

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA

AMY GILBERT, p/n/g of B.G., a minor, :  
Plaintiff, : No. CV 21-00,169  
 :  
vs. :  
 :  
UPMC WILLIAMSPORT, WILLIAMSPORT : CIVIL ACTION - LAW  
HOSPITAL, and SUSQUEHANNA HEALTH :  
SYSTEM, and GEISINGER MEDICAL :  
CENTER, :  
Defendants, :  
 :  
CHARLES D. LAMADE, M.D., JENNIFER P. :  
VASINDA, D.O. and PHILIP R. BYLER, M.D., :  
Additional Defendants. :

**OPINION AND ORDER**

AND NOW, this 16<sup>th</sup> day of September 2024, upon consideration of the preliminary objections filed by Additional Defendants Charles D. Lamade, M.D.<sup>1</sup> and Philip R. Byler, M.D.<sup>2</sup> to the Defendants' Joinder Complaint,<sup>3</sup> the various responses<sup>4</sup>

<sup>1</sup> Preliminary Objections of Additional Defendant, Charles D. Lamade, M.D., to the Joinder Complaint of Defendants, UPMC Williamsport, The Williamsport Hospital, and Susquehanna Health System, filed April 16, 2024 (the "Lamade Preliminary Objection").

<sup>2</sup> Additional Defendant, Philip R. Byler, M.D.'s Preliminary Objections to the Joinder Complaint of Defendants UPMC Williamsport, The Williamsport Hospital, and Susquehanna Health System, filed March 7, 2024 (the "Byler Preliminary Objections").

<sup>3</sup> Complaint of Defendants UPMC Williamsport, The Williamsport Hospital, and Susquehanna Health System Joining Additional Defendants Charles D. Lamade, M.D., Jennifer P. Vasinda, D.O. and Phillip R. Byler, M.D., filed November 8, 2023 (the "Joinder Complaint"). Additional Defendant Vasinda also filed preliminary objections to the joinder complaint, see Preliminary Objections of Additional Defendant, Jennifer P. Vasinda, D.O., to the Joinder Complaint of Defendants, UPMC Williamsport, the Williamsport Hospital and Susquehanna Health System, filed February 13, 2024; however, those preliminary objections have been withdrawn. See Praecipe to Withdraw Preliminary Objections of Additional Defendant, Jennifer P. Vasinda, D.O., to the Joinder Complaint of Defendants, UPMC Williamsport, the Williamsport Hospital and Susquehanna Health System, filed May 15, 2024. Shortly thereafter, Defendant Geisinger Medical Center and Additional Defendant Jennifer P. Vasinda, D.O. were dismissed from this case. See Order dated May 22, 2024 and entered May 23, 2024.

<sup>4</sup> The parties filed the following responses to the outstanding preliminary objections: (i) Answer in Opposition of Defendant Susquehanna Health System to Preliminary Objections of Additional Defendant Philip R. Byler, D.O. to Joinder Complaint filed November 8, 2023, filed April 1, 2024 (the "SHS Response to Byler"); (ii) Reply of Defendants, UPMC Williamsport and Williamsport Hospital, in Opposition to Preliminary Objections of Additional Defendant, Philip R. Byler, M.D., to Joinder Complaint of Defendants, UPMC Williamsport, Williamsport Hospital and Susquehanna Health System, filed April 2, 2024 (the "UPMC Response to Byler"); (iii) Reply of Defendants, UPMC Williamsport and Williamsport Hospital, in Opposition to Preliminary Objections of Additional

of the parties, and the briefs<sup>5</sup> and arguments<sup>6</sup> of the parties, it is hereby ORDERED and DIRECTED that the preliminary objections are OVERRULED.

### **I. BACKGROUND.**

Plaintiff commenced this professional liability action by Writ of Summons on March 1, 2021.<sup>7</sup> Subsequently, she filed her Complaint on April 29, 2021.<sup>8</sup> Plaintiff alleges that she is the parent and natural guardian of B.G., a minor born in 2008.

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Defendant, Charles D. Lamade, M.D., to Joinder Complaint of Defendants, UPMC Williamsport and Williamsport Hospital, filed April 23, 2024 (the "UPMC Response to Lamade"); (iv) Answer in Opposition of Defendant Susquehanna Health System to Preliminary Objections of Additional Defendant Charles D. Lamade, M.D. to Joinder Complaint filed November 8, 2023, filed April 23, 2024 (the "SHS Response to Lamade"); (v) Plaintiff's Response to Preliminary Objections of Additional Defendant Charles D. Lamade, M.D. to Joinder Complaint of Defendants, UPMC Williamsport, Williamsport Hospital and Susquehanna Health System, filed May 6, 2024 ("Plaintiff's Response to Lamade"); and (vi) Plaintiff's Response to Preliminary Objections of Additional Defendant Philip R. Byler to Joinder Complaint of Defendants, UPMC Williamsport, Williamsport Hospital and Susquehanna Health System, filed May 8, 2024 ("Plaintiff's Response to Byler").

<sup>5</sup> The parties filed the following briefs: (i) Brief in Support of Additional Defendant, Philip R. Byler, M.D.'s Preliminary Objections to the Joinder Complaint of Defendants UPMC Williamsport, The Williamsport Hospital, and Susquehanna Health System, filed March 7, 2024 (the "Byler Brief"); (ii) Memorandum of Law in Support of the Preliminary Objections of Additional Defendant [Lamade] to the Joinder Complaint of Defendants, filed April 16, 2024 (the "Lamade Brief"); (iii) Memorandum of Law of Defendants, UPMC Williamsport and Williamsport Hospital, in Support of Response in Opposition to Preliminary Objections of Additional Defendant, Charles D. Lamade, M.D., to Joinder Complaint, filed April 29, 2024 ("UPMC Brief Opposing Lamade"); (iv) Brief in Opposition of Defendant Susquehanna Health System to Preliminary Objections of Additional Defendant Philip R. Byler, MD. to Joinder Complaint filed November 8, 2023, filed May 8, 2024 ("SHS Brief Opposing Byler"); (v) Brief of Defendants, UPMC Williamsport and Williamsport Hospital, in Support of Opposition to Preliminary Objections of Additional Defendant, Philip R. Byler, M.D., to Joinder Complaint of Defendants UPMC Williamsport, Williamsport Hospital, and Susquehanna Health System, filed May 9, 2024 ("UPMC Brief Opposing Byler"); and (vi) Reply of Additional Defendant Charles D. Lamade, M.D., to the Answer in Opposition to Preliminary Objections of Additional Defendant Charles D. Lamade, M.D. to Joinder Complaint of Defendants Susquehanna Health System, UPMC Williamsport and Williamsport Hospital, filed May 16, 2024 ("Reply Brief of Lamade").

<sup>6</sup> The Court heard argument on the Byler Preliminary Objections and the Lamade Preliminary Objection on May 16, 2024. Scheduling Order dated March 11, 2024 and entered March 12, 2024; Scheduling Order dated April 19, 2024 and entered April 22, 2024. Additional Defendants were represented at argument by Nicole E. Tanana, Esq., for Dr. Byler, and Evan Baker, Esq., for Dr. Lamade. Defendants were represented by Marcy B. Tanker, Esq., for UPMC Williamsport and Williamsport Hospital (collectively, "UPMC"), and Brian J. Bluth, Esq. and Stephen C. Hartley, Esq., for Susquehanna Health System ("SHS"). Plaintiff did not appear, as she previously informed the Court that she did not take any position on any of the preliminary objections or any of the responses to them. Plaintiff's Response to Byler; Plaintiff's Response to Lamade. The remaining Defendant and Additional Defendant did not appear, having both been dismissed from the case shortly prior to argument. See, *supra*, n.3.

<sup>7</sup> Praecipe for Writ of Summons, filed March 1, 2021; Writ of Summons, issued March 1, 2021. See also Pa. R. Civ. P. 1007 ("An action may be commenced by filing with the prothonotary: (1) a praecipe for a writ of summons, or (2) a complaint").

<sup>8</sup> Complaint, filed April 29, 2021 (the "Complaint").

Fundamentally, she contends that the Defendants, by and through their agents, servants, and employees, provided improper and negligent pre-natal and post-natal treatment to herself and to B.G., such that B.G. was born prematurely and has suffered severe and continuing injuries and damages.<sup>9</sup> She makes vicarious liability claims against the Defendants based upon the negligence of their agents.<sup>10</sup>

Defendants duly filed answers denying any wrongdoing.<sup>11</sup> Subsequent to discovery, SHS moved for leave to join the Additional Defendants as parties.<sup>12</sup> The motion, being uncontested,<sup>13</sup> the Court granted leave to join the Additional Defendants.<sup>14</sup> Thereafter, Defendants filed the Joinder Complaint, wherein they assert that, if Plaintiff proves her allegations at trial, Additional Defendants are solely liable to Plaintiff, and/or are jointly and severally liable with Defendants, and/or are liable over to Defendants for indemnity and/or contribution.<sup>15</sup>

Subsequent to service of the Joinder Complaint, Additional Defendants filed their preliminary objections.<sup>16</sup> Defendants responded to them, and the parties submitted their respective briefs and arguments. Accordingly, the Byler Preliminary Objections and the Lamade Preliminary Objection are ripe for disposition.

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<sup>9</sup> *Id.* The alleged improper pre-natal and post-natal care pertained both to Plaintiff's pregnancy with B.G. and to her previous pregnancy in 2002.

<sup>10</sup> *See id.*, Count I (Plaintiff v. UPMC), Count II (Plaintiff v. Williamsport Hospital), Count III (Plaintiff v. Susquehanna Health System), Count IV (Plaintiff v. Geisinger Medical Center).

<sup>11</sup> *See* Answer and New Matter of Defendants UPMC Williamsport and Williamsport Hospital, filed May 19, 2023; Answer with New Matter of Defendant Susquehanna Health System to Plaintiff's Complaint. Plaintiff replied to SHS's New Matter, Plaintiff's Reply to New Matter of Defendant Susquehanna Health System to Plaintiff's Complaint, filed July 12, 2023, but not to UPMC's.

<sup>12</sup> Motion of Defendant Susquehanna Health System for Leave to Join Additional Defendants, filed October 23, 2023.

<sup>13</sup> *Id.* *See also* the Certificates of Concurrence filed contemporaneously with the Motion for Leave to Join Additional Defendants.

<sup>14</sup> Order, dated and entered October 24, 2023.

<sup>15</sup> Joinder Complaint.

<sup>16</sup> "Where an ex parte motion to join a third-party defendant out of time has been granted, the late-joined party may challenge the late joinder through preliminary objections." *Bester v. Essex Crane Rental Corp.*, 619 A.2d 304, 305 (Pa. Super. 1993) (citing *Prime Properties Development Corp. v. Binns*, 580 A.2d 405 (Pa. Super. 1990)).



### ***A. The Byler Preliminary Objections.***

Dr. Byler alleges two preliminary objections against the Joinder Complaint. First, he moves to dismiss the Joinder Complaint pursuant to Rules 1028(a)(4) and 2253(c), Pennsylvania Rules of Civil Procedure.<sup>17</sup> In support of this objection, Dr. Byler states that Defendants filed their Joinder Complaint well after the time afforded them to do so of right; that Defendants have not met their burden of establishing reasonable justification for the late joinder; that Defendants were aware of the Plaintiff's claims more than two years before joining Additional Defendants; that the Joinder Complaint fails to conform to law or rule of court and is legally insufficient in that it fails to allege facts rendering Additional Defendants liable; that Additional Defendant will be prejudiced if joined, in that he has been unable to participate in the preceding two years of discovery, in that he has lived in Africa for twenty years and has limited physical availability, and in that he does not have access to records from more than twenty years ago.<sup>18</sup>

In response, SHS argues that "Dr. Byler has not been prejudiced in any way by when any pleading was filed [and] is not entitled to any relief on his preliminary objections."<sup>19</sup> SHS argues that only the Plaintiff may object to late joinder of an additional defendant on the ground that the joining party has not shown a reasonable justification for the delay; that Plaintiff has consented to this joinder; that our rules of pleading permit factual allegations of another pleading to be incorporated by reference into a subsequent pleading; that Dr. Byler has suffered no

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<sup>17</sup> Pa. R. Civ. P. 1028(a)(4) permits a preliminary objection for legal insufficiency of a pleading (demurrer). Pa. R. Civ. P. 2253(c) permits a person not previously a party who is joined as an additional defendant to file a preliminary objection alleging prejudice or any other ground permitted by Pa. R. Civ. P. 1028.

<sup>18</sup> Byler Preliminary Objections, ¶¶ 25-41.

<sup>19</sup> SHS Response to Byler, ¶ 21.

prejudice because written discovery has not been completed, depositions have not been taken, expert reports have not been exchanged, and relevant deadlines for discovery and trial are months in the future. SHS further points out that the applicable statutes of limitations have not yet run, so Dr. Byler faces the same liability as he would face in a new action which could be commenced in the future, and that judicial economy favors bringing together all claims arising out of the same transactions and occurrences.<sup>20</sup> UPMC raises similar arguments as those raised by SHS.<sup>21</sup>

Secondly, Dr. Byler asserts a preliminary objection for failure to allege a cause of action pursuant to Rules 1028(a)(2), 1028(a)(3) and 1028(a)(4).<sup>22</sup> He contends the Joinder Complaint's negligence claim against him is legally insufficient because it fails to allege a cognizable legal duty that he owed Defendants and because it alleges no facts that would support a cause of action for negligence. Instead, the Joinder Complaint incorporates by reference the allegations of the Complaint. Dr. Byler maintains that such "open-ended and factually unsupported allegations of liability" are contrary to our rules of pleading.<sup>23</sup>

In response, SHS and UPMC both argue that the Joinder Complaint is legally sufficient and complies with applicable rules of pleading, and that factual allegations regarding Dr. Byler's alleged conduct and liability are incorporated into the Joinder Complaint by reference to the Complaint.<sup>24</sup>

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<sup>20</sup> *Id.*, ¶¶ 25-49.

<sup>21</sup> UPMC Response to Byler, ¶¶ 15-49.

<sup>22</sup> Pa. R. Civ. P. 1028(a)(2), 1028(a)(3) and 1028(a)(4) permit preliminary objections for failure to conform to law or rule of court, for insufficient specificity, and for legal insufficiency, respectively.

<sup>23</sup> Byler Preliminary Objections, ¶¶ 42-48.

<sup>24</sup> SHS Response to Byler, ¶¶ 42-49; UPMC Response to Byler, ¶¶ 42-49.

With respect to both preliminary objections, “Plaintiff takes no position of the Preliminary Objections or the response by any party to them” and requests that the Court “permit this matter to proceed to trial.”<sup>25</sup>

***B. The Lamade Preliminary Objection.***

Dr. Lamade asserts one preliminary objection to the Joinder Complaint. Like Dr. Byler, he complains that Defendants did not join him as an additional defendant within the time specified in Rules of Civil Procedure. He complains that the joinder complaint is legally insufficient, insufficiently specific, and fails to conform to law or rule of court.<sup>26</sup> Dr. Lamade makes arguments similar to those made by Dr. Byler regarding this objection, *i.e.*, that Defendants have known about this litigation and Dr. Lamade's involvement in Plaintiff's treatment since at least 2021; that Defendants have had the records of Plaintiff's treatment available to them; that Defendants have not provided any justification for their late joinder of Dr. Lamade; that Defendants bear the burden of establishing proper grounds for joinder, a reasonable justification for the delay, and the absence of prejudice to the original plaintiff; that Defendants have no reasonable excuse for their delay in joining Dr. Lamade as an additional defendant; and that joinder would be unduly and unfairly prejudicial to Dr. Lamade, most particularly because the treatment at issue occurred in 2002 and 2008 and because Dr. Lamade has been deprived of two and a half years of discovery.<sup>27</sup>

SHS and UPMC both responded with arguments similar to those raised in their responses to the Byler Preliminary Objections. Specifically, they contend that

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<sup>25</sup> Plaintiff's Response to Byler.

<sup>26</sup> Lamade Objection, ¶¶ 1-23. See Pa. R. Civ. P. 1028(a)(2), 1028(a)(3), 1028(a)(4), 2253; see also, *supra*, nn. 17, 22.

<sup>27</sup> Lamade Objection, ¶¶ 24-33.

the Joinder Complaint was filed with consent of all parties, including Plaintiff; that they are not required to prove any justification for the delay in joining Dr. Lamade as an additional defendant; that only Plaintiff may object on the basis that no reasonable justification was demonstrated; that Dr. Lamade has not, and cannot, demonstrate prejudice, because written discovery has not been completed, depositions have not occurred, expert reports have not been exchanged, discovery deadlines and trial are well in the future, and the statute of limitations on the applicable claims has not passed.<sup>28</sup> Moreover, Plaintiff, similarly, “takes no position of the Preliminary Objections or the response by any party to them” and requests that the Court “permit this matter to proceed to trial.”<sup>29</sup>

## **II. LAW AND ANALYSIS.**

When ruling on preliminary objections, a court accepts as true all well-pleaded averments within the challenged pleading, as well as any reasonable inferences which may be drawn therefrom;<sup>30</sup> however, the court need not accept conclusions of law, argumentative allegations or opinions.<sup>31</sup>

### **A. Joinder of Additional Defendants.**

The first Byler preliminary objection (the “First Byler Preliminary Objection”) and the Lamade Preliminary Objection seeks an Order barring their joinder as untimely. Joinder of additional defendants is governed by Rules 2251-2257, Pennsylvania Rules of Civil Procedure. Timeliness of joinder is governed by Rule 2253, which states as follows:

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<sup>28</sup> SHS Response to Lamade; UPMC Response to Lamade.

<sup>29</sup> Plaintiff’s Response to Lamade.

<sup>30</sup> *Preiser v. Rosenzweig*, 614 A.2d 303, 305 (Pa. Super. 1992).

<sup>31</sup> *Erie County League of Women Voters v. Com., Dep’t of Environmental Resources*, 525 A.2d 1290, 1291 (Pa. Commw. 1987) (citing *Ohio Casualty Group of Insurance Cos. v. Argonaut Insurance Co.*, 500 A.2d 191 (Pa. Commw. 1985)).



(a) Except as provided by Rule 1041.1(e) [pertaining to asbestos litigation], neither a praecipe for a writ to join an additional defendant nor a complaint if the joinder is commenced by complaint, shall be filed later than

(1) sixty days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof, or

(2) the time for filing the joining party's answer as established by Rule 1026 [pertaining to time for filing pleadings subsequent to the complaint], Rule 1028 [pertaining to preliminary objections] or order of court, whichever is later, unless such filing is allowed by order of the court or by the written consent of all parties approved by and filed with the court. The praecipe for a writ to join an additional defendant or the complaint joining the additional defendant shall be filed within twenty days after notice of the court order or the court approval of the written consent or within such other time as the court shall fix.

(b) Any party may object to a motion to join an additional defendant after the period prescribed by subdivision (a) on the ground that the party will be prejudiced by the late joinder. 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.

(c) A person not previously a party who is joined as an additional defendant may object to the joinder by filing preliminary objections asserting prejudice or any other ground set forth in Rule 1028.<sup>32</sup>

This Section requires additional defendants to be joined within a short, defined period of time, unless that time period is extended by order of court or by written consent of all parties with approval of the court.

The purpose of this limited time period is to expedite disposition of multi-party litigation.<sup>33</sup> The single time period is designed to protect plaintiffs from the delay attendant to successive joinder of additional defendants.<sup>34</sup> It is within the sound discretion of the trial court to determine whether there is sufficient cause to allow late

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<sup>32</sup> Pa. R. Civ. P. 2253.

<sup>33</sup> *NPW Medical Center of N.E. Penna., Inc. v. LS Design Group, P.C.*, 509 A.2d 1306, 1310 (Pa. Super. 1986) (citing *Zakian v. Liljestrand*, 264 A.2d 638, 641 (Pa. 1970)).

<sup>34</sup> *Exton Development v. Sun Oil Co. of Pennsylvania*, 525 A.2d 402, 404 (Pa. Super. 1987).



joinder,<sup>35</sup> and the decision will not be disturbed on appeal absent abuse of that discretion.<sup>36</sup>

Nevertheless, the court “should be guided by the objectives sought to be achieved by use of the additional defendant procedure.” ... 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.”<sup>37</sup>

“The rule permitting the joinder of additional defendants is to be broadly construed to effectuate its purpose of avoiding multiple lawsuits by settling in one action all claims arising out of the transaction or occurrence which gave rise to the plaintiff’s complaint.”<sup>38</sup> However, courts may deny a request for late joinder, *inter alia*, if the joinder is not based on proper grounds, if the party seeking joinder does not have some reasonable excuse for the delay, if the original plaintiff is prejudiced by the late joinder,<sup>39</sup> or if the proposed additional defendant is prejudiced.<sup>40</sup>

Instantly, the Defendants’ joinder proceedings were commenced more than two years after the time period specified in Rule 2253.<sup>41</sup> However, Defendants

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<sup>35</sup> *Kessock v. Conestoga Title Ins. Co.*, 194 A.2d 1046, 1051-52 (Pa. Super. 2018) (citing *Mutual Indus., Inc. v. Weinberg*, 621 A.2d 140, 143 (Pa. Super. 1993)).

<sup>36</sup> *NPW Medical Center, supra*, 509 A.2d at 1309. “An abuse of discretion is synonymous with a failure to exercise a sound, reasonable, and legal discretion. It is a strict legal term indicating that [an] appellate court is of opinion that there was commission of an error of law by the trial court. It does not imply intentional wrong or bad faith, or misconduct, nor any reflection on the judge, but means [a] clearly erroneous conclusion and judgment—one that is clearly against logic and [the] effect of such facts as are presented in support of the application or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing; an improvident exercise of discretion; an error of law.” *Com. v. Powell*, 590 A.2d 1240, 1249 n.8 (Pa. 1991) (quoting *Black’s Law Dictionary*, 5th Ed. (1979)).

<sup>37</sup> *Id.* (quoting *Zakian, supra*, 264 A.2d at 641).

<sup>38</sup> *202 Island Car Wash, L.P. v. Monridge Const., Inc.*, 913 A.2d 922, 926 (Pa. Super. 2006) (quoting *Svetz for Svetz v. Land Tool Co.*, 513 A.2d 403, 405 (Pa. Super. 1986) (citation omitted)).

<sup>39</sup> *Lawrence v. Meeker*, 717 A.2d 1046, 1048-1049 (Pa. Super. 1998) (citing *Francisco v. Ford Motor Co.*, 593 A.2d 1277, 1278 (Pa. Super. 1991)).

<sup>40</sup> *Id.* (citing *Binns, supra*, 580 A.2d at 405).

<sup>41</sup> Plaintiff filed her Complaint on April 29, 2021 and her Certificates of Merit on May 5, 2021. UPMC filed its Answer and New Matter on May 19, 2021, and SHS filed its Answer and New Matter on June 20, 2023. The Sheriff served UPMC and SHS with the writ of summons commencing this litigation on March 3, 2024, Sheriff’s Return, filed March 15, 2021, and Plaintiffs’ counsel served their attorney with the Complaint on April 28, 2021. Complaint, Certificate of Service. The due date for UPMC and SHS to file an answer or preliminary objections was May 18, 2021. See Pa. R. Civ. P. 1026

obtained filed consents of all parties<sup>42</sup> and approval of the Court<sup>43</sup> to file the Joinder Complaint, so the Joinder Complaint was filed in accordance with Rule 2253(a).

Moreover, a delay of more than two years, in and of itself, is not determinative as to whether joinder should be permitted.<sup>44</sup>

Drs. Byler and Lamade both complain that Defendants have not demonstrated reasonable justification for the delay in joinder.<sup>45</sup> SHS and UPMC respond that only Plaintiff can object on the basis that the joining party failed to show a reasonable justification for the delay.<sup>46</sup> Rule 2253(b) governs the matter:

(b) Any party may object to a motion to join an additional defendant after the period prescribed by subdivision (a) on the ground that the party will be prejudiced by the late joinder. 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.<sup>47</sup>

The cases cited by the Additional Defendants indicating that Defendants must show a reasonable justification for the delay predate the 2005 amendments to Rule 2253. The 2005 Explanatory Comment to the Rule makes clear that only Plaintiff may raise this issue:

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

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(requiring pleadings subsequent to the complaint to be filed within twenty days after service of the preceding pleading). June 27, 2021 is sixty days after service of the Plaintiff's initial pleading on the original defendant. As June 27, 2021 is later than May 18, 2021, the deadline for commencement of joinder proceedings pursuant to Rule 2253 was June 27, 2021, absent a Court Order or filed consent of all parties and approval of the Court.

<sup>42</sup> See Motion of Defendant Susquehanna Health System for Leave to Join Additional Defendants, filed October 23, 2024.

<sup>43</sup> Order, dated and entered October 24, 2023.

<sup>44</sup> See, e.g., *Binns*, *supra*, 580 A.2d at 410.

<sup>45</sup> Byler Preliminary Objections, ¶¶ 28-34; Byler Brief, at 5-7; Lamade Preliminary Objection, ¶¶ 24-32; Lamade Brief, at 4-5.

<sup>46</sup> SHS Response to Byler, ¶¶ 25-34; UPMC Response to Byler, ¶¶ 25-30; SHS Response to Lamade, ¶¶ 23-32; UPMC Response to Lamade, ¶¶ 24-25.

<sup>47</sup> Pa. R. Civ. P. 2253(b).

reasonable justification for the delay in commencing the joinder proceeding.<sup>48</sup>

Further, a plain reading of Rule 2253(b) makes clear that Additional Defendants cannot raise this issue. The rule of *expressio unius est exclusio alterius*,<sup>49</sup> compels this result. Rule 2253(b) specifically allows the plaintiff to object to late joinder on the ground that the joining party has not shown sufficient justification for the delay. It could have specified that other parties could raise the issue, as well, but it did not do so. Therefore, the Court must conclude that other parties cannot do so.<sup>50</sup> When interpreting a statute, “one is admonished to listen attentively to what a statute says ... [but also] to what it does not say.”<sup>51</sup> Thus, the Court will not sustain the preliminary objections on the ground that Defendants did not provide sufficient justification for their delay in commencing joinder proceedings.

Drs. Byler and Lamade also allege they will be prejudiced by being joined as parties in this litigation.<sup>52</sup> Generally, a party asserting prejudice cannot rest on general allegations, but must support his claim by asserting a factual basis for it.<sup>53</sup> Moreover, the prejudice alleged must be more than that which naturally flows from

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<sup>48</sup> Pa. R. Civ. P. 2253, Explanatory Comment—2005. Dr. Lamade argues that this does not mean that Defendants need not show a reasonable justification but only that Plaintiff is the only party who can object on this basis. Lamade Reply Brief.

<sup>49</sup> *i.e.*, the expression of one thing implies the exclusion of others.

<sup>50</sup> *See, e.g., Thompson v. Thompson*, 223 A.3d 1272, 1277-78 (Pa. 2020) (holding that where a statute provides three express punishments for a support obligor who is found to be in contempt for noncompliance with a support order, the trial court is prohibited from imposing any other form of punishment).

<sup>51</sup> *Kronk-Sullivan v. State Farm Mut. Auto. Ins. Co.*, 788 A.2d 955, 962 (Pa. 2001) (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 536 (1947)).

<sup>52</sup> Any party may object to late joinder on the ground that the party will be prejudiced by the delay. *See* Pa. R. Civ. P. 2253(b).

<sup>53</sup> *See, e.g., Bratic v. Rubendall*, 99 A.3d 1, 9-10 (Pa. 2014) (finding a sufficient factual basis to show oppressiveness of forum in dispute over venue); *Stilp v. Hafer*, 701 A.2d 1387, 1392 (Pa. Commw. 1997) (finding a sufficient factual basis to support claim of prejudice caused by delay in bringing action); *American Bank and Trust Co. of Penna. v. Ritter, Todd and Haayen*, 418 A.2d 408, 410 (Pa. Super. 1980) (finding sufficient factual basis to support claim of prejudice caused by delay in prosecuting action). Prejudice can include “any substantial diminution of defendants’ ability to present factual information in the event of trial which has been brought about by plaintiff’s delay.” *American Bank, supra*, 418 A.2d at 410.



being named as a party in a lawsuit; rather, the record must reflect that additional defendant would lose a substantive right as a result of the delay.<sup>54</sup>

Dr. Byler alleges that the Defendants have failed to demonstrate lack of prejudice.<sup>55</sup> He asserts that he has been deprived of “over two and a half years of discovery;” that he currently resides and has resided in Africa, since 2003, so his physical availability is “extremely limited;” that availability of records from over twenty years ago is “questionable;” and that he will suffer “an extreme and undue burden” in getting “up to speed” on matters that have been outstanding for over two years.<sup>56</sup> Dr. Lamade alleges similar prejudice, except that he does not claim that he currently resides out of country.<sup>57</sup>

Defendants respond that Additional Defendants cannot show any undue prejudice. They note that written discovery has not been completed; depositions have not been taken; expert reports have not been exchanged; the current discovery deadline is January 15, 2025; and the case is not scheduled for trial until the October/November 2025 trial term. They also point out that the statute of limitations on the claims that both they and the Plaintiffs may have against Additional Defendants have not yet expired.<sup>58</sup> Plaintiff’s claim alleges birth injury to a minor

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<sup>54</sup> *Azcon Corp. v. Dual State Builders, Inc.*, 8 D. & C.3d 499, 502-03 (Phila. Cnty. 1978). “The substantive rights of defendant will not be affected by allowance of the late joinder. To be sure, additional defendant will be prejudiced by the joinder. Being joined as parties will ipso facto expose them to a liability and to this extent it may be said that their position is worsened. But, if this were to be the criteria for allowing extension for joinder of a party on cause shown, then there could never be a late joinder, and the rule authorizing the joinder after 60 days is a nullity. This self-evident absurdity was not meant to be. The prejudice that will impel the court to disallow an amendment or extension must be other than that which naturally flows from the mere allowance of the relief sought. The detriment must be independent of the allowance of the late joinder. There is nothing on the record before me that suggests what if any prejudice additional defendant would suffer or what substantive rights they have lost as a result of the delay.” *Id.*

<sup>55</sup> Byler Preliminary Objections, ¶ 36.

<sup>56</sup> *Id.*, at ¶¶ 36-40; see also Byler Brief, at 7-8.

<sup>57</sup> Lamade Preliminary Objection, ¶¶ 30-33; Lamade Brief, at 5; see also Lamade Reply Brief, at 9-11 (adding that no analysis of prejudice is necessary where there is no justification for late filing).

<sup>58</sup> SHS Response to Byler, ¶¶ 36-40; UPMC Response to Byler, ¶¶ 36-40; SHS Response to Lamade, ¶ 33; UPMC Response to Lamade, ¶ 33.

born in 2008. A claim of this nature sounding in trespass is subject to a two year limitation period;<sup>59</sup> however, that limitation period does not begin to run until the minor reaches majority in 2026.<sup>60</sup> Defendants' claim against Additional Defendants is a claim for indemnity or contribution, which may be asserted during the original proceeding or in a separate action.<sup>61</sup> The limitation period for such a claim does not begin to run until judgment is entered in favor of the original Plaintiff,<sup>62</sup> which has not happened yet.

Prejudice to a joined party has been found where the case is on a trial list and the joined party has not been able to participate in discovery.<sup>63</sup> Under the circumstances here, however, the Court does not find Additional Defendants' claims of prejudice to be compelling. Discovery is in a relatively early stage, and they can be provided with copies of any written discovery previously completed. Depositions have not been taken, and expert reports have not been exchanged. As such, the prejudice to Additional Defendants is minimal and curable.

On the other hand, our Supreme Court has stated that joinder ordinarily should be granted to simplify and expedite matters involving numerous parties.<sup>64</sup>

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<sup>59</sup> See 42 Pa. C.S. § 5524.

<sup>60</sup> See 42 Pa. C.S. § 5533(b)(1).

<sup>61</sup> See, e.g., *Bianculli v. Turner Constr. Co.*, 640 A.2d 461, 465 (Pa. Super. 1994).

<sup>62</sup> See, e.g., *id.*

<sup>63</sup> See, e.g., *Binns, supra*, 580 A.2d at 412. "In addition, appellants argue that James Campbell's bald averments of prejudice are insufficient to warrant the dismissal of the third-party complaint against him, since there is no prejudice to him inasmuch as he uniquely knows whether he was negligent in framing the house, since discovery is still ongoing, and since copies of any discovery and photographs obtained during discovery up to this point can be made available to Campbell. However, as the trial court pointed out, the case is already listed on the trial list, and any discovery, whether depositions, including the deposition of James Campbell himself, or photographs, was obtained without the best interests of James Campbell in mind. James Campbell was not represented by counsel when his deposition was taken, and therefore with regard to both his own and other witness' deposition, no one was available to ask questions of the witnesses which would ferret out information most advantageous to James Campbell. With regard to the photographs, the trial court correctly noted that they were taken by parties who are now opponents of Campbell, and because the framing has been repaired, James Campbell cannot go back and obtain his own photographs of the allegedly faulty framing which no longer exists." *Id.*

<sup>64</sup> See, e.g., *Lawrence, supra*, 717 A.2d at 1049.

Permitting joinder here, where the statutes of limitations on the claims will not expire until several years in the future and, in fact, have not yet begun to run, seems to be the most sensible approach, since, otherwise, Defendants could commence separate suits against Additional Defendants and then move to consolidate the outstanding litigation as all arising out of the same occurrences.<sup>65</sup> Moreover, as the Plaintiff does not object to the tardy joinder, when Rule 2253 is designed primarily to protect her, the Court is not inclined to enforce that Rule strictly.

Accordingly, the First Byler Preliminary Objection and the Lamade Preliminary Objection are OVERRULED, for reasons explained in this Part.

***B. The Claim for Negligence.***

Dr. Byler's second preliminary objection (the "Second Byler Preliminary Objection") alleges that the Joinder Complaint fails to allege a cause of action pursuant to Rules 1028(a)(2), 1028(a)(3) and 1028(a)(4), Pennsylvania Rules of Civil Procedure.<sup>66</sup> The elements of a negligence claim are (1) a duty recognized by law; (2) a breach of that duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages.<sup>67</sup>

"Pennsylvania is a fact-pleading state,"<sup>68</sup> and our rules of pleading mandate that "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form."<sup>69</sup> "Material facts' are 'ultimate facts,' *i.e.*,

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<sup>65</sup> That suit could be commenced against Additional Defendants directly on the same issues at any time over the next several years limits the impact of their claims of prejudice as a result of the late joinder. Indeed, it may even be in Additional Defendants' best interests to participate in this litigation, as they will not be in as good a position to test the merits of the underlying action in a separate suit for indemnity or contribution as they would be as parties in the same suit with the Plaintiff.

<sup>66</sup> Pa. R. Civ. P. 1028(a)(2), 1028(a)(3) and 1028(a)(4) permit preliminary objections for failure to conform to law or rule of court, for insufficient specificity, and for legal insufficiency, respectively.

<sup>67</sup> *Toro v. Fitness International LLC*, 150 A.3d 968, 976-77 (Pa. Super. 2016).

<sup>68</sup> *Catanzaro v. Pennell*, 238 A.3d 504, 507 (Pa. Super. 2020) (quoting *Foster v. UPMC S. Side Hosp.*, 2 A.3d 655, 666 (Pa. Super. 2010)).

<sup>69</sup> Pa. R. Civ. P. 1019(a).



those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged.”<sup>70</sup> “As a minimum, a pleader must set forth concisely the facts upon which his cause of action is based,”<sup>71</sup> and a pleading “must not only apprise the defendant of the claim being asserted, but it must also summarize the essential facts to support the claim.”<sup>72</sup>

A court tasked with determining whether a claim has been pled with the requisite specificity views the pleading as a whole, rather than merely analyzing a particular paragraph or allegation standing alone,<sup>73</sup> and may exercise “broad discretion in determining the amount of detail that must be averred.”<sup>74</sup> Ultimately, the court must ascertain “‘whether the complaint is sufficiently clear to enable the defendant to prepare his defense,’ or ‘whether the plaintiff’s complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.’”<sup>75</sup>

The Complaint alleges, *inter alia*, that Dr. Byler was a licensed physician who was an agent of UPMC and/or SHS at the time of Plaintiff’s injury or injuries and that UPMC and SHS are vicariously liable for his negligent acts and omissions.<sup>76</sup> The Joinder Complaint alleges, *inter alia*, that, if the allegations of the Complaint are

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<sup>70</sup> *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. 1974) (citing *United Refrigerator Co. v. Applebaum*, 189 A.2d 253 (Pa. 1963) (allegation of defense by accommodation parties that plaintiff was accommodated party to whom they were not liable sufficient; reason for accommodation evidentiary fact that need not be alleged); *Smith v. Allegheny County*, 155 A.2d 615 (Pa. 1959) (complaint accusing defendants of failure to provide adequate drainage sufficient; source and means of flow either through pipes or strata of rock a matter of evidence)).

<sup>71</sup> *McShea v. City of Phila.*, 995 A.2d 334, 339 (2010) (quoting *Line Lexington Lumber & Millwork Co., Inc. v. Pa. Publ’g Corp.*, 301 A.2d 684, 688 (Pa. 1973)).

<sup>72</sup> *Id.* (quoting *Landau v. W. Pa. Nat’l Bank*, 282 A.2d 335, 339 (Pa. 1971)).

<sup>73</sup> *Yacoub v. Lehigh Valley Med. Assocs., P.C.*, 805 A.2d 579, 589 (Pa. Super. 2002) (en banc).

<sup>74</sup> *United Refrigerator*, *supra*, 189 A.2d at 255.

<sup>75</sup> *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. 2006) (quoting *Ammlung v. City of Chester*, 302 A.2d 491, 498 n. 36 (Pa. Super. 1973) (quoting 1 Goodrich-Amram § 1017(b)-9)); see also *Unified Sportsmen of Pa. v. Pa. Game Comm’n*, 950 A.2d 1120, 1134 (Pa. Commw. 2008).

<sup>76</sup> Complaint.

proven at trial, Dr. Byler is solely liable to Plaintiff, and/or is jointly and severally liable to Plaintiff with the Defendants, and/or is liable over to the Defendants for indemnity and/or contribution.<sup>77</sup>

The Joinder Complaint contains few factual allegations concerning the underlying transactions and occurrences upon which Plaintiff's claims are based. Nevertheless, it incorporates by reference the factual averments made in the Complaint.<sup>78</sup> Rule 1019(g) provides that "[a]ny part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action."<sup>79</sup> The Complaint contains numerous and detailed factual averments concerning the alleged negligent acts and omissions leading to Plaintiff's injuries and damages.<sup>80</sup> The Court is convinced that the Joinder Complaint, which incorporates by reference the averments in the Complaint, is sufficiently clear to enable the Dr. Byler to prepare his defense and informs him with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.

Accordingly, the Second Byler Preliminary Objection is OVERRULED, for reasons explained in this Part.

### **III. CONCLUSION AND ORDER.**

For the reasons explained above, (1) Additional Defendant, Philip R. Byler, M.D.'s Preliminary Objections to the Joinder Complaint of Defendants UPMC Williamsport, The Williamsport Hospital, and Susquehanna Health System, filed

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<sup>77</sup> Joinder Complaint, ¶ 14.

<sup>78</sup> *Id.*, ¶ 10 ("Pursuant to Pa. R.C.P. No. 1019(g), the UPMC Defendants incorporate by reference each and every averment of plaintiff's Complaint as if the same was alleged against Additional Defendants").

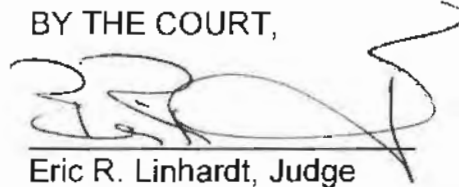
<sup>79</sup> Pa. R. Civ. P. 1019(g).

<sup>80</sup> See Complaint, ¶¶ 1-35.

March 7, 2024, and (2) the Preliminary Objections of Additional Defendant, Charles D. Lamade, M.D., to the Joinder Complaint of Defendants, UPMC Williamsport, The Williamsport Hospital, and Susquehanna Health System, filed April 16, 2024, are OVERRULED. Additional Defendants shall file answers to the Joinder Complaint within twenty (20) days after entry of this Order.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

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