

Applehole v Wyeth Ayerst Labs.
2022 NY Slip Op 30302(U)
January 31, 2022
Supreme Court, New York County
Docket Number: Index No. 105122/2009
Judge: Andrew Borrok
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X

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

INDEX NO. 105122/2009
MOTION DATE 12/08/2021
MOTION SEQ. NO. 011

DECISION + ORDER ON MOTION

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, 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 SCHWORNBARTEHOPE, 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, VINCENT 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 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.

-----X

PAUL NAPOLI, NAPOLI KAISER & BERN LLP, NAPOLI KAISER BERN & ASSOC. LLP

Third-Party
Index No. 595018/2015

Plaintiff,

-against-

PARKER WAICHMAN, LLP F/K/A PARKER WAICHMAN ALONSO LLP, PARKER WAICHMAN ALONSO MARK, LLP, PARKER & WAICHMAN, LLP, JERROLD PARKER, HERBERT WAICHMAN

Defendant.

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 351, 352, 353, 354, 355, 356, 357, 358

were read on this motion to/for DISQUALIFY COUNSEL.

Upon the foregoing documents, the motion must be granted.

Reference is made to this court’s prior decision (the **Prior Order**; NYSCEF Doc. No. 306), dated June 25, 2019, 180 AD3d 483, 483 [1st Dept 2020], *appeal denied* 36 NY3d 942 [2020]), pursuant to which this court held that Parker Waichman LLP (the **Parker Firm**) was disqualified from representing the plaintiffs for the purpose of taking depositions under Rule 3.7(b)(1) of the New York Rules of Professional Conduct (**NYRPC**) because it was undisputed that Jerold

Parker would be called as a material witness in this case. The disqualification of Mr. Parker is imputed to his firm.

The Intervenor Defendants now move to disqualify the Parker Firm from representing the plaintiffs in any capacity in this matter because the Intervenor Defendants argue that the Parker Firm has willfully violated the Prior Order by participating in the representation of the plaintiffs by, among other things, preparing them for their depositions, scheduling their depositions, arranging for the review and execution of their deposition transcripts and by facilitating post-deposition demands (e.g., NYSCEF Doc. 345). Mr. DiJoseph is counsel of record for the plaintiffs in this case. The Intervenor Defendants further argue that Mr. DiJoseph has facilitated the willful disregard of this court's Prior Order and Rule 3.7(b)(1) of the NYRPC by the Parker Firm by directing that all issues involving scheduling the plaintiff depositions be directed to the Parker Firm (NYSCEF Doc. No. 346) and by directing that the depositions transcripts be sent directly to the Parker Firm (NYSCEF Doc. No. 344).

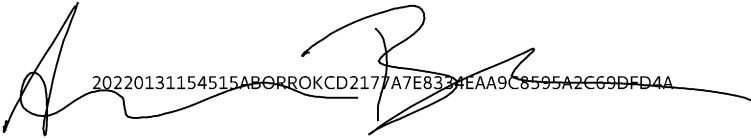
Although it should not have taken this court's Prior Order, as the Parker Firm's obligations arise from the NYRPC, the Parker Firm is disqualified from representing the plaintiffs in this case. Rule 3.7(b)(1) is not a deposition rule. Put another way, it is irrelevant that this court's Prior Order only addressed the Parker's Firm representing the plaintiffs at depositions. There simply has been no basis for the Parker Firm or for Mr. DiJoseph who is counsel of record to believe that the Parker Firm could represent the plaintiffs in this case.

The court has considered Mr. DiJoseph's arguments and found them unavailing. Thus, the motion must be granted.

Accordingly, it is

ORDERED that the motion to disqualify counsel is granted.

20220131154515ABORROKCD2177A7E8334EAA9C8595A2C69BFD4A

<u>1/31/2022</u> DATE	 <hr/> ANDREW BORROK, J.S.C.													
CHECK ONE: APPLICATION: CHECK IF APPROPRIATE:	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><input type="checkbox"/> CASE DISPOSED</td> <td style="width: 50%;"><input checked="" type="checkbox"/> NON-FINAL DISPOSITION</td> </tr> <tr> <td><input checked="" type="checkbox"/> GRANTED</td> <td><input type="checkbox"/> GRANTED IN PART</td> </tr> <tr> <td><input type="checkbox"/> DENIED</td> <td><input type="checkbox"/> OTHER</td> </tr> <tr> <td><input type="checkbox"/> SETTLE ORDER</td> <td><input type="checkbox"/> SUBMIT ORDER</td> </tr> <tr> <td><input type="checkbox"/> INCLUDES TRANSFER/REASSIGN</td> <td><input type="checkbox"/> FIDUCIARY APPOINTMENT</td> </tr> <tr> <td></td> <td><input type="checkbox"/> REFERENCE</td> </tr> </table>	<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	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT		<input type="checkbox"/> REFERENCE	
<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													
<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER													
<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT													
	<input type="checkbox"/> REFERENCE													