

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

CAROLYN JOHNSON	*	CIVIL ACTION
VERSUS	*	NO. 08-3526
STATE FARM FIRE & CASUALTY CO.	*	SECTION "L" (5)

ORDER & REASONS

Before the Court is the Defendant's Motion to Dismiss (Rec. Doc. 3). For the following reasons, the Motion is DENIED.

The Plaintiff originally filed her complaint as part of a mass action styled *Donald Daniel v. State Farm Fire & Casualty Co.* See Civ. A. No. 07-8643. On May 1, 2008, the Court ordered that certain of the claims in the mass action be dismissed with prejudice. The Court further ordered that certain remaining plaintiffs, including Ms. Johnson, were to file an amended complaint within fifteen days of the Order if they wished to proceed with their cases. The Court stated that failure to comply with the filing schedule would result in dismissal of the case with prejudice.

The Plaintiff filed an amended complaint on May 21, 2008, two days after the court-ordered deadline of May 19, 2008.¹ On June 18, 2008, the Defendant moved to dismiss the Plaintiff's claims for failure to timely file the amended complaint. The Defendant contends that the Plaintiff's failure to comply with the scheduling order warrants dismissal with prejudice. In response, the Plaintiff argues that the Court should apply a liberal rule to amended pleadings and

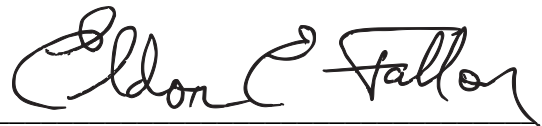
¹The Order was issued on May 2, 2008. Because May 17, 2008 was a Saturday, the Plaintiff had until May 19, 2008, to file the amended complaint.

that dismissal is unwarranted given the unique facts of the case. The Plaintiff further contends that the delay in this case did not prejudice the Defendant's case.

Rule 15 of the Federal Rules of Civil Procedure provides that a party may amend a complaint by leave of court and that the court "should freely give leave when just so requires." Fed.R.Civ.P. 15. "In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant ... the leave sought should, as the rules require, be 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Although the Plaintiff failed to timely file her amended complaint, the delay in filing was minimal—only two days. The parties have not selected trial or pretrial dates at this time. There is no formal schedule for discovery. The amended complaint asserts essentially the same allegations and charges as those advanced in the original action. As a result, the delay does not prejudice the Defendant in any way. Given the particular facts of the case, it would be overly harsh to dismiss the Plaintiff's claims with prejudice. Accordingly, the Defendant's Motion to Dismiss IS DENIED.

New Orleans, Louisiana, this 9th day of October, 2008.

A handwritten signature in black ink, reading "Eldon C. Falter". The signature is written in a cursive style with a horizontal line underneath the name.

UNITED STATES DISTRICT JUDGE