

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

KINCAID COACH LINES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17-2388-DDC
	)	
TRANSARCTIC OF NORTH	)	
CAROLINA, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

This matter comes before the court upon Defendant SPAL USA, Inc.’s (“SPAL”) Motion for Leave to File a First Amended Answer (ECF No. 44). For the following reasons, the court grants SPAL’s motion.

SPAL filed its motion on January 30, 2018. Pursuant to D. Kan. Rule 6.1(d)(1), the other parties had fourteen days to file a response to SPAL’s motion. None of the parties have filed a response, and the time to file a response has passed. D. Kan. Rule 7.4(b) states:

Absent a showing of excusable neglect, a party or attorney who fails to file a responsive brief or memorandum within the time specified in D. Kan. Rule 6.1(d) waives the right to later file such brief or memorandum. If a responsive brief or memorandum is not filed within the Rule 6.1(d) time requirements, the court will consider and decide the motion as an uncontested motion. Ordinarily, the court will grant the motion without further notice.

Because no timely response has been filed within the Rule 6.1(d) time requirements, the court will consider and decide SPAL’s motion as uncontested.

Rule 15(a)(2) of the Federal Rules of Civil Procedure states that a party may amend its pleading only with the opposing party’s written consent or the court’s leave. In addition, the court

should freely give leave when justice so requires.<sup>1</sup> When considering whether to grant leave to amend, a court may refuse leave “only [upon] a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of the amendment.”<sup>2</sup>

SPAL seeks to amend its answer to identify other potential affirmative defenses. Based upon the application of the factors under Fed. R. Civ. P. 15(a)(2) and considering SPAL’s motion as uncontested, the court grants the motion.

Accordingly,

**IT IS THEREFORE ORDERED** that SPAL USA, Inc.’s Motion for Leave to File a First Amended Answer (ECF No. 44) is hereby granted. SPAL USA, Inc. shall file its amended answer within fourteen (14) days of this order.

**IT IS SO ORDERED.**

Dated this 14th day of February, 2018, at Topeka, Kansas.

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

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<sup>1</sup> Fed. R. Civ. P. 15(a)(2).

<sup>2</sup> *Wilkerson v. Shinseki*, 606 F.3d 1256, 1267 (10th Cir. 2010) (quoting *Duncan v. Manager, Dep’t Safety, City & Cnty. of Denv.*, 397 F.3d 1300, 1315 (10th Cir. 2005)).