

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

BOSTON SCIENTIFIC)	
CORPORATION, <i>et al.</i>,)	
)	
Plaintiffs/Counterdefendants,)	Cause No. 1:11-cv-00736-WTL-DKL
vs.)	
)	
MIROWSKI FAMILY)	
VENTURES, LLC,)	
)	
Defendant/Counterclaimant.)	

ENTRY ON COUNTERCLAIMANT’S MOTION TO AMEND

In response to the Plaintiffs’ motion for judgment on the pleadings, Mirowski Family Ventures, LLC, (hereinafter “Mirowski”) has moved for leave to amend its Counterclaims.¹ The Plaintiffs (hereinafter “Boston Scientific”) object to the amendment on the ground that it is untimely and also fails to correct the deficiencies in the original counterclaims and therefore would be futile. Mirowski has responded to Boston Scientific’s motion for judgment on the pleadings and has also replied to the Boston Scientific’s response to its motion to amend.

As a preliminary matter, Boston Scientific opposes Mirowski’s motion to amend on the ground that it represents undue delay. This argument is a non-starter. As Boston Scientific itself acknowledges, Mirowski filed its motion for leave to amend by the deadline established for doing so. Minute Entry, Jan. 20, 2012, Dkt. No. 58 (“[T]he deadline to file motions for leave to

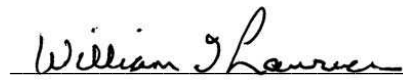
¹ Mirowski should have moved to amend its Answer and Counterclaims pursuant to Local Rule 15-1(b).

amend the pleadings and/or to join additional parties [is] February 17, 2012.”).² Therefore no delay exists at all, much less undue delay.

With respect to the remaining arguments raised in Boston Scientific’s response to Mirowski’s motion to amend, as well as the Boston Scientific’s motion for judgment on the pleadings, the Court believes the most efficient means of the resolving the issues before it are as follow:

1. Mirowski’s motion to amend (dkt. #73) is **GRANTED**. However, rather than present the Court with the entire pleading as amended as required by Local Rule 15-1(b), Mirowski instead has only provided its proposed amended Counterclaims. Mirowski is hereby **ORDERED** to file its entire pleading as amended within **SEVEN DAYS** from the date of this Entry.
2. Ordinarily, the filing of an amended pleading will moot a previously-filed motion for judgment on the pleadings. However, the issues raised in the motion for judgment on the pleadings apply equally to the amended pleadings. Thus, the Court will consider Boston Scientific’s motion as if it were directed toward the amended Answer and Counterclaims. The Court will address the motion by separate order.

SO ORDERED: 08/09/2012



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Copies to all counsel of record via electronic communication.

² Because there is no delay, the Court does not address Boston Scientific’s argument that Mirowski’s undue delay militates toward a denial when combined with the unfair prejudice Boston Scientific contends it will suffer.