

FILED

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

NOV 20 4: 01  
KOLEEN NOSEKABEL  
CLERK OF THE DIST. COURT  
STEVENS CO. KS

GILBERT H. COULTER and  
ELIZABETH S. LEIGHNOR, individually  
as represented plaintiffs on behalf of  
persons or companies similarly situated,  
Plaintiffs

vs.

Case No. 98-CV-40

ANADARKO PETROLEUM CORPORATION,  
Defendant

**JOURNAL ENTRY OF DECISION BY THE COURT UPON PLAINTIFF'S  
MOTION FOR PUNITIVE DAMAGES**

The Plaintiff has filed its Motion pursuant to K.S.A. 60-3703 to amend its Petition herein to include a recovery for punitive damages.

In this proceeding the Plaintiffs have asked for an accounting from the Defendant.

The Plaintiff makes its claim for an accounting based upon a breach of the obligations both expressed and implied of the oil and gas lease that exists between these parties. In essence, this is a case for a breach of contract.

This Court finds that in a breach of contract case no punitive damages are recoverable in the absence of additional damages caused by an independent tort beyond those suffered by the breach. Heller v. Martin, 14 Kan. App. 2d. 48.

It is a further requirement of Kansas law that a verdict for actual damages is a prerequisite to an award of punitive damages. Enlow v. Sears Roebuck and Company, 249 Kan. 732.

The Plaintiffs are not requesting a verdict for actual damages in this proceeding.


It is required that this Court find from the pleadings that there is a probability that the Plaintiff will prevail upon their claim for punitive damages which have to be proven by a standard of clear and convincing evidence. Fusaro v. First Family Mortgage Company, 257 Kan. 794.

This Court finds the Plaintiffs are not entitled to claim punitive damages in this proceeding because of the nature of action as filed by the Plaintiffs and because this Court cannot find that the trier of fact would probably allow the Plaintiff to prevail upon a claim of punitive damages.

IT IS, THEREFORE, the Order, Judgment and Decree of this Court that the Plaintiffs' Motion to Amend Its Petition to Include Punitive Damages shall be and is hereby denied.

IT IS SO ORDERED.

Dated this 21<sup>st</sup> day of November, 2001.

  
Tom R. Smith, District Court Judge

**CERTIFICATE OF SERVICE**

I, Renata McCulloch, hereby certify that I mailed a true and correct copy of the above Journal Entry by United States mail, postage prepaid and properly addressed on the 21st day of November, 2001 to:

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Renata McCulloch