

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

RITA LOVEJOY,

Plaintiff,

v.

CIVIL ACTION NO. 2:20-cv-00537

JACKSON RESOURCES COMPANY,

Defendant.

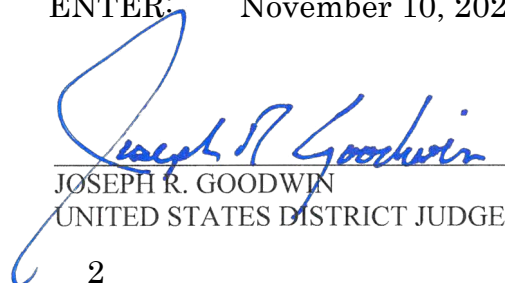
MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant Jackson Resources Company's unopposed Motion for Leave to File an Amended Answer [ECF No. 57] to Plaintiff Rita Lovejoy's First Amended Complaint [ECF No. 39]. Pursuant to Rule 15(a)(2) and Rule 16(b)(4) of the Federal Rules of Civil Procedure, Defendant requests to file an amended answer that asserts two additional defenses in response to Plaintiff's claims: (1) one or more non-parties may be wholly or partially at fault for the alleged contamination described in the First Amended Complaint, and therefore any recovery by Plaintiff must be reduced by the percentage of fault chargeable to such non-party(s) pursuant to West Virginia Code § 55-7-13d; and (2) Defendant Jackson Resources Company is not subject to joint and several liability with Defendant AMCOX Oil and Gas LLC pursuant to West Virginia Code § 55-7-13c.

Federal Rule of Civil Procedure 15(a)(2) states that leave to amend a pleading should be “freely give[n] when justice so requires.” However, this motion to amend was filed on October 18, 2021, after the August 30, 2021, deadline for amendment of pleadings set in the Amended Scheduling Order. [ECF No. 50]. “Once the scheduling order’s deadline for amendment of the pleadings has passed, a moving party first must satisfy the good cause standard of Rule 16(b)(4). If the moving party satisfies Rule 16(b), the movant then must pass the tests for amendment under Rule 15(a).” *Marcum v. Zimmer*, 163 F.R.D. 250, 254 (S.D. W. Va. 1995). “Unlike Rule 15(a)’s liberal amendment policy which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Id.* (internal quotation marks omitted). In other words, “the touchstone of ‘good cause’ . . . is diligence.” *Id.* at 255.

Finding good cause to amend and no apparent lack of diligence on behalf of Defendant Jackson Resources Company, the Court hereby **GRANTS** the motion. Defendant is directed to file its proposed First Amended Answer [ECF No. 57-1] within 14 days of entry of this order. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: November 10, 2021


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE