BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: ELIQUIS (APIXABAN) PRODUCTS LIABILITY LITIGATION	MDL No. ____

BRISTOL-MYERS SQUIBB COMPANY AND PFIZER INC.'S MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR TRANSFER OF RELATED ELIQUIS (APIXABAN) PRODUCTS LIABILITY ACTIONS FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

Pursuant to 28 U.S.C. § 1407 and Rule 6.2(a) of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, Bristol-Myers Squibb Company ("BMS") and Pfizer Inc. ("Pfizer") (collectively, "Defendants") respectfully submit this Memorandum of Law in support of their Motion for Transfer of Related Eliquis (Apixaban) Products Liability Actions for Coordinated Pretrial Proceedings. For the reasons discussed below, the Related Actions should be transferred and centralized in the Southern District of New York.

BACKGROUND OF THE LITIGATION

This litigation currently consists of 34 Related Actions filed in 13 different federal districts.[1] In the Related Actions, the Plaintiffs allege that they suffered various bleeding-related injuries as a result of taking Eliquis after their physicians prescribed it.[2] While there is some

[1] For purposes of this Motion, a full list of the Related Actions appears in the Schedule of Related Actions filed with this motion. There are 16 cases pending in the Southern District of New York, 4 cases pending in the Eastern District of Louisiana, 3 cases pending in the Eastern District of Kentucky, 2 cases pending in the Eastern District of Tennessee, and 1 case each pending in the Southern District of California, the District of Hawaii, the Northern District of Illinois, the Southern District of Illinois, the Middle District of Louisiana, the Western District of Louisiana, the Eastern District of Pennsylvania, the Western District of Tennessee, and the Northern District of Texas. There are also an additional 29 actions filed in state courts in California, Delaware, New York, Oklahoma, and Pennsylvania, which are not currently subject to this Motion.

[2] Per the Panel's Rules, all of the relevant complaints have been attached to this Motion. As a representative example of the complaints in the Related Actions, Defendants point the Panel to the complaint filed in *Utts v. Bristol-Myers Squibb Company and Pfizer Inc.*, No. 1:16-cv-05668 (S.D.N.Y.), which is the 18th complaint attached to this Motion (*see* ECF 1-22).

variation in each of the complaints, the core of the allegations is the same; indeed, many of the allegations are copied verbatim across the complaints. Plaintiffs claim that Defendants should be held liable for Plaintiffs' bleeding-related injuries under a variety of theories, including that: (1) Defendants failed to warn adequately about the risk of bleeding; and (2) Defendants should not have sold Eliquis without precautions for blood monitoring or an additional drug to reverse its anticoagulant effect. In short, all 34 actions share similar facts as to the design, testing, regulatory approval, manufacture, and marketing of Eliquis, and similar alleged injuries resulting from the use of Eliquis.

I. Background Regarding Eliquis.

Eliquis (also known by its molecular name apixaban) is a breakthrough anticoagulant medication that thins the blood, prevents the formation of blood clots, and significantly decreases the risk of stroke in patients with atrial fibrillation and certain other conditions. Atrial fibrillation is a common arrhythmia (abnormal heart beat) that causes blood clots to form in the heart, and that is known to be associated with a very high risk of stroke. Because strokes are frequently debilitating or even fatal, stroke prevention is a primary goal of atrial fibrillation treatment. Prior to the advent of Eliquis and some other anticoagulants, the mainstay of atrial fibrillation therapy was warfarin. However, warfarin has a number of significant drawbacks, including a significant risk of bleeding, particularly cerebral hemorrhage (bleeding in the brain), the need for frequent blood tests to monitor medication levels, and a multitude of food and drug interactions that complicate its use and affect patient compliance. Unlike other anticoagulants, Eliquis has been shown to be significantly more effective *and* significantly less likely to cause bleeding than warfarin. *See* Ex. A (Eliquis Label), at 6-8, 18-22. In fact, with regard to bleeding risk, data from one of the pivotal clinical trials described in the FDA-approved Eliquis label show that Eliquis is no less safe than a daily aspirin. *See id*. at 9.

Prior to approval, FDA carefully evaluated the safety and efficacy of Eliquis. Thirty FDA employees were involved in the pre-approval review process, and the medical reviews totaled more than 400 pages. As part of its review, FDA analyzed the totality of data from the Eliquis clinical development program and specifically considered the very issues raised in Plaintiffs' complaints, including the design and conduct of the Eliquis trials, the bleeding risk associated with Eliquis use, and the lack of an effective reversal agent. FDA also requested additional analyses and information from BMS in order to ensure that the Agency had sufficient data to approve the medication. In December 2012, upon completing its review, FDA concluded that, as designed, Eliquis is safe and effective for its intended uses and that the labeling accurately reflects the scientific evidence regarding its risks and benefits.

Importantly, the medical community has recognized for decades that anticoagulant medications increase bleeding risk. While patients taking Eliquis are at a significantly lower risk of bleeding than patients taking warfarin, it is well-recognized that Eliquis increases the risk of bleeding compared to taking no anticoagulant medication at all. As a result, the Eliquis label always has warned prominently and unambiguously of the bleeding risk associated with use of the medication. Indeed, the word "bleeding" appears no less than 65 times in the original, FDA-approved Eliquis label and Medication Guide. Since FDA's approval, the Warnings & Precautions section of the Eliquis label has warned physicians explicitly that the medication "can cause serious, potentially fatal bleeding," that there "is no established way to reverse the anticoagulant effect of apixaban," and that "[a] specific antidote for ELIQUIS is not available." Ex. A (Eliquis Label), at 1, 5. The Overdosage section of the Eliquis label also has warned since approval that "[t]here is no antidote to ELIQUIS" and that "[o]verdose of ELIQUIS increases the risk of bleeding." *Id*. at 12. Likewise, the Medication Guide has advised patients that "ELIQUIS

can cause bleeding which can be serious and rarely may lead to death. This is because ELIQUIS is a blood thinner medicine that reduces blood clotting." *Id*. at 26. Despite these prominent and unequivocal warnings, the risk of bleeding from Eliquis is the focus of the Related Actions.

II. Status of the Eliquis Litigation.

The litigation relating to Eliquis is in its early stages. The first of the Related Actions, *Orr v. Bristol-Myers Squibb Company and Pfizer, Inc.*, No. 3:16-cv-00681 (N.D. Tex.), was filed on August 4, 2015.[3] Plaintiffs have filed the vast majority (31) of the 34 Related Actions in the past six months. And Plaintiffs' counsel have promised that they intend to file many more cases in the near future.

Defendants have not yet answered or moved to dismiss the complaints in 22 of the 34 cases. Defendants have filed motions to dismiss in eleven cases, and no district court has decided any of these pending motions.[4] No meaningful discovery has taken place in any case to date.

ARGUMENT

All 34 of the Related Actions, along with future tag-along actions, should be transferred to the Southern District of New York for pretrial coordination. Coordination in a multi-district litigation ("MDL") will serve the convenience of the parties and witnesses and will promote the just and efficient conduct of the Related Actions, because: (a) the Related Actions involve similar products liability claims, all of which arise from the design, testing, regulatory approval,

[3] Plaintiff originally filed *Orr* in Connecticut state court. After Defendants removed to the U.S. District Court for the District of Connecticut, that court transferred the case to the U.S. District Court for the Northern District of Texas on February 24, 2016.

[4] In *Orr*, Defendants filed a motion to dismiss after the case was transferred to the Northern District of Texas. The plaintiff in that case subsequently amended her complaint, and Defendants' second motion to dismiss is now pending. In *Segovia v. Bristol-Myers Squibb Company and Pfizer, Inc.*, No. 1:15-cv-00519 (D. Haw.), after the court granted in part and denied in part Defendants' motion to dismiss the plaintiff's first amended complaint, the plaintiff filed a second amended complaint. A decision on Defendants' motion to dismiss the fraud claims in the second amended complaint is still pending.

manufacture, and marketing of Eliquis, thus presenting numerous common questions of fact; (b) centralization will minimize the risk of duplicative discovery; (c) centralization is vital to prevent inconsistent pretrial rulings on a variety of issues, notably with regard to discovery, the sufficiency of the Eliquis label, federal preemption, and other defenses; and (d) centralization will conserve the resources of the parties, their counsel, and the judiciary. Moreover, this is an opportune time for centralization because all the Related Actions are in their early stages.

The Southern District of New York is the most suitable district for an MDL, because: (a) Defendants' headquarters are located in that district, and relevant witnesses and documents are located there; (b) it is easily accessible for litigants and witnesses; (c) almost half (16) of the related actions have been filed there, while no other federal district has more than four related actions; and (d) it is a district with substantial experience with MDLs, including several of the judges assigned to the Related Actions.

I. Coordination Will Serve the Convenience of the Parties and Witnesses and Will Promote the Just and Efficient Conduct of the Related Actions.

The Related Actions easily satisfy this Panel's standard for coordination. Under 28 U.S.C. § 1407, "[w]hen civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated . . . pretrial proceedings." Transfer is appropriate where this Panel determines "that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." *Id.* In determining whether this standard has been satisfied, this Panel considers whether centralization of related actions "will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel, and the judiciary." *In re Zofran (Ondansetron) Prod. Liab. Litig.*, 138 F. Supp. 3d 1381 (J.P.M.L. 2015). Here, coordination meets all of these factors.

A. The Related Actions Involve Numerous Common Questions of Alleged Fact Regarding the Design, Testing, Regulatory Approval, Manufacture, and Marketing of Eliquis.

The Related actions involve numerous common questions of alleged fact. As discussed above, the complaints in the Related Actions contain common allegations regarding the design, testing, regulatory approval process, manufacturing, and marketing of Eliquis. In products liability actions involving medications, this Panel repeatedly has recognized that when "[i]ssues concerning the development, manufacture, regulatory approval, labeling, and marketing of the drugs . . . are common to all actions[,]" centralization is appropriate. *In re: Benicar (Olmesartan) Prod. Liab. Litig.*, 96 F. Supp. 3d 1381, 1382 (J.P.M.L. 2015); *see also In re Viagra (Sildenafil Citrate) Prod. Liab. Litig.*, No. MDL 2691, 2016 WL 1403304, at *1 (J.P.M.L. 2016) (centralizing products liability action because, *inter alia*, "[i]ssues concerning general causation, the background science, regulatory history, and marketing will be common to all actions."); *In re Plavix Mktg., Sales Pracs. & Prod. Liab. Litig. (No. II)*, 923 F. Supp. 2d 1376, 1379 (J.P.M.L. 2013) (centralizing related actions because "[i]ssues concerning the development, manufacture, regulatory approval, labeling, and marketing of the drug are . . . common to all actions"); *In re Chantix (Varenicline) Prod. Liab. Litig.*, 655 F. Supp. 2d 1346 (J.P.M.L. 2009) ("All 37 actions share factual issues regarding, *inter alia*, Pfizer's design, testing, manufacture, and marketing of Chantix.").

Similarly, the Panel has centralized litigation when various actions allege similar injuries resulting from the use of the same medication, as is the case here with regard to the bleeding-related injuries alleged by Plaintiffs. *See, e.g., In re: Lipitor (Atorvastatin Calcium) Mktg., Sales Pracs. & Prod. Liab. Litig. (No. II)*, 997 F. Supp. 2d 1354, 1356–57 (J.P.M.L. 2014) (finding common factual issues because claims arose from "common allegations that taking Lipitor can cause women to develop type 2 diabetes"); *In re Tylenol (Acetaminophen) Mktg., Sales Pracs. &*

Prod. Liab. Litig., 936 F. Supp. 2d 1379, 1380 (J.P.M.L. 2013) (noting that "the actions all involve allegations that ingesting acetaminophen—specifically, OTC Tylenol in its various forms—can cause liver injury"); *In re: Nexium (Esomeprazole) Prod. Liab. Litig.*, 908 F. Supp. 2d 1362, 1364 (J.P.M.L. 2012) ("[T]he actions share allegations relating to . . . the potential that Nexium may cause bone-related injuries such as osteoporosis, bone deterioration or loss, and broken bones.").

Indeed, the Panel previously centralized separate products liability litigations for other anticoagulants, namely one for Pradaxa and a subsequent one for Xarelto. *See In re: Xarelto (Rivaroxaban) Prod. Liab. Litig.*, 65 F. Supp. 3d 1402, 1405 (J.P.M.L. 2014) ("*In re Xarelto*"); *In re: Pradaxa*, 883 F. Supp. 2d 1355, 1356 (J.P.M.L. 2012). The Pradaxa litigation culminated in 2014, while the Xarelto MDL has been ongoing for nearly two years. *See* Case Management Order No. 2A, *In Re: Xarelto (Rivaroxaban) Prod. Liab. Litig.*, No. 2:14-md-02592-EEF-MBN, ECF No. 4223 (E.D. La. Sept. 21, 2016). In short, because the Related Actions involve one or more common questions of fact and are pending in different districts, a separate MDL for Eliquis and centralization under section 1407 would be appropriate here as well.

B. Centralization Will Eliminate Duplicative Discovery.

Centralization also will eliminate unnecessarily duplicative discovery. As explained above, the Related Actions share common issues of alleged fact and are based upon the same underlying events and decisions regarding the design, testing, regulatory approval, manufacture, and marketing of Eliquis. Consequently, many of the same witnesses and documents will be relevant to all 34 proceedings. Establishing an MDL for all Related Actions will allow for one streamlined discovery process, which will avoid multiple and overlapping discovery requests and document productions, as well as the possibility of both fact and expert witnesses having to be

deposed multiple times and potentially in numerous jurisdictions. As this Panel has recognized in previous products liability cases, "coordination of discovery across all actions, with the use of common and individual discovery tracks, can offer efficiencies to all parties." *In re: Zoloft (Sertraline Hydrochloride) Prod. Liab. Litig.*, 856 F. Supp. 2d 1347, 1348 (J.P.M.L. 2012); *see also In re: MI Windows & Doors, Inc., Prod. Liab. Litig.*, 857 F. Supp. 2d 1374, 1375 (J.P.M.L. 2012) ("Centralized proceedings will provide for the efficient conduct of discovery, particularly with respect to expert discovery, which will be common among the actions.").

C. Centralization Will Prevent Inconsistent Pretrial Rulings, Including Rulings on the Admissibility of Expert Opinions, the Sufficiency of the Eliquis Label and Federal Preemption.

Centralization of the Related Actions also is vital to prevent inconsistent pretrial rulings. Specifically, centralization will harmonize common discovery. *See In re Power Morcellator Prod. Liab. Litig.*, 140 F. Supp. 3d 1351, 1353 (J.P.M.L. 2015); *In re: Bard IVC Filters Prod. Liab. Litig.*, 122 F. Supp. 3d 1375, 1376 (J.P.M.L. 2015). And given that the Related Actions are product liability suits and will require expert testimony, there likely will be *Daubert* motions challenging the admissibility of some experts' opinions. This Panel repeatedly has noted that centralization can ensure consistency as to these key evidentiary decisions. *See In re Viagra*, 2016 WL 1403304, at *1 ("Centralization will . . . prevent inconsistent pretrial rulings on *Daubert* and other issues."); *In re: Benicar*, 96 F. Supp. 3d at 1382 (same).

Further, centralization also can ensure consistency as to pretrial rulings on dispositive issues. For example, in several already-pending motions to dismiss in the Related Actions, Defendants have argued that some or all of Plaintiffs' claims are preempted by the federal Food, Drug, and Cosmetic Act ("FDCA"), because: (1) it was impossible for Defendants to both comply with the FDCA and the state-law claims asserted by Plaintiffs; and (2) allowing some of

Plaintiffs' fraud-based claims to go forward would interfere with FDA's regulatory authority.[5] Other MDL courts recently have ruled on preemption issues in the pharmaceutical context; such rulings promote uniformity and efficient pretrial management of threshold issues that impact large numbers of cases. *See, e.g.*, *In re Incretin-Based Therapies Prod. Liab. Litig.*, 142 F. Supp. 3d 1108 (S.D. Cal. 2015).

Similarly, while Plaintiffs assert their claims under various state laws, centralization also will ensure uniform treatment of certain state-law specific defenses. For example, Defendants have argued that comment k of section 402 of the Restatement (Second) of Torts bars certain Plaintiffs' non-warnings based design defect claims, and an MDL would help ensure that Plaintiffs from each state are subject to consistent rulings. Defendants also have argued that the Eliquis label is adequate as a matter of law because it expressly warns of the risk of severe bleeding and that no reversal agent existed for Eliquis, for which consistent treatment also may be warranted.

D. Centralization Will Conserve the Resources of the Parties, Their Counsel, and the Judiciary.

Finally, centralization will conserve the resources of the parties, their counsel, and the judiciary. Given the similarity of issues, there is no need for at least 13 separate federal courts to engage in substantially similar pretrial proceedings, including extensive motions practice on a variety of issues as set forth above, for each of the Related Actions. *See In re: Tribune Co.*

[5] More specifically, Defendants have raised three main preemption arguments. First, Plaintiffs' non-warnings-based design defect claims are preempted because Defendants could not have independently altered the design of Eliquis while still complying with relevant FDA regulations. *See Mut. Pharm. Co. v. Bartlett*, 133 S. Ct. 2466, 2473 (2013); *PLIVA, Inc. v. Mensing*, 564 U.S. 604 (2011); *Yates v. Ortho-McNeil-Janssen Pharms.*, 808 F.3d 281 (6th Cir. 2015). Second, Plaintiffs' failure-to-warn claims are preempted because Plaintiffs have not identified any "newly acquired information" that would support Defendants independently making any changes to the original, FDA-approved Eliquis label. *See In re Celexa & Lexapro Mktg. & Sales Pracs. Litig.*, 779 F.3d 34, 41 (1st Cir. 2015); 21 C.F.R. § 314.3(b). Third, Plaintiffs' fraud and misrepresentation claims are preempted in part under the Supreme Court's holding in *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001).

Fraudulent Conveyance Litig., 831 F. Supp. 2d 1371, 1372 (J.P.M.L. 2011) (noting that, due to centralization, "prudent counsel likely will combine their forces and apportion their workload in order to streamline the efforts of the parties, their counsel and the judiciary" thus resulting in "a significant savings of time and money for the parties and the courts"). Further, while individual cases sometimes can present unique issues not shared by other cases, transfer and centralization "has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues . . . and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties." *In re Ephedra Prod. Liab. Litig.*, 314 F. Supp. 2d 1373, 1375 (J.P.M.L. 2004) (citing *In re Multi-Piece Rim Prod. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979). Finally, centralization will conserve Defendants' resources and allow them to focus properly on common issues in one forum. For all of these reasons, coordination will serve the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions.

II. The Related Actions Should Be Transferred to the Southern District of New York.

The Southern District of New York is the most appropriate forum for the pretrial coordination of the Related Actions. First, it is geographically convenient for parties, witnesses and documents, as Defendants' headquarters are located there and 16 of the 34 Related Actions have been filed in that district. Additionally, the Southern District of New York is one of the most experienced MDL districts in the federal system, and it includes several judges adept at handling multidistrict litigation who are presiding over one or more of the Related Actions.

A. The Southern District of New York Has a Meaningful Nexus to the Parties, Witnesses and Documents.

First, the Southern District of New York is ideally situated for transfer of the Related Actions because it has a meaningful nexus to the parties, witnesses, and documents. In particular, both BMS's and Pfizer's headquarters are located in that district, and many witnesses and documents relevant to the litigation are located there. As this Panel repeatedly has recognized, the location of one or more defendant's headquarters in a given jurisdiction – and in particular in the Southern District of New York – gives that jurisdiction "a significant connection to the litigation" weighing in favor of transfer there. *In re: Aluminum Warehousing Antitrust Litig.*, 988 F. Supp. 2d 1362, 1363 (J.P.M.L. 2013) (selecting Southern District of New York as transferee forum because defendants were headquartered there); *see also In re Treasury Sec. Auction Antitrust Litig.*, 148 F. Supp. 3d 1360, 1362 (J.P.M.L. 2015) (designating Southern District of New York as transferee district because "[n]early all defendants have their U.S. headquarters in or near New York"); *In re: Kind LLC (All Nat.) Litig.*, 118 F. Supp. 3d 1380, 1381 (J.P.M.L. 2015) (transferring cases to Southern District of New York because defendant was headquartered there and "executives with decision-making authority . . . are located there"); *In re Pfizer Inc. Sec., Derivative & ERISA Litig.*, 374 F. Supp. 2d 1348, 1350 (J.P.M.L. 2005) (litigation had "a strong New York nexus" and should therefore be transferred to the Southern District of New York because, *inter alia*, Pfizer was headquartered there).

In many products liability actions, the location of a defendant's headquarters is particularly relevant because it is often where some or all of the "design, testing, marketing, labeling, and post-market surveillance" of the relevant product takes place. *In re: Bard IVC Filters Prod. Liab. Litig.*, 122 F. Supp. 3d 1375, 1376–77 (J.P.M.L. 2015); *see also In re: Benicar*, 96 F. Supp. 3d at 1383 (transferring products liability action arising from use of high

blood pressure medication to the District of New Jersey because several defendants were headquartered there); *In re Tylenol (Acetaminophen) Mktg., Sales Pracs. & Prod. Liab. Litig.*, 936 F. Supp. 2d 1379, 1380 (J.P.M.L. 2013) (finding that Eastern District of Pennsylvania was appropriate transferee district because the defendant "alleged to be primarily responsible for the design, manufacture, and distribution of OTC Tylenol, is headquartered in that district"); *In re Vytorin/Zetia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 543 F. Supp. 2d 1378, 1380 (J.P.M.L. 2008) (transferring cases to the District of New Jersey because defendants' headquarters, and thus relevant discovery, could be found there).

Finally, there should be little inconvenience for the parties in transferring the Related Actions to the Southern District of New York. Sixteen of the 34 cases have been filed in that district, resulting in no inconvenience for parties already litigating there. In comparison, no other federal district has more than four related actions. For counsel, parties and witnesses traveling from other jurisdictions, New York City is served by three major international airports (John F. Kennedy, LaGuardia, and Newark), and offers plentiful accommodations. Further, this Panel frequently has recognized that the Southern District of New York is a convenient forum for MDLs. *See, e.g., In re: Kind LLC (All Nat.) Litig.*, 118 F. Supp. 3d 1380, (Mem)–1381 (J.P.M.L. 2015) (centralizing actions from California, Illinois, and New York in Southern District of New York because it "is both convenient and accessible for the parties and witnesses"); *In re: Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, 24 F. Supp. 3d 1361, 1363 (J.P.M.L. 2014) (noting that Southern District of New York "is conveniently located for this nationwide litigation"); *In re: Tribune Co. Fraudulent Conveyance Litig.*, 831 F. Supp. 2d 1371, 1372 (J.P.M.L. 2011) (holding that Southern District of New York "is a convenient and

accessible forum for most parties"). Accordingly, the factor of geographical convenience weighs strongly in favor of transfer to the Southern District of New York.

B. The Southern District of New York Has Significant Experience with Multidistrict Litigation, and Has Several Judges Well-Qualified to Oversee the Related Actions.

In addition to its geographical convenience, the Southern District of New York is a suitable forum because of its significant experience in handling MDLs. The district has handled at least 158 previously terminated MDLs,[6] and District Judges in the jurisdiction currently are handling an additional 27 pending MDLs,[7] for a total of at least 185 MDLs – the most of any federal district. Importantly, the district has handled at least two prominent product liability MDLs involving prescription medications, *In re Rezulin Prod. Liab. Litig.* (MDL No. 1348) (centralizing actions from jurisdictions including California, Ohio, Alabama, District of Columbia, Iowa, Louisiana, Massachusetts, New Jersey, Pennsylvania, and South Carolina); and *In re Fosamax Prod. Liab. Litig.* (MDL No. 1789) (centralizing actions from jurisdictions including New York, Florida and Tennessee).

Additionally, the Southern District of New York offers some of the country's most capable MDL jurists. For example, in addition to his service on this Panel, U.S. District Judge

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[6] *See* U.S. Judicial Panel on Multidistrict Litigation, "Multidistrict Litigation Terminated through September 30, 2015," at 6-11 (listing 153 previous MDLs in Southern District of New York as of September 30, 2015), available at: http://www.jpml.uscourts.gov/sites/jpml/files/JPML_Cumulative_Terminated_Litigations-FY-2015.pdf. *See also* U.S. Judicial Panel on Multidistrict Litigation, "MDLs Terminated Between January 1, 2016 and September 15, 2016," at 1-2 (listing five MDLs terminated in the Southern District of New York in 2016), available at http://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated%20MDLs-1-1-2016_to_9-15-2016.pdf.

[7] *See* U.S. Judicial Panel on Multidistrict Litigation, "MDL Statistics Report - Distribution of Pending MDL Dockets by District," at 4-5 (listing 27 MDLs in the Southern District of New York as of September 15, 2016), available at: http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-September-15-2016.pdf.

Lewis A. Kaplan has presided over four MDLs, including the *Rezulin* MDL noted above.[8] Importantly, Judge Kaplan currently is presiding over one of the Related Actions, *Utts v. Bristol-Myers Squibb Company and Pfizer Inc.*, No. 1:16-cv-05668, in which Defendants have filed a motion to dismiss and in which the briefing is set to be completed before any other motion pending in that district (*see* ECF Nos. 15-16). In addition to Judge Kaplan, several other judges in the Southern District of New York who have overseen at least three prior MDLs are presiding over a Related Action, including U.S. District Judges Loretta A. Preska, Jesse M. Furman, and Denise L. Cote.

In short, given all of the aforementioned factors, the Southern District of New York is the best choice for centralization of this multidistrict litigation. The Related Actions should be coordinated in that district for pretrial proceedings.

CONCLUSION

For the reasons set forth above, Bristol-Myers Squibb Company and Pfizer Inc. request that this Panel transfer the Related Actions for coordinated pretrial proceedings to the United States District Court for the Southern District of New York.

[8] Judge Kaplan has also presided over *In re Parmalat Sec. Litig.* (MDL No. 1653) and *In re: Bank of New York Mellon Corp. Foreign Exch. Transactions Litig.* (MDL No. 2335). He is currently presiding over *In re Lehman Bros. Holdings, Inc., Sec. & Employee Ret. Income Sec. Act (ERISA) Litig.* (MDL No. 2017).

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Respectfully submitted,

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