

STATE OF NEW YORK
LITIGATION COORDINATING PANEL

NEW YORK COUNTY
CLERK'S NO.
560001/2008

Panel Case No. 0001/2008

Sub #6

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X

Stephanie S. Maggio

Plaintiff,

Index No. 103744/2007

- against -

RTI Donor Services, Inc.; Regeneration Technologies, Inc;
New York Tissue Services, Inc; Biomedical Tissue Services, Ltd.,
Michael Mastromarino; Joseph Nicelli; Garzone Funeral Home, Inc.;
Liberty Cremation, Inc.; Jon Doe Corporations 1-10 and John Doe Individuals
1-10

Defendants

-----X

AND OTHER MATTERS LISTED ON THE ATTACHED APPENDIX

FILED
MAY 28 2008
NEW YORK
COUNTY CLERK'S OFFICE

DECISION AND ORDER

The defendants RTI Donor Services, Inc. and Regeneration Technologies, Inc., in the above captioned matter, move the Panel, by Robin Gregory, Esq., of the law firm of Wilson, Elser, Moskowitz, Edelman and Dicker , for an order coordinating this and twenty three other related actions (as identified in the Appendix to this decision and order) pending in various judicial districts in the courts of this state. The twenty four related cases "...all derive from allegations concerning the procurement, processing, distribution and/or supplying of human tissue for allografts* used in implant surgeries." **

All 24 cases involve allegations by the next-of kin, that they suffered emotional harm and incurred financial losses in connection with the alleged fraudulent procurement of tissue from the decedent by the defendants without consent. Causes of action common to all matters range from negligent infliction of emotional distress to violations of N.Y. General Business Law Section 349, with demands for compensatory and punitive damages against defendants, jointly and severally . Movants herein seek coordination of these cases in New York County.

* Human tissues such as bones ligaments, heart valves, skin, or organs, removed from one human for preparation and transplantation into another is described as an "allograft."

** "Affirmation of Robin Gregory, Esq."-paragraph #4 -Order to Show Cause, Stephanie S. Maggio v. RTI Donor Services, et al.- Litigation Coordinating Panel No. 0001/2008.

Similar cases have also been coordinated on the federal level by the Judicial Panel on Multi District Litigation : *In Re Human Tissue Products Liability Litigation* , MDL No. 1763, (06-135 WJM), in the U.S. District Court, District of New Jersey. Concurrent criminal proceedings against certain individual defendants have also been held in Kings County, State of New York (Second Judicial District).

No one appears in opposition to the defendants' (RTI Donor Services, Inc. and Regeneration Technologies, Inc) motion for Coordination of pre- trial proceedings of these related matters.

The Panel, by its Presiding Justice and with their consent, having considered the movants' application and hearing no opposition, finds that Coordination is appropriate in these matters and grants the motion. However, contrary to movants' argument that New York County would be a more convenient county in which to coordinate these matters, the Panel finds, that at the time of this motion, no cases have been filed in New York County; while at least sixteen cases have been filed in Richmond County (appx. 66% of identified cases). At least four of those cases have been assigned to Justices, and several of the defendants, individual and corporate, reside or have offices in Richmond County. Under the circumstances, the Panel finds that Richmond County to be the appropriate county for coordination.

For these reasons, it is hereby

(1) Ordered, that the actions set forth above and in the Appendix shall be coordinated pursuant to Section 202.69 of the Uniform Rules of the Trial Courts, in the Supreme Court of the State of New York, County of Richmond, before a Coordinating Justice of that county; and it is further

(2) Ordered, that any actions alleging , that the defendants were involved in negligent conduct and/or a scheme in which they participated in improperly obtaining human body parts, such as bone, skin , tendons and other tissues from the corpse of a plaintiff's next-of-kin while the corpse was under the care of one or more of the defendants, with defendants having participated in this scheme and/or have harvested body parts from the corpse without consent of the decedent (while alive), the decedent's next-of-kin, family member or other person legally responsible for the decedent, allowing the harvesting of body parts by the defendants for ultimate use as transplantation materials, also known as "allographs," into living human beings, that were filed in the Supreme Court of the State of New York heretofore and which remain active, but are not listed in the caption above or on the Appendix, and any such actions that are filed hereafter shall, in accordance with Subdivision F of the Procedures of the Panel, likewise be coordinated pursuant to Section 202.69 of the Uniform Rules of the Trial Courts of the State of New York, before the Coordinating Justice, unless the Panel rules otherwise in Subdivision F; and it is further

(3) Ordered, that Pursuant to 22 NYCRR 202.69(c)(1), the Administrative Judge of the Second Judicial District shall designate the Coordinating Justice: and it is further

(4) Ordered, that the Clerk of the Panel shall forthwith transmit a copy of this order to counsel for all parties herein, the Justices to whom each of the above actions is currently assigned and the Honorable Philip G Minardo , Administrative Judge of the Second Judicial District (for Richmond County) : and it is further

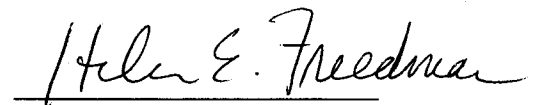
(5) **Ordered**, that with respect to any additional action that is to be coordinated as provided in paragraph (2) hereof, upon service of a copy of the Order of the Panel with notice of entry, together with the affidavit of compliance or the Decision of the Panel set forth in Subdivision F of the Procedures of the Panel, upon the Clerk of the Court in which any such additional action is or hereafter shall be pending (other than the Supreme Court, Richmond County) as provided in Subdivision F, the said Clerk shall forthwith transfer to the Supreme Court, Richmond County, after payment of the appropriate fees, if any, the file in any such additional action that is to be coordinated as provided in this order and Subdivision F ; and it is further

(6) **Ordered**, that the Clerk of the Supreme Court, Richmond County, shall assign a Richmond County index number, without fee, to any such additional action transferred to that county from another as provided above and such number shall serve as a means of identification and orderly processing of any such case while it remains in Richmond County for the purpose of coordination.

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 2 , 2008
New York, New York

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

FILED

MAY 28 2008

COUNTY CLERK'S OFFICE

APPENDIX
LCP NO.0001/2008
MAGGIO v. RTI DONOR
SERVICES, INC., et al.

EXHIBIT A - Captions

District No. 1:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----- X
Henry Caban, : Index No.: 301428/07
 :
Plaintiff, : Action 1
 :
- against - : Justice Assigned: Hon. Wilma
 : Guzman
 :
RTI Donor Services, Inc.; Regeneration :
Technologies, Inc.; New York Tissue Services, :
Inc.; Biomedical Tissue Services, Ltd., :
Michael Mastromarino; Joseph Nicelli; :
Avalon Cremation and Funeral Services, Inc.; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :
 :
Defendants. :
----- X

District No. 2:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----- X
Stephanie S. Maggio, : Index No.: 103744/07
 :
Plaintiff, : Action 2
 :
- against - : Justice Assigned: Hon. Joseph J.
 : Maltese
 :
RTI Donor Services, Inc.; Regeneration :
Technologies, Inc.; New York Tissue Services, :
Inc.; Biomedical Tissue Services, Ltd., :
Michael Mastromarino; Joseph Nicelli; :
Garzone Funeral Home, Inc.; Liberty :
Cremation, Inc.; John Doe Corporations 1-10 :
and John Doe Individuals 1-10, :
 :

Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
----- X

Arkady Vasilyeva, Klaudia Vasilyeva and Inna Popil, : Index No.: 103745/07

Plaintiff, : Action 3

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration Technologies, Inc., New :
York Tissue Services, Inc., Biomedical Tissue Services, Ltd.; :
Michael Mastromarino; Joseph Nicelli; Daniel George & Son :
Funeral Home, Inc.; John Doe Corporations 1-10 and John Doe :
Individuals 1-10, :

Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
----- X

Mary Josephine Ambrosino, :

Plaintiff, : Index No.: 103718/07

- against - : Action 4

RTI Donor Services, Inc.; Regeneration : No Justice Assigned
Technologies, Inc., New York Tissue Services,
Inc., Medtronic Sofamor Danek, USA, Inc.; :
SpinalGraft Technologies, LLC; Biomedical
Tissue Services, Ltd.; Michael Mastromarino; :
Joseph Nicelli; Empire State Shipping Services,
Ltd.; F. Ruggiero & Sons Funeral Home, Inc.; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :

Defendants. :
----- X

Plaintiff, : Action 7

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration
Technologies, Inc.; New York Tissue Services,
Inc.; Biomedical Tissue Services, Ltd.,
Michael Mastromarino; Joseph Nicelli;
New York Mortuary Services, Inc.;
John Doe Corporations 1-10 and
John Doe Individuals 1-10, :

Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
----- X

Katalina H. Filo, : Index No.: 103742/07

Plaintiff, : Action 8

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration
Technologies, Inc.; New York Tissue Services,
Inc.; Biomedical Tissue Services, Ltd.,
Michael Mastromarino; Joseph Nicelli;
Maitner Cremation Services, Inc.;
John Doe Corporations 1-10 and
John Doe Individuals 1-10, :

Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
----- X

James Gallas, : Index No.: 103743/07

Plaintiff, : Action 9

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration
Technologies, Inc., New York Tissue Services, :

Inc., Biomedical Tissue Services, Ltd.; :
Michael Mastromarino; Joseph Nicelli; :
New York Mortuary Services, Inc.; Liberty :
Grove Memorial Gardens Crematory; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :
: :
Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
----- X

Claire Silverman, : Index No.: 103739/07
: :
Plaintiff, : Action 10
: :
- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration :
Technologies, Inc.; New York Tissue Services, :
Inc.; Biomedical Tissue Services, Ltd., :
Michael Mastromarino; Joseph Nicelli; :
Avalon Cremation and Funeral Services, Inc.; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :
: :
Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
----- X

Agnes-Jean Rizzolo, : Index No.: 103720/07
: :
Plaintiff, : Action 11
: :
- against - : Justice Assigned: Hon. Judith
McMahon

RTI Donor Services, Inc.; Regeneration :
Technologies, Inc.; New York Tissue Services, :
Inc.; Biomedical Tissue Services, Ltd., :
Michael Mastromarino; Joseph Nicelli; :
Berardinelli Forest Hill Memorial; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :
: :

Defendants. :

----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----- X

Norman Robert Card, Jr. : Index No.: 103716/07

Plaintiff, :

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration :
Technologies, Inc., New York Tissue Services, :
Inc., Biomedical Tissue Services, Ltd.; :
Michael Mastromarino; Joseph Nicelli; :
Garzone Funeral Home, Inc.; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :

Defendants. :

----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----- X

Martin Ulp, : Index No.: 103746/07

Plaintiff, :

- against - : No Justice Assigned

RTI Donor Services; Inc.; Regeneration Technologies, :
Inc.; New York Tissue Services, Inc.; :
Biomedical Tissue Services, Ltd., Michael :
Mastromarino; Joseph Nicelli; Thomas E. :
Burger Funeral Home, Inc.; John Doe :
Corporations 1-10 and John Doe :
Individuals 1-10, :

Defendants. :

----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration
Technologies, Inc.; New York Tissue Services,
Inc.; Biomedical Tissue Services, Ltd.;
Michael Mastromarino; Joseph Nicelli;
Daniel George & Sons Funeral Home, Inc.;
John Doe Corporations 1-10 and
John Doe Individuals 1-10,

Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
----- X

John De Rosa, : Index No. 37067/07

Plaintiff, : Action 17

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration
Technologies, Inc.; New York Tissue Services,
Inc.; Biomedical Tissue Services, Ltd.;
Michael Mastromarino; Joseph Nicelli;
Daniel George & Sons Funeral Home, Inc.;
John Doe Corporations 1-10 and
John Doe Individuals 1-10,

Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
----- X

James Durkin, : Index No.: 37069/07

Plaintiff, : Action 18

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration
Technologies, Inc.; New York Tissue Services,
Inc.; Biomedical Tissue Services, Ltd.;
Michael Mastromarino; Joseph Nicelli;

Daniel George & Sons Funeral Home, Inc.; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10. :

Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
----- X

Mary Randazzo, : Index No.: 37071/07

Plaintiff, : Action 19

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration :
Technologies, Inc.; New York Tissue Services, :
Inc.; Biomedical Tissue Services, Ltd.; :
Michael Mastromarino; Joseph Nicelli; :
Edw. H. C. Dunn Inc. Funeral Home; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :

Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
----- X

Karen Del Re, : Index No. 103823/07

Plaintiff, : Action 20

- against - : Justice Assigned: Hon. John A.
Fusco

RTI Donor Services, Inc.; Regeneration :
Technologies, Inc.; New York Tissue Services, :
Inc.; Biomedical Tissue Services, Ltd.; :
Michael Mastromarino; Joseph Nicelli; :
Berardinelli Forest Hill Memorial, Inc.; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :

Defendants. :
----- X

Plaintiff, : Action 23

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration :
Technologies, Inc.; New York Tissue Services, :
Inc.; Biomedical Tissue Services, Ltd.; :
Michael Mastromarino; Joseph Nicelli; :
Daniel George & Sons Funeral Home, Inc.; :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :

Defendants. :
----- X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
----- X

Natalie A. Jones, : Index No.: 37501/07

Plaintiff, : Action 24

- against - : No Justice Assigned

RTI Donor Services, Inc.; Regeneration :
Technologies, Inc.; New York Tissue Services, :
Inc.; Biomedical Tissue Services, Ltd.; :
Michael Mastromarino; Joseph Nicelli; :
Daniel George & Son Funeral Home, Inc.; :
Liberty Grove Memorial Gardens Crematory :
John Doe Corporations 1-10 and :
John Doe Individuals 1-10, :

Defendants. :
----- X