

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

MERRIMACK, SS.

03-C-0550

STATE OF NEW HAMPSHIRE

v.

HESS CORPORATION, ET AL.

ORDER ON DEFENDANTS' MOTION
FOR A MORE DEFINITE STATEMENT
[INDEX #244]

The defendants move for a more definite statement of the factual and legal allegations underlying the State's claims for relief as stated in the State's Second Amended Complaint ("SAC"). The State objects. Upon review of the parties' submissions, their arguments, and the applicable law, the Court enters the following findings and orders.

The general background of this case has been outlined by the Court in earlier orders. The State of New Hampshire has filed the present action against various gasoline suppliers, refiners, and chemical manufacturers seeking damages for groundwater contamination alleged to have been caused by MTBE. The parties are presently before the Court to address the defendants' motion for

the Court to order the State to prepare "a more definite statement of the facts and theories relied upon by the State to establish the causation element of each Count in its Second Amended Complaint." Defs.' Mot. for a More Definite Statement.

"New Hampshire maintains a system of notice pleadings." Porter v. City of Manchester, 151 N.H. 30, 43 (2004) (citation omitted). "As such, we take a liberal approach to the technical requirements of pleadings." Id. (citation and quotations omitted). The Court "may in all cases order either party to plead and also to file a statement in sufficient detail to give to the adverse party and to the Court reasonable knowledge of the nature and grounds of the action or defense." Super. Ct. R. 29. There appears to be limited New Hampshire case law directly relating to the application of this rule. However, the Federal Rules of Civil Procedure similarly allow a party to "move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). Therefore, given the substantive similarities between the rules, the Court will review case law interpreting both Rule 29 and Rule 12(e) for guidance.

"[A] more definite statement will be required only when the pleading is so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith or without prejudice to himself." Lewis v. Textron Automotive Company, 935 F.Supp. 68, 70 (D.N.H. 1996) (citation omitted). Further, the "motion is granted sparingly since it is not to be used as a substitute for discovery in trial preparation, but is to be used only when a pleading is too general." Town

of Hooksett School Dist. v. W.R. Grace & Co., 617 F. Supp. 126, 135 (D.N.H. 1984) (citation omitted). With these principles in mind, the Court turns to the pending issues.

The defendants submit that the State's SAC "never alleges that any specific Defendant was responsible under a specific theory for a specific release that damages a specific site." Defs.' Mem. in Supp. of Mot. For a More Definite Statement, 1. The defendants further allege that "a more definite statement is required to enable Defendants to discern the nature and grounds of the claims against them and thus to frame responsive pleadings." Id. The defendants argue that the Court should order the State to specify the following:

(A) which Defendants it seeks to hold liable for the damages, (B) what damages it seeks to recover from those Defendants and when and how the damages occurred, and (C) the legal theory for holding those Defendants liable for the damages, including how the damages are to be spread or apportioned among the Defendants.

Id. at 7. Conversely, the defendants also submit that "if Plaintiff cannot allege facts to show that Defendants actually caused or contributed to the damages at a given place or time, it should specify the legal basis or theory on which it seeks to hold all Defendants liable for the damages and how the damages are to be allocated among those Defendants." Id. The defendants assert that the State's alleged "indivisible injury" should not relieve the State of its pleading requirements.

The State responds by asserting that the defendants' motion for a more definite statement essentially constitutes a motion to dismiss, because the

defendants are essentially challenging the State's legal theory. The State submits that its SAC is already more detailed than necessary. The State also maintains that because it alleges a statewide and indivisible injury to the waters of New Hampshire, it would be impossible to determine:

either in any particular instance or in the aggregate, the specific amounts or proportions contributed by any particular defendant to the MTBE released into the subsurface. In the aggregate, however, given the commingling in the gasoline distribution system, the propensity of underground storage tanks to release MTBE and the nature of MTBE releases as [alleged in the Second Amended Complaint], each defendant was a substantial contributor to the widespread degradation of the State's waters by MTBE.

Mem. of Law in Supp. of State of New Hampshire's Objection to Defs.' Mot. For a More Definite Statement, 3. Further, the State argues that the defendants' First Amended Special Plea, Brief Statement of Affirmative Defense and Counterclaims, filed on February 19, 2008, proves that the defendants are able to form a reply to the SAC.

The United States District Court for the Southern District of New York, Scheindlin, J., has presided over MTBE Multi-District Litigation (MDL) related to issues relevant to the present matter. Accordingly, the Court has reviewed and considered orders of United States District Court relevant to the present issues. The District Court found that the defendants' motion for a more definite statement must be denied when the complaint is intelligible, satisfies the Federal Rules and allows the defendants to file an answer. In Re: Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig., (S.D.N.Y. June 1, 2007). Further, the District Court noted that "[o]nce an answer is filed, Defendants may use depositions and other

traditional discovery methods (e.g., requests to admit) to clarify the Plaintiff's allegations or the factual basis underlying their claims." Id. at 2-3.

The United States District Court also specifically addressed the defendants' concerns about a complaint that was said to fail to specify which factual allegations and claims apply to individual defendants. In denying the defendants' motion for a more definite statement, the District Court noted that "although defendants may have played different roles in the petroleum industry, [Plaintiff] alleges that all defendants placed gasoline containing MTBE into the stream of commerce, thereby causing [Plaintiff's] injury." In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, 233 F.R.D. 133, 135 (S.D.N.Y. 2005). There, the plaintiff had defined "defendants" to mean all defendants, which gave individual defendants notice that each time the term was used, it applied to them. Id. Also, the plaintiff used modifiers, such as "Defendant Chevron," when it intended to refer to an individual defendant. Id.

Here, too, the State's SAC alleges that "[t]he conduct of each defendant, as alleged herein, was a substantial contributing factor in causing an indivisible injury to the waters of the State." SAC ¶ 6. The State's complaint divides the defendants into two categories: "(1) the refiners and marketers of gasoline containing MTBE; and (2) the manufacturers and promoters of MTBE that contaminates and threatens the waters of the State." SAC ¶ 12. The SAC alleges that "the refiner/marketer defendants and manufacturer defendants are referred to collectively herein as 'defendants.'" ¶ 21. The State also identifies the refiner/marketer defendants in ¶¶ 13(a)-13(y) of the SAC and states the

allegations against them in ¶ 14. Similarly, the SAC identifies the manufacturer defendants, and the allegations against them in ¶¶ 15-20. Further, on numerous occasions the SAC makes reference to specific defendants by name. The Court concludes that the State's SAC is intelligible, and does not prohibit the defendants from answering.

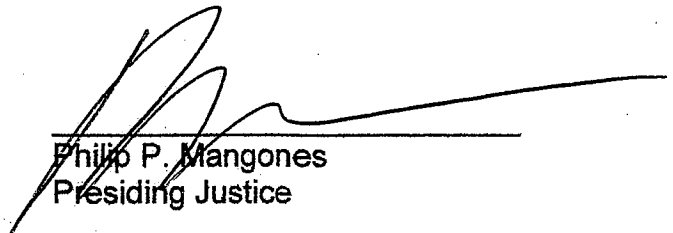
The Court concludes that requiring the State to allege specifically which defendant caused each injury would create an impossible burden given the allegations of commingling of MTBE and the asserted indivisible injury to the State of New Hampshire's water supplies. To mandate the State to establish more particularized causation would essentially allow the defendants to seek to avoid liability because of lack of individualized proofs where the gravamen of the claim is, as noted by the United States District Court, that "all defendants placed gasoline containing MTBE into the stream of commerce, thereby causing [Plaintiff's] injury."

To allow such a state of events would be to allow claims for tortious conduct for discrete, identifiable, and perhaps lesser tortious acts, but to deny claims for tortious conduct where the conduct alleged may be part of group activity which is alleged have led to a common, and more deleterious, result. Therefore, the Court finds that in the present action, if established at trial, the defendants' alleged group participation in the asserted tortious act would not shield defendants from potential liability.

Defendants' motion for a more definite statement is denied.

SO ORDERED.

10-1-08
Date


Philip P. Mangones
Presiding Justice