

STATE OF MAINE  
CUMBERLAND, ss.

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CLERK'S OFFICE  
2002 NOV 19 P 2:04 RAC-CUM-11/19/2002  
SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-96-321

PAULINE HODGE and STEPHEN HODGE,

Plaintiffs

v.

JOHNSON & JOHNSON MEDICAL, INC., ET AL.

Defendant

DONALD L. GARBRECHT  
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DEC 3 2002

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OWENS & MINOR, INC. and STUART MEDICAL, INC.,  
Defendants and Third-Party Plaintiffs

v.

ORDER

AMERICAN HEALTH PRODUCTS CORP., ET AL.

Third-Party Defendant

Before this court is American Health Products Corp.'s Motion to Dismiss pursuant to M.R.Civ.P. 7(b) & 16(a) an Amended Third-Party Complaint filed by Owens & Minor, Inc. and Stuart Medical, Inc.

### FACTS

Pauline Hodge was employed as a nurse. In the course of her work, she claimed that she used latex gloves, which caused her to suffer an allergic reaction and become totally disabled. As a result of her injuries, she and her husband, the original Plaintiffs, filed a suit on April 2, 1996 against Johnson & Johnson, Co., a

manufacturer of latex gloves.<sup>1</sup> On May 30, 1997, this court revised the scheduling order so that June 10, 1997 was the last day to join additional parties, also noting that "Deadlines will not be extended again." On June 6, 1997, the Plaintiffs filed a Motion to Amend Complaint, which among other things, added as defendants, Owens & Minor, Inc. and Stuart Medical, Inc., companies that distributed latex gloves to hospitals. This court granted the Motion to Amend Complaint on July 8, 1997. Hence, Owens & Minor, Inc. and Stuart Medical Inc. (Third-Party Plaintiffs) were served process on July 18, 1997. After answering the Amended Complaint, the Third-Party Plaintiffs filed a third-party Complaint on March 22, 2002, also later amended, against American Health Products Corp. (Third-Party Defendant), a manufacturer of latex gloves, claiming indemnity, contribution and express indemnity as well as seeking declaratory relief.

### DISCUSSION

The Third-Party Defendant seeks to dismiss the Third-Party Amended Complaint because it was filed more than four years after the deadline set in the Revised Scheduling Order (RSO) issued by this court on May 30, 1997. Pursuant to M.R.Civ.P. 16(a) "[t]he joinder of additional parties after the scheduling order has issued shall not require a modification of the scheduling order except on motion for good cause shown." Accordingly, under normal circumstances the Third-Party Plaintiffs would have had to file a motion showing good cause to modify the RSO. However, in the present case, the deadline set in the RSO to

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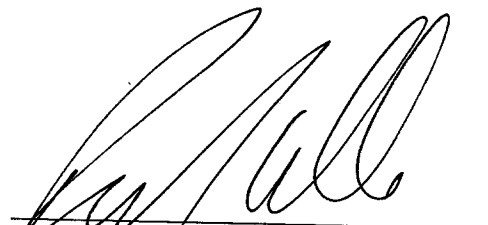
<sup>1</sup> The issues in the Plaintiffs' suit are similar to those in federal multidistrict litigation, MDL Docket No. 1148, in which the United States District Court for the Eastern District of Pennsylvania is coordinating discovery and other pretrial matters for over two hundred and fifty pending latex gloves product liability cases. See <http://www.paed.uscourts.gov/mdl1148.shtml>. On July 11, 1997, this court ordered that the present case be coordinated with the abovementioned MDL docket.

join new parties had already expired before the Third-Party Plaintiffs were made parties to the suit. Furthermore, per the RSO the Third-Party Plaintiffs had no way to have the deadline extended. Therefore, as a matter of fairness this court cannot deprive the Third-Party Plaintiffs of procedural rights afforded other parties.

The Third-Party Plaintiffs have persuaded this court that under the circumstances they acted in a relatively timely manner in seeking to involve the Third-Party Defendant in defending its manufacturing processes. Moreover, because the Third-Party Defendant is a national manufacturing defendant in the MDL and has participated in generic MDL discovery, little prejudice will result given that local discovery is still ongoing, e.g., the Third Party Defendant can still participate in deposing the Plaintiff and her co-workers. Finally, as the Superior Court in San Diego County, California has stated, there is a strong public policy in favor of resolving latex glove cases on the merits in a single proceeding as opposed to granting a motion to dismiss because cross-defendants were served in an untimely manner. See Dutton v. Baxter Healthcare, Corp., No. JCCP 4003-032 (Super. Ct. San Diego County, Cal., June 29, 2000).<sup>2</sup>

WHEREFORE this court will **DENY** the Third-Party Defendant's Motion to Dismiss.

Dated: November 19, 2002

  
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Roland A. Cole  
Justice, Superior Court

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<sup>2</sup> In this case the court mitigated prejudice by extending discovery. See [http://www.sandiego.courts.ca.gov/jccp/latex/orders/tr000629\\_032.html](http://www.sandiego.courts.ca.gov/jccp/latex/orders/tr000629_032.html).

Date Filed 04-01-96

Cumberland  
County

Docket No. CV 96-321

BIOSAFTEY SYSTEMS INC, HAND CARE INC  
AMERICAN HEALTH PRODUCTS CO. (t/p c  
HPI INC, SMITH & NEWPHEW AHP INC,  
SAFESKI CORP, TYCO HEALTHCARE GROUP

Action Personal Injury

PAULINE HODGE  
STEPHEN HODGE

Robert Mittelholzer  
Esq. (TPD Hand Care)  
369 Lafayette Road  
Hampton, NH 03842  
603-926-7455

(TYCO)

vs. VHA CORPORATION

Jason International In

JOHNSON & JOHNSON Medical, Inc.  
TILLOTSON HEALTHCARE CORP.  
MEDIGUARD CORP. STUART MEDICAL, I  
JASON MARKETING CORP. OWENS & MINOR, I  
BECTON DICKINSON & Company  
ANSELL INC.

Plaintiff's Attorney

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Defendant's Attorney

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773-0333

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(Owens & Minors Inc)

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(617) 720-2700

WILLIAM KNOWLES (Tillotson)  
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PO BOX 568 772-6565 (Owens)  
& Robert Redmond  
PM 04112-0568

THEODORE H. KIRCHNER, ESQ  
JAMES POLIQUIN, BARRY EPSTEIN, STUART  
FEINBLATT, BETH ROSE, ESQS. (Becton)  
PO BOX 4600, PM 04112-4600 774-7000

Date of  
Entry

1996  
Apr. 2

Two James Ctr, 1021 East Cary Street  
Richmond VA 23219  
Received on 04-01-96:  
Complaint filed.

JOHN RICH, RICHARD DUFFY, LUIS BERRONES,  
ARTHUR SCHELLER, NANCY LAETHEM, Esqs.  
PO BOX 426 PM 04112-0426 (VHA)  
& Ansell Inc.  
KENNETH PIERCE ESQ. (AMER. HEALTH)

May 7

Received 05-06-96:  
Plaintiffs' motion to Amend Complaint filed.

" "

Plaintiffs' Motion to Admit William Sheridan Pro Hac Vice filed.

" "

Verified Pro Hac Vice Application for Admission of William A. Sheridan filed.

" "

Plaintiffs' First Amended Complaint filed.

May 31

Received 05-30-96:  
Order Admitting William Sheridan Pro Hac Vice filed. (Brodrick,  
J.)

Attorney William A. Sheridan is hereby admitted pro hoc vice  
pursuant to Rule 89(b) of the Maine Rules of Civil Procedure  
and motion filed by Dynthia Dill, Esq. dated May 3, 1996.

" "

Order filed. (Brodrick, J.)

Plaintiffs' Motion to Amend Complaint is hereby allowed pursuant  
to M.R.Civ.P. 15(a).

On 05-31-96: Copies mailed to William Sheridan and Cynthia Dill,  
Esqs.

June 27

Received 06-26-96:  
Summonses filed.  
Defendant Jason Marketing Corp., served on 6-14-96.  
Defendant VHA Corporation served on 6-19-96.  
Defendant Tillotson Healthcare Corp. served on 6-21-96.  
Defendant Johnson & Johnson Co. served on 6-20-96.

June 27

Received 06/27/96:  
Summons filed.  
Defendant Becton Dickinson Corp. served 06/24/96 to Marianne  
Iacobelli, Legal Sec.

July 10

Received 07-10-96:  
Defendant Johnson & Johnson's Answer and Cross-Claim filed.