



June 12, 2019

VIA ECF

Hon. Claire C. Cecchi, U.S.D.J.
United States District Court for the District of New Jersey
Martin Luther King, Jr. Bldg. & U.S. Courthouse
Courtroom MLK 5B
50 Walnut Street
Newark, New Jersey 07101

Re: Proton-Pump Inhibitor Products Liability Litigation (No. II)
2:17-md-2789 (CCC)(MF) (MDL 2789)

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Dear Judge Cecchi:

We write to bring to your attention that there are currently 13 cases in this MDL proceeding that do not allege any kidney injuries, the injuries for which this MDL was established. Rather, they allege unspecified “gastric” or “stomach” cancer. (A list of those 13 cases is attached as Exhibit 1, hereinafter, “gastric cancer cases”). These 13 cases (all but one of which were filed by out-of-state plaintiffs) were filed in this district and the Clerk of this Court assigned them to Your Honor and transferred them to this MDL proceeding, we respectfully submit improperly, in light of the Panel’s rulings in this MDL.

Based on the Panel’s initial ruling limiting this MDL to kidney injury cases, and subsequent Panel precedent in this MDL proceeding -- including a recent decision declining to transfer to this MDL a gastric cancer (specifically, esophageal junction adenocarcinoma) case filed in another jurisdiction -- Defendants respectfully request that: (i) the previously assigned gastric cancer cases be removed from the MDL proceeding; and (ii) all future cases alleging gastric cancer that are filed in this district not be assigned to this MDL proceeding..

In its order establishing this MDL, the Panel premised its decision to centralize PPI cases on the ground that they “share factual issues arising from allegations that taking one or more PPIs can result in *kidney injury*, and that defendants failed to adequately warn of the negative effects and risks of PPI use.” *In re Proton Pump Inhibitor Prods. Liab. Litig. (II)*, 261 F. Supp. 3d 1351, 1353 (J.P.M.L. 2017) (emphasis added). In addition, in creating this MDL after denying a prior motion to do so, the Panel observed that the cases subject to the (renewed) MDL petition involved a narrow category of kidney-related injuries. *See id.* at 1354 n.6 (noting that “[t]he variety of alleged kidney injuries arguably has diminished, as

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most plaintiffs alleged that they suffer from CKD”); *see also id.* at 1353 (the actions allege that “[plaintiffs] or their decedents suffered **kidney injury (e.g., chronic kidney disease (CKD), acute interstitial nephritis, end stage renal disease, or kidney failure).**”) (emphasis added). Thus, cases alleging injuries of a different organ and a cancer, rather than kidney-related diseases, are *a fortiori* beyond the scope of this MDL proceeding. Indeed, as set forth below, the Panel has already reached the same conclusion in connection with this MDL.

The gastric cancer cases involve different allegations, different injuries and an alleged failure to warn of injuries that differ from the cases previously transferred by the Panel to the MDL, and for which this MDL was created. They will thus involve different discovery, different portions of the labeling, different science and different expert testimony as well as different *Daubert* motion practice, from the other actions transferred to this MDL. Both plaintiffs and defendants have already presented “Science Day” to the Court relating to alleged kidney injuries.¹ Including gastric cancer cases will distract both the parties’ and this MDL Court’s resources from the “just and efficient conduct” of the pending kidney claims. 28 U.S.C. § 1407.

Late last year, the Panel was informed of a gastric cancer case (*Baudin*) filed in the Middle District of Louisiana. In response, the Panel ordered the parties to make a submission regarding whether such a case should be included within the MDL. Specifically, the Panel stated:

In *Baudin*, plaintiff alleges that his use of Nexium caused him to develop **gastric cancer**. The initially-centralized cases in this docket involved allegations of kidney injury from ingestion of proton-pump inhibitors such as Nexium. ACCORDINGLY, the parties are directed to file with the Panel, either separately or jointly, a short statement as to whether and why they believe *Baudin* falls or does not fall within the parameters of this MDL.

¹ The stipulated CMO for Science Day stated that “topics to be discussed . . . may include: a background on the diseases treated using PPIs; a background on acid suppressors, including PPIs, including how they work and their approved indications; the injuries alleged in this litigation; and **medical literature related to PPIs and the alleged kidney injuries**” (emphasis added). Both plaintiffs and defendants engaged a license nephrologist (kidney specialist) to present on these topics.

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In re Proton Pump Inhibitor Prods. Liab. Litig. (II), Doc. No. 216 (J.P.M.L. Dec. 10, 2018) (emphasis added).

Thereafter, the parties in *Baudin* -- including plaintiff's counsel who has two stomach cancer only cases pending in this MDL that are included on the attached listing of cases -- made a **joint, agreed submission** asserting that the action should not be transferred because it involves allegations of stomach cancer, and not a kidney injury, and thus does not fall within the parameters of MDL No. 2789 or share a common factual core with the other transferred actions. (A copy of the parties' joint submission to the Panel in *Baudin* is attached as Exhibit 2).

On December 18, 2018, "[t]he Clerk of the Panel [] determined the listed case(s) [*Baudin*] is not appropriate for inclusion in this MDL." *In re Proton Pump Inhibitor Prods. Liab. Litig. (II)*, Doc. No. 223 (J.P.M.L. Dec. 18, 2018) (emphasis added).

Accordingly, based on Panel precedent in connection with this MDL proceeding: (i) the current gastric cancer cases should be removed from this MDL proceeding (and no longer subject to the MDL CMOs, including, but not limited to, requiring the filing of a long-form complaint to the extent not already filed); and (ii) all future cases of gastric cancer of any type filed in this district should not be assigned to this MDL proceeding.²

Respectfully submitted,
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² While the current and any future cases filed in this district would be deemed related to each other and thus assigned to Your Honor as the Judge presiding over the case with the lowest cause number, Defendants reserve the right to seek Section 1404 and/or dismissal based on a lack of personal jurisdiction as to out-of-state plaintiffs, and dismissal on any additional grounds in the cases.

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Exhibit 1 – List of Gastric Cancer Only Cases in MDL 2789

	Case Name	Case No.	Date of Filing	Plaintiff Firm	Injury Alleged	City/State of Residence	Defendants Named
1	Karen Akers	2:19-cv-03913	1/31/2019	Anapol Weiss	Gastric cancer	Denham Springs, LA	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co. Inc. d/b/a Merck, Sharp & Dohme Corporation
2	Shannon Boule, Individually and as Executor of the Estate of Edward R. Boule, Deceased	2:19-cv-10180	4/16/2019	Dalimonte Rueb, LLP	Gastric cancer	Pleasanton, CA	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co. Inc. d/b/a Merck, Sharp & Dohme Corporation
3	Marlene Y. Greene	2:19-cv-12647	5/17/2019	Aylstock, Witkin, Kreis & Overholtz, PLLC	Stomach cancer	[city unavailable in the Complaint], Maryland	Abbott Laboratories; Takeda Pharmaceuticals USA, Inc; Takeda Pharmaceuticals America, Inc.; Takeda Development Center Americas, Inc. f/k/a Takeda Global Research & Development Center, Inc.; and Takeda Pharmaceutical Company Limited

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4	Hudson, Daniel and Stephanie Hudson	2:19-cv-11900	4/30/2019	Restaino Law, LLC Dalimonte Rueb, LLP	Gastric cancer	Box Springs, GA	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co. Inc. d/b/a Merck, Sharp & Dohme Corporation
5	Robert Morello and Jennifer Morello	2:19-cv-11967	5/1/2019	Douglas & London, P.C.	Stomach cancer	Colts Neck, NJ	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Pfizer, Inc.; The Procter & Gamble Company; The Procter & Gamble Manufacturing Company
6	Pamela Pierce	2:18-cv-12899	8/17/2018	Douglas & London, P.C.	Stomach cancer	[city unavailable in the Complaint], Texas	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co, Inc.
7	Vickie Poole and Tommy Poole	2:18-cv-09264	5/15/2018	Douglas & London, P.C.	Stomach cancer	[city unavailable in the Complaint], Kentucky	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co, Inc.; Pfizer Inc.
8	Hilda Rankins	2:19-cv-01133	1/25/2019	Anapol Weiss	Gastric cancer	Jackson, MS	Abbott Laboratories; Takeda; Pharmaceutical Company Limited; Takeda Development

Exhibit 1 – List of Gastric Cancer Only Cases in MDL 2789

							Center Americas, Inc.; Takeda Pharmaceuticals America Inc.; Takeda Pharmaceuticals USA, Inc.; AstraZeneca LP; AstraZeneca Pharmaceutics LP; and Merck & Co. Inc., d/b/a Merck, Sharp & Dohme Corporation
9	Range, Rosemary and Frank (deceased)	2:19-cv-00569	1/16/2019	Restaino Law, LLC; Dalimonte Rueb, LLP	Stage IV Gastric Cancer; Death	Fairfield, AL	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co. Inc d/b/a Merck, Sharp & Dohme Corporation
10	Wayne Sistrunk	2:19—cv-00645	1/17/2019	Aylstock, Witkin, Kreis & Overholtz, PLLC	Stomach cancer	[city unavailable in the Complaint], Louisiana	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co. Inc., d/b/a Merck, Sharp & Dohme Corporation; The Procter & Gamble Company; The Procter & Gamble Manufacturing Company

Exhibit 1 – List of Gastric Cancer Only Cases in MDL 2789

11	Frantz Stval	2:19-cv-11970	5/1/2019	Douglas & London, P.C.	Stomach cancer	Bridgeport, CT	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co. Inc., d/b/a Merck, Sharp & Dohme Corporation; Pfizer, Inc.
12	Joseph E. Ward, as Personal Representative of the Estate of Kathleen A. Ward, Deceased, and Joseph E. Ward, In His Own Right	2:19-cv-01161	1/28/2019	Anapol Weiss	Gastric cancer; Death	Hartselle, AL	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co. Inc., d/b/a Merck, Sharp & Dohme Corporation
13	Stewart Williams	2:18-cv-14886	10/12/2018	Douglas & London, P.C.	Gastric Adenocarcinoma	Baltimore, MD	AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Merck & Co. Inc., d/b/a Merck, Sharp & Dohme Corporation; Pfizer, Inc.; The Procter & Gamble Company; The Procter & Gamble Manufacturing Company

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

IN RE PROTON PUMP INHIBITOR
PRODUCTS LIABILITY LITIGATION
(NO. II)

MDL Docket No. 2789

*Baudin v. AstraZeneca Pharmaceuticals LP,
et al.*, No. 3:18-cv-1063 (M.D. Louisiana)

**DEFENDANTS’ AND PLAINTIFF’S JOINT STATEMENT AS TO WHY THE BAUDIN
ACTION DOES NOT FALL WITHIN THE PARAMETERS OF MDL NO. 2789**

Pursuant to the Panel’s Minute Order dated December 10, 2018 [Doc. 216], Defendants AstraZeneca Pharmaceuticals LP, AstraZeneca LP and Merck Sharp & Dohme Corporation (collectively, “Defendants”) and Plaintiff submit this joint Statement as to why the *Baudin* action--alleging stomach cancer, and not a kidney injury--does not fall within the parameters of MDL No. 2789. The MDL was originally established for 161 personal injury and wrongful death actions alleging that “they or their decedents suffered *kidney injury (e.g., chronic kidney disease (CKD), acute interstitial nephritis, end stage renal disease, or kidney failure)*.” *In re Proton Pump Inhibitor Prods. Liab. Litig.*, 261 F. Supp. 3d 1351, 1353 (J.P.M.L. 2017) (“*In re PPI*”) (emphasis added).

In the *Baudin* action, Plaintiff alleges that Nexium® “caused the Plaintiff to suffer from *gastric cancer*.” Pet. ¶ 2. The Petition (complaint) includes sections entitled “*Gastric Cancer*”; “*Proton Pump Inhibitors and Gastric Cancer*”; and the “*Epidemiology of the Link of Between PPIs and Gastric Cancer*” (emphasis added), and is otherwise replete with references to “stomach cancer” and the alleged failure to adequately warn of “the risks of developing gastric

cancer” (*see, e.g., id.* ¶ 187), rather than the alleged injuries which are the subject of MDL No. 2789--kidney injuries.

In the order establishing this MDL, the Panel premised its decision to centralize those PPI cases on the ground that they “share factual issues arising from allegations that taking one or more PPIs can result in *kidney injury*, and that defendants failed to adequately warn of the negative effects and risks of PPI use.” *In re PPI*, 261 F. Supp. 3d at 1354 (emphasis added). In addition, in creating this MDL after denying a prior motion to do so, the Panel observed that the cases subject to the (renewed) MDL petition involved primarily only a narrow category of kidney-related injuries. *See id.* at 1354 n.6 (noting that “[t]he variety of alleged kidney injuries arguably has diminished, as most plaintiffs allege that they suffer from CKD”). Thus, a case alleging injuries of a different organ and a cancer, rather than kidney-related diseases, is *a fortiori* beyond the scope of this MDL proceeding.

In light of these allegations, it is apparent that *Baudin* does not share a common factual core with the other actions transferred to MDL No. 2789. *Baudin* involves different allegations, different injuries and an alleged failure to warn of injuries that differ from the cases previously transferred by the Panel to the MDL, and for which this MDL was created. *Baudin* will thus involve different discovery, different portions of the labeling, different science and different expert testimony as well as different *Daubert* motion practice, from the other actions transferred to this MDL. Indeed, MDL No. 2789 has now been pending for 17 months, and the parties have already engaged in extensive discovery, including the production of numerous custodial files, using search terms focused on the alleged kidney injuries, and both plaintiffs and defendants

presented “Science Day” to the Court relating to alleged kidney injuries.¹ None of these activities are probative about whether PPIs cause gastric cancer, and all discovery would have to be redone with new search terms related solely to Mr. Baudin’s claims, distracting both the parties’ and the MDL Court’s resources from the “just and efficient conduct” of the pending kidney claims. 28 U.S.C. § 1407.

Moreover, in connection with other MDL proceedings, the Panel has excluded actions where they alleged injuries of a different nature from those in the MDL and a failure to warn of such differing injuries. This includes a prior MDL proceeding involving the very same product as here, Nexium (esomeprazole), established for bone-related injuries. In that proceeding, the Panel excluded actions alleging hypomagnesemia because they did “not fall within the scope of this MDL.” *In re Nexium (Esomeprazole) Prods. Liab. Litig.*, 908 F. Supp. 2d 1362, 1364 (J.P.M.L. 2012) (“based on the injury described in the complaint (hypomagnesemia) and the parties’ arguments, it is apparent that [the action] does not fall within the scope of this MDL. Accordingly, we will not conditionally transfer that action to the MDL”); *see also In re Welding Fume Prods. Liab. Litig.*, 560 F. Supp. 2d 1356, 1357 (J.P.M.L. 2008) (granting motion to vacate MDL transfer where “[u]nlike the majority of the actions in MDL No. 1535, which involve neurological injuries allegedly caused by exposure to manganese in welding fumes, the plaintiff in the present action complains that he developed laryngeal cancer from welding on used oil-field piping covered with naturally occurring radioactive material”); *In re Mirena IUD Prod.*

¹ The stipulated CMO for Science Day stated that “topics to be discussed . . . may include: a background on the diseases treated using PPIs; a background on acid suppressors, including PPIs, including how they work and their approved indications; the injuries alleged in this litigation; and *medical literature related to PPIs and the alleged kidney injuries*” (emphasis added). Both plaintiffs and defendants engaged a license nephrologist (kidney specialist) to present on these topics.

Liab. Litig., 938 F. Supp. 2d 1355, 1357–58 (J.P.M.L. 2013) (“[t]he action listed on Schedule B does not allege that the product poses a risk of perforation or migration. This action alleges that the product causes autoimmune disorders and that the product’s label fails to provide adequate warnings with respect to such disorders. Based on the Panel’s review of the complaint, no common factual issues are readily apparent. Therefore, we decline to centralize this action”).

Similarly here, and as all parties to the *Baudin* action agree, *Baudin* alleges a fundamentally different injury from that alleged in cases already transferred to the MDL and for which the MDL was established. Accordingly, *Baudin* does not fall within the parameters of MDL No. 2789 and should not be transferred to that proceeding.

Dated: December 17, 2018

Respectfully submitted,

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