

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

**K.E.E.,  
M.J.M.,  
M.M.A.,  
S.M.F.,  
A.C.J.,  
J.E.H.,  
S.K.P.,  
C.L.K. (By Next Friend and Mother A.C.K.),  
H.G.B. (By Next Friend and Mother G.L.B.),  
B.C.P.,  
K.M.J.,  
D.T.A.,  
C.V.M.,  
K.A.M. (By Next Friend and Mother S.M.M.),  
A.J.S. (By Next Friend and Grandmother A.A.S.),  
J.L.K. (By Next Friend and Mother S.M.K.),  
J.A.H. (By Next Friend and Mother S.M.H.),  
C.T.K. (By Next Friend and Mother J.K.),  
K.E.H. (By Next Friend and Mother F.E.H.),  
M.M. (By Next Friend and Mother S.E.M.),**

**Plaintiffs,**

**v.**

**CL20-5209-00**

**CUMBERLAND HOSPITAL, LLC, D/B/A CUMBERLAND  
HOSPITAL FOR CHILDREN AND ADOLESCENTS,**

**UNIVERSAL HEALTH SERVICES, INC.,**

**UHS OF DELAWARE, INC.,**

**UHS CHILDREN SERVICES, INC.**

**DANIEL N. DAVIDOW,**

**DANIEL N. DAVIDOW, P.C., AND**

**HERSCHEL C. HARDEN, III,**

**Defendants.**

**CUMBERLAND HOSPITAL, LLC'S MOTION TO DROP AND/OR SEVER  
IMPROPERLY JOINED PARTIES**

1. COMES NOW Defendant, Cumberland Hospital, LLC ("Defendant"), by counsel, and states the following for its Motion to Drop and/or Sever Improperly Joined Parties:

2. Twenty (20) different plaintiffs have impermissibly joined separate actions against Defendant, and others, in a single Complaint, alleging different damages caused by different alleged independent acts occurring over different periods of time, often years apart from each other.

3. Defendant moves the Court to drop improperly named plaintiffs. Plaintiffs' Complaint is an improper attempt to join disparate claims by disparate plaintiffs into a single action. None of Plaintiffs' actions arises from the same alleged transaction, occurrence, or conduct by Defendant.

4. "Persons who have separate and distinct interests or are separately affected by the tortious act of another are generally unable to unite as plaintiffs in an action for injuries sustained." *Branch v. Purdue Pharma, LP*, 64 Va. Cir. 159 (Cir. Ct. for City of Richmond 2004) (citing *Carufel v. American Isuzu Motors, Inc.*, 47 Va. Cir. 529 (1999)). Plaintiffs have sought to utilize the exception to this rule afforded by the Multiple Claimant Litigation Act.

5. The Multiple Claimant Litigation Act permits consolidation only if there are six or more plaintiffs and those actions "involve common questions of law or fact and arise out of the same transaction, occurrence, or series of transactions or occurrences." Plaintiffs must also show, and the Court must find, "the common questions of law or fact predominate and are significant to the actions' and such consolidation would 'promote the ends of justice' be 'consistent with each party's right to due process of law' and 'not prejudice each individual party's right to a fair and impartial resolution of each action.'" *Id.* at 160. In this consolidated action, some plaintiffs allege

assault by a physician, others by a psychotherapist, still others by their peers or other patients. The alleged acts giving rise to these claims occurred as early as 2008 and it appears at least one plaintiff alleges ongoing conduct by certain defendants continuing to the present. The Multiple Claimant Litigation Act was not designed or intended to consolidate such a variety of claims with such differing factual predicates into a single proceeding.

6. Va. Code §8.01-267.5 provides that on motion of a defendant, such consolidated claims “**shall be severed** unless the court finds that the claims of the plaintiffs were ones which, if they had been filed separately, would have met the standards of §8.01-267.1 and would have been consolidated under §8.01-267.3.” (emphasis added).

7. In this consolidated action, much like the plaintiffs before Judge Markow in *Branch*, “[t]his occurrence is based upon different factual bases for each Plaintiff, and, therefore, represents an individual cause of action for each Plaintiff.” *Branch*, at 160. As Judge Markow explained further, “the [Multiple Claimant Litigation] Act was enacted for the limited purpose of allowing multiple plaintiffs involved in the same transaction or occurrence, such as a plane crash or hospital fire, or perhaps a builder of a defective condominium project to proceed jointly against the tortfeasor(s). Such is not the case in the case at bar. Instead, in this case, we have multiple plaintiffs with differing factual circumstances leading to their alleged injury.” *Id.* at 160.

8. The factors to be considered by the Court in determining whether consolidation is proper favor severance of these actions. Consolidation of the claims of these twenty plaintiffs against a variety of defendants asserting claims occurring in some cases over a decade apart would not promote the ends of justice and the just and efficient conduct and disposition of the actions. Indeed, attempting to shoehorn these disparate claims into a single action will only make the discovery process and preparation of these cases for trial all the more cumbersome, as it will be

nearly impossible to separate evidence admissible as to one plaintiff from other inadmissible evidence.

9. In addition, the likelihood of prejudice or confusion caused by such a procedure would violate Defendant's due process rights. In such a proceeding "it would be practically impossible for the interests of each [defendant] to be presented to a jury in a way that is not commingled with the interests of another defendant and/or plaintiff in this case. Such a presentation would cause confusion for the jury, thereby prejudicing each party to the action." *Branch*, at 161. In these cases, each plaintiff's claims must rise and fall on their own merits and cannot be decided under the additional weight of the other plaintiffs' unproven claims.

10. WHEREFORE, Defendant moves that all plaintiffs other than the first-named plaintiff, K.E.E., be dropped from this action as improperly joined, or in the alternative, that each plaintiff's claims be severed from the others into separate individual actions in accordance with Va. Code §8.01-267.5.

**CUMBERLAND HOSPITAL, LLC**

  
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By Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of November 2020, I sent via electronic and U.S. mail, first-class postage prepaid, a true and correct copy of the foregoing to:

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