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**STATE OF NEW YORK
LITIGATION COORDINATING PANEL**

Panel Case No. 0001/2005

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X
PEDRO HURTADO, et al.,

Plaintiffs,

- against -

THE PURDUE PHARMA COMPANY, et al.,

Defendants.
-----X

Index No. 12648/2003

Hon. Joseph J. Maltese
Part DCM 3

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X
MAUREEN SARA,

Plaintiff,

- against -

THE PURDUE PHARMA COMPANY, et al.,

Defendants.
-----X

Index No. 13699/2003

Hon. Joseph J. Maltese
Part DCM 3

FILED

AUG 02 2005

**COUNTY CLERK'S OFFICE
NEW YORK**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
LINDA SERAFIN et ano.,

Plaintiffs,

- against -

Index No. 103031/2004

Hon. Stanley L. Sklar

THE PURDUE PHARMA COMPANY, et al.,

Defendants.

-----X

DECISION AND ORDER

The issue has been raised before the Litigation Coordinating Panel ("the Panel") as to whether the above-captioned matters and others ought to be coordinated pursuant to Section 202.69 of the Uniform Rules for the Trial Courts. The issue was brought before the Panel as follows. Pending before the Honorable Joseph J. Maltese, Supreme Court, Richmond County, are cases involving Oxycontin, the trade name for oxycodone hydrochloride. Two other such matters were then pending in Supreme Court, New York County. Justice Maltese denied an application for class action certification in one of the Richmond County cases and brought the coordination issue to the attention of the Panel. Justice Maltese is a member of the Panel. He recused himself from the Panel's deliberations in this matter.

The parties in the pending matters were afforded an opportunity to submit papers on the coordination issue and have done so.

It is clear that there are related cases pending in more than one judicial district, as required by Section 202.69. Two cases alleging personal injury involving Oxycontin were commenced in Supreme Court, New York County and were referred to in Justice Maltese's decision on the class certification question. One of these is the *Serafin* matter listed above. The other, *Washington v. Purdue Pharma L.P.*, Index No. 107841/2004, was disposed of on or about January 24, 2005 by decision of the Hon. Paul G. Feinman, J.S.C. Thus, the issue of possible coordination of related cases is properly before us.

Defendants argue in opposition to coordination that discovery in these cases will

focus largely on individual issues having to do with the claims of particular plaintiffs, such as the medical condition of the plaintiff and the decisions of physicians to prescribe the drug. However, it is clear that there will be discovery that will be the same, or substantially similar, in these cases, such as discovery directed to the defendants. Justice Maltese stated in his decision on class certification in *Hurtado* (at p. 1) that

there are some common issues of law and fact, especially the discovery issues concerning the defendant manufacturers and distributors, which would be repetitive, costly and inefficient if the cases were allowed to remain before multiple judges in different counties. Therefore, it is appropriate that these cases, and such other cases in other counties of the New York Supreme Court be coordinated before one justice pursuant to New York Rules for Trial Courts § 202.69.

Defendants, in asserting that they have been working with counsel for plaintiffs and will continue to do so to avoid problems, implicitly recognize the existence of related issues and the risk of unnecessary expense and duplication flowing from such common discovery. Clearly, then, it will be in the interests of all parties to have common discovery issues coordinated.

It will also promote efficiency and ease the burdens on the court system to have these related matters pending during the pre-trial phase before one Justice rather than perhaps many, each of whom would have to become familiar with the medical and factual issues in order to address discovery questions and other problems that may arise. Coordination of these matters will avoid the possibility of inconsistent rulings. We are not persuaded that, as urged by defendants, the order we craft here will lead to delay or create unnecessary complexity.

Counsel for plaintiffs indicates that there are eight related cases pending. As noted, however, the *Washington* case has been disposed of. There are only three other cases before the Panel at this time, although counsel for plaintiffs states that *Hurtado* should be counted as five cases since the certification motion there was denied. Counsel for plaintiffs, however, represents - - and the Panel has relied upon this representation - - that his firm is engaged in handling many Oxycontin personal injury cases nationwide and that it is on the verge of filing between 50 and 75 other such cases in Richmond County and perhaps in other counties of the State. As these cases are filed, the benefits from coordination before a single Justice will become apparent.

Accordingly, the Panel concludes that an order should be issued directing coordination of all personal injury actions involving Oxycontin and asserting inadequate

warnings, over-aggressive marketing, and the like. It appears appropriate that this coordination take place in Richmond County. Pursuant to Section 202.69, the Administrative Judge of the District shall designate the Coordinating Justice. It appears to the Panel that only a single Coordinating Justice will be required.

The Panel is of the view, however, that the *Serafin* case should not be included in the coordination. The plaintiff in that case has sued defendants other than Purdue and Abbott, specifically, her physician, a hospital, and the manufacturer of another medication. The presence of these parties in the case would give rise to issues distinct from those that will predominate in the other Oxycontin cases.

Subdivision F of the Procedures of the Panel (posted on the Panel's website at www.nycourts.gov/suptctmanh/lcp) provides for notice to parties in related actions that are pending but not included by name in the application before the Panel and related actions that are filed subsequent to issuance of the Panel's order and for an opportunity of parties to be heard in the event that a party believes that some circumstance particular to such a case may warrant an exclusion of that matter from the coordination generally directed. Thus, the rights of parties are protected.

For these reasons, it is hereby

(1) ORDERED that the actions set forth above (with the exception of *Serafin v. Purdue Pharma L.P.*, 103031/2004 (N.Y. Cty.)(Sklar, J.)) shall be coordinated pursuant to Section 202.69 of the Uniform Rules for the Trial Courts in the Supreme Court of the State of New York, County of Richmond, before a Coordinating Justice of that County; and it is further

(2) ORDERED that any actions for personal injury alleged to have occurred as a result of the ingestion of Oxycontin and that assert theories of design defect, inadequate warnings, over-aggressive marketing and the like and that were filed in the Supreme Court of the State of New York heretofore and that remain active but that are not listed in the caption above or that are filed hereafter shall, in accordance with Subdivision F of the Procedures of the Panel, likewise be coordinated pursuant to Section 202.69 in New York County before the said Coordinating Justice unless the Panel rules otherwise as provided in said Subdivision; and it is further

(3) ORDERED that, pursuant to Section 202.69 (c) (1), the Administrative Judge of the Second Judicial District shall designate the Coordinating Justice; and it is further

(4) ORDERED that the Clerk of the Panel shall forthwith transmit a copy of this

Decision and Order to counsel for all parties herein, the Justices to whom each of the above actions is currently assigned, and Honorable Neil J. Firetog, Administrative Judge of the Second Judicial District; and it is further

(5) ORDERED that, with respect to any additional action that is to be coordinated as provided in Paragraph (2) hereof, upon service of a copy of the Decision and Order of the Panel with notice of entry, together with either the affidavit of compliance or the further decision of the Panel set forth in Subdivision F of the Procedures of the Panel, upon the Clerk of the Court in which any such additional action is or hereafter shall be pending (other than the Supreme Court, Richmond County) as provided in Subdivision F, the said Clerk shall forthwith transfer to the Clerk of Supreme Court, Richmond County, after payment of appropriate fees, if any, the file in any such additional action that is to be coordinated as provided in this Decision and Order and Subdivision F; and it is further

(6) ORDERED that, the Clerk of the Supreme Court, Richmond County, shall assign a Richmond County index number without fee to any action transferred to that County from another as provided above and such number shall serve as a means of identification and orderly processing of any such case while it remains in Richmond County for the purpose of coordination.

This constitutes the Decision and Order of the Panel. The Presiding Justice of the Panel signs this Decision and Order on her own behalf and with the authorization and on behalf of all of the other Members of the Panel other than Justice Maltese.

Dated: New York, New York
July 8, 2005

JUSTICES OF THE PANEL:

HON. HELEN E. FREEDMAN
Presiding Justice, First Department

HON. RAYMOND E. CORNELIUS
Associate Justice, Fourth Department

HON. E. MICHAEL KAVANAGH
Associate Justice, Third Department

FOR THE PANEL:

FILED
AUG 02 2005
COUNTY CLERK'S OFFICE
NEW YORK

Helen E. Freedman
HON. HELEN E. FREEDMAN
Presiding Justice, First Department

FILED

AUG 02 2005

**COUNTY CLERK'S OFFICE
NEW YORK**

TAKING NO PART:

HON. JOSEPH J. MALTESE
Associate Justice, Second Department