

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

2014 JAN -6 AM 10:42

IN THE COURT OF CLAIMS

JAMES DANIEL HUGHES, et al.)	CASE NO.: 2012-09059
)	
Plaintiffs,)	JUDGE: PATRICK M. MCGRATH
)	
vs.)	
)	<u>PLAINTIFF'S MOTION FOR LEAVE TO</u>
THE OHIO STATE UNIVERSITY.)	<u>FILE REPLY BRIEF IN SUPPORT OF</u>
)	<u>PLAINTIFF'S MOTION TO</u>
Defendants.)	<u>CONSOLIDATE AND REPLY BRIEF</u>
)	<u>INSTANTER</u>
)	
)	

Now come Plaintiffs, and move this Court for Leave to file a short Reply Brief in support of their Motion to Consolidate. Leave is requested to Reply to Defendant The Ohio State University's Motion in Opposition. In addition, Plaintiffs provide their Reply Brief in Support of the Motion to Consolidate *instanter* in order to allow this Court to make a timely ruling.

Respectfully submitted,

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ON COMPUTER

REPLY BRIEF

Defendant's Motion in Opposition misses the mark regarding Plaintiff's request for consolidation. The bulk of Defendant's Opposition is spent reciting irrelevant procedural history from the Court of Common Pleas filing and pages of citations confirming this Court has statutorily mandated original jurisdiction over any controversy involving the State. This latter issue is not in dispute as Plaintiff's properly filed an action against the State in the Court of Claims and other "non-state" Defendants in the Court of Common Pleas.

What Defendants intentionally sidestepped is why this Court lacks the power to consolidate separate actions into the Court of Claims when both State and "non-state" litigants are able to do so. Defendants provided no case law, no statutory citation or no rule that indicates this Court lacks this power. If the State can add "non-state" Defendants into the Court of Claims and if even "non-state" Defendants can also force consolidation by filing cross-claims against the State from their perch in The Court of Common Pleas, why is this Court powerless to do the same?

Plaintiffs provided ample sworn testimony, which illustrates all parties are blaming each other for actions that gave rise to staggering damages to the Hughes family. Clearly these allegations among Defendants give rise to valid cross claims against each other. However, such a deliberate decision not to assert them is simply a nefarious defense strategy. However, this calculated decision does not mean this Court is prohibited from consolidation. This Court has more powers than the litigants before it, not less.

Finally, in what way would the State, or the parties to be added, be prejudiced by consolidation? Statutory provisions exists regarding the method in which the matter would be tried which guarantee fairness to all parties. Jurors from the very county where venue exists

now would hear the matter against “non-state” Defendants while this Court would decide issues against the State. No rules of evidence would change and judicial economy would also benefit greatly. Lastly, Defendants would all be in the same courtroom fully able to argue claims against each other and why some other Defendant is more responsible for Daniel’s horrific injuries than they are. There is simply no evidence or argument of prejudice to any Defendant if consolidation is ordered.

Conversely, it would be Daniel Hughes and his family that would be prejudiced should this Court not exercise the power to consolidate and resolve this matter in the Court of Claims. This prejudice is both ubiquitous and easily prevented by consolidation.

For these reasons, Plaintiff’s ask this Court to Order Consolidation of this matter into the Court of Claims to fully and fairly resolve all claims among the various parties.

 Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing *Plaintiff's Motion for Leave to File Reply Brief in Support of Motion to Consolidate* has been sent via E-mail on the 3rd day of January, 2014 upon:

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Stephen S. Crandall (0063810)

IN THE COURT OF CLAIMS

JAMES DANIEL HUGHES, et al.)	CASE NO.: 2012-09059
)	
Plaintiffs,)	JUDGE: PATRICK M. MCGRATH
)	
vs.)	
)	<u>JUDGMENT ENTRY</u>
THE OHIO STATE UNIVERSITY.)	
)	
Defendants.)	
)	
)	
)	

This matter came for consideration on this _____ day of _____, 2014 upon Plaintiff's Motion for Leave to File Reply Brief in Support of Plaintiff's Motion to Consolidate and Reply Brief *Instante*. Having considered the foregoing Motion, it is

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Leave to File a Reply Brief in Support of Plaintiff's Motion to Consolidate and Reply Brief *Instante* is granted.

IT IS SO ORDERED.

Date: _____

JUDGE PATRICK M. MCGRATH



CRANDALL • MOSES • PERA • WILT

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January 3, 2014

Court of Claims of Ohio-Clerk of Courts
The Ohio Judicial Center
65 South Front Street
Columbus, OH 43215

Re: *James D. Hughes, et al. v. The Ohio State University*
Case No.: 2012-09059

Dear Clerk:

Enclosed is the original and one copy of the following:

- Plaintiff's Motion for Leave to File Reply Brief in Support of Plaintiff's Motion to Consolidate and Reply Brief Instanter (with Proposed Judgment Entry)

Would you please;

- File accordingly
- Return one time-stamped copy in the self-addressed, stamped envelope provided

Thank you in advance for your assistance with this filing.

Sincerely,

Stephen S. Crandall, Esq.

Enc.

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