BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL No. 2385

In re Pradaxa Products Liability Litigation

Oral Argument Requested

RESPONSE TO PLAINTIFF'S MOTION TO TRANSFER UNDER SECTION 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

Defendants Boehringer Ingelheim Pharmaceuticals, Inc. (BIPI), Boehringer Ingelheim Vetmedica, Inc. (BIVI), Boehringer Ingelheim Roxane, Inc. (BIRI), Boehringer Ingelheim Corporation (BIC), and Boehringer Ingelheim USA Corporation (BI USA) respectfully submit this Response to Plaintiff's Motion for Transfer Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings (ECF No. 1-1, 1-2) (Plaintiff's Motion).[1]

I. OVERVIEW OF BIPI'S RESPONSE

BIPI does not oppose transfer of the PRADAXA® ("Pradaxa") product liability cases to an MDL. The cases should not, however, be transferred to the Southern District of Illinois because it does not have any meaningful nexus to the litigation overall, its docket conditions are not favorable for assignment of a pharmaceutical products liability MDL, and it is not home to any of the first-filed actions. Instead, the Southern District of Illinois is simply the location of a number of new Pradaxa cases—most filed within a three-day period months after other Pradaxa cases had been filed in other district courts—that appear to have been strategically filed in a

[1] BIVI, BIC, BIRI and BI USA have been named in some of the pending actions. Each of these entities is included herein, subject to reservation of all defenses, including jurisdictional defenses. BIVI, BIC, BIRI and BI USA do not oppose transfer to an MDL, but, in accordance with the arguments in this Response, assert that the proper transferee district is the District of Connecticut or, alternatively, the Eastern District of Tennessee or Eastern District of Kentucky.

purposeful effort to support consolidation there. Those filings were followed almost immediately by the instant request for an MDL in the same district: the Southern District of Illinois. Such a process, employed to "time" those filings with the instant Motion to Transfer, does not support the creation of the MDL in the Southern District of Illinois.

Looking past this maneuver, the progression of the Pradaxa litigation reveals that the cases have actually been distributed across many different jurisdictions, three of which would provide a more proper transferee district. At the top of these choices is the District of Connecticut, which stands out as the best option for a transferee district in the Pradaxa litigation. The District of Connecticut is most appropriate because (a) BIPI—the only common defendant—has its corporate headquarters in Ridgefield, Connecticut; (b) relevant documents, witnesses, and parties common to all cases are located in the district; (c) the docket conditions in the district, including MDL Statistics, Federal Judicial Caseload Statistics, and Federal Court Management Statistics, are favorable; (d) it is home to one of the first-filed actions; (e) it is the location of a related state court proceeding; and (f) the district is within proximity of major airports for airline travel for witnesses, parties and counsel. In the alternative, either the Eastern District of Tennessee or the Eastern District of Kentucky would be a suitable transferee forum. Each of these districts is home to at least two of the first-filed actions with fully-briefed responsive pleadings in place; each district has favorable docket conditions both in terms of MDL and overall docket conditions; and each district is centrally located.

Finally, other than what appears to be an effort at "front loading" a number of cases in the Southern District of Illinois to support Plaintiffs' choice of forum, there is no reason to conclude that the number of cases pending in that district will continue to outnumber other districts after

this Panel renders its decision. Moreover, the Southern District of Illinois is not a suitable transferee district. The district has no connection to common sources of key documents or witnesses, and it does not have favorable docket conditions to undertake another large pharmaceutical products liability action. The active MDL in the Southern District of Illinois (*In re Yasmin*)—over which Chief Judge David R. Herndon is presiding—**currently has the second-highest number of pending actions (8,715) out of the 301 active MDLs in the entire United States.** Similarly, **the Southern District of Illinois has the highest number of pending actions per judgeship in the United States at more than 2,200 cases per judgeship**.

For all these reasons, BIPI respectfully requests that the Panel transfer the Pradaxa products liability actions to an MDL in the District of Connecticut or the alternate locations (Eastern District of Tennessee or Eastern District of Kentucky) for pretrial proceedings.

II. BACKGROUND

A. Overview of Pradaxa

The U.S. Food and Drug Administration (FDA) first approved Pradaxa as safe and efficacious, in both 75 mg and 150 mg doses, on October 19, 2010, "for the prevention of stroke and blood clots in patients with abnormal heart rhythm (atrial fibrillation)."[2] The condition of atrial fibrillation affects more than two million Americans and, according to the FDA, "involves very fast and uncoordinated contractions of the heart's two upper heart chambers (atria) and is one of the most common types of abnormal heart rhythm." The FDA explained that people suffering from atrial fibrillation "are at a higher risk of developing blood clots, which can cause a disabling stroke if the clots travel to the brain." Weighing the benefits and the risks, the FDA

[2] http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2010/ucm230241.htm (emphasis in following text added)

approved Pradaxa as an anticoagulant that saves lives by preventing strokes. In doing so, the FDA articulated a clear understanding of the inherent risk of bleeding associated with the drug: "[a]s with other approved anti-clotting drugs, **bleeding, including life-threatening and fatal bleeding,** was among the most common adverse reactions reported by patients treated with Pradaxa." In fact, Pradaxa's FDA-approved label includes the required "Highlights of Prescribing Information" that explains the risks of serious bleeding on its first page—in a bold, all-caps caption entitled "Warnings and Precautions" with the following language:[3]

> ----------**WARNINGS AND PRECAUTIONS**----------
>
> - Risk of bleeding: PRADAXA can cause serious and, sometimes, fatal bleeding. Promptly evaluate signs and symptoms of blood loss. (5.1)

B. Genesis of Pradaxa Product Liability Actions

The first Pradaxa product liability actions against BIPI were filed in March 2012. These initial complaints, and the continuing wave of additional cases that are being filed, appear to have been spawned by an FDA Safety Announcement in December 2011.[4] The pending actions specifically cite to excerpts of that Announcement as a triggering event for these cases. Contrary to the plaintiffs' contentions, the Announcement in fact explained that **"[b]leeding that may lead to serious or even fatal outcomes is a well-recognized complication of all anticoagulant therapies. The Pradaxa drug label contains a warning about significant and sometimes**

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[3] The 2010 and 2012 versions of the Pradaxa label both contain this "Warnings and Precaution" verbiage. Both labels are available on the FDA's website: http://www.accessdata.fda.gov/scripts/cder/drugsatfda/index.cfm?fuseaction=Search.DrugDetails

[4] 12/07/2011 - Drug Safety Communication - FDA http://www.fda.gov/Safety/MedWatch/SafetyInformation/SafetyAlertsforHumanMedicalProducts/ucm282820.htm (emphasis added).

fatal bleeds." The Announcement warned that patients with atrial fibrillation **should not stop taking Pradaxa without talking to their healthcare professional** because **"[s]topping use of blood thinning medications can increase their risk of stroke. Strokes can lead to permanent disability and death."** Critically, the Announcement explained that "FDA continues to believe that Pradaxa provides an important health benefit when used as directed and recommends that healthcare professionals who prescribe Pradaxa follow the recommendations in the approved drug label." The original FDA approval of Pradaxa and its warnings, the Pradaxa label itself, and the FDA Safety Announcement all demonstrate that the FDA (1) approved Pradaxa with a well-known and expressly warned-of risk of bleeding, (2) has continued to explain that the risk of bleeding, which may lead to "serious or even fatal outcomes," is indeed "a well-recognized complication of all anticoagulant therapies" and (3) is continuing to affirm that the "Pradaxa drug label contains a warning about significant and sometimes fatal bleeds."

Notwithstanding the FDA's recognition of the risks associated with an anticoagulant like Pradaxa, and the explicit warnings of the risks of "serious and, sometimes, fatal bleeding" on the Pradaxa label, plaintiffs' attorneys across the country are aggressively pursuing new clients for Pradaxa cases. For instance, attorneys have held in-person informational sessions and webinars to encourage the plaintiffs' bar to bring Pradaxa claims. Plaintiffs' lawyers are also aggressively marketing directly to consumers, and these efforts run the gamut from advertising in newspapers, to the Internet and TV, including the now-familiar and alarming TV commercial including the prominently displayed "1-800-BAD-DRUG" phone number. Another tactic is the aggressive use of recorded telephone calls to consumers to market Pradaxa litigation. These efforts have

resulted in a continually increasing number of Pradaxa cases, which is only expected to increase in light of these broad-based strategies.

C. Pending Federal Pradaxa Actions

As of the date of this Response, there are 30 federal cases in 14 different federal district courts. These cases fall into two categories based on the time frame(s) in which they were filed: the first filings occurred in March-April 2012, followed by a second group in May-June 2012.

1. First Group of Pradaxa Cases (March-April 2012)

The first Pradaxa cases were filed in March and April 2012. Plaintiffs filed actions in the Eastern District of Tennessee (*Bivens* and *Stair*—Judge R. Leon Jordan), Eastern District of Kentucky (*Hawkins, Cornelius*—Judge Gregory Van Tatenhove), Western District of Kentucky (*Pawley*—Judge John Heyburn II), Western District of Louisiana (*Lege*—Judge Rebecca Doherty), and Western District of Oklahoma (*Radcliff*—Judge Lee West). BIPI and three other entities are defendants in each of these actions.[5] The complaints contain nearly verbatim factual allegations and legal claims. Plaintiffs' allegations consist of a two-pronged attack, in which they contend that (1) Pradaxa did not adequately warn prescribing physicians of the risk of irreversible bleeding due to the lack of a reversal agent, and (2) Pradaxa is defective because it is not possible to monitor the levels of Pradaxa in the blood. Likewise, the asserted legal theories are mirror images of one another, with only slight variations based on state law and/or the

[5] The other entities named as defendants in some of the underlying cases, Boehringer Ingelheim Pharma GmbH & Co. KG, Boehringer Ingelheim International GmbH, and Bidachem SPA, are foreign, related corporations that have not been served in any of the underlying lawsuits, have not appeared in any of the underlying lawsuits in the United States, and are not subject to the jurisdiction of any United States court.

particular plaintiff(s). All of the cases allege, at their core, failure to warn, although the complaints include additional legal theories (e.g., design defect, warranty claims).

In each of these cases, BIPI has filed Rule 12(b)(6) Motions to Dismiss, identifying several reasons why the complaints fail to comply with federal pleading standards as well as federal and state law. In many of the Responses, the plaintiffs have voluntarily withdrawn several claims, such as manufacturing defect and negligence per se, and various requested damages. For each of these cases, the briefing on BIPI's Rule 12(b)(6) Motions to Dismiss has been completed and is awaiting disposition by the federal district court.[6] Two additional cases are part of the first-filed actions and contain essentially the same allegations and legal theories in the District of Connecticut (*Wilchinski*—Judge Mark Kravitz),[7] and Western District of Tennessee (*Wright*—Judge Samuel Mays, Jr.).

2. Second Group of Pradaxa Cases (May-June 2012)

In May and June 2012, a second wave of Pradaxa cases began. Plaintiffs' attorneys filed eight cases between May 11-14, 2012, in the Southern District of Illinois (*Boston, Fitzgibbons, Garner, Herbeck, Richardson, Sellers, Smith, Stout*—Chief Judge David Herndon), and the Middle District of Tennessee (*Scott*—Judge John Nixon; *Giles*—Judge Aleta Trauger). New cases were also filed in the Eastern District of Louisiana (*Jackson*—purported class action—Judge Lance Africk; *Hawthorne*—Judge Jay Zainey; and *Sykes*—Judge Nanette Jolivette Brown), Southern District of Florida (*Hole*—Judge James Cohn), and Northern District of Ohio (*Gennaro*—Chief Judge Solomon Oliver, Jr.). Another case was added in the Eastern District of

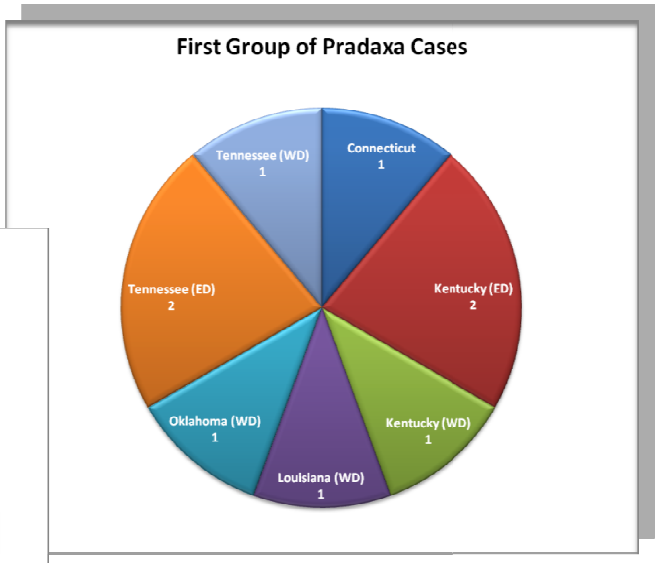
[6] One exception is *Hawkins* (E.D. Kentucky). Plaintiffs were granted extensions of time for their Response, but on May 29, 2012, counsel for Plaintiffs filed a Motion to Withdraw.

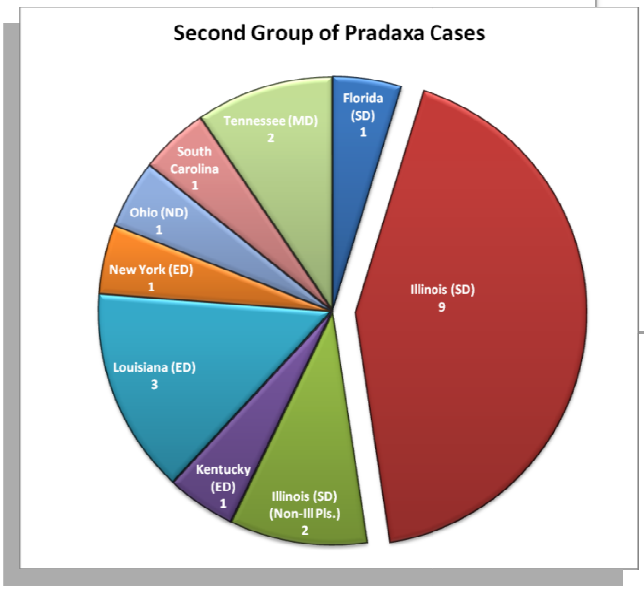
[7] A state court case, *Sardinha*, was filed in the Superior Court of Connecticut after *Wilchinski*.

Kentucky (*Smiley*—Judge Karl Forester), which was already presiding over other first-filed actions.[8] In addition, cases have been filed or removed to other new jurisdictions: the Eastern District of New York (*Ecklund*—Judge Nina Gershon) and the District of South Carolina (*Sessoms*—judge not yet assigned). Further, just a few days prior to this Response, three additional cases were added in the Southern District of Illinois (*Crosby, Kekich,* and *Williams*)—yet two of those cases do not even involve plaintiffs who are from Illinois.

3. Summary of Pending Actions

As the chart to the RIGHT reveals, the first Pradaxa actions were filed across several different federal district courts:





The second chart to the LEFT looks quite different. Whereas several cases were similarly filed in various jurisdictions, the Southern District of Illinois is an aberration.

And as the chart reflects, beyond the initial, and intentional, filings in the Southern District of

[8] State court actions were filed in Illinois (*Deal*, with 73 plaintiffs—and 70 of those plaintiffs being from 20 different states) and California (*Butner*, with 9 plaintiffs from several different states). John Wilchinski, who is alleged to be a citizen of Tennessee, is a plaintiff in the District of Connecticut case and also appears to be a named plaintiff in the California state court case.

Illinois, in two of the most recent cases in that district *the plaintiffs are not even from Illinois*. This is another example of the approach to "weight" a specific, preferred jurisdiction with a higher percentage of cases for MDL purposes alone.

4. Geographic Diversity of Plaintiffs' Law Firms

Beyond the pending actions, Plaintiff states that "more than 500 additional Complaints will be filed in the near future." (Pl. Br. at 2) Given the nationwide soliciting, the distribution of forthcoming cases should be expected to be spread across the United States. This is, in fact, what has happened. Even after the "wave" of cases were filed in the Southern District of Illinois, followed by the instant MDL request, various plaintiffs filed cases in the Eastern District of Louisiana (including a purported class action), Middle District of Tennessee, Eastern District of Kentucky, Southern District of Florida, Northern District of Ohio, Eastern District of New York, and the District of South Carolina (removed). This distribution reinforces the national scope of the Pradaxa litigation—both in terms of where the cases stand today and where they are likely to be filed. Additional evidence of the widespread litigation is revealed in the following map, which shows the locations of plaintiffs' law firms in state/ federal actions to date:

III. LAW & ANALYSIS

Given the foregoing, several features of the Pradaxa litigation are noteworthy. The first-filed actions, as well as many of the second-filed actions, have been filed in diverse geographic locations by plaintiffs' firms that, similarly, are located across the country. Moreover, the cases involve certain similar factual allegations and legal claims arising from Pradaxa and the common defendant, BIPI. As a result, and as explained below, BIPI does not oppose centralization but submits that the District of Connecticut is the most appropriate forum for these cases.

A. BIPI Does Not Oppose Transfer Under 28 U.S.C. § 1407.

Plaintiff requests transfer to an MDL pursuant to 28 U.S.C. § 1407. The key criterion for transfer to an MDL is the presence of common questions of fact, and there are two stated objectives: the convenience of parties and witnesses and the promotion of judicial efficiency. 28 U.S.C. § 1407(a). Consistent with these goals, transfers to an MDL are designed to eliminate duplicative discovery and inconsistent pretrial rulings, and to conserve the resources of the parties, counsel and the judiciary. *See, e.g.*, *In Re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, MDL No. 2226, 780 F. Supp. 2d 1379, 1381 (J.P.M.L. 2011).

BIPI does not oppose transfer of the pending actions to an MDL. There are 30 actions pending in 14 federal district courts, thus providing an adequate threshold number of cases and districts. *See, e.g.*, *In re Trasylol Prods. Liab. Litig*., MDL No. 1928, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (granting defendant's motion to centralize 18 pending actions in 14 districts). The Pradaxa cases also involve certain allegations with related questions of fact and law. Plaintiffs generally contend that they suffered bleeding or other injuries as a result of their ingestion of Pradaxa, and the complaints generally assert that BIPI did not adequately warn

prescribing physicians of risks associated with Pradaxa. Therefore, in all cases, common discovery will likely be requested from the common defendant, BIPI, on issues such as its research, testing, warnings for Pradaxa and its regulatory approval by the FDA. Similarly, anticipated *Daubert*, preemption and other pretrial/dispositive motions may overlap in each case. These factors weigh in favor of transfer to an MDL. *See, e.g.*, *In Re Darvocet,* 780 F. Supp. 2d at 1381. Moreover, the Pradaxa cases have involved almost no pretrial proceedings beyond initial dispositive motions. No scheduling orders or discovery obligations are in place, and no court-mandated conferences have occurred.[9] Transfer to an MDL may thus eliminate duplicative discovery and potentially inconsistent pretrial rulings at the relative outset of these federal proceedings. *See id.*

B. The District of Connecticut is the Most Appropriate Transferee District.

The District of Connecticut is the most appropriate transferee district. The Panel often considers the following key factors in selecting an appropriate transferee district: location of the parties, witnesses and documents; accessibility of the transferee district for parties, witnesses and counsel; the respective MDL and overall caseload statistics for the proposed transferee district courts; and the potential for coordination of federal-state proceedings. *See, e.g.*, *In re Camp Lejeune, N.C. Water Contamination Litig.*, 763 F. Supp. 2d 1381, 1382 (J.P.M.L. 2011); *In re*

[9] The *Wilchinski* case is subject to a standing pretrial order that was issued when the case was filed. As noted, service has not yet been effected in this case and no further activity has begun. In *Scott*, which was recently filed and served, the Court had initially scheduled a case management conference on July 17, 2012. The *Scott* Court, however, granted a stay in light of the pending MDL request.

In contrast, the Court in the Southern District of Illinois scheduled a status conference for seven of its cases on June 28, 2012. BIPI requested a stay of those proceedings or, in the alternative, a continuance of the hearing. The Southern District of Illinois Court denied BIPI's Motion to Stay, and a conference is now scheduled for July 13, 2012, before that Court.

Trasylol, 545 F. Supp. 2d at 1358. Application of these factors weighs heavily in favor of transfer to the District of Connecticut and against transfer to the Southern District of Illinois.

1. The District of Connecticut has close proximity to the common defendant, BIPI, and is closest to relevant witnesses and documents.

Foremost, the headquarters of BIPI—the common defendant in all pending Pradaxa actions—is located in Ridgefield, Connecticut, within the District of Connecticut and just 40 miles from the federal courthouse in New Haven, Connecticut. As a result, the District of Connecticut is the federal district in which key witnesses and documents are most likely to be found and, moreover, will be most convenient for witnesses, parties and counsel. *See, e.g.*, *In re Propecia (Finasteride) Prods. Liab. Litig.*, MDL No. 2331 (Order, 4/16/2012, ECF No. 37) ("[b]ecause Merck is headquartered in nearby Whitehouse Station, New Jersey, the Eastern District of New York is close to where relevant evidence and witnesses are likely located"); *In re Darvocet*, 780 F. Supp. 2d at 1382 (transferring cases to district where defendant's headquarters are located). In fact, Plaintiff's Motion to Transfer reaffirms that the District of Connecticut, home to BIPI's headquarters, is of significance. Plaintiff lists eight common questions of fact and law in the Pradaxa cases, all of which point to evidence and witnesses that will likely come from BIPI's corporate location in Ridgefield, Connecticut:

Whether Pradaxa was defective	→	**Connecticut**
Whether BIPI conducted adequate testing	→	**Connecticut**
Whether BIPI breached its duty of care	→	**Connecticut**
Whether BIPI had knowledge regarding the existence of a defect	→	**Connecticut**
Whether BIPI failed to warn	→	**Connecticut**

Whether BIPI breached express or implied warranties	→	**Connecticut**
Whether Plaintiffs relied on BIPI's claims as to the safety and efficacy provided by Pradaxa	→	**Connecticut/ Residence of Plaintiff**
Whether Plaintiffs are entitled to compensatory and exemplary damages	→	**Connecticut**

Accordingly, even though Plaintiff *identifies* certain common questions, she did not mention *where* evidence relating to those issues will primarily be found. That location is within the District of Connecticut.

2. The District of Connecticut has favorable case management statistics.

The District of Connecticut also has favorable docket conditions when considering the most recent MDL Statistics Report, Federal Judicial Caseload Statistics, and Federal Court Management Statistics.[10] The district has only one active MDL, *In re Foodservice, Inc. Pricing Litigation* (MDL No. 1894), before Chief Judge Alvin Thompson—and that MDL contains only one pending action. The District of Connecticut's overall caseload conditions are likewise favorable. As of the latest report of the Federal Judicial Caseload Statistics, the District of Connecticut had a total of 2,343 pending civil cases and a relatively low ratio of cases per judge (344) as compared to other federal district courts (numerical ranking of #64 in the United States)—particularly as compared to the Southern District of Illinois. These favorable statistics

[10] MDL Statistics Report, Pending MDLs (5/14/12), http://www.jpml.uscourts.gov/pending-mdls-0, attached as Exhibit 1. U.S. District Courts—Civil Cases Commenced, Terminated, and Pending During the 12-Month Periods Ending Mar. 31, 2010 and 2011 http://www.uscourts.gov/Statistics/FederalJudicialCaseloadStatistics/FederalJudicialCaseloadStatistics2011.aspx, Table C, relevant excerpts attached as Exhibit 2. Federal Court Management Statistics, Sept. 2011, District Courts, http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/DistrictCourtsSep2011.aspx, relevant excerpts attached as Exhibit 3.

support the District of Connecticut as an appropriate transferee district. *See, e.g.*, *In re Trasylol*, 545 F. Supp. 2d at 1358 (identifying the district's "relatively low number of MDL dockets" favorably in selecting a transferee district); *see also In re Camp Lejeune*, 763 F. Supp. 2d at 1382 (selecting transferee district that "does not have many MDLs on its docket"). Further, BIPI would point out that it is not requesting a particular judge, but rather, a *district* that is amenable to an MDL under the factors frequently relied upon by the Panel. Although Judge Mark Kravitz, to whom the *Wilchinski* action is assigned in the District of Connecticut, appears to have capacity for an MDL given that he is not presiding over any MDL at present, BIPI notes that the Panel may appropriately select any jurist from the 12 district judges in the District of Connecticut, in accordance with its assessment of salient MDL factors.

3. The District of Connecticut is accessible to major airports.

The District of Connecticut is accessible by air travel for witnesses, parties and counsel. As detailed above, various plaintiffs and their counsel in the Pradaxa litigation are located in the West Coast, East Coast, Midwest, Midsouth, Southeast, and so forth. Therefore, because much of the travel for counsel, in particular, will be via air, access to major international airports is important to achieve Section 1407's goals. To this issue, the courthouse in New Haven is 53 miles from Bradley International Airport in Hartford, Connecticut, and is also within reasonable distances of several major international airports: 74 miles from LaGuardia Airport, 80 miles from John F. Kennedy International Airport, and 94 miles from Newark Liberty International Airport.

See, e.g., *In re Trasylol*, 545 F. Supp. 2d at 1358 (selecting transferee district, in part, based on its location in an accessible metropolitan location).[11]

4. The District of Connecticut is amenable to federal-state coordination.

Connecticut is also the site of both federal and state cases, thus allowing for possible coordination for convenience of the parties and conservation of judicial resources. *Wilchinski* is pending in the District of Connecticut, while a simultaneous state court action (*Sardinha*) is pending in the Superior Court of Connecticut in Stamford. Attorneys for the state court case are actively pursuing new Connecticut plaintiffs, and a recent article in the Connecticut Law Tribune quoted plaintiffs' counsel as stating that more Pradaxa cases will be filed in Superior Court in Connecticut in the coming months.[12] The state court proceedings in Connecticut are therefore expected to increase, providing an opportunity for federal-state coordination of proceedings.

C. The Eastern District of Tennessee and the Eastern District of Kentucky are appropriate alternate districts.

In the alternative, BIPI requests transfer to the Eastern District of Tennessee or the Eastern District of Kentucky. Each district is handling two of the first-filed Pradaxa actions; the *Stair* and *Bivens* cases are pending before Judge R. Leon Jordan in the Eastern District of Tennessee (in Knoxville),[13] and the *Hawkins* and *Cornelius* cases are pending before Judge

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[11] In some cases, plaintiffs have named, but have not served, the German and Italian entities identified above in footnote 5. To the extent those entities ever have any involvement in any of these cases, travel to LaGuardia or other international East Coast airports will enhance convenience for counsel and witnesses.

[12] *Conn. Joins Wave of Suits over Anti-Stroke Drug*, Conn. Law Tribune, May 21, 2012, at 5. http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202556944762&slreturn=1

[13] Whereas Judge Jordan is on Senior Status, the MDL Statistics Report shows that out of 221 transferee judges with active MDLs, 58 are Senior District Judges. Also, transfer by the Panel may be made to any *district*; thus, other District Judges would be appropriate.

Gregory Van Tatenhove in the Eastern District of Kentucky (London Division).[14] Both of these districts are centrally located within the United States and are, therefore, reasonably accessible.

Both districts also have favorable MDL and overall caseload conditions. The Eastern District of Tennessee currently has two active MDLs; both are antitrust actions pending before different judges and have low numbers of actions per case.[15] Judge R. Leon Jordan, to whom two Pradaxa actions (*Bivens* and *Stair*) are assigned, is not presiding over any MDL proceeding.

The Eastern District of Tennessee's caseload statistics are also favorable, with 1,669 pending civil cases and a ratio of 450 total cases per judge (numerical ranking of #33 within the United States). The Eastern District of Kentucky currently has two MDLs; one is a lease action, and the other is a pharmaceutical products liability action (*In re Darvocet*)—but it is located in a different division with a different judge.[16] Judge Gregory Van Tatenhove, presiding over two Pradaxa cases (*Hawkins* and *Cornelius*) is not presiding over any MDL proceedings. The district's overall caseload statistics are similarly amenable for an MDL, with 1,420 pending civil cases and a ratio of 348 total cases per judge (numerical ranking of #62 within the United States). Therefore, given these districts' initial familiarity with Pradaxa cases, centralized locations, and favorable docket conditions, either the Eastern District of Tennessee or the Eastern District of Kentucky would be an appropriate alternate forum.

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[14] Another case has been filed in the Eastern District of Kentucky (*Smiley*—Judge Forester).

[15] The two active MDLs in the Eastern District of Tennessee, *In re Skelaxin (Metaxalone) Antitrust Litig.* and *In re Southeastern Milk Antitrust Litig.*, are assigned to Chief Judge Curtis Collier and Judge J. Ronnie Greer. *In re Skelaxin* is a new MDL to the Eastern District of Tennessee (*see* Order, MDL No. 2343, 4/17/2012) in Chattanooga. The two MDLs have only 9 and 2 pending actions, respectively.

[16] In the Eastern District of Kentucky, *In re ClassicStar Mare Lease Litig.* is assigned to Judge Joseph Hood and currently has 17 pending actions. *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.* is before Judge Danny Reeves (Frankfort Division) with 124 pending actions.

D. The Southern District of Illinois is not a suitable transferee district.

Plaintiff has suggested the Southern District of Illinois, but it is an altogether inappropriate forum.[17] An overarching reason to reject Plaintiff's request involves basic issues of fair dealing and respect for the MDL objectives and process. As discussed above, plaintiffs boosted the number of filings in their preferred district just before seeking transfer to an MDL, but this is not an important factor in litigation, like the Pradaxa cases, which is national in scope. *See In re Darvocet*, 780 F. Supp. 2d at 1381("[b]ecause potential plaintiffs and putative class members will reside in every corner of the country and defendants are located in several states, the location of the currently filed cases is not a particularly significant factor in our decision."); *see also* Section II(C), *supra* (demonstrating the nationwide distribution of plaintiffs and counsel in the Pradaxa cases).

Not only did plaintiffs employ this approach, but during the course of the briefing on the Motion to Transfer, three additional cases were filed in the Southern District of Illinois—yet two of those three cases do not even involve Illinois plaintiffs. Beyond this transparent tactic, the Southern District of Illinois affords no reason to serve as the transferee district. First, the Southern District of Illinois does not have favorable docket conditions. Plaintiff paints this as a positive, but Chief Judge Herndon is currently presiding over a massive pharmaceutical product liability action, *In re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices & Products*

[17] Plaintiff requests not only the Southern District of Illinois, but a specific judge—Chief Judge David Herndon—as the jurist of choice. BIPI believes it is inappropriate to comment on a particular judge's qualifications—as well as the talents of the judge's law clerks and staff. (*See* Pl. Br. at 7-8) BIPI is confident that the Panel would only select—as it has in its prior opinions—a district judge who possesses the necessary skills to manage the MDL in question.

Liability Litigation (MDL No. 2100).[18] To put *In re Yasmin* in context, there are currently 301 active MDLs in the United States in 55 transferee districts. According to the current MDL Statistics Report, ***In re Yasmin* has the second-highest number of pending actions (8,715) among all currently active MDLs in the United States**. Only one case, an asbestos MDL in the Eastern District of Pennsylvania, has more pending actions. Review of federal court management statistics corroborates that the Southern District of Illinois is not a suitable transferee district. The district has a high ratio *of 2,204 pending actions per judgeship*, giving it the #1 numerical ranking in the entire United States.

Plaintiff represents, upon "information and belief," that *In re Yasmin* is well on its way to resolution. (Pl. Br. at 8). Publicly available records from the United States federal court system, as well as the current docket of *In re Yasmin*, strongly undermine this contention. The MDL Statistics Report shows 8,715 active actions in the MDL. The docket sheet reveals that new Notices of Related Actions have been filed as recently as June 8, 2012. Accordingly, contrary to Plaintiff's representation, *In re Yasmin* does not appear to be even reasonably close to final resolution. Under such circumstances, transfer of another MDL would impose an inordinate burden on a district that is already under substantially heavier MDL and overall docket conditions than almost any other district in the United States.

Furthermore, although no less important, the Southern District of Illinois has *no* connection to the most likely sources of documents, witnesses or other information in the Pradaxa cases. The district is nowhere near Connecticut, the location of the only common

[18] Plaintiff states that *In re Profiler Products Liability Litigation* (MDL No. 1748) is pending in the Southern District of Illinois. The MDL Statistics report does not list this as an active case.

defendant, BIPI. Further, only three current plaintiffs' firms are located in Illinois.[19] Again, the only nexus of the litigation to the Southern District of Illinois is that it is where the plaintiffs' attorneys filed more cases in a short time period than elsewhere. This is an insufficient basis to select a transferee district, given relevant Panel considerations and Section 1407's objectives to achieve convenience of the witnesses, parties and counsel, and judicial efficiency.[20]

E. Summary of Proposed Transferee Districts

The chart below summarizes key factors for an appropriate transferee district in the Pradaxa cases. As the chart reveals, several factors strongly favor the District of Connecticut or, alternatively, the Eastern District of Tennessee or Eastern District of Kentucky. In contrast, no factor listed below indicates a valid basis for the Southern District of Illinois.

Statistics/Factors	District of Connecticut	Eastern District of Tennessee	Eastern District of Kentucky	Southern District of Illinois
Transferee District Factors:				
District where most relevant witnesses/documents are located	Yes	No	No	No
District of first-filed actions	Yes	Yes	Yes	No
Familiarity of transferee judge with underlying cases (briefing complete)	(Pending)	Yes	Yes	No
District Statistics				
Total Active Civil Cases	2,343	1,669	1,420	6,566
Pending Cases/Actions Per Judgeship	344	450	348	2,204
Total Active MDLs in District	1	2	2	1
Actions Pending in the MDL(s)	1	9 and 2	17 and 124	8,715

[19] The Watts Guerra firm, which is leading the effort for creation of an MDL, is a Texas firm.

[20] Plaintiff may assert that a state court action in Illinois (St. Clair County) supports the Southern District of Illinois. That action, however, consists of 73 plaintiffs—**yet only *three* of those plaintiffs are from Illinois**, meaning that almost all of the meaningful discovery conducted in that case would be conducted in other parts of the United States. The other 70 plaintiffs are from 20 different states. BIPI has moved to sever, transfer venue and dismiss those actions as there is no justification for those cases being filed in Illinois state court.

IV. CONCLUSION

All relevant factors for a transferee district point to the District of Connecticut. Defendants thus respectfully request that the Panel transfer all Pradaxa actions to the United States District Court for the District of Connecticut or, in the alternative, the Eastern District of Tennessee or the Eastern District of Kentucky. Defendants pray for all other relief to which they are entitled.

Respectfully submitted this the 21st day of June, 2012.

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CERTIFICATE OF SERVICE

Pursuant to Rule 4.1(a) of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, I hereby certify that the foregoing document was served on June 21, 2012, via CM/ECF. The JPML's Notice of Electronic (NEF) filing shall constitute service of pleadings on registered counsel. Further, under Rule 4.1(a), counsel or parties who are identified by NEF as having no email address must be mailed hard copies via first-class United States mail.

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Finally, a Courtesy Copy of the foregoing shall be delivered to the Clerk of the Panel within one business day, in accordance with Rule 3.2(d).

/s/Orlando R. Richmond, Sr.
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