



**FILED**

APR 29 2005

**CAROL E. HIGBEE, J.S.C.**

**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON  
OPINIONS**

**SUPERIOR COURT OF NEW JERSEY  
COUNTIES OF  
ATLANTIC AND CAPE MAY**

CAROL E. HIGBEE, J.S.C.

1201 Bacharach Boulevard  
Atlantic City, NJ 08401-4527  
(609) 343-2190

**MEMORANDUM OF DECISION ON MOTION**  
**Pursuant to Rule 1:6-2(f)**

**CASE:** Toscano v. Merck & Co., Inc.  
**DOCKET #:** ATL-L-373-05-MT  
**RETURN DATE:** April 29, 2005  
**MOTION:** Plaintiff's Motion to Amend Complaint  
**ATTORNEYS:** Franklin P. Solomon – Plaintiff

Having carefully reviewed the moving papers and any response filed, I have ruled on the above Motion as follows:

Plaintiff Michael Toscano brings this motion to amend his complaint to add a loss of consortium claim on behalf of his spouse, Suzanne Toscano. This motion is unopposed.

R. 4:9-1 provides, in relevant part,

A party may amend any pleading as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is to be served, and the action has not been placed upon the trial calendar, at any time within 90 days after it is served. Thereafter a party may amend a pleading only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice....

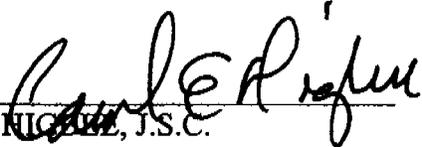
A motion for leave to amend is required by the Rule to be liberally granted even if the ultimate merits of the amendment are uncertain. See Kernan v. One Washington Park, 154 N.J.

437, 456-457 (1998). Nevertheless, motions to amend remain within the court's sound discretion. Id.

Plaintiff's counsel certifies that the loss of consortium claim was inadvertently omitted from the original complaint.

The Court finds this application appropriate.

Motion Granted.

  
\_\_\_\_\_  
CAROL E. NICHOL, J.S.C.

XXXX Order is attached.

This decision will be posted on the judiciary website and can be viewed at <http://www.judiciary.state.nj.us/decisions.htm> for a period of six weeks from the motion return period.