

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

IN RE: ABBOTT LABORATORIES, ET AL.,
PRETERM INFANT NUTRITION
PRODUCT LIABILITY LITIGATION

MDL No. 3026

**RESPONSE OF INTERESTED PARTY-PLAINTIFFS GEORGE, MAR, STUPER,
TAYLOR, GSCHWEND AND RINEHART FOR TRANSFER AND COORDINATION
OR CONSOLIDATION PURSUANT TO 28 U.S.C. §1407**

I. INTRODUCTION

This response is filed on behalf of Interested Party Plaintiffs Ashia George¹, Ericka Mar², Megan Stuper and Ashton Brown (together “Stuper”)³, Dorothy Taylor and Lonnie Taylor, Jr., (together “Taylor”)⁴ Jessica Gschwend, Justin Hodges, and Emma Hodges (together “Gschwend”),⁵ and Anthony Rinehart, Jessica Rinehart, and Remington Rinehart (together “Rinehart”).⁶ (hereinafter “these plaintiffs”). Plaintiffs agree with Movant Abbott Laboratories that preterm infant nutrition product liability cases filed in federal court should be centralized pursuant to 28 U.S.C. § 1407 because they all share the common allegation that preterm infant formula caused a deadly and tragic disease - Necrotizing Enterocolitis (hereinafter “NEC”). Plaintiffs request this Panel to transfer all preterm infant nutrition product liability cases filed in

¹ *George. v. Abbott Laboratories, Inc.*, Case No. 1:20-cv-02537-EGS (D.D.C.)

² *Mar v. Abbott Laboratories*, Case No. 1:22-cv-00232 (N.D. Ill.)

³ *Stuper v. Abbott Laboratories, et al.*, Case No. 1:22-cv-00204 (N.D. Ill.)

⁴ *Taylor, et al., v. Abbott Laboratories, et al.*, Case No. 1:22-cv-00203 (N.D. Ill.)

⁵ *Gschwend, et. al v. Abbott Laboratories, et. al, 1:22-cv-00197 (N.D. Ill.)*

⁶ *Rinehart, et. al v. Abbott Laboratories, et. al, 1:22-cv-00192 (N.D. Ill.)*

federal courts to the Northern District of Illinois for coordination and consolidation.⁷ These Plaintiffs join the Response of Interested Party Plaintiffs Shannon E. Hall and Erika Shindell (Case MDL No. 3026, Document 40).⁸

These cases all allege that the Defendants' preterm infant nutrition products, which are all made with cow's milk protein, exponentially increase the risk to preterm infants of developing NEC, a deadly intestinal disease that is characterized by inflammation and injury of the gut wall barrier that may advance to necrosis and perforation of the gut. Advanced cases of NEC often lead to surgery and even death. These cases allege that Defendants had knowledge of the exponentially increased risk of NEC associated with their preterm infant nutrition products for decades, that preterm infant nutrition products can be made safer, but that Defendants have failed to do so, and that Defendants have failed to adequately warn consumers of the increased risk of NEC associated with their preterm infant nutrition products.

George v. Abbott Laboratories, Inc., Case No. 1:20-cv-02537-EGS (D.D.C.) is the longest pending case in the Country. *Mar v. Abbott Laboratories*, Case No. 1:22-cv-00232 (N.D. Ill.), *Stuper v. Abbott Laboratories, et al.*, Case No. 1:22-cv-00204 (N.D. Ill.), *Taylor, et al., v. Abbott*

⁷ The Defendants in these cases are Abbott Laboratories and Abbott Laboratories, Inc. (collectively referred to as "Abbott"), and Mead Johnson & Company, LLC and Mead Johnson Nutrition Company (collectively referred to as "Mead Johnson"). Abbott's global corporate headquarters are located in Lake County, Illinois, which is in the Northern District of Illinois. Mead Johnson currently maintains its corporate headquarters in, or at all times relevant to these cases maintained its corporate headquarters in, Cook County, Illinois, which is also located in the Northern District of Illinois.

⁸ The Defendants in these cases are: Abbott Laboratories and Abbott Laboratories, Inc. (collectively referred to as "Abbott"), and Mead Johnson & Company, LLC and Mead Johnson Nutrition Company (collectively referred to as "Mead Johnson"). Abbott's global corporate headquarters are located in Lake County, Illinois, which is in the Northern District of Illinois. Mead Johnson currently maintains its corporate headquarters in, or at all times relevant to these cases maintained its corporate headquarters in, Cook County, Illinois, which is also located in the Northern District of Illinois.

Laboratories, et al., Case No. 1:22-cv-00203 (N.D. Ill.), *Gschwend, et. al v. Abbott Laboratories, et. al*, 1:22-cv-00197 (N.D. Ill.) and *Rinehart, et. al v. Abbott Laboratories, et. al*, 1:22-cv-00192 (N.D. Ill.) are all pending in the Northern District of Illinois, where the Defendants' global corporate headquarters are, or at all times relevant to these cases, were, located.

These plaintiffs agree that the factors warranting the creation of an MDL are present here and agree with Interested Party Plaintiffs Hall and Shindel that the Northern District of Illinois is the most appropriate venue for the MDL. Numerous cases have been filed by plaintiffs against the same Defendants in multiple federal districts throughout the country, alleging the same or similar claims on behalf of preterm infants (and/or the parents of such infants) who developed NEC after ingesting Defendants' preterm infant nutrition products.

As the parties all agree that 28 U.S.C. § 1407 transfer and coordination/consolidation is necessary, the primary issue before the Panel is deciding the most appropriate transferee forum in which to consolidate these cases. For the reasons set forth below, Plaintiffs George, Mar, Stuper, Taylor, Gschwend, and Rinehart submit that the Northern District of Illinois is best situated to oversee the pretrial proceedings of these cases because it is the judicial district within which both Defendants have chosen to maintain their global corporate headquarters, and will thus be the location where many of the relevant witnesses, documents and evidence will be located. In addition, the Northern District of Illinois has a track record of successfully managing complex MDL dockets, as well as MDL-experienced jurists who can effectively oversee the pretrial proceedings in this litigation.

II. FACTUAL BACKGROUND

Plaintiffs in each of the Related Actions allege that the preterm infant nutrition products manufactured and sold by the Defendants are defectively designed because their cow's milk base

exponentially increases the risk of NEC in preterm infants. Plaintiffs in each of the Related Actions also allege that, despite decades of knowledge of the exponentially increased risk of NEC associated with their preterm infant nutrition products, Defendants have failed to warn consumers or physicians about that increased risk.

III. ARGUMENT

Because these Plaintiffs agree with Interested Party Plaintiffs Hall and Shindel (and Movant Abbott) that consolidation and coordination is appropriate, Plaintiffs will not burden the Panel with a repetition of the arguments and factors supporting same. Rather, these Plaintiffs turn their attention to what is mostly at issue, the appropriate forum and presiding judge for this MDL.

A. The Most Appropriate Transferee Forum is the Northern District of Illinois.

Plaintiffs submit that the Northern District of Illinois is the most appropriate transfer venue because it has the strongest nexus to Defendants and to the conduct out of which the claims in this litigation arise.⁹ Abbott's global corporate headquarters are located in Lake County, Illinois, which is in the Northern District of Illinois. According to its website, Mead Johnson's global corporate headquarters are located in Cook County, Illinois, which is also in the Northern District of Illinois. Accordingly, many of the key witnesses and documents will be located in that district. Moreover, Plaintiffs Mar, Stuper, Taylor, Gschwend and Rinehart are already pending in the Northern District of Illinois.

The Panel has found that the district court with the strongest nexus to the litigation is often selected as the transferee court. *See, e.g., In re: Reciprocal of Am. (ROA) Sales Practices Litig.*,

⁹ Plaintiffs Stuper, Taylor, Gschwend and Rinehart are seeking remand to State Court, where their cases were originally filed and subsequently removed to federal court by Movant. However, in the event that remand is not successful, these plaintiffs support the consolidation and coordination into an MDL in the Northern District of Illinois.

281 F. Supp. 2d 1356, 1358 (J.P.M.L. 2003). Not surprisingly in light of the location of the Defendants' headquarters, the Northern District of Illinois also has the most cases filed – more than double the number of cases than any other district court.

It is likely that employees and executives who have knowledge regarding the design, testing, and sales of the Defendants' preterm infant nutrition products are located in the Northern District of Illinois. Likewise, a significant portion of the events and decision-making relating to the marketing and concealment of the health dangers likely occurred at Defendants' headquarters in Lake County, Illinois and Cook County, Illinois. Accordingly, it is likely that the Northern District of Illinois has more relevant defense witnesses and relevant documents than any other District. *See, e.g., In re All-Clad Metalcrafters, LLC, Cookware Mktg. & Sales Practices Litig.*, MDL No. 2988, 2021 WL 1221526, *2 (J.P.M.L. Mar. 31, 2021) (“The Western District of Pennsylvania is where All-Clad has been based since 1971. Documents and witnesses relevant to plaintiffs' claims likely will be found there.”); *In re General Motors Onstar Contract Litig.*, 502 F. Supp. 2d 1357 (J.P.M.L. 2007) (transferring action to the Eastern District of Michigan instead of another District because “relevant documents and witnesses are likely located in or near defendants' facilities in Michigan”).

These factors strongly suggest that the Northern District of Illinois has the most meaningful nexus to the litigation. *See In re GAF Elk Cross Timbers Decking Mktg., Sales Practices & Prods. Liab. Litig.*, 65 F. Supp. 3d 1407, 1408 (J.P.M.L. 2014) (transferring MDL to the district in which the common defendant was headquartered); *In re Bluetooth Headset Prods. Liab. Litig.*, 475 F. Supp. 2d 1403, 1404 (J.P.M.L. 2007) (same); *In re RC2 Corp. Toy Lead Paint Prods. Liab. Litig.*, 528 F. Supp. 2d 1374, 1375 (J.P.M.L. 2007) (same).

The Northern District of Illinois is plainly a convenient and readily accessible location for this litigation. Chicago is one of the Nation's largest cities, located near the Nation's center, and it has two major airports, convenient transportation, and multiple options for accommodations. Chicago is a hub to at least four major airlines (American, United, Southwest and Sprit), and offers dozens of daily non-stop flights from all across the United States. Given that these cases are likely to involve Plaintiffs, witnesses, and attorneys from dozens of districts across the country, Chicago's central location and accessibility make it an ideal location for the proceedings.

The location is ideal for Defendants too. As noted, both Defendants identify their headquarters as being with the Northern District of Illinois. Moreover, lead counsel for Abbott, Stephen D'Amore, maintains his offices in Chicago. Similarly, lead counsel for Mead Johnson, Anthony Anscombe, maintains his principal offices in Chicago.

The Panel has recognized that "[the Northern District of Illinois] provides a convenient and accessible forum for actions filed throughout the country regarding products sold nationwide." *In re AndroGel Prods. Liab. Litig.*, 24 F. Supp. 3d 1378, 1380 (J.P.M.L. 2014). Further, "the Northern District of Illinois has the resources and the capacity to efficiently handle this nationwide litigation." *In re Seresto Flea and Tick Collar Marketing, Sales Practices Prods. Liab. Litig.*, 2021 WL 3854901, *2 (J.P.M.L. Aug. 11, 2021).

Another important factor in favor of the Northern District of Illinois is its diverse and representative population. To the extent the MDL Court conducts bellwether trials, the Northern District of Illinois will provide for a large and diverse jury pool, adequately representative of the country and of the particular plaintiffs likely to file claims. The undersigned counsel represents many clients whose babies either died or were seriously and permanently harmed after consuming the subject products. A large percentage of these clients are Black and/or Hispanic. Studies have

shown “that non-Hispanic Black and Hispanic infants are significantly more likely to be diagnosed with NEC . . . [and] have higher odds of death after NEC compared to non-Hispanic White infants.” Jammeh ML, *et al.*, *Racial/ethnic differences in necrotizing enterocolitis incidence and outcomes in premature very low birth weight infants*. J Perinatol. 2018. See also, Cuna A, et al. *Racial Disparities in Necrotizing Enterocolitis*. Front Pediatr. 2021;9:633088. Published 2021 Feb 18. It has been theorized that the source of this disparity is the lower lactation levels in minority communities. Goldstein GP, *et al.*, *Racial/ethnic disparities and human milk use in necrotizing enterocolitis*. Pediatr Res. 2020 (Aug). Given the disproportionate impact that these products have on Black and Hispanic populations, a representative jury pool is appropriate for any bellwether trials.

B. Judge Lefkow and Judge Coleman Are Ideal Candidates to Preside Over the MDL.

Further, as forecast by Abbott in its Motion and Memorandum, this MDL is likely to grow quite large, and is certain to involve complex issues of law. As such, the Panel should transfer the cases to a judge with prior MDL experience, and with significant judicial experience in general. Of the ten (10) preterm infant nutrition product cases currently pending in the Northern District of Illinois, the first filed case is assigned to the Honorable Joan Humphrey Lefkow. Judge Lefkow is an experienced jurist, having served in the Northern District of Illinois as a Magistrate Judge from 1982-1997, as a Bankruptcy Judge from 1997-2000, as a District Judge from 2000-2012, and as a Senior Judge from 2012 through the present. Judge Lefkow also has MDL experience, having previously presided over MDL 2371, *In re Unified Messaging Solutions LLC Patent Litigation*. Judge Lefkow is imminently qualified to preside over these cases

Like Judge Lefkow, the Honorable Sharon Johnson Coleman is also an experienced jurist, having served as a Judge of the Circuit Court of Cook County, Illinois from 1996 to 2008, as a

Judge on the Illinois Appellate Court from 2008 to 2010, and as a District Judge from 2010 through the present. Judge Coleman also has MDL experience, presiding over MDL 2967, *In re: Clearview AI, Inc., Consumer Privacy Litigation*. Judge Coleman is currently presiding over one of the Related Cases filed in the Northern District of Illinois¹⁰ and would be an excellent judge to preside over the preterm infant nutrition product liability litigation MDL.

C. As an Alternative, the District of the District of Columbia Would Be an Appropriate Transferee Forum, before the Honorable Amit P. Mehta.

Interested Party Plaintiff George also supports the transfer to the Northern District of Illinois. Although the *George* case is pending in the District of the District of Columbia, Plaintiff George similarly believes that consolidation within a district where the Defendants have the greatest nexus is the most sensible, efficient, and economic option. However, in the event that the Northern District of Illinois is not selected by the Panel, Plaintiff George shows that the District of the District of Columbia would be an appropriate forum for this litigation. The District of the District of Columbia has the longest-pending cow's milk-based preterm infant nutrition product case on file in any District Court.¹¹ At the time of filing this Motion, there are only five (5) MDLs pending in the District of the District of Columbia spread among the fifteen (15) District Judges and eight (8) Senior Judges.

The District of the District of Columbia is also a convenient forum, as it is equipped with three (3) major airports (Dulles International Airport, Ronald Reagan Washington National Airport, and Baltimore/Washington International Thurgood Marshall Airport) providing non-stop flights to/from virtually anywhere in the country, the city's METRO system provides convenient

¹⁰ *Taylor v. Abbott Laboratories, et al.*, C.A. No. 1:22-cv-00203 (ND Ill.)

¹¹ *George v. Abbott Laboratories, Inc.*, C.A. No. 20-CV-02537-APM (D. D.C.) was removed to the District Court for the District of Columbia on September 10, 2020.

transportation in and around the city, and there are scores of hotels in close proximity the courthouse. Additionally, the District of Columbia would provide a diverse jury pool representative of the country.

Plaintiff George further submits that the Honorable Amit P. Mehta, the judge presiding over the *George* case, would be an excellent choice if the Panel determines that consolidation should occur in the District of Columbia. Although Judge Mehta has not yet presided over an MDL, he has presided over many complex actions, including a nationally significant pharmaceutical case. *Merck and Co., Inc., et al. v. United States Dept. of Health and Human Services, et al.*, C.A. No.: 1:19-cv-01738 (D.D.C. July 8, 2019) (ruling in favor of the drug companies, because the department of Health and Human Services exceeded its Congressional authority to require the drug manufacturers to disclose drug prices in advertising.) While MDL experience has been a persuasive factor in selecting an MDL court, providing more qualified and capable jurists the opportunity to gain valuable MDL experience is likewise beneficial. *See, e.g.*, Transfer Order entered in *In re Atrium Medical Corp. C-Qur Mesh Prods. Liab. Litig.*, MDL 2753 (J.P.M.L.2016) (“[W]e are selecting a jurist with the willingness and ability to handle this litigation, but who has not yet had the opportunity to preside over an MDL.”).

IV. CONCLUSION

For these reasons, Interested Party Plaintiffs George, Mar, Stuper, Taylor, Gschwend, and Rinehart respectfully request that the Panel grant the motion for transfer and coordination or consolidation under 28 U.S.C. § 1407, and transfer these Related Actions to the Northern District of Illinois before the Honorable Sharon Johnson Coleman or the Honorable Joan Humphrey Lefkow. Alternatively, the plaintiffs respectfully request that these related actions be transferred to the District of the District of Columbia before the Honorable Amit P. Mehta.

Dated: February 9, 2022

Respectfully submitted,

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