

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

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

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| THIS DOCUMENT APPLIES TO: ALL ACTIONS | : | |
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PRETRIAL ORDER NO. 159

Certain Plaintiffs (hereinafter “Movants”), by and through counsel, have filed Motions for Suggestion of Remand.¹ Movants argue that the work which remains to be done to advance claims is case specific and not for the common benefit of all plaintiffs,² and therefore this Court should recommend to the Judicial Panel on Multidistrict Litigation (“JPML”) that the cases be returned to the transferor courts.

A court overseeing an MDL is permitted to conduct coordinated or consolidated pre-trial proceedings.³ The term “coordinated or consolidated” is to be interpreted broadly,⁴ and “a proceeding that relates only to a single individual’s case or claim can nonetheless be coordinated.”⁵ The JPML panel is obligated to remand pending cases to the originating courts

¹ Doc. Nos. 2212, 2229, 2234, and 2253.

² Movants also argue that the adequacy of the evidence regarding specific causation should be weighed in accordance with the laws of the transferor courts. The Court does not find that this argument requires remand, as the Court has been required to apply the laws of various transferor jurisdictions when deciding other motions during the course of this litigation and is prepared to do so on this issue as well.

³ 28 U.S.C. § 1407; *In re Patenaude*, 210 F.3d 135, 142 (3d Cir. 2000).

⁴ *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 33-34 (1998).

⁵ *In re Paternaude*, 210 F.3d at 143.

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.