

County of Suffolk v Purdue Pharma L.P.
2017 NY Slip Op 32948(U)
October 24, 2017
Supreme Court, Suffolk County
Docket Number: 400001/2017
Judge: Jerry Garguilo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

E-FILE

SHORT FORM ORDER

INDEX NO. 400001/2017 (613760/2016)
(400000/2017 In Re Opioid)

**SUPREME COURT - STATE OF NEW YORK
NEW YORK STATE OPIOID LITIGATION PART 48 - SUFFOLK COUNTY**

PRESENT:

**HON. JERRY GARGUILO
SUPREME COURT JUSTICE**

ORIG. RETURN DATE: 4/17/17
FINAL SUBMITTED DATE: 10/18/17
MOTION SEQ#016
MOTION: MD

COUNTY OF SUFFOLK,

Plaintiff,

**ALL PARTIES VIA NYSCEF
(FULL PARTICIPATION RECORDED)**

-against-

PURDUE PHARMA L.P., PURDUE PHARMA INC.,
THE PURDUE FREDERICK COMPANY, INC.,
TEVA PHARMACEUTICALS USA, INC.,
CEPHALON, INC., JOHNSON & JOHNSON,
JANSSEN PHARMACEUTICALS, INC.,
ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC. N/K/A JANSSEN
PHARMACEUTICALS, INC., JANSSEN
PHARMACEUTICA, INC. N/K/A JANSSEN
PHARMACEUTICALS, INC., ENDO HEALTH
SOLUTIONS INC., ENDO PHARMACEUTICALS,
INC., Russell Portenoy, Perry Fine, Scott Fishman,
Lynn Webster,

Defendants.

The Petitioner, Michael Belfiore D.O., seeks an order allowing him to intervene in this action, pursuant to CPLR §§ 1013 and 1014, and for such other and further relief as this Court may deem just and proper.

The Court has considered the following:

1. Petitioner's Notice of Motion, Affirmation of Counsel, Thomas F. Liotti, inclusive of Exhibit A;
2. Defendants' Endo Health Solutions Inc. and Endo Pharmaceuticals Incs. Affirmation by Ingo W. Sprie, Jr., in Opposition to Motion with Exhibits A through F;

COUNTY OF SUFFOLK v. PURDUE PHARMA, LP, ET AL
INDEX NO.: 400001/2017 (613760/2016)
PAGE 2

3. Individual Defendants' Opposition to Motion to Intervene;
4. Plaintiffs' Motion In Opposition;
5. Pharmaceutical Defendants' Memorandum of Law in Opposition; and
6. Petitioner's Reply Affirmation, inclusive of Exhibits A and B.

On or about July 17, 2017 in accordance with the Uniform Rules of the Trial Court's Section 202.69 (c)(1), and in furtherance of the Order of the Litigation Coordinating Panel, an order was issued by Presiding Justice Joseph J. Maltese concerning claims brought by municipal corporations against opioid producers, distributors and three physicians. To wit:

...whereby this case and 8 other cases filed in Broome, Dutchess, Erie, Nassau, Orange, Seneca, Schenectady and Sullivan Counties as outlined in the Appendix to this Order, and any other similar cases now or hereafter filed in Suffolk or any other county of this state, shall be transferred for coordination to the Suffolk County Supreme Court, and the Hon. Jerry Garguilo of the Supreme Court, Suffolk County, located at 400 Carleton Aveune, Central Islip, NY 11722, telephone number 631-853-7703, is designated as the Coordinating Justice for all actions pending in any county of the New York Supreme Court.

The Uniform Rules for the Trial Court's Section 202.69 (c)(1) notes:

(c) Coordinating Justice.

(1) Designation. The Administrative Judge charged with supervision of the local jurisdiction within which coordinated proceedings are to take place shall select the Coordinating Justice or Justices, in consultation with the appropriate Deputy Chief Administrative Judge. In deciding whom to designate, the Administrative Judge shall consider, among other things, the existing caseload of each prospective appointee and the overall needs of the court in which that justice serves; the familiarity of that justice with the litigation at issue; the justice's managerial ability; and the previous experience of the justice with the field of law involved and with coordinated litigation. The Administrative Judge may designate a justice from another local jurisdiction as a Coordinating Justice with the approval of the Administrative Judge thereof.

Pursuant to the Uniform Rule and the Order of July 17, 2017, the eight (8) cases pending in various counties have been transferred for coordination to this Court. It is further anticipated that

COUNTY OF SUFFOLK v. PURDUE PHARMA, LP, ET AL
INDEX NO.: 400001/2017 (613760/2016)
PAGE 3

54 similar cases may follow.¹

The Petitioner, Michael Belfiore, D.O., seeks to intervene as a plaintiff in one of the transferred and/or coordinated actions. The submissions identify the Petitioner as an indicted defendant in a criminal action brought in the Federal District Court, Eastern District of New York. More particularly, as noted in counsel's Affirmation:

Dr. Belfiore is presently charged in the United States District Court for the Eastern District of New York with over-prescribing pain medication without a "legitimate medical purpose" pursuant to 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(c), 853a, 853p and 18 U.S.C. §§3551, et. seq. See *U.S. v. Belfiore* (Docket No. 15cr242[S-1][JFB]).

Part of Dr. Belfiore's defense in that federal criminal case is that he and other doctors similarly situated were misled by the defendants in this action by false and fraudulent advertising and sales promotion in telling the doctors that opioids such as oxycodone could be freely prescribed without being concerned with any addictive qualities in the medication.² Furthermore, Dr. Belfiore is seeking to intervene in this action, it is anticipated that all of these actions, once initiated, will be consolidated in one venue and Dr. Belfiore will be a part of that.

Compellingly, Counsel's Affirmation notes "While Dr. Belfiore believes that there are many physicians similarly situated, presently he is the only plaintiff seeking to intervene in this matter. This action may evolve into not only a multi-county litigation but also a class action involving all physicians similarly situated."

When the proposed intervenor's claim or defense has any question in common with a claim or defense involved in the action, intervention is permitted under CPLR 1013 "in the discretion of the court." See New York Practice, Fifth Edition by David Siegel West Publishing:

Siegel, N.Y. Prac. § 182 (5th'ed.)

The court has to be wary of numbers. If, for example, the legality of rent control or some phase of it were involved in a case, literally tens

1. The Plaintiffs in each case is a County or similar municipal corporation. It was into these coordinated cases that the Petitioner seeks to intervene.

2. The Complaint filed and served in the civil action into which Plaintiff seeks to intervene speaks of similar allegations.

COUNTY OF SUFFOLK v. PURDUE PHARMA, LP, ET AL
INDEX NO.: 400001/2017 (613760/2016)
PAGE 4

of thousands of tenants and landlords would have sufficient interests in the outcome to apply to intervene. **The discretion of the court is the dike against this potential flood.** (*emphasis added*)

Petitioner's counsel notes at paragraph 20 of his affirmation:

...the prospective plaintiff/intervenor in this action, Michael Belfiore, is but one of the many osteopaths and medical doctors who have been misled by the 'Big Pharma' defendants and the United States Government.

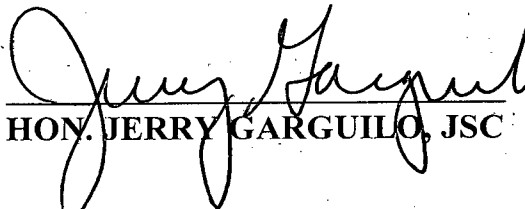
In fact, Counsel titles that section of his Affirmation as "The Nature of a Possible Class Action," and comments:

Dr. Belfiore contends that he has been wrongfully prosecuted and that as a result, he has suffered severe damage to his reputation and business and that he has been compelled to expend enormous amounts of time and costly legal fees and selected expenses in order to defend against these false criminal charges which are the direct result of his detrimental reliance upon the misrepresentations of these defendants and the condoning of those misrepresentations by the Government in its nonfeasance, malfeasance and misfeasance with respect to law enforcement relative to these defendants.

As suggested to this Court during the initial conference in these "Pharma" cases and in consideration of the anticipated 54 additional claims yet to be filed by other counties, the Court in its discretion **DENIES** the Petition. As noted hereinabove by Prof. Siegel "the discretion of the court is the dike against this potential flood." The flood of course, being healthcare professionals throughout the state as intervenors.

The foregoing constitutes the decision and **ORDER** of this Court.

Dated: October 24, 2017


HON. JERRY GARGUILO, JSC