



1           Upon consideration of the written and oral argument of defendant United States and  
2 plaintiffs' pending motion to consolidate and amend, the Court GRANTS plaintiffs leave to  
3 amend their complaint and finds defendant's motion to dismiss moot.

4           The United States filed their motion to dismiss on April 10, 2000 asserting  
5 insufficiency of service of process and failure to state a claim upon which relief can be  
6 granted as the basis for their motion. Prior to the United States filing their motion to  
7 dismiss, plaintiffs filed a motion to consolidate and file a second amended complaint  
8 indicating their desire to amend the complaint in this action.<sup>1</sup> The hearing on plaintiffs'  
9 motion to consolidate and amend was continued by agreement of the parties, and  
10 consequently, defendant's motion to dismiss came on for hearing before plaintiffs' motion  
11 to amend. Because plaintiffs' motion to consolidate and amend is in the nature of a proper  
12 motion to amend, and because leave to amend is to be granted freely when justice so  
13 requires,<sup>2</sup> the Court grants plaintiffs leave to amend their complaint, thus defendant's  
14 motion to dismiss for failure to state a claim is moot. Further, because the 120 day time  
15 period for service of process had not yet run at the time defendant filed its motion to  
16 dismiss, the Court finds defendant's motion based on failure of service of process was  
17  
18  
19  
20  
21

---

22 <sup>1</sup>Plaintiffs filed their Motion to Consolidate Cases (Civ. Action Nos. 99-0046 and 00-0005)  
23 and File Second Amended Complaint on March 2, 2000. At the March 30<sup>th</sup> hearing on that  
24 motion, the parties agreed to continue the hearing date to May 18, 2000. The United States  
25 filed their motion to dismiss on April 10, 2000, to be heard May 11, 2000. The Court on this  
date denied plaintiffs' motion to consolidate and motion to amend as proposed with respect  
to Civil Action No. 99-0046.

26 <sup>2</sup>Fed.R.Civ.P. 15(a) provides that leave to amend "shall be freely given when justice so  
requires."

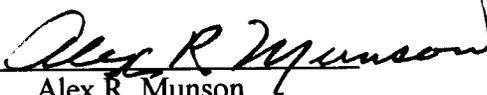
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

premature.<sup>3</sup>

Accordingly, plaintiffs shall have 20 days from the date of this Order to file a second amended complaint. Because the case has not progressed beyond the initial pleadings, plaintiffs may amend their complaint to add new parties and new causes of action as requested in their motion to consolidate and amend without resulting in prejudice to defendants. Defendant's motion to dismiss is moot.

IT IS SO ORDERED.

DATED this 22<sup>nd</sup> day of June, 2000.

  
\_\_\_\_\_  
Alex R. Munson  
District Judge

---

<sup>3</sup>The Court notes that during the time this motion was under advisement, plaintiffs filed returns of service reflecting that the Commonwealth of the Northern Mariana Islands (CNMI), the United States Attorney General and the Assistant United States Attorney in the CNMI were served with process on May 24, 2000.