

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LIN-CHUNG YANG, and MIAOTANG WANG  
YANG,

No. C 09-3823 SI

Plaintiffs,

**ORDER DENYING SWISSPORT USA,  
INC.'S MOTION FOR LEAVE TO FILE  
A MOTION FOR RECONSIDERATION**

v.

SWISSPORT USA, INC., *et al.*,

Defendants.

NEW HAMPSHIRE INSURANCE COMPANY,

Plaintiff-in-Intervention,

v.

SWISSPORT USA, INC., *et al.*,

Defendants.

Defendant Swissport USA, Inc. has filed a motion for leave to file a motion for reconsideration of the Court's July 6, 2010 Order Granting Plaintiffs' Motion for Leave to File a Second Amended Complaint and Remanding Case to the Superior Court for the County of San Francisco. In that order, the Court held that joinder of four new defendants was appropriate, and because plaintiffs and newly-added defendants Todaro and Banzon were not diverse, the case should be remanded. Defendant contends that reconsideration is warranted because after the Court filed the order, defendant learned that plaintiffs are residents of Taiwan, not California, and thus plaintiffs and defendants Todaro and Banzon

1 are diverse.<sup>1</sup> Although it is correct that plaintiffs' Taiwanese domicile alters the joinder and  
2 jurisdictional analysis with regard to defendants Todaro and Banzon, the Court concludes that remand  
3 is still proper because plaintiff-intervener New Hampshire Insurance Co. is non-diverse to defendant  
4 Hall Industries, Inc. ("Hall Industries"). For the reasons set forth below, the Court DENIES defendant's  
5 motion for leave to file for reconsideration.<sup>2</sup>

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7 **I. Joinder of Hall Industries, Inc.**

8 Plaintiffs originally sought joinder of all of the newly-added defendants, including Hall  
9 Industries, pursuant to 28 U.S.C. § 1447(e). The Court's July 6, 2010 order found it unnecessary to  
10 analyze the joinder of Hall Industries under 28 U.S.C. § 1447(e), and instead analyzed the propriety of  
11 permissive joinder of Hall Industries under Federal Rule of Civil Procedure 20. In light of the fact that  
12 plaintiffs are Taiwanese residents, and because later-joined defendants must also be diverse to  
13 intervening plaintiffs<sup>3</sup> in actions where subject matter jurisdiction is predicated solely on diversity, the  
14 Court now analyzes the joinder of Hall Industries under 28 U.S.C. § 1447(e). *See* 28 U.S.C. § 1367(b);  
15 *Development Fin. Corp. v. Alpha Housing & Health Care, Inc.*, 54 F.3d 156, 159-60 (3d Cir. 1995);  
16 *Mattel, Inc. v. Bryant*, 441 F. Supp. 2d 1081, 1094, 1098 (C.D. Cal. 2005).

17 When evaluating joinder under § 1447(e), a court should consider (1) whether the party plaintiff  
18 seeks to join is required for just adjudication and would be joined under Fed. R. Civ. P. 19(a); (2)  
19 whether the statute of limitations would bar an action against defendant in state court; (3) whether the  
20 joinder is untimely, or there has been an unexplained delay in its request; (4) whether joinder is intended  
21 solely to destroy diversity jurisdiction, (5) whether the claims against the new defendants appear valid;

22  
23 <sup>1</sup> Counsel accuse each other of making misrepresentations to each other and the Court, and  
24 defense counsel seeks sanctions. On this record, the Court does not find that sanctions are appropriate.  
25 Although plaintiffs' reply brief did not correct defense counsel's mistaken belief that plaintiffs were  
citizens of California, plaintiffs' motion to amend asserted that it was the joinder of Hall that destroyed  
diversity.

26 <sup>2</sup> The Court incorporates the facts and legal standard as laid out in its Order Granting Plaintiffs'  
27 Motion for Leave to File Second Amended Complaint. (Docket No. 45).

28 <sup>3</sup> Intervenor-plaintiff New Hampshire Insurance Company and proposed defendant Hall  
Industries, Inc. are both Pennsylvania citizens.

1 and (6) whether denial of joinder will prejudice the plaintiff. *IBC Aviation Servs., Inc. v. Compania*  
2 *Mexicana de Aviacion, S.A. de C.V.*, 125 F. Supp. 2d 1008, 1011 (N.D. Cal. 2000) (citing *Palestini*, 193  
3 F.R.D. 654, 658 (S.D. Cal. 2000)).

4 With respect to the first factor, the Court finds that the joinder of Hall Industries is necessary for  
5 just adjudication under Fed. R. Civ. P. 19(a). Plaintiffs allege that Yang was injured as a proximate  
6 result of Hall Industries and/or Clyde Machines' negligent design and manufacture of the towbar, and  
7 in connection with their motion to amend plaintiffs submitted evidence suggesting that Hall Industries  
8 manufactured the towbar at issue. In general, a party is deemed necessary if its failure to join would  
9 lead to redundant litigation in separate forums. *IBC*, 125 F. Supp. 2d at 1012. Whether Hall Industries  
10 or Clyde Machines manufactured the allegedly defective towbar is a disputed question that can only be  
11 resolved after discovery. As there is a possibility that Hall Industries proximately caused plaintiff's  
12 injury, joinder of Hall Industries is necessary to the full and just resolution of plaintiffs' claims.  
13 Moreover, permitting joinder of diverse defendants Todaro, Banzon, and Clyde Machines in federal  
14 court, while forcing plaintiffs to litigate against Hall Industries in state court, would result in redundant  
15 litigation and an unnecessary drain on judicial resources.

16 With respect to the second factor, the statute of limitations has not yet expired. As the Court  
17 explained in its July 6, 2010 order, although this factor weighs slightly against joinder, this factor is not  
18 decisive.

19 Regarding the third factor of whether joinder is untimely, the Court's analysis remains  
20 unchanged. Plaintiffs have provided a reasonable explanation for their delay in seeking to amend, and  
21 no dispositive motions have been filed. In addition, plaintiffs filed their motion to amend before the  
22 May 28, 2010 deadline for such motions.

23 With respect to the fourth factor, the motive for joinder, the Court's analysis also remains  
24 unchanged. Hall Industries potentially played a material role in causing plaintiffs' injury, and as such  
25 is a necessary party in plaintiffs' claim. The Court additionally finds no evidence suggesting that  
26 plaintiffs acted with any improper motive in seeking to join a non-diverse defendant. For this reason,  
27 this factor weighs in favor of joinder.

28 The fifth factor, the merit of plaintiffs' claims, also weighs in favor of joinder. Under California

1 law, to state a valid claim for strict products liability, a plaintiff must allege that a defect in the  
2 manufacture or design of a product “causes injury while the product is being used in a reasonably  
3 foreseeable way.” *Soule v. Gen. Motors Corp.*, 34 Cal. Rptr. 2d 607, 612 (Cal.1994). As discussed  
4 above, plaintiffs assert that plaintiff Yang was injured as a proximate result of Hall Industries and/or  
5 Clyde Machines’ negligent design and manufacture of the towbar; that the towbar was being used in a  
6 foreseeable way; and that Yang was unaware of any defect. Plaintiffs have asserted a valid claim for  
7 relief against Hall Industries.

8 Finally, the Court finds that the denial of joinder would prejudice plaintiffs because the claims  
9 against Hall Industries are closely connected to the claims alleged against the original defendant such  
10 that denial of joinder would force the plaintiff to choose whether to pursue redundant litigation in state  
11 court or forego the claim entirely. *See IBC*, 125 F. Supp. 2d at 1013.

12 Weighing the six factors collectively, the Court finds that with the exception of the statute of  
13 limitations, all of the factors weigh in favor of joinder. Accordingly, the Court finds that joinder of Hall  
14 is appropriate under § 1447(e).

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16 **II. Joinder of Todaro, Banzon, and Clyde Machines, Inc.**

17 Defendants Todaro, Banzon, and Clyde Machines are each diverse to both plaintiffs and  
18 plaintiff-intervener. For this reason, their joinder is analyzed under Fed. R. Civ. P. 20. *Desert Empire*  
19 *Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1374 (9th Cir. 1980). Under Rule 20, defendants may be  
20 joined if: (1) a right to relief arising out of the same transaction or occurrence is asserted; and (2) a  
21 question of law or fact common to all parties arises in the action. *Desert Empire*, 623 F.2d at 1374.  
22 Plaintiffs allege that Todaro, Banzon, and Clyde Machines all directly contributed to plaintiff’s injury  
23 during the same incident, and the claims against them thus arise out of the same transaction. Moreover,  
24 as plaintiffs allege that Todaro, Banzon, Clyde Machines, Hall Industries, and Swissport caused the  
25 same injury, common issues of proximate causation exist amongst all the parties to this action.  
26 Accordingly, the Court finds the joinder of Todaro, Banzon, and Clyde Machines appropriate.

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**CONCLUSION**

For the foregoing reasons, the Court finds no reason to alter its previous ruling and hereby DENIES defendant's motion for leave to file a motion for reconsideration. (Docket No. 47).

**IT IS SO ORDERED.**

Dated: August 13, 2010

  
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SUSAN ILLSTON  
United States District Judge