

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

BRIAN SIMMONS,

Plaintiff,

vs.

BATTELLE ENERGY ALLIANCE,
LLC, organized in Delaware,

Defendant.

Case No. 4:14-cv-294-BLW

**MEMORANDUM DECISION AND
ORDER**

STEVE BRAASE,

Plaintiff,

vs.

BATTELLE ENERGY ALLIANCE,
LLC, organized in Delaware,

Defendant.

Case No. 4:14-cv-481-EJL

INTRODUCTION

The Court has before it plaintiff Simmons' motion to consolidate. The motion is fully briefed and at issue. For the reasons expressed below, the Court will grant the

motion, transferring a similar case from Judge Lodge to this Court and consolidating the two cases for discovery purposes but not for trial.

BACKGROUND

Plaintiff Brian Simmons asks the Court to consolidate his case with a similar case brought by Steve Braase pending before Judge Lodge. *Braase v. Battelle Energy Alliance, LLC, Case No. 4:14-cv-481-EJL*. Both Simmons and Braase have sued defendant Battelle Energy Alliance, LLC alleging they were wrongfully exposed to Plutonium-239 while working on November 8, 2011. Simmons and Braase bring 11 identical claims against Battelle; Simmons brings one additional claim for retaliation.

Because Simmons and Braase bring 11 overlapping claims that arise from the same event, Simmons asks the Court to (1) transfer the *Braase* case from Judge Lodge to this Court, and (2) consolidate the two cases for discovery but not for trial. Battelle agrees that the cases should not be consolidated for trial, but objects to consolidation for discovery purposes, pointing out that (1) the parties have already agreed that discovery in the two cases can be used in either case; and (2) the motion to consolidate is an attempt to forum shop by Simmons because this Court denied a motion to dismiss, and Judge Lodge had – at the time of the briefing on this motion – an identical motion pending before him. Battelle argues that Simmons’ attempt to remove the case from Judge Lodge is actually an attempt to get both cases in front of a judge deemed by Simmons to be favorable to his case.

That latter point is now resolved because Judge Lodge also denied Battelle’s motion to dismiss. There is no longer any hint of forum shopping in plaintiff’s attempt to

get both cases before a single judge. Indeed, the transfer would avoid the potential for inconsistent rulings on motions and jury instructions. *See Fed.R.Civ.P. 1*. For these reasons, the Court will grant that portion of the motion that seeks to transfer *Braase* to this Court.

The only remaining issue is whether the cases should be consolidated for discovery purposes. While the cases are not identical they are sufficiently similar to warrant consolidation for discovery purposes. Battelle argues that complications will arise because one case has a complex retaliation issue that the other case does not share. Battelle is concerned about how consolidation will affect summary judgment motions. However, Simmons is only seeking consolidation for discovery purposes, and the consolidation will have no impact on summary judgment motions – they can be filed separately in each case. Battelle also points out that the parties have agreed to share discovery between the two cases, but that just means that a formal consolidation for discovery purposes will not disrupt either side. The Court will therefore grant the motion to consolidate for discovery purposes only.

ORDER

In accordance with the Memorandum Decision above,

NOW THEREFORE IT IS HEREBY ORDERED, that the Motion to Consolidate (docket no. 20) is GRANTED. The Clerk is directed to effectuate the transfer of *Braase v. Battelle Energy Alliance, LLC, Case No. 4:14-cv-481-EJL* to this Court, and make the necessary changes to the case title.

IT IS FURTHER ORDERED, that this case and *Braase v. Battelle Energy Alliance, LLC, Case No. 4:14-cv-481-EJL* be consolidated for discovery purposes only and that this case be designated as the lead case for discovery purposes only.

IT IS FURTHER ORDERED, that the Clerk file a copy of this Order in both this case and *Braase*.

IT IS FURTHER ORDERED, that the referral to Judge Bush in *Braase v. Battelle Energy Alliance LLC, supra*, is withdrawn.



DATED: March 16, 2016

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
Chief Judge
United States District Court