BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE PLAVIX® PRODUCT LIABILITY AND MARKETING LITIGATION	)	**MDL DOCKET NO. _____**

MEMORANDUM OF LAW IN SUPPORT OF BRISTOL-MYERS SQUIBB COMPANY, SANOFI-AVENTIS U.S. LLC, SANOFI US SERVICES INC., AND SANOFI-SYNTHELABO INC.'S RENEWED MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

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INTRODUCTION

Bristol-Myers Squibb Company ("BMS"), Sanofi-Aventis U.S. LLC, Sanofi US Services Inc. (f/k/a Sanofi-Aventis U.S. Inc.), and Sanofi-Synthelabo Inc. (collectively "Defendants") respectfully move, pursuant to 28 U.S.C. § 1407, to centralize 30 pending federal Plavix® product liability and marketing cases, as well as all such future Plavix® cases, for coordinated pretrial proceedings.

Although the Panel denied Defendants' motion to centralize in 2011, *see In re: Plavix Prods. Liab. Litig.*, 829 F. Supp. 2d 1378 (J.P.M.L. 2011) ("2011 Order"), the litigation is now dramatically different in size and kind. Plavix® litigation has now become a significant mass tort that demands coordination. Multiple Plaintiffs' counsel have filed product liability lawsuits on behalf of thousands of Plaintiffs in state and federal courts around the country. While most are currently in state court, a critical mass will remain in federal court, and new cases are being filed in both federal and state courts on almost a daily basis. Plaintiffs' counsel have also filed federal *qui tam*, state attorneys general, and third-party payor Plavix® cases, all of which make allegations similar to the product liability cases concerning Defendants' marketing the efficacy and health benefits of Plavix®.

There is a critical need for a centralized coordination of the overlapping discovery and pretrial rulings in these various cases, especially because Plaintiffs' assurances to this Panel a year ago that they would voluntarily coordinate discovery among the various cases have proven altogether hollow. To the contrary, Plaintiffs now seek to use the lack of coordination between the cases to gain tactical advantages.

The reasons the Panel provided for denying Defendants' prior MDL application are no longer apposite. *See* 2011 Order, 829 F. Supp. at 1378 (citing limited number of actions,

different procedural posture, and relatively few counsel involved as grounds for denial). ***First,*** in 2011 there were only three groups of cases pending in three federal districts. Now there are seventeen Plavix® cases in eight different federal districts, counting only those in which federal jurisdiction has already been affirmed or is uncontested. There are another 13 cases in three federal districts with remand motions pending. And in light of thousands of new plaintiffs filing claims in state and federal courts over the last several months, more federal cases are sure to come.

Second, the substantial majority of the cases are in the same early procedural stage, with discovery not yet begun or just started -- making this the ideal time to benefit from coordinated treatment. ***Third***, there are now nine different sets of Plaintiffs' counsel involved, and they have already demonstrated their unwillingness or inability to coordinate voluntarily on basic discovery issues. Coordinated treatment is therefore greatly needed to ensure uniformity in discovery rulings and avoid duplicative discovery efforts.

This substantial expansion of the litigation represents precisely the sort of changed circumstances that warrant revisiting the Panel's prior decision denying centralization. *See In re Glaceau VitaminWater Mktg. and Sales Practices Litig. (No. II)*, 764 F. Supp.2d 1349, 1350 (J.P.M.L. 2011) (granting centralization after prior denial when two new related actions were filed); *In re Fedex Ground Package Sys., Inc. Emp't Practices Litig. (No. II)*, 381 F. Supp.2d 1380, 1381 (J.P.M.L. 2005) (granted centralization where the Panel had previously denied it but in the "intervening months" the "litigation ha[d] grown considerably").

Defendants propose that these cases be centralized in a District Court in the New York/New Jersey area. Defendants are headquartered and have substantial operations there, Defendants' documents and the vast majority of Defendants' party witnesses are located there,

and it would be a convenient location for counsel. There are also several District Courts in New York and New Jersey that have experience with the Plavix® litigation that would be appropriate choices.

BACKGROUND

Thousands of individuals who took Plavix® and now claim to have developed bleeding complications have initiated product liability suits now pending in federal and state courts across the country, alleging that the companies improperly "overpromoted" the efficacy and health benefits of Plavix®. More recently, private law firms representing state attorneys general and third-party payors have also brought suits again alleging that Defendants improper marketed the drug. A federal *qui tam* concerning the companies' promotion of Plavix® was also just unsealed in the Southern District of Illinois. Below is an overview of the Plavix® cases now pending in federal courts across the country.

1. New Jersey

Nine single-plaintiff cases alleging that Plavix® caused bleeding injuries are pending in the United States District Court for the District of New Jersey. While these cases have not been formally consolidated, they have all been assigned to Judge Freda Wolfson and Magistrate Judge Tonianne Bongiovanni, who have been managing the cases in a coordinated fashion.

a. More Developed Cases

In six New Jersey cases (*LaBarre*, *Begley*, *Cooper*, *Carr-Davis*, *Solomon*, and *Mattson*), discovery has been stayed pending resolution of pending summary judgment motions.[1] *See* Schedule of Actions, Nos. 19-24. Should the cases survive summary judgment, the next phase of discovery will include depositions of Defendants' employees. In another case, *Newell*, fact

[1] Judge Wolfson stayed these cases for several years pending the outcome of the Supreme Court's decision in *Wyeth v. Levine*, 555 U.S. 555 (2009).

discovery is underway but not yet completed and no dispositive motion is pending. *See* Schedule of Actions, No. 24.

Prior to the discovery stay, Defendants completed document production and produced approximately 3.5 million pages of documents. The court entered a confidentiality order and has ruled on motions to dismiss and the appropriate scope of *ex parte* contacts with non-party treating doctors. The parties have developed, served, and responded to detailed fact sheets, and they have served and responded to other written discovery. The court has also entered a phased schedule for taking depositions. Defendants' discovery responses in the New Jersey cases identified fifteen of their current and former employees knowledgeable about the development, testing, regulatory approval, packaging, and marketing of Plavix®. The substantial majority of these witnesses work or reside in New Jersey. Most are located in the Northeast.

b. Newer Cases

One of the District of New Jersey cases—*Kennovin*—was filed this year as a diversity matter. *See* Schedule of Actions, No. 27. Defendants have answered, but the parties have not started discovery. The *Crowe* case, filed in 2011, has not yet been served. *See* Schedule of Actions, No. 26. The Court has ordered Mr. Crowe to show cause by October 15, 2012, why the case should not be dismissed for failure to respond to the Court's inquiries concerning his intention to proceed with the case.

2. Iowa

In September, 2012, Raymond and Darlene Snyder sued Defendants for alleged Plavix® caused bleeding injuries in Iowa state court.[2] In October, 2012, Defendants removed the matter based on diversity to the United States District Court for the District of Iowa. *See* Schedule of

[2] This Complaint names Bristol Myers Squibb and Sanofi Pasteur, Inc. as Defendants.

Actions, No. 16. There is complete diversity and no basis to question jurisdiction. The parties have not yet begun discovery.

3. Louisiana (Western District)

In March 2012, a Decedents' heirs filed suit against Defendants in Louisiana state court for an alleged wrongful death caused by Plavix® bleeding complications. Defendants removed the suit to the United States District Court for the Western District of Louisiana. *See* Schedule of Actions, No. 17. On September 26, 2012, the Magistrate Judge recommended denial of Plaintiffs' motion to remand and no objections to that Report have yet been filed. The parties have not begun discovery.

4. New York (Southern District)

In July 2011, four Plavix® cases were filed in New York state court based on alleged Plavix® bleeding injuries. Defendant Sanofi-Aventis U.S. Inc. removed these cases to the United States District Court for the Southern District of New York. *See* Schedule of Actions, Nos. 29-32. In 2012, the Court denied Plaintiffs' motion to remand. The court has consolidated these cases for pretrial proceedings, and discovery is in the very early stages.

5. New York (Eastern District)

An additional Plavix® case was filed on July 5, 2011, in the United States District Court for the Eastern District of New York. *See* Schedule of Actions, No. 28. The parties have not begun discovery.

6. Pennsylvania (Eastern District)

In January, 2012, two cases were filed in Pennsylvania state court based on alleged Plavix® bleeding injuries. Defendants removed both cases to the United States District Court for the Eastern District of Pennsylvania and no remand motion was filed. *See* Schedule of Actions, Nos. 33 and 34. The parties have not begun discovery in either case.

7. West Virginia (Southern District)

In February 2012, two union health care funds—the Employer Teamsters-Local Nos. 175/505 Health and Welfare Trust Fund and the International Brotherhood of Teamsters-Voluntary Employee Benefits Trust sued Defendants in the United States District Court for the Southern District of West Virginia. *See* Schedule of Actions, No. 35. The First Amended Complaint alleges that Defendants improperly promoted Plavix®, thus causing the Plaintiffs to pay more in insurance benefits than they otherwise would have. Plaintiffs' liability allegations overlap substantially with the personal injury cases discussed above. Discovery has not yet begun.

8. Illinois (Southern District)

On December 2, 2011, Elisa Dickson filed a *qui tam* suit alleging that Defendants improperly marketing of Plavix®'s health benefits caused false claims to be presented to the Medicaid and Medicare programs of several government entities. *See* Schedule of Actions No. 15. The Court unsealed this case on October 1, 2012. The parties have not started discovery. Because the Complaint alleges that Defendants made misrepresentations about the efficacy and health benefits of Plavix®, its liability allegations overlap substantially with the personal injury cases discussed above. The lead Plaintiffs' lawyers in this *qui tam* suit are also the counsel in eight Plavix® cases including 546 Plaintiffs in Illinois state court as well as a suit brought by a county attorney in California challenging Defendants' marketing of Plavix®.

9. Mississippi (Northern District)

In June 2012, the State of Mississippi sued Defendants in state court alleging violations of the Mississippi Consumer Protection Act. In August, 2012, Defendants removed the case to the Northern District of Mississippi, Eastern Division. The State has moved to remand. Like the West Virginia case, this Complaint alleges that Defendants misrepresented the scientific facts

about Plavix® in marketing efforts. As such, Plaintiffs' liability allegations overlap substantially with the personal injury cases discussed above. The parties have not begun discovery.[3]

10. Illinois (Northern District)

In May 2012, 81 Plaintiffs filed a single complaint alleging Plavix-caused bleeding injuries in Illinois state court. Defendants removed the matter based on diversity to the United States District Court for the Northern District of Illinois. *See* Schedule of Actions, No. __. Plaintiffs have moved to remand the suit, and Defendants have moved to dismiss for lack of personal jurisdiction. The parties have not begun discovery.

11. California (Northern District)

During 2012, nineteen separate complaints were filed in California state court on behalf of more than 1450 plaintiffs claiming to have suffered Plavix®-related bleeding injuries. BMS removed each of these cases to the United State District Court for the Northern District of California based on diversity jurisdiction and the "mass action" provisions of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1332(d)(11)(B)(i). The District Court remanded the first eight of these suits to state court, but Defendants petitioned the United States Court of Appeals for the Ninth Circuit for interlocutory appeal of those remands, which remains pending.

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[3] In addition, Defendants have appealed to the United States Court of Appeals for the Fifth Circuit the Western District of Louisiana's remand to state court of a suit brought by the Attorney General of Louisiana asserting that Defendants misrepresented the efficacy and health benefits of Plavix® and thereby caused the Louisiana Medicaid program and Louisiana consumers to overpay for Plavix® prescriptions. The suit was originally filed in state court and Defendants removed it, among other grounds, as a CAFA "mass action." Should Defendants prevail in their appeal, this suit would be an appropriate tag-along case because the discovery concerning Plavix®'s efficacy and health benefits will substantially overlap with that in the personal injury cases discussed above.

Another case challenging Defendants' claimed overpromotion of the health benefits of Plavix® is pending in California state court. *See Cnty. of Santa Clara v. Bristol-Myers Squibb Co.*, No. 112CV224091 (Cal. Super. Ct. Santa Clara Cnty. filed May 8, 2012).

The remaining eleven cases, involving some 820 Plaintiffs, are still pending in the Northern District of California. *See* Schedule of Actions, Nos. 3 through 13. Plaintiffs have moved to remand most of these cases back to state court consistent with the District Court's prior ruling. Defendants have sought to stay decision on the remand motions pending decision by the Ninth Circuit. The parties have not begun discovery in any of these cases.

ARGUMENT

A. The Panel Should Centralize These Cases

This Panel consolidates "civil actions involving one or more common questions of fact" pending in different judicial districts when doing so "will be for the convenience of parties and witnesses and will promote the just and efficient conduct" of the actions. 28 U.S.C. § 1407(a). These cases easily meet that standard.

1. Circumstances Have Changed Significantly Since The Panel Denied Centralization in 2011, and These Cases Are Now Well Suited for Coordination

This Panel denied centralization in 2011 because there were only three groups of Plavix® cases pending (one in New Jersey and two in New York) involving just two sets of plaintiffs' counsel, and because the New Jersey cases were far more procedurally advanced than the two other New York cases. *In re Plavix*, 829 F. Supp.2d at 1378. But the Plavix® litigation has significantly changed since that time, developing into a full-blown mass tort litigation.

This Panel has often recognized that changed circumstances warrant the grant of a previously-denied motion to centralize. In *In re Glaceau VitaminWater*, for example, the Panel had previously denied transfer with respect to two pending cases but then granted transfer because there were "[a]t least two recently-filed additional related actions" which plaintiffs did not intend to consolidate with the previous suits. 764 F. Supp.2d at 1350. *See also In reFedex Ground Package System*, 381 F. Supp.2d at 1381 (granted centralization where the Panel had

previously denied it but in the "intervening months" the "litigation ha[d] grown considerably"); *In re Lawnmower Engine Horsepower Mktg. and Sales Practices Litig. (No. II)*, 588 F. Supp.2d 1379, 1380 (J.P.M.L. 2008) (granting previously-denied motion to centralize because "the litigation has grown considerably").[4]

This rapid expansion of this litigation now warrants centralization. None of the bases for the Court's prior denial apply to the litigation as of now stands. ***First***, there are significantly more cases spread across more federal districts than in 2011. There were three case groups pending in three federal districts when the Panel denied centralization in 2011 -- ten cases in New Jersey, one consolidated case in the Southern District of New York, and one case in the Eastern District of New York. Today, in contrast, there are 17 Plavix® suits pending in eight different federal districts in which federal jurisdiction is undisputed or has been upheld by the Court.[5] These cases alone would justify centralization, because the Panel routinely coordinates cases involving significantly fewer actions and fewer districts.[6] In addition, there are thirteen

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[4] *See also* Interview with Judge Wm. Terrell Hodges, "Chair of Judicial Panel Sees Role as Gatekeeper," *The Third Branch* at 11 (Nov. 2005) (Judge Hodges, former Panel chairman, discussing how the panel had recently centralized a matter after an initial denial because it increased from two cases to seven), *available at* http://www.jpml.uscourts.gov/third-branch-interviews.

[5] Federal jurisdiction is undisputed in the District of New Jersey cases, *Snyder*, *Brown*, *Little*, the *qui tam* and *Employer Teamsters-Local Nos. 175/505 Health and Welfare Fund*. The district court has already upheld federal jurisdiction in *Chesney*, *McAleese*, *Burrow*, *Petit*, *and Santana*, and the Magistrate Judge has recommended denial of Plaintiff's remand motion in *Touriac.*

[6] The Panel only requires two actions pending in two federal districts for consolidation under 28 U.S.C. § 1407. *See In re Toys "R"' Us-Del., Inc., Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 581 F. Supp. 2d 1377, 1377-78 (J.P.M.L. 2008) (consolidating two actions pending in two districts); Checklist for Filing a New MDL Motion for 28 U.S.C. § 1407 Transfer, http://www.jpml.uscourts.gov/Rules Procedures/Checklist_for_New_MDL_Motion-3-2011.pdf ("Motion must consist of at least two actions with common questions of fact pending in two different federal district courts."). *See also In re Glaceau VitaminWater*, 764 F. Supp. 2d at 1350 (involving three actions in three districts); *In re Porsche Cars N. Am., Inc. Plastic Coolant Tubes Prods. Liab. Litig.*, 787 F. Supp. 2d 1349, 1349 (J.P.M.L. 2011) (involving four actions in four districts); *In re Se. Milk Antitrust Litig.*, 530 F. Supp. 2d 1359, 1360 (J.P.M.L. 2008) (involving four actions in two districts); *In re Camp Lejeune, N.C. Water Contamination Litig.*, 763 F. Supp. 2d 1381, 1381-82 (J.P.M.L. 2011) (involving four actions in four districts); *In re*

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cases pending in three federal districts, involving many hundreds of Plaintiffs, in which jurisdiction is contested.

The number of cases continue to grow. The Plavix® litigation has mushroomed since the Panel's decision in 2011. There are now over 2400 Plavix® Plaintiffs pending in state or federal court, up from approximately 100 Plaintiffs when the Panel denied the prior motion. In only the last several months, Plaintiffs' counsel have filed suits involving some 1000 new Plaintiffs. Given this trajectory, additional filings are highly likely, numerous of which no doubt will be filed in or removed to federal court. *See In re Camp Lejeune, N.C. Water Contamination Litig.*, 763 F. Supp. 2d 1381, 1382 (J.P.M.L. 2011) (considering the potential for "a large number of additional related actions to be filed"); *In re Foot Locker, Inc., Fair Labor Standards Act (FLSA) & Wage & Hour Litig.*, MDL No. 2235, -- F. Supp. --, 2011 WL 2118980, at *1 (J.P.M.L. May 26, 2011) (Though a large number of actions are not presently before the Panel, also weighing in favor of centralization is that additional related actions alleging similar class claims in other states could well be filed."). Now is the right time to establish an MDL so that discovery in these new filings can be coordinated from the beginning.

Second, there is now a significant core group of federal Plavix® cases that are in exactly the same procedural posture, with discovery either not started or in its earliest stages. This is true for ***all*** of the cases outside of New Jersey, as well as the two more recently filed New Jersey cases (*Kennovin* and *Crowe*).

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Enfamil Lipil Mktg. & Sales Practices Litig., 764 F. Supp. 2d 1356, 1357 (J.P.M.L. 2011) (involving six actions in six districts).

There remain a few New Jersey cases that are procedurally more advanced, but they are not an obstacle to centralization. The Panel could simply order centralization but exclude the more-advanced New Jersey cases from that Order. *See, e.g., In re the Upjohn Co. Antibiotic "Cleocin" Prods. Liab. Litig.*, 450 F. Supp. 1168, 1170 (J.P.M.L. 1978) (ordering centralization but denying transfer of three actions where discovery had already been completed); *In re Aviation Prods. Liab. Litig.*, 347 F. Supp. 1401, 1407 (J.P.M.L. 1972) (ordering centralization but not transferring several cases because they did not involve common issues of fact or where discovery was nearly complete). Or, if an MDL were assigned to Judge Wolfson,[7] she could establish a separate scheduling track for the older cases to the extent necessary. *See, e.g., In re Cyclobenzaprine Hyrdochloride Extended-Release Capsule Patent Litig.*, 657 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009) (ordering centralization over objection that it would "delay the progress of the two earliest-filed District of Delaware actions" because the transferee judge is able to "formulate a pretrial program that ensures that pretrial proceedings are conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties and the courts") (citation omitted).

Third, the Panel rejected centralization in 2011 because there were relatively few Plaintiffs' counsel involved at that time. *See, e.g., In re Plavix*, 829 F. Supp.2d at 1378. But the increased number of Plavix® cases means there are now eight different sets of counsel for Plaintiffs, even excluding those cases where federal jurisdiction is still in dispute.[8] In contrast, when this case came before the Panel last year there were only two sets of Plaintiffs' counsel.

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[7] Should the Panel assign the case to a District Judge other than Judge Wolfson, Defendants request that the transfer order exclude the more advanced New Jersey cases (*LaBarre*, *Begley*, *Cooper*, *Carr-Davis*, *Solomon*, *Newell* and *Mattson*).

[8] One firm represents Plaintiffs in the Eastern District of Pennsylvania. A different firm represents Plaintiffs in the Southern District of New York and Eastern District of New York.

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When last before the Panel, moreover, Plaintiffs' counsel argued that an MDL was unnecessary because they would cooperate voluntarily in discovery efforts across jurisdictions.[9] But that promise rings hollow in light of the Defendants' experience to date. By way of example, one of the counsel who promised voluntarily cooperation in 2011 (Plaintiff's counsel in Illinois state court Plavix® litigation, the *qui tam* action filed in the Southern District of Illinois, and a state court attorney general action in California) recently advised that Plaintiffs' lawyers were unable to coordinate a single, national document production for all pending Plavix® cases.[10] Counsel is insisting on a separate negotiation and production for his cases and has moved to compel discovery with a hearing date set one week from date he filed his motion.[11] When one party promises but ultimate sabotages cooperation, judicially mandated coordination becomes necessary.

Voluntary cooperation in any event is no substitute for coordination and transfer before a single court. *See, e.g.*, *In re Mentor Corp. Obtabe Transoburator Sling Prods. Liab. Litig.*, 588 F. Supp. 2d 1374, 1375 (applauding voluntary cooperation efforts but deciding that transfer to a single District for coordinated proceedings would be more efficient).

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Another firm represents Plaintiffs in the more advanced cases in New Jersey, and a different lawyer represents Plaintiff in the *Kennovin* case. Plaintiffs are represented by different attorneys in each of the Iowa, West Virginia, Illinois *qui tam*, and Louisiana actions. On top of this, there are also three *pro se* cases.

9 *See, e.g.*, Memorandum in Opposition [to] Bristol-Myers Squibb Co., Sanofi-Aventis U.S. Inc., Sanofi-Aventis U.S. LLC, and Sanofi-Synthelabo, Inc.'s Motion for Transfer of Actions to the District of New Jersey Pursuant to 28 U.S.C. §1407 for Coordination or Consolidated Pretrial Proceedings, at 13, MDL 2300 (Docket No. 10) (J.P.M.L. filed Sept. 27, 2011) ("Because cooperation among counsel and the parties is easily achieved in the present situation, where the majority of plaintiffs share counsel, Defendants' motion for transfer must be denied").

10 *See* Email from Anand Agneshwar to Robert Salim, Sept. 20, 2012 (submitted as Exhibit 1).

11 *See* Motion to Compel submitted as Exhibit 2.

In short, the reasons that led the Panel to deny centralization in 2011 have been superseded by events. There is now a significant core of Plavix® cases that share the same procedural posture and that can proceed most efficiently if they are centralized in a single court for pretrial proceedings.

2. The Currently-Pending Cases Will Benefit From Centralization

Pharmaceutical product liability cases are particularly well-suited for coordination, because they involve common questions of fact concerning the "development, testing, manufacturing and marketing" of the products. *See In re Accutane Prods. Liab. Litig.*, 343 F. Supp. 2d 1382, 1383 (J.P.M.L. 2004); *see also In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (common questions regarding the safety profile of a drug and the manufacturer's warnings); *In re Vytorin/Zetia Mktg., Sales Practices & Prods. Liab. Litig.*, 543 F. Supp. 2d 1378, 1380 (J.P.M.L. 2008) (common questions regarding the use and/or marketing of two pharmaceutical drugs).

These considerations fully apply here. As the Panel previously recognized, the Plavix® product liability cases now pending in federal court involve common fact questions concerning Defendants' development, testing, manufacturing and marketing of that drug, and the warnings they provided concerning Plavix®. *See In re Plavix*, 829 F. Supp. 2d at 1378 ("Certainly, these twelve actions . . .do involve some common factual issues concerning the development, manufacture, regulatory approval, labeling and marketing of Plavix® . . . ."). Centralization is thus "necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary." *In re Accutane*, 343 F. Supp. 2d at 1383. *See also In re Trasylol*, 545 F. Supp. 2d at 1358 (same); *In re Celexa & Lexapro Prods. Liab. Litig.*, 416 F. Supp. 2d 1361, 1363 (J.P.M.L. 2006) (same). MDL

coordination will thus permit the Defendants and the various plaintiffs to coordinate document discovery and avoid multiple, unnecessary depositions of Defendants' key witnesses.

Having a single court with a broad perspective over the litigation as a whole will not only avoid inconsistent rulings, it will also help achieve fair and just results. That is particularly true because the Plavix® cases present recurring examples of Plaintiffs' lawyers using dubious techniques to avoid federal jurisdiction, such as filing mass complaints with only a few non-diverse plaintiffs added to destroy diversity. A single Judge can better assess common patterns of this type and resolve the resulting disputes in a uniform way. *See In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2003 WL 22341307, at *4 (E.D. Pa. 2003) (transferor court noting that it "developed a broader perspective than is usually available to individual transferor courts in dealing with widespread efforts [of fraudulent joinder]."); *In re Wilson*, 451 F.3d 161, 167 (3d Cir. 2006) (same).

The pending state attorney general and third-party payor suits involving Plavix® will similarly benefit from coordinated treatment. The West Virginia, Mississippi, and Southern District of Illinois *qui tam* cases all allege that Defendants engaged in improper sales and marketing practices when promoting Plavix®. The factual disputes and discovery in these cases will overlap substantially with the products liability cases, because the Plaintiffs allege many of the same misrepresentations about Plavix®'s efficacy. At the core of all the suits is the contention that Defendants improperly touted Plavix as superior to aspirin.[12] In support of that

[12] *Compare* Mississippi Compl. ¶ 5.4 ("Defendants have sought to increase Plavix's sales and market share by making false and misleading superiority claims about Plavix relative to aspirin"); West Virginia First Am. Compl. ¶ 8 ("BMS/Sanofi ordered its sales force to promote Plavix as comparably safe to aspirin…."); S.D. Illinois Compl. ¶ 3 ("This action arises out of BMS/Sanofi's practice of promoting Plavix as a superior drug to aspirin for certain indicated usages…."); *with Petit* Second Amend. Compl. ¶ 31 ("The truth is that the Defendants always knew, or if they had paid attention to the findings of their own studies, should have known, that

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allegation, the suits all rely on certain letters sent by the FDA raising concerns about particular marketing pieces.[13] They all likewise involve common allegations concerning the results of certain medical studies.[14]

The Panel has often coordinated state attorney general and payor cases with related product liability or other private actions. *See, e.g.*, *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005) (centralizing New York third party payor case with other product liability suits because it "ensures that pretrial proceedings will be conducted in a manner leading to a just and expeditious resolution of all actions to the overall benefit of the parties"); *In re Zyprexa Prods. Liab. Litig.*, 671 F. Supp. 2d 397, 407 (E.D.N.Y. 2009) (noting that numerous

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Plavix was not more efficacious than aspirin to prevent heart attacks and strokes.") (Southern District of New York).

[13] For example, the Mississippi and *qui tam* cases both reference the exact same FDA letters ("DDMAC") from 1998 to 2009 as many of the product liability actions as purported evidence that Defendants allegedly mislead the efficacy of Plavix®. *Compare* Mississippi Compl. ¶¶ 5.26-5.31 (alleging that FDA DDMAC letters admonished Defendants' promotion of Plavix in 1998, 2001, and 2009); S.D. Illinois Compl. ¶¶ 4-14 (alleging FDA regulatory action taken because of DDMAC letters sent in 1998, 2001, and 2009); *with Petit* Second Amend. Compl. ¶ 41 (S.D.N.Y.) ("The FDA criticized that the Defendants were claiming to physicians, in their promotional letter, that Plavix was safe for use with other drugs."); *Little* Compl.¶¶ 22-26 (E.D. Pa.) (citing same FDA letters from 1998 and 2001).

[14] There is significant overlap on the alleged promotion and meaning of three medical studies concerning Plavix®: CAPRIE, Chan, and CHARISMA. For example, the Mississippi, West Virginia, and *qui tam* cases, like numerous product liability cases, all allege that Defendants misrepresented the results of the CAPRIE study, i.e. the study used by the FDA for its initial approval of Plavix®. *Compare* Mississippi Compl. ¶ 5.19 ("Defendants knew or should have known of the misleading nature of the CAPRIE trial results. . ."); West Virginia First Am. Compl. ¶ 22 ("BMX/Sanofi manipulated the results of [the CAPRIE] clinical trial. . . .") ; S.D. Illinois Compl. ¶ 12 ("the CAPRIE trial does not provide substantial evidence to support the implication that Plavix has superiority over aspirin. . . ."*); with Petit* Second Amend. Compl. ¶ 45 (S.D.N.Y.) ("Defendants' promotional materials <u>again</u> mislead consumers about the CAPRIE study") (emphasis original); *Little* Compl.¶ 27 ("Defendants' promotional materials mislead the medical community and consumers about…CAPRIE."). Both the West Virginia and *qui tam* case, like the products liability cases, also assert that Defendants misrepresented the results of the so called "Chan Study" to the medical community and public. *Compare e.g.*, S.D. Illinois Compl. ¶ 97; Teamsters' Compl. ¶ 31; *with Petit* Second Amend. Compl. ¶ 54 (S.D.N.Y); *Kennovin* ¶ 28 (D.N.J.). The Mississippi attorney general case, like other product cases, alleges that Defendants "falsely and misleadingly marketed Plavix by failing to timely disclose the results" of the CHARISMA study. Mississippi Compl. ¶ 5.13; *compare with Little* Compl.¶ 24 (E.D. Pa.); *Touriac* ¶ 30 (W.D. La.).

attorney general actions were transferred to the Eastern District of New York pursuant to a transfer order); *In re Zyprexa Prods. Liab. Litig.: State of Cal. ex. rel. Jaydeen Vicente v. Eli Lilly & Co.*, No. 3:07-4911, MDL No. 1596 Transfer Order (J.P.M.L. 2008) ("Regardless of the difference in legal theory, the present [qui tam] claims similarly arise from representations about the safety of Zyprexa and its adverse effects…."); *In re Countrywide Fin. Corp. Mortg. Mktg. and Sales Practices Litig.*, 582 F. Supp. 2d 1373, 1374-75 (J.P.M.L. 2008) (centralizing private class actions together with attorney general suits addressing same conduct); *In re Cement and Concrete Antitrust Litig.*, 437 F. Supp. 750, 752-53 (J.P.M.L. 1977) (centralizing private antitrust actions together with state attorney general antitrust actions); *In re Multidistrict Private Civil Treble Damage Antitrust Litig. Involving Motor Vehicle Air Pollution Control Equip.*, MDL No. 31, 1970 WL 563, at *2 (J.P.M.L. Apr. 6, 1970) (centralizing antitrust suits brought by "cities, states, and individuals"). Here, centralization of these cases together with the product liability cases will similarly eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of all involved.

B. The Panel Should Centralize the Cases in a District Court in New York or New Jersey

A District Court in New York or New Jersey is the best choice of transfer forum based on the cases already pending there, convenience for counsel, and those Districts' proximity to the key events, witnesses, and documents.

New Jersey is where the Sanofi Defendants are headquartered and where all the Defendants have major research and manufacturing facilities. Bristol-Myers' headquarters is in New York. New Jersey is where Defendants developed Plavix®, secured regulatory approval to sell it, and developed the labeling, warnings, packaging, and other promotional materials necessary to sell the drug. New Jersey is also where the vast majority of Defendants' witnesses

and documents are located. These facts weigh heavily in favor of choosing a forum in New York or New Jersey as the transfer forum. *See In re Bayer Corp. Combination Aspirin Prods. Mktg. & Sales Practices Litig.*, 609 F. Supp. 2d 1379, 1380 (J.P.M.L. 2009) ("Given that common defendant Bayer Healthcare LLC has its corporate headquarters in New York, albeit in another federal district, relevant documents and witnesses will likely be found nearby."); *In re Digitek Prods. Liab. Litig.*, 571 F. Supp. 2d 1376, 1377 (J.P.M.L. 2008) ("Mylan's principal place of business is in West Virginia and documents and witnesses will likely be found there . . . .").

There are several District Courts in the New Jersey/New York area that already preside over Plavix® cases. Judge Wolfson in the District of New Jersey has supervised Plavix® litigation since 2006, and has already established a useful framework for managing discovery in the cases. *See* discussion *supra* at 4. Judge Kiyo Matsumoto of the Eastern District of New York and Judge Ronnie Abrams of the Southern District of New York also currently preside over Plavix® cases and are conveniently situated in the New York City area.

CONCLUSION

For all the foregoing reasons, Defendants respectfully move for an Order transferring existing and future Plavix® product liability suits to a District Court in New Jersey or New York for consolidated or coordinated pretrial proceedings.

Respectfully submitted,

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