

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

CLINTON EUGENE GILLEY, as
Administrator of the Estate of
CARL DAVID GILLEY, Nicole Leigh Le,
As Administrator of the Estate of
CHRISTINE TARA WARDEN GILLEY, and
Clinton Eugene Gilley and Nicole Leigh
Le as Co-Administrators of the Estates
of J.G. and G.G., minor children.

Plaintiffs,

v.

CIVIL ACTION NO. 1:18-00536

C.H. ROBINSON WORLDWIDE, INC.,
J&TS TRANSPORT EXPRESS, INC., and
BERTRAM COPELAND, M & K TRUCK LEASING, LLC,
And RIVER VALLEY CAPITAL INSURANCE, INC.

Defendants.

MEMORANDUM OPINION AND ORDER

Consistent with the court's Order on April 10, 2019 (ECF No. 84), the court hereby **GRANTS** the Stipulated Motion to Amend Complaint (ECF NO. 83), which adds defendants M & K Trucking Leasing LLC and River Valley Capital Insurance, Inc to the case, for the reasons stated below.

According to the Stipulated Motion, all parties—the plaintiffs and the defendants joined at the time—consented to the filing of the Amended Complaint. Id. At the time of the filing of the motion the parties to be added—M & K Trucking Leasing LLC and River Valley Capital Insurance, Inc—had not, however, had an opportunity to file a response to the motion.

After the court entered its Order granting the parties' Stipulated Motion to Amend Complaint, the new defendant, M & K Truck Leasing, LLC, filed a Response to Stipulated Motion to Amend Complaint. (ECF NO. 90). The plaintiffs have since filed a Motion to Strike Response to Stipulated Motion to Amend Complaint. (ECF No. 92).

Analysis

In the stipulated motion, the parties contended they were filing the motion under Fed. R. Civ. P. 15(a)(2). (ECF No. 83). Thus, because the plaintiffs' time to amend their complaint as a matter of course passed and because the parties to be joined did not consent in writing to being joined, this court has to determine whether "justice so requires" allowing the parties to amend the complaint, which adds the two new parties.

According to Fed. R. Civ. P. 15(a)(2), [after a party's right to an amendment as a matter of course is no longer applicable] "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." While Rule 15 does not specifically address whether a party may join additional parties by amending a complaint, the Fourth Circuit has held that Rule 15 is applicable to amendments seeking to add parties. See Galustian v. Peter, 591 F.3d 724, 730 (4th Cir. 2010).

It is the Fourth Circuit's "policy to liberally allow amendment in keeping with the spirit of Federal Rule of Civil Procedure 15(a). Id. at 729. Furthermore, this district has held that allowing the use of Rule 15(a) to add claims against parties, at least where no prejudice results, is appropriate. Smith v. Green Tree Servicing, LLC, No. 2:09-cv-710, 2010 WL 1050350, F.Supp.2d, at *3 (S.D.W.V. March 18, 2010) (citing Galustian, 591 F.3d 724). In making this determination [of whether an amendment under Rule 15(a) should be granted], a court should consider whether there has been undue delay in filing, bad faith or dilatory motives, prejudice to the opposing parties, and the futility of the amendment. See Forman v. Davis, 371 U.S. 178, 182 (1962).

Here, the court finds that any potential unfair prejudice can be remedied through amending the current scheduling order. In its Response to Stipulated Motion to Amend Complaint (ECF NO. 90), M & K Truck Leasing, LCC did not demonstrate any unfair prejudice that cannot be resolved through a new scheduling order. Furthermore, the court does not find, and the defendants sought to be added have not alleged, futility or that the plaintiffs are acting in bad faith. Therefore, consistent with the court's Order entered on April 10, 2019 (ECF No. 84), the court **GRANTS** the Stipulated Motion to Amend Complaint (ECF NO. 83).

Additionally, even though M & K Trucking Leasing, LLC filed their response to the plaintiffs' motion to amend after the court entered its Order (ECF NO. 90), the court took their brief under consideration. Nonetheless, the court was not persuaded by M & K Trucking Leasing, LLC's argument, and did not find their reasoning to justify the court overruling its previous Order. Thus, because the court took M & K Trucking Leasing, LLC's filing under consideration, the court **DENIES** plaintiff's Motion to Strike Response to Stipulated Motion to Amend complaint (ECF No. 92).

Conclusion

For the foregoing reasons, the Stipulated Motion to Amend Complaint (ECF NO. 83) is **GRANTED** and plaintiff's Motion to Strike Response to Stipulated Motion to Amend complaint (ECF No. 92) is **DENIED**.

The Clerk is directed to send copies of this Order to all counsel of record.

IT IS SO ORDERED this 29th day of May, 2019.

ENTER:



David A. Faber
Senior United States District Judge