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A P R O F E S S I O N A L C O R P O R A T I O N  
• L A W O F F I C E S •

700 BROADWAY • NEW YORK, N.Y. 10003  
TEL. 212-558-5500 FAX 212-344-5461  
WWW.WEITZLUX.COM

ELLEN RELKIN, Esq.  
Direct Number: (212) 558-5715  
erelkin@weitzlux.com



July 16, 2019

**VIA FEDERAL EXPRESS**

Hon. Glenn A. Grant, J.A.D.  
Administrative Director of the Courts  
Administrative Office of the Courts  
of the State of New Jersey  
Richard J. Hughes Justice Complex  
25 W. Market Street  
Trenton, New Jersey 08625

***Re: Request for Multi-County Designation of In Re: Proton-Pump Inhibitor  
Products Liability Litigation***

Dear Judge Grant:

This letter is submitted on behalf of 39 New Jersey resident Plaintiffs<sup>1</sup> who have cases recently filed in Bergen County, involving Proton-Pump Inhibitors (“PPI”) manufactured by a large number of different pharmaceutical companies including the New Jersey entity Merck & Co. (“Defendants”).<sup>2</sup>

Each of the Plaintiffs claim that they ingested a PPI and as a result have suffered serious kidney injuries. Plaintiffs seek a Multi-County Litigation designation in accordance with R. 4:38A.

<sup>1</sup> See attached Exhibit Schedule A.

<sup>2</sup> Defendants are Abbott Laboratories; Astrazeneca Pharmaceuticals LP; Astrazeneca LP; Glaxosmithkline Consumer Healthcare Holdings (US) LLC; Merck & Co., Inc. d/b/a Merck, Sharp & Dohme Corporation; Novartis Corporation; Novartis Pharmaceuticals Corporation; Novartis Institutes for Biomedical Research, Inc.; Novartis Vaccines and Diagnostics, Inc.; Pfizer, Inc.; The Proctor & Gamble Company; The Proctor & Gamble Manufacturing Company; The Proctor & Gamble Distributing LLC f/k/a The Proctor & Gamble Distributing Co.; 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.

*Ms Relkin is admitted in New York, New Jersey, Pennsylvania and the District of Columbia, and also affiliated with the following office:*

220 LAKE DRIVE EAST, SUITE 210 • CHERRY HILL, NJ 08002 • TEL 856-755-1115 • FAX 856-755-1995

There is currently a Multidistrict Litigation (“MDL”) for the Proton-Pump Inhibitor litigation ongoing in the United States District Court, District of New Jersey, which was assigned to Judge Claire C. Cecchi who sits in Newark, on August 2, 2017. *In re: Proton-Pump Inhibitor Products Liability Litigation, (II):17-MD-2789 (D.N.J.)*. There are currently over 10,000 cases pending in the MDL where the parties have taken over 50 Company depositions of various Defendants and Plaintiff Fact Sheets have been served in thousands of cases. There is currently a trial scheduled for September 2020.

In addition to the PPI MDL, there is also a Delaware State Court Coordinated Proceeding before Judge Eric M. Davis where approximately 150 PPI cases are pending. Moreover, Plaintiffs expect that based on recent filings in Illinois and Ohio that there will be a consolidation of all PPI cases in those respective state courts as well. Given the maturity of the MDL where over 40 million pages have been produced by the Defendants to this point and in an effort to efficiently litigate all PPI cases filed in different jurisdictions, the majority of discovery will be conducted in the MDL and, therefore, there should be no discovery dispute burden regarding any depositions or interrogatory discovery in New Jersey. We do not anticipate a large number of additional cases to be filed in New Jersey state court.<sup>3</sup> Last week we asked defense counsel if they would consent to an MCL, but we have not yet heard back with an answer.

## **BACKGROUND**

Proton-Pump Inhibitors have been marketed to suppress the reduction of acid to treat conditions such as gastroesophageal reflux disease (“GERD”). However, Plaintiffs claim that Defendants failed to warn Plaintiffs of the high risk of renal adverse events associated with these products.

Potential adverse events associated with Proton-Pump Inhibitors include serious kidney injuries, such as acute kidney injury (AKI), acute interstitial nephritis, chronic kidney disease, end stage renal disease, and even death. The current product labeling for PPIs does not include any warnings for increased risk of AKI for either over-the-counter or prescription products, and product labels contain insufficient warnings for other adverse events. In December 2014, the FDA required that all Brand PPIs change their labels to include a Warning for Acute Interstitial Nephritis.

The New Jersey Plaintiffs have suffered the adverse events mentioned above, including some with fatal outcomes. The complaints allege design defect, failure to warn and breach of warranty claims.

## **WHY COORDINATION IS APPROPRIATE**

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<sup>3</sup> These 39 New Jersey plaintiff cases had been subject to a tolling agreement that expired on May 31, 2019, which is the reason why they were all filed at approximately the same time and, thus, there is currently no expectation of another group of case filings.

As set forth in the guidelines, coordination is warranted when a litigation involves a large number of parties; many claims with common, recurrent issues of law and facts that are associated with a single product; there is geographical dispersal of parties; there is a high degree of commonality of injury; there is a value interdependence between different claims; there is a degree of remoteness between court and actual decision makers in the litigation; among other considerations.

This litigation meets most of the above enunciated criteria. There are currently 39 cases filed in Bergen County. Each of the Plaintiffs reside in New Jersey but from different counties throughout the state. One Defendant, Merck, Sharp & Dohme Corporation, is incorporated in New Jersey while the other 15 Defendants are located across the country. Because of Merck's New Jersey citizenship, there is no diversity and these cases had to be filed in state court as there is no federal jurisdiction. All these cases will involve the recurrent legal issues of failure to warn, breach of warranty and design defect. Moreover, there are significant overlapping factual liability issues relating to the labeling of the class of PPI drugs, communications with the FDA and regulatory process and the causal relationship between these medications and kidney injuries. Centralized management of these cases would be fair to all parties, promote judicial economy and remove the risk of inconsistent rulings without risking an unreasonable delay in the lawsuits.

### **WHY BERGEN COUNTY IS AN APPROPRIATE MASS TORT VENUE**

Presently, the 39 cases filed are pending before a number of different Judges in Bergen County. Issues of fairness, geographical location of the parties and attorneys, and the existing civil and mass tort caseload in the vicinage will be considered to determine which vicinage a particular mass tort will be assigned to for centralized management. *See Mass Torts—Guidelines and Criteria for Designation*, at 2 (Oct. 25, 2007).

Geographical location is to be considered when selecting the best venue in which to centralize a mass tort. While all of the available venues for multi-county centralization - Atlantic, Bergen, and Middlesex counties - have judges fully capable of handling this litigation and all are convenient to regional and international airports (*e.g.*, Philadelphia, Atlantic City, and Newark) and are within a reasonable driving distance from the offices of Defendants' local counsel in the MDL, Plaintiffs believe that Bergen County is best suited for this consolidation. It is closest to New York City being right over the George Washington Bridge and some counsel and numerous witnesses are in NYC. Bergen County is not as populated with other pharmaceutical companies as is Middlesex County, home to Johnson & Johnson and Bristol-Myers Squibb, to name a few. It is certainly harder to find a neutral venire in a city where J&J is incorporated and employs thousands of individuals at its headquarters virtually across the street from the courthouse. Also, a number of depositions have already been taken in Manhattan, with additional ones to be scheduled, making Bergen County an appropriate and convenient venue. Moreover, all of the cases currently pending in New Jersey State Court are in Bergen County.

**Via Electronic Mail to:**

Natalie H. Mantell, Esq. ([nmantell@mccarter.com](mailto:nmantell@mccarter.com))  
*Attorney for Defendants, AstraZeneca LP and AstraZeneca Pharmaceuticals LP*

Beth S. Rose, Esq. ([brose@sillscummis.com](mailto:brose@sillscummis.com))  
Craig A. Thompson, Esq. ([cathompson@Venable.com](mailto:cathompson@Venable.com))  
*Attorneys for Takeda Defendants and Abbott Laboratories*

Philip W. Danziger, Esq. ([pdanziger@reedsmith.com](mailto:pdanziger@reedsmith.com))  
*Attorney for Defendants GlaxoSmithKline Consumer Healthcare Holdings (US) LLC*

H. Lockwood Miller, Esq. ([hmillergoldbergsegalla.com](mailto:hmillergoldbergsegalla.com))  
*Attorney for The Procter & Gamble Company and The Procter & Gamble Manufacturing Company*

Stephen C. Matthews, Esq. ([stephen.matthews@dlapiper.com](mailto:stephen.matthews@dlapiper.com))  
*Attorney for Pfizer, Inc.*

Stephen A. Klein, Esq. ([sklein@sillscummis.com](mailto:sklein@sillscummis.com))  
*Attorney for Defendants Novartis Corporation, Novartis Pharmaceuticals Corporation, Novartis Institutes for Biomedical Research Inc., Novartis Vaccines and Diagnostics, Inc.*

An important factor in selecting an appropriate County is the “existing civil and mass tort caseload in the vicinage” being considered. *See id.* Presently, per this Court’s website <https://njcourts.gov/attorneys/mcl/index.html>, Bergen County carries the smallest number of multicounty litigations at six (6) (*Stryker Hip/ABG II, DePuy ASR Hip Implant, Mirena, Pelvic Mesh, Stryker LFIT CoCr V40 Femoral Heads, Stryker Trident Hip Implants*). Some of those litigations are fully or mostly resolved including Stryker Hip/ ABG II (most revision cases are settled and remaining on the case list are mostly unrevised cases which are effectively dormant unless and until those plaintiffs have revisions) (*Mirena* (despite out of date case list), *DePuy ASR* (13 cases only), *Stryker Trident* (16 cases) and *Stryker L Fit V 40* (most cases on the list are in the settlement process). Certainly the numerous pelvic mesh cases are active with trials scheduled, although many cases have settled and continue to settle.

There are currently nine (9) Multi-County and centralized litigations in the Middlesex County Superior Court (*Asbestos, AlloDerm, Fosamax, Levaquin, Propecia, Reglan, Risperdal/Seroquel/Zyprexa, Taxotere/Docetaxel, Zostavax*) and eight (8) Multi-County litigations centralized in Atlantic County Superior Court (*Abilify, Accutane, Benicar, Bristol-Myers Squibb Environmental, Firefighter Hearing Loss, Physiomesh, Proceed Surgical Mesh/Proceed Ventral Patch, Talc-Powder*).

In light of all the factors and information discussed above, Plaintiffs respectfully request that the Supreme Court designate the Proton-Pump Inhibitor cases for Multi-County or Centralized Management of such matters in the Bergen County Superior Court.

Respectfully submitted,

  
Ellen Rekin

cc: Taironda E. Phoenix, Esq., Chief, Civil Court Programs  
The Honorable Avis Bishop-Thompson  
The Honorable Christine A. Farrington  
The Honorable Estela M. De La Cruz  
The Honorable Gregg A. Padovano  
The Honorable John D. Odwyer  
The Honorable Lisa Perez-Friscia  
The Honorable Mary F. Thurber  
The Honorable Rachelle L. Harz  
The Honorable Robert C. Wilson  
The Honorable Walter F. Skrod

No.	First Name	Last Name	Case Judge	Docket No.
1	George	Dipoalo	AVIS BISHOP-THOMPSON	BER-L-004186-19
2	Berneta	Dupree	AVIS BISHOP-THOMPSON	BER-L-004184-19
3	Sandra	Godbolt	AVIS BISHOP-THOMPSON	BER-L-004165-19
4	Elizabeth	Parsons	AVIS BISHOP-THOMPSON	BER-L-004185-19
5	Mary	Brooks	CHRISTINE A. FARRINGTON	BER-L-004182-19
6	Omelia	Fontenot	CHRISTINE A. FARRINGTON	BER-L-004164-19
7	Lynne	Lower	CHRISTINE A. FARRINGTON	BER-L-004178-19
8	Delores	More	CHRISTINE A. FARRINGTON	BER-L-004179-19
9	Monica	Romans	CHRISTINE A. FARRINGTON	BER-L-004181-19
10	Linda	Russomanno	CHRISTINE A. FARRINGTON	BER-L-004180-19
11	Geraldine	Sakil	CHRISTINE A. FARRINGTON	BER-L-004175-19
12	Julio	Carballo	ESTELA M. DE LA CRUZ	BER-L-004156-19
13	Nancy	Espada	ESTELA M. DE LA CRUZ	BER-L-004163-19
14	Jeffrey	Lewis	ESTELA M. DE LA CRUZ	BER L 004157-19
15	Mary	McMillan	ESTELA M. DE LA CRUZ	BER-L-004149-19
16	Mamerto	Morales	ESTELA M. DE LA CRUZ	BER-L-004151-19
17	Marie	White	ESTELA M. DE LA CRUZ	BER-L-004152-19
18	Lisa	Kaplan	GREGG A. PADOVANO	BER-L-004158-19
19	Michael	Lupo	GREGG A. PADOVANO	BER-L-004106-19
20	Ralph	Riccardi	GREGG A. PADOVANO	BER-L-004111-19
21	Gregory	De Filippo	JOHN D. ODWYER	BER-L-004133-19
22	Beth	Eckstein	JOHN D. ODWYER	BER-L-004137-19
23	Darrell	Williams	JOHN D. ODWYER	BER-L-004161-19
24	Theresa	Schaeffer	LISA PEREZ-FRISCIA	BER-L-004166-19
25	Donna	Bator	MARY F. THURBER	BER-L-004129-19
26	Cetewayo Taj	Hafiz	MARY F. THURBER	BER-L-004126-19
27	Domenico	Mittiga	MARY F. THURBER	BER-L-004160-19
28	Leonardo	Smith	MARY F. THURBER	BER-L-004128-19
29	Annette	Yetter	MARY F. THURBER	BER-L-004127-19
30	Rebecca	Bland	RACHELLE L. HARZ	BER-L-004167-19
31	Micah	Brooks	RACHELLE L. HARZ	BER-L-004168-19
32	Samuel	Campbell	RACHELLE L. HARZ	BER-L-004169-19
33	Lorraine	Lewis	RACHELLE L. HARZ	BER-L-004173-19
34	Patricia	Liegel	RACHELLE L. HARZ	BER-L-004174-19
35	Stephanie	Smith	RACHELLE L. HARZ	BER-L-004172-19
36	Dennis	Williams	RACHELLE L. HARZ	BER-L-004170-19
37	Howard	Feder	ROBERT C. WILSON	BER-L-004146-19
38	Edward	Hill	ROBERT C. WILSON	BER-L-004147-19
39	Kathy	Fratlicelli	WALTER F. SKROD	BER-L-004159-19