

560001-2004  
RW # 11

**STATE OF NEW YORK  
LITIGATION COORDINATING PANEL**

**Panel Case No. 0001/2004**

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THOMAS BEATTIE,

Plaintiff,

Index No. 120685/2001

-against-

Pending in the  
First Judicial District

BOVIS LEND LEASE LMB, INC., CITY OF  
NEW YORK and BAY CRANE, INC.,

Hon. Michael D. Stallman

Defendants.  
-----X

AND OTHER CASES LISTED ON APPENDIX HERETO

**DECISION**

BY THE PANEL:<sup>1</sup>

The City of New York, a defendant in various actions at issue, has applied to the Litigation Coordinating Panel (“the Panel”) for an order directing the coordination, pursuant to Section 202.69 of the Uniform Rules for the Trial Courts, of all actions arising from the terrorist attacks on the World Trade Center on September 11, 2001 and the resulting destruction. The application is brought with regard to 29 actions.

<sup>1</sup> Honorable Helen E. Freedman, Presiding Justice of the Litigation Coordinating Panel, took no part in the consideration or resolution of this matter.

The City states that the actions seek damages for personal injury arising from the rescue and recovery efforts in the aftermath of the disaster. Plaintiffs assert, the City states, that they were injured as a result of an unsafe work environment.

By Administrative Order dated July 8, 2003, the Administrative Judge of the Supreme Court, Civil Branch, New York County, Hon. Jacqueline W. Silbermann, directed that all actions, present and future, in that court seeking damages for personal injury arising out of the rescue, recovery and debris removal work at the World Trade Center site in the aftermath of the attacks be assigned to a single Justice, Hon. Michael D. Stallman. Twenty-six such actions are pending in Supreme Court, New York County, all but one of which (the exception is Gorglione v. Bovis Lend Lease LMB, Inc., Index No. 109836/2002 (Hon. Edward H. Lehner)) are pending before Justice Stallman. Some of these actions are brought against the City of New York, but some are not. The Administrative Order directed that all World Trade Center cases as defined therein be assigned to Justice Stallman, who is assigned to a City Part, even if the City is not a party.

According to the City's papers, three other actions that the City has characterized as World Trade Center cases are pending outside New York County. Two are pending in Queens County<sup>2</sup> and one in the Bronx.<sup>3</sup>

The City argues that these cases involve a similar set of facts. They raise common

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<sup>2</sup> McClellan v. Tully Construction Co., Index No. 20172/2002 (Hon. Orin R. Kitzes) and Sullivan v. Grace Industries, Inc., Index No. 4869/2003 (unassigned).

<sup>3</sup> Iacono v. Grace Construction & Development Corp., Index No. 21236/2002 (Hon. Kenneth L. Thompson, Jr.).

questions of law, such as whether the defendants are immune under the Defense Emergency Act (Unconsol. Law §§ 9101-9200) and the State and Local Natural and Man-Made Disaster Preparedness Act (Exec. Law §§ 20 to 29-g), concerning which issues motions have been made. Coordination is needed, the City contends, to avoid possibly inconsistent rulings from different Justices, whose rulings would be subject to appellate review in different Departments. The City also urges that coordination is needed to ensure that discovery will be efficient and not unduly burdensome. Discovery will involve, it is anticipated, many common documents and witnesses. Coordination would promote efficient resolution of case-specific issues. Finally, the City contends, coordination is needed to ensure effective coordination with actions pending in the United States District Court.

The Port Authority of New York and New Jersey, also a defendant in various of the actions, has also moved to coordinate all World Trade Center cases for the reasons summarized above. The Port Authority cited and seeks coordination of two additional cases that it believes to be Trade Center matters, one of which is pending in New York County before Justice Stallman and one of which was filed in Bronx County.<sup>4</sup> The Port Authority did not seek coordination of one matter that was included in the City's motion but that has since been removed to Federal Court.<sup>5</sup>

Thus, the Panel is called upon to address a total of 30 actions. Of these, 26 cases are

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<sup>4</sup> Buonamini v. Port Authority of New York and New Jersey, Index No. 13962/2002 (Bronx Cty., Unassigned) and Fergus v. City of New York, Index No. 120819/2002 (N.Y. Cty., Hon. Michael D. Stallman).

<sup>5</sup> Anastassatos v. Tully Construction Co., Index No. 117717/2003 (N.Y. Cty., Hon. Michael D. Stallman).

pending in New York County and two each in Bronx County and Queens County.

The plaintiff in the Bronx County Iacono action opposed the motions on the ground that the injury alleged there did not involve respiratory problems and did not take place during emergency activities at the Trade Center site, but rather occurred about four months after September 11, allegedly due to the negligence of defendants, when canvas debris protection on a truck ripped off, causing a metal bar to which it was attached to strike him in the head. Neither the City nor the Port Authority is a party to the Iacono case.

Plaintiffs in the Queens McClellan action also oppose the motions. They urge that coordination is inappropriate since, among other things, the City and the Port Authority are not parties to that case and a note of issue has been filed there. Summary judgment motions have been made and decided. Coordination would delay the progress of the case, plaintiffs contend, not advance it.

No other party to any of the 30 cases has opposed the motions to coordinate.

#### DISCUSSION

The City and the Port Authority have sufficient standing to seek coordination of these cases even though the applicants are not parties to every one of them. It appears that one or both of the applicants are parties to 21 of the cases. The applicants may be required to produce documents and witnesses as non-parties in the nine cases to which they are not parties, which process ought to be coordinated with similar discovery in the 21 cases in

which they are parties. Section 202.69 (a) provides that the coordination procedure applies to “related actions” and subdivision (b)(2) provides for an application by “a party to an action...” The Section does not limit coordination to cases in which there is a complete identity of parties. In addition to the applicants, there are many overlapping defendants in these cases whose presence gives rise to the potential for duplicative discovery. None of these defendants has opposed these applications; their acquiescence should be weighed in the balance. Furthermore, Section 202.69 (b)(2) authorizes the Panel to determine whether to direct coordination upon application of a Justice before whom an action is pending or an Administrative Judge or even sua sponte, that is, upon an application by a person or entity not a party to the cases. The critical elements thus are notice and an opportunity of all parties to be heard, which are guaranteed in subdivision (b)(2). In addition, what is at issue here is an administrative matter - - where pre-trial proceedings should take place - - and does not involve the substantive rights of the parties. Compare the Administrative Order (directing assignment to one Justice of all Trade Center cases in New York County, including those in which the City is not a party).

It is clear that coordination is appropriate here. There are common questions of law and fact in these cases, which will involve discovery regarding conditions at the Trade Center site and changes there over time. Coordination will promote efficient and expeditious discovery and avoid undue burden due to duplication. Coordination is also advisable in order to avoid potentially inconsistent decisions. Coordination can contribute to expeditious and

effective resolution of issues unique to a group of cases or one case. Coordination will ensure the best and most orderly and efficient use of judicial time and energy, upon which there are many other demands. Finally, coordination pursuant to Section 202.69 will enhance the prospects for efficient coordination with the Federal court proceedings. Plaintiffs in only two cases oppose coordination. Accordingly, the motions shall be granted in substantial part. See Section 202.69 (b)(3).

The McClellan case shall not be included in the coordination. Section 202.69(a) indicates that coordination applies to pretrial proceedings. See also Section 202.69 (d) (upon completion of coordination, cases shall be returned to the counties of origin for trial). Since a note of issue was filed in McClellan months ago and has not been stricken and summary judgment motions previously pending have been decided, that case shall not be part of the coordinated proceedings.

In Iacono, the only other case with regard to which an objection has been raised, the plaintiff opposes coordination,<sup>6</sup> among other things, on the ground that the injury alleged in that case did not involve respiratory problems. It appears, however, that there is only one case that alleges respiratory problems and that matter (Anastassatos) was removed to Federal court. The other cases involve such things as alleged injuries due to objects that fell on plaintiffs or hit them, including one case in which the plaintiff asserts that he was hit in the face by a piece of sharpnel discharged by exploding ammunition.

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<sup>6</sup> Literally, the plaintiff opposes “consolidation,” which, however, is not the subject of the applications before us.

It does appear, however, that the circumstances alleged by the plaintiff in Iacono set that case apart from the other Trade Center matters, with the incident alleged there having occurred away from the site. Therefore, that case shall not be coordinated either.

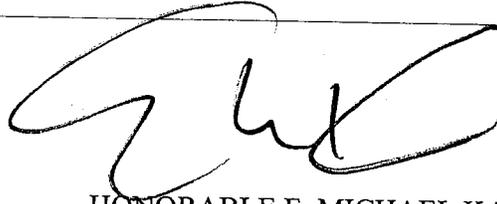
The motions are granted in part. The coordination will take place before a single Coordinating Justice in Supreme Court, New York County, where most of the cases are pending and where, of course, the disaster of September 11 occurred. Section 202.69 (b)(4)(ii). The Administrative Judge of Supreme Court, Civil Branch, New York County, shall designate the Coordinating Justice. Section 202.69 (c) (1). The Panel will issue an appropriate order. Although the applications literally request coordination of “all actions” (City’s Notice of Motion, p. 1; Port Authority’s Notice of Motion, p. 11), the order will cover only personal injury actions. See the Administrative Order. The McClellan and Iacono cases shall not be included in the coordination, but future World Trade Center cases shall be, in accordance with Paragraph F of the Procedures of the Panel (see the Panel’s website at [www.nycourts.gov/supctmanh/lcp](http://www.nycourts.gov/supctmanh/lcp)). The Anastassatos case shall not be included in the order.

This constitutes the decision of the Panel.

Dated: June 30, 2004

**FILED**  
AUG 5 - 2004  
COUNTY CLERK'S OFFICE  
NEW YORK

  
HONORABLE RAYMOND E. CORNELIUS  
Associate Justice, Fourth Judicial  
Department



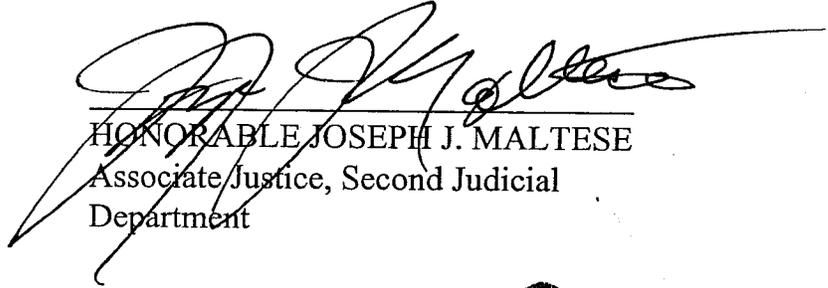
HONORABLE E. MICHAEL KAVANAGH  
Associate Justice, Third Judicial  
Department

HONORABLE JOSEPH J. MALTESE  
Associate Justice, Second Judicial  
Department

**FILED**  
AUG 5 - 2004  
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NEW YORK

**APPENDIX**

HONORABLE E. MICHAEL KAVANAGH  
Associate Justice, Third Judicial  
Department



HONORABLE JOSEPH J. MALTESE  
Associate Justice, Second Judicial  
Department

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