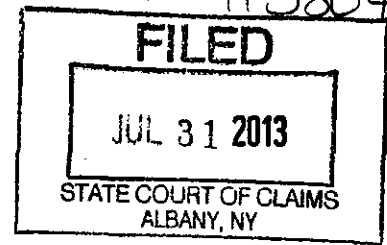


Fuentes v State of New York
2013 NY Slip Op 34112(U)
July 10, 2013
Court of Claims
Docket Number: 115807
Judge: Richard E. Sise
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This opinion is uncorrected and not selected for official publication.

File in 118314

Orig motion docs on # 115807



STATE OF NEW YORK COURT OF CLAIMS

**YESICA AUGISTINA ESCOBAR
FUENTES, LEYDI ARELY FUENTES
PAZ,**

Claimant,

**DECISION AND
ORDER**

-v-

**THE STATE OF NEW YORK AND NEW
YORK STATE THRUWAY AUTHORITY,**

**Claim No. 115807
Motion No. M-83230**

Defendants.

VANESSA RAMIREZ,

Claimant,

-v-

**THE STATE OF NEW YORK AND NEW
YORK STATE THRUWAY AUTHORITY,**

Claim No. 118314

Defendants.

YADIRA VELASQUEZ,

Claimant,

-v-

**THE STATE OF NEW YORK and THE
NEW YORK STATE THRUWAY
AUTHORITY,**

Claim No. 118506

Defendants.

**MAYRA GRANADOS, as Administratrix
ad Prosequendum of the Estate of
GEORGINA LETICIA CASTENEDA
PAREDES,**

Claimant,

-v-

**THE STATE OF NEW YORK and THE
NEW YORK STATE THRUWAY
AUTHORITY,**

Claim No. 118507

Defendants.

YADIRA SINCHE RIVERA,

Claimant,

-v-

**THE STATE OF NEW YORK and THE
NEW YORK STATE THRUWAY
AUTHORITY,**

Claim No. 118508

Defendants.

ANGELA MORENO,

Claimant,

-v-

**THE STATE OF NEW YORK and THE
NEW YORK STATE THRUWAY
AUTHORITY,**

Claim No. 120544

Defendants.

BEFORE:

**HON. RICHARD E. SISE
Acting Presiding Judge of the Court of Claims**

APPEARANCES: **For Claimant:**
SIMON, EISENBERG & BAUM, LLP
BY: Carol Abrams, Esq. (Claim No. 115807)
MORTON BUCKVAR, ESQ.
NO APPEARANCE (Claim No. 118314)
SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO, P.C.
BY: Frank V. Floriani, Esq. (Claim No. 118506)
(Claim No. 118507)
(Claim No. 118508)
MICHAEL N. DAVID, ESQ.
NO APPEARANCE (Claim No. 120544)

For Defendants:
HON. ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL
BY: J. Gardner Ryan, Esq.
Assistant Attorney General

The following papers were read on a motion, brought on by an Order to Show Cause, for an order consolidating Claims No. 115807, 118314, 118506, 118507, 118508 and 120544:

1. Order to Show Cause and Supporting Affirmation of Carol Abrams, Esq., with annexed Exhibits;
2. Reply affirmation of Frank V. Floriani, Esq. (Claims No. 118506, 118507, 118508)
3. Affirmation in response of J. Gardner Ryan, AAG.

Each of the six claims for which consolidation is sought arose from a June 14, 2008 automobile collision that occurred on the New York State Thruway near mile post marker 39.9 in the Town of Tuxedo, Orange County, New York. A GMC van, carrying a total of fourteen people, left the southbound travel lane, crossed over a guardrail, and struck a concrete overpass bridge abutment. The driver of the van was killed. A number of the passengers commenced

actions in this Court, alleging that the State was negligent in its design, management, and inspection of the portion of the Thruway where the accident occurred.¹

Three of the claims were assigned to the Individual Assignment calendar of the Hon.

Terry Jane Ruderman.

<u>Claim No.</u>	<u>Claimant</u>	<u>filed</u>
115807	Yesica Agustina Escobar Fuentes and Leydi Arely Fuentes Paz	9/10/08
118314	Vanessa Ramirez	4/22/10
120544	Angela Moreno	11/3/11

The three other claims were assigned to the Individual Assignment calendar of the Hon. Thomas

J. Scuccimarra:

<u>Claim No.</u>	<u>Claimant</u>	<u>filed</u>
118506	Yadira Velaquez	6/10/10
118507	Mayra Granados, as Administratrix ad Prosequendum of the Estate of Georgina Leticia Castaneda Paredes	6/10/10
118508	Yadira Sinche Rivera	6/10/10

Discovery has been completed and Notes of Issue have been filed and served in all six claims.

Trial dates were established for four of them: Claim No. 115807 was scheduled to be tried before Judge Ruderman on April 8, 2013,² and the three claims filed on June 10, 2010 (Claims No. 118506, 118507, and 118508) are scheduled to be tried on October 21, 2013 before Judge Scuccimarra. No trial date has been set for either Claim No. 118314 or Claim No. 120544.

Counsel for claimants in the earliest action, Claim No. 115807, initiated the instant motion to consolidate, asserting that consolidation was appropriate because all of the actions involve a common question of law and fact and consolidation would both avoid unnecessary

¹ Although the specific acts of negligence set forth in the claims vary considerably, all six actions are premised on the State's alleged failure to use due care in carrying out design, management and inspection of the roadway.

² This trial date was stayed pending determination of the instant motion.

costs and delay and remove the possibility of inconsistent verdicts (Abrams affirmation, ¶ 8; CPLR 602 [a]; Badillo v 400 East 51st St. Realty LLC, 74 AD3d 619 [1st Dept 2010]). Counsel for the claimants in Claims No. 118506, 118507, and 118508 states in his affidavit that his clients have no objection, as long as the trial date of October 21, 2013 is not changed. The opinion of defense Counsel is that “[j]oinder of the actions for a trial on the issue of liability is clearly appropriate” as it would promote efficiency and negate the possibility of conflicting results on that issue (Ryan affirmation, ¶ 11).

Both the CPLR and the Court of Claims Act authorize consolidation and joinder of two or more actions. CPLR 602 (a) provides:

“When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay”

Section 9 (5) of the Court of Claims Act conveys the authority

“[t]o order two or more claims growing out of the same set of facts to be tried or heard together, with or without consolidation, whenever it can be done without prejudice to a substantial right.”

While consolidation and joinder have similar aims and the terms are sometimes used interchangeably, there is a significant distinction between them (Kelley v Galina-Bouquet, Inc., 155 AD2d 96, 101 [1st Dept 1990], *citing* 2 Weinstein–Korn–Miller, NY Civ Prac, ¶ 602.02). Consolidation of two or more actions “completely merges the separate actions such that they lose their original identity” (Alexander, *Practice Commentaries*, McKinney’s Consol Laws of NY, CPLR 602, C602:2). After consolidation, there is only one caption to the action, a caption that

incorporates all of the parties to the previously separate actions; the result of the trial would be a single verdict or decision; and only one judgment would be entered (Alexander, *Practice Commentaries*, McKinney's Consol Laws of NY, CPLR 602, C602:2). In addition, the parties of the formerly separate action must agree on which of their counsel is to be the attorney of record for the consolidated claim (*see* 3 Carmody-Wait 2d § 17:60, [Consolidation of Actions, Designation of attorneys]).

In contrast, joinder of two or more actions for trial "leaves the individual actions intact," and requires only that they be tried simultaneously (*id.*). The captions of the individual actions remain the same; separate verdicts or decisions are rendered and a separate judgment is issued in each action.

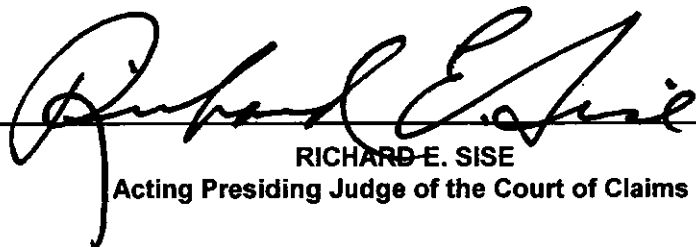
"Organic" consolidation, the total merger of several actions, is not appropriate in situations where the plaintiffs' (or claimants') injuries resulted from the same occurrence and they are seeking recovery against the same defendant(s) on the same theory of liability but, on the issue of damages, each of several parties will be presenting medical proof of injuries that may vary greatly. In such situations, courts are advised to join the actions for trial of the issue of liability only, and, if liability is found, allow each litigant or group of litigants to have their damages assessed separately and/or to enter into their own separate negotiations for settlement (*see e.g.* Alvarado v Dillon, 67 AD3d 1214, 1215 [3d Dept 2009]; Bass v France, 70 AD2d 849 [1st Dept 1979]; Molnar v Fifth Ave. Coach Lines, 6 AD2d 1003 [1st Dept 1958]; 105 NY Jur 2d Trial §192; 7C Carmody-Wait 2d § 52:42 [2013] [Joint Trials Without Consolidation]).

Although claimants have requested "consolidation" of the actions being considered on this motion, it is evident that joinder, without consolidation, for trial on the issue of damages is

more appropriate. Thus, Defendant's liability to those injured by this single automobile accident will be decided together with respect to all six actions. Should liability be found each claim will have its own settlement negotiations and damages trial if required.

Consequently, the motion is granted to the extent that claims numbered 115807, 118314, 118506, 118507, 118508 and 120544 are joined for trial of the issue of liability. The Chief Clerk is directed to issue such transfer orders as are necessary to place all six of these claims on the Individual Assignment calendar of the Judge Terry Jane Ruderman.

Albany, New York
July 10, 2013



RICHARD E. SISE
Acting Presiding Judge of the Court of Claims