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VIA ELECTRONIC FILING & FAX

Honorable Freda L. Wolfson, U.S.D.J.
Honorable Tonianne J. Bongiovanni, U.S.M.J.
U.S. District Court for the District of New Jersey
Clarkson S. Fisher Federal Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: <i>In Re: Plavix Product Liability and Marketing Litigation</i>

Civil Action No. 13-2418 (FLW)(TJB), MDL 2418
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Dear Judge Wolfson and Judge Bongiovanni:

Please accept this letter on behalf of Defendants Bristol-Myers Squibb Company, Sanofi-Aventis U.S. LLC, Sanofi US Services, and Sanofi-Synthelabo Inc. (collectively, “Defendants”). In accordance with the Court’s direction, we write to provide a status report on cases coordinated in MDL No. 2418 and to propose potential agenda items for the scheduled Organizational Conference.

I. STATUS REPORT ON MDL NO. 2418 CASES

A. Product Liability Actions

1. Multi-Plaintiff Cases Removed From the Northern District of California

Defendants believe that a key threshold issue in this multidistrict litigation is determining whether federal jurisdiction exists over the multi-plaintiff cases removed to the Northern District of California, which include the substantial majority of the plaintiffs in MDL No. 2418. Specifically, Defendants removed fifteen multi-plaintiff actions involving 1,036 plaintiffs to the

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Northern District of California.¹ The Judicial Panel on Multidistrict Litigation entered the transfer order assigning these cases to MDL No. 2418 earlier today.

Plaintiffs tried to keep these mass-joined cases out of federal court by naming just a few non-diverse plaintiffs in each case among many other diverse plaintiffs from around the country. Plaintiffs also joined McKesson, a California drug wholesaler, to try to thwart removal. Defendants removed the cases on the basis that 1) the doctrine of fraudulent misjoinder permits the Court to retain jurisdiction over the diverse plaintiffs' claims despite their improper joinder with a few unrelated, non-diverse plaintiffs; and 2) Plaintiffs fraudulently joined McKesson because plaintiffs failed adequately to allege that they ingested products that McKesson sold and because their claims against McKesson are preempted by federal law. Plaintiffs have moved to remand each of these cases and Defendants have opposed such motions. The transferor courts stayed consideration of the remand motions pending transfer to this Court, and no discovery has taken place in these cases.

To avoid burdening the Court with duplicative briefing, Defendants and Plaintiffs have been discussing, subject to the Court's approval, the filing of a coordinated set of "omnibus" briefs on these jurisdictional issues. The parties have not yet agreed on dates, but will submit proposed dates to the Court. The schedule will be designed to allow the parties to brief and the Court to consider the Supreme Court's forthcoming decision in *Mutual Pharmaceutical Co. v. Bartlett*, No. 12-142 (U.S.), which the Parties expect to be issued in June and which may bear significantly on the question of whether claims against McKesson are preempted.

¹ *Kinney v. Bristol-Myers Squibb Co.*, No. 3:12-cv-0447; *Burman v. Bristol-Myers Squibb Co.*, No. 3:12-cv-04478; *Raynor v. Bristol-Myers Squibb Co.*, No. 3:12-cv-4615; *Robinson v. Bristol-Myers Squibb Co.*, No. 3:12-cv-4616; *Meeke v. Bristol-Myers Squibb Co.*, No. 3:12-cv-4617; *Olmstead v. Bristol-Myers Squibb Co.*, No. 3:12-cv-4619; *Dillard v. Bristol-Myers Squibb Co.*, No. 3:12-cv-4633; *Walden v. Bristol-Myers Squibb Co.*, No. 3:12-cv-4641; *Kaluza v. Bristol-Myers Squibb Co.*, No. 3:12-cv-4642; *Corkerin v. Bristol-Myers Squibb Co.*, No. 3:12-cv-4803; *Aiken v. Bristol-Myers Squibb Co.*, No. 3:12-cv-05208; *Vanny v. Bristol-Myers Squibb Co.*, No. 3:12-cv-5752; *Arnold v. Bristol-Myers Squibb Co.*, No. 3:12-cv-06426; *Belinda v. Bristol-Myers Squibb Co.*, No. 4:12-cv-05941; *Arenberg v. Bristol-Myers Squibb Co.*, No. 4:12-cv-06207. Defendants have removed an additional 10 multi-plaintiff actions involving 564 plaintiffs to the Northern District of California and tagged these cases for inclusion in MDL 2418. We expect the Panel to consider the transfer of these actions during its next hearing session scheduled for July 25, 2013.

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As the question of whether these multi-plaintiff cases remain in the MDL will substantially affect the litigation-wide discovery plan, Defendants and plaintiffs' counsel handling the bulk of MDL 2418 cases have conferred and propose that the Court resolve these jurisdictional issues prior to setting discovery schedules in the product liability actions pending in MDL No. 2418. The Parties would meet and confer to discuss discovery scheduling within a date certain following the Court's decision on the remand motion.

The parties have not discussed settlement in any of these cases (or any of the other cases in MDL No. 2418) and Defendants believe that settlement discussions at this time would be premature.

2. Eastern and Southern Districts of New York

MDL No. 2418 includes five single-plaintiff cases transferred from the Southern and Eastern Districts of New York.² The transferor judge in the Southern District of New York denied Plaintiff's motions to remand and Plaintiff in the Eastern District case filed in federal court. Defendants' motions to dismiss certain claims from Plaintiffs' second amended complaints is pending. Plaintiffs and Defendants were able to resolve by agreement similar motions filed in the New York State coordinated Plavix proceedings. Accordingly, Defendants suggest that the Court defer consideration of these motions to dismiss until after the Parties have been able to discuss and potentially narrow or avoid the need for Court intervention. Some limited discovery has taken place in these cases: plaintiffs have completed Plaintiff Fact Sheets and submitted medical authorizations to permit Defendants to collect medical records in the Southern District of New York cases. No discovery has occurred in the Eastern District of New York case.

3. Northern District of Alabama

Defendants removed a single-plaintiff case, *Thomas v. Bristol-Myers Squibb Co.*, No. 3:13-cv-1166, to federal court and no remand motion was filed. Defendants filed a motion to dismiss Plaintiff's amended complaint in the transferor court on August 29, 2012. Magistrate

² *Burrow v. Bristol-Myers Squibb Co.*, No. 3:13-cv-991 (S.D.N.Y.); *McAleese v. Bristol-Myers Squibb Co.*, No. 3:13-cv-991 (S.D.N.Y.); *Petit v. Bristol-Myers Squibb Co.*, No. 3:13-cv-991 (S.D.N.Y.); *Santana v. Bristol-Myers Squibb Co.*, No. 3:13-cv-991 (S.D.N.Y.); *Chesney v. Bristol-Myers Squibb Co.*, No. 3:13-cv-1036 (E.D.N.Y.).

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Judge Robert R. Armstrong recommended that Defendant's motion to dismiss be granted on October 1, 2012. Defendants moved to stay proceedings pending a decision by the Judicial Panel on Multidistrict Litigation, which the transferor court granted on January 2, 2013. The District Court did not render any ruling on the Report and Recommendation prior to transfer.

4. Other Actions

There are 12 product liability cases involving 31 plaintiffs transferred from 10 federal district courts with essentially the identical status.³ In each such action, no discovery has taken place and no motions are pending before this Court.

B. Sales and Marketing Actions

1. *United States ex rel. Dickson v. Bristol-Myers Squibb Co. et al.*, No. 3:13-cv-1039 (S.D. Ill.)

On September 28, 2012, the federal government filed a notice indicating that it declined to intervene in this *qui tam* case. On January 30, 2013, Judge David R. Herndon denied Defendants' motion to dismiss Relator's second amended complaint. Defendants filed with this Court a motion for reconsideration of that decision.⁴ Relator has filed a motion for a suggestion of remand back to the U.S. District Court for the Southern District of Illinois, and a motion to stay decision on the motion for reconsideration until after a ruling on the motion to remand. All of these motions are fully briefed and ripe for decision.⁵ No discovery has taken place.

³ *Snyder v. E.R. Squibb & Sons, L.L.C.*, No. 3:13-cv-1038 (N.D. Iowa); *Black v. Bristol-Myers Squibb Co.*, No. 3:13-cv-2378 (E.D. La.); *Tarver v. Bristol-Myers Squibb Co.*, No. 3:13-cv-2262 (E.D. La.); *Touriac v. Chenevert*, No. 3:13-cv-1074 (W.D. La.); *Taylor v. Bristol-Myers Squibb Co.*, No. 3:13-cv-02479 (E.D. Mo.); *Kenovin v. Bristol-Myers Squibb Co.*, No. 3:12-cv-05059 (D.N.J.); *Hawley v. Bristol-Myers Squibb Co.*, No. 3:13-cv-2083 (W.D. Okla.); *Budz v. Bristol-Myers Squibb Co.*, No. 3:13-cv-1187 (D. Or.); *Little v. Bristol-Myers Squibb Co.*, No. 3:13-cv-1387 (E.D. Pa.); *Brown v. Bristol-Myers Squibb Co.*, No. 3:13-cv-1388 (E.D. Pa.); *Thomas v. Bristol-Myers Squibb Co.*, No. 3:13-cv-1188 (E.D. Tenn.); *Norrise v. Kaiser Foundation Hosps.*, No. 3:12-cv-06456 (N.D. Cal.).

⁴ See Defs.' Mot. for Recons. on Mot. to Dismiss (Doc. #72) (Mar. 4, 2013).

⁵ See Pls.' Mot. for Suggestion of Remand to S.D. Ill. (Doc. #77) (Mar. 8, 2013); Pls.' Mot. to Stay (Doc. #78) (Mar. 8, 2013); Defs.' Resp. to Mot. for Suggestion of Remand (Doc. #82) (Mar. 18, 2013); Defs.' Resp. to Mot. to Stay (Doc. #83) (Mar. 18, 2013); Pls. Reply for Suggestion of Remand (Doc. #84) (Mar. 25, 2013); Pls.' Resp. to Mot. for Recons. (Doc. #85) (Apr. 1, 2013); Defs.' Reply to Mot. for Recons. (submitted via letter to Judge Bongiovanni) (Apr. 8, 2013).

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Given that disposition of the motions described above will inform whether discovery will go forward and the scope of any such discovery, Plaintiffs and Defendants propose that the parties meet and confer concerning discovery scheduling following the Court's disposition of the motions. Defendants respectfully request oral argument on the motions.

2. ***State of West Virginia ex rel. McGraw v. Bristol-Myers Squibb Co., No. 3:13-cv-1603***

Plaintiff's motion to remand is fully briefed and pending.⁶ No discovery has taken place. Plaintiffs and Defendants propose that the parties meet and confer concerning discovery scheduling following the Court's disposition of the motion to remand, if remand is denied. Defendants respectfully request oral argument on the motion to remand.⁷

II. PROPOSED AGENDA ITEMS

- A. Proposed Case Management Order: The Parties have been discussing a proposed case management order which addresses various procedural issues such as filing requirements, procedures for service of process, *pro hac* procedures, scheduling of future status conferences, and a procedure for direct filing of cases in the District of New Jersey. We will provide the proposal to the Court in advance of the conference and will be prepared to answer any questions or address any areas of dispute with Plaintiffs.
- B. Lead/Liaison Counsel: Defendants have nominated Anand Agneshwar of Arnold & Porter LLP to serve as Defendants' Lead Counsel. Defendants do not believe it is necessary to appoint a separate Defense Liaison Counsel at this time. Plaintiffs have advised Defendants that they wish to defer formal appointment of a

⁶ See Pl.'s Mot. to Remand to State Ct. (Doc. #12) (Feb. 18, 2013); Defs.' Mem. in Opp'n to Mot. to Remand to State Ct. (Doc. #18) (Mar. 4, 2013); Pl.s' Reply to Response to Motion to Remand to State Ct. (Doc. #19) (Mar. 11, 2013); Defs.' Sur-Reply Br. in Opp'n to Pl.'s Mot. to Remand to State Ct. (submitted via letter to Judge Bongiovanni) (Mar. 26, 2013).

⁷ Defendants have also tagged for inclusion in MDL 2418 an action filed by the Mississippi Attorney General. See *Hood v. Bristol-Myers Squibb Co., et al.*, 1:12-cv-00179 (N.D. Miss.). A remand motion is pending in that case as well. We expect the Panel to issue a decision regarding transfer of the *Hood* case at its next hearing session on July 25, 2013; it remains in the transferor court's discretion whether or not to consider the remand motion prior to transfer.

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Plaintiffs' Steering Committee until after resolution of key pending motions. Defendants have no objection to such deferral but have requested that Plaintiffs' counsel nominate an interim representative to facilitate communications with plaintiffs' counsel in the MDL (Robert Salim), and Plaintiffs have agreed to do so.

- C. Document Discovery: Plaintiffs and Defendants have been discussing the possibility of agreeing voluntarily to a coordinated document discovery protocol for that would apply to all state and federal Plavix® actions. We will provide the Court with an update on these document discussions prior to the conference.
- D. Pending Motions: As noted above, certain cases have significant motions pending. Defendants would be pleased to provide further information concerning these motions so as to facilitate the Court's consideration of the motions.
- E. State Court Coordination: We believe that creation of the MDL provides an excellent opportunity for state/federal coordination for the benefit of both state and federal Plavix® cases. A large number of Plavix® cases are currently pending in California, Illinois, and New York state courts. Defendants can provide an update on the status of the state court litigation to facilitate any coordination efforts.

* * *

We hope this report is of assistance to the Court and look forward to the Conference.

Respectfully submitted,

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cc: Counsel of record