

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

MARK JACKSON,
Plaintiff,

Civil Action No. 05-4988

v.

ROHM & HAAS COMPANY, et al.,
Defendants.

MEMORANDUM / ORDER

December 18, 2006

Before the court is “Plaintiff’s Renewed Motion for Leave to Amend the Amended Complaint” (Docket # 96). Rule 15(a) of the Federal Rules of Civil Procedure states that, after amending a complaint once as a matter of course, a plaintiff “may amend [its] pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” The Rohm & Haas defendants have filed a consent to the proposed second amended complaint. While not interposing any objection to the filing of the proposed amendment, these defendants seek a modest extension of time within which motions to dismiss would be filed. They request thirty days for the filing of their anticipated motion to dismiss, thirty days for plaintiff to respond, and fifteen days for their reply. But since (a) no consent has to date been forthcoming from defendant Liberty Life Assurance Company, and (b) the proposed amendment seeks to

add three additional defendants (Deanna May, Nancy Mayo, and Lori Hamlin), the proposed amendment requires leave of court. *See id.*; Fed. R. Civ. Pro. 21 (“Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.”).

Rule 15(a) and Rule 21 employ the same standard for determining whether leave should be granted. *See Gibbs v. Titelman*, 369 F. Supp. 38, 53 n.25 (E.D. Pa. 1973), *rev’d on other grounds*, 502 F.2d 1107 (3d Cir.), *cert. denied*, 419 U.S. 1039 (1974). Under both rules, leave will be granted unless the interests of justice do not favor amendment, and “[a]mong the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility.” *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997). Applying this test, the motion to amend will be granted.

The interval between plaintiff’s last attempt to amend the complaint (which was denied on July 10, 2006) and the current “Renewed Motion” has not been too long. Furthermore, plaintiff has removed from the proposed amended complaint those claims previously adjudged frivolous. *See* Orders of March 13, 2006 (Docket # 47), April 12, 2006 (Docket # 63), and July 10, 2006 (Docket # 90).

For the foregoing reasons, it is ORDERED that “Plaintiff’s Motion for Leave to Amend the Amended Complaint” (Docket # 96) is GRANTED. The clerk of court is

directed to file the second amended complaint (Document 96-4).¹ It is further ORDERED that defendants' motions to dismiss the amended complaint (Docket #s 26 & 27) are DISMISSED as moot. Defendants shall have thirty (30) days after service of the second amended complaint in which to file a motion to dismiss; plaintiff shall have thirty (30) days after service of the motion to dismiss in which to respond; and defendants shall have fifteen (15) days after service of plaintiff's response in which to reply.

/s/ Louis H. Pollak
Louis H. Pollak

¹ The Rohm & Haas defendants also ask the court to dismiss, with prejudice, Counts I, III, IV, and VII of the first amended complaint. Plaintiff's omission of these claims from the second amended complaint constitutes a voluntary dismissal. Such dismissal is prudent given that Count I (obstruction of justice) and Count III (42 U.S.C. § 1985) were adjudged frivolous in the Order of March 13, 2006 (Docket # 47), Count IV (42 U.S.C. § 1986) was deemed to fall with the failure of Count III (*see* Order of March 13, 2006 at 16, n.10), and Count VII (abuse of process) drew on the same factual basis as the preceding counts. Thus, it seems unlikely that these claims will ever resurface.