

Taylor v New York Dept. of Educ.
2009 NY Slip Op 33273(U)
April 30, 2009
Supreme Court, New York County
Docket Number: 114006/2008
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ~~HON. EILEEN A. RAKOWER~~

Part 5
PART

Index Number : 114006/2008

TAYLOR, ERIN

VS.

NY DEPT. OF EDUCATION

SEQUENCE NUMBER : 001

CONSOLIDATION/JOINT TRIAL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1, 2, 3,

4, 5, 6,

7

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

MAY 06 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5-4-09



J.S.C.

HON. EILEEN A. RAKOWER

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
ERIN TAYLOR,

Plaintiff,

Index No.
114006/08

- against -

**DECISION
and ORDER**

NEW YORK DEPARTMENT OF EDUCATION,
THE CITY OF NEW YORK, STUYVESANT HIGH
SCHOOL, FORD MOTOR COMPANY, AVIS
BUDGET GROUP, INC., and TRW AUTOMOTIVE
U.S., LLC,

Defendants.

FILED
MAY 06 2009
COUNTY CLERK'S OFFICE
NEW YORK

Mot. Seq.001

-----X
HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff Erin Taylor ("Taylor") brings this action for personal injuries allegedly sustained when an automobile she was driving in the course of her employment as an Assistant Track and Field Coach with Stuyvesant High School veered out of control and rolled over on the northbound side of I-91 in Hartford, VT. Plaintiff brings claims of negligence against the New York City Department of Education ("DOE"), the City of New York ("City"), and Stuyvesant High School ("Stuyvesant") (collectively "DOE Defendants"); and claims of negligence, strict products liability, and breach of warranty against defendants Ford Motor Company ("Ford"), TRW Vehicle Safety Systems, Inc. ("TRW"), and Avis Budget Group, Inc. ("Avis").

Presently before the court is a motion by Avis to consolidate the instant action ("the Taylor matter") with another matter presently before the Supreme Court, New York County, titled *Piro et al. v. New York City Department of Education, et al.*, Index No. 110973/08 ("the Piro matter"). The plaintiff in the Piro matter has filed suit against Taylor, the DOE Defendants, Ford TRW, and Avis, in connection with the same automobile accident at issue in the instant matter. The plaintiff in the Piro matter brings claims of negligence against Taylor and the DOE Defendants; and claims of negligence, strict products liability, and breach of warranty against Ford, TRW, and

Avis. In addition, Avis moves this court for an order that the City produce a copy of Taylor's 50-h transcript. Avis has submitted a Notice of Motion and an Affirmation in Support. Annexed to the affirmation as exhibits are copies of pleadings in the Taylor matter; copies of the pleadings in the Piro matter; a copy of the police report generated in connection with the underlying automobile accident; and a copy of the City's 12/3/08 letter to counsel to Avis, denying Avis' request for a copy of Taylor's 50-h transcript.

TRW has cross-moved for an order (1) consolidating the instant matter and the Piro matter for purposes of joint discovery only; and (2) denying Avis' motion insofar as it seeks consolidation of the matters for joint trial, or alternatively, reserving decision until after the completion of discovery. TRW has submitted a Notice of Cross-Motion and an Affirmation in Support. Annexed to TRW's Affirmation in Support as an exhibit is an affidavit from TRW Senior Engineering Manager for Product Analysis Jeffrey A. Jenkins.

TRW also cross-moves for an order admitting attorneys David B. Weinstein, Esq. and Katheryne MarDock, Esq. *pro hac vice* to represent TRW's interests in the event that this court orders consolidation of the Piro and Taylor matters (TRW currently has motions to admit Mr. Weinstein and Ms. MarDock *pro hac vice* pending before the court in the Piro matter). TRW has submitted a Notice of Cross-Motion and an Affirmation in Support. Annexed to the affirmation as exhibits are a copy of Avis' Motion to Consolidate; and copies of Mr. Weinstein and Ms. MarDock's motions to admit *pro hac vice*, submitted in the Piro matter.

The City and the DOE have submitted an Affirmation in support of Avis' motion to consolidate, in opposition to Avis' motion to compel production of Taylor's 50-h transcript, and in opposition to TRW's motion for limited consolidation.

Ford has submitted an Affirmation in opposition to Avis' motion to consolidate for joint trial, but does not object to limited consolidation for purposes of joint discovery. Additionally, Ford's affirmation stands in support of Avis's motion to compel the city to produce Taylor's 50-h transcript.

Finally, TRW has submitted a Reply Affirmation in further support for its cross-motion for limited consolidation.

The plaintiff in the Piro matter submits an Affirmation in partial opposition to

Avis' motion to consolidate - its sole objection being that, if this court orders consolidation, it should designate the Piro matter "Action No. 1," and the instant matter "Action No. 2," contrary to the caption proposed by Taylor.

CPLR §602(a) states, in relevant part:

When actions involving a common question of law or fact are pending before the court, the court, upon motion, may order . . . the actions consolidated . . . and may make such other orders . . . as may tend to avoid unnecessary costs or delay . . .

"[I]t is well settled that there is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right" (*Geneva Temps, Inc. v. New World Communities, Inc.*, 2005 NY Slip Op 10203, *2 [1st Dept. 2005]).

TRW and Ford both argue that consolidation for joint trial is inappropriate because the two plaintiffs were positioned in different places in the automobile, and that there will necessarily be separate product liability analyses as to each plaintiff's individual seatbelt (which are in fact different designs, according to TRW), as well as separate expert testimony as to the effect the accident had on each plaintiffs' body.

The court finds that consolidation for both purposes of joint discovery and joint trial is appropriate. The Taylor and Piro Matters involve the same defendants (with the addition of Taylor as a defendant in the Piro matter) and involve the same automobile accident. Ford and TRW have not made a sufficient showing that consolidation for joint trial would result in prejudice to their substantial rights. Although there may be separate analyses as to the effect of the accident on each individual plaintiff, as well as products liability analyses as to two distinct seatbelt mechanisms, there is no reason to believe that a jury is incapable of properly processing the information it receives as to each individual plaintiff and/or product.

In addition, the court finds that Avis is entitled to a copy of Taylor's 50-h transcript from the City. Since Taylor has brought an action concerning the automobile accident about which she testified pursuant to General Municipal Law §50-h, and has named Avis as a defendant in that action, sufficient good cause exists for an order directing production of Taylor's 50-h transcript (*see* Gen. Mun. Law §50-

h(3)).

Finally, turning to TRW's motion to have its attorneys admitted to practice in New York *pro hac vice*, 22 NYCRR §520.11 states, in relevant part:

(a) *General*. An attorney and counselor-at-law or the equivalent who is a member in good standing of the bar of another state, territory, district or foreign country may be admitted *pro hac vice*:

(1) in the discretion of any court of record, to participate in any matter in which the attorney is employed.

(c) *Association of New York counsel*. No attorney may be admitted *pro hac vice* pursuant to paragraph (a)(1) of this section to participate in pre-trial or trial proceedings unless he or she is associated with an attorney who is a member in good standing of the New York bar, who shall be the attorney of record in the matter.

Kevin P. Arias, attorney for defendant TRW moves for the *pro hac vice* admission of Mr. Weinstein and Ms. MarDock, members of the firm Weinstein Tippetts & Little LLP, which is located at 7660 Woodway, Suite 500, Houston, Texas 77063. No party opposes the motion. Arias submits the affidavits of Mr. Weinstein and Ms. MarDock along with their respective certificates of good standing from the State Bar of Texas. Arias affirms that he is a member in good standing of the bar of the State of New York and that his law firm will continue to serve as counsel of record on behalf of TRW. Having met the requirements of 22 NYCRR §520.11 and there being no opposition by any of the parties, TRW's motion to admit Mr. Weinstein and Ms. MarDock *pro hac vice* is granted.

Wherefore it is hereby

ORDERED that Avis's motion to compel the City to produce a copy of Taylor's 50-h transcript is granted; and it is further

ORDERED that the City is to provide Avis with a copy of Taylor's 50-h transcript within 15 days of receipt of a copy of this order with notice of entry; and it is further

ORDERED that TRW's motion to admit David B. Weinstein, Esq. and Kathryne MarDock, Esq. *pro hac vice* is granted without opposition; and it is further

ORDERED that the motion to consolidate is granted and the above-captioned action is consolidated in this Court with *Piro, et al. v. New York City Department of Education, et al.*, Index No. 110973/08, under Index No. 110973/08, and the consolidated action shall bear the following caption:

ALFRED PIRO and CHAW-WHA WANG PIRO

h/w both Individually and as the Parents and
Natural Guardians of VALERIE PIRO, a Minor

Index. No. 110973/08

Action No. 1

Plaintiffs,

-against-

NEW YORK DEPARTMENT OF EDUCATION,
THE CITY OF NEW YORK, STUYVESANT
HIGH SCHOOL, ERIN TAYLOR, FORD MOTOR
COMPANY, AVIS/BUDGET RENT-A-CAR SYSTEM,
LLC and TRW AUTOMOTIVE,

Defendants.

ERIN TAYLOR,

Index No. 114006/08

Plaintiff,

Action No. 2

-against-

NEW YORK DEPARTMENT OF EDUCATION,
THE CITY OF NEW YORK, STUYVESANT
HIGH SCHOOL, FORD MOTOR
COMPANY, AVIS/BUDGET RENT-A-CAR
SYSTEM, LLC and TRW AUTOMOTIVE,

Defendants.

And it is further

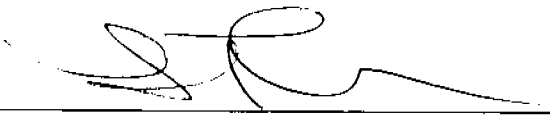
ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that upon service on the Clerk of the Court of a copy of this order with notice of entry, the Clerk shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that a copy of this order with notice of entry shall also be served upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: April 30, 2009



EILEEN A. RAKOWER, J.S.C.

FILED
MAY 06 2009
COUNTY CLERK'S OFFICE
NEW YORK