

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF VIRGINIA

O' SULLIVAN FILMS, INC., *
1944 Valley Avenue *
Winchester, Virginia 22601 *

Plaintiff, *

v. *

PRECISION ROLL GRINDERS, INC., * Civil Action No. 5:09CV00062
6356 Chapmans Road *
Allentown, Pennsylvania 18106 *

Defendant *

v. *

WALZEN IRLE GMBH *
Huttenweg 5 *
57250 Netphen Deuz, Germany *
Serve: Mr. Martin Grosskreutz *

Third-Party Defendant. *

* * * * *

DEFENDANT PRECISION ROLL GRINDERS, INC.'S MOTION FOR LEAVE TO
FILE THIRD-PARTY COMPLAINT

COMES NOW Defendant PRECISION ROLL GRINDERS, INC., by and through
its attorneys, JEFFREY R. SCHMIELER and SAUNDERS & SCHMIELER, P.C., and
pursuant to Federal Rule of Civil Procedure 14, moves that this Court grant leave to file a
Third-Party Complaint against WALZEN IRLE GMBH and in support thereof, states as
follows:

GENERAL ALLEGATIONS

1. The Plaintiff O'SULLIVAN FILMS, INC. has filed a Complaint against the

Defendant **PRECISION ROLL GRINDERS, INC.**, alleging a manufacturing defect in a Calender Roll (hereinafter "Calender Roll #4) purchased by the Plaintiff from Defendant **PRECISION ROLL GRINDERS, INC.** Defendant **PRECISION ROLL GRINDERS, INC.** is a United States distributor for Third-Party Defendant **WALZEN IRLE GMBH**, a German manufacturer of Calender Rolls and other products. The Plaintiff **O'SULLIVAN FILMS, INC.** alleges that Calender Roll #4 exhibited cracks on its surface approximately two (2) months after being put into service by the Plaintiff in its Calender #3 machine. The Plaintiff's Complaint is hereby incorporated by reference herein.

2. The Plaintiff alleges that Defendant **PRECISION ROLL GRINDERS, INC.** breached its contract and its warranties that Calender Roll #4 would meet the Plaintiff's specifications, would be merchantable, and would be fit for the particular purpose of allowing the Plaintiff to produce films through operation of its Calender#3 machine.

3. Defendant **PRECISION ROLL GRINDERS, INC.** filed its Answer to the Complaint on October 2, 2009.

4. Third-Party Defendant **WALZEN IRLE GMBH** was the manufacturer of Calender Roll #4 which is the subject of the allegations contained in the Plaintiff's Complaint.

5. Defendant **PRECISION ROLL GRINDERS, INC.** now seeks to file the attached Third-Party Complaint against **WALZEN IRLE GMBH** on the grounds that it is liable to Defendant **PRECISION ROLL GRINDERS, INC.** for all or part of the Plaintiff's claims against Defendant **PRECISION ROLL GRINDERS, INC.** whereas it, if anyone, was responsible for the alleged failure of Calender Roll #4 to perform as required by the Plaintiff's specifications.

6. This Third-Party Complaint is being filed within ten (10) days of the Defendant serving its original answer as required under Federal Rule of Civil Procedure 14.

7. The Third-Party Complaint and supporting documents must be served pursuant to the Hague Convention as **WALZEN IRLE GMBH** is a German company. This process may take approximately 2-3 months to complete.

8. The Third-Party Defendant is not prejudiced by the Third-Party Complaint being filed at this time, as to date, no discovery has taken place and no scheduling order has been issued by the Court.

WHEREFORE, the above arguments considered, Defendant **PRECISION ROLL GRINDERS, INC.**, respectfully requests that this Court to grant its Motion For Leave to File Third-Party Complaint and that the Court accept and deem as filed Defendant's Third-Party Complaint which is attached hereto.

Respectfully Submitted,

/s/

Jeffrey R. Schmieler
Virginia Bar #32175
Attorney for Defendant, Precision Roll Grinders, Inc.
Saunders & Schmieler, P.C.
8737 Colesville Road, Suite L-201
Silver Spring, MD 20910
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Serve: Mr. Martin Grosskreutch *

Third-Party Defendant. *

* * * * *

MEMORANDUM OF POINTS AND AUTHORITIES

7. Federal Rule of Civil Procedure 14.
8. Pleadings herein.

Respectfully Submitted,

/s/ _____

Jeffrey R. Schmieler
Virginia Bar #32175
Attorney for Defendant, Precision Roll Grinders, Inc.
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AREA CODE 301
588-7717

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Third-Party Defendant. *

* * * * *

ORDER

UPON CONSIDERATION of Defendant **PRECISION ROLL GRINDERS, INC.'S**
Motion For Leave To File Third-Party Complaint, and any opposition thereto, it is hereby this
_____ day of _____, 2009,

ORDERED, that Defendant **PRECISION ROLL GRINDERS, INC.'S** Motion is
hereby **GRANTED**, and it is further

ORDERED, that Defendant **PRECISION ROLL GRINDERS, INC.'S** will be given
leave to file its Third-Party Complaint against Third-Party Defendant **WALZEN IRLE,**
GMBH, pursuant to the terms of the Hague Convention.

JUDGE

Copies to:

Kevin M. Rose, Esquire
BotkinRose, PLC
3210 Peoples Drive
Harrisonburg, Virginia 22801
Attorney for Plaintiff

Steven L. Smith, Esquire
Law Office of Steven L. Smith, P.C.
404 Harvard Avenue
Swarthmore, Pennsylvania 19081
Attorney for Plaintiff
(Pro Hac Vice admission to be sought)

Mr. Martin Grosskreutz
WALZEN IRLE GMBH
Huttenweg 5
57250 Netphen Deuz, Germany
Third-Party Defendant

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8737 COLESVILLE ROAD
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 2nd day of *October, 2009*, a copy of the foregoing Defendant **PRECISION ROLL GRINDERS, INC.**'s Motion for Leave to File Third-Party Complaint which was electronically filed in this case with the United States District Court for the Western District of Virginia, was mailed via first-class mail, postage pre-paid, to:

Kevin M. Rose, Esquire
BotkinRose, PLC
3210 Peoples Drive
Harrisonburg, Virginia 22801
Attorney for Plaintiff

Steven L. Smith, Esquire
Law Office of Steven L. Smith, P.C.
404 Harvard Avenue
Swarthmore, Pennsylvania 19081
Attorney for Plaintiff
(Pro Hac Vice admission to be sought)

Sent via International Mail:

Mr. Martin Grosskreutz
WALZEN IRLE GMBH
Huttenweg 5
57250 Netphen Deuz, Germany
Third-Party Defendant

/s/
JEFFREY R. SCHMIELER (#32175)