

**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 KLAIRE OSMUN AND JOSHUA
OSMUN TO MOTION TO TRANSFER RELATED CASES FOR CONSOLIDATED
PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

Pursuant to 28 U.S.C. § 1407 and Rule 6.2(e) of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, Interested Party Plaintiffs, Klaire Osmun and Joshua Osmun (hereinafter “Plaintiffs”)¹, hereby file this response to support and join in the Response of Interested Party Plaintiff-Respondents Laurie Lynn McCubbin Perkins and Michael Perkins (MDL No. 3026, Document 111) (hereinafter “Perkins Plaintiffs”)², requesting transfer and coordination/consolidation of all federal Preterm Infant Nutrition cases to the United States District Court for the Eastern District of Louisiana. In the alternative, Plaintiffs also support and join in the Response of Interested Party Plaintiff-Respondents Kimberlee Bookhart³ and Brianna Lincoln⁴ (MDL No. 3026, Document 45), requesting transfer and coordination/consolidation of all federal Preterm Infant Nutrition cases to the United States District Court for the Western District of Missouri.

The parties all agree that 28 U.S.C. § 1407 transfer and coordination/consolidation is warranted – the primary issue before the Panel is deciding the appropriate transferee forum and

¹ *Osmun, et al. v. Abbott Laboratories, Inc., et al.*, 3:22-cv-5018 (W.D. Mo.)

² *Perkins, et al. v. Abbott Laboratories, Inc., et al.*, 2:22-cv-00658 (E.D. La.)

³ *Bookhart, et al. v. Abbott Laboratories, Inc., et al.*, 4:22-cv-00032 (W.D. Mo)

⁴ *Lincoln, et al. v. Abbott Laboratories, Inc., et al.*, 4:22-cv-00033 (W.D. Mo)

presiding judge for this MDL. For the reasons set forth herein, Plaintiffs submit that the Eastern District of Louisiana is best situated to oversee the pretrial proceedings of these cases, before the Honorable Ivan Lemelle, or in the alternative, the Western District of Missouri before the Honorable Stephen R. Bough. Both judicial districts are conveniently located and have MDL-experienced jurists with the time and resources to allow for the speedy and efficient resolution of these cases.

I. INTRODUCTION

Plaintiffs filed an action against Defendants Abbott Laboratories, Abbott Laboratories, Inc., Mead Johnson & Company, LLC, and Mead Johnson Nutrition Company (collectively “Defendants”) in the Western District of Missouri on March 17, 2022, individually and as parents and general guardians of N.O., a minor. Plaintiffs’ preterm infant child, N.O., developed Necrotizing Enterocolitis (“NEC”), and sustained injuries after ingesting Enfamil and Similac cow’s milk-based products that were designed, manufactured, labeled, marketed and sold by Defendants. Like Plaintiffs, each of the federal Preterm Infant Nutrition actions involve allegations that the Defendants’⁵ cow’s milk-based preterm infant nutrition products exponentially increase the risk to preterm infants of developing NEC.

II. ARGUMENT

A. Transfer, coordination, and consolidation of all actions is appropriate under 28 U.S.C. § 1407.

Plaintiffs agree with Movant-Defendants Abbott Laboratories and Abbott Laboratories, Inc. (and interested parties Bookhart and Lincoln and the Perkins Plaintiffs, as well as other interested parties) that transfer, coordination and consolidation of all federal Preterm Infant

⁵ The Defendants in these cases are: Abbott Laboratories and Abbott Laboratories, Inc. (collectively “Abbott”), and Mead Johnson & Company, LLC and Mead Johnson Nutrition Company (collectively “Mead Johnson”).

Nutrition actions for pretrial proceedings pursuant to 28 U.S.C. § 1407 is warranted in this litigation. At the discretion of the Panel, civil actions pending in different federal districts may be transferred to a centralized district. Under 28 U.S.C. § 1407(a), transfer is appropriate if the Panel determines that consolidation would serve “the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions.”

Centralizing the pretrial proceedings will ensure the just and efficient prosecution of the claims as well as the convenience of the parties and witnesses. *See* 28 U.S.C. § 1407. These actions, as well as the several hundred likely future filings contain the same basic facts, the same theories of liability (including negligence and strict liability with respect to the defective design and inadequate labeling of Defendants’ cow’s milk-based preterm infant products), and the same Defendants. Consolidation in one federal district would conserve the resources of the judiciary, avoid duplication of discovery, and prevent inconsistent or repetitive rulings. Expert depositions will only be required to be taken once. Document production will be centralized. And travel will be minimized as Defendants would only have to appear in one location rather than multiple districts around the country. Thus, centralization in one district, with coordinated discovery, is appropriate because it will minimize duplication of effort and burden on all parties. *See In re “Factor VIII or IX Concentrate Blood Prods.” Prod. Liab. Litig.*, 853 F. Supp. 454, 455 (J.P.M.L. 1993).

B. The Most Appropriate Forum for Transfer and Consolidation.

In determining an appropriate forum for transfer, the Panel evaluates a number of factors including: the site of the occurrence of common facts; where the cost and inconvenience will be minimized; and the experience, skill and caseloads of the available judges. *Manual for Complex Litigation (Fourth)*, § 20.131, pp. 220-221. In light of these considerations, Plaintiffs contend

that transfer is most appropriate to the Eastern District of Louisiana, or alternatively, would be appropriate to the Western District of Missouri.

1. The Eastern District of Louisiana, or in the Alternative, the Western District of Missouri, are the Most Appropriate Forums.

The primary purpose of 28 U.S.C. § 1407 is to ensure the “just, speedy and inexpensive determination of every action” in the interest of avoiding piecemeal litigation. *In re National Student Marketing Litig.*, 368 F. Supp. 1311, 1316 (J.P.M.L. 1972); *see also In re Food Lion, Inc. Far Labor Stds. Act Effective Scheduling Litig.*, 73 F.3d 528, 532 (4th Cir. 1996). A key factor when considering transfers under Section 1407 is the need for geographic centralization to account for the coast-to-coast geographic dispersion of witnesses, parties, evidence, and counsel. Here, the plaintiffs and counsel involved in this multidistrict proceeding are dispersed throughout the country, including actions that are currently pending in California, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Ohio, Tennessee, and Texas. Because of this wide dispersal of the parties, counsel, and evidence, the Eastern District of Louisiana is an appropriate venue for this MDL as New Orleans is among the most convenient locations to visit in the country and is one of the more centrally located districts that have been proffered thus far. It is a destination city with ample accommodations and an international airport servicing multiple airlines – making it convenient to all parties in the litigation. Similarly, the Western District of Missouri’s courthouse is located in Kansas City, which is a geographically convenient location for all parties in the dead center of the country. *See In re T-Mobile Customer Data Security Breach Litig.*, MDL No. 3019, 2021 WL 5872977 (Dec. 3, 2021) (holding “[t]he Western District of Missouri presents a geographically central and accessible venue for this nationwide litigation.”).

In addition to the convenience of the parties, the Panel should consider whether a potential

transferee forum has the necessary time, resources, and expertise to handle consolidated litigation. *See In re Fed. Nat. Mortgage Ass'n Sec. Derivative & "ERISA" Litig.*, 370 F. Supp. 2d 1359, 1380 (J.P.M.L. 2005) (concluding that the transferee forum "possesses the necessary resources and expertise to be able to devote the time and effort to pretrial matters that this docket is likely to require"). The experience of the proposed transferee judge is often a determining factor. *See, e.g., In re Mirena IUD Products Liab. Litig.*, 938 F. Supp. 2d 1355, 1358 (J.P.M.L. 2013) (transferring to "an experienced transferee judge who we are confident will steer this litigation on a prudent course"); *In re African-American Slave Descendants Litig.*, 231 F. Supp. 2d 1357, 1358 (J.P.M.L. 2002) (transferee forum proper where "the judge assigned to the action pending in this district is a seasoned jurist who can steer this litigation on a steady and expeditious course").

The Honorable Ivan Lemelle, Senior Judge of the Eastern District of Louisiana, is a highly qualified judge and is well suited to preside over this litigation. He has served as Judge of the Eastern District from 1998 to present. He assumed senior status on June 29, 2015 and has presided over several high-profile trials. He is experienced in handling an MDL having previously presided over the *In Re High Sulfur Content Gasoline Products Liability Litigation*, MDL No. 1632. Moreover, he is not currently presiding over an MDL litigation, and therefore has the necessary time, resources, and expertise to handle this litigation.

Alternatively, Plaintiffs submit that all Preterm Infant Nutrition cases should be transferred to the Western District of Missouri, before Honorable Judge Stephen R. Bough, who has the requisite qualifications, experience, and caseload capacity for efficiently managing this litigation. Judge Bough is not only experienced at handling complex MDL product liability cases but has a caseload capacity for efficiently handling this litigation. He is currently presiding over a small MDL case load, MDL 2936, *In re: Smitty's/CAM2 303 Tractor Hydraulic Fluid Marketing, Sales*

Practices and Products Liability Litigation.

Given that both Judge Lemelle of the Eastern District of Louisiana, and Judge Bough of the Western District of Missouri have extensive experience and qualifications in managing MDLs, as well as the capacity to take on the Preterm Infant Formula MDL cases, either would lend to the speedy and efficient resolutions of these claims.

III. CONCLUSION

For these reasons stated herein, Interested Party Plaintiffs Klaire Osmun and Joshua Osmun 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 Eastern District of Louisiana before the Honorable Ivan Lemelle, or alternatively, to the Western District of Missouri before the Honorable Stephen R. Bough.

Dated: March 22, 2022

Respectfully submitted,

/s/ David P. Matthews

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PROOF OF SERVICE

In compliance with Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation. I hereby certify that on March 22, 2022, the foregoing RESPONSE OF INTERESTED PARTY PLAINTIFFS KLAIRE OSMUN AND JOSHUA OSMUN TO MOTION TO TRANSFER RELATED CASES FOR CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407 and PROOF OF SERVICE were filed with the Clerk of the Court for the Judicial Panel on Multidistrict Litigation using the CM/ECF system, which will provide electronic service on all parties electronically via ECF.

Respectfully submitted this 22nd day of March, 2022.

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