *Rademaker*, 17 F.2d at 17.

[66] *Longo*, 618 F.Supp. at 89.

[67] *Id*. at 90.

parties, it would not have relied on four federal cases that did not support that proposition, particularly where those cases involved notice provided in a variety of ways, including a phone call.

The third and most critical reason Plaintiff urges this Court to reject the trial court's interpretation of this Court's language is that the trial court's reading deprives the *Terra-West* language of its clear meaning to the detriment of the Englishes under the facts of this case. The Medical Defendants had more abundant "notice of the substance of the proposed amendment" than any civil defendant would ever have because of not only discussions with the Englishes' counsel prior to filing suit, but more especially because of statutory prelitigation requirements applicable in medical negligence cases.

Because the Englishes' claims against the Medical Defendants were medical negligence claims, the Englishes had a statutory obligation to file with the Idaho Board of Medicine and serve upon the Medical Defendants a written statement of their claims against the Medical Defendants, setting forth "when, where and under what circumstances the health care in question allegedly was improperly provided or withheld and the general and special damages attributed thereto."[68] Pursuant to statute, the Board of Medicine then appointed a panel, which held a hearing on the Englishes' claims, during which the Medical Defendants had an opportunity to respond to those claims.[69] On November 18, 2013, the panel filed a written opinion regarding the Englishes' claims with the Board of Medicine, which was served upon the Medical

[68] IDAHO CODE § 6-1007.

[69] *Id*. at §§ 6-1001, 6-1002.

Defendants.[70] Thus, before the Englishes even filed their motion for leave to amend, and well within the limitations period, the Medical Defendants not only knew "that [they] may be subject to an impending action,"[71] but were thoroughly and indisputably aware of the substance of the claims against them—the very claims of which they received written notice and responded to through the statutory prelitigation procedure.

The trial court did not consider these facts or whether the Medical Defendants had actual notice of the substance of the claims because it rejected that language in favor of a strict procedural requirement not found in *Terra-West*. If Idaho law requires "notice of the substance of a proposed amendment" within the limitations period as a precondition to application of *Terra-West's* "settled rule" commencing actions upon the filing of a motion to amend, the Medical Defendants had that notice in abundance. Indeed, if a phone call and general familiarity with an action such as the "notice" in *Longo* that this Court cited with approval constitutes sufficient notice of the substance of the amendment, certainly a statutory prelitigation process *requiring* notice, a hearing, and a written opinion on the substance of the very claims asserted in the amendment satisfies the notice requirement. The Englishes were entitled to and did rely on this Court's language and the authorities it cited in *Terra-West*, and they simply ask this Court to apply that language here.

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[70] *See* R Vol. 1, p. 47 (Affidavit of Marvin M. Smith, ¶ 3).

[71] *Terra-West*, 150 Idaho at 399-400, 247 P.3d at 626-27. Importantly, neither *Terra-West* nor any other Idaho authorities require notice that a complaint has been filed, but only that one *may* be filed. Both the Medical Defendants and the trial court below focused on notice that a claim will be or has been filed, but that is not the question.

In fact, the Medical Defendants had more notice than they would have had if the Englishes had simply served them with a copy of their proposed amended complaint. A complaint consists of allegations of wrongdoing, but in the prelitigation proceeding the claimant cannot rely on allegations alone but must present evidence to support his allegations.[72] And because the prelitigation screening process is a prerequisite to filing suit, the Medical Defendants knew or should have known that a complaint against them would be forthcoming. Thus, in a medical malpractice case such as this, the prelitigation screening process provides the functional equivalent of service of a proposed amended complaint, which the trial court recognized would have been sufficient to start the Englishes' action against the Medical Defendants.

The trial court's interpretation of *Terra-West* is not supported by the authorities this Court referenced and renders nugatory this Court's language requiring "notice of the substance of the proposed amendment" by substituting that plain language with a procedural requirement that a motion be filed and served on non-parties. The Englishes' course of action was a permissible option, yet application of the trial court's rule of law would make this permissible course of action impossible as a matter of law. This is not the law of Idaho, and the Englishes urge the Court to reject that narrow and unsupported interpretation and, at the very least, reiterate the notice requirement already set forth in *Terra-West.*

5. Applying a notice requirement to claims against proposed new parties is unnecessary and procedurally inconsistent.

[72] *E.g., James v. Buck*, 111 Idaho 708, 709, 727 P.2d 1136, 1137 (1986) ("The purpose of the [prelitigation screening] panel is to receive evidence concerning the plaintiff's claim").

The Englishes believe that they complied with the notice requirements of Idaho law under *Terra-West*, and therefore that they should prevail in this appeal for that reason. However, if this Court disagrees, the Englishes request that the Court examine the necessity and practicality of the notice requirement applied to motions to amend seeking to add new parties. The trial court acknowledged that the issue of commencement of actions against new defendants "was not before the court in *Terra-West*,"[73] which concerned a motion to amend that did not involve adding new parties. The issue now being squarely before this Court, the Englishes propose that a notice requirement is not necessary and results in procedural inconsistencies, and they ask the Court to allow the "settled rule" to apply to all new claims brought by way of a motion to amend, including claims against new defendants.

This Court's concern in *Terra-West* was that a motion for leave to amend to add a new party

> does not give any notice to the third party that it may be subject to an impending action. Because the third party would not be served with the motion for leave to a file a third-party complaint, the third party may discover, after the expiration of the statute of limitations, that a previously filed motion to which the third party had no notice, commenced the proceedings. Such a rule is contrary to the purposes of any statute of limitations, which function to prevent stale claims and to protect a defendant's reasonable expectation that his earlier conduct can no longer give rise to liability.[74]

[73] R Vol. 2, p. 219.

[74] *Terra-West*, 150 Idaho at 400, 247 P.3d at 627.

The trial court posited that "[w]hile the Supreme Court did not specify the reasoning for this requirement, justice suggests to enjoy this benefit, the plaintiff must take steps to mitigate damage potentially suffered by the potential defendant."[75]

There are three difficulties with this reasoning that the *Terra-West* Court was not asked to consider, and which the trial court below chose not to consider. First, requiring notice to a proposed new defendant within the limitations period that it may be subject to an action places new defendants on different footing than other defendants. A plaintiff may file an original complaint on the last day of the limitations period, and that complaint is deemed timely, whether the named defendants have notice of the substance of the claims or not. Indeed, pursuant to Rule 4, which requires service of the summons and complaint within six months after filing the complaint, the defendant may not have any knowledge of the substance or even existence of the action for fully six months after the complaint is filed. It is not at all clear why adopting the "settled rule" deeming an action commenced upon the filing of a motion to amend is "contrary to the purposes of any statute of limitations" but deeming an original complaint timely without any notice to the defendant until many months after filing is not. Contrary to the trial court's opinion, there is no "damage potentially suffered by the potential defendant"[76] named by way of a motion to amend, any more than there is damage to a defendant named in an original

[75] R Vol. 2, p. 219.

[76] *Id*.

complaint—both are timely named in a lawsuit. The law should operate uniformly.[77] Applying a notice requirement to one type of defendant where there has never been a notice requirement for others does not remedy problems, but instead creates them by unnecessarily placing claims and defendants on unequal grounds.

Second, the policy considerations underlying the "settled rule" apply no less in the context of an amendment adding new parties than they do with any other amendment. In the context of any amended complaint, "the plaintiff only has unilateral control over the timing of the filing of the motion for leave to amend, but does not have unilateral control over when the motion may be granted."[78] This is why, in both contexts,

> the filing of the motion is comparable to the original filing of the complaint, both in the sense that each is the first step that a plaintiff takes and the first document that a plaintiff files with the court concerning the action, and in the sense that both the filing of the original complaint and the filing of the motion to amend are steps that remain unilaterally in the plaintiff's control.[79]

The trial court suggested that this procedural problem is best remedied by requiring that a plaintiff file a separate action, and then move to consolidate the actions.[80] Yet not only would

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[77] *E.g.*, *Cowles Pub. Co. v. Magistrate Court of the 1st Jud. Dist.*, 118 Idaho 753, 757, 800 P.2d 640, 644 (1990) ("we desire a uniform application of law throughout the state"); *Big Wood Canal Co. v. Chapman*, 45 Idaho 380, 388, 263 P. 45, 53 (1927) ("The constitutional requirement of uniformity in the case of a general law is complied with if it operates alike upon all persons or property under the same circumstances and conditions.").

[78] *Terra-West*, 150 Idaho at 397, 247 P.3d at 624.

[79] *Nett v. Bellucci*, 774 N.E.2d 130, 136 (Mass. 2002), *quoted with approval in Terra-West*, 150 Idaho at 397, 247 P.3d at 624.

[80] R Vol. 2, pp. 219-220 ("While not directly holding such, the . . . Court also suggested that filing a separate action and attempting to consolidate might be a better course of action when

the very problems this Court identified in *Terra-West* still arise (compromising "the principles of judicial economy and practicality," creating "needless confusion and duplication,"[81] forcing plaintiffs "to incur additional litigation costs associated with filing a separate action[, and wasting] scarce judicial resources . . . by adding an unnecessary case to the court's calendar")[82], other procedural problems would also abound.

The present case illustrates this point. The action against the Cook Defendants had been removed to federal court sitting in diversity jurisdiction. The federal court would have lacked jurisdiction over an action against the Medical Defendants (as there was not diversity of parties between the plaintiffs and the Medical Defendants), and so a separate action against them would have had to have been filed in state court. There is, however, no procedural mechanism to join a state action with a federal action. Were the trial court's proposed solution to have been employed, the net result would have been not only all the ills identified in *Terra-West*, but also two parallel but un-joinable actions proceeding forward on separate, parallel tracks, contrary to Idaho's comparative negligence principles, and risking inconsistent verdicts.[83] The trial court

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dealing with third-party complaints"). Of course, if a plaintiff elected this course of action, the new defendant might not have notice of the claim against it for up to six months, yet the claim would be considered timely filed.

[81] *Terra-West*, 150 Idaho at 397, 247 P.3d at 624.

[82] *Id*., 150 Idaho at 398, 247 P.3d at 625.

[83] *See* IDAHO CODE §§ 6-801, 6-802 (embracing comparative negligence and directing courts to allow juries to allocate negligence or responsibility attributable to each party); IDAHO R. CIV. P. 19(a)(1) (requiring joinder of parties where one party's absence would compromise complete relief or leave others subject to a substantial risk of incurring inconsistent obligations).

determined that its conclusion was "not unjust because Plaintiffs had the ability to file a new action against the Medical Defendants that would have guaranteed preservation of Plaintiffs' claim."[84] The Englishes' claim against the Medical Defendant may have been preserved, but it would be unjust to make them try their claims against the Medical Defendants and the Cook Defendants separately when they both arose from the same transaction or occurrence. Without both sets of defendants in the same case, the jury in each case could decide that the non-party defendant was at fault, and the Englishes could be left without a remedy for a clear wrong caused by one or the other. This is precisely the impractical and unjust situation Idaho's joinder rules were intended to prevent.

Third, the concerns giving rise to the *Terra-West* notice requirement are simply not shared by other federal or state jurisdictions, which, with two exceptions, do not require notice at all. Idaho's Rule 3 provides that "[a] civil action is commenced by the filing of a complaint, petition or application with the court."[85] This tracks the Federal Rules of Civil Procedure[86] and the vast majority of state claim commencement rules.[87] In nearly all of these jurisdictions, the case law addressing the effect of filing a motion to amend to add a new party provides that the

[84] R Vol. 2, p. 219.

[85] IDAHO R. CIV. P. 3(a)(1).

[86] *See* FED. R. CIV. P. 3. ("A civil action is commenced by filing a complaint with the court").

[87] The following jurisdictions use either identical or substantially similar language in their rules or statutes governing commencement of claims: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kentucky, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Tennessee, Utah, Washington, West Virginia, and Wyoming.

filing of the motion to amend commences the claims.[88] This includes the cases this Court cited with approval in *Terra-West*.[89]

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[88] *See Mason Tenders Dist. Council Pension Fund v. Messera*, 958 F. Supp. 869, 888 (S.D.N.Y. 1997) ("The filing of a motion to amend constitutes commencement of an action. When a plaintiff seeks to add a new defendant in an existing action, the date of the filing of the motion to amend constitutes the date the action was commenced for statute of limitations purposes.") (quoting *Northwestern Nat'l Ins. Co. v. Alberts,* 769 F. Supp. 498, 510 (S.D.N.Y.1991), which cited *Derdiarian v. Futterman Corp.,* 36 F.R.D. 192, 194 (S.D.N.Y.1964)); *In re Integrated Res. Real Estate Ltd. P'ship Sec. Litig.*, 815 F. Supp. 620, 645 (S.D.N.Y. 1993) ("Where a plaintiff seeks to add a new defendant in an existing action, the date of the filing of the motion to amend constitutes the date the action was commenced for statute of limitations purposes") (quoting *Northwestern Nat'l Ins. Inc. v. Alberts*, 769 F. Supp. 498, 510 (S.D.N.Y. 1991), which cited *Schiavone v. Fortune aka Time, Inc.*, 477 U.S. 21, 25–32 (1986)); *Williams v. Totura & Co., Inc.*, 718 So.2d 375, 376 (Fla. Dist. Ct. App. 1998) ("An amended complaint relates back to the date a motion to amend is filed; the timely filing of such motion defeats a statute of limitations defense"); *Simpson v. Hatteras Island Gallery Restaurant, Inc.*, 427 S.E.2d 131, 138 (N.C. Ct. App. 1993) ("The relevant date for measuring the statute of limitations where an amendment to a pleading is concerned, however, is the date of the *filing of the motion,* not the date the court rules on that motion. 'The timely filing of the motion to amend, if later allowed, is sufficient to start the action within the period of limitations.'") (emphasis in original) (quoting *Mauney v. Morris,* 340 S.E.2d 397, 400 (N.C. 1986)). Some jurisdictions require that a copy of the proposed amended complaint accompany the motion to amend. *See, e.g.*, *Flood v. Hardy*, 868 F. Supp. 809, 814 (E.D.N.C. 1994) (holding that the plaintiff's amended complaint related back to the date the motion to amend was filed where the motion was accompanied by the amended complaint); *Sheets v. Dziabis*, 738 F. Supp. 307, 313 (N.D. Ind. 1990) ("the filing of a motion for leave to amend a complaint to add a defendant, accompanied by the proposed amended complaint, tolls the statute of limitations from the date the motion is filed even if the motion is not granted until after the limitations period expired") (citing *Eaton Corp. v. Alliance Valves Co.,* 634 F. Supp. 974 (N.D. Ind. 1984), *aff'd*, 790 F.2d 874 (Fed. Cir. 1986); *Smith v. Metropolitan Dade County*, 338 So.2d 878, 879 (Fla. Dist. Ct. App. 1976) ("The better rule is that a motion for leave to amend with the amended complaint attached joining additional defendants filed within the statutory period stands in the place of the actual amendment which is filed with leave of court subsequent to the running of the statute of limitations") (citing *Rademaker v. E.D. Flynn Export Co.*, 17 F.2d 15, 17 (5th Cir. 1927)). Courts have come to the same conclusion in cases involving motions to intervene, *see Korwek v. Hunt*, 649 F. Supp. 1547, 1548 (S.D.N.Y. 1986) ("the date of filing of a successful intervention motion is taken to be the date the action is brought, for limitations purposes, in situations in which the formal complaint is not filed until after intervention is granted"), and motions relating to the expiration of the statute of repose, *see*

The few jurisdictions that have considered but not adopted the "settled rule" deeming an action commenced when a motion for leave to amend is filed fall into two camps. Those in the first camp have rejected the "settled rule" for jurisdiction-specific reasons. Pennsylvania, for example, requires that specific actions be taken to commence an action, including filing a complaint or a preaecipe for a writ of summons in the prothonotary's office.[90] The Pennsylvania Superior Court, in declining to adopt the rule deeming an action against a new defendant commenced upon filing a motion for leave to amend, expressly distinguished Pennsylvania's action commencement procedures from other jurisdictions, like federal courts and Idaho, that require that an action be filed "with the court."[91] Because Pennsylvania's action commencement

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Nett ex rel. Nett v. Bellucci, 306 F.3d 1153 (1st Cir. 2002) (the filing of a motion to amend to add a party, not the date on which the amended complaint is filed after leave of court is granted, is the operative date for the commencement of an action for purposes of Massachusetts's statute of repose).

[89] *See* discussion of *Moore*, *Mayes*, *Rademaker*, and *Longo* on pages 18-19, *supra*. None of these cases required notice to the proposed new defendant as a condition for deeming the claims against the new defendant commenced as of the filing of the motion to amend.

[90] PA. R. CIV. P. 1007. There are several jurisdictions that have specific requirements beyond simply filing a complaint with the court in order to deem an action commenced. For example, North Dakota's Rule 3 provides that "[a] civil action is commenced by the service of a summons." Minnesota's Rule 3.01(a) provides that a civil action is commenced against each defendant "when the summons is served upon that defendant."

[91] *See Aivazoglou v. Drever Furnaces*, 613 A.2d 595, 599 (Pa. Super. Ct. 1992):

> We recognize that the federal courts have allowed a petition to amend, with copy of the amended complaint attached, to have the effect of tolling an applicable statute of limitations. They have done so by relying upon the federal rule which provides that '[a] civil action is commenced by filing a complaint *with the court*.' In Pennsylvania, however, a civil action can only be commenced in the manner

rules did not use that language and imposed other requirements, the court determined that adoption of the "settled rule" would be inappropriate.

The other camp consists of jurisdictions that have rejected the "settled rule" by conflating the "settled rule" analysis with a Rule 15 relation back analysis, which addresses a completely different issue. The Mississippi Supreme Court is one example. In *Curry v. Turner*,[92] a 2002 Mississippi Supreme Court decision, the plaintiff had moved the court within the limitations period to amend the complaint to add new parties, but the court granted the motion to amend after the limitations period had expired.[93] The plaintiff petitioned the court to adopt the "settled rule" and even cited some of the same authorities that the Idaho Supreme Court embraced in *Terra-West*.[94] The Mississippi court acknowledged that federal courts and many state jurisdictions apply the "settled rule" allowing motions to amend to commence actions against new defendants,[95] but then, rather than analyzing the propriety or applicability of the rule, it instead viewed the "settled rule" as an alternative to Rule 15(c) relation back of amendments, and concluded that because Rule 15(c) had already been adopted in Mississippi, it must apply to

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> provided by R.C.P. 1007. Here, nothing was filed in the Prothonotary's Office until after the statute of limitations had run.

(Citations omitted.)

[92] 832 So.2d 508 (Miss. 2002).

[93] *Id*. at 510.

[94] *See id*. at 511-12 (citing *Rademaker v. E.D. Flynn Exp. Co.*, 17 F.2d 15 (5th Cir. 1927), and *Mayes v. AT&T Info. Sys., Inc.*, 867 F.2d 1172 (8th Cir. 1989)).

[95] *Curry*, 832 So.2d at 511-12.

this question. The court then concluded that because the proposed new defendants had no notice of the institution of the action against them, as Rule 15(c) requires, the claims did not relate back to the original filing.[96]

The trouble with this reasoning is that it uses Rule 15(c) to analyze a problem Rule 15(c) was not intended to address. Rule 15(c) allows amended claims filed after the statute of limitations to relate back to the filing of the original complaint when (1) the claim arose out of the same set of facts as those set forth in the original pleading, and, (2) if seeking to add a new party, the new party received notice of the institution of the action and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against them.[97] "The principal purpose of Rule 15(c) is to enable a plaintiff to correct a pleading error after the statute of limitations has run if the correction will not prejudice his adversary in any way."[98] If, therefore, a plaintiff does not seek to correct an error after the statute of limitations has run, Rule 15(c) is inapposite.

Here, the trial court appeared to understand this distinction and did not inject a Rule 15(c) analysis into its decision. That is because in seeking to add the Medical Defendants, the Englishes did not seek to correct an error, and the Englishes' relevant actions did not occur after the statute of limitations had run, but before. The problem here is not a mistake, but a procedural conundrum presented by reason of the fact that the Englishes did not control when the federal

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[96] *Id*. at 513-14.

[97] IDAHO R. CIV. P. 15(c). *See also* MISS. R. CIV. P. 15(c) (same); FED. R. CIV. P. 15(c) (same).

[98] *Schiavone v. Fortune*, 477 U.S. 21, 38 (1986).

court would grant their motion to amend. All of the jurisdictions in which the "settled rule" has been adopted have a corollary of Rule 15(c), yet they have recognized that Rule 15(c) does not address the problem, which is why they have adopted the "settled rule" to address the problem presented here. Rule 15(c) simply has nothing to do with the problem identified in this appeal.

Idaho has long embraced the policy that controversies should be decided on their merits whenever possible:

> The object of statutes and rules regulating procedure in the courts is to promote the administration of justice. Those statutes and rules which fix the time within which procedural rights are to be asserted are intended to expedite the disposition of causes to the end that justice will not be denied by inexcusable and unnecessary delay. But, except as to those which are mandatory or jurisdictional, procedural regulations should not be so applied as to defeat their primary purpose, that is, the disposition of causes upon their substantial merits without delay or prejudice.[99]

The Englishes propose that the better rule of law, which maintains consistency with Idaho's Rule 3 and with the sound policy considerations recognized in state and federal courts across the country for decades, is to deem new claims commenced upon the filing of a motion for leave to amend, including claims against proposed new defendants. Requiring notice to proposed new parties creates non-uniform application of law to defendants, creates procedural problems for plaintiffs, and is simply unnecessary given Rule 4's service requirements for actions timely commenced.

[99] *Stoner v. Turner*, 73 Idaho 117, 121, 247 P.2d 469, 471 (1952).

CONCLUSION

The Englishes filed a motion in federal court under Federal Rule of Civil Procedure 15 to add the Medical Defendants as defendants. Federal law deems the filing of a motion to amend a complaint to be the date on which an action against additional proposed defendants commences, and the federal court therefore deemed the amended complaint filed within the statute of limitations. That should be dispositive of this appeal.

But if the Court determines that Idaho law applies, current Idaho law requires that a proposed new defendant be given notice of the substance of the claims against it within the limitations period, and the Medical Defendants had such notice in abundance. The Englishes complied with this requirement, but also propose that the Court embrace the policy considerations it recognized in *Terra-West* and their application to all motions to amend, including motions seeking to add new parties, and hold that an amended complaint is deemed filed as of the date of the motion to amend.

Dated this 5th day of November, 2015.

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

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