BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: TAXOTERE (DOCETAXEL) PRODUCTS LIABILITY LITIGATION	**MDL DOCKET NO. _____**
	BRIEF IN SUPPORT OF MOTION OF PLAINTIFFS, VERONICA SMITH AND KELLY GAHAN, FOR TRANSFER OF ACTIONS, PURSUANT TO 28 U.S.C. SECTION 1407, TO THE EASTERN DISTRICT OF LOUISIANA FOR CENTRALIZED PRETRIAL PROCEEDINGS
	ORAL ARGUMENT REQUESTED

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiffs Veronica Smith[1] and Kelly Gahan[2] ("Movants") respectfully submit this memorandum of law in support of their motion for transfer and coordination for pretrial purposes of all currently filed cases identified in the included Schedule of Actions ("Actions"), as well as any subsequently filed cases involving similar facts or claims ("tag-along actions"), to the United States District Court for the Eastern District of Louisiana.

Each of the thirty-three (33) currently filed cases included on the Schedule of Actions involve claims by women who have suffered permanent hair loss as the result of using the chemotherapy drug Taxotere®. Transfer and centralization is proper because

[1] Veronica Smith's action is captioned *Veronica Smith v. Sanofi S.A. et al.*, Case No. 16-cv-12943-SSV-JCW, United States District Court for the Eastern District of Louisiana (hereinafter "Smith Complaint").
[2] Kelly Gahan's case is captioned *Kelly Gahan v. Sanofi S.A. et al*., Case No. 15-cv-02777-RM-MJW, United States District Court for the District of Colorado (hereinafter "Gahan Complaint").

each of these Actions and future tag-along cases arise out of the same or similar nucleus of operative facts and the same or similar wrongful conduct, and will involve resolution of the same or similar questions of fact and law. In addition, pretrial discovery in all the cases will be substantially similar and will involve the same documents and witnesses. Significantly, Defendants, the manufacturers of Taxotere®, seemingly agree with the need for centralization of these actions before a single district court.[3] There are currently thirty-three (33) cases pending in sixteen (16) federal district courts, before thirty (30) different federal judges. The undersigned counsel believe the number of Taxotere® cases yet to be filed will likely be in the thousands, due to the widespread use of the drug and the significant percentage of women impacted by permanent hair loss.

For the reasons that follow, the United States District Court for the Eastern District of Louisiana is the most appropriate venue to consolidate these cases: (1) five (5) cases are currently pending in the Eastern District of Louisiana[4]; (2) the Eastern District of Louisiana is home to many respected jurists who have expeditiously and successfully handled multidistrict and complex litigation; (3) the District has sufficient capacity to adjudicate this litigation, as many of the larger MDL cases within the District have been resolved or are drawing to a close; (4) New Orleans is an easily accessible and convenient forum for the anticipated number of geographically dispersed cases that are on file and expected to be filed; and (5) the Clerk of Court of the Eastern District of

[3] "Defendants" refers to the parties that have been named as a defendant in the vast majority of the currently filed federal actions, including: Sanofi S.A., Aventis Pharma S.A., and Sanofi-Aventis U.S. LLC.
[4] The cases pending in the United States District Court for the Eastern District of Louisiana include: *Veronica Smith v. Sanofi-Aventis, et al*., Case No. 16-cv-12943 (Judge Vance); *Walter v. Sanofi-Aventis, et al*., Case No. 16-cv-12706 (Judge Zainey); *Bemiss v. Sanofi-Aventis, et al.*, Case No. 16-cv-06425 (Judge Feldman); *Webb v. Sanofi-Aventis, et al*., Case No. 16-10763 (Judge Lemelle); *Wanda Smith v. Sanofi-Aventis, et al*., Case No. 13-cv-00107 (Judge Fallon).

Louisiana has done a remarkable job in efficiently managing complex multidistrict litigations, many of which involved large numbers of daily filings.

II. BACKGROUND, FACTUAL AND LEGAL CONTENTIONS

A. Background

Movants and plaintiffs in these actions are women who have been diagnosed with breast cancer[5] and were treated with Taxotere®.[6] As a result of using Taxotere®, plaintiffs in all pending actions, including Movants, have suffered permanent alopecia ("hair loss"). Now, having overcome breast cancer and the concomitant indignities of the disease as well as the treatment and all that it entails, Movants – and all women impacted – are forced to live their lives with significant degrees of hair loss, forever. Plaintiffs in these Taxotere® cases seek damages for personal injuries they have incurred as a result of the wrongful conduct of Defendants in designing, developing, manufacturing, distributing, labeling, advertising, marketing, promoting, and selling Taxotere® for the treatment of breast cancer. As these injured parties begin to file lawsuits, the federal courts are seeing an increasing number of new Taxotere® cases. Movants anticipate that the number of Taxotere® cases will grow exponentially and that thousands of Taxotere® cases will be filed in the federal courts, particularly because, at the direction of the FDA, Defendants

[5] While there might be non-breast cancer cases filed in the future alleging permanent hair loss as a result of Taxotere use, counsel currently believes a significant majority of the claims will be breast cancer cases.

[6] Taxotere® is the Defendants' brand name for the drug docetaxel. For convenience, throughout this Brief the name Taxotere® will be used in lieu of docetaxel. Taxotere® is a drug used in the treatment of various forms of cancer, including, but not limited to, breast cancer. Taxotere® is a part of a family of drugs commonly referred to as Taxanes. Taxanes are widely used as chemotherapy agents. Taxane agents include paclitaxel (Taxol®)[6] and Taxotere®. Taxane agents also exist as cabazitaxel and in generic forms as well. The drug and chemical compound that would become known as Taxotere® was designed as an increased-potency Taxane.

recently modified the prescribing information for Taxotere® to indicate, for the first time in the U.S. label, that the drug may cause permanent hair loss.

The pending actions involve common Defendants: Sanofi S.A., Aventis Pharma S.A., and Sanofi-Aventis U.S. LLC. Defendants Sanofi S.A. and Aventis Pharma, S.A. are based in France (Paris and Antony, respectively) while Defendant Sanofi-Aventis U.S. LLC is based in Bridgewater, New Jersey.

B. Factual Contentions

While alopecia is a common side effect related to chemotherapy drugs, permanent alopecia is not. Permanent alopecia is a disfiguring condition, especially for women. Women who have experienced disfiguring permanent alopecia as a result of the use of Taxotere® suffer great mental anguish as well as economic damages, including, but not limited to, loss of work or inability to work due to significant psychological damage. And, though in some instances women might accept the possibility of permanent baldness as a result of the use of Taxotere® if no other product were available to treat their cancer, this was not the case here.

Defendant Sanofi S.A. ("Sanofi") – the world's fifth-largest pharmaceutical company by sales in 2013 – is a French multinational pharmaceutical parent company that operates worldwide through a complex, consolidated, and intermingled web of more than 400 wholly-owned subsidiaries, including Defendant Aventis Pharma S.A. and Defendant Sanofi-Aventis U.S. LLC.[7] As a parent of these wholly-owned subsidiaries,

[7] As alleged by Plaintiffs, as the corporate parent of these wholly-owned subsidiaries, Sanofi S.A. directs and controls the operations of Aventis Pharma S.A. and Sanofi-Aventis U.S. LLC. Indeed, according to Sanofi S.A.'s Form 20-F filed with the U.S. Securities and Exchange Commission for the fiscal year ended December 31, 2014, Sanofi S.A. owns 100% of the membership and voting interest of Sanofi-Aventis U.S. LLC. Therefore, Sanofi S.A. controls and directs the operations of Sanofi-Aventis U.S. LLC. According to

Sanofi S.A. directs and controls the operations of Aventis Pharma, S.A. and Sanofi-Aventis U.S. LLC. Since March 1989, Sanofi S.A., through its wholly-owned subsidiary, Aventis Pharma S.A., has controlled the development and been the owner, holder, or assignee of the patents related to Taxotere®. Defendants Sanofi S.A., Aventis Pharma S.A., and Sanofi-Aventis U.S. LLC were engaged in the business of, and/or were successors in interest to, entities engaged in the business of researching, analyzing, licensing, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging, advertising, and/or selling Taxotere® to the general public, including Movants.

Sanofi began enrolling patients in Phase I clinical testing trials for Taxotere® on June 21, 1990. The study reporting on these trials was called the "TAX 001" study, which continued until May 13, 1992. The results from the TAX 001 study were reported on May 24, 1994. Accordingly, Sanofi was not only involved in the patenting and assignment of the compound Taxotere®, but Sanofi was also directly involved in the clinical trials and testing of the compound Taxotere®.[8] In addition, an entity named Rhône-Poulenc Rorer S.A., before it was acquired by or merged into Aventis Pharma S.A., initially sought the United States Food and Drug Administration's ("FDA") approval for Taxotere® in December 1994. However, the FDA's Oncologic Drugs

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Sanofi S.A.'s Form 20-F, Sanofi-Aventis U.S. LLC was formed on June 28, 2000 as a Delaware limited liability company whose principal activity was identified as "Pharmaceuticals." Additionally, Sanofi S.A. owns 100% of the shares or financial interest of Aventis Pharma S.A., and Sanofi S.A. therefore directs and controls the operations and activities of Aventis Pharma S.A.

[8] Accordingly, Sanofi S.A. and Aventis Pharma S.A. have direct and personal knowledge of the results of those tests and Sanofi S.A., Aventis Pharma S.A., and Sanofi-Aventis U.S. LLC's decisions to withhold information and data from those tests from physicians, healthcare providers, patients, and Plaintiffs in the United States.

Advisory Committee panel unanimously recommended the rejection of Rhône-Poulenc Rorer S.A.'s request for the approval of Taxotere® because Taxotere® was more toxic than its competing drug Taxol®, which had already received FDA approval, and because more studies of Taxotere®'s side effects were needed. Taxotere® was ultimately approved by the FDA on May 14, 1996 and, according to its product labeling, Taxotere® was "indicated for the treatment of patients with locally advanced or metastatic breast cancer after failure of prior chemotherapy." Following the initial FDA approval, Defendants sought and were granted FDA approval for additional indications for Taxotere®.

Based on self-sponsored clinical trials, Defendants claimed superiority over other chemotherapy products approved to treat breast cancer. Defendants' marketing claims included claims of superior efficacy over the lower-potency Taxane product paclitaxel (Taxol®), which was the primary competitor product to Taxotere®. However, post-market surveillance has shown that the more potent and more toxic Taxotere® does not in fact offer increased efficacy or benefits over other Taxanes, as Defendants have claimed and advertised.[9] Nevertheless, Defendants concealed the existence of studies from the FDA, physicians, and patients that refuted Defendants' claims.

[9] Indeed, a study of available clinical studies concerning the relative efficacy of Taxanes in the treatment of breast cancer, published in the August 2007 journal *Cancer Treatment Review*, concluded that no significant differences were found in the efficacy and outcomes obtained with Taxotere® or Taxol® (paclitaxel). A study published in 2008 in the New England Journal of Medicine, titled *Weekly Paclitaxel in the Adjuvant Treatment of Breast Cancer*, concluded that Taxol® (paclitaxel) was more effective than Taxotere® for patients undergoing standard adjuvant chemotherapy with doxorubicin and cyclophosphamide. Nevertheless, despite the publication of these studies, Defendants continued to make false and misleading statements promoting the "superior efficacy" of Taxotere® over the competing product paclitaxel (Taxol®). In June 2008, Sanofi-Aventis utilized marketing and promotional materials for Taxotere® at the annual meeting for the American Society of Clinical Oncology, comparing the efficacy of Taxotere® versus paclitaxel (Taxol®). Specifically, Sanofi-Aventis utilized a "reprint carrier," citing a clinical study published in the August 2005 edition of the Journal of Clinical Oncology ("JCO"). The 2005

Before Defendants' wrongful conduct resulted in thousands of women being exposed to the side effects of Taxotere®, there were already similar products on the market that were at least as effective as Taxotere® and did not subject users to the same risk of disfiguring permanent alopecia as does Taxotere®. Despite that fact, Defendants, through their publications and marketing materials, misled Movants, the public, and the medical community to believe that, users' hair would grow back, as it does with other chemotherapy drugs that cause temporary alopecia.

Importantly, and by way of example, beginning in the late 1990's, Sanofi S.A. and Aventis Pharma S.A. sponsored and/or were aware of a study titled the GEICAM 9805 study. In 2005, Sanofi S.A. and Aventis Pharma S.A. knew that the GEICAM 9805 study demonstrated that 9.2% of patients who took Taxotere® had persistent alopecia, or hair loss, for up to 10 years and 5 months, and in some cases longer, after taking Taxotere®. Sanofi S.A. and Aventis Pharma S.A. knowingly, intentionally, and wrongfully withheld these results contained in the GEICAM 9805 study from physicians, healthcare providers, patients, and Movants here in the United States. Additionally, in 2006, Defendants knew or should have known that a Denver-based oncologist in the United States had observed that an increased percentage (6.3%) of his patients who had

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JCO study concluded that ". . . Taxotere® demonstrated superior efficacy compared with paclitaxel (Taxol®), providing significant clinical benefit in terms of survival and time to disease progression, with a numerically higher response rate and manageable toxicities." Whatever the merits of the 2005 JCO study may have been, Defendants' statements in the "reprint carrier" marketing the conclusions of the 2005 JCO study were false and/or misleading in light of the 2007 and 2008 studies finding that Taxotere® was not more effective than paclitaxel (Taxol®) in the treatment of breast cancer. Furthermore, as a result of these false and misleading statements, in 2009, the FDA issued a warning letter to Sanofi-Aventis (the same company as Defendant Sanofi S.A. before Sanofi-Aventis changed its name in 2011) citing these unsubstantiated claims of superiority over paclitaxel. Likewise, a Qui Tam lawsuit was also filed against Sanofi-Aventis and its affiliates in the United States District Court for the Eastern District of Pennsylvania by a former employee accusing Sanofi-Aventis and its affiliates of engaging in a fraudulent marketing scheme, paying kickbacks, and providing other unlawful incentives to entice physicians to use docetaxel (Taxotere®). *See U.S. ex rel. Gohil v. Sanofi-Aventis U.S. Inc.*, Civil Action No. 02-2964 (E.D. Pa. 2015).

taken Taxotere® suffered from permanent disfiguring hair loss for years after the patients had stopped taking Taxotere®.

Despite Defendants' knowledge of the relevant findings from the GEICAM 9805 study, as well as reports from patients who had taken Taxotere® and suffered from permanent disfiguring hair loss, Defendants failed to provide accurate information and proper warnings to physicians, healthcare providers, and patients in the United States, including Movants, disclosing that patients who take Taxotere® are at a significantly increased risk of suffering from permanent disfiguring hair loss. Defendants chose to withhold this information in the United States despite advising physicians, patients, and regulatory agencies in other countries, including the European Union and Canada, that Taxotere® causes an increased risk of permanent disfiguring hair loss. Defendants instead continued to warn or advise physicians, healthcare providers, patients, and Movants in the United States only with the generic, vague, and insufficient "alopecia" warning, and stating that "hair generally grows back" after taking Taxotere®.

In truth, however, users of Taxotere® and their prescribing physicians were not presented with the opportunity to make an informed choice as to whether the benefits of Taxotere® were worth its known risks. Defendants engaged in a pattern of deception by overstating the benefits of Taxotere® as compared to other alternatives while simultaneously failing to warn of the risk of disfiguring permanent alopecia.

Thus, as a direct result of Defendants' wrongful and deceptive acts, many thousands of women, including Movants herein, were exposed to the risk of disfiguring permanent alopecia without any warning and without any enhanced benefit over and above the available options. Furthermore, as a direct result of Defendants' failure to

warn patients of the risk of disfiguring permanent alopecia in the United States, thousands of women, including Movants, as well as their health care providers, were deprived of the opportunity to make an informed decision as to whether the benefits of using Taxotere® over other comparable products was justified.

Additionally, Defendants caused thousands of individuals, such as the Movants here and persons in other "tag-along" cases, to be exposed to increased frequency and more severe side effects, including but not limited to disfiguring permanent alopecia. In doing so, Defendants obtained billions of dollars in increased revenues at the expense of unwary cancer victims.[10] In short, Defendants preyed on one of the most vulnerable groups of individuals at the most difficult time in their lives.

C. Legal Contentions

Movants and plaintiffs in other pending actions contend that Taxotere® was defectively designed and manufactured by Defendants, that Defendants knew that Taxotere® was more toxic than other taxanes used for the treatment of breast cancer (such as Taxol® - a competitor drug), that Defendants designed and developed Taxotere® with a higher potency (and thus a higher toxicity) for the purpose of obtaining a patent, that Defendants were on notice from the FDA that Taxotere® was more toxic than Taxol®, that Defendants failed to conduct complete and proper testing, that Defendants – issuing

[10] Indeed, beginning in 1996, Sanofi S.A., Aventis Pharma S.A., and Sanofi-Aventis U.S. LLC and their predecessors and affiliates designed, directed, and/or engaged in a marketing scheme that promoted Taxotere® for off-label uses not approved by the FDA. The scheme took two forms: first, Defendants trained and directed their employees to misrepresent the safety and effectiveness of the off-label use of Taxotere® to expand the market for Taxotere® in unapproved settings; and second, Defendants paid healthcare providers illegal kickbacks in the form of sham grants, speaking fees, travel, entertainment, sports and concert tickets, preceptorship fees, and free reimbursement assistance to incentivize healthcare providers to prescribe Taxotere® for off-label uses. As a direct result of Defendants' fraudulent marketing scheme, Defendants dramatically increased revenue on sales of Taxotere® from $424 million in 2000 to $1.4 billion in 2004. *U.S. ex rel. Gohil v. Sanofi-Aventis U.S. Inc.*, 96 F. Supp. 3d 504, 508 (E.D. Pa. 2015).

fraudulent misrepresentations – made false and misleading statements promoting the "superior efficacy" of Taxotere®, that Defendants knew or should have known that their statements regarding the efficacy of the drug were false, that Defendants knew or should have known that Taxotere® caused permanent alopecia at a rate far greater than other products available used for the treatment of breast cancer, that – despite the fact that Defendants issued warnings with respect to Taxotere® about permanent disfiguring alopecia in other countries – Defendants issued no similar warnings with respect to Taxotere® in the United States of the risk of disfiguring permanent alopecia either to patients, physicians, or members of the scientific community, and that the causal link between the use of Taxotere® and permanent alopecia has been confirmed by multiple studies, all of which were known of or should have been known of by Defendants.

Additionally, Movants and plaintiffs in other pending actions contend that Defendants failed to update the warnings for Taxotere®, failed to disclose the results of additional studies despite learning the facts with respect to the risks of Taxotere®, fraudulently concealed the fact that Taxotere® caused permanent alopecia unlike other taxanes used for the treatment of breast cancer, and engaged in a fraudulent marketing scheme, which involved paying kickbacks and providing other unlawful incentives to entice physicians to use Taxotere®.

Based on the foregoing, as well as Movants' damages resulting from the conduct of the Defendants, Movants have brought numerous identical claims against Defendants, including products liability for negligence, strict products liability for design and manufacturing defects, strict products liability for failure to warn, breach of express warranty, breach of implied warranty, fraudulent misrepresentation, fraudulent

concealment, negligent misrepresentation, strict products liability for misrepresentation, fraud and deceit, and extreme and outrageous conduct/intentional infliction of emotional distress. *See* Exhibit 18, Smith Complaint and Exhibit 3, Gahan Complaint.

III. ARGUMENT

A. Transfer and centralization of the Taxotere® permanent hair loss cases is appropriate and necessary.

The underlying purpose of transferring related actions under 28 U.S.C. § 1407 is to serve the convenience of the parties and witnesses and promote the just and efficient adjudication of actions. *See In re Hydrogen Peroxide Antitrust Litigation*, 374 F.Supp.2d 1345, 1346 (J.P.M.L. 2005). On the specific issue of whether to centralize in a single district, the Panel considers the convenience of the parties and witnesses, the number of related actions, and the complexity of the common questions of fact. *See In re DaimlerChrysler Corp. Seat Belt Buckle Products Liability Litigation*, 217 F.Supp.2d 1376, 1377 (J.P.M.L. 2002).

28 U.S.C. § 1407 directs the Panel to transfer federal civil actions for pretrial coordination or consolidation where: (1) the cases involve "common questions of fact"; (2) the transfer is convenient for the parties and witnesses; and (3) the transfer "promote[s] the just and efficient conduct" of the cases. 28 U.S.C. § 1407(a). Generally speaking, the purpose of Section 1407 is "to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation costs, and save the time and effort of the parties, the attorneys, the witnesses, and the courts." Manual for Complex Litigation (Fourth) § 20.131 (2004) (*citing In re Plumbing Fixture Cases*, 298 F. Supp. 484 (J.P.M.L. 1968)); *see also* David F. Herr, Multidistrict Litigation Manual § 5:16 (2010).

The Taxotere® cases are well-suited for centralization under Section 1407. Though scattered across the country, these cases are all closely related: in most or all cases, they share exactly the same Defendants, the same basic theories of liability, and the same general factual allegations. The cases all will involve the same core of lay and expert witness and document discovery. Most importantly, this is the ideal time to centralize these cases, because none of the Taxotere® cases has progressed past the initial stages of litigation. In fact, upon information and belief, none of the actions has resulted in a full production of documents or discovery of experts and other key witnesses. Consequently, the goals of efficiency and coordination can best be met by transferring all filed cases to one MDL Judge.

1. The Taxotere® cases involve common questions of fact and involve common issues for discovery.

A critical factor in transferability and coordination under Section 1407 is the presence of common questions of fact. *See In re Federal Election Campaign Act Litigation*, 511 F.Supp.821, 823 (J.P.M.L. 1979). To date, thirty-three (33) actions have been commenced against Defendants in sixteen (16) different federal judicial districts. Movants expect substantial numbers of additional cases to be filed in various districts based on the wide-spread use of Taxotere® by women who, simply seeking treatment for breast cancer, now have to face the specter of living the rest of their lives without hair.[11] Each of these actions includes substantially similar claims and seeks substantially similar relief. Among the common questions of fact are:

(1) Whether Defendants defectively designed and/or manufactured Taxotere®;

[11] Based upon the number of cases Movants' counsel currently has in review, as well as those known by Movants' counsel to be in review at other firms, it is expected that thousands of cases may eventually be filed.

(2) Whether Defendants conducted complete and adequate studies of Taxotere®;

(3) When Defendants first learned of the connection between Taxotere® and permanent disfiguring alopecia;

(4) Whether and to what extent Defendants misrepresented the efficacy of Taxotere® as compared to other taxanes;

(5) Whether and to what extent Taxotere® has caused, or will cause, harmful effects in patients that took the drug to treat breast cancer;

(6) The nature and extent of damages suffered by Plaintiffs as a result of Taxotere®;

(7) Whether, and for how long, Defendants concealed this knowledge from physicians, patients, and the scientific community; and

(8) Whether and to what extent Defendants failed to provide accurate information and proper warnings to physicians, healthcare providers, and patients in the United States; and

(9) Whether and to what extent Defendants engaged in a fraudulent marketing scheme, paying kickbacks and providing other unlawful incentives to entice physicians to use Taxotere®.

Under Section 1407, the transfer and consolidation of these thirty-three (33) Taxotere® actions and the many anticipated actions to be filed in the near future, is appropriate, and will serve the purpose of judicial economy, national coordination of discovery and other pretrial efforts will prevent duplicative and potentially conflicting pretrial efforts and rulings, will reduce the costs of litigation and allow cases to proceed more efficiently to trial.

2. Pretrial centralization of the Taxotere® cases will promote the just and efficient conduct of these cases and will enhance the convenience of the litigation as a whole.

Centralization will foster the just and efficient conduct of these actions by preventing duplicative discovery and preventing inconsistent resolution of pretrial issues.

Transferring these cases pursuant to 28 U.S.C. § 1407 would enhance the efficiency and expediency of this litigation. On the other hand, failing to centralize would force all parties to take repetitive and/or redundant pre-trial discovery, and would very likely lead to inconsistent and conflicting rulings across the country concerning discovery and other pretrial matters.

Transfer and coordination/consolidation of the actions will best serve the interests of justice and efficiency by permitting a single court to coordinate discovery and resolve disputes common to the pending actions, thus avoiding unnecessary taxing of the judicial system's and the litigants' finite resources. *See, e.g., In re Temporomandibular Joint (TMJ) Implant Products Liability Litigation*, 1553, 1554 (J.P.M.L. 1994). Because of the number of current and anticipated Taxotere® claims and the existence of common questions of fact, the requirements for transfer under Section 1407 are easily met here. Additionally, separate, unconsolidated pretrial proceedings in the cases that have been and will be filed would greatly increase the costs of this litigation for all parties, waste judicial resources, and create a significant risk of inconsistent rulings on these common questions of fact.

B. <u>The Eastern District of Louisiana is the most appropriate venue to centralize the Taxotere® cases.</u>

1. The Eastern District of Louisiana has an impressive track record of efficiently handling complex multidistrict litigations and has the capacity to adjudicate this case.

The Eastern District of Louisiana is the ideal court to effectively manage a complex products liability case such as this, in part because of the court's familiarity and

vast experience with multidistrict litigation, including product liability actions involving pharmaceutical drugs.

In determining an appropriate transferee forum, the Panel balances a number of factors including: the experience, skill and caseloads of the available judges; number of cases pending in the jurisdiction; convenience of the parties; location of the witnesses and evidence; and the minimization of cost and inconvenience to the parties. *See, e.g., In re Regents of University of California*, 964F.2d 1128, 1136 (Fed. Cir. 1992); *In re Wheat Farmers Antitrust Class Action Litig*., 366 F. Supp. 1087, 1088 (J.P.M.L. 1973); *In re Preferential Drugs Prods. Pricing Antitrust Lit*ig., 429 F. Supp. 1027, 1029 (J.P.M.L. 1977); *In re Tri-State Crematory Litig*., 206 F. Supp. 1376, 1378 (J.P.M.L. 2002); Annotated Manual of Complex Litigation (Fourth) (2004), §20.131, at 303-304. Of the factors the panel considers when determining the transferee forum, experience, number of pending cases, and available resources weigh heavily in favor of transferring all related cases to the Eastern District of Louisiana.

The judges of the Eastern District of Louisiana are well-suited to handle this multidistrict litigation. Many of them have successfully, either partially or completely, presided over several complex, multidistrict litigation cases such as this one, including but not limited to the following: *In re: Vioxx Products Liability Litigation*, MDL No. 1657 (Judge Fallon), *In re: Propulsid Products Liability Litigation*, MDL No. 1355 (Judge Fallon); *In re BP Oil Spill "Deepwater Horizon"*, MDL No. 2179 (Judge Barbier); *In re: Chinese Manufactured Drywall Products Liability Litigation*, MDL No. 2047 (Judge Fallon); and *In re: Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328 (Judge Vance).

Furthermore, the Eastern District of Louisiana has a wealth of jurists who are skilled and experienced in managing and successfully and expeditiously resolving multidistrict and complex litigations such as this. Moreover, the Eastern District of Louisiana truly understands the MDL process and the importance of coordination efforts between MDL courts and state court proceedings in order to promote the just and efficient conduct of all litigation.

Additionally, it is also important to point out that the jurists of the Eastern District of Louisiana have experience in handling multidistrict litigation involving foreign defendants. Here, the Taxotere® cases involve a French multinational defendant. In the Chinese Drywall Litigation, a number of the defendants were entities based in China and Germany. Similarly, in *In re Xarelto Products Liability Litigation*, MDL No. 2592, Bayer, a German based company, is a major defendant. This note about the Eastern District of Louisiana's experience with foreign defendants is important as the transferee court will be called on to oversee issues of jurisdiction, unique foreign laws or perhaps personally preside over depositions in foreign countries as Judge Fallon did in the *In re Chinese Drywall* case, MDL 2047.

Another relevant factor is the transferee court's capacity to handle the cases. This Panel has historically favored districts where the transferred cases will not add to an already overburdened docket. *See, e.g., In re Webvention LLC ('294) Patent Litigation*, 831 F.Supp.2d 1366, 1367 (J.P.M.L. 2011) (avoiding transfer to districts with "large civil caseloads" and choosing a transferee court with "more favorable" docket conditions). The majority, if not all, of the large multidistrict cases pending in the Eastern District of Louisiana have been completely resolved or are quickly drawing to a close, including, but

not limited to *In re: BP Oil Spill*, MDL No. 2179 and *In re Chinese Drywall*, MDL No. 2047. In addition, upon information and belief, the *In re Pool Products* MDL, pending before Judge Sarah Vance, has recently resolved. Consequently, the Judges and clerks of the Eastern District of Louisiana currently have the capacity and resources to adjudicate this case with the necessary attention it will require.

2. The Eastern District of Louisiana is well-equipped to manage the litigation.

As evidenced by the efficiencies in which the Eastern District of Louisiana has been able to successfully resolve other complex multidistrict litigations, it is apparent that the Clerk of Court is well-staffed, well-equipped and has the necessary resources to manage MDL litigations. The efficiency and experience of the Clerk's office in a district court is absolutely vital to the successful management and administration of a complex multidistrict litigation. The Clerk's office of the Eastern District of Louisiana has efficiently handled an enormous volume of filings in MDL cases such as *In re: BP Oil Spill, In re Vioxx, In re Xarelto,* and *In re Chinese Drywall*.

As an added element of efficiency and convenience for all parties, the Clerk's office manages a webpage for each MDL which includes a wealth of useful information for the parties and litigants. The Clerk of Court's office of the Eastern District of Louisiana shares the same expertise in managing multidistrict cases as does its judges.

3. The Eastern District of Louisiana is central and convenient to the parties and witnesses.

Another important factor for consideration by this Panel is whether the district court provides a convenient forum and easy access for the parties and witnesses. Presently, there is no center of gravity for the Taxotere® cases as thirty-three (33) cases

span sixteen (16) federal districts (five cases pending in the Eastern District of Louisiana). However, the Eastern District of Louisiana is geographically centralized and easily accessible for counsel, witnesses and the parties, especially when compared to travel to the East or West Coast. The federal courthouse in New Orleans is in close proximity to the Louis Armstrong New Orleans International Airport, which hosts 13 airlines and serves 44 nonstop destinations with 135 daily departures. In addition, New Orleans has a large number and variety of hotels near the courthouse.

As noted above, Defendants Sanofi S.A. and Aventis Pharma, S.A. are based in France (Paris and Antony, respectively) while Defendant Sanofi-Aventis U.S. LLC is based in Bridgewater, New Jersey. Despite the placement of the Defendants, New Orleans provides a neutral venue, while it is not the "hometown" of the defendants. Moreover, in this day and age of electronic discovery, the need to be near the Defendants' headquarters and/or paper documents is frankly archaic and imaginary.

For these reasons, the Eastern District of Louisiana offers a very convenient and central location, and is thus an appropriate choice to serve as the transferee court for this multidistrict litigation. Movants are confident that any Judge of the Eastern District of Louisiana will promote the goal of a just resolution of these cases as speedily, inexpensively and fairly as possible.

IV. CONCLUSION

For all the foregoing reasons, Movants Veronica Smith and Kelly Gahan respectfully move for an Order transferring all Related Actions and any future Taxotere® product liability cases to the United States District Court for the Eastern District of Louisiana for consolidated or coordinated pretrial proceedings.

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Respectfully Submitted,

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