

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: AVANDIA MARKETING, SALES	:	MDL No.
1871 PRACTICES AND PRODUCTS	:	07-md-01871
LIABILITY LITIGATION	:	HON. CYNTHIA M. RUFÉ

THIS DOCUMENT APPLIES TO:

Cases listed in Exhibit A

**RESPONSE OF DEFENDANT GLAXOSMITHKLINE LLC
TO PLAINTIFFS' JOINT MOTION FOR SUGGESTION OF REMAND
OF REMAINING MYOCARDIAL INFARCTION CASES**

I. INTRODUCTION

The Joint Motion for Suggestion of Remand filed by the Diaz Law Firm, the Law Offices of Peter G. Angelos, P.C., the Ferraro Law Firm, and Baum, Hedlund, Aristei & Goldman (collectively referred to as "Movants") should be denied. Pretrial Order 159, dated April 4, 2012 and attached as Exhibit B to this Response ("PTO 159"), made clear that any Motion for Suggestion of Remand was premature if it was based on the argument that "common issue discovery had been completed and only case specific discovery remained." Nothing that has occurred in the short interim since the entry of PTO 159 warrants revisiting the question of remanding any cases to transferor courts. Indeed, during the September 19, 2012 conference, this Court took a number of actions which underscore the prematurity of this Motion for Suggestion of Remand, including referring the parties to Special Master Juneau for further mediation and settlement efforts, referring the matter of Medicare lien resolution to Special Master Merenstein, discussing the creation of new discovery groups to assist in the identification of trial picks, discussing these same plaintiffs' law firms' proposal to waive Lexicon and consent to having transferred cases tried in the MDL, and, most importantly, this Court's view that it

intended to preside over case specific discovery and rule on case specific Daubert motions prior to remanding cases to transferor courts.

Under PTO 159 and the decisional law of this Circuit, an MDL Court retains discretionary jurisdiction over cases if any (general or case specific) discovery and/or any other type of coordinated case activity is ongoing. Coordinated case specific discovery and motion practice is pending or ongoing with respect to the 145 cases listed in Exhibit "A" to Movants' Suggestion of Remand (the "subject cases"). A majority of the subject cases have failed to meet basic threshold discovery requirements and as a result are the subject of pending motions. None have progressed beyond threshold discovery. The actions taken at the September 19, 2012 conference are only the most recent examples of why it is necessary for this Court to continue exercising jurisdiction over these cases so that discovery, motion practice, common issue development, settlement and pretrial disposition occur in a coordinated fashion and the transferor courts are not inundated with untested, partially discovered, piecemeal Avandia myocardial infarction cases.

II. ARGUMENT

(i) There Is No Basis To Revisit PTO 159 So Soon After Its Entry

While important, though incremental, progress has been made toward concluding this MDL since PTO 159 was entered on April 4 of this year, nothing has occurred that warrants revisiting PTO 159 so soon after its entry.

PTO 159 reads in relevant part:

A court overseeing an MDL is permitted to conduct coordinated or consolidated pre-trial proceedings. The term 'coordinated or consolidated' is to be interpreted broadly, and 'a proceeding that relates only to a single individual's case or claim can nonetheless be coordinated.'

* * *

Discovery is, of course, a pretrial proceeding.

* * *

Finally, ongoing, coordinated mediation and settlement efforts under the guidance of Special Master Juneau and the Court, both of whom are familiar with the litigation and the settlement values established in this MDL, provide an independent basis for denying the suggestion of remand.

PTO 159 at 1-2 (citing 28 U.S.C. § 1407; In re Patenaude, 210 F.3d 135, 142 (3d Cir. 2000)).

As set forth in detail in GSK's Opposition to Suggestion of Remand earlier this year, the Third Circuit has considered and rejected remand petitions based on the rationale that "common" discovery was complete and only "case specific" discovery remained. See In Re Patenaude, 210 F.3d 135 (3d Cir. 2000); In Re Wilson, 451 F.3d 161 (3d Cir. 2006). Rather, the Third Circuit has consistently confirmed the extensive reach of an MDL judge's authority in managing all manner of "pretrial" proceedings, as well as its broad discretion in ruling on motions for suggestion of remand. As a result, PTO 159 and Circuit precedent make clear:

- The standard for remand is that coordinated pretrial proceedings have been "concluded."
- The concepts of "pretrial" and "coordinated proceedings" are broadly construed: "pretrial" proceedings encompass "all judicial proceedings before trial," including discovery, summary judgment motions and settlement efforts; proceedings are "coordinated" even when the "transferee court ceases to conduct proceedings that are common to all." Patenaude, 210 F.3d at 144.
- Even if generic liability discovery has been completed, the transferee judge is still authorized to oversee case-specific discovery and to rule on case-specific motions.
- The possibility that settlement efforts will be more efficient when facilitated by a judge familiar with the litigation's issues and players is a sufficient reason to deny remand.

Since the entry of PTO 159, this Court has continued to make progress towards resolution of this MDL but the fact remains that coordinated pretrial proceedings will be necessary for the foreseeable future:

- Through its pretrial orders (most recently PTO No. 155), the Court continues to manage case specific and expert discovery for these cases in a comprehensive manner. These efforts will ultimately reduce duplication of effort, the potential for inconsistent rulings and yield either resolution or disposition of individual cases or, at the very least, creation of complete factual records for cases that may be eventually remanded to their transferor courts. See In re Diet Drugs, No. 99-20593, 2003 U.S. Dist. Lexis 18069 at *6 (E.D.Pa. August 25, 2003) (Bartle) (“[W]e believe that the continued administration of discovery and other pretrial matters through the MDL process will provide much needed consistency and reduce duplication of effort and expense”).
- The Court’s summary judgment rulings in the Faleem and Rainey cases provided important guidance in myocardial infarction cases but explicitly did not dispose of all issues in such cases, including the outcome if a different state’s law applied. Further motions with different fact patterns under different states’ laws are anticipated.
- The focus of the Court’s efforts to this point has, in large measure, been directed to cases involving myocardial infarction and related injuries. Yet many of the remaining cases (including some of those brought by counsel who have filed these motions) involve injuries other than myocardial infarction (e.g. stroke) and the Court has ahead of it Daubert arguments and other issues presented by such cases.
- The Court, through its own efforts, and working with Special Settlement Master Juneau, has facilitated the resolution of tens of thousands of cases and claims. Indeed, on September 19, 2012, after the filing of this Joint Motion for Suggestion of Remand, this Court referred the parties to Special Master Juneau for further mediation and settlement efforts. As the Third Circuit has made clear, remand is inappropriate in cases such as these, where the transferee judge has become familiar with the litigation before it, and “the MDL Court (or its Special Master) [is] in a better position than any transferor court to facilitate discussions” between the parties. Wilson, 451 F.3d at 171; see also PTO 159.

The issues raised in this most recent Motion for Suggestion of Remand were fully litigated less than 6 months ago and PTO 159 could not have been more faithful to the controlling law or more clear in its view that the “common vs. case specific discovery

distinction” would not be dispositive. The actions taken at the September 19, 2012 conference, including ongoing settlement and mediation efforts, Medicare lien resolution, the creation of new discovery groups to assist in the identification of new trial picks, and retaining jurisdiction over case specific discovery and motion practice, are only the most recent examples of why the Motion for Suggestion of Remand should be denied. For these reasons alone, GSK respectfully requests that Movants’ Motion for Suggestion of Remand be denied in its entirety.

(ii) **Most of the Subject Cases Have Pending Potentially Case Dispositive Motions for Failure to Provide Adequate Submissions Under PTO 155**

In addition to the reality that coordinated proceedings are ongoing, the suggestion that these cases have “run their course” in the MDL ignores the fact that a majority have pending and potentially case dispositive motions directed to the failure to make adequate (or in a few cases any) expert submissions under PTO 155. In truth, the movants are asking the Court to remand cases before they have a chance to be dismissed for a threshold deficiency.

Specifically, all 96 subject cases represented by the Diaz Firm are subject to pending dispositive motions in this Court; 95 are subject to GSK’s Motion to Strike the Expert Report of Malcom Taylor, M.D. filed on September 13, 2012, and 1 Diaz Firm subject case is subject to a motion to dismiss for failure to provide any PTO 155 reports at all. Likewise, of the 21 subject cases being handled by the Ferraro Firm, 19 are subject to GSK’s pending Motion to Strike the Expert Reports of Richard C. Bernstein, M.D. filed on August 27, 2012. One additional Ferraro Firm subject case is subject to a motion to dismiss for failing to provide any PTO 155 expert reports.

Finally, GSK is currently evaluating PTO 155 submissions for the Angelos and Baum Hedlund subject cases and it is likely that motion practice with respect to those Firms’ PTO 155 submissions will occur as well.

Clearly, proceedings with respect to the subject cases have not run their course; it is particularly inappropriate for Movants to include cases for which there are potentially case dispositive motions under PTO 155 pending.

(iii) **There Will Be a Risk of Inconsistent Judgments if Cases Are Remanded Prematurely**

In the particular context of Avandia litigation, issues relating to the statute of limitations and the learned intermediary doctrine, among others, under various states' law have yet to be considered and settled through pretrial motion practice. Movants' requested Suggestion of Remand, if granted, would leave in the MDL other cases – also represented by Movants – that share the laws of 11 states with the subject cases, based on the plaintiffs' residencies. As a result, this Court and the various transferor courts could issue important pretrial statute of limitations and learned intermediary rulings on Avandia claims under the same state laws, in overlapping factual settings, which would defeat one of the main benefits of an MDL proceeding: having a judge deeply familiar with the issues making consistent rulings on potentially case dispositive, recurrent issues.

(iv) **Improved Coordination Among Plaintiffs' Counsel Is the Best Solution to Purported Communications Issues**

The only new consideration raised in Movants' Suggestion of Remand is an instance when a communication from GSK's counsel was not promptly disseminated by liaison counsel to other counsel with MDL claimants. The assertion is that, in the absence of a Plaintiffs' Steering Committee, one instance of a missed communication is emblematic of an MDL that has run its course. The proper remedy for a lapse of communication among plaintiffs' counsel is improved coordination among plaintiffs' counsel, not piecemeal remand of cases that are not ready for trial.

III. CONCLUSION

The justifications offered in support of the Joint Motion for Suggestion of Remand are directly contrary to PTO 159 and Third Circuit precedent, and can reasonably be regarded as yet another attempt by plaintiffs' groups to circumvent case management orders like PTO No. 155.

WHEREFORE, for the foregoing reasons, Defendant GlaxoSmithKline LLC respectfully requests that the Plaintiffs' Joint Motion for Suggestion of Remand of Remaining Myocardial Infarction Cases be Denied in its entirety.

Respectfully submitted,

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Dated: September 27, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: AVANDIA MARKETING, SALES	:	MDL No. 1871
1871 PRACTICES AND PRODUCTS	:	07-md-01871
LIABILITY LITIGATION	:	HON. CYNTHIA M. RUFÉ
<hr/>		
THIS DOCUMENT APPLIES TO:	:	
<i>Cases listed in Exhibit A</i>	:	
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ORDER

UPON CONSIDERATION of the Plaintiffs' Joint Motion for Suggestion of Remand of Remaining Myocardial Infarction Cases, and the Response of Defendant GlaxoSmithKline LLC to Plaintiffs' Joint Motion for Suggestion of Remand of Remaining Myocardial Infarction Cases,

IT IS hereby ORDERED that said Motion is DENIED as to those plaintiffs listed in Exhibit A to defendant GlaxoSmithKline LLC's Response.

Dated: _____, 2012

CYNTHIA M. RUFÉ, U.S.D.J.

CERTIFICATE OF SERVICE

I, William J. Brennan, IV, certify that the foregoing Response of Defendant GlaxoSmithKline LLC to Plaintiffs' Joint Motion for Suggestion of Remand of Remaining Myocardial Infarction Cases was filed electronically on September 27, 2012, and is available for viewing and downloading via the Eastern District of Pennsylvania's Electronic Case Filing ("ECF") system. I further certify that, on September 27, 2012, in addition to the Notice of Electronic Case Filing automatically generated by the ECF system, I caused the foregoing documents to be served via first class mail upon the following:

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Exhibit A

Plaintiffs' Joint Motion for Suggestion of Remand of Remaining Myocardial Infarction Cases

	Last Name	First Name	Representative	MDL Docket No.	Plaintiff's Counsel
1	Adams	Bernice		2:11-cv-00784-CMR	Diaz Law Firm
2	Alsup	Lorraine		2:11-cv-03897-CMR	The Ferraro Law Firm
3	Arthur	Shirley		2:11-cv-04764-CMR	Law Offices of Peter G. Angelos, PC
4	Barber	Tommie		2:11-cv-01241-CMR	Diaz Law Firm
5	Barfield	Nellie		2:11-cv-03526-CMR	The Ferraro Law Firm
6	Benford	Billy		2:11-cv-00766-CMR	Diaz Law Firm
7	Berei	Edward M.	Rosemarie Berei	2:11-cv-03905-CMR	The Ferraro Law Firm
8	Blackmon	Ida	Antoine Blackmon	2:11-cv-00767-CMR	Diaz Law Firm
9	Blevins	Ira	Gary Blevins	2:11-cv-00637-CMR	Diaz Law Firm
10	Boggs	William		2:09-cv-03283-CMR	Baum Hedlund
11	Bolton	Betty		2:11-cv-01732-CMR	Diaz Law Firm
12	Boyd	Hollis		2:11-cv-01640-CMR	Diaz Law Firm
13	Brock	Leatha		2:11-cv-00342-CMR	Diaz Law Firm
14	Brown	Willie		2:11-cv-01719-CMR	Diaz Law Firm
15	Burley	Linwood		2:10-cv-04097-CMR	Law Offices of Peter G. Angelos, PC
16	Burnes	Dorothy		2:11-cv-01210-CMR	Diaz Law Firm
17	Burton	John		2:11-cv-00837-CMR	Diaz Law Firm
18	Byrd	Jessie		2:11-cv-00640-CMR	Diaz Law Firm
19	Caldwell	Lanny		2:11-cv-01645-CMR	Diaz Law Firm
20	Caloca	Peter S.		2:12-cv-01927-CMR	Baum Hedlund
21	Card	Shirley		2:11-cv-00343-CMR	Diaz Law Firm
22	Carpenter	James		2:11-cv-00827-CMR	Diaz Law Firm
23	Castanien	Kenneth		2:11-cv-03939-CMR	The Ferraro Law Firm
24	Cavinder	Chester		2:11-cv-00826-CMR	Diaz Law Firm
25	Chiaradonna	Arlene		2:10-cv-01871-CMR	Baum Hedlund
26	Conley	Thomas	Cleo Matthews-Conley	2:11-cv-04774-CMR	Law Offices of Peter G. Angelos, PC
27	Cook	Michael R		2:10-cv-04146-CMR	Baum Hedlund
28	Cooley-Watkins	Carol	Leon Cooley	2:11-cv-00799-CMR	Diaz Law Firm
29	Cooper	Lacunya		2:09-cv-03281-CMR	Baum Hedlund
30	Cooper	Mary		2:11-cv-00642-CMR	Diaz Law Firm
31	Davis	Virginia		2:11-cv-00643-CMR	Diaz Law Firm
32	Deese	Cathlinn		2:11-cv-03523-CMR	The Ferraro Law Firm
33	Derrick	Dorothy		2:11-cv-00346-CMR	Diaz Law Firm
34	Dooley	Larry	Patricia Dooley	2:11-cv-00789-CMR	Diaz Law Firm
35	Dresser	Mark A.		2:10-cv-06869-CMR	Baum Hedlund
36	Duszynski	Sandra		2:11-cv-00791-CMR	Diaz Law Firm
37	Evans	Elizabeth		2:11-cv-00795-CMR	Diaz Law Firm
38	Evans	Johnnie	Mae Julie Evans	2:11-cv-01216-CMR	Diaz Law Firm
39	Fountain	Lessie	Cynthia Fountain	2:11-cv-00660-CMR	Diaz Law Firm
40	Garrett	Mamie Ruth	Timothy Garrett	2:11-cv-01269-CMR	Diaz Law Firm
41	Gibson	Thelma		2:11-cv-00355-CMR	Diaz Law Firm
42	Gilliam	Donald	Teresa Gilliam	2:11-cv-01435-CMR	Diaz Law Firm
43	Gonzalez	Lisa		2:09-cv-04670-CMR	Baum Hedlund
44	Green	Joyce		2:11-cv-03952-CMR	The Ferraro Law Firm
45	Green	Charles		2:11-cv-00428-CMR	Diaz Law Firm
46	Greenbaum	Brian		2:11-cv-03697-CMR	The Ferraro Law Firm
47	Guttery	Katherine		2:11-cv-03902-CMR	The Ferraro Law Firm

Plaintiffs' Joint Motion for Suggestion of Remand of Remaining Myocardial Infarction Cases

	Last Name	First Name	Representative	MDL Docket No.	Plaintiff's Counsel
48	Hall	Robert		2:11-cv-03686-CMR	The Ferraro Law Firm
49	Hamilton	Alfred R.		2:12-cv-01040-CMR	Baum Hedlund
50	Harper	A.G.		2:11-cv-01272-CMR	Diaz Law Firm
51	Harris	Raymond		2:11-cv-06635-CMR	Diaz Law Firm
52	Henderson	Victoria		2:11-cv-04766-CMR	Law Offices of Peter G. Angelos, PC
53	Hill	Frank		2:11-cv-01454-CMR	Diaz Law Firm
54	Holtz	Elizabeth	Penny Woods	2:11-cv-01323-CMR	Diaz Law Firm
55	Howell	John		2:11-cv-01277-CMR	Diaz Law Firm
56	Hubbard	Norman		2:11-cv-00440-CMR	Diaz Law Firm
57	Hunt	Mattie		2:11-cv-01456-CMR	Diaz Law Firm
58	Hunt	William		2:11-cv-01280-CMR	Diaz Law Firm
59	Hussein	Gamal		2:09-cv-02063-CMR	Baum Hedlund
60	Johnson	Arthur	Joan Johnson	2:12-cv-01042-CMR	Law Offices of Peter G. Angelos, PC
61	Johnson III	Eddie		2:09-cv-04220-CMR	Baum Hedlund
62	Jones	Debbie		2:11-cv-00452-CMR	Diaz Law Firm
63	Keady	Helen		2:11-cv-04765-CMR	Law Offices of Peter G. Angelos, PC
64	Keene	Donald		2:11-cv-01283-CMR	Diaz Law Firm
65	Kerstine	Edwin		2:11-cv-00753-CMR	Diaz Law Firm
66	Keys	Owens		2:11-cv-04772-CMR	Law Offices of Peter G. Angelos, PC
67	Kimball	Roberta		2:11-cv-03598-CMR	The Ferraro Law Firm
68	LaClair	Leon		2:11-cv-03730-CMR	The Ferraro Law Firm
69	Langley	Mary C.	Robert Langley	2:11-cv-01738-CMR	Diaz Law Firm
70	Larosa	Rogelio		2:08-cv-00484-CMR	Baum Hedlund
71	Latimer	Jere		2:11-cv-03522-CMR	The Ferraro Law Firm
72	Lavender	Louis	Ravelle Sweet (POA)	2:11-cv-01637-CMR	Diaz Law Firm
73	Leeper	Kay		2:08-cv-02190-CMR	Baum Hedlund
74	Lewis	Lloyd		2:11-cv-00756-CMR	Diaz Law Firm
75	Loen	Douglas		2:08-cv-02822-CMR	Baum Hedlund
76	Longenette	David	Leigh Longenette	2-10-CV-06930-CMR	Law Offices of Peter G. Angelos, PC
77	Magee	Joseph	Denver Magee	2:11-cv-01238-CMR	Diaz Law Firm
78	Maldonado	Carlos	Ophelia Maldonado	2:11-cv-01452-CMR	Diaz Law Firm
79	Martin	David		2:11-cv-00757-CMR	Diaz Law Firm
80	Martin	Harvey		2:09-cv-02490-CMR	Baum Hedlund
81	Martz	John		2:11-cv-00892-CMR	Diaz Law Firm
82	Massey	Rufus	Bonnie Massey	2:11-cv-00447-CMR	Diaz Law Firm
83	Merrill	Steven		2:10-cv-04042-CMR	Law Offices of Peter G. Angelos, PC
84	Middleton	Loretta		2:11-cv-01635-CMR	Diaz Law Firm
85	Miller	Betty		2:11-cv-01284-CMR	Diaz Law Firm
86	Mitchell	Edna		2:11-cv-00763-CMR	Diaz Law Firm
87	Montero	Jesus		2:11-cv-03685-CMR	The Ferraro Law Firm
88	Montgomery	Lottie Joyce		2:11-cv-01240-CMR	Diaz Law Firm
89	Morro	Richard		2:11-cv-01685-CMR	Diaz Law Firm
90	Mullins	Brenda		2:11-cv-00764-CMR	Diaz Law Firm
91	Murrey	Loretta		2:11-cv-01636-CMR	Diaz Law Firm
92	Neal	Wesley	Linda Neal	2:11-cv-01677-CMR	Diaz Law Firm
93	Nelson	Ogal		2:11-cv-01313-CMR	Diaz Law Firm
94	Nelson	Shante		2:11-cv-01714-CMR	Diaz Law Firm
95	Newman	Rosalind		2:11-cv-01305-CMR	Diaz Law Firm

Plaintiffs' Joint Motion for Suggestion of Remand of Remaining Myocardial Infarction Cases

	Last Name	First Name	Representative	MDL Docket No.	Plaintiff's Counsel
96	Nixon	Beverly		2:11-cv-01306-CMR	Diaz Law Firm
97	O'Briant	Freddie	Larry O'Briant	2:11-cv-01215-CMR	Diaz Law Firm
98	Oliver	James R.	Patricia Oliver	2:11-cv-01676-CMR	Diaz Law Firm
99	Owens	Minnie		2:11-cv-00647-CMR	Diaz Law Firm
100	Oxendine	Ethel		2:11-cv-03679-CMR	The Ferraro Law Firm
101	Pearson	Carl		2:11-cv-01505-CMR	Diaz Law Firm
102	Perroni	Carl		2:11-cv-01675-CMR	Diaz Law Firm
103	Rabka	Fred	Nancy Rabka	2:11-cv-01725-CMR	Diaz Law Firm
104	Radle	Rosemary		2:11-cv-03894-CMR	The Ferraro Law Firm
105	Ramdeen	Tara		2:11-cv-01498-CMR	Diaz Law Firm
106	Rhyne	Calvin		2:11-cv-01713-CMR	Diaz Law Firm
107	Rodriquez	Elmidio		2:11-cv-03738-CMR	The Ferraro Law Firm
108	Rogers-Bell	Mary		2:11-cv-03736-CMR	The Ferraro Law Firm
109	Rose	Jerry		2:11-cv-00424-CMR	Diaz Law Firm
110	Sanders	Tinnie		2:12-cv-01929-CMR	Baum Hedlund
111	Santoro	Joseph	Grace Santoro	2:11-cv-01679-CMR	Diaz Law Firm
112	Sawyer	Glen	Ruth Sawyer	2:09-cv-04427-CMR	Diaz Law Firm
113	Schaffer	George		2:11-cv-01287-CMR	Diaz Law Firm
114	Scott	Denise		2:11-cv-00353-CMR	Diaz Law Firm
115	Sias	Rose		2:11-cv-00898-CMR	Diaz Law Firm
116	Siegel	Samuel		2:11-cv-03900-CMR	The Ferraro Law Firm
117	Simmons	Jackey		2:11-cv-00354-CMR	Diaz Law Firm
118	Skinner	Tommie		2:11-cv-00650-CMR	Diaz Law Firm
119	Spindler	Janice	Donald Spindler	2:11-cv-01686-CMR	Diaz Law Firm
120	Staples	Milton		2:11-cv-04769-CMR	Law Offices of Peter G. Angelos, PC
121	Taylor	Elayne		2:11-cv-01682-CMR	Diaz Law Firm
122	Taylor	Mark		2:11-cv-03942-CMR	The Ferraro Law Firm
123	Thomas	Earnest		2:11-cv-05446-CMR	Diaz Law Firm
124	Thomas	Marlene		2:09-cv-04646-CMR	Baum Hedlund
125	Thomas	Thaddeus		2:11-cv-01315-CMR	Diaz Law Firm
126	Thrall	Patricia		2:11-cv-01318-CMR	Diaz Law Firm
127	Toliver	George		2:11-cv-01579-CMR	Diaz Law Firm
128	Toombs-Johnson	Lorraine	Sharon Jackson	2:11-cv-01510-CMR	Diaz Law Firm
129	Turner	John	Elizabeth Turner	2:11-cv-01027-CMR	Law Offices of Peter G. Angelos, PC
130	Vail	William		2:11-cv-03525-CMR	The Ferraro Law Firm
131	Vonesh	Marilyn		2:11-cv-00984-CMR	Diaz Law Firm
132	Walker	Lucille	Geraldine Miller (POA)	2:11-cv-00904-CMR	Diaz Law Firm
133	Wallace	Jerry		2:11-cv-03682-CMR	The Ferraro Law Firm
134	Walton	Brenda		2:11-cv-00359-CMR	Diaz Law Firm
135	Wilhoite	William	Valerie Wilhoite	2:11-cv-01321-CMR	Diaz Law Firm
136	Williams	Mose		2:11-cv-00365-CMR	Diaz Law Firm
137	Wills	Harold		2:11-cv-04763-CMR	Law Offices of Peter G. Angelos, PC
138	Wilson	William		2:11-cv-00433-CMR	Diaz Law Firm
139	Winters	Freddie		2:11-cv-00434-CMR	Diaz Law Firm
140	Worley	Sylvia		2:11-cv-00890-CMR	Diaz Law Firm
141	Wrancher	Katherine	Ella Wrencher	2:11-cv-01326-CMR	Diaz Law Firm
142	Wright	Corneilus		2:11-cv-01588-CMR	Diaz Law Firm
143	Wright	Willette		2:11-cv-01587-CMR	Diaz Law Firm

Plaintiffs' Joint Motion for Suggestion of Remand of Remaining Myocardial Infarction Cases

	Last Name	First Name	Representative	MDL Docket No.	Plaintiff's Counsel
144	Wrobel	Genowefa		2:11-cv-01687-CMR	Diaz Law Firm
145	Wyatt	James		2:11-cv-01595-CMR	Diaz Law Firm

Exhibit B

when pre-trial proceedings have run their course.⁶

In this MDL, coordinated pre-trial proceedings are ongoing. To survive a motion for summary judgment or to succeed at trial, Plaintiffs must establish that GSK's breach of duty caused their injuries.⁷ Finding that the time was ripe for Plaintiffs to develop and disclose evidence of individual causation, so that the litigation could proceed to resolution by case dispositive motions or trial, the Court recently entered PTO 155. PTO 155 sets forth coordinated, pre-trial, case-specific expert discovery procedures applicable to all myocardial infarction cases. Discovery is, of course, a pre-trial proceeding. Therefore, at this point in the litigation, remand to the transferor courts is purely discretionary.⁸ The Court has determined that remand would be premature.

Finally, ongoing, coordinated mediation and settlement efforts under the guidance of Special Master Juneau and the Court, both of whom are familiar with the litigation and the settlement values established in this MDL, provide an independent basis for denying the motion for suggestion of remand.⁹

In light of the foregoing, on this 4th day of April 2012, it is hereby **ORDERED** that Movants' Motions are **DENIED** without prejudice.

⁶ Id.

⁷ In Pennsylvania, a cause of action in negligence requires proof of four elements: 1) the defendant had a duty; 2) the defendant breached that duty; 3) the breach caused the injury in question; and 4) the plaintiff incurred an injury. Pyeritz v. Com., 32 A.3d 687, 692 (Pa. 2011). The elements are similar or identical in other jurisdictions. See Boyd v. Travelers Ins. Co., 652 N.E.2d 267, 270 (Ill. 1995); Madden v. C & K Barbeque Carryout, Inc., 758 S.W.2d 59, 61 (Mo. 1988); Merrill v. Navegar, Inc., 28 P.3d 116, 139 (Ca. 2001); Green v. N.B.S., Inc., 976 A.2d 279, 289 (Md. 2009).

⁸ In re Paternaude, 210 F.3d at 145.

⁹ Id. at 145.

It is so **ORDERED**.

BY THE COURT:


CYNTHIA M. RUFÉ, J.