

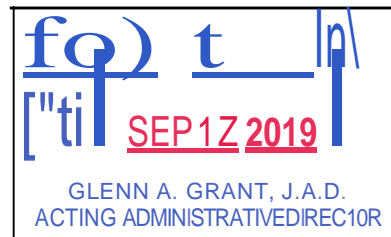


DLA Piper LLP (US)
 51 John F. Kennedy Parkway
 Suite 120
 Short Hills, New Jersey 07078-2704
 www.dlapiper.com

Stephen C Matthews
 stephen.matthews@dlapiper.com
 T 973.520.2541
 F 973.215.2602

September 12, 2019

VIA HAND DELIVERY



Hon. Glenn A. Grant
 Acting Administrative Director of the Courts
 Attention: MCL Application - Proton Pump Inhibitors
 Hughes Justice Complex, P.O. Box 037
 Trenton, New Jersey 08625-0037

**Re: Defendants' Response to Plaintiffs' Request for Multi-County Designation of
 In Re: Proton-Pump Inhibitor Products Liability Litigation**

Dear Judge Grant:

Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP (collectively "AstraZeneca"), Merck Sharp & Dahme Corporation, incorrectly named as Merck & Co. Inc. d/b/a Merck, Sharp & Dahme Corporation ("Merck"), The Procter & Gamble Manufacturing Company, and the Procter & Gamble Company (collectively "Procter & Gamble"), Abbott Laboratories ("Abbott"), Takeda Pharmaceuticals U.S.A., Inc., Takeda Pharmaceuticals America, Inc., Takeda Development Center Americas, Inc., f/k/a Takeda Global Research & Development Center, Inc., and Takeda Pharmaceutical Company Limited (collectively "Takeda"), Pfizer Inc. ("Pfizer"), and Glaxosmithkline Consumer Healthcare Holdings (US) LLC and Novartis Consumer Health, Inc. n/k/a GSK Consumer Health, Inc. (collectively "GSK") (collectively, "Defendants" or "PPI Defendants") submit this response to Plaintiffs' application dated July 16, 2019 ("the Application"), requesting that the New Jersey Supreme Court designate all cases recently filed in

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Bergen, Camden and Middlesex Counties involving plaintiffs who claim taking Defendants' Proton-Pump Inhibitors ("PPis") caused them kidney injury (collectively, "the New Jersey PPI cases") as a Multicounty Litigation ("MCL") for centralized case management.

Defendants agree with and do not object to MCL designation of the New Jersey PPI cases for purposes of centralized management in accordance with Rule 4:38A. However, Plaintiffs omitted from their application significant information relating to fairness, geographical location, and pending caseload in each vicinage that materially affects the analysis of which vicinage is the most appropriate site for centralized management. Based on the totality of the circumstances and all relevant factors, Defendants respectfully submit that Middlesex County, rather than the Bergen County Superior Court, is the appropriate location for this MCL.

I. Background

PPis work by reducing the amount of acid in the stomach. They are available both by prescription or over-the-counter, and have been approved by FDA for various indications, but commonly are used to treat conditions like Gastroesophageal Reflux Disease ("GERD"). The 47¹ plaintiffs in the New Jersey PPI cases bring personal injury and wrongful death actions against the various Defendants, all alleging that they or their decedents sustained a kidney injury as a result

¹ Plaintiffs' Application references 39 cases, all of which were filed by Weitz & Luxenberg, the firm that filed the MCL petition. Other Plaintiffs' counsel filed the remaining eight cases pending in New Jersey state courts.



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of taking one or more PPis manufactured or marketed by one or more of the Defendants. Plaintiffs allege that PPI Defendants failed to adequately warn of the risks associated with PPis.

In addition to the New Jersey PPI cases that are the subject of Plaintiffs' Application, there is currently an ongoing federal Multidistrict Litigation ("MDL") related to PPis in which plaintiffs have made similar allegations against the PPI Defendants . On August 2, 2017, the Judicial Panel on Multidistrict Litigation ("JPML") issued a Transfer Order transferring the federal actions to a single district court for pretrial purposes pursuant to 28 U.S.C. §1407. The MDL cases, *In Re: Proton-Pump Products Liability Litigation, (II): 17-MD-2789 (D.N.J)*, currently are pending in the District of New Jersey before Judge Claire Cecchi. At the time the JPML created the MDL in 2017, there were fewer than 200 federal cases pending. Today, there are more than 13,000 cases pending in the MDL. The parties currently are in the midst of discovery. So far, Defendants have produced millions of pages of documents in response to plaintiffs' document requests, the parties have issued and responded to written discovery, both parties have served, respectively, Plaintiff and Defendant Fact Sheets, and Plaintiffs have taken nearly 50 depositions of various Company witnesses from the different Defendants.

In addition to the cases in the MDL and in New Jersey, there are various other cases brought by plaintiffs lodging similar allegations against the PPI Defendants pending in several state courts across the country. Currently, most of the state cases have been coordinated before a single judge for pretrial proceedings. In Delaware, where there are approximately 124 cases pending, all cases

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have been coordinated before Judge Eric M. Davis in a Delaware State Court Coordinated Proceeding. Similarly, in Cook County, Illinois, 68 related cases were consolidated before Judge Brendan O' Brien on July 25, 2019. In Ohio, the 22 PPI related cases are being handled by a single judge, Judge Sylvia Hendon, in Hamilton County.

II. **Coordination of the New Jersey PPI Cases is Appropriate Under the Guidelines**

[Directive #02-19](#) enumerates several factors related to the specific characteristics of the cases that are to be considered when determining whether designation as an MCL is warranted. Some of these characteristics include: (1) whether the cases involve a large number of parties; (2) whether the cases involve claims with common, recurrent issues of law and fact that are associated with a single product; (3) whether there is geographical dispersment of parties; and (4) whether there is a high degree of commonality of injury or damage among plaintiffs. *See* Directive #02-19. This litigation meets the criteria articulated by Directive #02-19. Specifically, the Plaintiffs bringing the New Jersey PPI cases all have similar causes of action with common, recurrent legal issues, and they all allege similar injuries purportedly sustained as a result of taking one or more of the class of PPis. Adjudication of these 47 cases will involve overlapping legal and factual issues. Further, Plaintiffs, who all reside in various places in New Jersey, bring their claims against numerous Defendants, who are citizens of different states and some of whom have places of business located in New Jersey.

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However, the guidelines do not limit the factors to be considered exclusively to characteristics about the cases. Several other factors in determining whether an MCL is appropriate look to the efficiency, fairness and convenience of not only the parties, but the courts. These factors include: (1) whether centralized management is fair and convenient to the parties, witnesses, and counsel; (2) whether there is a risk of duplicative and inconsistent rulings or orders without coordination; (3) whether coordinated discovery would be advantageous; (4) whether the centralization would result in the efficient utilization of judicial resources; and (5) whether there are related matters pending in Federal court or in other state courts that require coordination with a single New Jersey Judge. *See* [Directive #02-19](#). For many of the reasons stated above, Defendants agree with the plaintiffs that centralized management of these cases would promote judicial economy, ameliorate the risk of inconsistent rulings without risking an unreasonable delay in the lawsuits, and would be fair to all parties involved.

Additionally, the New Jersey MCL judge may benefit from the federal MDL. All of the national counsel for Plaintiffs in the New Jersey state court litigation also represent plaintiffs in the MDL, and several hold leadership positions in the MDL. Centralization will help facilitate coordination between the MCL judge and the MDL judge so that they can avoid duplication of efforts and conserve judicial resources. *See* N.J. MULTICOUNTY RESOURCE BOOK (noting that "coordination can achieve major gains in efficiency and economy"). Coordination of these cases into an MCL also can facilitate the sharing of ideas and expertise, case management strategies, and

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perspectives for appropriate state-federal cooperation. *Id.* Here, Judge Cecchi already has entered numerous case-management and discovery orders in the MDL that could easily be implemented by the MCL judge, including a protective order and orders governing Plaintiff and Defendant Fact Sheets, product identification requirements, and the production of electronically-stored information. *Id.*

III. Choice of Site for Centralized Management

Plaintiffs request as part of their application for MCL treatment that the Supreme Court designate the New Jersey PPI cases for MCL coordination in the Bergen County Superior Court because "all of the cases currently pending in New Jersey State Court are in Bergen County."

While the vast majority of the PPI cases in New Jersey were filed in Bergen County, other Plaintiffs' complaints were filed elsewhere, including in Middlesex County and Camden County.

Venue selection should not be controlled by the county in which some Plaintiffs' counsel have strategically chosen to file cases. This is particularly so when that county bears no relation to the parties, the events at issue, or the witnesses. The factors identified in Directive #02-19 are what the Court should look to in selecting the appropriate vicinage, and not the location of the initial cases filed.

Therefore, Defendants respectfully object to Plaintiffs' application for Bergen County and instead, based on the following analysis of all relevant factors, respectfully request Middlesex County as the appropriate vicinage for the MCL.

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In determining which particular vicinage is best for centralized management, the guidelines for consideration include issues of fairness, geographical location of the parties and attorneys, and the existing civil and multicounty litigation caseload in the potential vicinage. Though Plaintiffs request Bergen County as the vicinage for this MCL, notably only two Plaintiffs in the 47 cases currently reside in Bergen County. All other Plaintiffs reside in various other counties across the state. The below chart summarizes the various Counties in which the New Jersey PPI Plaintiffs reside:

County	Plaintiffs
Atlantic	4
Bergen	2
Burlington	5
Camden	5
Cumberland	1
Essex	2
Gloucester	4
Hudson	4
Mercer	1
Middlesex	3
Monmouth	5
Morris	1
Ocean	5
Passaic	2
Union	2
Warren	1

While geographical location is to be considered in selecting the best venue to centralize an MCL, as Plaintiffs acknowledge in the Application, "all of the available venues for multi-county

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centralization - Atlantic, Bergen, and Middlesex counties - have judges fully capable of handling this litigation,² [] all are convenient to regional and international airports [...] and are within a reasonable driving distance from the offices of Defendants' local counsel in the MDL." Given its more central location, Middlesex County would be more convenient for the parties and the attorneys. As Plaintiffs note in their Application, only one Defendant - Merck - is incorporated in New Jersey, but that Defendant's registered office is in Kenilworth, Union County, which neighbors Middlesex County. Similarly, several other Defendants have offices or places of business across New Jersey; GSK is in Warren, Somerset County and Novartis is in East Hanover, Morris County. Additionally, most of the counsel representing Plaintiffs in the New Jersey PPI cases (many of whom are in leadership positions in the MDL) do not have offices located in their requested vicinage, nor do any of the Defendants' local counsel. Therefore, Middlesex County would be the best vicinage for the MCL based on the convenience of the parties and attorneys, as it is centrally located for the New Jersey Defendants, as well as for the Plaintiffs who reside across the entire state.

In addition, the current mass tort caseload warrants coordination of the New Jersey PPI cases in Middlesex County. Currently, Bergen County has the busiest MCL docket of the three vicinages. As of June 2019, there were 12,543 MCL cases pending in Bergen County, a 4%

² Although Plaintiffs acknowledge that the judges in Middlesex County are well-qualified for this MCL, they claim it would be harder to empanel a neutral jury there because of the presence of J&J. Putting aside the fact that J&J is not even a party in this litigation, there is no empirical evidence whatsoever to support this assertion.

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increase over the past year, with a backlog of 11,237 cases. Middlesex County has far fewer pending MCL cases than Bergen County, as well as a substantially smaller backlog. Indeed, the June 2019 New Jersey court statistics confirm that there were 4,444 non-asbestos MCL cases pending in Middlesex County (compared to Bergen County's 12,543), with a backlog of 2,609 cases (compared to Bergen County's 11,237), and there are even fewer cases today. Although Atlantic County has fewer MCL cases (810 pending as of June 2019), it has been assigned two new MCLs, including one as recently as March 2019, and is not nearly as convenient to the parties, the witnesses, or counsel as Middlesex County. *See* Civil Statistics, July 2018-June 2019, available at <https://njcourts.gov/public/stats.html>.

Moreover, Plaintiffs' list of the pending MCLs in each county tells only part of the story. Plaintiffs note that a number of litigations in Bergen County are resolved or mostly resolved, but fail to mention that the Bergen County MCL Judge currently has three multi-week MCL trials scheduled in November 2019, January 2020, and April 2020 in the *In Re Gynecare Pelvic Mesh* and *In Re CR. Bard Pelvic Mesh Multi-County Litigations*.

Plaintiffs also fail to acknowledge that there are several dormant or ending MCLs in Middlesex County. For instance, the Risperdal/Seroquel/Zyprexa litigation has been pending since 2006, and has one incarcerated prose plaintiff remaining. *See* Risperdal/Seroquel/Zyprexa Orders and Case List, available at <https://www.njcourts.gov/attorneys/mcl/middlesex/rsz.html>

Moreover, several other mature MCLs in Middlesex County are likewise nearing the end: the AlloDerm

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litigation has been pending since 2011 and only two cases remained as of April 2019; the Levaquin litigation has been pending since 2009 and only twelve cases remain as of August 2019; and the Propecia litigation will soon conclude due to recent settlements and dismissals. *See generally* Orders and Case Lists *available at* <https://www.njcourts.gov/attorneys/mcl/middlesex/alloderm.html> <https://www.njcourts.gov/attorneys/mcl/middlesex/levaquin.html> <https://www.njcourts.gov/attorneys/mcl/middlesex/propecia.html>

Consequently, designating these cases for MCL coordination in Bergen County would not serve the goals espoused by the MCL guidelines for determining which particular vicinage is best for centralized management - fairness, geographical location of the parties and attorneys, and the existing civil and multicounty litigation caseload in the potential vicinage. In light of all the reasons and factors discussed above, Defendants respectfully request that the Supreme Court designate the New Jersey PPI cases for Multi-County Coordination in Middlesex County.

Respectfully Submitted,



Stephen C. Matthews

cc: Ellen Relkin, Esq. (erelkin@weitzlux.com)
Natalie H. Mantell, Esq. (nmantell@mccarter.com)
Beth S. Rose, Esq. (brose@sillscummis.com)
Craig A. Thompson, Esq. (cathompson@venable.com)
Philip W. Danziger, Esq. (pdanziger@reedsmith.com)

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H. Lockwood Miller, Esq. (hmiller@goldbergsegalla.com)
Stephen A. Klein, Esq. (sklein@sillscummis.com)