STATE OF VERMONT
DEPARTMENT OF LABOR

Kevin Joyce	Opinion No. 06-23WC
v.	By: Stephen W. Brown Administrative Law Judge
North Branch Fire District # 1	For: Michael A. Harrington Commissioner
and	
Mount Mansfield Company	State File Nos. MM-62770 and G-13132

RULING ON DEFENDANT MOUNT MANSFIELD COMPANY'S MOTION TO ADD MOUNT SNOW, LTD. AS A PARTY DEFENDANT

APPEARANCES:

Spencer Crispe, Esq., for Claimant
Elijah LaChance, Esq., for Defendant Mount Mansfield Company ("Mansfield")
William J. Blake, Esq., for Defendant North Branch Fire District #1 ("North Branch")

ISSUE PRESENTED:

Should Mount Snow, Ltd., be added to this action as a potentially responsible employer?

BACKGROUND:

1. This is the second opinion the Department has issued in this case; I presume the reader's familiarity with the first, Opinion No. 19-22WC (October 18, 2022) ("*Joyce I*"). This case arises out of two accepted left knee injuries that Claimant experienced while working for each of the Defendants in this case: a 1993 injury that he suffered while working for Mansfield and a 2020 injury he suffered while working for North Branch.

2. In June 2021, Claimant underwent a total left knee replacement surgery. The parties dispute which, if either, Defendant bears financial responsibility for that surgery, and if both bear some responsibility, then to what degree. This case is scheduled for a formal hearing on September 22, 2023 to resolve this dispute.

3. As the parties have been aware for some time, Claimant also worked for Mount Snow, Ltd. (Mount Snow), and suffered a workplace injury there in 1996. While the instant case was pending at the informal level, the Department's specialist undertook an investigation to locate more detail about Claimant's Mount Snow injury and what insurance carrier might have provided coverage at that time. As the Department noted in *Joyce I*:

> … Mansfield asserts that during an informal conference, the specialist assigned to this claim advised that Claimant appeared to have filed

> another workers' compensation claim against Mount Snow, Ltd., and that he may have had surgery at Tufts Medical Center in connection with that case. To date, however, the parties have not discovered any official documents relating to that claim. Claimant does not dispute Mansfield's assertions concerning the specialist's statements, but Defendant North Branch states that it does not recall precisely what the specialist said during the informal conference except that she was unable to locate prior state file records. In any event, Mount Snow, Ltd. is not currently a party to this proceeding …

Id., p. 3, fn. 1.

4. The specialist's oral statement was not the only communication she had with the parties on this subject, however. Specifically, on September 22, 2021, she advised the parties via email that she had exhausted her efforts to identify the insurer for Claimant's 1996 claim against Mount Snow and attached a four-page printout of a series of emails showing communications she had had with employees of Vail Resorts Management Company and the MEMIC Group. The emails in that chain show the State File Number for Claimant's 1996 injury at Mount Snow, the date of that injury, a statement that the physical file for the case had been destroyed in accordance with document retention policies, and the identification of "Am. Ski Co./Dunlap Ins." as Mount Snow's insurer of record. These emails indicate that efforts to identify successors to Dunlap Insurance, however, had proven unfruitful.

5. Although these details about Claimant's claim against Mount Snow were not in the body of the specialist's email to the parties, the attachment was not lengthy, and the parties could have read them. Despite having received this information, however, neither Mansfield nor North Branch took additional action at that time to add Mount Snow as a party to this case.

6. After the specialist's email, this case was referred to the formal hearing docket and scheduled for a formal hearing on Claimant's claims against Mansfield and North Branch. Mansfield then filed a Motion for Summary Judgment that the Department denied in *Joyce I*, and the formal hearing was rescheduled for September 22, 2023.

7. After all of those procedural steps occurred, on January 27, 2023, Mansfield moved to add Mount Snow as a party in this case, arguing that at the time of Motion for Summary Judgment, the only information connecting Mount Snow to any injury relevant to this case was the specialist's comment during an informal conference, and that after the Department's ruling on that motion, Defendant North Branch deposed Claimant, who testified about his accepted workplace injury while working for Mount Snow and a surgery he underwent for that injury in 1997 at Bennington Memorial Hospital. Mansfield argues that given this new information, it is appropriate to add Mount Snow as a party to this case.

8. North Branch does not object to Mansfield's request to add Mount Snow, but Claimant does, "strongly." Claimant contends that Defendants have known about the

Mount Snow claim for a significant amount of time but did not act on that information, and that adding another employer now would needlessly delay the resolution of the parties' disputes by restarting the clock for Mount Snow to exercise all of its rights to discovery and the assertion of any affirmative defenses. Claimant contends that adding this delay would be prejudicial to his interest in resolving this dispute that has been pending for nearly three years.

9. Following a lengthy conference on February 10, 2023, the parties submitted supplemental legal briefing on the extent of the Department's discretion to add or disallow joinder of potentially responsible parties and the applicability of the equitable doctrine of laches.

DISCUSSION:

1. The Department's Workers' Compensation Rules incorporate the Vermont Rules of Civil Procedure (V.R.C.P.), "but only insofar as they do not defeat the informal nature of the hearing." *See* Workers' Compensation Rule 17.1100. Two provisions of the V.R.C.P have potential applicability: (1) Rule 14 governing a defendant's right to implead a third party who may be liable for all or part of the claimant's claim against the original defendant; and (2) Rule 19 regarding the joinder of "indispensable" parties. These Rules differ importantly with respect to their use of mandatory versus permissive language.

2. Specifically, Rule 14(c) provides that where one defendant seeks to implead another to share in or contribute to its potential liability to a claimant,

> The court may make such orders as will … prevent delay of the trial or other proceedings, by the assertion of a third-party claim, and may dismiss the third-party claim, order separate trials, or make other orders to prevent delay or prejudice. Unless otherwise specified in the order, a dismissal under this rule is without prejudice.

V.R.C.P. 14(c).

3. By contrast, Rule 19(a) provides as follows concerning the joinder of indispensable parties:

> A person who is subject to service of process ***shall*** be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the

person should join as a plaintiff but refuses to do so, the person may be made a defendant.

V.R.C.P. 19(a) (emphasis added).

4. Defendant Mansfield emphasizes the mandatory language of Rule 19(a) and argues that because there is a possibility of apportionment of liability across multiple employers, Mount Snow's absence from this proceeding would make it likely that complete relief could not be granted. Defendant North Branch notes further that if Claimant received any prior permanency benefits as a result of his 1996 injury with Mount Snow, that would result in a credit, or if Claimant's impairment resulting from that injury was never rated and paid, the Department could still allow an offset to avoid double recovery.

5. In this case, I do not find that Mount Snow is an indispensable party as contemplated by Rule 19, because even without it, it is still possible to determine whether and to what extent *Mansfield* and/or *North Branch* are financially responsible for Claimant's 2021 surgery. The parties may pursue third party discovery from Mount Snow and if supportable, the current Defendants may present evidence and argument that their respective liabilities should be reduced as a result of apportionment, credits, or offsets related to the earlier Mount Snow action. None of that requires that Mount Snow be made a party to this case.[1] Additionally, since Claimant is not advocating for the addition of Mount Snow, and Defendants seek to implead it in order to share in any liability they owe to Claimant, I find that V.R.C.P. 14, rather than 19, is the appropriate analytic route to assess whether it should be added to this proceeding.

6. Rule 14(c), as incorporated by Workers' Compensation Rule 17.1100, affords the Department discretion to issue orders to avoid the delay of a formal hearing. My exercise of that discretion in this case is informed by the equitable doctrine of laches, which refers to the "failure to assert a right for an unreasonable and unexplained period of time when the delay has been prejudicial to the adverse party, rendering it inequitable to enforce the right." *Stamato v. Quazzo*, 139 Vt. 155, 157 (1980). "Laches does not arise from delay alone, but from delay that works disadvantage to another." *In re Town Highway No.20 of Town of Georgia*, 2003 VT 76, ¶ 16 (2003). "These two factors are not to be viewed independently." *Leopard Marine & Trading, Ltd. v. Easy St. Ltd.*, 896 F.3d 174, 194–95 (2d Cir. 2018) (quoting *Larios v. Victory Carriers, Inc.*, 316 F.2d 63, 67 (2d Cir. 1963)). Thus, "[a] weak excuse may suffice if there has been no prejudice; an exceedingly good one might still do even when there has been some." *Id.*

7. In this case, Mansfield and North Branch have known about Claimant's prior claim against Mount Snow since at least September 2021, when the Department's specialist forwarded them an email with an attachment containing more than enough information for the parties to investigate further and take steps to join Mount Snow as a party to

[1] Of course, if Mount Snow is not made a party to this case, then it will not be bound by the results of any adjudication of this case.

this case. Since that time, this case has undergone significant process at the formal hearing level, *see* Background ¶¶ 6-7, only after which Mansfield sought to add Mount Snow as a party.

8. Defendants have not persuasively explained why they did not seek any third party discovery from Mount Snow in 2021, or why they did not depose Claimant to discover more information at that time. Both Defendants suggest that this delay was in part due to the informal nature of workers' compensation proceedings, and the tendency of parties not to develop discovery until fairly late into the process. I find this unpersuasive. The parties have always enjoyed access to compulsory discovery if only they requested it.

9. Moreover, I do not find that Claimant's 2023 deposition testimony materially changed the landscape of this claim with respect to Mount Snow. While Claimant apparently told Defendants more details than they already knew about Mount Snow during his deposition, there is no evidence that he did anything to hide that information earlier. Defendants could have deposed him in 2021. They also had plenty of information at their disposal to justify a subpoena directed to Mount Snow at that time as well. I therefore conclude that Defendants failed to assert their right to add Mount Snow to this case for an unreasonable and unexplained period of time, satisfying the first element of laches.

10. Additionally, I am persuaded that Defendant's delay in taking action to add Mount Snow earlier in this process prejudiced Claimant's interest in obtaining a resolution to the question of the parties' financial responsibility for his total knee replacement surgery. The parties disagree about exactly how much delay would result from adding Mount Snow to this case, with Claimant predicting a roughly two-year delay and Defendants characterizing that estimate as extremely unlikely. North Branch suggests that any concern about delay could be remedied with a tight scheduling order. It is impossible to project what the procedural needs of this case will be with Mount Snow added as a party unless and until it is actually added. If it were added, it might move for summary judgment, as did Mansfield. It might pursue discovery more aggressively than the other parties. Conversely, it might engage in minimal discovery and simply leave Claimant to his burden of proof. However, adding Mount Snow would very likely result in at least a non-trivial postponement of the currently-scheduled formal hearing. While this level of delay is not the gravest conceivable form of prejudice, I consider the two factors of laches together, *see Leopard Marine, supra*, 896 F.3d at 194–95, and conclude that the weakness of Defendants' explanation of the delay in conjunction with only a modest degree of prejudice is sufficient to apply the doctrine of laches here.

11. Finally, Mansfield notes that in *Alden v. Fletcher Allen Healthcare*, Opinion No. 32-09WC (August 21, 2009), the Department considered and rejected the assertion of laches by one defendant against another defendant's efforts to add it as a party. Specifically, the Department in *Alden* noted that dismissing one defendant because of the other defendant's delay in notifying it of potential liability could leave the claimant with an entitlement to benefits but no responsible employer against whom to collect

them. Thus, the Department concluded that dismissing the second defendant "***for reasons that have nothing at all to do with Claimant's actions***" would be unfair. *Id.* (emphasis added).

12. The posture of *Alden* is structurally different from this case. Here, unlike in *Alden*, it is Claimant who affirmatively opposes adding yet another Defendant. It is true that Claimant may suffer some disadvantage if Mount Snow is partly responsible for his total knee replacement surgery and that party does not participate in this action. However, Claimant is represented by competent and experienced legal counsel, and I presume he stakes out his litigation position with his eyes open to the risks. His opposition to adding Mount Snow reflects a legitimate strategic choice that prioritizes prompt resolution over seeking every conceivable avenue of recovery. If that strategic choice results in Claimant recovering less than all the benefits he might otherwise be entitled to recover, he can accept the bitter with the sweet. Thus, the concern underlying the result in *Alden* does not apply here.

13. I conclude that I have discretion under V.R.C.P. 14(c) to allow or disallow the joinder of Mount Snow as a potentially responsible employer in this case. My exercise of that discretion is informed and influenced by the equitable doctrine of laches, which the facts of this case satisfy. Based on the facts and history presented, I find that the equities favor sustaining Claimant's objection to the joinder of Mount Snow.

ORDER:

For all of these reasons, Defendant Mansfield's Motion to add Mount Snow as a Party Defendant is **DENIED**.

DATED at Montpelier, Vermont this 9th day of March 2023.

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Michael A. Harrington
Commissioner