

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

**IN RE: BENICAR (AND OTHER
OLMESTARTAN DRUGS) PRODUCTS
LIABILITY LITIGATION**

MDL No. 2606

**INTERESTED PARTY RESPONSE OF PLAINTIFFS, BRENDA BAUGH, *ET AL.*, TO
THE MOTION FOR TRANSFER OF ACTIONS TO THE NORTHERN DISTRICT OF
OHIO**

Pursuant to 28 U.S.C. § 1407 and Rule 6.2(e) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Brenda Baugh, *et. al.*, along with the undersigned counsel for Interested Party Plaintiffs (defined below), respectfully submit this Interested Party Response for Transfer of Actions to the Northern District of Ohio for Coordinated and Consolidated Proceedings, said Response being to the Motion by Spangenberg, Shibley & Liber, LLP who has moved for consolidated and coordinated pre-trial procedure under 28 U.S.C. § 1407. Through undersigned counsel, Plaintiffs agree that consolidation is appropriate and submit that the most appropriate venue is the United States District Court for the Northern District of Ohio before the Honorable Judge Dan Aaron Polster.

I. INTRODUCTION

The undersigned is counsel of record for Interested Party Plaintiffs in the following cases pending in the Northern District of Ohio¹:

Brenda D. Baugh v. Daiichi Sankyo, Inc., et al.

United States District Court Northern District of Ohio – Docket Number 4:14-cv-02309

Pamela Bonner v. Daiichi Sankyo, Inc., et al.

¹ The undersigned is also counsel of record for 10 other cases that are currently pending in state court of New Jersey.

United States District Court Northern District of Ohio – Docket Number 5:14-cv-02671

Vicki L. Changet v. Daiichi Sankyo, Inc., et al.

United States District Court Northern District of Ohio – Docket Number 5:14-cv-02782

Leo B. Charlton v. Daiichi Sankyo, Inc., et al.

United States District Court Northern District of Ohio – Docket Number 1:14-cv-02786

Laura J. Laney v. Daiichi Sankyo, Inc., et al.

United States District Court Northern District of Ohio – Docket Number 1:14-cv-02515

Marilyn McCleskey v. Daiichi Sankyo, Inc., et al.

United States District Court Northern District of Ohio – Docket Number 5:14-cv-02784

Annette M. Johnson v. Daiichi Sankyo, Inc., et al.

United States District Court Northern District of Ohio – Docket Number 3:14-cv-02672

Victoria L. Kuhn v. Daiichi Sankyo, Inc., et al.

United States District Court Northern District of Ohio – Docket Number 1:14-cv-02781

Plaintiffs and undersigned counsel support transfer of these actions to the Honorable

Judge Dan Aaron Polster.

II. THE BENICAR (AND OTHER OLMESARTAN DRUGS) PRODUCTS LIABILITY CASES SHOULD BE TRANSFERRED AND COORDINATED PURSUANT TO 28 U.S.C. § 1407

The undersigned counsel concurs with the arguments already presented in the Motion by Spangenberg, Shibley & Liber, LLP. As set forth in the Movant's original motion for transfer, all of these cases involve common issues of fact and law regarding claims for failure to warn, design defect, manufacturing defect, breach of warranty, and claims for fraud and misrepresentation in the sales and marketing of Benicar and other olmesartan drugs, which is manufactured, marketed, promoted and placed into the stream of commerce by the Defendants. At this time there are approximately twenty-three cases (23) filed in thirteen (13) different district courts throughout the country, including:

1. Northern District of Ohio

2. Eastern District of Louisiana
3. Northern District of California
4. Southern District of Illinois
5. Southern District of New York
6. Central District of Illinois
7. District of Maine
8. District of Oregon
9. District of Montana
10. Southern District of California
11. District of Iowa
12. Central District of California
13. District of Minnesota

These twenty-three (23) federal cases have been filed by thirteen different plaintiffs' counsel (even without including local counsel). This is clearly distinguishable from cases like Cymbalta wherein just two firms represented plaintiffs in all federal cases at the time of the Cymbalta JPML hearing regarding transfer and consolidation. *See In re: Cymbalta*, at 2 (citing *In re: Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litig.*, 446 F.Supp.2d 242, 244 (J.P.M.L. 1978)). Most of the law firms representing plaintiffs in federal cases do not represent any plaintiffs in the state court of New Jersey consolidated proceedings. The overwhelming majority of federal cases do not have any protective orders entered, they do not have any case management conference schedules entered, and they do not have any preliminary discovery court orders entered. With the vast number of different plaintiff law firms involved across numerous federal jurisdictions and with the overwhelming majority of federal cases at the starting point of

the litigation process, transfer and consolidation is essential in order to avoid conflicting rulings across numerous federal courts and for judicial efficiency.

While defendants have produced over 725,000 pages of documents in the state court of New Jersey proceeding, the overwhelming majority of these pages of documents are the New Drug Application and these were only recently produced within the last month. The defendants had failed to produce a single document until counsel from Robbins Kaplan filed a motion to compel asking for these documents that were requested through requests to produce over 6 months ago. In addition, the defendants have not produced a single document in response to a request for production served on September 15, 2014 and directed at the foreign Daiichi Sankyo defendant (Daiichi Sankyo Co., Limited). As counsel for the defendants advised the Judge presiding over the state court of New Jersey consolidated proceedings, pharmaceutical product liability cases typically involve the production of tens of millions of pages of documents and defendants' counsel represents that only just over 725,000 pages of documents have been produced. Also, no depositions have taken place in the state court of New Jersey consolidated proceedings. Therefore, the state court of New Jersey consolidated proceedings has only just begun the discovery phase of the litigation.

III. THE NORTHERN DISTRICT OF OHIO IS THE PREEMINENT TRANSFEREE FORUM TO EFFICIENTLY OVERSEE THE FEDERAL BENICAR AND OTHER OLMESARTAN DRUG PRODUCT LIABILITY CASES

For the reasons cited in the Motion by Spangenberg, Shibley & Liber, LLP, the undersigned counsel agrees that the federal cases should be consolidated and transferred to the Northern District of Ohio and should be assigned to the Honorable Judge Dan Aaron Polster.

IV. CONCLUSION

For the aforementioned reasons, Moving Party respectfully requests that the Panel order coordinated or consolidated pretrial proceedings for the Benicar (and other olmesartan drugs) products liability litigation and that these cases be presided over by the Honorable Judge Dan Aaron Polster in the Northern District of Ohio.

Respectfully submitted,

s/Daniel A. Nigh
DANIEL A. NIGH (0030905)
LEVIN, PAPANTONIO, THOMAS,
MITCHELL, RAFFERTY & PROCTOR, PA
316 S. Baylen Street, Suite 600
Pensacola, Florida 32502
Telephone: (850) 435-7000
Facsimile: (850) 435-7020
dnigh@levinlaw.com

COUNSEL FOR PLAINTIFF

Dated: January 23, 2015