

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: PROTON-PUMP INHIBITOR
PRODUCTS LIABILITY LITIGATION (NO. II)**

MDL No. 2789

ORDER DENYING TRANSFER

Before the Panel:* Defendant AstraZeneca Pharmaceuticals LP in the Northern District of California *Bentz* action listed on Schedule A moves under 28 U.S.C. § 1407(c) to transfer *Bentz* to the District of New Jersey for inclusion in MDL No. 2789. Plaintiff opposes the motion.

In August 2017, we created this MDL in the District of New Jersey, centralizing actions alleging that taking proton pump inhibitors (PPIs) may result in “kidney injury (*e.g.*, chronic kidney disease (CDK), acute interstitial nephritis, end stage renal disease, or kidney failure).” *In re Proton-Pump Inhibitor Prods. Liab. Litig. (No. II)*, 261 F. Supp. 3d 1351, 1353 (J.P.M.L. 2017). Plaintiff in the *Bentz* action alleges that he suffers from gastric cancer caused by taking PPIs. AstraZeneca contends that the scope of the MDL has expanded over time to include actions involving claims of gastric cancer, and that transfer of the *Bentz* action accordingly is appropriate.

The question of whether gastric cancer cases should be included in this MDL has been raised previously, before both the Panel and the transferee court. In 2018, a Middle District of Louisiana case (*Baudin*) was noticed as a potential tag-along action, and the Panel Clerk directed the parties to submit a joint statement as to “whether and why they believe *Baudin* falls or does not fall within the parameters of this MDL.” MDL No. 2789 (J.P.M.L. Dec. 10, 2018), ECF No. 216. The *Baudin* plaintiff and AstraZeneca submitted a joint statement of position in which they agreed that, because *Baudin* involved stomach cancer rather than kidney injury, the case fell outside the scope of the MDL and should not be transferred. *Id.* (J.P.M.L. Dec. 17, 2018), ECF No. 218. The action was not placed on a conditional transfer order.

In June and August 2019, the plaintiffs’ steering committee (PSC) in the MDL submitted letters to transferee Judge Claire C. Cecchi, stating that roughly thirteen gastric cancer cases had been filed in the District of New Jersey and related to the MDL, and that those cases “should remain as part of MDL 2789.” Defendants, including AstraZeneca, disagreed and submitted letters arguing that the cases did not fall within the scope of the MDL because, among other reasons, they “involve[d] different allegations, different injuries and an alleged failure to warn of injuries that differ from the cases previously transferred by the Panel to the MDL, and for which this MDL was created,” and would “involve different discovery, different portions of the labeling, different

* Judges David C. Norton and M. Casey Rodgers did not participate in the decision of this matter.

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science and different expert testimony as well as different *Daubert* motion practice . . .” Nothing in the docket suggests that the transferee court granted the PSC’s request and it does not appear that the parties pressed the issue further.

In its transfer motion, AstraZeneca states that there now are over 200 gastric cancer cases in the MDL¹ and reverses its position of 2019, arguing that these actions belong in the MDL and have, in fact, been included with the transferee court’s approval. AstraZeneca argues that the court’s direct-filing order shows the MDL has expanded to include gastric cancer cases. That order requires that plaintiffs who direct-file short form complaints check off one of the following injuries: acute interstitial nephritis, acute kidney injury, chronic kidney disease, end stage renal disease, dialysis, death, or “Other(s) (please specify).” AstraZeneca also relies upon the two “wave orders” entered in 2022, each of which listed 200 cases to be worked up for trial or remand. According to AstraZeneca, four gastric cancer actions were “handpicked” by Judge Cecchi for inclusion among the cases listed on the orders.² Both wave orders, however, state that the listed cases were “randomly selected,” and the second wave order set deadlines for the submission of information and documentation supporting plaintiffs’ claims, including “medical records demonstrating that the Plaintiff was diagnosed with or received treatment for a kidney injury following PPI ingestion or a declaration under penalty of perjury from a licensed physician attesting that such physician has diagnosed the Plaintiff with a kidney injury following PPI ingestion . . .” Gastric cancer is not mentioned in the second wave order.

AstraZeneca also contends that transfer of gastric cancer cases to the MDL would be efficient and convenient for the parties and witnesses because the transferee court already has established the “infrastructure” to handle the cases. It notes that Judge Cecchi has set up procedures addressing product use and injury, fact sheets, medical records, case-specific and expert discovery, and dispositive motions, and tasked co-lead counsel and the PSC with coordinating pretrial discovery, avoiding unnecessary expenditures of time and funds, maintaining common files and document repositories, and coordinating filings and motion practice. AstraZeneca argues that the *Bentz* action should proceed subject to the docket control order in the MDL for plaintiffs litigating claims against AstraZeneca, which was entered after AstraZeneca settled the bulk of the MDL actions in 2023.

After considering the argument of counsel, we conclude that transfer of gastric cancer cases under 28 U.S.C. § 1407 will not serve the convenience of the parties and witnesses or further the just and efficient conduct of the litigation. Cases involving non-kidney injuries do not fall within the scope of the MDL as defined in the Panel’s 2017 transfer order. AstraZeneca’s contention that Judge Cecchi has approved the inclusion of gastric cancer cases in the MDL is not borne out by the record—neither the direct-filing order, the wave orders, or any other order in the MDL reflects such a decision to expand the scope of the MDL. Moreover, transfer would provide few efficiencies, given that none of the discovery or motion practice in the MDL to date has addressed

¹ AstraZeneca has provided no information regarding how many of these 200-some gastric cancer cases also involve claims of kidney injury.

² Again, AstraZeneca does not specify whether any of these four actions also involved a claim of kidney injury.

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non-kidney injuries. The “infrastructure” that, according to AstraZeneca, would provide such efficiencies is common in many products liability MDLs and does not weigh in favor of including new injuries in this advanced MDL. The fact that actions involving gastric cancer claims have been directly filed in the MDL does not require that we expand the MDL’s scope to accommodate such claims, particularly as we have no information as to how many of those actions may also involve allegations of kidney injury.

Given that the MDL has involved no coordinated discovery or other pretrial proceedings focused on gastric cancer, requiring gastric cancer plaintiffs to comply with the accelerated deadlines imposed by Judge Cecchi’s docket control orders would not lead to the just and efficient conduct of those actions. Adding gastric cancer cases to this nine-year-old MDL after all principal defendants have entered into global settlements could launch an extended wave of new litigation involving not only gastric cancer cases but other non-kidney-injury cases as well. Transfer of *Bentz* would only serve to delay the resolution of this complicated litigation. Accordingly, transfer is not warranted.

IT IS THEREFORE ORDERED that the motion to transfer the action listed on Schedule A to MDL No. 2789 is denied.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell", is positioned above a horizontal line.

Karen K. Caldwell
Chair

Matthew F. Kennelly
Madeline Cox Arleo

Dale A. Kimball
Richard Seeborg

**IN RE: PROTON-PUMP INHIBITOR
PRODUCTS LIABILITY LITIGATION (NO. II)**

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SCHEDULE A

Northern District of California

BENTZ v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 3:26–06449