

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHERRI CAPPELLI, ROBERT CAPPELLI,	:	
and ANDREW CAPPELLI, Individually and as	:	
Administrators and Personal Representatives	:	
Representatives of THE ESTATE OF	:	
RICHARD CAPPELLI	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 98-5983
HAVERFORD TOWNSHIP, HAVERFORD	:	
TOWNSHIP POLICE DEPARTMENT,	:	
DENNIS DONNELLY, KEITH GILMAN,	:	
PETER BOGUTZ, JOHN VIOLA, MICHAEL	:	
FLYNN, ROBERT MURPHY, STEVEN	:	
FORTROW, Individually and in their capacity as	:	
Police Officers in the Haverford Township Police:	:	
Department, DEFENSE TECHNOLOGY	:	
CORPORATION OF AMERICA and ARMOR	:	
HOLDINGS, INC.	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

March , 1999

Presently before the court is Defendants Defense Technology Corporation of America and Armor Holdings, Inc.'s Motion to Dismiss and Motion for Definite Pleading and Plaintiffs Response thereto. For the following reasons, Defendants' Motion to Dismiss for failure to state a product liability claim will be denied; Defendants' Motion for More Definitive Pleadings will be denied; Defendants' Motion to Dismiss all causes of action asserted by Plaintiffs Robert Cappelli and Andrew Cappelli under the Pennsylvania Wrongful Death Statute will be granted; Defendants' Motion to Dismiss all individual causes of action asserted by Plaintiffs Sherri Cappelli, Robert Cappelli and Andrew Cappelli under the Pennsylvania Survival Action statute will be granted.

FACTUAL BACKGROUND

Plaintiffs allege in their Complaint that on or about January 9, 1997, decedent Richard Cappelli was inside a bar located at 1901 Old West Chester Pike, Havertown, Pennsylvania when he was approached by the Defendant Officers. A physical confrontation ensued between Defendant Officers and Richard Cappelli, wherein Defendant Officers “repeatedly and unnecessarily sprayed Richard Cappelli’s face, nose, mouth, eyes and throat with pepper spray.” (Compl. ¶ 17.) Plaintiffs allege that the pepper spray attacks “occurred while Richard Cappelli was standing, while he was on the ground, and while he was on the ground in the prone position, with his hands and feet restrained behind his back.” (Compl. ¶¶ 18-19.) Plaintiffs further allege that as a result of said events, Richard Cappelli died on January 9, 1997.

Plaintiffs, as administrators of the Estate of Richard Cappelli, have filed this action against Defendants Haverford Township, Haverford Township Police Department and the Defendant Officers under § 1983 alleging use of excessive force in violation of Mr. Cappelli’s Fourth Amendment Rights. Plaintiffs have also brought claims against Defendants Defense Technology Corporation of America (“Defense Technology”) and Armor Holdings, Inc. (“Armor”) alleging that the pepper spray used upon Mr. Cappelli was defective and a substantial cause of Mr. Cappelli’s death. Specifically, Plaintiffs allege that Defendant Defense Technology, which is allegedly owned by Defendant Armor, manufactured and supplied the pepper spray used on Mr. Cappelli to Defendant Haverford Township Police Department. (See Complaint ¶¶ 65-66.) Plaintiffs allege that the product was defective and inherently dangerous in design at the time the product left the control of Defense Technology in that it “lacked adequate warnings, training, notices, and instructions to inform users of the dangerous characteristics of the product.”

(Complaint ¶¶ 70-71.) Plaintiffs also claim that the product was “designed, manufactured and assembled without adequate testing and safety analysis.” (Complaint ¶ 72.)

DISCUSSION

A motion to dismiss a complaint for failure to state a claim may not be granted unless it appears from the face of the complaint that the plaintiff can establish no set of facts which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The facts must be taken as true and reviewed in the light most favorable to the plaintiff. Id. Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a complaint include only "a short and plain statement of the claim showing that the pleader is entitled to relief."

Defendants Defense Technology and Armor argue that Plaintiffs have failed to state a claim upon which relief can be granted because Plaintiffs do not plead any facts that give notice as to why the product is allegedly unreasonably dangerous and defective. Pennsylvania law requires that a plaintiff prove two elements in a product liability action: (1) that the product was defective, and (2) that the defect was a substantial factor in causing the injury. Spino v. Tilley Ladder Co., 696 A.2d 1169, 1172 (Pa. 1997). Under the notice pleading requirements in federal court, Plaintiffs allegations sufficiently state a product liability claim. Accordingly, Defendants’ Motion to Dismiss for failure to state a product liability claim will be denied. Defendants’ Motion for More Definitive Pleadings will also be denied.

Defendants argue that Plaintiffs Robert Cappelli and Andrew Cappelli do not have standing to assert a cause of action under the Wrongful Death Statute, 42 Pa. Cons. Stat. Ann. § 8301, as brothers of the deceased Richard Cappelli. Pursuant to the Pennsylvania Wrongful Death Statute, only the spouse, children or parents of the deceased are entitled to bring a cause of

action for wrongful death. See id. at subsection (b). Furthermore, a personal representative may only bring an action and recover damages under the statute if no person is eligible to recover damages under subsection (b). See id. at subsection (d). In the present case, Plaintiffs Robert and Andrew Cappelli are precluded from bringing individual causes of action for wrongful death as brothers of the deceased. In addition, because Plaintiff Sherri Cappelli, as the daughter of the deceased Richard Cappelli, can maintain a cause of action under the Wrongful Death Statute, Plaintiffs Robert Cappelli and Andrew Cappelli are also precluded from asserting a claim for wrongful death as personal representatives of the estate. Accordingly, to the extent Plaintiffs Robert and Andrew Cappelli have asserted claims under the Wrongful Death Statute, individually or as personal representatives of the estate, said claims shall be dismissed.

Defendants also argue that Plaintiffs Sherri Cappelli, Robert Cappelli and Andrew Cappelli do not have individual rights of action under the Survival Action, 42 Pa. Cons. Stat. Ann. § 8302. A survival action is brought by the administrator of the deceased plaintiff's estate in order to recover the loss to the estate of the decedent resulting from the tort. Kiser v. Schulte, 648 A.2d 1 (Pa. 1994); see also 42 Pa. Cons. Stat. Ann. § 8302. As a survival action under may only be brought on behalf of the estate, Plaintiffs Sherri Cappelli, Robert Cappelli and Andrew Cappelli may not maintain individual causes of action under § 8302. To the extent Plaintiffs have asserted actions under § 8302 in their individual capacities, said claims will be dismissed.

An appropriate Order follows.

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CORPORATION OF AMERICA and ARMOR	:	
HOLDINGS, INC.	:	
Defendants.	:	

ORDER

AND NOW, this day of March, 1999, upon consideration of Defendants Defense Technology Corporation of America and Armor Holdings Inc.'s Motion to Dismiss and Motion for More Definitive Pleadings and Plaintiffs' Response thereto, IT IS HEREBY ORDERED that:

1. Defendants' Motion to Dismiss under Rule 12(b)(6) for failure to state a product liability claim is DENIED;
2. Defendants' Motion for More Definitive Pleadings is DENIED;
3. Defendants' Motion to Dismiss all causes of action asserted by Plaintiffs Robert Cappelli and Andrew Cappelli under the Pennsylvania Wrongful Death Statute, to the extent such causes of action have been asserted, is GRANTED; and

4. Defendants' Motion to Dismiss all causes of action asserted by Plaintiffs Sherri Cappelli, Robert Cappelli and Andrew Cappelli in their individual capacities under the Pennsylvania Survival Action statute, to the extent such causes have been asserted, is GRANTED.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.