

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

STAFFORD, LLC, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No.06-4099-JAR
)	
PETROL OIL and GAS, INC.,)	
)	
Defendant.)	

ORDER

This matter comes before the court upon plaintiffs’ Motion for Leave to Amend Complaint¹ (Doc. 15). In the present motion plaintiffs seek add a cause of action for Inverse Condemnation, and to remove Count VI from their complaint which seeks an Accounting. Because defendant asserts the affirmative defense of condemnation in its answer, plaintiffs now wish to amend their complaint and claim Inverse Condemnation. Moreover, plaintiffs believe that their accounting claims is unnecessary they can obtain comparable relief through the discovery process.

Plaintiffs filed the present motion on March 1, 2007, which, pursuant to the parties’ Scheduling Order (Doc. 9), is within the parties’ deadline to otherwise amend their pleadings. Defendants have informed the court that they do not oppose the present motion.

¹Plaintiffs title their motion “Plaintiffs [sic] Motion for Leave to Amend Petition.” Moreover, plaintiffs attach a “Second Amended Petition” to their Memorandum in Support (Doc. 15)(Exhibit A) of the present motion. While the present action was originally filed in state court and then removed, the court will treat plaintiff’s motion as a motion for leave to file an amended complaint.

Fed. R. Civ. P. 15 controls the procedure for amending the pleadings. Rule 15(a) states, in pertinent part, that after a responsive pleading: “a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.”² In considering whether to grant leave to amend, the court evaluates several factors including whether the amendment will cause undue delay or prejudice to the non-moving party.³ As defendant does not object to the present motion, the amendment should not cause defendant prejudice. Accordingly, and in the interest of justice,

IT IS THEREFORE ORDERED that plaintiffs’ Motion for Leave to Amend Complaint (Doc. 14) is granted. The court directs the Clerk to file Attachment 1 to Doc. 15 as plaintiffs’ First Amended Complaint.

IT IS SO ORDERED.

Dated this 7th day of March, 2007, at Topeka, Kansas.

s/ K. Gary Sebelius
K. Gary Sebelius
U.S. Magistrate Judge

²Fed. R. Civ. P. 15(a).

³ *Little v. Reed-Prentice Div. Of Package Mach. Co.*, 131 F.R.D. 591, 593 (D. Kan. 1990) (citations omitted).