

STATE OF NEW YORK
SUPREME COURT
LITIGATION COORDINATING PANEL

NY County Clerk's

Number 560001 120/A

Sub# 6

Panel Case No.0002/2008

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
RONALD DULIN

Plaintiff,

Index No. 21983-2008

- against -

PFIZER, INC.,

Defendant.
-----X

FILED

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AND OTHER MATTERS LISTED ON THE ATTACHED APPENDIX

DECISION AND ORDER

In the above captioned matter plaintiff, appearing by Clinton B. Fisher, Esq., of the firm of Hanly Conroy Biersten Sheridan Fisher and Hayes, LLP, moves for an Order of Coordination pursuant to Uniform Rule for the Trial Courts of the State of New York, 202.69. The plaintiff's Alabama counsel (co-counsel) Cory, Watson, Crowder, & Degaris support and consent to this motion, as well as counsel for plaintiffs in several of the related matters.

The defendant in this and the related matters, opposes the motion by its counsel, Christopher C. Land, Esq., of the firm of DLA Piper LLP (US).

Plaintiff Ronald Dulin, by his counsel, seeks to Coordinate his Kings County action with nine or more actions pending in the courts of this state (listed in the appendix to this Decision and Order) and any other subsequently filed actions that allege injuries arising out of the ingestion of defendant's smoking cessation prescription drug *Chantix*®. The plaintiff (s) allege that "... Chantix® increases the risk of and/or causes serious injury and death including suicide ideation, suicide attempts, and in many instances, successful suicide, as well as heart rhythm disturbances, seizures and muscle disorders, vision disturbances, and other dangerous conditions . . ." (*Affidavit of Clinton B. Fisher in Support of Motion for Order of Coordination of Related Proceedings*, pg.3, ¶ 3, dated: April8, 2008).

After some discussion and correspondence, the defendant, citing the filing of additional claims, particularly in New York County and a Federal Multi-District Litigation of “Chantix® matters,” in which the federal litigations were Coordinated in the U.S. District Court, for the Northern District of Alabama, withdrew its opposition to the issuance of an Order of Coordination, but requests that the Coordinated proceedings take place in the County of New York (*See Defendant’s Memorandum Of Law In Opposition To Plaintiff’s Motion For order Of Coordination Of Related Proceedings, Dated: November 14, 2008*). However, the parties, could not come to an agreement as to the venue of the Coordination, notwithstanding the many discussions.

The defendant argues: that New York County is the most appropriate venue, because the majority of pending cases have been filed in that county; the New York County Supreme Court has experience with multi-jurisdictional pharmaceutical product liability cases; counsel for both sides maintain offices in New York County and defendant asserts the fact that the vast majority of cases coordinated in the past six years have been Coordinated in New York County (*Defendant’s Memorandum of Law In Opposition to Plaintiffs’s Motion For Order of Coordination of Related Proceedings, Date: November 14, 2008*).

The Plaintiff posits that the Coordination does not necessarily have to be venued where the majority of cases are filed and argues that Richmond County may be an appropriate venue. Plaintiff goes further and requests that the Coordination be before Justice Joseph Maltese of the Richmond County Supreme Court (Justice Maltese also sits as a member of this Panel representing the Second Department). Plaintiff argues that the Richmond County Supreme Court, with less of a caseload, may be in a better position to handle this Coordination. The plaintiff further asserts that any inconvenience in traveling to Richmond County is comparatively much less than traveling to Alabama for the Federal MDL Coordination.

The defendant points out that not one case has been filed in Richmond County, no injuries have been alleged to have occurred in that county, none of the attorneys maintains offices in Richmond County nor does it appear that any of their respective clients maintain residence in that county at this time.

While the Parties have agreed to Coordinate the related matters, the location is the issue. The Panel now having heard arguments from both sides, must consider what venue best meets the standards and requirements of Uniform Rule 202.69. The plaintiff argues that it is not necessary to venue the Coordination based upon the number of cases filed in any one district. However, the fact remains that not one case (at this time) has been filed in Richmond County, none of the attorneys maintain offices in that county, their respective clients do not maintain residence in the county, all of which the plaintiff contends should not present a bar to Coordination in that county. It is further contended that the bench in Richmond County (and in his view, a particular member of the bench) is just as capable in the processing and hearing of these complex matters.

Conversely, the defendants argue against Coordination in Richmond County for practically the very same reasons that the plaintiffs contend are not bars to Coordination in Richmond County; particularly the inconvenience it will create, impracticality and the fact there exist no ties to the county as far as the litigation is concerned.

The Panel, having now considered all of the issues and judicial economy with respect to this motion, finds that the purposes of Uniform Rule 202.69 are best served by denying plaintiff's application to venue this matter in Richmond County. Moreover, the Panel goes further to point out that the decision with respect to the assignment of the Coordinating Justice lies within the authority of the Administrative Judge of the District of Coordination, as set forth in 22NYCRR202.69(c)(1) and is not a decision that is made by this Panel. Additionally, the fact that the majority of cases (as indicated by the defendant in this application) have been Coordinated in New York County, is a result of a case by case examination of all the facts and circumstances in those applications and the suitability of the venue relative to the matters sought to be Coordinated. There are a relatively appropriate amounts of matters that have been Coordinated in other New York State counties, as can be easily ascertained by visiting the Panel's website. The Panel has determined that Coordination of these related matters is appropriate (as previously agreed to by all counsel) and that Uniform Rule 202.69 is best served by the Coordination of this and those related matters, listed in the appendix hereto as well as related matters subsequently filed, by directing that Coordination of these related matters be before a Coordinating Justice in the First Judicial District, Supreme Court, County Of New York-Civil Branch.

For these reasons, it is hereby

(1) **Ordered**, that the actions set forth above and in the Appendix shall be Coordinated pursuant to Section 202.69 of the Uniform Rules for the Trial Courts, of the State of New York, in the Supreme Court, New York County, before a Coordinating Justice of that county; and it is further

(2) **Ordered**, that any actions that allege injuries resulting from the ingestion of the defendant's prescription drug Chantix®, that were filed in the Supreme Court of the State of New York heretofore and which remain active, but are not listed in the caption above or on the Appendix and any such actions that are filed hereafter shall, in accordance with Subdivision F of the Procedures of the Panel, likewise be Coordinated pursuant to Section 202.69 of the Uniform Rules for the Trial Courts of the State of New York, before the Coordinating Justice, unless the Panel rules otherwise pursuant to Subdivision F of the Procedures of the Panel; and it is further

(3) **Ordered**, that pursuant to 22NYCRR202.69(c)(1), the Administrative Judge of the First Judicial District (Civil Branch) shall assign 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 the Honorable Sherry Klein.Heitler, Administrative Judge for the First Judicial District; and it is further

(5) **Ordered**, that with respect to any additional action that is to be Coordinated as provided in paragraph two (2) hereof, upon service of a copy of the Order of the Panel with notice of entry, together with the affidavit of compliance or the 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, New York County) as provided in Subdivision F, the said Clerk shall forthwith transfer to the Supreme Court, New York County, after the payment of the 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, New York County, shall assign a New York County index number, without fee, to any such additional 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 New York County for the purpose of Coordination.

This constitutes the Decision and Order of the Panel. The Panel, by its Presiding Justice and with their consent, signs this Decision and Order.

Associate Justice Joseph J. Maltese did not participate.

Dated: October 18, 2010

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Justices of the Panel:

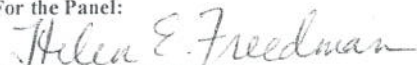
Hon. Helen E. Freedman
Presiding Justice, First Department

Hon. Joseph J. Maltese
Associate Justice, Second Department

Hon. E. Michael Kavanagh
Associate Justice, Third Department

Hon. Matthew Rosenbaum
Associate Justice, Fourth Department

For the Panel:


Hon. Helen E. Freedman
Presiding Justice

SUPREME COURT OF THE STATE OF NEW YORK
LITIGATION COORDINATING PANEL

APPENDIX OF RELATED CASES*

LITIGATION COORDINATING PANEL CASE NUMBER 0002/2008

Sharon E. Boeri v. Pfizer, Inc., -Suffolk County Supreme Court-Index No. 08-33613

Virginia Beth Buckley v. Pfizer, Inc., -Jefferson County Supreme Court-Index No. 08-2614

Linda A. White v. Pfizer, Inc., - New York County Supreme Court- Index No. 111071/2008

Thomas Smith, Individually and as the Administrator of the Estate of Richard L. Smith, Deceased, and Barbara Smith v. Pfizer, Inc., - New York County Supreme Court- Index No. 110520/2008

Susan Hanna v. Pfizer, Inc., - New York County Supreme Court- Index No. 110518/2008

Linda J. Beckel, Individually and as the Administratrix of the Estate of Donald C. Beckel, Deceased, v. Pfizer, Inc., - New York County Supreme Court- Index No. 110517/2008

Kathleen Belleville, Individually and as the Administratrix of the Estate of Lane Williams, Deceased - New York County Supreme Court- Index No. 110561/2008

Sarita Rojas v. Pfizer, Inc., - New York County Supreme Court- Index 110519/2008

* As of 10/20/2010 None of the cases above have been assigned to a judge.