

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>HARRY ADAMS, et al.</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Civil Action No. 7:99cv00813</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>ALLIANT TECHSYSTEMS, INC. and</b>	)	
<b>HERCULES, INCORPORATED,</b>	)	<b>By: Samuel G. Wilson</b>
	)	<b>Chief United States District Judge</b>
<b>Defendants.</b>	)	

In this action Plaintiffs, employees or former employees at the Radford Army Ammunition Plant (“Arsenal” or “Radford Arsenal”), sue Defendants Alliant Techsystems, Inc. (“Alliant”) and Hercules Incorporated (“Hercules”) to recover for hearing loss they allegedly suffered while working at the Arsenal. The court has jurisdiction under 28 U.S.C. § 1332. This action is before the court on Defendants’ motion to dismiss all but one Plaintiff or, alternatively, to sever the individual Plaintiffs’ cases for misjoinder, pursuant to Rule 21, and Plaintiffs’ motion to amend and motion for joinder of additional parties. For the reasons stated below, the court denies Defendants’ motion to dismiss all but one Plaintiff, grants Defendants’ motion to sever the individual Plaintiffs’ cases, and denies Plaintiffs’ motion to amend and motion for joinder of additional parties.

**I.**

The Radford Arsenal consists of approximately 7,500 acres with approximately 2,200 buildings. Alliant operated the Arsenal from February 1995 to present. Before February 1995, Hercules operated the Arsenal. Plaintiffs allege that Alliant and Hercules negligently conducted

manufacturing operations during their respective tenures of operating the Arsenal, causing each Plaintiff to suffer partial or total hearing loss. Plaintiffs worked in different buildings during different time periods—which span 60 years—and were exposed to different levels of noise. Also, the applicable standards for noise levels in the workplace have changed in the past sixty years.

On July 1, 1997, 342 Plaintiffs filed a lawsuit in Minnesota state court claiming loss of hearing allegedly resulting from working for Defendants. The Minnesota state court dismissed the action on the grounds of *forum non conveniens*. On November 9, 1999, the 342 Plaintiffs filed this action in the Western District of Virginia, alleging the same causes of action. On March 28, 2000, Defendants filed a motion to dismiss for lack of subject matter jurisdiction. Before ruling on that motion, this court certified a question of state law to the Virginia Supreme Court. After receiving the Virginia Supreme Court’s answer, this court denied Defendants’ motion to dismiss for lack of subject matter jurisdiction. On October 16, 2001, Defendants filed a motion to abstain, or, alternatively to stay these proceedings, which the court also denied.

On May 17, 2001, Plaintiffs filed a motion to amend their complaint and a motion for joinder of thirty-nine additional plaintiffs, who also allegedly suffered hearing loss as a result of Defendants’ negligence. Defendants oppose the joinder of these thirty-nine additional plaintiffs, arguing that neither the additional plaintiffs nor the 342 original Plaintiffs meet the requirements for permissive joinder under Rule 20(a). Defendants filed a motion to dismiss all but one Plaintiff or, alternatively, to sever the individual Plaintiffs’ claims pursuant to Rule 21.<sup>1</sup>

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<sup>1</sup>On February 1, 2002, twenty-nine Plaintiffs were voluntarily dismissed from this action. Currently, the total number of original Plaintiffs is 313. Plaintiffs seek to add thirty-nine plaintiffs for a total of 352.

## II.

Rule 20(a) of the Federal Rules of Civil Procedure allows for the permissive joinder of plaintiffs if they assert a right to relief (1) “arising out of the same transaction or occurrence or series of transactions or occurrences,” and (2) “if any question of law or fact common to all these persons will arise in the action.” These requirements are not rigid tests, but flexible concepts used by the courts to implement the purpose of Rule 20. See 7 Wright, Miller & Kane, Federal Practice and Procedure 3d §1653 (2001). Therefore, “the rule should be construed in light of its purpose, which is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits.” Saval v. BL Ltd., 710 F.2d 1027, 1031 (4th Cir. 1983).

The “transaction or occurrence” test of the rule permits “all reasonably related claims for relief by or against different parties to be tried in a single proceeding. Absolute identity of events is unnecessary.” Mosley v. General Motors Corp., 497 F.2d 1300, 1333 (8th Cir. 1974). Courts make this determination on a case by case basis and have not established hard or fast rules. Id. Generally, courts ask “whether there are enough ultimate factual concurrences that it would be fair to the parties to require them to defend jointly [the several claims] against them.” 7 Wright, Miller & Kane, Federal Practice and Procedure 3d § 1653 (quoting Eastern Fireproofing Co. v. U.S. Gypsum Co., 160 F. Supp. 580, 581 (D.C. Mass. 1958)).

Here, Plaintiffs have not demonstrated that all of their claims arise out the same “series of transactions or occurrences.” Plaintiffs’ complaint alleges that each of the 342 Plaintiffs worked for Alliant or Hercules and that Plaintiffs’ hearing loss was caused by the negligence of Alliant or Hercules. However, the underlying facts of each of the Plaintiffs’ claims are very different. The Plaintiffs worked in different buildings and were exposed to different noise levels. The Arsenal is

7,500 acres and contains over 2,000 buildings. Some of the Plaintiffs worked in the Arsenal as long as sixty years ago, and many of them worked in other jobs that might have caused their hearing loss. Also, the standards regarding workplace noise levels have changed during the last sixty years. It would be practically impossible for a jury to keep track of all of the facts and applicable law regarding each of the 342 Plaintiffs. Considering that the Plaintiffs' claims cannot be determined in a single trial, the purpose behind Rule 20—to enhance judicial economy—would not be furthered by allowing all of the Plaintiffs to join together in a single action and single trial. Although Plaintiffs' claims are similar and may include common questions of law and fact, Plaintiffs have not shown that all 342 of their claims are reasonably related to each other as to be part of the same “series of transactions or occurrences.” Thus, Plaintiffs have not met their burden of showing that all of their claims are properly joined under Rule 20(a).

Defendants argue that the court should dismiss all but one Plaintiff and require the dismissed Plaintiffs to re-file their claims and pay separate filing fees.<sup>2</sup> Rule 21 of the Federal Rules of Civil Procedure states that “[m]isjoinder of parties is not ground for dismissal of an action.” However, “[p]arties may be dropped or added by order of the court . . . at any stage in the action and on such terms as are just.” Fed. R. Civ. Pro. 21. Also, “[a]ny claim against a party may be severed and proceeded with separately.” *Id.* Here, the dismissal of all but one Plaintiff would not be just. Plaintiffs first filed suit nearly five years ago. Since then, the case has traveled from state court in Minnesota to the Western District of Virginia to the Virginia Supreme Court

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<sup>2</sup> “The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$150, except that on application for a writ of habeas corpus the filing fee shall be \$5.” 28 U.S.C. § 1914(a).

and back to the Western District of Virginia. It would not be just to require Plaintiffs to re-file their claims and pay separate filing fees after five years of litigation. Instead, in accordance with Rule 21, the court will order that Plaintiffs' claims be severed into individual actions.

Additionally, the court will deny Plaintiffs' motion to amend their complaint and motion for joinder of thirty-nine additional plaintiffs. Like the original 342 Plaintiffs, these thirty-nine additional plaintiffs do not meet the requirements of permissive joinder under Rule 20(a). The thirty-nine additional plaintiffs will have to file separate claims and will have to pay separate filing fees. The equities that weigh against requiring the original Plaintiffs to re-file and pay separate filing fees do not apply to the thirty-nine plaintiffs who seek to join this lawsuit four years after it began.

Plaintiffs' claims will be severed into individual actions and proceed as discrete units. However, the court notes that many of the Plaintiffs' claims may involve the same or similar facts. Therefore, the court will consolidate the claims for the purposes of discovery. Additionally, the court expects that some of the claims will be consolidated for trial under Rule 42(a) if they involve common questions of law or fact.

Even if the court were to find that joinder of Plaintiffs' claims was permissible under Rule 20(a), the court still would order the severance of the claims at this stage. Rule 20(b) states:

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 20(b) gives the court discretion to sever claims "that technically may be joined in one action under liberalized joinder rules but that could be determined more conveniently and expeditiously

in separate trials.” Wright, Miller & Kane, Federal Practice and Procedure 3d § 1660; see also id. § 1653. The court believes that the most convenient and expeditious way to litigate the Plaintiffs’ claims is to divide them into individual actions, consolidate them for purposes of discovery, and then attempt to find groups of Plaintiffs, whose claims involve similar facts, to consolidate for trial.

### **III.**

For the reasons stated above, Defendants’ motion to dismiss all but one Plaintiff will be denied. However, Defendants’ motion to sever Plaintiffs’ claims into individual actions will be granted. Although these claims will proceed as individual actions, they will be consolidated for the purposes of discovery and the court expects that some of the claims will be consolidated for trial under Rule 42(a). Additionally, Plaintiffs’ motion to amend and motion for joinder of additional parties will be denied. An order in accordance with this opinion will be entered this day.

**ENTER:** This \_\_\_\_ day of February, 2002.

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CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
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	)	<b>Chief United States District Judge</b>
<b>Defendants.</b>	)	

In accordance with the Memorandum Opinion issued this day, it is **ORDERED** and **ADJUDGED** that:

- (1) Plaintiffs' motion to amend and motion for joinder of additional parties is **DENIED**;
- (2) Defendants' motion to dismiss all but one Plaintiff is **DENIED**;
- (3) Defendants' motion to sever Plaintiffs' claims into individual actions is **GRANTED**;
- (4) Plaintiffs' claims are to be consolidated for purposes of discovery.

**ENTER:** This \_\_\_\_ day of February, 2002.

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CHIEF UNITED STATES DISTRICT JUDGE