

**BEFORE THE JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

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<b>In re Actos Products Liability Litigation</b>	:	<b>MDL DOCKET NO. 2299</b>
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**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ MOTION FOR COORDINATION**

Defendants Takeda Pharmaceuticals America, Inc., 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 (“Lilly”) (collectively, Defendants) hereby respond to the pending motion seeking transfer pursuant to 28 U.S.C. § 1407 of various federal court cases relating to the prescription medication Actos®.<sup>1</sup> Although Defendants do not agree with many of the assertions contained in Plaintiffs’ papers, particularly

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<sup>1</sup> The Motion to Transfer Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings was filed on August 31, 2011, by plaintiffs Glen and Nina Weant (“the Weants”). (D.E. 1). Plaintiffs Stanley and Suzanne Sieminski (“the Sieminskis”) filed a response to the Weants’ Motion to Transfer on September 21, 2011. (D.E. 21). Plaintiffs Barbara Coxe, William Coxe, and Lillian Davis (D.E. 27), Edmond and Deborah Schwing (“the Schwings”) (D.E. 28), Clement Dabiere and Leo Cobian (D.E. 29), and James Carter (D.E. 30) filed responses to the Weants’ Motion to Transfer on September 22, 2011. Movants and plaintiff respondents are referred to herein collectively as “Plaintiffs.”

those related to the purported merits of Plaintiffs' claims, Defendants will not address them here because they have no bearing on whether transfer pursuant to § 1407 is appropriate. Defendants do agree that all pending Actos-related cases would benefit from pretrial coordination in a single federal district, but submit that the cases should be transferred to the Northern District of Illinois or, in the alternative, to the Western District of Louisiana.

## **I. BACKGROUND**

Each of the lawsuits identified in the Schedule of Pending Federal Actions (Ex. A)<sup>2</sup> alleges individual claims arising from the use of Actos, a prescription medication. Actos (the trade name for pioglitazone HCl tablets) is a medication approved for prescription by licensed physicians to treat diabetes, in conjunction with diet and exercise. The United States Food and Drug Administration approved Actos as safe and effective on July 15, 1999, and the European Medicines Agency authorized Actos for marketing in the European Union in October 2000. Tablets containing the active ingredient, pioglitazone, are available as a single-ingredient product (marketed as Actos), or as tablets where pioglitazone is combined with other anti-diabetes medicines.<sup>3</sup> From July 1999 to March 2006, Takeda co-promoted Actos with Lilly in the United States pursuant to the terms of an agreement between the companies. When that agreement ended in 2006, Takeda took over all responsibility for marketing Actos in the United

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<sup>2</sup> The Schedule of Actions attached hereto as Ex. A identifies all pending related actions of which Defendants currently are aware. Related actions not previously identified by other parties are identified, and the docket sheets and complaints related to all such actions also are attached as Exhibits G through N.

<sup>3</sup> Pioglitazone combined with metformin hydrochloride is marketed as ACTOplus Met® or ACTOplus Met XR® in the U.S., and Competact or Glubrava in the EU. Pioglitazone combined with glimepride is marketed as Duetact® in the U.S., and Tandemact in the EU. In addition, tablets containing only pioglitazone are marketed as Glustin in the EU. Plaintiffs generally claim that all pioglitazone-containing medicines are associated with an increased risk of bladder cancer.

States. The first products liability lawsuit alleging that Actos causes bladder cancer was filed against Takeda and Eli Lilly on July 29, 2011. To date, Defendants are aware of 54 such actions that have been filed in or removed to federal court. *See* Schedule of Pending Federal Actions (Ex. A).

**II. ALL ACTOS CASES PENDING IN FEDERAL COURT SHOULD BE COORDINATED FOR PRETRIAL PROCEEDINGS.**

Plaintiffs argue that the various Actos-related lawsuits filed against Defendants should be coordinated for pretrial proceedings because of common issues of law and fact. Though Defendants do not agree with many of Plaintiffs' characterizations regarding the common questions of law and fact, they do agree that the actions would benefit from pretrial coordination in a single federal district.

Centralization of the federal cases under §1407 will serve at least two key functions. First, centralization will eliminate duplicative discovery on common issues of fact in all the federal cases and potentially some state cases in jurisdictions that choose to take advantage of consolidated discovery procedures. Defendants anticipate that, at minimum, discovery relating to the FDA licensing of Actos and ongoing approval of Actos labeling, as well as discovery into the scientific evidence concerning Actos, can most efficiently be completed through a coordinated proceeding. Second, centralization will eliminate the risk of inconsistent pretrial rulings.

Thus, transfer and coordination of these actions for pretrial proceedings will promote the just and efficient conduct of the litigation, conserve the resources of the parties and the court, and serve the convenience of the parties and the witnesses. 28 U.S.C. § 1407. Defendants therefore agree with Plaintiffs that all Actos-related products liability actions

pending in federal court should be transferred to a single district court for coordinated pretrial proceedings.

**III. THE ACTIONS SHOULD BE TRANSFERRED TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IN THE ALTERNATIVE, TO THE WESTERN DISTRICT OF LOUISIANA.**

The Panel has before it a motion for transfer, filed by the Weants, suggesting two different transferee districts: the Southern District of Illinois or, alternatively, the Central District of California. (D.E. 1). Five responses have been filed by plaintiffs in other actions. The Sieminskis suggest transfer to the Northern District of Ohio or, in the alternative, the Western District of Louisiana. (D.E. 21). The Schwings (D.E. 28), along with plaintiffs Clement Dabiere and Leo Cobian (D.E. 29), suggest transfer to the Western District of Louisiana or, in the alternative, to the Northern District of Ohio. Plaintiffs William Coxe, Barbara Coxe, and Lillian Davis suggest transfer to the Eastern District of Louisiana. (D.E. 27). Plaintiff James Carter suggests transfer to the Northern District of Illinois. (D.E. 30).

Defendants agree with plaintiff James Carter that the Northern District of Illinois would be the most appropriate venue for coordination of Actos-related actions. In the event the Panel decides against transfer the Northern District of Illinois, Actos-related actions should be transferred to Judge Doherty in the Western District of Louisiana, as suggested by the Sieminskis, Schwings, and plaintiffs Clement Dabiere and Leo Cobian. The Panel should reject Plaintiffs' suggestion that the Southern District of Illinois, the Central District of California, the Northern District of Ohio, or the Eastern District of Louisiana would be appropriate venues for transfer. *See infra*, § III.B.

**A. The Relevant Factors Compel Transfer to the Northern District of Illinois.**

The first factor that this Panel considers in determining where to assign coordinated actions is whether there is an obvious choice for the transferee district, such as where cases have progressed furthest, in which district the event or injury occurred, or in which district the costs and inconvenience would be minimized. *See, e.g., In re RC2 Corp. Toy Lead Paint Products Liability Litigation*, 528 F. Supp. 2d 1374, 1375 (J.P.M.L. 2007) (majority of actions pending in district where defendant’s headquarters located); *In re Pfizer Ins. Securities, Derivative & Erisa Litigation*, 374 F. Supp. 2d 1348, 1350 (J.P.M.L. 2005) (defendant headquarters, “therefore relevant witnesses and documents will likely be found there”); *In re California Wholesale Electricity Antitrust Litigation*, 2001 WL 733534 (J.P.M.L. June 8, 2001) (strong California nexus).

At present, no case has progressed beyond the others, and no discovery has been taken. Under these circumstances, the best forum for the coordinated actions is the Northern District of Illinois, which has a nexus to the litigation. Five of the defendants – Takeda Pharmaceuticals America, Inc., Takeda Pharmaceuticals North America, Inc., Takeda Global Research & Development Center, Inc., Takeda Pharmaceuticals International, Inc., and Takeda Pharmaceuticals LLC – have their headquarters in Deerfield, Illinois (just outside of Chicago), which is located in the Northern District of Illinois.<sup>4</sup> As a result, documents and witnesses relevant to this litigation are located within the Northern District of Illinois. Chicago is also home to Defendants’ counsel. *See In re Mountain States Tel. & Tel. Co. Employees Ben. Litigation*, 1989 U.S. Dist. LEXIS 13673 (J.P.M.L. Feb. 2, 1989) (selecting transferee district

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<sup>4</sup> Lilly’s headquarters in Indianapolis, Indiana are less than 200 miles away from the federal courthouse in Chicago.

because of, inter alia, counsel's proximity to the location). It therefore would result in a minimization of costs and inconvenience if the MDL were located there.

**1. The Northern District of Illinois has a wealth of experience with managing multidistrict litigations, particularly products liability and pharmaceutical litigations.** The Northern District of Illinois has significant experience with multidistrict litigation, including the type of litigation presented by the Actos-related actions. The Northern District of Illinois has successfully managed more than sixty multidistrict litigations. *See J.P.M.L., Multidistrict Litigation Terminated Through Sept. 30, 2010* at 25-27 (Ex. B) (showing that the district has terminated 61 MDLs). Of these, a significant number involved products liability or antitrust claims relating to pharmaceuticals. *See, e.g., In re Factor VIII or IX Concentrate Blood Products Liability Litigation* (MDL-986); *In re Brand Name Prescription Drugs Antitrust Litigation* (MDL-997); *In re Abbott Laboratories Omniflox Products Liability Litigation* (MDL-1004); *In re Amino Acid Lysine Antitrust Litigation* (MDL-1083); *In re Synthroid Marketing Litigation* (MDL-1182); *In re Plasma-Derivative Protein Therapies Antitrust Litigation* (MDL-2109). *See generally In re General Motors Corp. Type III Door Latch Products Liability Litigation* (MDL-1266); *In re StarLink Corn Products Liability Litigation* (MDL-1403); *In re RC2 Corp. Toy Lead Paint Products Liability Litigation* (MDL-1893). Many of these multidistrict litigations involved significant numbers of actions, alleging tort claims on behalf of plaintiffs from many different states. No other proposed transferee court can match the Northern District of Illinois' MDL experience with pharmaceutical cases.

**2. The Northern District of Illinois has the present resources to devote the substantial time to pretrial matters that this litigation is likely to require.** As of the date of this response, at least 54 Actos-related products liability actions are pending in federal courts.

See Schedule of Pending Federal Actions (Ex. A). Litigation of this size will require substantial case management by the judge to whom it is assigned.

The Northern District of Illinois appears to have the greatest capacity to absorb this litigation. Notwithstanding its significant experience with multidistrict litigations over the years, the Northern District of Illinois currently enjoys a relatively low number of pending MDLs per judge. See J.P.M.L., *Distribution of Pending MDL Dockets* (as of Sept. 15, 2011) at 2 (Ex. C). Accordingly, the Northern District of Illinois is not presently overtaxed with multidistrict litigation, and thus has a greater capacity than other proposed transferee courts to absorb a docket of the size suggested by this litigation. See *In re Inter-op Hip Prosthesis Products Liability Litigation*, 149 F. Supp. 2d 931, 933 (J.P.M.L. 2001); *In re Tamoxifen Citrate Antitrust Litigation*, 2001 WL 950663 (J.P.M.L. Aug. 14, 2001).

The Northern District of Illinois also has a median time from filing to disposition for civil cases of 6.3 months – below the national average of 7.9 months – suggesting that the district is efficient in resolution of cases. See *Federal Court Management Statistics* (U.S. District Court – Judicial Caseload Profile as of March 31, 2011), available at <http://www.uscourts.gov/viewer.aspx?doc=/cgi-bin/cmsd2011Mar.pl> (last accessed Sept. 22, 2011) (Ex. D). The Northern District of Illinois plainly has the resources to support the Actos litigation.

**3. The Northern District of Illinois has a number of judges who have the ability and temperament to guide this litigation through pretrial proceedings.** Plaintiff James Carter has a case pending in the Northern District of Illinois, which is assigned to Judge James B. Zagel. See Schedule of Pending Federal Actions (Ex. A). As Mr. Carter has suggested (D.E. 30), Judge Zagel would be an appropriate choice for coordination of these proceedings, as he has successfully handled several complex multidistrict litigation dockets, including two

involving product liability claims. *See, e.g., In re VMS Real Estate* (MDL-847); *In re Mortgage Escrow Deposit* (MDL-899); *In re Fund F “ERISA”* (MDL-976); *In re General Motors Type III Door Latch Products Liability Litigation* (MDL-1266); *In re GMC Vehicle Paint Litig.* (MDL-1392). Judge Zagel is currently presiding over one MDL, *In re BP Prods. North America, Inc. Antitrust Litigation (No. II)* (MDL-1946), which had just one pending action as of September 15, 2011. *See* J.P.M.L., *Distribution of Pending MDL Dockets* (as of Sept. 15, 2011) at 2 (Ex. C).

Numerous additional judges of the Northern District of Illinois have demonstrated repeatedly the ability to manage large multidistrict litigation dockets, deal with complex legal and factual issues, and expeditiously conclude pretrial multidistrict proceedings. *See* J.P.M.L., *Multidistrict Litigation Terminated Through Sept. 30, 2010* at 25-27 (Ex. B). Should Judge Zagel be unavailable for assignment, the litigation could be coordinated before one of these other judges. *In re Cooper Tire & Rubber Co. Tires Products Liability Litigation*, 2001 WL 253115 (J.P.M.L. Feb. 23, 2001) (“we are entrusting this assignment to an able jurist”); *In re Bridgestone/Firestone Inc., Tires Products Liability Litigation*, 2000 WL 33416573 (J.P.M.L. Oct. 24, 2000) (“we have searched for a transferee judge with the ability and temperament to steer this complex litigation on a steady and expeditious course”).

**4. The Northern District of Illinois is an accessible, geographically central metropolitan district convenient to the litigants and witnesses.** Given the geographic dispersion of the current Actos-related actions, and the fact that Defendants expect that actions will be filed in additional states, the most practical choice for coordinated pretrial proceedings is one that is centrally located within the United States in an accessible, major metropolitan area. *See, e.g., In re Starlink Corn Products Liability Litigation*, 152 F. Supp. 2d 1378, 1480-81 (J.P.M.L. 2001) (selecting Northern District of Illinois as geographically convenient); *In re*



*America Online, Inc. Version 6.0 Software Litigation*, 2001 WL 1018356 (J.P.M.L. Aug. 16, 2001) (Northern District of Illinois is geographically central for nationwide litigation). The Northern District of Illinois, in the city of Chicago, meets those criteria. With cases pending around the nation – in California, Louisiana, Illinois, Ohio, New Jersey, Minnesota, North Carolina, and New York – Chicago is centrally located and convenient to all other litigants and witnesses.

Chicago also is more accessible than Plaintiffs' other proposed locations.

Chicago is the largest transportation hub in North America. O'Hare International Airport offers more connections to more destinations than any other airport in the world. *See* <http://chicago.cbslocal.com/top-lists/guide-to-o%E2%80%99hare-airport/> (last accessed on Sept. 28, 2011). It is an airport hub for many airline companies, most notably United Airlines and American Airlines, each of which has a dedicated terminal and hourly flights to most major U.S. cities. O'Hare International Airport is also among the largest international airports in the world. This litigation in particular demands coordination in a city easily accessible to international travel. Plaintiffs have named a Japanese company – Takeda Pharmaceutical Company Limited – as a defendant. Chicago provides the best international air service of the proposed transferee locations.

**B. In the Alternative, the Panel Should Transfer the Actions to Judge Doherty in the Western District of Louisiana for Coordinated Pretrial Proceedings.**

Though not as convenient as the Northern District of Illinois, the Panel should, as an alternative, transfer these actions to Judge Doherty in the Western District of Louisiana. As the Sieminskis (D.E. 21), Schwings (D.E. 28), and plaintiffs Clement Dabiere and Leo Cobian (D.E. 29) point out, Judge Doherty is an experienced and able jurist who is not currently burdened with an MDL docket. Agreement by the parties on a district and judge is one factor the

Panel considers when assigning an MDL. *See, e.g., In re Am. Honda Motor Co., Oil Filter Prods. Liab. Litig.*, 416 F. Supp. 2d 1368, 1369 (J.P.M.L. 2006). Here, parties to four of the seven submissions have now suggested that Judge Doherty would be their primary or alternate choice for assignment of the MDL at issue. And though no action has progressed further than any other, it is worth noting that 16 actions have been filed in the Western District of Louisiana, more than in any other district court. *See* Schedule of Pending Federal Actions (Ex. A). Moreover, ten of these actions have been assigned to Judge Doherty, more than any other judge. *Id.* These are factors the Panel often considers when assigning MDLs. *See, e.g., In re Air Crash Near Athens, Greece, on Aug. 14, 2005*, 435 F. Supp. 2d 1340, 1342 (J.P.M.L. 2006) (noting that the transferee forum contained a majority of the actions in the dispute).

**C. The Southern District of Illinois, Central District of California, Northern District of Ohio, and Eastern District of Louisiana Are Not Appropriate Choices for Transferring Actions for Coordinated Pretrial Proceedings.**

The Southern District of Illinois, Central District of California, Northern District of Ohio, and Eastern District of Louisiana are not convenient to any of the Defendants' corporate headquarters, nor are they the location of documents or witnesses relevant to this litigation. Moreover, each fails to satisfy other of the Panel's factors for selection.

Southern District of Illinois. It is not clear that the Southern District of Illinois has capacity to absorb another large MDL proceeding. The Southern District of Illinois is a small district that already is home to the more than 7,000 cases pending in the *Yasmin/YAZ* MDL. *See* J.P.M.L., Distribution of Pending MDL Dockets (as of Sept. 15, 2011) at 2 (Ex. C). In addition, the Southern District of Illinois, although located in the Midwest, is substantially less convenient to the parties than the Northern District of Illinois and only the Weants (D.E. 1) have suggested that transfer to this district would be appropriate.

Central District of California. The Central District of California is substantially less convenient to the Defendants' headquarters, relevant documents, and witnesses than is the Northern District of Illinois, and only the Weants (D.E. 1) have suggested that transfer to this district would be appropriate. In addition, Judge Virginia Phillips, whom the Weants recommend, has no prior experience managing a multidistrict litigation. *See* J.P.M.L., *Multidistrict Litigation Terminated Through Sept. 30, 2010* at 33-35 (Ex. B). This Panel often decides § 1407 motions based primarily on the experience of the potential transferee judge. *See, e.g., In re Zyprexa Prod. Liab. Litig.*, 314 F. Supp. 2d 1480 (J.P.M.L. 2004); *In re Pressure Sensitive Labelstock Antitrust Litig.*, 290 F. Supp. 2d 1374 (J.P.M.L. 2003); *In re Carbon Black Antitrust Litig.*, 277 F. Supp. 2d 1480 (J.P.M.L. 2003); *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 269 F. Supp. 2d 1372 (J.P.M.L. 2003); *In re Temporomandibular Joint (TMJ) Implants Prod. Liab. Litig.*, 844 F. Supp. 1553 (J.P.M.L. 1994). Of the proposed judges, Judge Zagel in the Northern District of Illinois possesses the most experience in handling complex cases, including managing large multidistrict litigation dockets.

Northern District of Ohio. The median time from filing to disposition of a case in the Northern District of Ohio is 16.2 months, which is more than double the national average and approximately two and a half times longer than it is in the Northern District of Illinois. *See* Federal Court Management Statistics (U.S. District Court – Judicial Caseload Profile as of March 31, 2011), *available at* <http://www.uscourts.gov/viewer.aspx?doc=/cgi-bin/cmsd2011Mar.pl> (last accessed Sept. 22, 2011) (Ex. E). In addition, Judge Dan Polster, whom the Sieminskis (D.E. 21), Schwings (D.E. 28), and plaintiffs Clement Dabiere and Leo Cobian (D.E. 29) recommend, is currently presiding over MDL 1900, *In re Gadolinium Contrast Dyes Product Liability Litigation*, in which approximately 500 actions are still pending.

See J.P.M.L., Distribution of Pending MDL Dockets (as of Sept. 15, 2011) at 4 (Ex. C). It is doubtful that Judge Polster has the present resources to manage yet another significant litigation of long duration. In addition, earlier this year, the Panel selected Judge Nugent (whom plaintiffs Dabiere, Cobian and the Schwings recommend secondarily) to preside over MDL 2220, *In re KABA Simplex Locks Marketing and Sales Practices Litigation* See *id.* As that MDL is still in its infancy, Judge Nugent also may not have current resources for another MDL.

Eastern District of Louisiana. Plaintiffs William Coxe, Barbara Coxe, and Lillian Davis have suggested transfer to Judge Ann Vial Lemmon of the Eastern District of Louisiana. Though an experienced and able jurist, Judge Lemmon recently took on senior status and it is doubtful that she desires to take on a potentially large and complex MDL at the present time. See Federal Judicial Center, *Biographical Directory of Federal Judges*, available at <http://www.fjc.gov/servlet/nGetInfo?jid=1378&cid=999&ctype=na&instate=na> (last accessed September 26, 2011) (Ex. F). Moreover, the Eastern District of Louisiana is currently presiding over six MDLs with a combined total of more than 7,000 pending actions as of September 15, 2011. See J.P.M.L., Distribution of Pending MDL Dockets (as of Sept. 15, 2011) at 2 (Ex. C). It therefore is not clear that the Eastern District of Louisiana has capacity to absorb another potentially large MDL proceeding.

### CONCLUSION

For the foregoing reasons, Defendants respectfully request that the actions listed on the Schedule of Pending Federal Actions (Ex. A) be transferred for coordinated pretrial proceedings to Judge Zagel in the Northern District of Illinois or, in the alternative, to Judge Doherty in the Western District of Louisiana.

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Respectfully submitted,

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