

Applehole v Wyeth Ayerst Labs.
2019 NY Slip Op 31815(U)
June 25, 2019
Supreme Court, New York County
Docket Number: 105122/2009
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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INDEX NO. 105122/2009
MOTION DATE 06/07/2019
MOTION SEQ. NO. 010

CLARA APPLEHOLE, ALAN HIKE, PARKER & WAICHMAN LLP, ELLA ABRAMOVA, CHARLOTTE ALLEN, CYNTHIA ALTINI, JOHN ALTINI, RICALDA ALVARADOS, VIAIAN ANDERSON, SHERRI ANTRUMPERRY, DANIEL ARMSTRONG, SHARON ARMSTRONG, CYNTHIA ARTHUR, CAROLINE ARTIS, STEPHEN ARTIS, JOHN BAGLO, JOAN BAKANOWSKY, JOSEPH BAKANOWSKY, BONNIE BAKER, RICHARD BAKER, ALVIN BALLENTINE, LINA BALLANTINE, MAYA BALOG, AMELI BARRETO, BONNIE BARROWCLIFF, ALLAN BAUMAN, SANDRA BAUMAN, PAMELA BECKER, ROBERT BECKER, LYNETTE BEDNARZ, HERNE BELLOBE, SHEILA BENN, SABINE BESSON, SHERWYN BESSON, MOISES BETANCOURT, BARBARA BISHOP, THOMAS BISHOP, LAURA BLASS, HELEN BONANNO, STEPHEN BONNANO, BERNARD BOOKER, LILLIAN BOOKER, RENE BRADLEYWILLIAMS, DEBRA BROWN, ESTATE CRAIG BROWN, DORRIE BRUMBAUGH, LAURIE BRUSH, SHARON BURCH, ANGELA BURNETT, JOHN BURNETT, JOHN BYRNE, KATHLEEN BYRNE, JOSEPH CAMMARATA, PATRICIA CAMMARATA, BONNIE CAMPBELL, SHARON CAPORALE, JOSEPH CAPPETTA, SUSAN CAPPETTA, DONNA CATALDO, COLLEEN CERVERO, JOSEPH CETRANGOL, PATRICIA CETRANGOL, BARBARA CIERVO, CARLO CIERVO, JOSEPH COHEN, NATALIE COHEN, TRACEY COIT, JACQUELINE COLEY, VINCENT COLEY, ERNESTINE COMEGYSTAYLOR, DEBORAH COOK, LEONARD CORBIN, AILEEN CRUPI, JAMES CRUPI, VINCENT DAURIA, GEORGE DANFORTH, JOSEPH DARPINO, ANNA DAVILA, ISRAEL DAVILA, ALICE DAVIS, CAROLYN DAVIS, PAMELA DAWKINS, JUDITH DEER, ANGELA DELEON, CRYSTAL DELIK, LAWRENCE DEMPSEY, SHEILA DICKERSON, JOHN DICKINSON, MARGARET DICKINSON, ANTOINETTE DILASCIO, DOUGLAS DINERSTEIN, MARIA DINERSTEIN, JOYCE DISTASI, LAURA DOBBS, VALERIE DOBEK, JOAN DOUGHERTY, BRUCE DOWNEY, KEITH DOWNEY, ALLEN DUNBAR, VALLERIA DUNBAR, DONALD DURIVAGE, GLORIA DURIVAGE, MARK EADES, MICHELE EADES, LISA EASTBURN, ELAINE EDWARDS, KAREN ELSAYED, JOYCE EPPS, WILLIAM EPPS, EDWIN ESCALERA, PATRICA ETCHART, RONALD ETCHART, TANYA FERGUSON, DIANNE FLAKESJORDAN, BETHANY FOLEY, JOHN FORIER, CHRISTINE FRANK, FRED FRANK, ELIZABETH FREDERICKS, ROBERT FERDERICKS, JACQUELINE FREEMAN, JOANNE FULLMAN, CLAUDETTE GALIBER, RUSSELL GALIBER, LINDA GAMBINO, MELVYN GARNER, MICKIE GARNER, RUBY GARRETT, GRACE GARTH, GLENNA GENTILE, RICHARD GENTILE, FRANCES GEORGALAS, PAUL GEORGALAS, MELANIE GERTCHER, PAMELA GETHARD, ANNAMARIA GIGANTE, AARON GILMAN, JANNET GILMA, DIANNE GLASSER, BRUCE GLAZER, GEORJEAN GLAZERMONTANINO, ROBERT GNUTZMAN, STELLA GNUTZMAN, LENORE GOLDSTEIN, MEL GOLDSTEIN, VICTOR GONZALEZ, LISA GORMAN, JANET GREEN, DEBORAH GREENE, TERRENCE GREENE, ED GREW, BRENDA GRIFFITHS, PHYLLIS GROSS,

DECISION AND ORDER

NATASHA GRUBB, VIVIAN GRULKOWSKILAMB, VERNETTE GUNN, VIVIAN HARRIS, TRACY HARRITYPREVITI, DEAN HARVEY, DENISE HARVEY, DEBORAH HAWKINS, BARBARA HAYES, RICHARD HECHT, ROBIN HECHT, MISHELLE HENDERSON, DEBORAH HESTERBEY, AIDA HINES, HAZEL HOLSBORG, LAWRENCE HOLSBORG, ELLIOT HUBER, JOAN HUBER, MARIE INGLESE, VINCENT INGLESE, MARIA JACKSON, VINCENT JACKSON, BRENDA JANEWAY, WILL JANEWAY, GWENDOLYN JENKINS, JOHN HENKINS, CHARLES JOHNSON, ANDREA JONES, HARRY JORDAN, CHRISTOPHER JOYNER, TAWANA JOYNER, BARBARA KAPLAN, DOREEN KAY, WILLIAM KAY, JACK KELLER, JOYCE KELLER, JEFFREY KENNEDY, LONNIE KIDWELL, FRANK KLIPPEL, JOANN KLIPPEL, KAREN KNUCKLES, BARRY KOEPPER, DEBRA KOEPPER, IRENE KONDILAS, GLORIA KOT, BARBARA KRALMAN, THOMAS KRALMAN, PATRICIA LAFRENIERE, PAUL LAIRD, SYLVIA LAIRD, TRAVIS LAMB, CHAIM LAX, ALICE LEA, DUANE LEA, ELIZABETH LEBRON, SANDRA LEVONS, KATHY LEWANDOWSKI, EDITH LEWIS, LILLIAN LEWIS, JOSEPH LIU, PATRICIA LIU, JOHN LLOYD, WILLA LLOYD, SHARON LOCKWOON, VINCENT LOMONTE, WANDA LOPEZ, JANET LOWE, KENNETH LOWE, ANA LUCAS, PATRICIA LUNSFORD, DEBORAH LYNAGH, PHYLLIS MAGGIO, LIA MAMNICO, CLARA MARCANO, MARIA MARIN, CHRISTOPHER MARKAKIS, LINDA MARKAKIS, WANDA MARTINEZ, EILEEN MATHEWS, HAROL MATHEWS, RITA MATHIESON, ROBERT MATHIESON, PATRICIA MATTHEWS, DANIEL MCALLISTER, MARY MCALLISTER, THELCIA MCDONALD, DEBORA MCTOMMONEY, JOSEPH MCTOMMONEY, PATRICIA MELIA, PATRICK MELIA, SHERIDAN MENDEZ, JOSEPH MERCANTE, AMANDA MESKO, DOROTHY MILLER, LINDA MILLER, MARA MILLER, SHERRY MITTASCH, ANTHONY MONACO, MARILYN MONACO, SHEILA MOODY, JOHN MORRIS, MERRIL MORRIS, LINDA MORTENSEN, SHIRLEY NAZZARIO, ELLEN NELSON, JOHN NELSON, DOROTHY NICOSIA, MINDY NIERENBERG, DIANE NOBLES, LARRY NOBLES, JANET NORWOOD, PAUL NORWOOD, MARIE NOTO, ARTHUR O'CONNELL, WILLIAM OBEGAARD, DIANE ORINGER, FRANCHETTA OUTLAW, MARK OWEN, MARIE PELUSO, RICHARD PELUSO, STACY PERRONE, KEITH PERRY, SHERRI PETERS, DEBBIE PETT, DONNA PICERNO, RICHARD PICERNO, EDNA PIPPA, JIMMY PORTERFIELD, SANDRA PORTERFIELD, JAMES POWELL, JOAN POWELL, JAMES PREVITI, JEAN PRITCHETT, LINA PURKEY, MARTIN PURKEY, BARBARA RAMSEY, EMIL RAPOPORT, IRIS REID, MARIANN RESCIGNO, NICHOLAS RESCIGNO, AMY REYNOLDS, MELVIN RHODES, PATRICIA RIEDEL, RICHARD RIEDEL, ROSA RIGUAL, EVELYN RIOS, JESUS RIVERA, ANNETTE ROBERT, ROBIN STESSEL, ESTATE STANLEY ROBERTS, ACQUENETTA ROBINSON, JAMES ROGALSKI, ANNA ROMANRIVERA, VIVIAN ROSA, DIANE ROSAS, JANICE ROSE, MICHAEL ROSE, JNICE ROWE, PATRICIA ROWE, JOHN RUNDLE, JULIE RUNDLE, PATTY RYLAND, ADBUL SALADIN, LEN ROEBEK, ANNETTE SALISBURY, ELANA SALMON, RENA SAMUEL, HOPE SCHNEIDER, GERISE SCHWORNBARTEÑOPE, LEONARD SCOTT, RENEE SEALY, ALICE SENEAL, ROGER SENEAL, SUSAN SERWATKA, FELICIA SESSOMS, MARION HORTMAN, KAY SIMS, JAMIE SMITH, SHARON SMITH, ESTATE DANA L. SMITH, DANA SMITH, SAUDA SNEED, SHEILA SNOW, NANCY SOLOMON, SCOTT SPIELBERG, SUSAN SPOHN, BRUNETTA SPRUILLI, CONSTANCE STAHL, VICTORIA STASKIEL,

LARENCE STEVENSON, ESTATE PATRICIA A. STEVENSON, AFRED STEWARD, OLDA STEWARD, ARLAND STORER, LINDA STORER, MATTIE STUBBS, STEPHEN SULLIVAN, CYNTHIA SUMMERS, JOHN SUMMERS, BRENDA SUTTON, JOAN SZVETTIS, PATRICIA TANTON, AIDA TAYLOR, WANDA TAYLOR, MARIE TESTA, SANDRA TETI, VINGENT TETI, ALBERT THOMAS, SHIRLEY THROPP, EARLINE TILLMAN, DOMINICK TORRE, SONIA TORRES, VIVIENNE TUCKER, APRIL UPSHAW, LORNA VAN HORNE, THERESA VANAMAN, ROBERTO VEGA, JACK VERO, PADGETT VERO, SHEILA VEVEIROS, MARY VOELKER, PHILP VOLNEY, ROSEMARIE WAGNER, WILLIAM WAGNER, MARIE WATSON, ELVIN WEBB, JANE WEBB, IRA WEISS, DWAYNE WESBY, THERESA WESBY, ASTR WIAND, DONNA WIERZBICKI, ROMAN WIERZBICKI, JOSEPH WILDEY, NANCY WILDEY, ANNABEL WILES, MARIE WILLIAMS, MARIO WITHERSPOON, JACQUELINE WOLLMAN, RODNEY WOLLMAN, FRANK WOODS, TONJA WOODS, JOSETTE WRIGHT, BRIAN WYATT, LANA YAGGIE, LLOYD YAGGIE, EMILY ZUHUSKY, THERODORE ZUHUSKY,

Plaintiff,

- v -

WYETH AYERST LABORATORIES, AMERICAN HOME PRODUCTIONS CORP., AMERICAN HOME PRODUCTS CORP., WYETH LABS INC., INTERNEURON PHARMACEUTICALS, PAUL NAPOLI, GERALD KAISER, MARC BERN, MARIE KAISER, NAPOLI NAPOLI KAISER & ASSOC., NAPOLI KAISER & BERN LLP, NAPOLI KAISER BERN & ASSOC. LLP, LAW OFFICES OF MARC JAY BERN, NAPOLI KAISER BERN & ASSOC. P.C., NAPOLI KAISER & BERN P.C.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 010) 292, 293, 294, 295, 296, 297, 298, 299, 300, 302, 303, 304, 305

were read on this motion to/for _____ SEAL _____.

This is a motion brought by Intervenor Defendants pursuant to CPLR § 2214 [d] and 22 NYCRR § 1200 to disqualify the law firm of Parker Waichman LLP (the **Parker Firm**) from representing the plaintiffs in taking depositions. For the avoidance of doubt, counsel for the plaintiffs sought to retain the Parker Firm solely for the purpose of conducting depositions in this case. For the reasons set forth on the record (6/25/19), the motion is granted.

Under Rule 3.7 [b] [1] of the New York Rules of Professional Conduct,

[a] lawyer may not act as advocate before a tribunal in a matter if: (1) another lawyer in the lawyer’s firm is likely to be called as a witness on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client; or (2) the lawyer is precluded from doing so by Rule 1.7 or Rule 1.9.

As discussed on the record, it is undisputed that among other potential witnesses from the Parker Firm, Mr. Parker will be called as a material witness in this case. Accordingly, disqualification is required.

Accordingly, it is

ORDERED that the motion to disqualify counsel is granted and the law firm of Parker Waichman LPP is hereby disqualified from representing the plaintiffs at their upcoming depositions in this matter, and it is further

ORDERED that counsel for the movant, within 21 days after the entry of this order, shall serve a copy of this order with notice of entry upon counsel for all other parties and upon Intervenor Plaintiffs; and it is further

ORDERED that such filing with the Clerk of the General Clerk’s Office and the Clerk of the Part shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

ORDERED that counsel are directed to appear for a conference forthwith.

6/25/2019
DATE



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ANDREW BORROK, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE