

STATE OF NEW YORK
LITIGATION COORDINATING PANEL

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

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SCOTT PENROD, MEILING SERRANO,
GARY POLEY, LUZ ROSADO-CABRERA,
MARK ADAMS, CRAIG FARLEY,
HAROLD HOFFMAN, CHARLES PRUITTE,
MARY THELEN and MARY WARD,

Plaintiffs,

-against-

PFIZER, INC., PHARMACIA CORPORATION,
PARKE, DAVIS & CO.,
WARNER LAMBERT COMPANY
and WARNER LAMBERT COMPANY, LLC,

Defendants.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
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AMY POLENBERG, ADRIAN ZEMKEN,
ANDREW EICK, DALE HART, DEAN KUSIK,
ETHEL PITTS, JO GOLDSMITH, RICK JOYCE,
TIMOTHY LEE HORTON, KARLEEN CLAUSEN,
JUNE BREND, KENYHAN WILLIAMS,
JUDITH MARIE COPPLA, PATTI DENUCCI,
NANCY MUSSER, RUSSEL PAUL BICKNER,
BRUCE HARTMAN, ANN MACKENZIE,
EUGENE STEELE and JOYCE WILLIAMS,

Plaintiffs,

-against-

PFIZER, INC., PHARMACIA CORPORATION,
PARKE, DAVID & CO.,
WARNER LAMBERT COMPANY
and WARNER LAMBERT COMPANY, LLC.

Defendants.

Index No. 159346/2018

**ORDER GRANTING
DEFENDANT'S MOTION
TO COODINATE CASES
IN NEW YORK COUNTY
SUPREME COURT PURSUANT
TO 22 NYCRR 202.69**

Index No. 510299/2018

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

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ELIZABETH DELUMEAU, STEVEN RHOADES,
CARL CRAM, GEORGE GOODE, TAMMY LYNN RAY,
STEVE SMITH, CRISTA ANN SULLO, SHAWN CANADY,
EDDIE PINNIX, CATHY SEIDENSTEIN, ELLEN MASON,
WILLIAM DEAN and JAMES BAUGHMAN,

Index No. 26098/2019E

Plaintiffs,

against

PFIZER, INC., PHARMACIA CORPORATION,
PARKE, DAVIS & CO., WARNER LAMBERT COMPANY
and WARNER LAMBERT COMPANY, LLC.,

Defendants.

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Defendants, Pfizer, Inc., Pharmacia Corporation, Parke, Davis & Co., Warner Lambert Company and Warner Lambert Company, LLC, are all represented by the same law firm and have jointly moved pursuant to Section 202.69 of the Uniform Rules for the Trial Courts to coordinate all of the above mentioned actions pending in the Supreme Court of Kings County and New York County, into Supreme Court of New York County, to be coordinated for discovery and all pre-trial matters before one Justice of New York County.

Joint counsel for all of the above-named plaintiffs have responded to the defendants' motion and agree to coordinate all of the above mentioned cases pending in the Supreme Court of the State of New York. However, the plaintiffs have cross-moved to coordinate all of the cases in Kings County and New York County, or any other similar causes of action filed in any court in the State of New York to be coordinated in Kings County, rather than New York County or any other county of this state. The defendants' counsel has filed a reply memorandum of law in further support of their motion for an order of coordination in New York County, and opposing the cross-motion of the plaintiffs to coordinate in Kings County, dated March 26, 2019.

Since the filing of this motion, another multi-plaintiff identical action dated May 23, 2019 has been filed in Bronx County by the same plaintiffs' law firms that filed the multi-plaintiff actions in Kings and New York Counties. That Bronx County action is also subject to this Order. The attorneys representing the parties are listed in Appendix A.

The Parties

The Defendants: Pfizer, Inc., a Delaware corporation; Parke Davis & Co.; Warner Lambert Company, a Delaware corporation; and Warner Lambert Company, LLC, a Delaware limited liability company; all have their principal place of business at 235 East 42nd Street, New York, New York 10017. Pharmacia Corporation is a Delaware corporation with its principal place of business located at 100 Route 206 North Peapack, New Jersey 07977.

The Plaintiffs in each of the three listed captioned actions and their residences are listed individually in Appendix B. The ten Plaintiffs in the New York County action all reside outside of New York State.

The twenty Plaintiffs in the Kings County action all reside outside of New York State, except for Amy Polenberg who resides in Brooklyn, Kings County, New York, and Adrian Zemken who resides in Amsterdam, New York. The thirteen Plaintiffs in the Bronx County action all reside outside of New York State, except for Crista Ann Sullo who resides in Bronx County, New York.

Causes of Action

The Plaintiffs in each of these three identical products liability actions allege that they each seek to recover damages for their catastrophic and irreparable injuries sustained after their ingestion of Dilantin, the brand name of the anti-epileptic drug Phenytoin Sodium, manufactured and distributed by the Defendants. Phenytoin Sodium is also available in a generic form. The Plaintiffs further allege that they suffered severe and permanent cerebellar atrophy reactions that

were the direct proximate result of the Defendants' wrongful conduct in connection with the design, manufacture, labeling, sale, testing, marketing, advertising, promotion and/or distribution of Dilantin. The Plaintiff also allege that the Defendants chose not to include any reference to cerebellar atrophy in its U.S. Dilantin label until June 2016 and have failed to warn those physicians who prescribed the drug Dilantin and Dilantin users who are in a high risk category for cerebellar atrophy and related injuries from the use of Phenytoin Sodium. The Plaintiffs' complaints allege nine causes of action alleging: First, Strict Products Liability-Failure to Warn; Second, Strict Products Liability-Defective Design; Third, Strict Products Liability-Manufacturing Defect; Fourth, Fraud, Fraudulent Concealment and Intentional Misrepresentation; Fifth, Breach of Implied Warranty; Sixth, Breach of Express Warranty; Seventh, Negligence and Negligent Misrepresentation; Eighth, Gross Negligence; and Ninth, Alter Ego, Corporate Liability and Civil Conspiracy.

The Plaintiffs allege that the Defendants were engaged in the business of or were successors in interest to entities engaged in the business of researching, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspect, distributing, marketing, labeling, promoting, packaging, prescribing and/or advertising for sale, and selling Dilantin for the use and ingestion by Plaintiffs and other users. As such, each Defendant is individually as well as jointly and severally liable for Plaintiffs' damages.

The Defendants have filed answers essentially denying the allegations in each of the nine causes of action.

Both the Plaintiffs and the Defendants have agreed to coordinate all of the New York cases, therefore the only remaining issue is where that coordination should be venued. Defendants' counsel has asserted that the Defendant Pharmacia has no connection to Dilantin, the subject matter of these actions. Therefore, all of the Defendants are co-located and have their principal place of business in New York County. Since both the Kings County and New York County actions have begun the discovery process before an assigned judge, and since the Kings County and New York County courthouses are geographically close to one another, the selection of either county will not create an undue hardship for the sole Kings County Plaintiff.

The Litigation Coordinating Panel having considered and deliberated on the issue of coordination, venue, convenience of parties and judicial economy determined that New York County shall be the situs of the coordination of all the cases filed in Kings County, New York County, Bronx County, and any other similar actions filed in any other county of this state the purposes of Uniform Civil Rules § 202.69 are best served by granting defendants' application for coordination in New York County. Accordingly, and upon due deliberation, it is hereby:

ORDERED, that the actions set forth in the three captions above shall be Coordinated pursuant to the Uniform Civil Rules § 202.69 before a Coordinating Justice of New York county; and it is further

ORDERED, that any actions that allege similar causes of action against the Defendants, that were filed in a Supreme Court of the State of New York, and which remain active, but are not listed in the above caption, and any such actions that are filed hereafter shall likewise be Coordinated pursuant to the Uniform Civil Rules § 202.69 in the Supreme Court, of New York County, before a Coordinating Justice of New York county, unless the Panel rules otherwise; and it is further

ORDERED, that pursuant to the Uniform Civil Rules § 202.69(c)(1) of the State of New York, the Honorable Deborah A. Kaplan, the Administrative Judge for Civil Matters of the Supreme Court, New York County, shall assign the Coordinating Justice; and it is further

ORDERED, that the Coordinating Justice shall have the authority to coordinate the discovery and pre-trial matters to prepare these matters for trial, to include ruling upon motions for summary judgment, *Frye/Parker* motions to preclude experts, expert opinions or evidence in general, and any other pre-trial matters. The Coordinating Justice may conduct the trial of any cases originally filed in New York County or cases originally filed in other counties that were coordinated in New York County at the option of the plaintiffs. When a case is ready for trial, each of the plaintiffs may choose to either try their case in New York County or in the county where their case was originally filed; and it is further

ORDERED, that the Acting 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 to the Honorable Deborah A. Kaplan, the Administrative Judge for Civil Matters of the Supreme Court of New York County; and it is further

ORDERED, that within 15 days of receipt of a copy of this Order, counsel for the applicants (Defendants) shall serve a copy of the Panel's Decision and Order with notice of entry upon the Clerks of the Supreme Court for the Counties of Kings, New York and Bronx, who are directed, upon payment of appropriate fees, if any, to transmit the files in the listed actions that are pending in said Counties to the Clerk of the Supreme Court, New York County; and it is further

ORDERED, that with respect to any additional similar actions against the same defendants that are filed in any county of this state, upon service of a copy of this Decision and Order of the Panel with notice of entry upon the Clerk of the Court in which any such additional similar action is or hereafter shall be pending (other than the Supreme Court of New York County), said Clerk shall forthwith transfer to the Supreme Court of New York County the file in any such additional action that is to be Coordinated as provided in this Decision and Order in compliance with the Uniform Civil Rules § 202.69; and it is further

ORDERED, that the Clerk of the Supreme Court of New York County, shall assign a County of New York index number, to any such similar additional actions transferred to New York County from another County as provided above and such number shall serve as a means of identification and orderly processing of any such case while it remains in the New York County for the purpose of Coordination, but will also retain the index number originally assigned to those actions from the county where they were originally filed.


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

Dated: June 26, 2019

Justices of the Panel:

Hon. Joseph J. Maltese
Hon. Joan A. Madden
Hon. Matthew Rosenbaum
Hon. Denise A. Hartman

For the Panel:



Hon. Joseph J. Maltese
Presiding Justice

APPENDIX A – THE ATTORNEYS

The attorneys who are jointly representing all of the individual Plaintiffs are:

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The attorneys representing all of the Defendants are:

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Fax: 212-836-8689

APPENDIX B – THE PLAINTIFFS

The Plaintiffs in the New York County action and their residences are listed as follows:

Scott Penrod of Hillsboro, Ohio
Meiling Serrano of Charlotte, North Carolina;
Gary Poley of Joice, Iowa;
Luz Rosado-Cabrera of Seffner, Florida;
Mark Adams of Miami, Florida;
Craig Farley of Tyler, Texas;
Harold Hoffman of Brookhaven, Pennsylvania;
Charles Pruitte of Ladson, South Carolina;
Mary Thelen of Fort Worth, Texas; and
Mary Ward of Decatur, Alabama.

The Plaintiffs in the Kings County action and their residences are listed as follows:

Amy Polenberg of Brooklyn, New York;
Adrian Zemken of Amsterdam, New York;
Andrew Eick of Appleton, Wisconsin;
Dale Hart of Centralia, Illinois;
Dean Kusik of Milwaukee, Wisconsin;
Ethel Pitts of Crestview, Florida;
Jo Goldsmith of Las Vegas, Nevada;
Rick Joyce of Las Vegas, Nevada;
Timothy Lee Horton of Memphis, Tennessee;
Karleen Clausen of Malden, Illinois;
June Brend of Brandon, Florida;
Kenyhan Williams of Madison, Wisconsin;
Judith Marie Coppla of Pahrump, Nevada;
Patti Denucci of Bangor, Pennsylvania;
Nancy Musser of San Antonio, Texas;
Russell Paul Bickner of Loveland, Colorado;

Bruce Hartman of West Jefferson, Ohio;
Ann MacKenzie of Charleston, Massachusetts;
Joyce Williams of Seattle, Washington; and
Eugene Steele.

The Plaintiffs in the Bronx County action and their residences are listed as follows:

Elizabeth DeLumeau of Parker, Colorado;
Steven Rhoades of Waverly, Ohio;
Carl Cram of Wyoming, Delaware;
George Goode of Gary, Indiana;
Tammy Lynn Ray of Lubbock, Texas;
Steve Smith of Billings, Montana;
Crista Ann Sullo of Bronx, New York;
Shawn Canady of Ladson, South Carolina;
Eddie Pinnix of Greensboro, North Carolina;
Cathy Seidenstein of Venice, Florida;
Ellen Mason of Broadway, Virginia;
William Dean of Streator, Illinois; and
James Baughman of Nashville, Tennessee.