IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, EMMANUEL BAPTIST CHURCH, NEW OXLEY HILL BAPTIST CHURCH, BETHEL A. BAPTIST CHURCH, COVENANT PRESBYTERIAN CHURCH, CLINTON TABERNACLE AME ZION CHURCH, BARBEE'S CHAPEL MISSIONARY BAPTIST CHURCH, INC., ROSANELL EATON, ARMENTA EATON, CAROLYN COLEMAN, BAHEEYAH MADANY, JOCELYN FERGUSON-KELLY, FAITH JACKSON, and MARY PERRY, Plaintiffs, v. PATRICK LLOYD MCCRORY, in his official capacity as the Governor of North Carolina, KIM WESTBROOK STRACH, in her official capacity as Executive Director of the North Carolina State Board of Elections, JOSHUA B. HOWARD, in his official capacity as Chairman of the North Carolina State Board of Elections, RHONDA K. AMOROSO, in her official capacity as Secretary of the North Carolina State Board of Elections, JOSHUA D. MALCOLM, in his official capacity as a member of the North Carolina State Board of Elections, PAUL J. FOLEY, in his official capacity as a member of the North Carolina State Board of Elections and MAJA KRICKER, in her official capacity as a member of the North Carolina State Board of Elections, Defendants.	**MOTION AND [PROPOSED] ORDER TO CONSOLIDATE FOR PURPOSES OF DISCOVERY ONLY** **Case No.: 1:13-CV-658**

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, A. PHILIP RANDOLPH INSTITUTE, UNIFOUR ONESTOP COLLABORATIVE, COMMON CAUSE NORTH CAROLINA, GOLDIE WELLS, KAY BRANDON, OCTAVIA RAINEY, SARA STOHLER, and HUGH STOHLER,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, JOSHUA B. HOWARD in his official capacity as a member of the State Board of Elections, RHONDA K. AMOROSO in her official capacity as a member of the State Board of Elections, JOSHUA D. MALCOLM in his official capacity as a member of the State Board of Elections, PAUL J. FOLEY in his official capacity as a member of the State Board of Elections, MAJA KRICKER in her official capacity as a member of the State Board of Elections, and PATRICK LLOYD MCCRORY, in his official capacity as the Governor of North Carolina,

Defendants.

Case No.: 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; and KIM W. STRACH, in her official capacity as Executive Director of the North Carolina State Board of Elections,

Defendants.

Case No.: 1:13-CV-861

INTRODUCTION

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, plaintiffs in *North Carolina State Conference of the NAACP, et al. v. McCrory, et al.* (hereinafter, the "NAACP Plaintiffs") and *League of Women Voters of North Carolina, et al. v. State of North Carolina, et al.* (hereinafter, the "LWV Plaintiffs") respectfully request that the Court consolidate the above captioned cases, Nos. 1:13-cv-658, 1:13-cv-660, and 1:13-cv-861, for purposes of discovery only. Consolidating these actions for discovery will give the Court and parties the benefits of consolidation—such as avoiding unnecessary costs and duplicative efforts—while ensuring that a decision on whether to consolidate these cases for trial is based on the state of cases and the state of the evidence at a time when both are more developed. Indeed, there are material differences among these cases that weigh in favor of postponing until a later date the decision of whether to consolidate these actions for summary judgment and trial. For these reasons, and for those discussed below, the Court should exercise its discretion and order consolidation of these actions for discovery purposes only.

BACKGROUND

The NAACP Plaintiffs and the LWV Plaintiffs filed Cases Nos. 1:13-cv-658 and 1:13-cv-660 shortly after Governor Patrick McCrory signed the omnibus election bill H.B. 589 into law on August 12, 2013. The Department of Justice filed Case No. 1:13-cv-861 thereafter. All three cases challenge provisions of H.B. 589, which imposed sweeping changes on North Carolina's election laws, including those provisions that eliminated a significant portion of the early voting period, imposed a photo ID requirement, eliminated same-day voter registration, and prohibited the counting of provisional ballots for voters in the wrong precincts. Although all three cases challenge the legality of H.B. 589, the cases are not identical. There are material differences

among the claims in the cases including, among others, that: certain of the cases challenge the photo ID requirement, while one of the cases does not; one of the cases challenges the provision concerning additional poll observers, while the other cases do not; two of the cases allege claims under the Fourteenth and Fifteenth Amendments of the U.S. Constitution, while one of the cases does not.

The parties in all three cases held a joint Rule 26(f) conference on November 15 and November 25, 2013. The parties discussed various topics during the conference, including the potential for consolidation. All the parties agreed that consolidation for discovery purposes was appropriate and that materials produced during discovery in any one case should be usable in all three. The parties could not reach agreement that the cases should be consolidated for purposes of summary judgment or trial at this time. Both the NAACP Plaintiffs and the LWV Plaintiffs expressed the view that consolidation for trial purposes was not appropriate at this time.

ARGUMENT

In light of the parties' positions, and the differences among these suits, the above captioned cases should be consolidated for purposes of discovery only at this time. Under Rule 42(a), the Court has considerable discretion with respect to how to consolidate cases. Fed. R. Civ. P. 42(a). Not only can the Court "consolidate the actions," it can "join for hearing or trial any or all matters" or "issue any other orders to avoid unnecessary cost or delay." *Id.* It is not uncommon for courts to consolidate cases for purposes of discovery only. *See, e.g.*, *Davis v. Heritage Crystal Clean, LLC,* No. 10-CV-59, 2011 WL 1483167, at *2 (E.D. Tenn. Apr. 19, 2011) (ordering consolidation for purposes of discovery only) (attached hereto as Ex. A); *Great Lakes Anesthesia, PLLC v. State Farm Mut. Auto. Ins. Co.*, No. 11-10658, 2011 WL 2472700, at *1-2 (E.D. Mich. June 22, 2011) (ordering parties to stipulate to consolidation for discovery

only) (attached hereto as Ex. B); *N. Natural Gas Co. v. L.D. Drilling, Inc.*, 759 F. Supp. 2d 1282, 1304 (D. Kan. 2010) (ordering consolidation for "purposes of discovery only").

Consolidation for purposes of discovery only makes sense here for several reasons: *First*, it is not necessary to decide whether these cases should be consolidated for trial or other purposes at this early stage in litigation. *See, e.g., Pariseau v. Anodyne Healthcare Mgmt, Inc.*, No. Civ. A. 3:04-cv-630, 2006 WL 325379, at *1 (W.D.N.C. Feb. 9, 2006) (consolidating cases for discovery and pre-trial motions only and explaining that plaintiff may renew her motion to consolidate the case for trial at the close of discovery) (attached hereto as Ex. C); *Davis*, 2011 WL 1483167, at *2 (consolidating cases for discovery only and explaining that consolidation for trial would be decided at a later date). Because the parties only recently concluded their Rule 26(f) conference, discovery has only just begun. All parties anticipate that several months of discovery will be required, making it unnecessary at this time for this Court to decide whether consolidation would be appropriate for trial or other purposes. For good case management reasons, courts frequently hold over the decision on whether to consolidate cases for trial until the close of discovery. *See id.* This approach allows the parties and the Court to determine the degree to which the evidence will overlap before making a decision about whether to consolidate the cases for trial or other purposes.

Second, consolidating these cases for only discovery purposes adequately promotes interests of judicial economy and efficiency. *See Davis*, 2011 WL 1483167, at *2 (noting that consolidating cases for discovery only "would further the interests of judicial administration and economy, as proof in each case may overlap"); *see also N. Natural Gas Co.*, 759 F. Supp. 2d at 1304 (noting that consolidating cases for discovery only would "reduce unnecessary cost and duplication of effort"). Any duplication in time, costs, or resources in these cases are most likely

to stem from the parties' discovery activities. The parties recognized as much during their Rule 26(f) conference when all parties agreed that coordinating discovery would save time and resources for all parties involved. Given that these discovery activities will consume the parties' time and resources for the next several months, discovery consolidation will adequately protect efficiency interests in the short term.

Third, it would be premature to consolidate these cases for trial or other purposes in light of the differences in Plaintiffs' claims. *See Great Lakes Anesthesia*, 2011 WL 2472700, at *1-2 (ordering consolidating for purposes of discovery only where differences in plaintiffs' injuries would require individualized assessment); *see also Gaddy v. Elmcroft Assisted Living*, No. 3:04-cv-36, 3:04-cv-309, 3:04-cv-458, 2005 WL 2989658, at *1 (W.D.N.C. Nov. 2, 2005) (rejecting consolidation for summary judgment where factual differences among the cases would not conserve judicial resources) (attached hereto as Ex. D). In particular, it does not make sense to consolidate these cases for trial when the United States and NAACP Plaintiffs, and not the LWV Plaintiffs are challenging the photo ID requirement in H.B. 589. In light of differences between the cases here, such as claims concerning the provision allowing more poll observers to be present during voting, which only the NAACP Plaintiffs have raised, consolidation for trial would be premature. Consolidating these cases for purposes of discovery, however, would ensure that the cases will proceed in an efficient and organized schedule until it can be better determined whether these cases should be consolidated for summary judgment or trial.

CONCLUSION

For the foregoing reasons, Plaintiffs in *North Carolina State Conference of the NAACP, et al. v. McCrory, et al.* and *League of Women Voters of North Carolina, et al. v. State of North Carolina, et al.* respectfully request that the Court consolidate the above captioned actions for

purposes of discovery only.

Dated: **December 4, 2013**

Respectfully submitted,

By: /s/ *Adam Stein*

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Dated: **December 4, 2013**

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, EMMANUEL BAPTIST CHURCH, NEW OXLEY HILL BAPTIST CHURCH, BETHEL A. BAPTIST CHURCH, COVENANT PRESBYTERIAN CHURCH, CLINTON TABERNACLE AME ZION CHURCH, BARBEE'S CHAPEL MISSIONARY BAPTIST CHURCH, INC., ROSANELL EATON, ARMENTA EATON, CAROLYN COLEMAN, BAHEEYAH MADANY, JOCELYN FERGUSON-KELLY, FAITH JACKSON, and MARY PERRY, Plaintiffs, v. PATRICK LLOYD MCCRORY, in his official capacity as the Governor of North Carolina, KIM WESTBROOK STRACH, in her official capacity as Executive Director of the North Carolina State Board of Elections, JOSHUA B. HOWARD, in his official capacity as Chairman of the North Carolina State Board of Elections, RHONDA K. AMOROSO, in her official capacity as Secretary of the North Carolina State Board of Elections, JOSHUA D. MALCOLM, in his official capacity as a member of the North Carolina State Board of Elections, PAUL J. FOLEY, in his official capacity as a member of the North Carolina State Board of Elections and MAJA KRICKER, in her official capacity as a member of the North Carolina State Board of Elections, Defendants.	**[PROPOSED] ORDER GRANTING CONSOLIDATION FOR PURPOSES OF DISCOVERY ONLY** **Case No.: 1:13-CV-658**

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, A. PHILIP RANDOLPH INSTITUTE, UNIFOUR ONESTOP COLLABORATIVE, COMMON CAUSE NORTH CAROLINA, GOLDIE WELLS, KAY BRANDON, OCTAVIA RAINEY, SARA STOHLER, and HUGH STOHLER,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, JOSHUA B. HOWARD in his official capacity as a member of the State Board of Elections, RHONDA K. AMOROSO in her official capacity as a member of the State Board of Elections, JOSHUA D. MALCOLM in his official capacity as a member of the State Board of Elections, PAUL J. FOLEY in his official capacity as a member of the State Board of Elections, MAJA KRICKER in her official capacity as a member of the State Board of Elections, and PATRICK LLOYD MCCRORY, in his official capacity as the Governor of North Carolina,

Defendants.

Case No.: 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; and KIM W. STRACH, in her official capacity as Executive Director of the North Carolina State Board of Elections,

Defendants.

Case No.: 1:13-CV-861

[PROPOSED] ORDER

Upon consideration, the Motion to Consolidate for Purposes of Discovery Only (ECF Doc. No. ___) filed by plaintiffs in *North Carolina State Conference of the NAACP, et al. v. McCrory*, No. 1:13-cv-658, et al. and *League of Women Voters, et al. v. North Carolina, et al.*, No. 1:12-cv-660 is hereby **GRANTED**. The following actions are consolidated for purposes of discovery only: *North Carolina State Conference of the NAACP, et al. v. McCrory, et al.*, No. 1:13-cv-658, et al., *League of Women Voters, et al. v. North Carolina, et al.*, No. 1:12-cv-660, and *United States v. North Carolina, et al.*, No. 1:13-cv-861. Depositions, interrogatory responses, materials produced in response to requests for production, and responses to requests for admission in any of these actions may be used in any other action that has been consolidated pursuant to this Order. All notices, requests, responses, motions, and other filings relating to discovery must be served on all counsel in each of these actions and bear the case caption for each action that has been consolidated for purposes of discovery pursuant to this Order.

SO ORDERED.

Date: _____, 2013

_____
THE HONORABLE THOMAS D. SCHROEDER
UNITED STATES DISTRICT JUDGE

EXHIBIT A

2011 WL 1483167
Only the Westlaw citation is currently available.
United States District Court, E.D. Tennessee.

Clint P. DAVIS, Plaintiff,
v.
HERITAGE CRYSTAL CLEAN, LLC, Defendant.

No. 3:10–CV–59. | April 19, 2011.

Attorneys and Law Firms

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Opinion

MEMORANDUM AND ORDER

THOMAS W. PHILLIPS, District Judge.

***1** This matter is before the court on Plaintiff's Motion to Consolidate [Doc. 10 in Case No. 3:10–CV–59]. Plaintiff moves the Court to consolidate this action (hereafter, *"Heritage Crystal"*) with *Clint P. Davis v. Fountain Indus. Co.*, Case No. 3:10–CV–220 (hereafter, *"Fountain Indus."*). Plaintiff requests that the cases be consolidated for discovery and trial purposes.

The defendant, Heritage Crystal Clean, LLC ("Heritage Crystal"), has not responded to the motion. For the following reasons, Plaintiff's Motion to Consolidate [Doc. 10 in Case No. 3:10–CV59] is **GRANTED IN PART AND DENIED IN PART.**

I. BACKGROUND

This is a product liability action concerning an "Industrial Parts Cleaner" (hereafter, "Parts Washer"). [Plaintiff's Complaint, Doc. 1, at 2, ¶ 6, Case No. 3:10–CV–59]. A Parts Washer is a machine "used to clean components of other machines and tools used in the plant through the use of chemical solvents and agitation." [*Id.*]. Plaintiff alleges that while he was working for Aluminum Company of America ("ALCOA"), he was injured when a Parts Washer "designed, manufactured, installed and/or maintained by Defendant Heritage failed during operation." [Plaintiff's Motion to Consolidate, Doc. 10, at 1, Case No. 3:10–CV–59]. The incident allegedly occurred on May 13, 2009. [*Id.*, at 3, ¶¶ 10–17]. Plaintiff alleges that he suffered back injuries as a result of the alleged failure. [*Id.*].

On February 18, 2010, Plaintiff filed a product liability action against Heritage Crystal. [Plaintiff's Complaint, Doc. 1, Case No. 3:10–CV–59]. In Count I, Plaintiff alleges that at the time of the manufacture and/or sale of the Parts Washer, it was (1) in a defective condition; and/or (2) unreasonably dangerous. [*Id.*, at 4, ¶¶ 18–24]. In Count II, Plaintiff alleges that the Parts Washer was negligently designed or manufactured. [*Id.*, at 5–6, ¶¶ 26–37]. In Count III, Plaintiff alleges that Heritage Crystal intentionally or recklessly sold a dangerous product. [*Id* ., at 7, ¶¶ 38–43]. In Count IV, Plaintiff alleges that Heritage Crystal breached warranties, both express and implied. [*Id.*, at 7–8, ¶¶ 44–47].

The complaint in *Fountain Indus.*, Case No. 3:10–CV–220, is nearly identical. Specifically, Plaintiff alleges that Fountain Industries designed, manufactured, and then sold the Parts Washer to Heritage Crystal. [Plaintiff's Complaint, Doc. 1, at 2, ¶ 6, Case No. 3:10–CV–220]. Plaintiff alleges that Heritage Crystal and/or Fountain Industries Company then sold or installed the Parts Washer at the Aloca plant where Plaintiff was allegedly injured. [*Id.*]. It is not clear who manufactured the product, sold it, or installed it. In its Answer, Heritage Crystal alleges that Fountain Industries Company designed and manufactured the Parts Washer. [Heritage Crystal's Answer, Doc. 5, at 2, ¶ 7, Case No. 3:10–CV–59].

At the time the *Heritage Crystal* case was filed, "Plaintiff believed that Defendant Heritage designed and manufactured the subject machine and there were no identifying labels on the machine confirming another potential manufacturer." [Plaintiff's Motion to Consolidate, Doc. 10, at 1, Case No. 3:10–CV–59]. After Heritage Crystal filed its Answer, Plaintiff then filed a separate action against Fountain Industries Company. [Plaintiff's Complaint, Doc. 1, Case No. 3:10–CV–220]. The *Fountain Indus.* action is based upon similar facts and circumstances as the *Heritage Crystal* action. Specifically, both actions are based upon the "subject parts washer, its alleged failure and all of Plaintiff's alleged injuries and damages." [Plaintiff's Motion to Consolidate, Doc. 10, at 2, Case No. 3:10–CV–59].

***2** Plaintiff now moves to consolidate the instant case and *Fountain Indus.*, Case No. 3:08–CV220, "for all purposes

including discovery and trial." [*Id.*, at 1]. Heritage Crystal has not responded to the motion.

II. ANALYSIS

Rule 42 of the Federal Rules of Civil Procedure provides, "[i]f actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." Fed. R Civ. P. 42(a). "Whether actions involving the same factual and legal questions should be consolidated for trial is a matter within the discretion of the trial court...." *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir.1993). "Cases should be consolidated if the risks of prejudice and confusion are outweighed by other factors[,] including the risk of inconsistent adjudications of common factual and legal issues, the burden on parties [and] witnesses[,] and available judicial resources." *Carpenter v. GAF Corp.*, Nos. 90–3460, 90–3461, 1994 WL 47781, at *1 (6th Cir. Feb.15, 1994) (per curiam) (quotation removed); *accord, e.g.*, *Cantrell*, 999 F.2d at 1011.

The Court finds that consolidation of these actions is appropriate for discovery only. An examination of the complaint in *Fountain Indus.*, Case No. 3:10–CV–220, confirms that the cases involve common issues of law and fact. Indeed, the complaints are nearly identical and involve similar parties. Furthermore, it appears that consolidation would further the interests of judicial administration and economy, as proof in each case may overlap. Finally, the risk of prejudice and confusion by consolidation will be minimal, as the consolidation is only for discovery purposes. The Court will decide at a later date whether the cases should be consolidated for trial purposes as well.

III. CONCLUSION

Accordingly, for good cause stated, Plaintiff's Motion to Consolidate [Doc. 10 in Case No. 3:10–CV–59] is **GRANTED IN PART AND DENIED IN PART,** whereby Case Nos. 3:10–CV–59 and 3:10–CV–220 are **CONSOLIDATED** for **purposes of discovery only.** Case No. 3:10–CV–59 shall be designated as the lead case, and all filings shall be made in Case No. 3:10–CV–59.

IT IS SO ORDERED.

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EXHIBIT B

2011 WL 2472700
Only the Westlaw citation is currently available.
United States District Court,
E.D. Michigan,
Southern Division.

GREAT LAKES ANESTHESIA, PLLC, Summit Medical Group, PLLC, Greater Lakes Ambulatory Surgical Center, PLLC, d/b/a Endosurgical Center at Greater Lakes, Plaintiffs,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant.

No. 11–10658. | June 22, 2011.

Attorneys and Law Firms

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Opinion

ORDER DENYING MOTION TO CONSOLIDATE CIVIL CASES

DAVID M. LAWSON, District Judge.

***1** This matter is before the Court on the parties' joint motion to consolidate the following cases filed in the Eastern District of Michigan, all involving similar parties with the exception of the addition of Michigan Institute of Pain and Headache, P.C. in case number 11–11003:

(1) this case;

(2) *Greater Lakes Ambulatory Surgical Center, PLLC, Great Lakes Anesthesia, PLLC, Michigan Institute of Pain and Headache, P.C. v. State Farm Mutual Automobile Insurance Company*, case number 11–11003 (Hon. Robert Cleland);

(3) *Greater Lakes Ambulatory Surgical Center, PLLC, Great Lakes Anesthesia, PLLC, Summit Medical Group, PLLC v. State Farm Mutual Automobile Insurance Company*, case number 11–11855 (Hon. Avern Cohn);

(4) *Greater Lakes Ambulatory Surgical Center, PLLC, Greater Lakes Anesthesia, PLLC, Summit Medical Group, PLLC v. State Farm Mutual Automobile Insurance Company*, case number 11–12135 (Hon. David Lawson).

The parties seek to consolidate the cases because they are all suits brought under Michigan's nofault insurance law by health-care providers seeking to recover reimbursement for medical services allegedly rendered to individuals insured by State Farm Mutual Automobile Insurance Company, and the cases all involve determining whether the medical services rendered were reasonable and necessary.

Rule 42 of the Federal Rules of Civil Procedure grants a court discretion to consolidate actions "[i]f [the] actions before the court involve a common question of law or fact." Fed.R.Civ.P. 42(a). "Consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties or make those who are parties in one suit parties in another." *Kraft, Inc. v. Local Union 327, Teamsters*, 683 F.2d 131, 133 (6th Cir.1982) (quoting *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496–97, 53 S.Ct. 721, 77 L.Ed. 1331 (1933)). Geared toward increasing the efficient allocation of judicial resources, consolidation is proper especially when multiple proceedings "would be largely duplicative." *See Central States, Se. & Sw. Area Pension Fund v. Smeltzer Enters., Inc.*, No. 08–50180, 2009 WL 3672120, at *1 (E.D.Mich. Oct.30, 2009).

The parties argue that all of the cases involve the "identical issues of whether the medical services rendered were reasonable and necessary, whether the charges were reasonable, whether the charges qualify as 'allowable expenses,' and other similar issues involving Michigan's No–Fault Act." Mot. at 3. The commonality, however, is purely categorical. Although the medical providers and the insurer may be the same entities, the insured patient is different in each case. Consequently, the determination of the necessity of treatment and reasonableness of the charges requires an individual assessment of the injuries and treatment for each of the injured parties. Evidence presented to support one insured's claims would have absolutely no bearing on the outcome of the other insureds' claims. Under Michigan's No–Fault Act, an insurer is liable only for expenses that are reasonable, necessary, and incurred. *Nasser v. Auto Club Ins. Ass'n*, 435 Mich. 33, 50, 457 N.W.2d 637, 645 (1990). To obtain relief, the plaintiffs will have to offer evidence, relevant to only one particular case, of the nature

of each insured's injuries and the medical care each insured received to establish that the care provided was reasonable and necessary.

***2** The Court fails to see the judicial economy to be gained by consolidating the four cases. The parties have not identified a common question of law, and the purportedly common factual questions are not in fact common.

However, counsel for the parties—who *are* common in each of the four cases—have suggested that discovery of the respective parties' methods and procedures may overlap among the cases. They state that economy would be served by consolidating the cases for discovery, at least as to issues that do not require an assessment of the treatment actually provided to the individual patients in the respective cases. Therefore, the Court will entertain the parties' stipulation to consolidate the cases for discovery only and permit the products of discovery in one case to apply and be introduced in the other cases.

Accordingly, it is **ORDERED** that the motion to consolidate cases [dkt. # 15] is **DENIED.**

It is further **ORDERED** that the parties may present a stipulation to consolidate the cases for discovery only, as described above.

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EXHIBIT C

2006 WL 325379
Only the Westlaw citation is currently available.
United States District Court,
W.D. North Carolina.

Aimee PARISEAU Plaintiff,
v.
ANODYNE HEALTHCARE MANAGEMENT, INC., Patrick Clifford, individually, Neal Taub, M.D., individually, Mountain Island Management Services, L.L.C. f/k/a Mountain Island Urgent Care, L.L.C., Mountain Island Urgent Care, P.A., f/k/a Mountain Island Medical Group, P.A., and Michael Smith, individually Defendants.

No. Civ.A. 3:04-CV-630. | Feb. 9, 2006.

Attorneys and Law Firms

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Opinion

MEMORANDUM AND ORDER

VOORHEES, Chief J.

***1** THIS MATTER is before the Court on Plaintiff's Motion to Consolidate pursuant to FED. R. CIV. P. 42(a) and Brief in Support, both filed April 27, 2005. On May 11, 2005, Defendants filed a Response to Plaintiff's Motion to Consolidate, to which Plaintiff filed a Reply on May 20, 2005.

This Motion is now ripe for disposition by the Court. Having carefully considered the arguments of the parties, the record, and the applicable authority, the Court will *grant* Plaintiff's Motion to Consolidate for the purposes of handling discovery and pre-trial motions only. At the close of discovery, the Plaintiff may renew her motion to consolidate the case for trial.

I. FACTUAL BACKGROUND

Plaintiff Aimee Pariseau ("Plaintiff" or "Pariseau") was allegedly an employee of Defendant, Anodyne Healthcare Management, Inc. ("Anodyne") from August 7, 2000, until May 2003. Plaintiff alleges that through a written agreement, Defendant Neil Taub ("Taub") and Defendant Patrick Clifford ("Clifford) guaranteed her part ownership in Anodyne through the delivery of stock. Plaintiff contends that this promise was never honored and that subsequent to the promise of the delivery of stock, Defendants Taub and Clifford sold substantially all of Anodyne's assets to Defendant Mountain Island Management Services, LLC ("Mountain Island"). Consequently, on December 28, 2004, Plaintiff filed her Complaint in this Court.

Plaintiff now seeks to consolidate the instant action with one currently pending before this Court: *Demarse v. Anodyne Healthcare Management, Inc. et al.*, Case No. 3:05cv71. [1] In that case, Plaintiff Demarse alleges to have been employed as Chairman of the Board for Anodyne. Plaintiff Demarse further alleges that he too was promised compensation in the form of shares of stock in Anodyne. Like Ms. Pariseau, Mr. Demarse claims that he never received the stock that he was promised and was never informed about the sale of Anodyne's assets to Mountain Island.

[1] Plaintiff Demarse initially filed his Complaint in the United States District Court for the Middle District of Florida. The Middle District of Florida subsequently transferred that case to this Court.

II. MOTION TO CONSOLIDATE

Plaintiff moves to consolidate pursuant to Rule 42(a) of the Federal Rules of Civil Procedure. Rule 42(a) states in pertinent part:

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

As the rule states, a motion to consolidate must meet the threshold requirement of involving "a common question of

law or fact." If that threshold requirement is met, then whether to grant the motion becomes an issue of judicial discretion. *Arnold v. Eastern Air Lines*, 681 F.2d 186, 193 (4th Cir.1982). The Middle District of North Carolina recently addressed what factors should be considered in determining whether a motion to consolidate should be granted. The Court wrote:

***2** Rule 42(a) ... allows a court to consolidate actions if they involve a "common question of law or fact." In exercising its discretion in such regard, the court should weigh the risk of prejudice and possible confusion versus the possibility of inconsistent adjudication of common factual and legal issues, the burden on the parties, witnesses, and judicial resources by multiple lawsuits, the length of time required to try multiple suits versus a single suit, and the relative expense required for multiple suits versus a single suit.

In re Cree, Inc., Securities Litigation, 219 F.R.D. 369 (M.D.N.C.2003) (citing *Arnold v. Eastern Air Lines*, 681 F.2d at 193).

As noted above, the two cases which Plaintiff seeks to consolidate question the legality of the sale of Anodyne's assets to Mountain Island, specifically as it concerns the legal rights of the minority shareholders. This single common question, while not the only one, is sufficient to meet the threshold requirement.[2] Furthermore, in the Order transferring the *Demarse* case from the Middle District of Florida to this Court, Chief Judge Fawsett noted:

2 Both cases also address numerous issues surrounding the asset transfer from Anodyne to Mountain Island.

Ms. Pariseau has a lawsuit pending ... which is based, in part, on the same transactions or occurrences which are alleged in the [Demarse] lawsuit.... These are two suits pending in different fora involving the same factual allegations, in part, and the same witnesses.

In sum, the threshold requirement for consolidation under Rule 42(a) of a common question of law or fact is clearly met in this case. Thus the question of whether or not to consolidate is one of judicial discretion, in which several factors should be considered.

Many of the reasons why cases should be consolidated include: (1) the possibility of inconsistent adjudication of common factual and legal issues; (2) unnecessary burden on parties and witnesses created by separate cases; (3) judicial economy; and (4) additional time requirements and expenses resulting from separate trials. By contrast, the reasons why cases should not be consolidated include: (1) prejudice to parties; (2) juror confusion; and (3) additional time requirements and expenses resulting from consolidation. *See Arnold v. Eastern Air Lines*, 681 F.2d 186; *In re Cree, Inc., Securities Litigation*, 219 F.R.D. at 371.

In the current action, the Defendants argue that consolidating these actions for trial would result in unfair prejudice and possible "guilt by association." (Defs.' Resp. p. 3-9). Further, Defendants argue that the fact that the *Pariseau* case is governed largely by North Carolina law and the *Demarse* case is governed in part by Florida law would result in juror confusion. (*Id.* p. 3). Notably, all of the arguments made by the Defendants in opposition to consolidation are centered around the potential for juror confusion at trial and the possible resulting prejudice to the Defendants. Defendants do not present any arguments why a motion granting consolidation until the close of discovery would present a hardship. Thus by granting the Motion to Consolidate for discovery matters and pre-trial motions, essentially all of Defendants' objections to consolidation become moot.

***3** While there are no reasons expressed or apparent to this Court why the case should not be consolidated for discovery and other pre-trial motions, there are several reasons why consolidation is favored for that period. Plaintiff alleges that the discovery plans are nearly identical for the two cases and that both cases are at virtually the same point in the pre-trial process. Further, as Judge Fawsett noted in the Transfer Order, many of the same witnesses and documents will be a part of the discovery process in the two cases. By consolidating the cases for the discovery process, the expense incurred by the parties and the burden on the parties and witnesses should be significantly reduced. Thus, the relative burdens and benefits fall clearly in favor of consolidation in this matter.

III. ORDER

IT IS THEREFORE ORDERED that Plaintiff's motion to consolidate this case with *Demarse v. Anodyne Healthcare Management, Inc., et al.*, Case No. 3:05cv71 is GRANTED for the purpose of discovery matters and pre-trial motions only.

IT IS FURTHER ORDERED that Docket No. 3:05cv71 is designated as the lead docket number. Pursuant to Local Rule

5.1(A)(1), the Office of the Clerk will maintain only this lead case file and docket. Accordingly, the parties are advised that all documents filed subsequent to this consolidation order should bear the caption and case number of the lead consolidated case.

EXHIBIT D

2005 WL 2989658
Only the Westlaw citation is currently available.
United States District Court,
W.D. North Carolina.

Shaequontia GADDY, Susan Ellen Calhoun & Jerra Pettus, Plaintiffs,
v.
ELMCROFT ASSISTED LIVING, et al., Defendants.

No. 3:04CV36, 3:04CV309, 3:04CV458. | Nov. 2, 2005.

Attorneys and Law Firms

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Opinion

ORDER

CONRAD, J.

***1** THIS MATTER IS BEFORE THE COURT on Motion by the Defendants to Reassign and Consolidate Cases For Summary Judgment Purposes, filed October 20, 2005. (Doc No. 24)

Having carefully considered the arguments of the parties, and finding no good cause and that the Plaintiffs object to the motion, the Court will *deny* the Defendants' Motion to Consolidate Cases for Summary Judgment. (Document No. 24) Further, finding good cause and that the parties jointly consent, the Court will *reassign* the above-captioned cases to Judge Robert Conrad Jr. for summary judgment purposes.

I. LEGAL ANALYSIS

Rule 42 (a) of the Federal Rules of Civil Procedure states:

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

Fed.R.Civ.P. 42(a). According to the Fourth Circuit, "district courts have broad discretion under [Rule] 42(a) to consolidate causes pending in the same district." *A/S Ludwig Mowinckles Rederi v. Tidewater Constr.*, 559 F.2d 928, 933 (4th Cir.1977). When exercising this discretion, district courts should

> weigh the risk of prejudice and confusion versus the possibility of inconsistent adjudication of common factual and legal issues, the burden on the parties witnesses, and judicial resources by multiple lawsuits, the length of time required to try multiple suits versus a single suit, and the relative expense required for multiple suits versus a single suit.

In re Cree, Inc., 219 F.R.D. 369, 371 (M.D.N.C.2003) (citing *Arnold v. Eastern Air Lines*, 681 F.2d 186, 193 (4th Cir.1982)).

Applying Rule 42(a), the Court finds that while these three cases involve *some* common questions of law and fact, they are separate and distinct cases. And so, consolidation for summary judgment purposes would be inappropriate.

While there are similarities between the cases (i.e., all three claims involve assertions of hostile work environment and retaliation under Title VII against the same defendants; all three suits are brought by former employees of Elmcroft whose employment temporally overlapped; and attorney Howard Widis represents all three plaintiffs, while Philip Van Hoy and Bryan Adams represent the defendants in all three cases), each of the Plaintiffs have submitted their claims under different sets of facts. Specifically, the ways in which each Plaintiff allegedly notified the Defendant of the un-welcomed, harassing behavior, and the ways in which the Defendant allegedly retaliated against the Plaintiffs vary significantly in each case.

Thus, consolidating the cases for summary judgment purposes would neither conserve judicial resources, nor

promote consistency and reduce confusion. Accordingly, the Court concludes that the various factors weigh against consolidation for summary judgment purposes. The Court also concludes that reassigning the cases to Judge Conrad Jr. for summary judgment purposes would be beneficial to both parties and to the Court by conserving judicial resources and avoiding inconsistent rulings.

***2** IT IS, THEREFORE, ORDERED that the "Consolidate Cases for Summary Judgment Purposes." (Doc. No. 24) is HEREBY *DENIED.*

IT IS FURTHER ORDERED that the following cases are HEREBY *ASSIGNED* to Judge Robert Conrad, Jr. for purposes of summary judgment only: *Gaddy v. lmcroft Assisted Living, et al.*, 3:04CV36; *Pettus v. Elmcroft Assisted Living et al.*, 3:04cv309; and *Calhoun v. Elmcroft Assisted Living, et al.*, 3:04cv458.

The Clerk is directed to send copies of this Order to counsel for the parties.

End of Document

CERTIFICATE OF SERVICE

I, Daniel T. Donovan, hereby certify that on **December 4, 2013**, I served Plaintiffs' **Motion and [Proposed] Order to Consolidate for Purposes of Discovery Only** with the Clerk of Court using the CM/ECF system in case numbers 1:13-cv-658, 1:13-cv-660, and 1:13-cv-861, which on the same date sent notification of the filing to the following:

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