

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RICHARD E. ANDERSON and)
SHERI R. ANDERSON, his wife,)
)
 Plaintiffs,)
) C.A. No. 02C-12-091 MMJ
)
 v.)
)
AIRCO, INC., et al.,)
)
 Defendants.)

Date Submitted: March 1, 2005
Date Decided: May 3, 2005

ORDER

UPON PLAINTIFF'S MOTION TO AMEND THE COMPLAINT

GRANTED IN PART

1. Plaintiffs' Motion to Amend the Complaint to Add Wrongful Death requested amendment of the complaint to include changes in the caption and in two paragraphs, reflecting the death of Richard E. Anderson and appointment of Shari R. Anderson as Administratrix of the Estate of Richard E. Anderson.
2. Certain defendants filed a response to plaintiffs' motion to amend. Other defendants joined in the response. Defendants' responses state that Defendants

do not oppose the proposed changes in the caption and in the two paragraphs, as listed in the back of plaintiffs' motion.

3. Defendants, however, object to: (a) the amended complaint including causes of action that already have been dismissed by the Court; (b) numerous sections of the proposed amended complaint that are underlined, although they appear to have been underlined in error as they do not seem to reflect actual changes from the original complaint; and (c) numerous notes and comments located throughout the right margin of the proposed amended complaint. Defendants assert that it is impossible to answer the proposed amended complaint in its current form.

4. A motion to amend a complaint should be granted freely, unless there is evidence of bad faith, undue delay, dilatory motive, undue prejudice or futility of amendment.¹ The Court has broad discretion to allow amendments when justice so requires.²

5. The Court is satisfied that it is appropriate to amend the original complaint and its caption to reflect the death of Mr. Anderson and appointment of Shari R. Anderson as Administratrix of Mr. Anderson's estate.

¹*Forman v. Davis*, 371 U.S. 178, 182 (1962).

²Super. Ct. Civ. R. 15(a).

6. However, the amended complaint attached to plaintiffs' motion to amend reflects significantly more alterations than requested by plaintiffs in their motion. The notations and comments in the margins seem to be attorneys' notes. The inclusion of such notes appears to be inadvertent.

7. Further, some of the causes of action included in the original, as well as in the amended complaint, were dismissed by the Court. These causes of action include Count II (Strict Products Liability Against All Supplier Defendants),³ Count IV (Recklessness and Conduct of Defendants), Count V (Fraud of the Defendants), and Count VI (Conspiracy to Commit Fraud and Misrepresentation and Concealment by All Defendants).⁴

THEREFORE, plaintiffs are hereby directed by the Court to file, within 20 days, an Amended Complaint that: (1) includes changes in the caption and in the two paragraphs set forth in plaintiffs' motion reflecting the death of plaintiffs' decedent and appointment of Shari R. Anderson as Administratrix of the Estate of Richard E. Anderson; (2) does not include causes of action that have been dismissed by this Court; and (3) constitutes a corrected version of the proposed amended complaint without the additional redlined text, notations or comments in the margin.

³*Anderson v. Airco, Inc.*, 2004 Del. Super. LEXIS 210 (June 30, 2004).

⁴*Anderson v. Airco, Inc.*, 2004 Del. Super. LEXIS 393 (Nov. 30, 2004).

Plaintiffs' Motion to Amend Complaint to Add Wrongful Death is hereby
GRANTED IN PART.

IT IS SO ORDERED.

1st Mary M. Johnston _____

The Honorable Mary M. Johnston

ORIGINAL: PROTHONOTARY'S OFFICE - CIVIL DIV.