

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

In re: MIRENA® IUS LEVONORGESTREL-RELATED
PRODUCTS LIABILITY LITIGATION (II)

MDL No. 2767

**INTERESTED PARTY RESPONSE IN SUPPORT OF TRANSFER AND
COORDINATION IN THE WESTERN DISTRICT OF MISSOURI**

As counsel of record in the attached sixty-seven (67) cases (attached as Ex. A), pending in thirteen (13) different federal district courts, including the only three cases in the country to have *Daubert* rulings, these plaintiffs support transfer and coordination before Judge Stephen R. Bough, United States District Judge for the Western District of Missouri. At the suggestion of the Panel nearly three years ago to “informally coordinate” these cases, counsel has engaged in expensive, time-consuming and often frustrating efforts to work with the Defendants to coordinate these cases to achieve the goals embodied in 28 U.S.C. § 1407. Unfortunately, from these plaintiffs’ viewpoints, the efforts to informally coordinate have been anything but convenient, just or efficient.

1. Foreign Service of Process Has Been an Unnecessary, Inefficient and Costly Endeavor.

Despite the fact that Bayer Healthcare Pharmaceuticals, Inc., Bayer Pharma AG, and Bayer OY are jointly represented by the same law firms, the plaintiffs have been forced to engage in the time-consuming and costly endeavor of perfecting service of process pursuant to the Hague Convention for one single reason –the cases have not been officially coordinated in the United States. The resulting inefficiencies to the parties are real. Real costs, real time, and real delays.

When the Panel considered the first Petition (MDL 2559) nearly three years ago, the foreign defendants (Bayer Pharma AG and Bayer OY) were not parties to these cases –indeed,

defense counsel insisted at the time that the foreign entities were not necessary or proper parties to the litigation. At the time, plaintiffs' counsel did not know that the majority of the key documents related to these cases were in the possession of the foreign entities and the pharmacovigilance duties (specifically those related to the "pseudotumor cerebri" adverse event investigations) were handled largely by the foreign entity employees. Despite the fact that the companies are so clearly intertwined so as to operate as one giant global entity, Bayer refused to allow the foreign documents to be used in those cases unless the foreign entities were named as parties to each individual lawsuit. This has necessitated time-consuming, expensive foreign service of process using the Hague Convention procedures (including translation of the complaints) applicable in Germany and Finland.

Bayer has claimed that the foreign laws governing its foreign entities prohibits "waiver of service" *unless* the cases are "officially" coordinated as a Multidistrict Litigation proceeding or a state court consolidated proceeding. Bayer has represented in the past that an "informal" consolidation—even if several cases are consolidated in one court—is not enough to free it from the constraints of the foreign laws. For that reason alone, these cases would benefit from transfer and coordination to a single federal district court.¹

2. Transfer and Coordination Will Prevent Inconsistent Rulings Across the Various Jurisdictions as Envisioned by 28 U.S.C. § 1407.

After reviewing an average of approximately 10,000 pages of briefing and exhibits in each of three individual cases (a total of approximately 30,000 pages), United States District Court

¹ Not only is the Hague Convention process extraordinarily time-consuming and costly on the front end, it is also time-consuming on the back end. It is not uncommon for the foreign central authorities to take six or more months before considering the service of process packet. It is also not uncommon for the packets to be rejected and returned—only to start the process over again. Indeed, on more than one occasion, counsel has served the near-exact packets (with only names and a few case specific facts changed) at the same time, only to have one packet accepted as valid and the other rejected as invalid.

Judge Stephen R. Bough has ruled on the admissibility of Plaintiffs' and Defendants' experts. While the *Daubert* motions are also fully briefed in three other jurisdictions, Judge Bough is the only judge to rule at this point. Briefing these same issues over and over again in various jurisdictions not only risks inconsistent rulings, but is also an incredible expenditure of resources by the parties and the respective district courts. Moreover, inconsistent rulings will inevitably result in appeals that will require the circuit courts to expend their respective resources tackling the same issues. *See* Hon. John G. Heyburn II, A View from the Panel: Part of the Solution, 82 Tul. L. Rev. 2225, 2236 (2008) (The Panel "considers that eliminating duplicate discovery in similar cases, avoiding conflicting judicial rulings, and conserving valuable judicial resources are sound reasons for centralizing pretrial proceedings."); *see also In re Multidistrict Private Civ. Treble Damages Litig.*, 298 F. Supp. 484, 491-92 (J.P.M.L. 1968).

CONCLUSION

For the foregoing reasons, the plaintiffs listed in Ex. A respectfully request transfer and coordination of all cases to the United States District Court for the Western District of Missouri before Judge Stephen R. Bough.

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Respectfully Submitted,

BY: /s/ Lawrence L. Jones II
JONES WARD PLC
Marion E. Taylor Building
312 South Fourth Street, Sixth Floor
Louisville, Kentucky 40202
Telephone: (502) 882-6000
Facsimile: (502) 587-2007
larry@jonesward.com