

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

JOE MYERS,

Plaintiff,

vs.

TIMOTHY F. MCCUNE, JOSEPH H.
CHIVERS, JACK W. MURTAUGH JR.,
GRAYDON BREWER, CARL V. NANNI,
JACK LEWIS, JIM GALLAGHER, HANK
LEYLAND, GREG LOVERICK, EDWARD
TASSEY, AK STEEL, UAW, et al.,

Defendants.

CIVIL DIVISION

CASE NO. 19-10516

TYPE OF PLEADING:

**DEFENDANTS AK STEEL
CORPORATION'S AND EDWARD
TASSEY'S MOTION TO STRIKE**

Filed on behalf of:

Defendants AK Steel Corporation and
Edward Tassey

Counsel of Record for these Parties:

Nicholas J. Koch (Pa. Id. No. 205549)

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CASE NO. 19-10516

**DEFENDANTS AK STEEL CORPORATION'S AND EDWARD TASSEY'S
MOTION TO STRIKE**

Pursuant to Rule 1033 of the Pennsylvania Rules of Civil Procedure, Defendants AK Steel Corporation ("AK Steel") and Edward Tassey ("Tassey") (collectively, "AK Steel Defendants"), by and through their undersigned counsel, respectfully submit the following Motion to Strike:

1. Plaintiff initiated this action against Timothy McCune, Joseph H. Chivers, Jack W. Murtaugh, Jr., Graydon Brewer, Carl V. Nanni, Jack Lewis, Jim Gallagher, Hank Leyland, Greg Loverick, Edward Tassey, AK Steel, and UAW (the "Original Defendants") on or about May 29, 2019.
2. Plaintiff's Complaint is incomprehensible and fails to state any legally valid claims. Further, Plaintiff's claims, to the extent that any are stated with legal sufficiency, are barred by the statute of limitations and/or collateral estoppel.
3. Many of the Original Defendants filed Preliminary Objections to Plaintiff's Complaint or otherwise stated grounds why Plaintiff's claims fail as a matter of law.

4. This Court held oral argument on Original Defendants' Preliminary Objections on October 22, 2019. At that argument the Court advised Plaintiff, among other things, that he could not amend his Complaint without leave of Court pursuant to the Pennsylvania Rules of Civil Procedure.¹

5. Nevertheless, on or about October 28, 2019, Plaintiff filed a pleading entitled "Amended Court filing Adding Defendants and for Continued Violation of Plaintiff's Constitutional Rights of the United States of America...Response to Defendant Papa's Limited Special Appearance Preliminary Objections" (the "Purported Amendment.")

6. Plaintiff's Purported Amendment seeks to add both claims against existing parties, and new claims against new parties. Specifically, Plaintiff's Purported Amendment seeks to add claims against the Honorable William Cunningham and counsel for all the Original Defendants, and new claims against Original Defendants, including allegations of criminal misconduct.

7. In violation of Pa.R.C.P. 1033(a) and this Court's express instructions, Plaintiff did not seek the consent of all parties or leave of Court prior to filing Plaintiff's Purported Amendment.

8. Even though Plaintiff is proceeding *pro se*, his mistake was not based on ignorance. Rather, he was directly advised by the Court that he could not proceed in the manner he now attempts.

9. Further, Plaintiff's Purported Amendment prejudices Original Defendants and is against a positive rule of law.

10. Original Defendants are prejudiced by Plaintiff's Purported Amendment because it seeks to chill their defense of Plaintiff's claims by asserting legally incognizable claims against their chosen counsel and by alleging that Original Defendants committed criminal acts in their

¹ Plaintiff "added" a defendant after he allegedly failed to include that defendant in the case caption despite purporting to state claims against said defendant.

procedurally and legally proper defense of Plaintiff's frivolous claims. *Bevans v. Hilltown Township*, 457 A.2d 977, 980 (Pa. Cmwlth. 1983) ("Amendments to pleadings will not be permitted if undue prejudice would result to the pleader's opponent or deprive him of some substantive right.") *Bayada Nurses, Inc. v. Com. Dept. of Labor and Industry*, 8 A.3d 866, 884 (Pa. Super. Ct. 2010) ("[A] court is not required to permit amendment of a pleading if a party is unable to state a claim on which relief could be granted.") (citing *Werner v. Zazyczny*, 681 A.2d 1331, 1338 (Pa. 1996)). Original Defendants are further prejudiced via the increased costs associated with defending against additional, frivolous claims, and by potentially being forced to re-argue Plaintiff's original, meritless claims in front of a new judge.

11. Plaintiff's Purported Amendment violates a positive rule of law because it seeks to assert legally incognizable, frivolous claims, including claims against the Honorable William Cunningham that are clearly barred by judicial immunity. *Feingold v. Hill*, 521 A.2d 33, 36 (Pa. Super. Ct. 1987) ("[J]udges are absolutely immune from liability for damages when performing judicial acts, even if their actions are in error or performed with malice, provided there is not a clear absence of all jurisdiction over subject matter and person.") (citing *Stump v. Sparkman*, 435 U.S. 349, 356-57, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978)).

12. Plaintiff's failure to comply with Pa.R.C.P. 1033 and this Court's specific instruction, the prejudice to the Original Defendants, and the legal insufficiencies in the Purported Amendment all require that it, and any future pleadings by Plaintiff seeking to add claims or parties to this action without leave of court, be struck.

WHEREFORE, Defendants AK Steel Corporation and Edward Tassey, respectfully request that Plaintiff's "Amended Court filing Adding Defendants and for Continued Violation of Plaintiff's Constitutional Rights of the United States of America" be struck from the docket and

that Plaintiff be barred from asserting new claims or adding parties to his existing claims without leave of Court.

Respectfully submitted,



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*Attorney for Defendants AK Steel Corporation
and Edward Tasse*

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Defendants, AK Steel Corporation and Edward Tasse

Signature: /s/ Nicholas J. Koch


Name: Nicholas J. Koch, Esquire

Attorney No. (if applicable): 205549

CERTIFICATE OF SERVICE

I, the undersigned, certify that the foregoing DEFENDANTS AK STEEL CORPORATION'S AND EDWARD TASSEY'S MOTION TO STRIKE was served on the following counsel of record or parties via U.S. Mail, First-Class, postage prepaid, this 18th day of November, 2019:

Mr. Joe Myers 12137 Emerald Green Court Jacksonville, FL 32246 <i>Pro Se Plaintiff</i>	Adam K. Hobaugh, Esquire Murtagh, Hobaugh & Cech 110 Swinderman Road Wexford, PA 15090 akhobaugh@mhclawfirm.com <i>Counsel for Defendants, John W. Murtagh Jr., Jack Lewis, Greg Loverick, United Auto Workers 3303, Jim Gallagher, Carl Nanni, and Hank Leyland</i>
Dennis J. Roman, Esquire Marshall Dennehey Warner Coleman & Goggin Union Trust Building 510 Grant Street, Suite 700 Pittsburgh, PA 15219 djroman@mdweg.com <i>Counsel for Defendant, Joseph H. Chivers</i>	Marie Milie Jones, Esquire Michael R. Lettrich, Esquire Jones Passodelis, PLLC Gulf Tower, Suite 3410 707 Grant Street Pittsburgh, PA 15219 mjones@jonespassodelis.com mlettrich@jonespassodelis.com <i>Counsel for Defendant, Honorable Timothy F. McCune</i>
Angelo Papa, Esquire 318 Highland Avenue New Castle, PA 16101 <i>Defendant</i>	Graydon Brewer, Esquire 48 Crystal Drive Oakmont, PA 15139 <i>Defendant</i>



Nicholas J. Koch

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CASE NO. 19-10516

ORDER

AND NOW, to-wit, this _____ day of _____, 2019, upon consideration of Defendants AK Steel Corporation's ("AK Steel") and Edward Tasse's ("Tasse") Motion to Strike, responses thereto, and oral argument on the same, it is hereby ORDERED, ADJUDGED, and DECREED that Plaintiff's "Amended Court filing Adding Defendants and for Continued Violation of Plaintiff's Constitutional Rights of the United States of America" is struck from the docket and that Plaintiff is barred from asserting new claims or adding parties to his existing claims without leave of Court.

BY THE COURT

J.