



STATE OF NEW YORK
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EXECUTIVE DIVISION

November 15, 2019

VIA NYSCEF

The Honorable Jerry Garguilo
Supreme Court of the State of New York, Suffolk County
John P. Cohalan, Jr. Courthouse, Part 48, Courtroom S-33
400 Carleton Avenue
Central Islip, New York 11722

Re: *In Re Opioid Litigation*, Index No. 400000/2017 (Track 1 Cases)

Dear Justice Garguilo:

Your Honor has directed a trial on liability to commence on March 20, 2020. To assist the Court and the parties in making that trial as effective and meaningful as possible¹, the State of New York is prepared to narrow significantly the claims and issues in this litigation by voluntarily discontinuing certain causes of action, severing others, and proceeding to trial on a much narrower set of causes of action than the seventeen contained in its First Amended Complaint (FAC), as follows.

In the March 20, 2020 Liability Trial, the State will try solely the following Causes of Action in its FAC:

1. Public Nuisance (1st Cause of Action)
2. Violation of N.Y. General Business Law § 349 (6th Cause of Action)
3. Violation of N.Y. General Business Law § 350 (7th Cause of Action)
4. Violation of the New York Controlled Substance Act (Public Health Law §§ 3300 *et seq.*) (8th Cause of Action)
5. Repeated and Persistent Illegality in Violation of N.Y. Executive Law § 63(12) (10th Cause of Action)

¹ See *In re Nat'l Prescription Opiate Litig.*, No. 1:17-md-2805, 2019 WL 3843082, at *2 (N.D. Ohio Aug. 15, 2019) (Polster, J.) (concluding that “severance will serve to 1) simplify the October trial and make it administratively manageable, 2) facilitate judicial economy and preserve judicial resources, and 3) encourage and assist in reaching a global resolution”).

The State will voluntarily discontinue, without prejudice, pursuant to CPLR 3217(a)(1), the following Causes of Action in its FAC:

6. Common-Law Fraud (11th Cause of Action)
7. Common-Law Gross Negligence (12th Cause of Action)
8. Common-Law Willful Misconduct (13th Cause of Action)
9. Unjust Enrichment (14th Cause of Action)
10. Repeated and Persistent Fraud in Violation of N.Y. Executive Law § 63(12) (9th Cause of Action)

Contemporaneously with this letter, the State is filing a Notice of Voluntary Discontinuance pursuant to CPLR 3217(a)(1) as to those five claims, except as to the Sackler and Purdue Defendants, as set forth below.

In addition, the State will move next week to sever the following Causes of Action. In the event of a favorable verdict on any cause of action in the initial Liability Phase, the State proposes that the determination of these causes of action be conjoined with the remedies phase of the case. To the extent that defendants intend to raise issues of contributory negligence, superseding or intervening causes, and the State's conduct or knowledge, in that remedies phase, these causes of action may also raise similar issues, making discovery and trial of all such issues after the initial trial the most efficient means to conserve the parties' and the Court's resources.

11. Violation of State Finance Law § 189(1)(a) (2nd Cause of Action)
12. Violation of State Finance Law § 189(1)(b) (3rd Cause of Action)
13. Violation of State Finance Law § 189(1)(c) (4th Cause of Action)
14. Violation of N.Y. Social Services Law § 145-b (5th Cause of Action)
15. Declaratory Judgment Pursuant to CPLR § 3301 (17th Cause of Action)

The foregoing does not apply to any of the State's Causes of Action as filed against the Purdue and Sackler Defendants, including the 15th and 16th Causes of Action for Intentionally Fraudulent Conveyances in violation of Debtor and Creditor Law § 276 and Constructively Fraudulent Conveyances in violation of Debtor and Creditor Law §§ 273, 273-a, 274 and/or 275. As the Court is aware, the State's case against these defendants is effectively stayed and, we expect, will remain effectively stayed through at least April 8, 2020. Accordingly, the State does not dismiss any claims, nor seek any severance of claims, as to those Defendants.

We are authorized to state that Suffolk and Nassau Counties intend to try, in the March 20, 2020 Liability Trial, the following Causes of Action:

1. Public Nuisance (Third Cause of Action)
2. Unjust Enrichment (Sixth Cause of Action)
3. Negligence (Seventh Cause of Action)

The Counties intend to promptly seek a Court Order to voluntarily discontinue, without prejudice, pursuant to CPLR 3217(b), the following Causes of Action:

4. Violation of N.Y. General Business Law § 349 (First Cause of Action)
5. Violation of N.Y. General Business Law § 350 (Second Cause of Action)
6. Violation of New York Social Services Law § 145-B (Fourth Cause of Action)
7. Common-Law Fraud (Fifth Cause of Action)

The joint submission of Plaintiffs, in compliance with the Order dated November 6, 2019, providing a “detailed summary of discovery items that remain outstanding limited solely to the issue of liability,” (Order, at 3) taking the above into consideration, will be filed on Monday, November 18th.

Respectfully submitted,

/s/ David E. Nachman

David E. Nachman

Counsel for Opioids and Impact Litigation

CC: All Counsel of Record (by NYSCEF)
Special Master Harvey Besunder (via NYSCEF)
Special Master Thomas McNamara (via NYSCEF)