

A manufacturer sued its competitor in federal district court for allegedly violating the manufacturer's patent. The competitor filed an answer that claimed the patent was invalid and asserted a counterclaim for damages. During a bench trial, the competitor presented overwhelming evidence showing that the manufacturer's chief executive officer (CEO) had used deceptive methods to obtain the patent. At the close of evidence, the judge issued findings of fact and conclusions of law, and the court entered judgment in favor of the competitor.

The competitor was worried that the manufacturer would declare bankruptcy and be unable to pay the judgment, so the competitor moved to amend its counterclaim to add the manufacturer's CEO as a party. It also requested that the court alter the judgment to require the CEO to pay the judgment in the event the manufacturer files for bankruptcy. The district court immediately granted the competitor's motion, and the CEO appealed.

The applicable statute of limitations governing the competitor's counterclaim has yet to expire.

Is the appellate court likely to affirm the district court's action?

- A. No, because the district court violated the CEO's due process rights by not allowing him to respond to the counterclaim.
- B. No, because the manufacturer did not consent in writing to the competitor's amendment.
- C. Yes, because the applicable statute of limitations for the competitor's counterclaim against the CEO has not expired.
- D. Yes, because the CEO should have been aware of the pending lawsuit.

Explanation:

Under FRCP 15, a party may **amend** his/her **pleading** (eg, counterclaim) with the opposing party's written consent or the **court's permission** before, during, or after trial. The court's permission should be freely granted when **justice so requires** and the amendment will **not violate due process**. In *Nelson v. Adams USA, Inc.*, the Supreme Court held that a court violates due process when it allows a new party to be added in an amended pleading but does not permit the new party to respond.*

Here, the district court permitted the competitor to amend its counterclaim to add the manufacturer's CEO as a party. The court then violated the CEO's due process rights by not giving him an opportunity to respond before altering the judgment to hold him personally liable in the event the manufacturer declares bankruptcy. Therefore, the appellate court will likely reverse and remand to give the CEO an opportunity to respond.

*Under FRCP 15(a), a new party may respond within the time remaining to respond to the original pleading or within 14 days after being served with the amended pleading—whichever is later.

(Choice B) The manufacturer did not need to consent in writing to the competitor's amendment. That is because a federal court can permit amendments to pleadings without the opposing party's consent and should do so when justice requires—so long as the amendment complies with due process (not seen here).

(Choice C) Although the applicable statute of limitations has not expired, the court violated the CEO's due process rights by amending the counterclaim and altering the judgment without allowing him a chance to respond.

(Choice D) The fact that the CEO should have been aware of the pending lawsuit does not change the due process requirement that he be given an opportunity to respond to the competitor's amended counterclaim.

Educational objective:

A court should freely allow parties to amend their pleadings when justice so requires and due process will not be violated. When a court grants a party's motion to amend a pleading to add a new party, due process requires that the new party be given an opportunity to respond.

References

- Fed. R. Civ. P. 15(b) (amending pleadings during and after trial).
- *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 465–67 (2000) (explaining that due process requires that a new party be given an opportunity to respond to an amended pleading).

Amending pleadings (FRCP 15)



FRCP = Federal Rule of Civil Procedure

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