

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

HUNTINGTON DIVISION

RUBBERLITE INC., a West Virginia corporation,
and JAMES ALLEN MAYO, a natural person,

Plaintiffs,

v.

CIVIL ACTION NO. 3:08-1106

BAYCHAR HOLDINGS, LLC, a Maine limited
liability company, BAYCHAR INC., a Maine
corporation, BAYCHAR, a natural person,
BAYCHAR TECHNOLOGIES, INC., a Maine
corporation, and DOES 1 through 100,

Defendants.

MEMORANDUM OPINION AND ORDER


Pending before the Court is the plaintiffs' Motion for Leave to File Third Amended Complaint (Doc. 44). The motion is **GRANTED**.

With respect to the amendment of pleadings, Federal Rule of Civil Procedure 15(a)(2) provides that a "court should freely give leave when justice so requires." A Rule 15(a) analysis "focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party." *Marcum v. Zimmer*, 163 F.R.D. 250, 254 (S.D. W. Va. 1995) (citation omitted). However, the United States Supreme Court has held that "a lack of prejudice would alone ordinarily warrant granting leave to amend and that mere delay absent any resulting prejudice or evidence of dilatoriness was not sufficient justification for denial." *Ward Electronic Service, Inc. v. First Commercial Bank*, 819 F.2d 496, 497 (4th Cir. 1987) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Here, the plaintiffs' seek leave to amend their complaint in order to: (1) change the language to reflect a change in fact, and (2) add Solid Water Holdings, L.L.C., a Maine limited liability company, as a defendant. Defendants oppose the amendment on the grounds that it is "substantially delayed" and/or "futile." However, they do not establish prejudice. Because the plaintiffs' motion is timely,¹ it is determined according to the liberal standard provided by Rule 15(a). Accordingly, because amendment will not result in prejudice to the defendants, the Court **GRANTS** the plaintiffs' motion for leave to file a third amended complaint.

The Court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented parties.

ENTER: November 6, 2009



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

¹The plaintiffs filed the instant motion on October 14, 2009, in conformity with the deadline for filing motions to amend the pleadings found in the Amended Scheduling Order (Doc. 40).