

PETER LEMONCELLI and LORINE  
LEMONCELLI, his wife,

Plaintiffs

vs.

NEWELL RUBBERMAID, INC.,

Defendant

vs.

SCHRADER INTERNATIONAL, INC.  
(Individually, and as a wholly-owned  
subsidiary of SENSATA TECHNOLOGIES  
HOLDING N.V.); SENSATA  
TECHNOLOGIES HOLDING N.V., a/k/a  
SENSATA TECHNOLOGIES, INC., f/n/a,  
d/b/a SCHRADER INTERNATIONAL, INC.,  
and SENSATA TECHNOLOGIES  
HOLDING N.V., as successor in interest to  
and/or parent of SCHRADER  
INTERNATIONAL, INC.,

Additional Defendants

: IN THE COURT OF COMMON PLEAS  
: OF LACKAWANNA COUNTY

: CIVIL ACTION – LAW

: NO. 11 CV 2565

JUDICIAL RECORDS  
2011 JAN 24 P 3:58  
LACKAWANNA COUNTY

**MEMORANDUM AND ORDER**

NEALON, J.

The defendant-manufacturer of a propane cylinder, which allegedly caused the male plaintiff's burn injuries, has filed a motion in this product liability action seeking to join the manufacturer of the component part valve that purportedly malfunctioned and allowed propane gas to escape and ignite, thereby injuring the plaintiff. The valve manufacturer opposes its joinder as an additional defendant on the grounds that the original defendant has not demonstrated reasonable excuse for the delay in filing its

joinder request, and that the proposed joinder will supposedly prejudice the valve manufacturer. Since the plaintiffs do not oppose the defendant's untimely joinder of the valve manufacturer as an additional defendant, the existence or absence of some reasonable justification for the delay in presenting the joinder request is not a relevant consideration under Pa.R.C.P. 2253(b). Furthermore, inasmuch as the valve manufacturer has not identified any legitimate prejudice that it will suffer as a result of its belated joinder, the defendant's motion for leave to join the valve manufacturer as an additional defendant will be granted.

## **I. FACTUAL BACKGROUND**

Plaintiff, Peter Lemoncelli and Lorine Lemoncelli ("the Lemoncellis"), instituted this product liability matter against Defendant, Newell Rubbermaid, Inc. ("Newell Rubbermaid"), asserting causes of action for negligence, breach of warranty and strict liability. (Docket Entry No. 9 at ¶¶ 9, 17, 20). The Lemoncellis allege that Newell Rubbermaid manufactured and sold a propane cylinder that Plaintiff, Peter Lemoncelli ("Lemoncelli"), "used as a fuel supply for a UL listed Weller propane torch head and which failed to seal on disassembly" on April 25, 2009. (*Id.* at ¶5). It is alleged that as a result of the "malfunction" of the propane cylinder, Lemoncelli suffered "12.25% TBSA second degree burns to his total body surface area, including burns to both lower extremities and his right arm, cellulitis, DYS lipidemia, permanent scarring and disfigurement, infection, and other serious injuries." (*Id.* at ¶ 6).

The parties' initial pre-trial discovery reportedly revealed that a valve contained within the propane cylinder malfunctioned and enabled the cylinder to expel gas following

disengagement of the torch head and to ignite the propane gas. (Docket Entry No. 40 at pp. 6-7). Based upon “ongoing communications” with representatives of Schrader-Bridgeport International, Inc. (“Schrader-Bridgeport”), non-destructive testing was performed on the propane cylinder on October 16, 2014, in an effort to recreate the incident involving Lemoncelli. (Docket Entry No. 38 at p. 2; Transcript of Proceedings (“T.P.”) on 12/1/16 at pp. 36-37, 39-40). That testing was conducted in the presence of Schrader-Bridgeport’s Director of Product Engineering and subject to testing protocol that was approved by Schrader-Bridgeport, and “when an apparatus was applied to the valve head and subsequently removed, the valve pin remained in the open position.” (Docket Entry No. 38 at p. 2). Newell Rubbermaid submits that “[a]s a result, Newell Rubbermaid became apprised of the likelihood that there was a defect in the subject valve causing the valve pin to remain in the open position, a likely cause of the escape of propane gas at the time of [Lemoncelli’s] use.” (Id.).

Following that testing, in-house counsel for Schrader-Bridgeport advised Newell Rubbermaid “that in order to positively identify the valve core as a Schrader-Bridgeport manufactured product, another inspection would need to be conducted with examination of the removed valve core under a microscope.” (Docket Entry No. 38, Exhibit C). To accomplish that testing, and “in an attempt to confirm who manufactured the subject valve,” Newell Rubbermaid was “required to engage in a variety of information gathering activities,” such as the “issuance of a subpoena” and a “request for commission and letters rogatory.” (Docket Entry No. 38 at p. 3). On December 3, 2015, the propane cylinder was subject to radiographic examination during which the valve core was removed for identification purposes. (T.P. 12/1/16 at pp. 38-39, 41-42). Once again, Schrader-

Bridgeport's Director of Product Engineering was present for and participated in that testing that was conducted in compliance with stipulated testing protocol. (Docket Entry No. 38 at p. 3). Newell Rubbermaid maintains that although the product testing on December 3, 2015, confirmed that Schrader-Bridgeport manufactured and distributed the allegedly defective valve contained within the propane cylinder that was used by Lemoncelli, Schrader-Bridgeport refused to acknowledge its role in the manufacture or sale of the valve at any time prior to Newell Rubbermaid's filing of its joinder complaint in this matter. (Docket Entry No. 38 at pp. 3-4; Docket Entry No. 50 at pp. 3-4).

On May 2, 2016, Newell Rubbermaid filed a motion and supporting brief seeking to join Schrader International, Inc. ("Schrader International"), Sensata Technologies Holding N.V. ("Sensata Holding") and Sensata Technologies, Inc. ("Sensata Technologies") as additional defendants in their individual capacities or as subsidiaries or parent companies of, or successors in interest to, other additional defendants. (Docket Entry Nos. 26-27). On May 19, 2016, Judge Vito P. Geroulo granted Newell Rubbermaid's motion to file a joinder complaint against Schrader International, Sensata Holding and Sensata Technologies. (Docket Entry No. 28). Newell Rubbermaid filed a joinder complaint naming those entities as additional defendants on May 25, 2016. (Docket Entry No. 29).

Schrader International filed preliminary objections to the joinder complaint asserting that the joinder was untimely, that Newell Rubbermaid had not established "good cause" for the late joinder, and that Schrader International was prejudiced by the belated joinder. (Docket Entry No. 31 at pp. 3-7). Sensata Holding and Sensata Technologies also filed preliminary objections advancing the same arguments raised by

Schrader International, and further asserting that they are not subject to personal jurisdiction in this forum. (Docket Entry No. 44 at pp. 4, 6-9, 11). In addition, Newell Rubbermaid filed a motion seeking leave of court to join Schrader-Bridgeport as an additional defendant pursuant to Pa.R.C.P. 2253. (Docket Entry No. 40). The preliminary objections presented by Schrader International, Sensata Holding and Sensata Technologies and the joinder motion filed by Newell Rubbermaid were scheduled for consolidated oral argument on December 1, 2016. (Docket Entry No. 47).

Based upon the arguments presented by counsel during the proceeding on December 1, 2016, and in an effort to resolve the preliminary objections while simultaneously addressing the parties' stated concerns, (T.P. 12/1/16 at pp. 23-30, 35-36, 44-52), an Order was entered on December 1, 2016, which stated:

1. By no later than December 21, 2016, counsel for defendant, the additional defendants and Schrader-Bridgeport International, Inc., shall file a stipulation confirming that Schrader-Bridgeport International, Inc. is the sole manufacturer of the subject valve core and that Schrader-Bridgeport International, Inc.'s self-insured retention fund is sufficient to satisfy plaintiffs' claim in the event that plaintiffs prevail in this litigation;
2. In the event that defendant, the additional defendants and Schrader-Bridgeport International, Inc. negotiate, execute and file such a stipulation, the pending preliminary objections will be sustained with regard to Sensata Technologies Holding N.V., Sensata Technologies, Inc. and Schrader International, Inc. *only*, with "Defendant Newell Rubbermaid, Inc.'s Motion for Leave to Join Schrader-Bridgeport International, Inc." as an additional defendant becoming ripe for disposition upon the filing of the foregoing stipulation; and
3. In the event that defendant, additional defendants and Schrader-Bridgeport International, Inc. are unable to negotiate, execute and file the aforementioned stipulation, counsel shall advise the undersigned of that fact by no later than December 21, 2016.

(Docket Entry No. 51 at p. 2). Following the grant of an extension of time, the parties filed an executed stipulation on December 27, 2016, confirming that the subject valve “was designed, manufactured and sold by Schrader-Bridgeport International, Inc.” and that “[t]here is sufficient insurance coverage and/or assets available to Schrader-Bridgeport International, Inc. from which to indemnify Schrader-Bridgeport International, Inc. against any judgment that may be rendered against Schrader-Bridgeport International, Inc. up to One Million Dollars (\$1,000,000) on the claims for contribution and indemnification alleged by Newell Rubbermaid, Inc. in the Joinder Complaint.”<sup>1</sup> (Docket Entry No. 52 at ¶¶ 1, 4). By virtue of that filed stipulation, the preliminary objections presented by Schrader International, Sensata Holding and Sensata Technologies will be sustained, and Newell Rubbermaid’s motion for leave to join Schrader-Bridgeport is ripe for disposition. (Docket Entry Nos. 51-52).

In seeking to join Schrader-Bridgeport as an additional defendant, Newell Rubbermaid asserts that the parties’ discovery and the testing of the propane cylinder indicate that an alleged defect in the valve that was manufactured by Schrader-Bridgeport enabled propane gas to escape upon disengagement of the torch head. (Docket Entry No. 41 at pp. 6-10). It posits that “reasonable justification or excuse” exists for the delay in seeking to join Schrader-Bridgeport since “Newell Rubbermaid only recently learned of the potential liability on behalf of Schrader-Bridgeport.” (*Id.* at pp. 11-12). Newell Rubbermaid submits that “Schrader-Bridgeport will not suffer any prejudice” as a result of its joinder inasmuch as discovery is ongoing and Schrader-Bridgeport “will be able to

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<sup>1</sup> The Lemoncellis’ counsel represented at the time of oral argument that the value of their personal injury and loss of consortium claims is less than \$1,000,000.00. (T.P. 12/1/16 at p. 24).

participate in written discovery, attend depositions and conduct depositions of its own choosing and will in no way be hindered by any deadlines or the passage of time.” (Id. at p. 13).

Schrader-Bridgeport counters that Newell Rubbermaid “does not offer any excuse, much less a ‘reasonable excuse,’ for its failure to identify Schrader-Bridgeport International, Inc. as a potential defendant any earlier or for waiting until September 16, 2016, to file its Motion for Leave to Join.” (Docket Entry No. 45 at pp. 5-6). Citing appellate precedent which predates 2000, Schrader-Bridgeport contends that Newell Rubbermaid’s motion should be denied “for failure on the part of Newell Rubbermaid to show reasonable excuse for Schrader-Bridgeport’s late joinder.” (Id. at pp. 6-7). Additionally, it asserts that “Schrader-Bridgeport will be prejudiced by its inability to conduct a prompt post-accident investigation, including timely review of its own files and records.” (Id. at p. 8).

## **II. DISCUSSION**

### *(A) STANDARD OF REVIEW*

In cases where an original defendant seeks to join an additional defendant more than sixty days after service of the plaintiff’s complaint, the original defendant must obtain leave of court to join the additional defendant under Pa.R.C.P. 2253(a). “Joinder should be granted when it can ‘simplify and expedite the disposition of matters involving numerous parties without subjecting the original plaintiff to unreasonable delay in the prosecution of his portion of the litigation.’” Lawrence v. Meeker, 717 A.2d 1046, 1048 (Pa. Super. 1998) (quoting Zakian v. Liljestrang, 438 Pa. 249, 256, 264 A.2d 638, 641

(1970)). The question of whether an original defendant should be permitted to join an additional defendant beyond the time constraints set forth in Rule 2253(a) is committed to the sound discretion of the trial court. White v. American Honda Research of America, 403 Pa. Super. 584, 587, 589 A.2d 764, 766 (1991). In making that determination, the court must remain “mindful of the general principle that the procedural rules applicable to controversies involving third party procedure should be liberally construed to avoid a multiplicity of lawsuits.” Exton Development v. Sun Oil Company of Pennsylvania, 363 Pa. Super. 17, 22, 525 A.2d 402, 404 (1987).

*(B) ABSENCE OF PREJUDICE FROM UNTIMELY JOINDER*

Prior to 2005, Rule 2253 allowed an untimely joinder only “upon cause shown,” which required the defendant seeking to join an additional defendant to show that (1) joinder was based on proper factual grounds of potential liability, (2) some reasonable excuse existed for the delay in filing the joinder request, and (3) the late joinder would not be prejudicial to the plaintiff or the proposed additional defendant. Lawrence, supra; Prime Properties Development Corp. v. Binns, 397 Pa. Super. 492, 499, 580 A.2d 405, 408 (1990); Kovaleski v. Esther Williams Swimming Pools, 345 Pa. Super. 95, 103, 497 A.2d 661, 665 (1985). Under that prior practice, both the plaintiff and the additional defendant could oppose the late joinder on the ground that the defendant had not established some reasonable justification for the delay. White, supra; Exton Development, supra.

Effective January 6, 2005, Rule 2253 was amended to delete the “upon cause shown” language that was previously contained in the former rule. Chelland v. Siegfried,



2011 WL 7169426, at \*3 (Lacka. Co. 2011). Subparagraph (b) of current Rule 2253 states that “[a]ny party may object to a motion to join an additional defendant after the period prescribed...on the ground that the party will be prejudiced by the late joinder,” but only the “plaintiff may also object to the late joinder on the ground that the joining party has not shown a reasonable justification for its delay in commencing joinder proceedings.” Pa.R.C.P. 2253(b). As the Explanatory Comment accompanying the 2005 amendments to Rule 2253 clearly states:

New subdivision (b) governs the procedure by which a party may object to a proposed late joinder of an additional defendant. Any party may object to the motion to join on the ground of prejudice. However, only the plaintiff may object on the ground of the absence of some reasonable justification for the delay in commencing the joinder proceeding.

Pa.R.C.P. 2253, Explanatory Comment (2005). Thus, only the Lemoncellis may object to Newell Rubbermaid’s proffered joinder based upon the absence of some reasonable justification for the delay in seeking joinder. *See Chelland, supra*.

The Lemoncellis do not oppose Newell Rubbermaid’s motion to join Schrader-Bridgeport as an additional defendant. (T.P. 12/1/16 at p. 43). Therefore, it is unnecessary to consider whether Newell Rubbermaid has “shown a reasonable justification for its delay in commencing joinder proceedings,” and the sole issue to be addressed is whether Schrader-Bridgeport will be prejudiced by the proposed joinder. Pa.R.C.P. 2253(b). The prejudice contemplated by Rule 2253 does not include the newly joined party’s exposure to liability which naturally flows from any joinder, and instead requires an independent detriment such as the loss of material evidence during the period of delay or the inability to participate in concluded discovery or to conduct discovery anew due to an impending trial date. *See Prime Properties Development Corp., 397 Pa.*

Super. at 506, 580 A.2d at 412; Welch Foods, Inc. v. Bishopric Products Company, 254 Pa. Super. 256, 261, 385 A.2d 1007, 1009-10 (1978).

Discovery remains pending in this matter and no party has filed a Certificate of Readiness seeking to have this case assigned to a judge and thereafter scheduled for trial. (T.P. 12/1/16 at p. 37). The product testing that has been accomplished to date was conducted in the presence of Schrader-Bridgeport's Director of Product Engineering and in accordance with testing protocol acceptable to Schrader-Bridgeport. Moreover, the propane cylinder and valve are amenable to further testing if Schrader-Bridgeport wishes to conduct additional examinations of them. (T.P. 12/1/16 at pp. 39-41).

The record submitted by the parties does not reflect any independent detriment that Schrader-Bridgeport will suffer if Newell Rubbermaid's joinder request is granted. *See, e.g., Prime Properties Development Corp.*, 397 Pa. Super. at 506, 580 A.2d at 412 (prejudice from late joinder exists where "the case is already listed on the trial list, and any discovery, whether depositions, including the deposition of [additional defendant] himself, or photographs, was obtained without the best interest of [additional defendant] in mind," the additional defendant "was not represented by counsel when his deposition was taken," and he "cannot go back and obtain his own photographs of the allegedly faulty framing which no longer exists."). Since the Lemoncellis have not objected to Newell Rubbermaid's proposed joinder on the basis that there is no reasonable excuse for Newell Rubbermaid's delay in filing its joinder request, the motion for leave to join Schrader-Bridgeport as an additional defendant may be denied only if Schrader-Bridgeport would suffer the requisite prejudice from the untimely joinder. Based upon the

absence of any such prejudice, Newell Rubbermaid's motion to join Schrader-Bridgeport as an additional defendant will be granted.

PETER LEMONCELLI and LORINE  
LEMONCELLI, his wife,

Plaintiffs

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NEWELL RUBBERMAID, INC.,

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SCHRADER INTERNATIONAL, INC.  
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subsidiary of SENSATA TECHNOLOGIES  
HOLDING N.V.); SENSATA  
TECHNOLOGIES HOLDING N.V., a/k/a  
SENSATA TECHNOLOGIES, INC., f/n/a,  
d/b/a SCHRADER INTERNATIONAL, INC.,  
and SENSATA TECHNOLOGIES  
HOLDING N.V., as successor in interest to  
and/or parent of SCHRADER  
INTERNATIONAL, INC.,

Additional Defendants

: IN THE COURT OF COMMON PLEAS  
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**ORDER**

AND NOW, this 24th day of January, 2017, upon consideration of the preliminary objections of additional defendants, Schrader International, Inc., Sensata Technologies Holding N.V., and Sensata Technologies, Inc., the motion of defendant, Newell Rubbermaid, Inc., for leave to join Schrader-Bridgeport International, Inc., as an additional defendant, the exhibits and memorandum of law submitted by the parties, the

oral argument of counsel on December 1, 2016, and the parties' stipulation filed on December 27, 2016, and based upon the reasoning set forth in the foregoing memorandum, it is hereby ORDERED and DECREED that:

1. By stipulation of the parties, the preliminary objections of additional defendants, Schrader International, Inc., Sensata Technologies Holding N.V., and Sensata Technologies, Inc., are SUSTAINED and the joinder complaint that was filed by defendant, Newell Rubbermaid, Inc., on May 25, 2016, is STRICKEN;

2. Schrader International, Inc. (individually, and as wholly-owned subsidiary of Sensata Technologies Holding N.V.), Sensata Technologies Holding N.V., a/k/a Sensata Technologies, Inc., f/n/a, d/b/a Schrader International, Inc., and Sensata Technologies Holding N.V., as successor in interest to and/or parent of Schrader International, Inc., shall be removed as named additional defendants in the caption of this matter;

3. "Defendant, Newell Rubbermaid, Inc.'s Motion for Leave to Join Schrader-Bridgeport International, Inc." as an additional defendant pursuant to Pa.R.C.P. 2253 is GRANTED; and

4. In accordance with Pa.R.C.P. 2253(a)(2), defendant, Newell Rubbermaid, Inc., shall file a joinder complaint against Schrader-Bridgeport International, Inc., within twenty (20) days of the date of this Order.

BY THE COURT:

  
Terrence R. Nealon

cc: *Written notice of the entry of the foregoing Memorandum and Order has been provided to each party pursuant to Pa. R. C. P. 236 (a)(2) and (d) by transmitting time-stamped copies via electronic mail to:*

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