

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

HUNTINGTON DIVISION

JUSTIN ADKINS, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 3:18-0321

CSX TRANSPORTATION, INC., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is Plaintiffs' Motion for Leave to File Third Amended Complaint, ECF No. 70. Federal Rule of Civil Procedure 15(a)(2) provides "[t]he court should freely give leave when justice so requires." The Fourth Circuit has held that leave to amend "should be denied *only when* the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999) (emphasis in original).

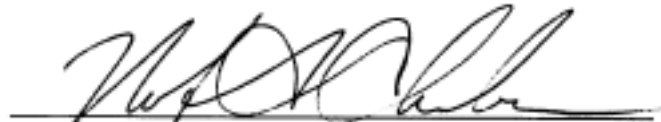
Plaintiffs seek leave to amend for two reasons. First, Plaintiffs desire to substitute Plaintiff Chad Little, who is deceased, with the Estate of Chad Little. ECF No. 70, at 1. Defendants do not object but expressly reserve all potential substantive defenses, including those related to the Estate's ability to bring claims under the applicable survival statutes. ECF No. 76, at 2. The Court finds the Plaintiffs' substitution necessary and acknowledges Defendants' reservation of all substantive defenses.

Second, Plaintiffs seek to add additional claims under the Federal Railroad Safety Act now that administrative exhaustion for these claims is complete. ECF No. 70, at 1. Defendants do not

object but request that the Court permit Defendants to incorporate their previous answers and objections by reference and to jointly respond to the new allegations only. ECF No. 76, at 3. The Court finds this case is at an early enough stage to permit the addition of claims. The Court also finds Defendants' request is reasonable to prevent an unduly prejudicial waste of resources. Defendants therefore may file a consolidated answer that only addresses the new party and claims, and the Court will deem Defendants' prior answers as responsive to the Third Amended Complaint.

In conclusion, the Court **GRANTS** Plaintiffs' Motion for Leave, ECF No. 70, per the conditions set forth in this Order. The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: January 13, 2020

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE