

**BEFORE THE
UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

**IN RE: ACTOS PRODUCT LIABILITY
LITIGATION**

MDL Docket No. 2299

**REPLY BRIEF IN SUPPORT OF PLAINTIFFS' GLEN WEANT AND NINA
WEANT'S MOTION FOR TRANSFER OF ACTIONS TO THE SOUTHERN
DISTRICT OF ILLINOIS PURSUANT TO 28 U.S.C. §1407 FOR COORDINATED
OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Plaintiffs Glen Weant and Nina Weant hereby reply to Takeda Pharmaceuticals America, Inc.'s, Takeda Pharmaceuticals North America, Inc., Takeda Global Research & Development Center, Inc., Takeda Pharmaceuticals International, Inc., Takeda Pharmaceuticals LLC, Takeda San Diego, Inc., Takeda Pharmaceutical Company Limited, and Eli Lilly and Company's ("Lilly") (collectively "defendants") response to Plaintiff's Motion for Coordination.

I. DEFENDANTS DO NOT OPPOSE CONSOLIDATION

As a threshold matter, Defendants, and all other respondents agree that this litigation would benefit from centralization under 28 U.S.C. § 1407. (Defendant's Brief in Response ("Def's Br." at 3). The Panel typically will consider the agreement of all parties when determining whether a matter should be consolidated. *In re Chicken Broiler Antitrust Litigation*, 411 F. Supp. 788 (J.P.M.L. 1976). As such, it seems clear that this matter should be consolidated into a multi-district litigation at the Panel's convenience.

II. THE SOUTHERN DISTRICT OF ILLINOIS AND NORTHERN DISTRICT OF OHIO ARE VIABLE VENUES

However, the above said, the parties do not agree on the most appropriate venue to handle this consolidated matter. The defendants argue that the Southern District of Illinois and the Northern District of Ohio should be rejected as appropriate venues. For the reasons below, all of those venues are entirely viable.

A. The Southern District of Illinois is More Appropriate than the Northern District of Illinois.

Defendants argue heavily for this litigation to be located in the Northern District of Illinois, mainly arguing that the Northern District of Illinois contains a “nexus” for this litigation. In doing so, defendants offer information that is somewhat misleading.

Though defendant suggest that five of the named Takeda defendants – Takeda Pharmaceuticals America, Inc., Takeda Pharmaceuticals North America, Inc., Takeda Global Research & Development Center, Inc., Takeda Pharmaceuticals International, Inc., and Takeda Pharmaceuticals LLC, respectively – have their headquarters in Deerfield, Illinois, this is not so. Takeda Pharmaceuticals International, Inc. and Takeda Pharmaceuticals LLC both count their headquarters as 1-1, Doshomachi 4-chrome, Chuo-ku, Osaka, 540-8645, Japan. Moreover, Takeda has an office in San Diego, California, and defendant Eli Lilly is located in Indiana, some two hundred miles south of Chicago. As such, the venue is not as convenient as defendant suggests.

Additionally, though it may be convenient for the defendants, the Northern District of Illinois is not necessarily convenient for all parties. The cases cited by the defendants in support of the Northern District of Illinois focus on the convenience of *both* sides of the litigation, and not simply the convenience of defendants or defendant’s

counsel. *See, e.g., In re RC2 Corp. Toy Lead Paint Products Liability Litigation*, 528 F. Supp. 2d 1374, 1375 (J.P.M.L. 2007) (consolidated the matter because most claims were filed in the district where the defendants were located); *In re Pfizer Ins. Securities, Derivative & ERISA Litigation*, 374 F. Supp. 2d 1348, 1350 (J.P.M.L. 2005) (consolidating the matter in the Southern District of New York because the defendants were located there *and* 23 of 29 filed matters were filed there); *In re California Wholesale Electricity Antitrust Litigation*, 2001 WL 773534 (J.P.M.L. June 8, 2001) (consolidating the matter in the Southern District of California because of the location of defendants and the location of the plaintiff's filings).

Indeed, it is the statutory mandate of this panel to consider the interests of all parties when making its determination. *See, e.g., In re Commonwealth Oil/Tesoro Petroleum Securities Litigation*, 458 F.Supp. 22 (J.P.M.L. 1978); *In re Stirling Homex Corp. Securities Litigation*, 442 F. Supp. 547 (J.P.M.L. 1977); *In re Falstaff Brewing Corp. Antitrust Litigation*, 434 F. Supp. 1225 (J.P.M.L. 1977); *In re Nat. Student Marketing Litigation*, 368 F. Supp. 1311 (J.P.M.L. 1972); *In re Antibiotic Drugs*, 299 F. Supp. 1403 (J.P.M.L. 1969).

The Southern District of Illinois would seem to serve the interests of all parties more favorably, as it is still extremely close in proximity to the defendant corporations, Takeda's American counsel, and it is additionally closer to the headquarters of defendant Eli Lilly & Company than the Northern District of Illinois.

i. The Southern District of Illinois is a Superior Choice for Consolidation.

For many of the reasons noted in Plaintiff's initial moving papers, the Southern District of Illinois is a superior choice for consolidation of this litigation. The Southern

District of Illinois certainly has the available resources, as it is currently handling only two additional MDL's: *In re Profiler Products Liability Litigation* (MDL 1748) and *In re Yasmin and Yaz (drospirenone) Marketing, Sales Practices and Relevant Products Liability Litigation* (MDL 2100). Moreover, the Southern District of Illinois has a well-equipped staff and an excellent Clerk's office that is able to provide support services for managing this litigation. Many complex cases and mass torts have previously been handled in this District.

Perhaps most critical is the fact that the Southern District of Illinois has the strongest "nexus" to this litigation. Not only is it as close to all of the American Takeda defendants, it is also within close proximity to Eli Lilly, defendant's counsel, and the plaintiffs who have filed there. As noted above, this Panel must consider the interests of all parties in making its determination. *In re Commonwealth Oil/Tesoro Petroleum Securities Litigation*, 458 F. Supp. 22 (J.P.M.L. 1978). In short, the Southern District of Illinois is an excellent, if not optimal, choice for this litigation consolidation.

B. The Northern District of Ohio is an Equally Appropriate Venue.

Defendants are also incorrect regarding the current status of pending MDL actions in the Northern District of Ohio. Judge PPolster of the Northern District of Ohio, for example, is handling the *In re Gadolinium Contrast Dyes Product Liability Litigation* (MDL 1900). Despite the suggestion that the Northern District of Ohio is somehow a slow jurisdiction, the Gadolinium MDL has already entered into settlement posture, and Judge Polster has recently reduced that docket from over 1,000 cases to less than 500. Judge Polster has done so not only because the Gadolinium MDL is winding down, but

also because of his tremendous judicial skills and knowledge. It seems clear that he could handle another multi-district litigation if one were assigned to him.

Also lost upon the defendants is that Judge Polster has been assigned two MDL's recently - *In Re: Oral Sodium Phosphate Solution-Based Products Liability Litigation* (MDL 2066) (which he took up after the death of the Honorable Ann Aldrich) and *In re Dannon Co., Inc., Probiotic Yogurt Products. Marketing and Sales Practices Litigation* (MDL 2012), both of which he successfully resolved within one year of their assignment to his docket.

Judge Nugent, also of the Northern District of Ohio, whom Plaintiffs Dabiere, Cobain, and Schwing recommend secondarily, is presiding over *In re KABA Simplex Locks Marketing and Sales Practice Litigation* (MDL 2200). That MDL consists of approximately eight (8) filed cases and is already in position for settlement. Again, this is because of Judge Nugent's judicial skill and legal knowledge. Nor does MDL 2200 seem poised to become extensive or exhausting. Also, much like Judge Polster, Judge Nugent's considerable skill set allowed him to quickly resolve another assigned MDL in an expeditious manner - *In Re Ford Motor Co. Crown Victoria Police Interceptor* (MDL 1488).

Both Judge Polster and Judge Nugent would be excellent candidates to manage this consolidation litigation for the reasons above. Both have the skills and the knowledge to not only manage, but also quickly resolve, large multidistrict litigations. Either would be an excellent choice to manage this consolidated litigation.

C. The Western District of Louisiana is also a Highly Viable Venue.

Plaintiffs Glen and Nina Weant agree with the defendants, as well as Plaintiffs Sieminski, Schwing, Babiere and Cobain, that Judge Doherty of the Western District of Louisiana would also be an excellent choice to preside over this litigation. The Panel typically considers agreement between the parties on a district and a judge when assigning a multi-district litigation. *In re Am. Honda Motor Co., Oil Filter Products Liab. Litig.*, 416 F. Supp. 2d 1368, 1369 (J.P.M.L. 2006). As a number of parties here agree, this Panel should give strong consideration to the Western District of Louisiana.

III. CONCLUSION

For the reasons discussed above, Plaintiffs-Movants respectfully requests that the Panel coordinate and consolidate pretrial proceedings to any of the above-mentioned jurisdictions.

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Respectfully submitted:

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