Pennsylvania Civil Procedure - Pleadings - Amending Complaint After Running of Statute of Limitations

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Pennsylvania Civil Procedure—Pleadings—Amending Complaint After Running of Statute of Limitations—The Pennsylvania Supreme Court has held that a broad allegation of negligence in the original complaint is sufficient to sustain an amendment containing a more specific allegation of negligence made after the statute of limitations has expired.

*Connor v. Allegheny General Hospital, _____ Pa. _____, 461 A.2d 600 (1983).*

On November 22, 1973, Mary Connor was admitted as an emergency patient to Allegheny General Hospital suffering from abdominal pain and on the morning of November 26, 1973, she underwent a barium enema as part of her diagnostic care. During the procedure, and for some hours following, the barium extravasated into the abdominal cavity through a perforation in the colon. The presence in the abdominal cavity of the extravasated barium and accompanying intestinal contents required emergency surgery.

On October 15, 1975, Mary Connor and her husband, Earl, filed a complaint in trespass and assumpsit against Allegheny General Hospital. The complaint alleged, inter alia, negligence by the hospital individually and acting through its agent, servant, or employee, in perforating Connor's colon during the enema procedure thereby permitting extravasation of the barium into the abdominal cavity.

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* Due to the unavailability of the Connor opinion in the Pennsylvania State Reports at the time of publication, citations to this reporter have been omitted.
2. A discharge or escape, as of blood, from a vessel into the tissues. Dorland's Illustrated Medical Dictionary 561 (25th ed. 1974) [hereinafter cited as Dorland's].
3. 461 A.2d at 601.
4. Connor v. Allegheny Gen. Hosp., 300 Pa. Super. 321, 323, 446 A.2d 635, 636 (1982), rev'd, 461 A.2d 600 (Pa. 1983). Connor was taken to Radiology to undergo the barium enema at 8:50 a.m.; the surgery to remove the barium was begun at approximately 11:50 p.m. the same day. Brief for Appellant at vii-viii, Connor.
5. 461 A.2d at 601. The complaint alleged, in part, that Earl Connor had been damaged, inter alia, in that he would be required to spend further sums for his wife's medical expenses, and he would be deprived of her services, assistance and companionship. Reproduced Record at 8a-9a, Connor v. Allegheny Gen. Hosp., 461 A.2d 600 (Pa. 1983).
cavity thus causing barium peritonitis, and "[i]n otherwise failing to use due care and caution under the circumstances." 77

On November 28, 1977, the case was called to trial 8 but was postponed because the plaintiff's expert refused to testify, citing his lack of expertise in this area of medicine. 9 The Connors obtained a new expert who stated that the extravasation of the barium was caused by a perforation of a diverticulum, 10 but that he was unable to determine whether the diverticulum had perforated prior to or during the barium enema procedure. 11 The report which

6. Reproduced Record at 6a, Connor. Peritonitis is an inflammation of the peritoneum (a membrane lining the abdominal walls) which is attended by abdominal pain and tenderness, constipation, vomiting and moderate fever. DORLAND'S at 1168. A report made by Dr. Joseph A. Marasco, Jr., then Director of Diagnostic Radiology at St. Francis General Hospital, Pittsburgh, Pennsylvania, was filed with the defendant-hospital's pre-trial statement. This report stated Marasco's opinion that barium does not cause acute peritonitis and that any acute peritonitis which was present in this case was caused by the usual intestinal contents which accompanied the barium through the perforation. Reproduced Record at 40a, Connor.

7. 461 A.2d at 601. The complaint alleged, among other things, that the hospital was negligent in perforating the sigmoid colon during the performance of the barium enema procedure, thus causing extravasation of the barium into the abdominal cavity resulting in barium peritonitis, and "[i]n otherwise failing to use due care and caution under the circumstances" (emphasis added). The complaint further alleged that as a result of the negligence of the hospital in perforating Connor's colon, she was required to have surgery to close the perforation and remove the barium; to undergo surgery to drain an abscess in the abdominal cavity; and to undergo surgery for a left colectomy (excision of a portion of the colon), a coloprostectomy (surgical creation of a new opening between the colon and rectum), a left oophorectomy (removal of the left ovary), and repair and removal of adhesions (fibrous bands or structures by which parts abnormally adhere) caused by the extravasation of the barium. Reproduced Record at 6a-7a, Connor. See generally, DORLAND'S.

8. 461 A.2d at 601. The Connors had filed a pre-trial statement on February 22, 1977, including a report from Cyril H. Wecht, M.D., in which he stated that Connor had suffered a perforation of the colon and extravasation of the barium as a result of the performance of the barium enema. 300 Pa. Super. at 323, 446 A.2d at 636. The court quoted Wecht's report as stating that this is "a quite unexpected and dangerous condition, and one which does not ordinarily occur if a barium enema is performed properly and carefully." 461 A.2d at 601.

9. 461 A.2d at 601 & n.1. The court stated that although the record was apparently silent on this point, Dr. Wecht's refusal to testify was apparently based on a rule of the Pennsylvania Medical Society which calls for dismissal of member physicians from the Society if they testify as experts for plaintiffs in malpractice cases outside their area of expertise. Id. at 601 n.1.

10. A diverticulum is a circumscribed pouch or sac of variable size occurring normally or created by herniation of the lining mucous membrane through a defect in the muscular coat of a tubular organ. DORLAND'S at 469.

11. 461 A.2d at 601. The new expert's report also stated that perforation may occur as a result of diverticulitis (inflammation of a diverticulum; a condition marked by the formation of small pouches along the border of the colon, which become filled with feces which sometimes set up irritation and give rise to inflammation and abscess. DORLAND'S at 469). Reproduced Record at 42a, Connor. This report was attached to the Supplemental Pre-Trial Statement which was filed by Connor on February 8, 1979. 300 Pa. Super. at 323, 446 A.2d
the new expert submitted stated, however, his opinion that there was undue delay on the part of the radiologist in making a diagnosis of the perforation and in performing surgery on a patient with perforation and acute peritonitis.\textsuperscript{12}

The case was again called for trial, and on November 26, 1979, the Connors filed a motion to amend their complaint,\textsuperscript{13} setting forth different allegations of the hospital's negligence which included a failure to recognize and promptly treat the barium extravasation.\textsuperscript{14} This motion to amend was denied by the trial judge in common pleas court.\textsuperscript{15} Allegheny General Hospital then filed a motion for summary judgment which was granted, and the case was dismissed.\textsuperscript{16}

The appeal by the Connors to the superior court alleged, in part, that the lower court erred in denying the motion to amend their complaint and in dismissing the complaint. The superior court,

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\item \textsuperscript{12} Reproduced Record at 43a, Connor.
\item \textsuperscript{13} 461 A.2d at 601-02. The Connors had made a prior Motion to Amend the Complaint which was denied on November 9, 1979, without prejudice to their right to present that motion at trial. This first motion included an allegation of negligence pursuant to the \textit{Restatement (Second) of Torts} § 323(a) (1976) which states in pertinent part:

\begin{quote}
Negligent Performance of Undertaking to Render Services. One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
\end{quote}

\begin{itemize}
\item [(a)] his failure to exercise such care increases the risk of such harm . . .
\end{itemize}

\textit{Id.} The original motion to amend the complaint was not reasserted in the second motion and the order denying it was never appealed. 461 A.2d at 601 n.2.
\item \textsuperscript{14} 461 A.2d at 601-02. The second motion proposed to amend the complaint by adding:

\begin{quote}
After it became apparent or should have become apparent to the radiology resident . . . and . . . the resident surgeon, that barium with accompanying intestinal contents had extravasated into the abdominal cavity, the necessary laparotomy and cleansing of the abdominal cavity . . . was delayed improperly causing the barium and intestinal contents to remain within the abdominal cavity causing extensive peritonitis, formation of adhesions and a pericolic abscess.
\end{quote}

Reproduced Record at 48a, Connor. A pericolic abscess is a collection of pus in a cavity formed by the disintegration of tissues around the colon. See \textit{generally} DORLAND'S.
\item \textsuperscript{15} 461 A.2d at 602. All parties and the trial court agreed that without the proposed amendment, the testimony by the new expert could not sustain the cause of action under the original complaint because of the new expert's opinion that there was no evidence that the barium enema tip caused the perforation of the colon, as alleged in the Connors' original complaint. The Connors' counsel declined to proceed with the trial and both counsel and the court agreed that the court would enter a non-suit. Counsel for the Connors failed to prepare the necessary materials for submission of the case on a case stated basis and the hospital filed a motion for summary judgment. 300 Pa. Super. at 324, 446 A.2d at 637-39.
\item \textsuperscript{16} 461 A.2d at 602.
\end{itemize}
Judge Johnson, speaking for the majority, affirmed summary judgment for the defendant, holding that the proposed amendment to the Connors’ complaint was barred by the statute of limitations since it “sought to add new allegations of negligent acts by proceeding on a different theory.” Judge Johnson stated that the proposed amendment clearly involved new and different acts of negligence which occurred after the acts of negligence alleged in the original complaint.\textsuperscript{17}

In his superior court dissent, Judge Cirillo looked to the purpose of the pleadings—that they are to define issues and give notice to the opposing party of what the pleader intends to prove at trial so that the opposition may prepare to meet such proof with its own evidence.\textsuperscript{18} Judge Cirillo took into account that the original complaint stated not only that the hospital was negligent in perforating the colon, but that the hospital also failed to use due care and caution under the circumstances,\textsuperscript{19} and, as such, the amended complaint did not change the cause of action and should therefore be allowed.\textsuperscript{20} Additionally, Judge Cirillo observed that the facts alleged in the proposed amendment were part of a causally related chain of events which occurred on the same day, November 26, 1973, and at the same place, Allegheny General Hospital, which suggested, therefore, that the hospital had notice of the events from the very day they occurred and would not have been prejudiced in its defense by the amended complaint.\textsuperscript{21} The Connors appealed to the Pennsylvania Supreme Court,

\textsuperscript{17} 300 Pa. Super. at 323-26, 446 A.2d at 636-38.
\textsuperscript{18} Id. at 327, 446 A.2d at 638. The majority declared that the alleged negligence in perforating the colon and thus permitting extravasation of barium into the abdominal cavity is distinct in theory from the allegations of failing to properly remedy the extravasation and failing to promptly perform corrective surgery. The majority also ruled that since there remained no issue of material fact that could be proven pursuant to the allegations in the original complaint, the hospital was entitled to judgment as a matter of law. Id. at 327-28, 446 A.2d at 639.
\textsuperscript{19} 300 Pa. Super. at 329, 446 A.2d at 639 (Cirillo, J., dissenting). See infra note 48 and accompanying text.
\textsuperscript{20} 300 Pa. Super. at 329, 446 A.2d at 639 (Cirillo, J., dissenting). See supra note 7.
\textsuperscript{21} 300 Pa. Super. at 329, 446 A.2d at 640 (Cirillo, J., dissenting). See 5 \textsc{standard Pennsylvania Practice} 2d § 24:44 which states:

Even where the statute of limitations has run, the plaintiff may amend his pleading to aver additional facts which particularize and render his complaint more explicit, and give a more detailed statement of the facts constituting the basis of his claim, provided he confines himself to a substantial restatement of the cause of action originally stated.

Id.
\textsuperscript{22} 300 Pa. Super. at 330, 446 A.2d at 640 (Cirillo, J., dissenting).
which reversed the superior court decision on April 27, 1983, and remanded the case for further proceedings. The supreme court held that since the proposed amendment did not change the original cause of action, but merely amplified it, it would not constitute prejudice to the defendants and it was therefore an abuse of judicial discretion for the trial court to refuse to grant the amendment.

The court noticed, as did Judge Cirillo in his superior court dissent, that the original complaint did not merely allege that the barium enema had been negligently performed, but that the hospital was negligent "[i]n otherwise failing to use due care and caution under the circumstances." The court viewed the proposed amendment as simply specifying other ways in which the hospital was negligent. The court followed the policy that the right to amend a complaint should be liberally granted at any stage of the proceedings, and then adhered to the rule that if the proposed amendment does not change the cause of action, but merely amplifies it, the amendment should be allowed, even though the statute of limitations has already run.

23. 461 A.2d at 601. Chief Justice Roberts and Justices Nix, Larsen, Flaherty, McDermott, Hutchinson and Zappala heard the case. Justice Larsen wrote the majority opinion, while Chief Justice Roberts wrote a concurring opinion and Justice Nix wrote a dissenting opinion. Id.

24. 461 A.2d at 602. See 5 STANDARD PENNSYLVANIA PRACTICE 2d § 24:4 ("In those instances in which court approval is required for an amendment of the complaint . . . the allowance of amendments is within the discretion of the lower court. This discretion, however, is a judicial discretion and can be reviewed on appeal, but will not be disturbed on appeal except in case of an evident abuse thereof, or unless the appellant shows affirmatively that he was prejudiced by the ruling."). See also Man O'War Racing Ass'n, Inc. v. State Horse Racing Comm'n, 433 Pa. 432, 250 A.2d 172 (1969), where the court said: "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment, exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by the evidence or the record, discretion is abused." Id. at 451 n.10, 250 A.2d at 181 n.10.

25. 461 A.2d at 602. See supra note 7.

26. 461 A.2d at 602.

27. Id. See 5 STANDARD PENNSYLVANIA PRACTICE 2d § 24:3 ("Accordingly, the generally recognized rule is that amendments will be allowed with great liberality at any stage of the case provided they do not violate the law or prejudice the rights of the opposing party so as to secure a determination of the cases on their merits whenever possible."). See, e.g., West Penn Power Co. v. Bethlehem Steel Corp., 236 Pa. Super. 413, 433, 348 A.2d 144, 155 (1975), where the court said: "[T]he general rule is that amendments to a pleading are to be liberally allowed and may be made at any point in the litigation."); Schaffer v. Larzelere, 410 Pa. 402, 406-07, 189 A.2d 267, 270 (1963), in which the court stated: "[T]he right to amend should be liberally granted at any stage of the proceedings unless there is an error of law or resulting prejudice to an adverse party . . . ." See supra note 34 and accompanying text.

28. 461 A.2d at 602. See supra note 21. See also note 64 and accompanying text.
In determining whether the hospital was prejudiced by the proposed amendment, Justice Larsen, speaking for the majority, observed in a footnote to the opinion, that if the hospital was unaware of how it "failed to use due care and caution under the circumstances" it had two options—it could have filed a preliminary objection in the nature of a request for a more specific pleading, or one in the nature of a motion to strike that portion of the Connors' complaint. Having failed to do either, Justice Larsen submitted, the defendant could not claim that it had been prejudiced by the late amplification of this particular allegation of the Connors' complaint.

Chief Justice Roberts, in a concurring opinion, supported the majority on the grounds that the original complaint provided ample notice of the theory which the Connors sought to pursue in the proposed amendment to the complaint.

In a dissenting opinion, Justice Nix stated that while it is true that amendment to pleading should be liberally granted, an

29. 461 A.2d at 601.
30. See supra note 7.
31. 461 A.2d at 602 n.3. Rule 1017(b) of the Pennsylvania Rules of Civil Procedure states that preliminary objections are available to any party and are limited to, among others, a motion to strike off a pleading because of lack of conformity to law or rule of court or because of scandalous or impertinent matter, and a motion for a more specific pleading.
32. 461 A.2d at 602 n.3. See King v. Brillhart, 271 Pa. 301, 114 A. 515 (1921), in which the court said:

[T]he [plaintiff's statement] may not be such a statement, in a concise and summary form, of the material facts upon which the plaintiffs relies . . . but, if not, it was waived by the defendant's affidavit to, and going to trial upon the merits . . . . [A] defendant may move to strike off an insufficient statement, or if it is too indefinite, may obtain a rule for one more specific. Failing to do either, he will not be entitled to a compulsory nonsuit because of the general character of the plaintiff's statement.

Id. at 305, 114 A. at 516. Goodrich-Amram states that a failure to object preliminarily will be considered an irrecoverable waiver of the defenses and objections of indefiniteness or lack of particularity in the opponent's pleading. GOODRICH-AMRAM 2D § 1032:2. According to the Pennsylvania Rules of Civil Procedure:

A party waives all defenses and objections which he does not present either by preliminary objection, answer or reply, except

(1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and,

(2) that whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter or that there has been a failure to join an indispensable party, the court shall dismiss the action.

33. 461 A.2d at 603 (Roberts, C.J., concurring).
34. 461 A.2d at 603 (Nix, J., dissenting). See Rule 126 of the Pennsylvania Rules of Civil Procedure which states in part: "The rules shall be liberally construed to secure the
amendment introducing a new cause of action will not be permitted after the statute of limitations has run. Justice Nix then observed that the proposed amendment in this case could not be a mere amplification of the complaint because the proposed change made the act causing the harm one of omission rather than one of commission. He argued that since the proof required to defend the newly alleged facts was different from that necessary to defend the original complaint, it resulted in prejudice to the adverse party.

just, speedy and inexpensive determination of every action or proceeding to which they are applicable," Pa. R. Civ. P. 126; and Wilson v. Howard Johnson Restaurant, 421 Pa. 455, 219 A.2d 676 (1966) (where the original complaint was based on negligence in permitting ice to form on the sidewalk and the proposed amendment alleged negligence in maintaining a fence next to the sidewalk because the defendant knew or should have known that anyone falling would have been injured by the fence). See also supra note 27.

35. 461 A.2d at 603 (Nix, J., dissenting). See 2B ANDERSON PENNSYLVANIA CIVIL PRACTICE § 1033.27 which states:

In the case of a pleading asserting a cause of action, the right to amend is subject to the qualification that an amendment cannot be made after the period of the Statute of Limitations has expired if the amendment introduces a new cause of action which would be barred by the statute.

Id.

In making its decision in the Connor case, the superior court declared that the purpose of the generally held rule prohibiting amendments which introduce a new cause of action after the statute of limitations has run is to prevent prejudice to the adverse party. 300 Pa. Super. at 325, 446 A.2d at 637. See also 5 STANDARD PENNSYLVANIA PRACTICE 2D § 24:41 ("[t]he criterion for determining whether or not an amendment may be made after the statute of limitations has run is whether the defendant will be prejudiced by the amendment or whether the cause of action is changed thereby"); GOODRICH-AMRAM 2D § 1033:4.1 ("an amendment filed, after the statute of limitations has run, introducing a new cause of action, is clearly prejudicial to the defendant and is not permitted"). GOODRICH-AMRAM 2D § 1033:4.1 also states that "[a] new cause of action exists if it is based on an entirely different theory, or charges a different kind of negligence or is based upon different relations between the parties. Under such circumstances both the plaintiff's proof and the defenses available to the defendant would be different." Id. In Junk v. East End Fire Dep't, 262 Pa. Super. 473, 491, 396 A.2d 1269, 1278 (1978), the court said, "One of the primary reasons for disallowing amendments which create new causes of action after the running of the statute of limitations is to prevent prejudice to the adverse party." Id.

Judge Johnson, speaking for the superior court majority in Connor, stated that Allegheny General Hospital would have been prejudiced by the proposed amendment since the amendment was not made until the date of trial and it would have required a different defense to be presented at trial. Judge Johnson stated that by "this point in time, many of the depositions had already been taken, and a defense prepared on the allegations found in the original complaint . . . . Appellee would have been prejudiced in its attempt to defend against allegations of negligence not incorporated in the pleadings until the date of trial." 300 Pa. Super. at 326, 446 A.2d at 638.

36. 461 A.2d at 603 (Nix, J., dissenting).

37. Id. According to Professor James:

[T]here are several ways in which lateness or delay [in amendments] may cause prejudice. . . . If the Amendment is sought on the eve of trial or at trial, the oppo-
Justice Nix further argued that the "boiler-plate allegation of negligence," which the majority used to substantiate its decision, defeated the purpose of the statute of limitations and frustrated the objectives of the fact pleading system. Justice Nix also followed the generally held rule that the decision to grant or deny permission to amend is within the discretion of the trial court and should only be reversed upon a clear abuse of that discretion. He declared that since there was no such abuse here, the decision of the superior court should not be reversed.

The Pennsylvania Rules of Civil Procedure provide for fact pleading, as distinguished from the notice pleading upon which the Federal Rules of Civil Procedure are based. Under notice pleading, the plaintiff need not plead every fact essential to his right to recover, it is enough that the opposing party be apprised of the

FLEMING JAMES, JR., CIVIL PROCEDURE 158 (1965).

38. 461 A.2d at 604 (Nix, J., dissenting).
39. 2 STANDARD PENNSYLVANIA PRACTICE 2D § 13:2 states:
Statutes of limitation are declaratory of the principle of the common law that the law lends its aid only to those who exercise diligence in invoking it. They are expressive of the feelings of mankind that wrongs should be redressed and rights enforced without unreasonable delay. Their purpose is to stimulate diligence in looking after rights and in instituting litigation while evidence is living, fresh, and at hand, and thus avoid the uncertainties which attend investigation of aged controversies. The primary consideration underlying statutes of limitations it to expedite litigation and to preclude long delays that would be prejudicial to the person against whom the action is brought.

Id. This section states further that, "[i]t has been said that the hardships which may result from the strict enforcement of the statute are nothing when compared with the mischiefs which would ensue by evading its provisions." Id.

40. 461 A.2d at 604 (Nix, J., dissenting). See infra note 46 and accompanying text.
41. 461 A.2d at 604 (Nix, J., dissenting). See Geiman v. Board of Assessment and Revision of Taxes, 412 Pa. 609, 195 A.2d 352 (1963) (where a request for leave to amend was made almost five months after entry of the decree dismissing the complaint and almost four months subsequent to the filing of exceptions thereto, there was no abuse of discretion).

According to 5 STANDARD PENNSYLVANIA PRACTICE 2D § 24:4, in those instances in which court approval is required for an amendment of the complaint, the allowance of amendments is within the discretion of the lower court. This discretion, however, may be reviewed on appeal, but not disturbed except in the case of evident abuse. Id. See also supra note 24.
42. 461 A.2d at 604 (Nix, J., dissenting).

43. Pennsylvania Rules of Civil Procedure, Rule 1019(a), provides: "The material facts on which a cause of action or defense is based shall be stated in a concise and summary form." See 3 STANDARD PENNSYLVANIA PRACTICE 2D § 16:1, which states that the Pennsylvania Rules of Civil Procedure retain the fact pleading system of the Practice Acts.
nature of the claim which is asserted." The fact pleading system of Pennsylvania is designed to compel a concise, orderly statement of the ultimate or "material facts" so as to expedite litigation. Primarily, the purpose of the fact pleading system is to give fair notice to the defendant of what will confront him at trial so that he may have an opportunity to prepare a defense.

Although Pennsylvania no longer utilizes a strict fact pleading system in which every fact must appear in the complaint, the purpose of the Pennsylvania Rules of Civil Procedure is to require the pleader to disclose the material facts sufficient to enable the adverse party to prepare his case. The Rules provide that "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form." This rule is satisfied if the pleading contains averments of all the facts which the plaintiff

44. *See Conley v. Green*, 355 U.S. 41, 47-48 (1957), in which the Court said: "[T]he Federal Rules . . . do not require a claimant to set out in detail the facts upon which he bases his claim. . . . [A]ll the Rules require is . . . that [plaintiff's complaint] will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests. . . ." *Id.* The Federal Rules of Civil Procedure provide that a pleading shall contain a short and plain statement of the claim showing that the pleader is entitled to relief. *Fed. R. Civ. P.* 8(a)(2).

45. *See Goodrich-Amram 2d § 1019:1. See also 4 Standard Pennsylvania Practice 2d § 21:26* which states that "[t]he fact pleading system requires parties to exchange pleadings precise and concise enough to inform all who read them what the plaintiff claims and the basis of the claim." *Id.*

46. *See 3 Standard Pennsylvania Practice 2d § 16:2* which states, in part: "[T]he primary purpose of pleading is to form a clear and distinct issue for the trial of the cause between the parties." *Id.* *See also Goodrich-Amram 2d § 1019:1* which states: "The fact pleading system is designed to compel a concise orderly statement of the ultimate facts, so that litigation will be expedited, and the parties will not be forced 'to depositions in all cases'" *Id.* and *Goodrich-Amram 2d § 1019(a):2.*

47. *See 4 Standard Pennsylvania Practice 2d § 21:26:* "Although Pennsylvania is no longer a strict fact pleading state in which every fact must appear in the complaint, the purpose of Rule 1019(a) is to require the pleader to disclose the material facts sufficient to enable the adverse party to prepare his case." *Id.* *See also supra note 43.*

48. 4 *Standard Pennsylvania Practice 2d § 21:4* states:

The primary function of a complaint is to set forth the plaintiff's cause of action. It also should inform the defendant with reasonable accuracy, of the nature and extent of the plaintiff's claim, and set forth concisely the material and issuable facts on which the plaintiff relies for his claim. Since the very purpose of the complaint is to set forth facts which show a claim "enforceable" by action, it necessarily fails of this purpose unless those facts are averred. *Id.* *See also Goodrich-Amram 2d § 1019:1* ("[t]he function of pleading is to put the opponent on notice of what he will be called upon to meet at trial, and to define the issues which will be tried"); 3 *Standard Pennsylvania Practice 2d § 16:2* ("[t]he most important function of a pleading is to exhibit to the court, not only the facts which constitute the cause of action, but which of those facts are controverted, in order to facilitate the administration of justice by simplifying the grounds of controversy").

will eventually have to prove in order to recover and if the averments are sufficiently specific so as to enable the party served to prepare a defense. The test of whether a complaint is sufficiently specific in its averments is whether it reasonably informs the defendant of the facts which he must be prepared to meet at trial.

If the complaint does not contain facts specific enough to state a cause of action, the defendant may make a motion for a more specific pleading or a motion for judgment on the pleadings.

The severity of the penalty for failure to conform to the requirements of the fact pleading system is tempered by Rule 1033 of the Pennsylvania Rules of Civil Procedure, and by the courts' policy of granting liberal amendments. Rule 1033 provides that a party may at any time, by leave of court, amend his pleading. It also provides that the amended pleading may aver transactions which occurred before or after the filing of the complaint even though they give rise to a new cause of action. This rule has, however, been modified by case law to the extent that the courts will not

50. See, e.g., Socha v. Metz, 385 Pa. 632, 641-42, 123 A.2d 837, 842 (1956): "[T]he intended role of a pleading is to forecast what the pleader hopes to prove at trial, thereby putting his opponent on notice of what the latter will have to meet."; Baker v. Rangos, 229 Pa. Super. 333, 349, 324 A.2d 498, 505 (1974): "A complaint . . . must do more than 'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests' . . . . It should formulate the issues by fully summarizing the material facts."


A pleading must achieve the purpose of informing the court and the adverse party or parties of the matters in issue. Rule 1019(a) is satisfied if allegations in a pleading (1) contain averments of all facts the plaintiff will eventually have to prove in order to recover, and (2) they are sufficiently specific so as to enable the party served to prepare a defense thereto.

Id. (emphasis in original). See also Goodrich-Amram 2d § 1019:1 and 61A Am. Jur. 2d Pleading § 32 ("the usual test of the sufficiency of a declaration, complaint, or petition is that it should state the cause of action with such a reasonable degree of certainty as will give fair notice to defendant of the character of the claim or demand made against him so as to enable him to prepare for his defense").


54. Pa. R. Civ. P. 1033. This rule states:

A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action of defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

Id.

55. See supra note 27.

56. See supra note 54.

57. Id.
permit amendments to a complaint which would create a new cause of action after the statute of limitations has run in favor of a defendant.\textsuperscript{58}

In Schaffer v. Larzelere\textsuperscript{59} the plaintiff, as administrator of the estate of Margaret Stuchko, filed a complaint alleging that the defendant-hospital was the cause of Stuchko's death in that it carelessly and prematurely released the decedent after she had been admitted for treatment of injuries suffered in a beating.\textsuperscript{60} At the time of the filing of the complaint, the one-year statute of limitations had already run in favor of the defendant.\textsuperscript{61} In response to the defendant-hospital's motion for judgment on the pleadings, the plaintiff made a motion to amend which would have added the allegations that the plaintiff could not have gained knowledge of the defendant's negligence prior to the running of the statute of limitations because the facts constituting negligence were solely within the defendant's knowledge and that the defendant had deliberately concealed the circumstances surrounding the cause of death.\textsuperscript{62} The Pennsylvania Supreme Court, in rendering its decision, stated that an amendment introducing a new cause of action would not be permitted after the statute of limitations had run because it would constitute resulting prejudice to the adverse party.\textsuperscript{63} The court then added that if the proposed amendment did not change the cause of action but merely amplified that which had already been averred, it would be allowed, even though the statute of limitations had already run.\textsuperscript{64} The Schaffer court viewed the proposed amendments as amplifications since they did not allege any further acts of negligence but only more specifically explained why the statute was tolled for the purpose of prosecution of the originally pleaded cause of action.\textsuperscript{65}

A later Pennsylvania Supreme Court decision, Laursen v. General Hospital of Monroe County,\textsuperscript{66} followed the ruling set down in

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\textsuperscript{58} See supra note 35 and accompanying text. See also infra notes 59-65 and accompanying text, and Kuisis v. Baldwin-Lima-Hamilton Corp., 457 Pa. 321, 319 A.2d 914 (1974) (permitting amendment where the original complaint alleged a defect in the crane's mechanism and the amendment alleged a defect in design or manufacturing of the crane).


\textsuperscript{60} Id. at 404, 189 A.2d at 269.

\textsuperscript{61} Id.

\textsuperscript{62} Id.

\textsuperscript{63} Id. at 407, 189 A.2d at 270.

\textsuperscript{64} Id.

\textsuperscript{65} Id.

Schaffer and permitted an amendment where the original complaint alleged that the physician's and the hospital's negligence occurred as of the date of admission to the hospital and the amendment listed specifically dates occurring between the date of admission to the hospital and a period of treatment ending six months later. The court permitted the amendment because the plaintiff would still have to rely on the specified acts of negligence averred in his original complaint. The court stated that allowing the amendment would not be allowing a new cause of action to be stated because no new negligent act or acts which occasioned the injury would be alleged. The only difference would be the dates of those acts already averred and, therefore, according to Schaffer, this would be an amplification of the original cause of action, not a new cause of action.

The pivotal question in Connor, as in Schaffer and Laursen, is whether an amendment constitutes an amplification to an already averred cause of action, or whether it constitutes a new cause of action. Amplification exists where the amendment merely particularizes the complaint or makes the complaint more specific without changing the basis of the complaint. The basis for making the determination of what constitutes a new cause of action within the Pennsylvania fact pleading system is grounded on whether the complaint contains all the material facts necessary to state a claim and whether it states those facts in a clear fashion so that

67. Id. at 243, 431 A.2d at 240.
68. Id.
69. Id.
70. Id.

71. See Junk v. East End Fire Dep't, 262 Pa. Super. 473, 396 A.2d 1269 (1978), infra note 82 and accompanying text, where the court defined a new cause of action as a different theory or different kind of negligence, or a change in the operative facts supporting the claim. See also Cox v. Wilkes-Barre Railways Corp., 334 Pa. 568, 570, 6 A.2d 538, 538 (1939) and Martin v. Pittsburgh Railways Co., 227 Pa. 18, 20, 75 A. 837, 837 (1910) where each of these courts said that a cause of action in negligence has been defined as "the negligent act or acts which occasioned the injury"; and GOODRICH-AMRAM 2d § 1033:4.1. For a different view see Kuisis v. Baldwin-Lima-Hamilton Corp., 457 Pa. 321, 319 A.2d 914 (1974), where the court said: "This court has never adopted a comprehensive definition of what constitutes a cause of action, for the excellent reason that no such definition exists." Id. at 325 n.7, 319 A.2d at 918 n.7.
72. See supra note 21.
73. See GOODRICH-AMRAM 2d § 1019(a):2 which states: "The requirement that material facts be pleaded is both directory and limiting. It is directory in the sense that it requires the ultimate facts and all the ultimate facts which are essential to the claim be pleaded." Id. See also supra note 47.
the defendant may prepare a defense to the allegations. The courts have never made a clear determination of what, precisely, is a fact. Material facts have been defined as "those which are essential to show the liability which is sought to be enforced." The Pennsylvania courts have defined "material facts" to be "ultimate facts," i.e., those facts essential to support the claim. They have also, however, admitted that the criteria for determining the essential material facts are incapable of precise measurement. These definitions do not, in any way, create a clearer understanding of the phrase "material facts."

The Connor court faced the very problem of what constitutes a fact and whether the complaint contained all the facts necessary for the defendant to prepare its defense to the allegations. The specific question in the case was whether the plaintiffs' allegation "in otherwise failing to use due care and caution under the circumstances" was sufficient to provide the defendant with notice of what he would have to defend, and the answer lay with the interpretation of that phrase. The interpretation controversy is clearly evidenced in that both the majority and the dissent in Connor used Laursen to shore up their positions. The majority used Laursen to support its conclusion that the proposed amendment should be permitted because it was an amplification of an already averred fact, whereas Justice Nix's dissent used the same case to support his conclusion that the amendment should not be permitted because it stated new facts and therefore created a new cause of action.

In his dissent, Justice Nix also supplemented his argument that this amendment stated a new cause of action with Junk v. East Fire Department, a case also cited by the superior court majority. In Junk, the Pennsylvania Superior Court refused to permit an amendment in an action arising from an intersectional collision between an ambulance and plaintiff's automobile where the plain-

74. See supra notes 48 and 50.
75. GOODRICH-AMRAM 2D § 1019(a):2.
78. 461 A.2d at 602. See also supra notes 50-51.
79. 461 A.2d at 602-03.
80. Id. at 602.
81. Id.
82. Id. See supra note 36 and accompanying text.
84. 300 Pa. Super. at 325-26, 447 A.2d at 637-38.
tiff sought to amend his complaint after the running of the statute of limitations to allege negligence on the part of the ambulance driver in choosing a particular route.\(^8\) There, the court said that a new cause of action arises if the amendment proposes a different theory or a different kind of negligence than the one previously raised or if the operative facts supporting the claim are changed.\(^9\) Justice Nix used this case to substantiate his claim that since the amendment proposed by the Connors changed the operative facts on which their complaint was based, it should be denied.\(^7\) The majority, although using language almost identical to that in \textit{Junk}—that the amendment specified "other ways in which the appellee was negligent"—\(^8\) ignored \textit{Junk} completely and permitted the amendment based on its interpretation of what constitutes amplification under \textit{Schaffer} and \textit{Laursen}.\(^8\) If the \textit{Connor} majority believed that the \textit{Junk} definition of what constitutes a new cause of action\(^9\) was in error, and the majority appears to have expressed that belief, it should have expressly overruled that decision. At the very least, the \textit{Connor} majority should have distinguished \textit{Junk} so as to put to rest any lingering questions about when a new cause of action arises in an amended complaint.

Clearly, there is some confusion as to whether the phrase "otherwise failing to use due care and caution under the circumstances" is narrow enough to constitute a fact such that a defense to it might be made and yet broad enough to permit an amplification which avers further actions on the part of the plaintiff which were not averred in the original complaint. Instead of clarifying when an amendment to a complaint may be made after the running of the statute of limitations, the decision in \textit{Connor} creates more confusion.

Even though the court in \textit{Connor} relied heavily on \textit{Schaffer} and \textit{Laursen} to substantiate its position, those cases can be distinguished. In \textit{Connor}, the court was dealing with a "boiler-plate" allegation of negligence,\(^9\) whereas in both \textit{Laursen} and \textit{Schaffer} the plaintiffs did not attempt to change the facts involved in the origi-
nal complaint, only the mechanical aspects of the complaint. In *Schaffer*, the facts and the negligence alleged remained the same, the amendment simply averred the reason that the complaint could not be brought prior to the running of the statute of limitations (i.e., that the facts surrounding the treatment of the plaintiff's decedent were in the exclusive knowledge of the defendant-hospital, which intentionally withheld those facts). In *Connor*, while the facts may have been within the sole knowledge of the defendant, the hospital did not attempt to withhold any facts from the plaintiff and the plaintiff did not allege that the hospital so attempted. The amendment in *Laursen*, on the other hand, only alleged more specifically the dates on which the already averred negligence occurred (i.e., by listing additional dates)—it did not attempt to allege further or new acts of negligence, as did the plaintiffs in *Connor*.

The *Connor* court found it necessary to interpret the averments of facts in the original complaint, and in so interpreting, make a determination as to whether those averments encompassed the facts alleged in the amendment. The majority in *Connor* contended that interpreting the amendment as a mere amplification was justified because if the defendant did not understand how it failed to use due care and caution under the circumstances, it could have moved to strike that portion of the complaint. This, however, ignores the fact that Pennsylvania common pleas court cases have denied motions to strike in situations where the averment sought to be struck was too general to stand on its own, but was included with more specific averments which in themselves constituted a cause of action. In this area, the common pleas courts have looked at those general averments as being read together with the specific averments and although in themselves they might constitute “catch-all” pleading, the courts have permitted them to stand with the specific allegations and have denied mo-

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92. *See supra* notes 65 and 70 and accompanying text.
93. 410 Pa. at 404, 189 A.2d at 269. *See also supra* note 62 and accompanying text.
94. In *Connor* the record suggests that the defendant supplied the plaintiff with all information upon request and the plaintiff did not, at any time, make allegations to the contrary.
95. 494 Pa. 238 at 242, 431 A.2d at 240. *See also supra* notes 69-70 and accompanying text.
96. 461 A.2d at 602.
97. *Id.* at n.3. *See supra* note 31 and accompanying text.
tions to strike. These decisions indicate that the Connor majority's suggestion that the defendant should have made a motion to strike the allegation in question was an unrealistic option, since "catch-all" allegations are designed to be read in context with the specific allegations. This interpretation of the general averments in context with the specific averments is apparently based on a generally held proposition, as well as case law, which provides that the pleadings will be construed most strictly against the pleader. The result would probably be to deny a plaintiff the opportunity to expand a "catch-all" allegation to such an extent that it encompasses "other ways in which the [defendant] was negligent." The majority in Connor also suggested that if the defendant did not understand how it failed to use due care and caution under the circumstances, defendant could have made a motion for a more specific pleading. While this may be true, it overlooks a critical

99. In Catina the allegation in the original complaint was that the defendant-doctor "otherwise failed to exercise the degree of skill and care commonly exercised by physicians and neurosurgeons." The court said:

[I]f this were the only averment of negligence, it would fall far short of informing the defendant of the basis of the plaintiff's charge. But when read in connection with the eleven specific charges of negligence and with the other paragraphs setting forth in chronological order the acts complained about, it certainly cannot be said that it is vague and uninformative. This may be a "catch-all" pleading, but when read in connection with all the other allegations of negligence we do not deem it objectionable.

77 Dauph. at 334-35. The complaint in Mikula alleged, inter alia, that the defendants failed to observe the current community standards of medical skill and care and further failed to exercise toward plaintiff's decedent all of the medical techniques known to the medical community to sustain life and restore some degree of health to a patient. There the court said: "It is true that [these allegations] are quite general in nature, and we would agree that if these were the only averment of negligence, they would fall far short of informing defendants of the basis of plaintiff's complaint." 58 Pa. D. & C.2d at 129.

100. See Schwartz v. Manufacturers' Casualty Ins. Co., 335 Pa. 130, 6 A.2d 299 (1939), and Maguire v. Preferred Realty Co., 257 Pa. 48, 101 A. 100 (1917), in which the respective courts said that the averments are taken most strongly against the pleader, for he is presumed to have stated all the facts involved and to have done so as favorably to himself as his conscience will permit. See also GOODMAN-AMRAM 2D § 1019:1 (pleadings will be construed most strongly against the pleader on the theory that he has stated his case as best he can; and any conflicts or ambiguities will be interpreted against him); 61 AM. JUR. 2D Pleading § 57 (pleadings are to be construed most strongly against the pleader, and . . . . He may not leave his pleading open to different constructions, and then take his choice between them. Therefore, it has been declared that any ambiguity or omission in the pleading must be at the peril of that party in whose allegation it occurs.;) 3 STANDARD PENNSYLVANIA PRACTICE 2D § 16.4 (this rule required that if the language of a pleading is equivocal or susceptible of two or more meanings, that construction shall be adopted which is most unfavorable to the party pleading, for he is presumed to have stated the facts involved as favorably to himself as his conscience would permit).

101. See supra notes 26 and 88 and accompanying text.

102. See supra notes 31 and 32 and accompanying text.
factor: at the time when the motion for a more specific pleading would have had to have been made, the plaintiffs did not have the facts necessary to expand that averment\textsuperscript{103} to include the allegations which ultimately surfaced in the proposed amendment. That being the case, the controverted averment would have been allowed to stand if the court had read it in context with the specific allegations,\textsuperscript{104} but the plaintiff would have been denied the opportunity to recover because she ultimately would not have been able to prove the originally averred facts.\textsuperscript{105}

While the \textit{Connor} court suggested alternative courses of action open to the defendant, the majority did not seem to consider that there had been an alternative open to the plaintiff which would have prevented the present issue from ever arising. In order to garner the information necessary\textsuperscript{106} to formulate a clear and more specific complaint, the Connors could have availed themselves of pre-trial discovery,\textsuperscript{107} which would have permitted them to draft the complaint properly before the statute of limitations had run. The \textit{Connor} court, in ignoring the fact that the Connors had this option available which would have avoided the necessity of this extended litigation process, has defeated the purpose of the discovery procedure. Discovery,\textsuperscript{108} since it has as its purpose to narrow the issues

\textsuperscript{103} The necessary facts would have been those that would have suggested that there was a twelve hour delay in removing the barium from the abdominal cavity and that the barium had some permanent damaging effect.

\textsuperscript{104} See supra notes 98-99 and accompanying text.

\textsuperscript{105} Those facts being that the hospital had perforated Connor's colon during the barium enema procedure. See supra notes 6 and 7 and accompanying text.

\textsuperscript{106} See supra note 103.

\textsuperscript{107} At the time the suit was filed, the Pennsylvania Rules of Civil Procedure provided:

\begin{itemize}
\item[(a)] Any party may take the testimony of any person, including a party, for the purpose of discovery by deposition upon oral examination or written interrogatories of the identity and whereabouts of witnesses. . . . \[T\]he deponent may also be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the action and will substantially aid in the preparation of the pleadings or the preparation or trial of the case.
\end{itemize}

\textbf{PA. R. Civ. P. 4007} (this rule was rescinded on November 20, 1978, after the Connors drafted and filed their original complaint). See also Lapp v. Titus, 224 Pa. Super. 150, 302 A.2d 366 (1973) where the court said:

It is clear that pre-complaint discovery is contemplated and allowed by the Rules of Civil Procedure. . . . Discovery by deposition may then be had 20 days thereafter, or within twenty days with leave of court. . . . Thus, for the plaintiff without sufficient facts with which to draw a complaint, discovery within the first twenty days is essential. Rule 4007 clearly allows such discovery because depositions thereunder are permitted if they will “substantially aid in the preparation of the pleadings.”

\textit{Id.} at 155, 302 A.2d at 369.

\textsuperscript{108} See supra note 107. \textbf{PA. R. Civ. P. 4007} has since been replaced in part, by Rules
for trial and to obtain the necessary information to prepare a proper pleading,\textsuperscript{109} would have been the best avenue open to the plaintiffs in preparing their complaint. If the plaintiffs had completed discovery, and still did not understand the ramifications of the information which they had received,\textsuperscript{110} it should not have been up to the court to provide them with additional opportunities to prepare their case where those opportunities clearly prejudice the defendant.

The \textit{Connor} court could also have examined another option which was available to the Connors in preparing their complaint. The plaintiffs had available to them, in formulating their complaint, the opportunity to allege that the material facts necessary to properly draft a complaint were exclusively within the possession of the defendant.\textsuperscript{111} Where such an allegation has been clearly made, the courts have not required as much specificity in the pleadings.\textsuperscript{112} This option is particularly attractive in medical mal-

\textsuperscript{4001 and 4003.1. Under Rule 4001(c), “any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery, or for preparation of pleadings, or for preparation or trial of a case . . .” (emphasis added). Pa. R. Civ. P. 4001(c). Rule 4003.1 provides: [A] party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. Pa. R. Civ. P. 4003.1.

\textsuperscript{109. See Little v. Sebastian, 50 Pa. D. & C.2d 761 (Lebanon 1970), where the court said: “We believe that the objects of a proper discovery procedure are to first, narrow the issues; second, obtain evidence to be used at the trial of the issues; third, secure information as to the existence and source of evidence that may be used at trial; and fourth, to obtain the necessary information to prepare proper pleadings.” Id. at 766.

\textsuperscript{110. It may have been easier, in the present case, for the plaintiffs to clearly understand the possible ramifications of the information which they ultimately received from the defendants, had they procured the services of a physician who was an expert in the particular field of medicine which was at issue. See supra note 9 and accompanying text.

\textsuperscript{111. See Fentini v. Ruginis, 52 Schuy. Leg. Rec. 6, 8 (1956) (“plaintiff in his complaint should disclose for the information of the defendant the essential facts to enable the defendant to make a proper defense, and that if facts lie as much within the knowledge of the defendant as of the plaintiff, less precision is required in averring them”); Corkill v. Ferrar, 45 Schuy. Leg. Rec. 150, 152 (1949) (“[t]he law is correctly set forth, ‘no one is required to plead facts of which he has no knowledge, where these same facts are within the knowledge of the opposing party’”).

\textsuperscript{112. See Line Lexington Lumber & Millwork Co. v. Pennsylvania Publishing Corp., 451 Pa. 154, 162, 301 A.2d 684, 689 (1973) (“[o]n the other hand, where crucial facts are in the exclusive knowledge of defendant, and plaintiff so pleads, he should be given considerable latitude”). See also 71 C.J.S. Pleadings § 6, GOODRICH-AMRAM 2D § 1019:1, 4 STANDARD PENNSYLVANIA PRACTICE 2D § 21:31.
practice where, as in Connor, the plaintiff does not have the requisite facts for clearly stating a cause of action in his complaint. 113

By its decision in Connor, the Pennsylvania Supreme Court created a situation which has the potential to extend the litigation process by permitting amendments under “catch-all” or “boiler-plate” allegations in the complaint. The effect is to create a two-part ritual. Plaintiffs will include this type of allegation in their complaints, hoping that if need be, they will be permitted to amend their complaints at a later date. Defendants, on guard for this type of allegation, will move to strike or make a motion for a more specific pleading. The greatest harm is that it permits sloppy pleading by a plaintiff, who may then later, at the expense of the defendant, be permitted to amend his complaint to state what is essentially a new cause of action. 114

The Connor result suggests that the Pennsylvania courts are leaning toward an adoption of the federal notice pleading system. Indeed, in his superior court dissent, Judge Cirillo noted that since the matters alleged in the amended complaint took place on the same day and in the same place, Allegheny General Hospital had notice of the events from the very day of the incident. 115

Under the Federal Rules of Civil Procedure, the issue in Connor would not have arisen. The federal rules require only a “short and plain statement of the claim showing that the pleader is entitled to relief.” 116 The parties then possess liberal opportunity for discov-

The malpractice type cases are not so common as to give plaintiff’s counsel the confidence in the preparation of a complaint he might have in preparing a complaint based say on a collision of two automobiles at an intersection. The allegation of negligence against a doctor in the highly specialized field of medicine presents problems real or imagined, which the drafter of a complaint in trespass could very well feel demands a cautious and detailed approach in order to protect his client’s interest. This could result in a lengthy and perhaps repetitious complaint. If such a result occurs, we cannot fault a plaintiff so long as the defendant is not prejudiced thereby. Id.

114. The risk, after Connor, is that a proposed amendment will be interpreted as an amplification of that “boiler-plate” allegation of negligence when it, as in Connor, comes dangerously close to stating a new cause of action.

115. 300 Pa. Super. at 330, 446 A.2d at 640 (Cirillo, J., dissenting). Judge Cirillo stated: “Additionally, the matters alleged by the appellants in their amended complaint were part of a causally related chain of events which occurred on the same day, November 26, 1973, and at the same place, Allegheny General Hospital. The hospital had notice of these events from the very day of this incident and, therefore, was not prejudiced in its defense by the amended complaint.” Id.

ery, to disclose more precisely the basis of the claim and to define more narrowly the disputed facts and issues.\textsuperscript{117} Under the notice pleading system of the federal rules, the result in \textit{Connor} would have been the same,\textsuperscript{118} but the litigation would not have required the additional years\textsuperscript{119} spent on deciding the issue of whether the amendment could be made. Federal Rule 15(c) provides that whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or \textit{attempted} to be set forth in the original pleading, the amendment relates back to the date of the original pleading.\textsuperscript{120} Since the transaction or occurrence in \textit{Connor} would have been the stay in the hospital, all that would have been necessary for the plaintiff to allege was that she was injured by the negligence of the hospital during her confinement thereto. Through the process of discovery\textsuperscript{121} both parties would then have had an opportunity to narrow the issues involved to the point that any alleged acts of negligence by the hospital were so clear that the defendant might be able to prepare to defend against the allegation.\textsuperscript{122}

If the purpose of the decision in \textit{Connor} is to liberalize the requirements of fact pleading and in effect bring some facets of the Pennsylvania Rules of Civil Procedure in line with the Federal Rules of Civil Procedure, perhaps it would have been better for the court simply to adopt the Federal Rules instead of creating confusion in the fact pleading system with this gradual change. The supreme court has the power to prescribe rules governing procedure,\textsuperscript{123} and to the extent that the court intends to make such changes in the rules, it may have been the better course for the

\textsuperscript{117} See generally \textit{Fed. R. Civ. P.} 26-37.

\textsuperscript{118} The result being that the court would have permitted the amendment and the Connors' case would have gone to trial on the merits. At the time of this writing, the question of the liability of Allegheny General Hospital has not yet been litigated.

\textsuperscript{119} Note that the complaint was filed on October 15, 1975; the motion to amend was made on November 26, 1979, and the amendment was granted on April 27, 1983. It took three and one half years to resolve the issue of whether or not to permit the amendment under the Pennsylvania system.

\textsuperscript{120} \textit{Fed} R. Civ. P. 15(c).

\textsuperscript{121} \textit{See supra} note 117.

\textsuperscript{122} \textit{See supra} notes 46, 48 and 50 and accompanying text.

\textsuperscript{123} The Pennsylvania Constitution provides: "The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts \ldots if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive right of any litigant \ldots" \textit{Pa. Const.} art. 5, § 10(c).
court to make the change in a clear decisive manner—not a little at a time.

*If it were done when 'tis done, then 'twere well
It were done quickly.*

_Cynthia E. Kernick_
