

**STATE OF NEW YORK
LITIGATION COORDINATING PANEL**

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SHEILA REEVES, as Administrator of the Estate
of ALLISON JIMERSON

Plaintiffs,

- against -

THE WATERS OF SALAMANCA, WOODLAND
PARK HEALTH CARE CENTER, INC, ABSOLUT
CENTER FOR NURSING AND REHABILITATION
AT SALAMANCA, LLC, OLEAN GENERAL HOSPITAL

Panel Case No. 0003/2010
Index No. 09534-2007

Pending in the:
Eighth Judicial District

Assigned Justice:
Hon. Frederick J. Marshall

Filed in the Erie County
Clerk's Office on

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AND OTHER MATTERS LISTED ON THE ATTACHED APPENDIX

DECISION AND ORDER

Overview

The Park Associates, Inc., The Waters of Aurora Park, The Waters of Orchard Park, The Waters of Salamanca, The Waters of Endicott, The Waters of Three Rivers, and The Waters of Village Park, Inc. (collectively, *The Waters Facilities*) defendants in the above-captioned action and in various of the actions on the attached appendix, move, by counsel, Ricotta & Visco, pursuant to section 202.69 of the Uniform Rules for the Trial Courts of the State of New York (22 NYCRR 202.69), by Notice of Motion dated September 3, 2010, for an order of coordination with regard to all the cases listed above and on the attached appendix.

The Waters Facilities seek to coordinate this Erie County action with 12 actions pending in the state of New York, as listed in the Appendix, as well as two actions pending in the state of Indiana.¹ All of the actions involve claims of injuries arising out of alleged negligent care and treatment provided by *The Waters Facilities* at their nursing home facilities. In addition, after reply

¹ Unless specifically indicated, the discussion below does not concern the Indiana actions.

papers were submitted herein, the parties forwarded a so-ordered stipulation to the Panel seeking to include *North v Aurora Park Health Care Center* (Supreme Court, Erie Co. Index No. 1596/04) in the proposed Coordination.

There has been only limited opposition to the application to coordinate the 13 New York actions. In fact, opposition was received only with respect to the three non-Erie County cases. No opposition was received with respect to the 10 Erie County cases.

The parties opposing Coordination are the plaintiffs in the two Broome County actions (*Berrios, Vasquez*), the plaintiff in the Chemung County action (*Taylor*), both defendant-physicians in one of the Broome County actions (*Berrios*), and the defendant-physician in the Chemung County action (*Taylor*). Plaintiffs' counsel in these actions, argue that, in contradistinction to the standard set forth in 22NYCRR 202.69 regarding common questions of law and fact, each of the cases under consideration involves facts specific to each case. Counsel for defendant-physician Woglom (*Taylor*) also opposes coordination on the ground that the actions are case-specific in nature.

Some of the objections focus on the delay and/or expense, inconvenience and prejudice that would allegedly result if the application were granted. Plaintiffs' counsel (*Berrios, Vasquez, Taylor*) points out that the actions are at different stages in the proceedings. Counsel for defendant-physician Woglom states that depositions of all of the primary parties in the *Taylor* action have been taken. Counsel for defendant-physician Bogdasarian adds that depositions of all parties to the *Berrios* action have been conducted. Counsel for defendant-physician Barreiro (*Berrios*) avers that he is not aware of any outstanding discovery demands.

With respect to the issue of venue, counsel for defendant-physician Bogdasarian (*Berrios*) emphasizes the expense and unnecessary inconvenience of a more than seven hour round-trip commute from Broome County to Erie County. Counsel for defendant-physician Barreiro (*Berrios*) also notes that defendant and counsel reside in Broome County. Counsel for defendant-physician Woglom (*Taylor*) similarly submits that it is a two and one-half hour drive from Elmira, arguing it would be more expensive for every other party who does not live or practice in Erie County. Plaintiffs' counsel (*Berrios, Vasquez, Taylor*), further adds that, in addition to inflicting burden and prejudice on the parties in these Broome and Chemung County cases, it would be especially onerous for plaintiff *Berrios*, who is a paraplegic with limited mobility residing in Broome County.

Reply papers indicate that stipulations are being circulated in the *Groff* case and the *Anderson* case to consolidate each of these Erie County actions with a second Erie County action not included in the application presently before the Panel - - *Groff v Mercy Hospital of Buffalo et al* (Index No.1518/09) and *Anderson v Dr. Zia Sheikh and Olean General Hospital* (Index No. 75330/09), respectively. The Panel is also apprised at this time, of the impending settlement of the lead case, *Reeves v the Waters of Salamanca et al.*

Review

Upon consideration of the applicable law and rules, and of all of the issues presented, including that of judicial economy, the Panel determines that the purposes of Section 202.69 of the Uniform Rules for the Trial Courts of the State of New York are best served by: (a) granting *The Waters Facilities'* Motion for Coordination with respect to the Erie County actions; and (b) denying *The Waters Facilities'* Motion for Coordination with respect to the Broome and Chemung County actions. The Panel declines to take any action with respect to the Indiana cases.

The Panel unanimously agrees that coordination will be advantageous and efficient for the Erie County actions. Conversely, the Panel is of the opinion that coordination of the Chemung and Broome County actions would result in undue prejudice to the plaintiffs and defendants-physicians by additional expense and delays. In those actions the discovery is at or near completion, and furthermore, the great distance between these counties and Erie County would be burdensome and expensive to the non-Erie County parties.

Conclusion

The Panel thus directs that the Erie County actions be coordinated before a Coordinating Justice in the Eighth Judicial District, Supreme Court, County Of Erie.

According, upon due deliberation, and for the reasons stated, it is hereby:

Ordered, that the Erie County actions set forth above and in the appendix shall be Coordinated pursuant to Section 202.69 of the Uniform Rules for the Trial Courts of the State of New York, in the Supreme Court, Erie County, before a Coordinating Justice of that county; and it is further

Ordered, that pursuant to section 202.69(c)(1) of the Uniform Rules for the Trial Courts of the State of New York, the Honorable Paula L. Feroletto, the Administrative Judge of the eighth Judicial District shall assign the Coordinating Justice; and it is further

Ordered, that the Clerk of the Panel shall forthwith transmit a copy of this Decision and Order to counsel for all parties herein, the Justices to whom each of the above actions is currently assigned and the Honorable Paula L. Feroletto, Administrative Judge for the Eighth Judicial District; and it is further

This constitutes the Decision and Order of the Panel. The Panel, by its Presiding Justice and with their consent, signs this Decision and Order.

Dated: May 16, 2011

Justices of the Panel:

Hon. Helen E. Freedman
Presiding Justice, First Department

Hon. Joseph J. Maltese
Associate Justice, Second Department

Hon. E. Michael Kavanagh
Associate Justice, Third Department

Hon. Matthew Rosenbaum
Associate Justice, Fourth Department

For the Panel: .



Hon. Helen E.
Freedman Presiding
Justice

APPENDIX – The Waters Nursing Home Cases

<u>CASE</u>	<u>INDEX NO.</u>	<u>COUNTY</u>	<u>JUSTICE ASSIGNED</u>
Taylor v Absolut Center	001011-2008	Chemung	Hon. Robert C. Mulvey
Pawlowski v Absolut Center.	000876-2008	Erie	Hon. John M. Curran
Groff v Absolut Center	003508-2008	Erie	None.
Moffett v Absolut Center	003506-2008	Erie	Hon. Diane Y. Devlin
Berrios v The Waters	000873-2008	Broome	Hon. Jeffrey A. Tait
Anderson v The Waters	005815-2008	Erie	Hon. Tracey A. Bannister
Rupert v Waters	005868-2008	Erie	Hon. Timothy J. Drury
Homewood v The Waters	005135-2008	Erie	Hon.. Gerald S. Whalen
Wierzba v Waters	0012157-2008	Erie	Hon. Diane Y. Devlin

Vasquez v The Waters	002938-2008	Broome	Hon. Jeffrey A. Tait
Terio v Absolut Care	004186-2009	Erie	Hon. Gerald J. Whalen
Hand v Absolut	010478-2009	Erie	Hon. John M. Curran
** North v Aurora	001596-2004	Erie	Hon. Tracey A. Bannister

** Case submitted for consideration by so ordered stipulation.