

D. N. UWY-CV14-6025333-S : **SUPERIOR COURT/CLD**
ROBIN SHERWOOD, ET AL : **J.D. OF WATERBURY**
V. : **AT WATERBURY**
STAMFORD HOSPITAL : **OCTOBER 11, 2016**

**REPLY TO DEFENDANT STAMFORD HOSPITAL'S
OBJECTION TO REQUEST FOR LEAVE TO AMEND**

Stamford Hospital has objected to Plaintiffs Request to Amend the Complaint dated September 23, 2016, No. 167.00 that merely adds alternative theories of liability without the addition of any new facts. Stamford Hospital's objection should be overruled on its merits and because it makes the same arguments that were recently rejected by this Court in both Farrell v. Johnson & Johnson, D.N.: X06 UWY-CV-11-6014102-S (Sept. 28, 2015, No. 622.10) and LeMay v. Johnson & Johnson, D.N. UWY-CV-13-6022061-S (Sept. 27, 2016, No. 319.10).

Stamford Hospital's objections are based on three grounds: 1) all other claims are barred by the exclusivity provision of the Connecticut Products Liability Act ("CPLA") C.G.S. 52-572m *et seq.*; 2) the Amended Complaint contains new allegations that are barred by the Statute of Limitations; and 3) it will be unfairly prejudiced by said Amended Complaint. All three grounds were rejected in Farrell and LeMay and should be rejected here.

As the Defendant was not prejudiced in Farrell and LeMay it will not be prejudiced here. Plaintiffs' Complaint and Amended Complaint are substantially similar to the operative

complaints in Farrell and LeMay since Stamford Hospital is a defendant in both cases and the product at issue in this case is the same. By way of reminder, the product in the LeMay case is the second generation of the product at issue in this case and in Farrell.

Connecticut Courts have consistently held that “unless there is a sound reason, refusal to allow an amendment is an abuse of discretion”. Esposito v. Presnick, 15 Conn. App. 654, 660 (1988)(quoting Tedesco v. Julius C. Pagano, Inc., 182 Conn. 339, 341 (1980)(emphasis added); see also Falby v. Zarembski, 221 Conn. 14, 24-26 (1992)(abuse of discretion to deny permission to amend complaint absent “some sound reason”); Cook v. Lawlor, 139 Conn. 68, 71-72 (1952); Clayton v. Clayton, 115 Conn. 683, 686 (1932).

"In the interest of justice, our courts have generally been most liberal in allowing amendments." Moore v. Sergi, 38 Conn. App. 829, 835 (1995). Connecticut Courts have consistently held that "unless there is a sound reason, refusal to allow an amendment is an abuse of discretion." Esposito v. Presnick, 15 Conn. App. 654, 660 (1988)(quoting Tedesco v. Julius C. Pagano, Inc., 182 Conn. 339, 341 (1980)(emphasis added); see also Falby v. Zarembski, 221 Conn. 14, 24-26 (1992)(abuse of discretion to deny permission to amend complaint absent "some sound reason").

In Falby the trial court refused to permit the plaintiffs to amend their complaint during jury selection to amplify their negligence claim. 221 Conn. at 21. The Supreme Court of Connecticut reversed, holding that it was an abuse of discretion to refuse to allow an amendment without "some sound reason." Id. at 24-26. The Court reasoned that the

amended complaint was "substantially similar" therefore the amendment would not cause undue delay or injustice to the defendants. Id. at 25. In the present action, there is no sound reason that would prevent the Plaintiff from amending her complaint.

In the present case there are literally no facts or evidence that would not have been admissible under the prior complaint that is being added by the amendment. All that is does is break out as an alternative various common law claims already asserted factually in the prior complaint, should it be determined that the Hospital is not a product seller.

“[I]f the alternate theory of liability may be supported by the original factual allegations, then the mere fact that the amendment adds a new theory of liability is not a bar to the application of the relation back doctrine.” Briere v. Greater Hartford Orthopedic Group, P.C., 158 Conn.App. 66, 82 (2015). The additional theories of liability contained in the Amended Complaint are clearly supported by the factual allegations of the earlier complaint, and add no new factual assertions from what was originally contained therein. In Briere the Appellate Court reversed the trial court for such a ruling, specifically noting that court should take a particularly broad and liberal view of the doctrine in complex personal injuries such as this one where “there is typically unequal access to the underlying facts and conditions of the claim at the time a complaint is served.” Id. at 83.

Likewise, in Gurliacci v. Mayer, 218 Conn. 531, 549, 590 A.2d 914 (1991), our Supreme Court expressly held that an amended complaint which added an allegation that a defendant engaged in conduct which was “either wilfully, wantonly, and maliciously or

outside the scope of his employment” properly related back because it did not inject two different sets of circumstances and depend on different facts, “but rather amplified and expanded upon the previous allegations by *setting forth alternate theories of liability.*” Id.(emphasis added). The changes here are clearly less than those approved by our Supreme Court in Gurliacci as they add no new factual claims.

“As long as the pleadings provide sufficient notice of the facts claimed and the issues to be tried and do not surprise or prejudice the opposing party, we will not conclude that the complaint is insufficient to allow recovery.” Grenier v. Comm'r of Transp., 306 Conn. 523, 537 (2012).

Under our case law, it is well settled that "a party properly may amplify or expand what has already been alleged in support of a cause of action, provided the identity of the cause of action remains substantially the same.... If a new cause of action is alleged in an amended complaint . . . it will [speak] as of the date when it was filed.... ***A cause of action is that single group of facts which is claimed to have brought about an unlawful injury to the plaintiff and which entitles the plaintiff to relief.... A change in, or an addition to, a ground of negligence or an act of negligence arising out of the single group of facts which was originally claimed to have brought about the unlawful injury to the plaintiff does not change the cause of action....*** It is proper to amplify or expand what has already been alleged in support of a cause of action, provided the identity of the cause of action remains substantially the same, but whe[n] an entirely new and different factual situation is presented, a new and different cause of action is stated. (Emphasis added).

Dimmock v. Lawrence and Memorial Hospital Inc., 286 Conn. 789, 798 (2008);

Deming v. Nationwide Mutual Insurance Co., 279 Conn. 745, 775 (2006). Plaintiffs

have not alleged any new cause of action or additional factual claims, but merely

added new alternative theories of liability premised upon the same underlying facts.

When comparing pleadings Connecticut courts are mindful that,

we long have eschewed the notion that pleadings should be read in a hypertechnical manner. Rather, [t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically.... [T]he complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded, and do substantial justice between the parties.... Our reading of pleadings in a manner that advances substantial justice means that a pleading must be construed reasonably

Grenier v. Comm'r of Transp., 306 Conn. 523, 536, 51 A.3d 367, 378 (2012);

Dimmock, 286 Conn. at 802; Grenier v. Commissioner of Transportation, 306 Conn. 523, 536 (2012).

The Plaintiffs' proposed amendments add no new facts to the original allegations. Simply adding new legal theories based upon the same facts is clearly permissible under Connecticut law. The allegations which the Defendant complains about are well within the original scope of the case and the facts and evidence that all parties have been working with all along.

Wherefore, Plaintiffs respectfully request that the Court overruled Defendant's Objection.

THE PLAINTIFFS,

By /s/ Jacqueline E. Fusco

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CERTIFICATION

This is to certify that a copy of the foregoing was Emailed this date, to all counsel of record.

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