STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: May 22, 2013)

ROSIE K. SWEREDOSKI, as Personal Representative of the Estate of DOUGLAS A. SWEREDOSKI, and Individually Recognized as Surviving Spouse	:	**C.A. No. PC 2011-1544**
v.	:	
ALFA LAVAL, INC., et al.	:	

DECISION

GIBNEY, P.J. In this asbestos action, Crane Co. (Defendant), Individually and as Successor to Chempump, Jenkins Bros., Weinman Pump Manufacturing Company, Pacific Steel Boiler Corporation, Thatcher Boiler, Chapman Valve Company, and Cochrane, brings a Motion for Leave to File an Amended Answer to Plaintiff's Fourth Amended Complaint (the Motion), seeking to plead a new affirmative defense. Rosie K. Sweredoski (Plaintiff), as Personal Representative of the Estate of Douglas A. Sweredoski (Sweredoski), and Individually Recognized as Surviving Spouse, opposes the Motion. She argues that pursuant to Super R. Civ. P. 8(c), Defendant waived all affirmative defenses not pled in its first Answer, and she will be unduly prejudiced by Defendant's proposed amendment at this late stage of the litigation. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts & Travel

From 1964 to 1968, Sweredoski served in the United States Navy (the Navy). He was assigned to the U.S.S. Independence (the "Independence")—an aircraft carrier—from 1965 to 1967, where he worked as a fireman and boiler operator in the ship's boiler rooms. During his time in the Independence's boiler rooms, Sweredoski replaced the packing and gaskets in steam valves allegedly designed and manufactured by Defendant. Both the packing and gaskets contained asbestos.

Plaintiff alleges that as a result of Sweredoski's exposure to these asbestos-containing packing and gaskets, he developed malignant mesothelioma and eventually died from the disease. She has asserted various tort- and warranty-based claims against Defendant, arguing that Defendant breached its duty to warn Sweredoski of the dangers of working with asbestos.

Plaintiff filed her original Complaint on March 21, 2011, and has amended it four times since. Defendant timely filed an Answer to each of these Complaints. Defendant now seeks to amend its most recent Answer to plead, for the first time, the affirmative defense known as the "government contractor defense."[1] Defendant argues that the so-

[1] In order to establish the government contractor defense, a party must show that "(1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States." Boyle v. United Technologies Corp., 457 U.S. 500, 512 (1988). This defense has been recognized as an affirmative defense by a number of courts and commentators. See, e.g., Snell v. Bell Helicopter Textron, Inc., 107 F.3d 744, 746 (9th Cir. 1997); Acoustic Processing Technology, Inc. v. KDH Electronic Systems, Inc., 724 F. Supp. 2d 128, 131

called "raise-or-waive" language of Rule 8(c) does not automatically bar its Motion, as a party may properly seek to amend a responsive pleading to add a new affirmative defense pursuant to Super. R. Civ. P. 15(a). Defendant contends that Plaintiff will not be prejudiced by its proposed amendment because discovery has not yet closed—as trial is several months away—and Plaintiff had meaningful notice of facts showing the applicability of the defense to this case.

Plaintiff responds that Rule 8(c), in fact, contains a mandatory dictate barring a defendant from asserting any affirmative defenses not specifically pled in its original answer. Plaintiff maintains that the purpose of Rule 8(c)—to avoid unfair surprise before trial—will be effectively undermined if Defendant is granted leave to assert the government contractor defense now.

Plaintiff contends that she will be unduly prejudiced by Defendant's proposed amendment as well. She asserts that Defendant has had four opportunities to add the government contractor defense to its Answer since the filing of this case but has failed to do so. At this late stage of the litigation, Plaintiff argues, Defendant's delay is prejudicial because she will have insufficient time to prepare a response before trial. Plaintiff posits that at no point in this litigation did she receive adequate notice of Defendant's intent to assert the defense and, as such, she is unfairly surprised by Defendant's Motion.

(D. Me. 2010); Dorse v. Armstrong World Industries, Inc., 513 So.2d 1265, 1267 (Fla. 1987); 63A Am. Jur. 2d Products Liability § 1355 at 657.

II

Discussion

A

Rule 8(c) and its "Raise-or-Waive" Clause

This Court addresses at the outset whether the "raise-or-waive" language in Rule 8(c) automatically bars a party from adding an omitted affirmative defense to a responsive pleading during the course of pending litigation. Rule 8(c) provides in pertinent part that:

> "In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense."

Super. R. Civ. P. 8(c) (emphasis added). The pleading requirements of Rule 8(c) "protec[t] the complaining party from unfair surprise at trial." Duquette v. Godbout, 416 A.2d 669, 670 (R.I. 1980); see World-Wide Computer Resources, Inc. v. Arthur Kaufman Sales Co., 615 A.2d 122, 124 (R.I. 1992). Accordingly, "the failure to raise an affirmative defense in a timely manner constitutes a waiver of that defense." World-Wide Computer Resources, Inc., 615 A.2d at 124; Associated Bonded Construction Co. v. Griffin Corp., 438 A.2d 1088, 1091 (R.I. 1981) (emphasis added).

The "waiver rule . . . under Rule 8(c) is not applied automatically with regard to omitted affirmative defenses[, however,] and as a practical matter there are numerous exceptions to it . . . ." 5 Wright & Miller 3d Civil Procedure § 1278 at 666; see Seals v. General Motors Corp., 546 F.3d 766, 770 (6th Cir. 2008) (finding that "as a practical

matter, there are exceptions to the general rule of waiver" in Rule 8(c)); 61A Am. Jur. 2d Pleading § 323 at 316 (noting that "[t]he failure to raise an affirmative defense by a responsive pleading does not always result in waiver of the defense"). In Rhode Island, a party seeking to add an omitted affirmative defense to a responsive pleading may move to amend that pleading pursuant to Super. R. Civ. P. 15(a). See Hanley v. State, 837 A.2d 707, 711 (R.I. 2003) (acknowledging that Rule 8(c) stands in "apparent conflict with . . . our interpretation of Rule 15 of the Superior Court Rules of Civil Procedure"); see also World-Wide Computer Resources, Inc., 615 A.2d at 124 (recognizing the interplay between Rule 8(c) and Rule 15(a)). Thus, this Court finds that Defendant's Motion is not automatically barred by Rule 8(c). See id.

B

Rule 15(a) and the Issue of Prejudice

Defendant argues that in considering whether to grant a motion to amend a responsive pleading pursuant to Rule 15(a), a Rhode Island court must determine whether the nonmoving party would be prejudiced by the amendment. Defendant maintains that the burden to show such prejudice rests on Plaintiff as the nonmoving party, but she cannot carry this burden for several reasons. First, Defendant contends that Plaintiff has sufficient time to prepare a response to the government contractor defense because trial is several months away[2] and Plaintiff has not yet deposed Defendant's naval experts.[3]

[2] The parties have agreed to a trial date of July 17, 2013.

[3] Defendant also argues that Plaintiff is not unfairly surprised by its proposed amendment because Plaintiff's counsel is experienced with asbestos-related litigation and has encountered the government contractor defense in previous cases. See Def.'s Br. at 9-10. Defendant maintains that Plaintiff's counsel, in fact, admitted at an April 17, 2013

Second, Defendant argues that Plaintiff had ample notice that Defendant intended to assert the defense at trial through Plaintiff's reference to government contractors in her Complaint, the testimony of Plaintiff's naval expert, Captain Arnold Moore (Moore), and information in Defendant's expert disclosures.

Plaintiff argues that she will suffer substantial prejudice if Defendant adds the government contractor defense to its Answer. Plaintiff asserts that Defendant knew or should have known said defense was available at the filing of this case approximately two years ago. Plaintiff posits that in response to her four amended Complaints, Defendant has had four opportunities to assert the defense but has failed to do so.[4] She contends that such delay is unduly prejudicial on the eve of trial because she has confined her trial preparation to the issues presented in the pleadings and would be forced to incur burdensome additional discovery costs and other expenses to combat the defense.[5]

Plaintiff also avers that she has not received adequate notice that Defendant would assert the government contractor defense in this case. She contends that neither the information contained in Defendant's expert disclosures, nor the reference to government contractors in her Complaint, were meaningful indicators that the defense could be in issue in this case.

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hearing that he expected Defendant to assert the government contractor defense at trial. See id. at 12.

[4] Plaintiff asserts that as the party seeking to add an omitted affirmative defense to its Answer, Defendant bears the burden of adequately explaining its failure to add the defense. See Pl.'s Br. at 4-5.

[5] Plaintiff maintains that her attorney's experience with asbestos-related litigation in general, and the government contractor defense in particular, is irrelevant to the prejudice analysis in this case. See Pl.'s Br. at 6.

Rule 15(a) provides in pertinent part that:

> "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

Super R. Civ. P. 15(a).[6] "[T]he 'true spirit of [Rule 15(a)] is exemplified' by the words 'and leave shall be freely given when justice so requires.'" Harodite Industries, Inc. v. Warren Electric Corp., 24 A.3d 514, 530 (R.I. 2011) (quoting Medeiros v. Cornwall, 911 A.2d 251, 253 (R.I. 2006)) (quotation marks omitted). "In abiding by the 'true spirit' of Rule 15, [our Supreme Court has] 'consistently held that trial justices should liberally allow amendments to the pleadings.'"[7] Harodite Industries, Inc., 24 A.3d at 530 (quoting Medeiros, 911 A.2d at 253) (quotation marks omitted). A trial justice's discretion in granting a motion to amend, then, "is inherently constrained by the plain language of Rule 15(a) and our cases interpreting the same; the proverbial scales are tipped at the outset in favor of permitting the amendment." Harodite Industries, Inc., 24 A.3d at 531 (emphasis in original).

[6] Rhode Island's Rule 15(a) "is modeled after Rule 15(a) of the Federal Rules of Civil Procedure." Inleasing Corp. v. Jessup, 475 A.2d 989, 992 (R.I. 1984). Thus, this Court may look to federal cases interpreting Rule 15(a) for interpretive guidance. See Greensleeves, Inc. v. Smiley, 942 A.2d 284, 290 (R.I. 2007) (finding that "in interpreting our rules of procedure, this Court has very frequently looked for guidance to the interpretation of comparable federal rules").

[7] Our Supreme Court has determined that the "liberal interpretation of Rule 15(a) encourages the allowance of amendments in order to facilitate the resolution of disputes on their merits rather than on blind adherence to procedural technicalities." Wachsberger v. Pepper, 583 A.2d 77, 78 (R.I. 1990); Inleasing Corp., 475 A.2d at 992.

With respect to a motion to amend an answer to add an omitted affirmative defense, the trial court "must necessarily take into account such elements as the extent of prejudice [to the nonmoving party], as well as the question of a defendant's knowledge of circumstances that should have alerted him or her to the existence of such a defense." World-Wide Computer Resources, Inc., 615 A.2d at 124; see Massachusetts Asset Financing Corp. v. MB Valuation Services, Inc., 248 F.R.D. 359, 361 (D. Ma. 2008) (finding that "[i]n making an exception to a Rule 8(c) waiver, the court should consider whether there exists undue delay or bad faith on the part of the moving party, prejudice to the nonmoving party, or if the amendment is itself futile"). "The question of prejudice to the party opposing the amendment is central to the investigation into whether an amendment should be granted." Weybosset Hill Investments, LLC v. Rossi, 857 A.2d 231, 236 (R.I. 2004); see Dixon v. Am. Re-Insurance Co., 477 A.2d 85, 87-88 (R.I. 1984). Potential sources of prejudice include "the lateness of the [moving party's] motion, its proximity to trial, and the significant work [the nonmoving party] would have needed to undertake to prepare for the new legal issue." Weybosset Hill Investments, LLC, 857 A.2d at 237 (quoting Granoff Realty II, Limited Partnership v. Rossi, 823 A.2d 296, 298 (R.I. 2003)) (quotation marks omitted). The burden rests on the nonmoving party to show that such prejudice exists. See Weybosset Hill Investments, LLC, 857 A.2d at 236 (determining that "leave to amend should be denied only when the nonmoving party can establish that it would be unduly prejudiced by the amendment"); Wachsberger, 583 A.2d at 78-79.

1

Mere Delay Is Insufficient To Show Prejudice

Defendant argues that even though this litigation has progressed for two years, Plaintiff will not be prejudiced by its proposed amendment because trial is several months away and discovery is still on-going. Plaintiff contends that Defendant's delay in filing its Motion is, in fact, unduly prejudicial because she will incur substantial expenses and have little time to properly respond to the defense at this late stage in the litigation.

It is undisputed that Plaintiff filed this case on March 21, 2011. See Docket Sheet, PC-2011-1544 at 1. Defendant filed the instant Motion on April 23, 2013. See Def.'s Br. at 1. Thus, over two years have passed since Plaintiff filed her Complaint. It is true that "Rule 15(a) does not prescribe a particular time limit for a motion to amend . . . ." Espinosa v. Sisters of Providence Health System, 227 F.R.D. 24, 27 (D. Ma. 2005). Courts have consistently found, however, that a period of years between the filing of a complaint and a motion to amend constitutes undue delay. See, e.g., Quaker State Oil Refining Corp. v. Garrity Oil Co., 884 F.2d 1510, 1517 (1st Cir. 1989) (determining that undue delay existed after two years had elapsed between the filing of a complaint and a motion to amend); Carter v. Supermarkets General Corp., 684 F.2d 187, 192 (1st Cir. 1982) (finding same after six years); Harodite Industries, Inc., 24 A.3d at 523 (four years); Inleasing Corp., 475 A.2d at 991-92 (three years).

"[W]hen 'a considerable period of time has passed between the filing of the complaint and the motion to amend, courts have placed the burden upon the movant to show some valid reason for his neglect and delay.'" Harodite Industries, Inc., 24 A.3d at 531 (quoting Carter, 684 F.2d at 192) (internal quotation marks omitted); Espinosa, 227

F.R.D. at 27 (recognizing same). This is because "the risk of substantial prejudice generally increases with the passage of time." RICO Corp. v. Town of Exeter, 836 A.2d 212, 218 (R.I. 2003). Defendant has not offered any argument or explanation concerning why it waited so long to assert the government contractor defense. See Harodite Industries, Inc., 24 A.3d at 531; Espinosa, 227 F.R.D. at 27. Such a failure can prove fatal to a motion to amend. See World-Wide Computer Resources, Inc., 615 A.2d at 125 (finding that the defendant's knowledge of facts giving rise to an affirmative defense weighed against granting the defendant's motion to amend).

However, "[e]ven if [the moving party's] explanation for delay is inadequate, [its] motion should not necessarily be denied" absent a showing that such delay actually prejudiced the nonmoving party. Martin v. Sands, 62 F. Supp. 2d 196, 198 (D. Ma. 1999). Indeed, "mere delay is an insufficient reason to deny an amendment." Wachsberger, 583 A.2d at 79. "The trial justice must [instead] find that such delay causes substantial prejudice to the opposing party." Id.; see Faerber v. Cavanagh, 568 A.2d 326, 329 (R.I. 1990) (finding that "undue and excessive delay that causes prejudice to the opposing party is grounds for denial" of a motion to amend) (emphasis added).

Trial in this case is set for mid-July—several months from this writing—thus affording Plaintiff adequate time to prepare a response.[8] See Inleasing Corp., 475 A.2d at 993 (allowing the defendant to amend its answer seven months before trial was scheduled to begin); Duncan v. CRS Sirrine Engineers, Inc., 337 S.C. 537, 542-43 (1999) (finding that the trial court properly granted a motion to amend where the nonmoving party had

[8] In fact, our Supreme Court has upheld a trial court's granting of motions to amend one day before trial was scheduled to commence, see Mikaelian v. Drug Abuse Unit, 501 A.2d 721, 722-23 (R.I. 1985), and even after trial had begun. See Bourbon's, Inc. v. ECIN Industries, Inc., 704 A.2d 747, 751-52 (R.I. 1997).

four months to prepare a response). Discovery, moreover, has not yet closed, as Plaintiff must still depose Defendant's naval experts. See Knowlton v. Spillane, 137 F.R.D. 196, 197 (D. Ma. 1991) (granting the plaintiffs' motion to amend their complaint in part because, "[d]espite the late stage at which the amendment was filed, discovery has not yet concluded . . ."). Plaintiff, therefore, has both time and opportunity to prepare a response to Defendant's government contractor defense. See Gallo v. F.S. Payne Elevator Co., 588 A.2d 614, 615 (R.I. 1991) (overturning the trial court's denial of the defendant's motion to amend its answer because "the motion to amend came well before the case has been assigned for trial" and, thus, "[a]mple opportunity exist[s] for plaintiff to utilize additional discovery in order to probe the truth of defendant's amended answer"); Allendale Mutual Ins. Co. v. Rutherford, 178 F.R.D. 1, 3-4 (D. Me. 1998) (finding that the defendant's delay in seeking to amend its answer did not prejudice the plaintiff because, "even if some additional discovery is necessary, Plaintiff will not be presented with any insuperable difficulties in conducting its case").

2

Plaintiff Had Notice of the Government Contractor Defense

Defendant contends that Plaintiff will not be prejudiced by its amendment because Plaintiff had ample notice that the government contractor defense could be in issue in this case. Defendant points to certain language in Plaintiff's Complaint, testimony given by Plaintiff's expert Moore in a related federal case, and information contained in Defendant's expert disclosures as evidence of Plaintiff's awareness. Plaintiff, in response, argues that the alleged sources of evidence indicated by Defendant

did not afford her any notice of Defendant's intent to assert the government contractor defense here. Plaintiff maintains that she is unfairly surprised by Defendant's Motion.

This Court finds that any prejudice Plaintiff might face from having to address the government contractor defense at this point in the litigation is mitigated by the fact that Plaintiff had adequate notice that the defense could be raised. See Dixon, 477 A.2d at 87-88 (recognizing that the plaintiffs were not prejudiced by the defendant's proposed amendment where "the plaintiffs were not unfairly surprised by defendant's motion to amend its answer . . ."); Massachusetts Asset Financing Corp., 248 F.R.D. at 361-62 (granting the defendant's motion to amend where the plaintiff had notice of the defense raised by the defendant, discovery was still on-going, and trial was months off). Plaintiff, in fact, had both general and specific notice regarding the applicability of the defense to the facts of this case.

A party has notice of the issue raised in a proposed amendment when the party is aware of facts tending to show that that issue could be asserted in the case. See Island Creek Coal Co. v. Lake Shore, Inc., 832 F.2d 274, 280 (4th Cir. 1987); Azemco (North Am.), Inc. v. Brown, 553 So.2d 1245, 1246 (Fla. App. 1990). In order to establish the government contractor defense in a failure-to-warn case, the defendant must present evidence showing that "(1) the government exercised its discretion and approved certain warnings; (2) the contractor provided the warnings required by the government; [and] (3) the contractor warned the government about dangers in the equipment's use that were known to the contractor but not to the government." Oliver v. Oshkosh Truck Corp., 96 F.3d 992, 1003-04 (7th Cir. 1996); see Holdren v. Buffalo Pumps, Inc., 614 F. Supp. 2d 129, 143 (D. Ma. 2009). This defense "protects government contractors from tort

liability that arises as a result of the contractor's 'compliance with the specifications of a federal government contract.'" Getz v. Boeing Co., 654 F.3d 852, 860 (9th Cir. 2011) (quoting In re Hanford Nuclear Reservation Litigation, 534 F.3d 986, 1000 (9th Cir. 2008)) (quotation marks omitted). Thus, "it is this salient fact of government participation in the various stages of the equipment's development that establishes the military contractor defense." Oliver, 96 F.3d at 998 (quoting Kleemann v. McDonnell Douglas Corp., 890 F.2d 698, 700-01 (4th Cir. 1989) (quotation marks omitted)).

a

Plaintiff's General Notice

With regard to the Plaintiff's general notice of the applicability of the government contractor defense to a products liability action involving government contractor defendants, Plaintiff states in her Complaint that:

> "Plaintif[f] specifically do[es] not assert herein a claim for relief or cause of action for damages:
>
> (B) Against any Defendant named herein where (1) said Defendant acted under the direction, order, specification, and/or comprehensive and detailed regulation of a federal officer of federal agency in the performance of its contract duties; and (2) there is a causal nexus between said claim or cause of action for damages and the federal officer or federal agency's direction, order, specification, and/or comprehensive and detailed regulation in the performance of the Defendant's contract duties."

Pl.'s Fourth Am. Compl. at 3-4 ¶ 3. Plaintiff's counsel has admitted that this clause was included in the Complaint to hinder Defendant from removing this case to federal court on the basis of its contractual relationship with the Navy. See Pl.'s Br. at 6-7. Such language shows that Plaintiff was generally aware of facts tending to show that Defendant, a government contractor, could assert the government contractor defense in a

case involving the products it sold to the Navy. See Matrix Capital Management Fund, LP v. BearingPoint, Inc., 576 F.3d 172, 195 (4th Cir. 2009) (finding that the defendant would not be prejudiced by the plaintiff's proposed amendment because the defendant was aware of important facts underlying the action); Greenburgh Eleven Union Free School District v. National Union Fire Ins. Co. of Pittsburgh, Pa., 298 A.D.2d 180, 181, 748 N.Y.S.2d 13, 13 (1st Dep't 2002) (determining that the defendants would not be prejudiced if the plaintiff amended its complaint because the defendants had notice of essential facts giving rise to the claim); see also Dixon, 477 A.2d at 87-88.

Plaintiff has also retained experts in other products liability actions involving government contractor defendants who have opined regarding the elements of the defense. In fact, Moore—one of Plaintiff's experts in this case—extensively discussed the elements of the defense in an affidavit for a related action filed in the United States District Court for the District of Rhode Island, Sweredoski v. Foster Wheeler, LLC, C.A. No. 11-5625. For example, Moore stated that he was prepared to testify regarding "the instructions the Navy required its equipment manufacturers to provide to warn of hazards associated with equipment delivered to the Navy." (Moore Aff., C.A. No. 11-5625, at 3 ¶ 13.) Moore provided detailed descriptions of a number of Navy regulations and specifications applicable to product warnings and knowledge of product hazards. See id. at 4-7. He explained the Navy's procedures for selecting, implementing, and testing product and equipment designs as well. See id. at 9-12.

Plaintiff argues that while Moore's affidavit testimony is relevant to the issue of notice in the federal Sweredoski action wherein she was aware that certain defendants tended to assert the government contractor defense, it is irrelevant here because

Defendant has not been known to use the defense in its cases. Nevertheless, such testimony demonstrates Plaintiff's general awareness that the government contractor defense could be in issue in a case involving parties, like Defendant, who provided equipment under contract to our nation's military. See Matrix Capital Management Fund, LP, 576 F.3d at 195; Greenburgh Eleven Union Free School District, 298 A.D.2d at 181, 748 N.Y.S.2d at 13; see also Dixon, 477 A.2d at 87-88.

b

Plaintiff's Specific Notice

Entries contained in Defendant's expert disclosure statements gave Plaintiff specific notice of the applicability of the government contractor defense to the particular facts of this case. For example, Defendant stated that Rear Admiral Malcolm MacKinnon III (ret.) (MacKinnon) is prepared to testify that "specifications for any equipment intended for use aboard a U.S. Navy ship, known as 'MilSpecs,' were drafted, approved and maintained by the Navy . . . ." (Def.'s Designation of Fact and Expert Witnesses at 71.) According to MacKinnon, "[t]hese specifications reflected the state of the art and the special needs of Naval vessels, including the safety and protection of U.S. Navy sailors aboard fighting ships." Id. Defendant states that Rear Admiral David P. Sargent, Jr. (ret.) (Sargent) is prepared to testify that "the Navy developed an engineering process for the creation and subsequent modification, as needed, of written specifications outlining all requirements for equipment manufactured and supplied for the Navy's use." Id. at 76. Sargent will opine that "[t]hese specifications covered . . . not only the physical requirements of the equipment, but also . . . the nature and the content of written instructions, directions, and warnings that would accompany such equipment." Id.

Thus, Defendant's expert disclosures gave Plaintiff specific notice that Defendant has compiled expert testimony concerning its contractual relationship with the Navy, the sophistication of the Navy's product specifications, and the extent of the Navy's participation in product and warning design. See Seals, 546 F.3d at 770 (finding that the defendant could amend its answer to assert a new affirmative defense because "plaintiff's counsel had notice that [the defendant] intended to assert the . . . [omitted] affirmative defense once . . . [certain] documents were discovered . . ."); Island Creek Coal Co., 832 F.2d at 280 (determining that the plaintiff's motion to amend its complaint to add new allegations did not "take the defendant by surprise or require it to investigate a claim of which is was not already cognizant" because the defendant had notice of particular facts underlying the new allegations); see also Massachusetts Asset Financing Corp., 248 F.R.D. at 361-62. Each of these topics is an essential element of the government contractor defense in the failure-to-warn context. See Oliver, 96 F.3d at 1003-04; Holdren, 614 F. Supp. 2d at 143. This Court finds, therefore, that Plaintiff had adequate notice of facts showing the applicability of the defense to this case and has failed to show that she will be prejudiced by Defendant's proposed amendment. See Weybosset Hill Investments, LLC, 857 A.2d at 236 (finding that in the context of a motion to amend pursuant to Rule 15(a), the burden rests on the nonmoving party to show prejudice).

III

Conclusion

Based on the foregoing, this Court grants Defendant's Motion to amend its Answer to plead the government contractor defense as a new affirmative defense in the instant action. Despite Defendant's delay in seeking to amend its Answer, Plaintiff has failed to carry its burden of showing that she would be prejudiced by Defendant's proposed amendment. Plaintiff has adequate time to prepare a response for trial. Plaintiff, moreover, was not unfairly surprised by the Motion because she had notice of general and specific facts tending to show that the government contractor defense could be in issue in this case.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Sweredoski v. Alfa Laval, Inc., et al.
CASE NO:	PC 2011-1544
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 22, 2013
JUSTICE/MAGISTRATE:	Presiding Justice Alice Bridget Gibney
ATTORNEYS:	
For Plaintiff:	Robert J. Sweeney, Esq.
For Defendant:	David A. Goldman, Esq.; Kendra A. Christensen, Esq.