

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM CONWAY ET AL.,

Plaintiffs,

v.

MICHAEL T. CONAHAN ET AL.,

Defendants.

**CONSOLIDATED TO:**  
Civil Action No. 3:09-cv-0286

Civil Action No. 3:09-cv-0291

(JUDGE CAPUTO)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

H.T. ET AL.,

Plaintiffs,

v.

MARK A. CIAVARELLA, JR. ET AL.,

Defendants.

**CONSOLIDATED TO:**  
Civil Action No. 3:09-cv-0286

Civil Action No. 3:09-cv-0357

(JUDGE CAPUTO)

**PLAINTIFFS' MOTION FOR LEAVE TO AMEND MASTER  
COMPLAINT FOR CLASS ACTIONS**

Plaintiffs move this Court pursuant to Federal Rule of Civil Procedure 15(a) and M.D. Pa. Local Rule 15.1 for leave to amend the Master Complaint for Class Actions. In support thereof, plaintiffs, through their counsel, state the following:

1. On June 25, 2009, Plaintiffs in Nos. 09-0291 and 09-0357 filed a Master Complaint for Class Actions, consolidating the factual allegations and claims on behalf of the class-action Plaintiffs.

2. Pursuant to paragraph 8 of the Amendment to Case Management Order docketed on June 22, 2009 (Doc. No. 132), Plaintiffs may file motions for amendments of the complaints no later than September 10, 2009.

3. Federal Rule of Civil Procedure Rule 15 provides, in pertinent part, that “a party may amend the party’s pleading only by leave of court . . . and leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a).

4. Courts should generally grant leave to amend “[i]n the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of the amendment, etc.” *Forman v. Davis*, 371 U.S. 178, 182 (1963); *see also Adams v. Gould Inc.*, 739 F.2d 858, 864 (3d Cir. 1984) (holding that amendment should be allowed under “liberal pleading philosophy” unless there is undue delay, bad faith or prejudice because of delay).

5. The Third Circuit Court of Appeals has stated that “prejudice to the non-moving party is the touchstone for the denial of an amendment.” *Cornell & Co. v. Occupational Safety & Health Review Comm’n*, 573 F.2d 820, 823 (3d Cir.

1978). “In the absence of substantial or undue prejudice, denial . . . must be based on bad faith or dilatory motives, truly undue or unexplained delay, repeated failures to cure the deficiency by amendments previously allowed, or futility of amendment.” *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1414 (citing *Heyl & Patterson Int'l, Inc. v. F.D. Rich Housing of the V.I., Inc.*, 663 F.2d 419, 425 (3d Cir. 1981)).

6. None of these bases for denial exist here: The amendment will not cause delay in this proceeding, which is still in its earliest stages; Plaintiffs have not evidenced – and certainly do not have– a bad faith or dilatory motive for seeking leave to amend; the Master Complaint for Class Actions has not previously been amended; and, again because this proceeding is only at the motion to dismiss stage, Defendants will not be prejudiced if the Court permits the amendment.

7. Attached as Exhibit A is a copy of the proposed amended Master Complaint for Class Actions, together with the attachments to the Complaint.

8. Attached as Exhibit B is a copy of the proposed amended Master Complaint for Class Actions, without attachments, on which stricken material has been lined through and new material has been underlined, pursuant to Local Rule 15.1(b).

WHEREFORE, plaintiffs respectfully request that this Court grant Plaintiffs leave to amend the Master Complaint for Class Actions. A proposed order is attached.

Respectfully submitted:

By: /s/ Sol Weiss

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, it is hereby  
ORDERED that Plaintiffs' motion for leave to amend the Master Complaint for  
Class Actions is GRANTED, and the Clerk shall file it forthwith.

BY THE COURT:

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A. Richard Caputo, J.  
United States District Court Judge

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**CERTIFICATE OF NON-CONCURRENCE**

I, Sol Weiss, hereby certify, pursuant to Local Rule 7.1, that (a) counsel for Plaintiffs indicated at the August 21, 2009 Case Management Conference that they intended to file a motion for leave to amend the Master Complaint for Class Actions and (b) there was not concurrence by all Defendants in the motion for leave to amend.

Dated: August 27, 2009

/s/ Sol Weiss

**CERTIFICATE OF SERVICE**

I, Adrienne Walvoord, hereby certify that, on this 27th day of August, 2009, the foregoing motion for leave to amend the Master Complaint for Class Actions was filed and made available via CM/ECF to all counsel of record. Additionally, the foregoing motion will be served by Federal Express on August 28, 2009 upon the following:

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