



infarction based on a reasonable degree of medical certainty.” The Court has made no such finding. The issue raised in the Daubert motions to exclude testimony from Plaintiffs’ general causation experts was whether the conclusions of the experts were premised upon reliable or unreliable methods. The Court found that the methods used were reliable and scientifically sound. The Court made no finding regarding the correctness of the experts’ conclusions, nor was it the Court’s job to do so on a Daubert motion.<sup>4</sup>

To survive a motion for summary judgment or to succeed at trial, Plaintiffs must establish that GSK’s breach of duty caused their injuries.<sup>5</sup> Plaintiffs have taken discovery on the issue of GSK’s breach of its duties but, to date, Plaintiffs subject to PTO 155 have only provided documentation that they took Avandia and suffered an injury (myocardial infarction). The time is ripe in the litigation of this MDL for Plaintiffs to develop and disclose evidence of individual causation. Only then can the litigation proceed to resolution by case dispositive motions and/or trial.<sup>6</sup>

While compliance with PTO 122 provided sufficient information to promote settlement, the cases remaining in the MDL in the wake of the Court’s comprehensive and successful

---

<sup>4</sup> In re TMI Litig., 193 F.3d 613, 664 (3d Cir. 1999).

<sup>5</sup> 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).

<sup>6</sup> PTO 155 was designed to ready cases for resolution by motions for summary judgment motions or by trial; its requirements do not impinge on procedural safeguards provided by Rule 56. Plaintiffs who fail to provide a case-specific expert report are likely to face a motion for summary judgment, which the Court will decide on the merits after full briefing.

mediation must now move forward to trial. As general discovery is essentially complete with regard to myocardial infarction cases, and as the vast majority of claims have been settled, individual personal injury claims must now be supported by adequate evidence.

By separate order entered on this date, the Court also issues a pre-trial schedule for cases selected for inclusion in the next trial pool. After the cases on this trial list have been resolved, the Court will consider recommending that transferred myocardial infarction/ heart attack cases be returned to the transferor courts for trial. At that point, each such case should be substantially ready to be resolved on either case dispositive motions or by trial. Therefore, whether a Movant's claims have been filed directly in this Court or were transferred for pre-trial management, case-specific expert reports must be produced in compliance with PTO 155.

The Court also finds that the specific content required by PTO 155 is necessary and not unreasonable.<sup>7</sup> Although some materials supportive of a Rule 26 expert report may have been previously provided, it remains necessary that each report include the data considered by the expert in forming his or her opinion, and any exhibits used to support the expert's opinion.<sup>8</sup>

The Court also denies Movants' request for additional time to comply with PTO 155, as PTO 155 itself sets forth a process for requesting extensions. Until that process has been followed, the Court will not consider motions for extensions of time to comply with PTO 155.

---

<sup>7</sup> One attorney objects to the requirement that plaintiffs provide a license number for treating and prescribing physicians, as it is argued that physicians may refuse to provide this information. [Doc. No. 2201]. The Court notes that in many states professional license numbers are a matter of public record, are printed on physician's prescription pads, and are otherwise readily available. The Court will not impose on Defendant the need to research basic identifying information regarding plaintiffs' physicians. Any difficulties individual plaintiffs have in obtaining this information can be addressed on a case-by-case basis.

<sup>8</sup> See Fed. R. Civ. P. 26(a)(2)(B).

In light of the foregoing, on this 4<sup>th</sup> day of April 2012, it is hereby **ORDERED** that  
Movants' Motions are **DENIED**.

It is so **ORDERED**.

**BY THE COURT:**

  
CYNTHIA M. RUFÉ, J.