

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

CONSECO SERVICES, L.L.C., et al.,)	
)	CIVIL ACTION
Plaintiffs,)	
)	
v.)	Case No. 09-2130 CM/DJW
)	
MATT V. ALEXANDER,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs' Motion for Leave to File Second Amended Complaint with Memorandum In Support (doc. 98). Plaintiffs seek to amend their Amended Complaint to add two additional claims. On July 1, 2010, the Court held a hearing on this Motion, as well as several other motions. During the hearing, the Court gave counsel for the parties the opportunity to resolve their disputes before the Court entered a ruling on the pending motions. As a result, the parties were able to resolve many of their disputes. However, the parties were unable to resolve their dispute concerning this Motion. The Court therefore heard arguments from counsel concerning the Motion and issued its ruling during the hearing. The purpose of this Memorandum and Order is to memorialize the Court's ruling during the hearing.

Plaintiffs seek leave to amend their Amended Complaint to add two additional claims against Defendant: (1) intentional infliction of emotional distress and (2) tortious interference with Plaintiff Wilkins' business and employment relationships. Plaintiffs admit that these claims are based on the same set of facts already plead in their Amended Complaint. Plaintiffs further admit that their Motion is not timely, as the deadline to amend pleadings expired in January 2010. Plaintiffs' counsel argued that Plaintiffs should be allowed to amend their Amended Complaint because there is no prejudice to Defendant. Plaintiffs point out that they did not oppose Defendant's request to

amend his answer, which was filed only two weeks before they filed their Motion. Plaintiffs further point out that the only deposition which took place before they filed their Motion was the deposition of Defendant.

Having considering the parties' arguments, the Court finds that the Motion should be denied. The Final Pretrial Conference in this case has already been conducted (on July 1, 2010) and any motion to amend pleadings was due in January 2010. The Court finds the Motion untimely and concludes that Defendant will be prejudiced by the fact that Plaintiffs are seeking leave to amend their Amended Complaint so late in this case. The Court further notes that Plaintiffs had every opportunity to timely plead these additional claims because they are based on facts that were already known to Plaintiffs.

IT IS THEREFORE ORDERED Plaintiffs' Motion for Leave to File Second Amended Complaint with Memorandum In Support (doc. 98) is denied.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 9th day of July 2010.

s/David J. Waxse
David J. Waxse
U.S. Magistrate Judge

cc: All counsel and *pro se* parties