BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: STRYKER ORTHOPAEDICS LFIT V40 FEMORAL HEAD PRODUCT LIABILITY LITIGATION	)	**MDL-_____**

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. §1407

Pursuant to 28 U.S.C. § 1407 and Rule 7.2(a) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiff Robert O'Hare respectfully submits this memorandum of law in support of his motion for transfer of all currently filed federal cases in this litigation, and any subsequent "tag along" cases involving similar claims, to the United States District Court in Massachusetts.

I. BACKGROUND

This motion for transfer currently involves six product liability actions pending in three different jurisdictions across the United States being prosecuted by at least ten different law firms. These six actions assert common factual allegations and involve overlapping claims and legal issues. Based on the ongoing efforts of counsel in obtaining cases as well as information and belief that there are potentially thousands of instances of device failure, Plaintiff expects many additional such actions to be filed in the state and federal courts.

A. The Plaintiffs and The Product.

The plaintiffs in this litigation have filed civil actions arising from injuries sustained from the failure of the now recalled Stryker LFIT V40 Anatomic Femoral Head used in hip replacement devices. These femoral heads have been used in at least six different modular hip

replacement devices manufactured by Stryker. The estimated number of Stryker LFIT V40 femoral heads that have been implanted into patients is in excess of 100,000 units.

The prosthetic hip used in a total hip arthroplasty, more commonly known as total hip replacement, generally consists of several components – a femoral stem, a femoral head or ball, and an acetabular cup with liner. The Stryker LFIT V40 Anatomic Femoral Head represents one component of a hip prosthesis and can be used across many different hip replacement femoral hip stems manufactured and marketed by Stryker. Stryker explains in its marketing materials that the "LFIT Anatomic CoCr Femoral Heads are compatible with Accolade TMZF, Secur-Fit Max, Citation TMZF, Hipstar, and most commercially available Stryker femoral hip stems." So, unlike other consolidated hip litigation currently pending like *In Re Stryker Rejuvenate/ABG II Product Liability Litigation*; MDL 2441 and *In re Pinnacle Products Liability Litigation*; MDL 2244 where essentially one hip stem/system is the focal point of the litigation, that will not be the case here. The Stryker LFIT V40 femoral head was designed and intended to be mated on a variety of femoral hip stems, however the design and geometry of each hip stem may contribute in different degrees to the failure of the Stryker LFIT V40 femoral head. Importantly, cases involving the failure of this device will involve common issues of inquiry as to the mechanism of failure when mated with these different materials. For example, the Accolade TMZF femoral hip stem is manufactured with a proprietary titanium alloy TMZF, that is different from the standard titanium alloy used in the Secur Fit Max femoral hip stem as well as many other femoral stems.

In these cases, the failure of the Stryker LFIT V40 COCR femoral head occurs where the femoral head is seated on the femoral hip stem -- the stem/head junction. During hip replacement surgery, the femoral head is impacted onto the taper, in this case a V40 taper, where it is supposed to lock in place. Many of these cases will involve the failure of that taper lock

which evidence shows causes excessive movement between the femoral head and the stem and ultimately leads to product failure.

On August 29, 2016, Stryker sent an "Urgent Medical Device Recall Notification" letter to surgeons that implanted or reported problems with certain Stryker LFIT V40 femoral heads manufactured prior to 2011. The letter explained that Stryker had received a higher than expected number of complaints involving taper lock failure of the recalled femoral heads. In the letter, Stryker outlined the failure of the Stryker LFIT V40 femoral head and enumerated the reported problems associated with the device:

- Dislocation of the femoral head from the hip stem
- Hip stem fractures
- Excessive metallic corrosion leading to cobalt and/or chromium poisoning
- Insufficient range of motion
- Loss of implant/bone fixation strength
- Excessive wear debris
- Noise

In its letter to surgeons, Stryker did not ask for any product to be returned and did not direct surgeons to notify patients of the potential defective product that had been implanted. Days before Stryker issued its alert in the United States, Health Canada, the Canadian public health agency, issued a recall notification concerning the Stryker LFIT V40. And, five days before Stryker's US health alert, the Australian Government Department of Health published a Hazard Alert regarding the same devices.

Plaintiffs contend that Stryker knew for years that the LFIT V40 femoral heads were defective and dangerous but instead chose to downplay the risk of using such device and failed to properly warn the hundreds of physicians implanting these devices into thousands of patients across the country. Plaintiffs further claim that the LFIT V40 femoral head was defectively

designed, manufactured and marketed by the defendants resulting in serious and significant injury to consumers.

Each of the currently filed cases present common claims arising under product liability laws and each present a common core set of facts, in that each (1) allege exposure to the LFIT V40 Anatomic femoral head; (2) asserts injury due to failure of the product; and (3) alleges the same negligent and/or egregious conduct by the defendants.

B. Defendants

Howmedica Osteonics Corp., (hereinafter "Howmedica"), d/b/a Stryker Orthopaedics, is a New Jersey corporation. Stryker Corp. (hereinafter "Stryker") is a Michigan corporation. Both conduct business throughout the United States including in the Commonwealth of Massachusetts. Stryker and Howmedica d/b/a Stryker Orthopaedics designed, manufactured, promoted, marketed, developed, supplied, labeled, tested, sold and/or distributed the LFIT V40 femoral heads throughout the country including in the Commonwealth of Massachusetts.

C. The Location and Status of Federal Actions

Plaintiffs have filed at least six cases this calendar year in the following jurisdictions:

- July 20, 2016, Donald Belisle filed in the District of Minnesota;
- August 5, 2016, Robert O'Hare filed in the District of Massachusetts
- November 8, 2016, William D'Orlando filed in the District of Massachusetts;
- November 14, 2016, James and Cindy Smith filed in the District of Minnesota;
- December 13, 2016, Russel and Gladys Layne filed in the District of Indiana; and
- January 12, 2017, Joseph Driscoll filed in the District of Massachusetts.

None of these cases have significantly advanced through discovery or trial such that transfer would be unduly prejudicial or inefficient, especially in light of the significant number of potential cases to be filed in the future. The *O'Hare* case presently pending in the United States District Court for the District of Massachusetts before the Hon. Indira Talwani and Magistrate Judge Dein has made some progress. On September 20, 2016, Judge Talwani entered

an agreed scheduling Order which has discovery scheduled to close in November 2017. It is anticipated that the substantial progress made before Judge Talwani and Judge Dein will assist in the efficient administration of this matter should the Panel elect to order consolidation in the District of Massachusetts. Indeed, all three cases presently filed in the District of Massachusetts are pending before Judge Talwani.

II. ARGUMENT

The Stryker V40 actions currently pending in different federal districts meet the requirements for transfer pursuant to 28 U.S.C. § 1407, and therefore, transfer of the above-referenced actions is warranted. Section 1407 authorizes the transfer of two or more civil actions, pending in different districts, for coordinated or consolidated pretrial proceedings, when (1) the "actions involv[e] one or more common questions of fact;" (2) transfer "will be for the convenience of parties and witnesses;" and (3) transfer "will promote the just and efficient conduct of such actions."

"The multidistrict litigation statute, 28 U.S.C. § 1407, was enacted as a means of conserving judicial resources in situations where multiple cases involving common questions of fact were filed in different districts." *Royster v. Food Lion (In re Food Lion)*, 73 F.3d 528, 531-32 (4th Cir. 1996). Two critical goals of Section 1407 are to promote efficiency and consistency. *Illinois Municipal Retirement Fund v. Citigroup, Inc.*, 391 F.3d 844, 852 (7th Cir. 2004). The statute "was [also] meant to 'assure uniform and expeditious treatment in the pretrial procedures in multidistrict litigation'" and "[w]ithout it, 'conflicting pretrial discovery demands for documents and witnesses' might 'disrupt the functions of the Federal courts.'" *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1230 (9th Cir. 2006) (quoting H.R. Rep. No. 1130, 90th Cong., 2d Sess. 1 (1968), reprinted in 1968 U.S.C.C.A.N. 1898, 1899). The alternative to appropriate transfer is "multiplied delay, confusion, conflict, inordinate expense

and inefficiency." *Id.* (*quoting In re Plumbing Fixture Cases*, 298 F. Supp. 484, 495 (J.P.M.L. 1968)).

These actions assert overlapping claims, based on multiple common factual allegations, and will involve several common defenses. Consolidated pretrial treatment under Section 1407 will assist the parties and the courts in avoiding duplicative and conflicting rulings on the common issues in dispute. Granting this motion will also serve the convenience of the parties and witnesses and promote the just and efficient resolution of the litigation.

A. These Cases Involve Common Questions of Fact.

The first element of the Section 1407 transfer analysis is whether there are one or more common questions of fact. See 28 U.S.C. § 1407. The statute, however, does not require a "complete identity or even [a] majority" of common questions of fact to justify transfer. *In re Zyprexa Prods. Liab. Litig.*, 314 F. Supp. 2d 1380, 1381 (J.P.M.L. 2004).

Here there can be little debate that these cases share a common core of operative facts. Plaintiffs all allege that the defective LFIT V40 heads failed while implanted causing similar injury to each plaintiff – revision surgery.[1] It is true that not each plaintiff suffered the exact same symptoms requiring revision surgery as some suffered from metallosis due to corrosion, some suffered constant dislocation of the head from the stem, some others suffered both, while some suffered other symptoms due to the defective nature of the product. The common factual allegations, however, are the same – the defective product caused plaintiffs to undergo painful premature revision surgery of their replaced hip because of the failure of the product.

In addition, each plaintiff alleges that the defendants knew of the defective nature of the product and failed to properly warn doctors and patients and failed to timely remove the product

[1] See, Belisle Compl. At ¶43; D'Orlando Compl. At ¶ 46; O'Hare Compl. At ¶ 23; Smith Compl. At ¶ 21; Layne Compl. At ¶ 25; Driscoll Compl. At ¶ 34.

from distribution when it did know of the dangerousness of its product.[2] All plaintiffs have asserted claims of negligence, breaches of warranty, and strict liability in both failure to warn and defective design.[3]

Clearly, not all fact questions raised by these actions are common (e.g., specific symptoms leading to revision surgery). While that is relevant to the transfer analysis, it is not necessary that the cases allege all of the exact same claims or injuries as a result of the LFIT V40 femoral head. As the Panel has previously observed, "[a]lmost all personal injury litigation involves questions of causation that are plaintiff-specific. Those differences are not an impediment to centralization where common questions of fact predominate." *In re: Xarelto (Rivaroxaban) Prods. Liab. Litig.*, 65 F. Supp. 3d 1402 (J.P.M.L. 2014); *see also In re Cook Med., Inc., IVC Filters Mktg., Sales Practices & Prods. Liab. Litig.*, 53 F. Supp. 3d 1379, 1381 (J.P.M.L. 2014) ("The Panel has rejected the argument that products liability actions must allege identical injuries to warrant centralization."). While all of these actions rely upon similar legal theories of recovery: negligence, strict products liability, failure to warn, and breach of warranty, not every cause of action is asserted in every one of the cases, as applicable state law will necessarily vary. However, the lawsuits all share the same legal theories of product liability. As the Panel has previously stated, "the presence of additional or differing legal theories is not significant when the actions still arise from a common factual core . . . ." *In re Oxycontin Antitrust Litig.*, 542 F. Supp. 2d 1359, 1360 (J.P.M.L. 2008).

The first element of the section 1407 transfer analysis is therefore satisfied as each of the cases share common core questions of fact legal theories of defendants' liability. The actions

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[2] See, Belisle Compl. At ¶¶95 (h), 117-120 ; D'Orlando Compl. At ¶¶ 48(i), (j); O'Hare Compl. At ¶¶ 37(j), 43(h); Smith Compl. At ¶¶ 35(j), 50-52; Layne Compl. At ¶¶ 41-42; Driscoll Compl. At ¶¶ 46 (i)(j).

[3] See, Belisle Compl. At ¶¶ 92-149; D'Orlando Compl. At ¶¶ 45-59; O'Hare Compl. At ¶¶ 34-45; Smith Compl. At ¶¶ 32-72; Layne Compl. At ¶¶ 28-52; Driscoll Compl. At ¶ ¶ 43-57.

thus implicate numerous common issues concerning the development, manufacture, testing, regulatory history, promotion, and labeling of the device.

B. Transfer Will Provide Convenience of the Parties and Prevent Duplicative Discovery.

This factor also favors transfers. Most importantly, there will be substantial duplicative discovery given the many overlapping issues of fact and law if these cases were to proceed separately. It is simply not cost effective nor efficient for multiple cases in various jurisdictions to take the depositions of the same company representatives and other current and former employees. Without consolidation, there could be a significant number of different experts testifying on the very same issues across the country. In addition, there will likely be the same production of corporate documents, and responses to interrogatories in jurisdictions around the country. *See, e.g., In re: Pilot Flying J Fuel Rebate Contract Litigation* (No. II), 11 F. Supp. 3d 1351, 1352 (J.P.M.L. 2014) ("Centralization will avoid repetitive depositions of Pilot's officers and employees and duplicative document discovery regarding the alleged scheme"). Absent transfer, the federal court system will be forced to administer these related actions across multiple venues, all proceeding on potentially different pretrial schedules and subject to different judicial decision-making and local procedural requirements.

Moreover, this Panel has routinely recognized that consolidating litigation in one court benefits both plaintiffs and defendants. For example, pretrial transfer would reduce discovery delays and costs for plaintiffs, and permit plaintiffs' counsel to coordinate their efforts and share the pretrial workload. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F.Supp.2d 1377, 1379 (2001) ("And it is most logical to assume that prudent counsel will combine their forces and apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of cost and a minimum of

inconvenience to all concerned."); *In re Baldwin-United Corp. Litigation*, 581 F. Supp. 739, 741 (J.P.M.L. 1984) (same).

The benefits to the defendants are clear. "Generic" expert depositions will be coordinated, document production will be centralized, and travel to attend court hearings and corporate depositions will be greatly minimized. While plaintiff anticipates additional filings, even the current number of filed cases would benefit from transfer and coordination given the overlapping of factual allegations and legal theories of liability among the complaints. *See In re First Nat'l Collection Bureau, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 11 F. Supp. 3d 1353, 1354 (J.P.M.L. Apr. 8, 2014) ("Although there are relatively few parties and actions at present, efficiencies can be gained from having these actions proceed in a single district," such as "eliminat[ing] duplicative discovery; prevent[ing] inconsistent pretrial rulings . . . and conserv[ing] the resources of the parties, their counsel and the judiciary."); *In re Nutramax Cosamin Mktg. & Sales Practices Litig.*, 988 F. Supp. 2d 1371, 1371–72 & n.2 (J.P.M.L. 2013) (creating multidistrict litigation for three pending actions involving claims of false and misleading marketing of nutritional supplements); *In re: Zurn Pex Plumbing Products Liability Litigation*, 572 F.Supp.2d 1380, 1381 (J.P.M.L. 2008) (granting transfer and consolidation of three cases and six potential tag-alongs because of the "overlapping and, often, nearly identical factual allegations that will likely require duplicative discovery and motion practice. Centralizing these actions under Section 1407 will ensure streamlined resolution of this litigation to the overall benefit of the parties and the judiciary."); *In re Amoxicillin Patent & Antitrust Litig.*, 449 F. Supp. 601, 603 (J.P.M.L. 1978) (granting transfer and consolidation of three cases "[b]ecause of the presence of complex factual questions and the strong likelihood that discovery concerning

these questions will be both complicated and time consuming, we rule that transfer under Section 1407 is appropriate at the present time even though only three actions are presently involved.").

Transfer of these actions would, therefore, serve the convenience of the parties and eliminate duplicative discovery, saving the parties, and the courts, significant time, effort, and money.

C. Transfer Will Promote the Just and Efficient Conduct of These Actions

As this panel has recognized, there are multiple factors that can aid in the analysis of whether the just and efficient conduct of a litigation will be advanced by transfer. Those factors include: (i) avoidance of conflicting rulings in various cases; (ii) prevention of duplication of discovery on common issues; (iii) avoidance of conflicting and duplicative pretrial conferences; (iv) advancing judicial economy; and (v) reducing the burden on the parties by allowing division of workload among several attorneys. *See, e.g., In re: Endangered Species Act Section 4 Deadline Litig.*, 716 F.Supp.2d 1369, 1369 (J.P.M.L. 2010); *In re Bristol Bay, Alaska, Salmon Fishery Antitrust Litigation*, 424 F. Supp. 504, 506 (J.P.M.L. 1976).

Currently, there are three different federal jurisdictions overseeing an LFIT V40 related case. Accordingly, at least three different federal courts will be ruling on many of the same factual and legal issues presented in these six cases. The presence of a number of different counsel, both plaintiff and defendant in jurisdictions across the country creates a clear risk of conflicting rulings potentially creating significant confusion among the parties. However, a single MDL judge coordinating pretrial discovery and ruling on pretrial motions in all of these federal cases at once will help reduce witness inconvenience, the cumulative burden on the courts, and the litigation's overall expense, as well as minimizing this potential for conflicting rulings. *In re: Xarelto (Rivaroxaban) Prods. Liab. Litig.*, 2014 WL 7004048, at *1 ("Issues concerning the development, manufacture, regulatory approval, labeling, and marketing of

Xarelto thus are common to all actions. Centralization will eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary."); *In re Tylenol Mktg., Sales Pracs. and Prods. Liab. Litig.*, 936 F.Supp.2d at 1379 ("Centralization will . . . prevent inconsistent pretrial rulings (on *Daubert* issues and other matters) . . . .").

Transfer will also allow for more efficient and centralized divisions of workload among the numerous attorneys already involved in this litigation, as well as those who join later. Both sides will find efficiencies from being able to divide up the management and conduct of the litigation as part of an MDL process, through MDL leadership and steering committees or similar mechanism, instead of each plaintiffs' firm separately litigating its own cases defended by potentially a number of different defense firms that may be familiar with each particular jurisdiction. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F.Supp.2d at 1379; In re *Tylenol Mktg., Sales Pracs. and Prods. Liab. Litig.*, 936 F.Supp.2d at 1379 ("Centralization will . . . conserve the resources of the parties, their counsel, and the judiciary.").

Transfer to a single district court is most fitting for the just and efficient resolution of these cases.

D. Transfer To The District of Massachusetts Best Serves Convenience and the Just and Efficient Conduct of These Actions.

The factors considered by this Panel in determining the appropriate MDL forum include: (1) location of the parties, witnesses and documents; (2) the accessibility of the proposed transfer district to parties and witnesses; and (3) the respective caseloads of the proposed transferee district courts. *See In re Corn Derivatives Antitrust Litig.* 486 F.Supp 929, 93 1-32 (J.P.M.L. 1980). Analysis of these factors supports transfer of these actions to the District of Massachusetts for consolidated pre-trial proceedings.

Currently, the six pending actions are filed equally between the eastern and western area of the country (two in Minnesota and one in Oregon; three in Massachusetts, one in New York and one in Indiana). Plaintiffs anticipate that further filings will be made in many more jurisdictions including Massachusetts. Wherever cases are filed, however, the District of Massachusetts provides an easily accessible location given its proximity to a major airport just minutes from the courthouse, allowing easy access for litigants, witnesses and counsel. The courthouse is three miles from Logan International Airport, which is one of the country's best connected airports, with direct flights to numerous U.S. cities and over 1,000 daily domestic departures.

Another relevant factor is the transferee court's capacity to handle the cases. The Panel favors districts where the transferred cases will not add to an already overburdened docket. *In re Webvention LLC ('294) Patent Litig.*, 831 F. Supp. 2d 1366, 1367 (J.P.M.L.) (avoiding transfer of districts with "large civil caseloads" and choosing a transferee court with "more favorable" docket conditions). Speed and efficiency are very much important factors. *In re Maxim Integrated Prods.*, 2012 U.S. Dist. LEXIS 79496, at * 8 (J.P.M.L. June 8, 2012) (transferring to court in part because "litigants can expect a prompt claim construction ruling" from that court.).

In 2012, this Panel assigned *In re: Nexium (Esomeprozole) Antitrust Litigation*, MDL No. 2409 to the District of Massachusetts on December 6, 2012, noting "that the district …is …relatively underutilized…. We find that …centralization under Section 1407 in the District of Massachusetts will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation." Since that time, there have been several assigned to the District, however, the bulk of that "newer" docket is currently winding down in settlement. In

fact, the current MDL docket in Massachusetts includes 5,283 cases. Of those cases, at least 4,500 of them are in the settlement phase of litigation with likely resolution by mid to late 2017.

Moreover, the District of Massachusetts has able jurists, to whom this Panel has already entrusted previous MDLs, including: *In re: Fresenius GranuFlo/NaturaLyte Dialysate Products Liability Litigation, MDL No. 2428*, *In re: Zofran (Ondansetron) Products Liability Litigation*, MDL, 2657, *In re: Daily Fantasy Sports Litigation*, MDL, 2677, *In re: Nexium (Esomeprozole) Antitrust Litigation*, MDL No. 2409; *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456; *In re: Neurontin Marketing and Sales Practices Litigation*, MDL 1629; *In re: Celexa and Lexapro Marketing and Sales Practices Litigation*, MDL 2067; *In re: Bank of America Home Affordable Modification Program (HAMP) Contract Litigation*, MDL 2193; *In re: Prudential Insurance Company of America SGLI/VGLI Contract Litigation*, MDL 2208; *In re: Prograf Antitrust*, MDL 2242; *In re: JPMorgan Chase Mortgage Modification Litigation*, MDL 2290; *In re: Body Science LLC Litigation*, MDL 2375; *In re: Citiground, Inc., Capital Accumulation Plan Litigation*, MDL 1354; *In re Zonolite Attic Insulation Products Liability Litigation*, MDL 1376; *In re Xcelera.Com Inc. Securities Litigation*, MDL No. 1400; *In re Pharmatrack, Inc., Privacy Litigation*, MDL No. 1380 and *In re Fidelity Magellan Funds/ Micron Technologies, Inc. Securities Litigation*, MDL No. 1157.

The District of Massachusetts has very experienced judges capable of handling this type of litigation. The availability of an experienced, competent judge weighs heavily in favor of transferring a case to that district. *See In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F.Supp. 935, 936 (J.P.M.L. 1977); In re Sugar Indus. Antitrust Litig. 437 F.Supp. 1204, 1208 (J.P.M.L. 1977); *In re Ampicillin Antitrust Litig.* 315 F.Supp. 317, 319 (J.P.M.L. 1970). The experience and knowledge of a particular judge is one of the factors that is considered in

determining the appropriate transferee forum for a case. *See In re "Factor VIII or IX Concentrate Blood Prod. Liab. Litig.*, 853 F.Supp. 454, 455 (J.P.M.L. 1993); *In re Silicon Gel Breast Implants Prod. Liab. Litig.*, 793 F.Supp. at 1101; *In re Data General Corp. Antitrust Litig.*, 470 F.Supp. 855, 859 (J.P.M.L. 1979).

For example, Judge Joseph L. Tauro is remarkably qualified to preside over this litigation with 40 years experience in the District Court and served as Chief Judge from 1992-1999. During his tenure on the bench, Judge Tauro presided over *In re Volkswagen and Audi Warranty Extension Litigation*, MDL No. 1790, which involved defendants' failure to disclose knowledge of product defects and misrepresentation of product warranty. In this matter, Judge Tauro was able to bring the case to a conclusion through monetary settlement and injunctive relief for the plaintiffs. Judge Patti B. Saris is also eminently qualified to preside over this litigation. Judge Saris has served as a federal Judge in the District of Massachusetts for 22 years, during which time she presided over *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL 1456. In this matter, Judge Saris brought the case to a final conclusion through settlement. Judge Saris also oversaw *In re: Neurontin Marketing and Sales Practices Litigation*, MDL No. 1629 and brought that MDL to its conclusion. Judge Richard Saylor successfully oversaw *In re: New England Compounding Pharmacy, Inc. Products Liability litigation*, MDL 2419, and is currently overseeing *In re: Zofran (Ondansetron) Products Liability Litigation*, MDL 2657 involving over 350 cases on file. Finally, Judge Talwani, who has been assigned each of the cases filed in the District of Massachusetts, is a jurist with extensive experience as a litigator who handled complex civil matters in private practice before being appointed to the Court. Despite her short time on the bench, Plaintiff believes that Judge Talwani is eminently qualified to efficiently manage this litigation.

Many more highly qualified jurists preside over large and complicated cases in the District of Massachusetts and would be more than competent to oversee this litigation.

III. CONCLUSION

Transfer and consolidation for pre-trial proceedings of all pending and subsequently filed Stryker LFIT V40 actions will promote the just and efficient conduct of these actions by allowing national coordination of discovery and other pre-trial efforts, will prevent duplicative and potentially conflicting pre-trial rulings, will reduce the costs of litigation, and allow cases to proceed more efficiently to trial. For all of the foregoing reasons, Movants respectfully request the Panel enter an order that the related actions be consolidated and transferred to the District of Massachusetts.

Respectfully submitted,
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