

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

T.W.,
Plaintiff

vs. Kanawha County Civil Action No. 16-C-497

Steven R. Matulis, M.D. and Charleston
Gastroenterology Associates, PLLC,
Defendants

The Honorable Jennifer F. Bailey, Judge of the Thirteenth Judicial Circuit, has advised the Chief Justice of the Supreme Court of Appeals that in Kanawha County Civil Action No. 18-C-176, referenced below, Defendant Charleston Area Medical Center, Inc., by counsel, Lee Murray Hall, Charlotte A. Hoffman Norris, Sarah A. Walling, and the law firm of Jenkins Fenstermaker, PLLC, and Heather Heiskell Jones, Don C.A. Parker, Joseph A. Ford, and the law firm of Spilman, Thomas & Battle, PLLC, filed a motion to refer on June 8, 2018, the following Kanawha County civil actions to the Mass Litigation Panel:

- *B.D. vs. Steven R. Matulis, M.D. and Charleston Area Medical Center, Inc.*, Civil Action No. 18-C-15;
- *Adriana Fleming, on behalf of herself and on behalf of a class of West Virginia residents similarly situated vs. Steven R. Matulis, M.D., Charleston Gastroenterology Associates, PLLC, and Charleston Area Medical Center, Inc.*, Civil Action No. 17-C-456;
- *Gary Foster, as Administrator of the Estate of Teresa Lou Foster vs. Steven R. Matulis, M.D., Charleston Gastroenterology Associates, PLLC, and Charleston Area Medical Center, Inc.*, Civil Action No. 17-C-286;
- *R.K. vs. Steven R. Matulis, M.D., Charleston Gastroenterology Associates, PLLC, and Charleston Area Medical Center, Inc.*, Civil Action No. 17-C-1579;
- *Karla Rae Popovec, Executrix of the Estate of Diana Nagy v. Charleston Area Medical Center, Inc. and Steven Matulis, M.D.*, Civil Action No. 17-C-1472;
- *A.H., individually and on behalf of all others similarly situated vs. Steven R. Matulis, M.D.; Charleston Gastroenterology Associates, PLLC; and Charleston Area Medical Center, Inc.*, Civil Action No. 18-C-176;
- *Jane Doe, on behalf of herself and on behalf of a class of West Virginia residents similarly situated vs. Steven R. Matulis, M.D., Charleston Gastroenterology Associates, PLLC, Day Surgery Center Limited Liability, Day Surgery Center, LLC, and Charleston Area Medical Center, Inc.*, Civil Action No. 16-C-1723;
- *Kristin Ashley Hager v. Steven R. Matulis, M.D., Charleston Gastroenterology Associates, PLLC*, Civil Action No. 16-C-1709;
- *J.L. vs. Charleston Gastroenterology Associates, PLLC, Steven R. Matulis, M.D., Day Surgery Limited Liability, and Day Surgery Center, LLC*, Civil Action No. 16-C-1738;

- *T.W. vs. Steven R. Matulis, M.D. and Charleston Gastroenterology Associates, PLLC*, Civil Action No. 16-C-497;
- *P.W. vs. Steven R. Matulis, M.D. and Charleston Gastroenterology Associates, PLLC*, Civil Action No. 17-C-1057; and
- *J.W. and J.W., her husband vs. Steven R. Matulis, M.D., Charleston Gastroenterology Associates, Day Surgery Limited Liability, Day Surgery Center, LLC, and DS Holdings, Inc.*, Civil Action No. 18-C-205.

The motion further requests, if the motion to refer is granted, that the Mass Litigation Panel be authorized to transfer and join any subsequently filed actions.

Judge Bailey has further advised that the following documents were filed in relation to the motion to refer:

- Plaintiffs' Response in Opposition to Defendant CAMC's Motion to Refer to the West Virginia Mass Litigation Panel, filed June 27, 2018 (Civil Action No. 18-C-176);
- Reply of Plaintiffs Jane Doe and Adriana Fleming to Charleston Area Medical Center, Inc.'s Motion to Refer to the Mass Litigation Panel, filed June 27, 2018 (Civil Action No. 18-C-176);
- Day Surgery Center, LLC's Notice of Appearance and Joinder in CAMC's Motion to Refer to Mass Litigation Panel, filed June 29, 2018 (Civil Action No. 18-C-176);
- Charleston Area Medical Center, Inc.'s Reply in Support of Motion to Refer to the Mass Litigation Panel, filed July 9, 2018 (Civil Action No. 18-C-176);
- Notice of Position on the Part of Steven R. Matulis, M.D. Concerning Mass Litigation Panel Referral and/or Consolidation of Civil Actions, filed July 18, 2018 (Civil Action No. 17-C-456);
- Notice of Position on the Part of Charleston Gastroenterology Associates, PLLC Concerning Mass Litigation Panel Referral and/or Consolidation of Civil Actions, filed July 26, 2018 (Civil Action Nos. 16-C-1723 and 17-C-456);
- Defendant Steven R. Matulis, M.D.'s Omnibus Memorandum of Law in Opposition to Referral to Mass Litigation Panel and in Opposition to Consolidation under T.W. Civil Action, filed July 30, 2018 (Civil Action Nos. 16-C-1723, 17-C-286, 17-C-456, and 17-C-1472); and
- Order Granting Plaintiff's Motion to Consolidate Civil Actions, entered on September 27, 2018 (Civil Action No. 16-C-497). This Order includes Kanawha County Civil Action Nos. 16-C-1709, 16-C-1723, 16-C-1738, 17-C-286, 17-C-456, 17-C-1057, 17-C-1472, 17-C-1579, 18-C-15, 18-C-176, and 18-C-205, which were all included in the motion to refer. The Order also included Kanawha County Civil Action Nos. 18-C-575, 18-C-576, and 18-C-578.

Upon careful review and consideration of the motion, the responses thereto, and reply, the Chief Justice has determined that all of the civil actions referenced herein do not meet the definition of mass litigation as set forth in Rule 26.04(a) of the West Virginia Trial Court Rules, and the motion to refer should, therefore, be denied.

IT IS, HEREBY, ORDERED, that the motion to refer the above-referenced actions is DENIED, and that a copy of this Order be transmitted to the Honorable Alan D. Moats, Chair of the Mass Litigation Panel; to the Honorable Jennifer F. Bailey, Judge of the Thirteenth Judicial Circuit; to the Mass Litigation Manager; and to the Circuit Clerk of Kanawha County.

IT IS FURTHER ORDERED, that the Circuit Clerk of Kanawha County record this Order and serve copies on all parties of record or their counsel.

ENTERED: FEBRUARY 27, 2019

A handwritten signature in black ink, appearing to read "Elizabeth D. Walker", written over a horizontal line.

ELIZABETH D. WALKER
Chief Justice