

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK DIVISION**

IN RE: PROTON-PUMP INHIBITOR PRODUCTS LIABILITY LITIGATION (NO. II)	MDL No. 2789 Case No.: 2:17-md-2789 (CCC)(MF)
This Document Relates to ALL ACTIONS	

**CASE MANAGEMENT ORDER NO. 11
(Dismissal of Certain AstraZeneca Defendants)**

The Court hereby issues the following Case Management Order ("Order" or "CMO"):

A. On February 2, 2018, the Plaintiffs' Co-Lead Counsel, Plaintiffs' Executive Committee, and Plaintiffs' Steering Committee (collectively "PSC") filed a Master Complaint (the "Master Complaint"), in *In re Proton-Pump Inhibitor Prod. Liab. Litig.* (D.N.J. Case No. 2:17-md-02789-CCC-MF (MDL No. 2789)) (the "PPI MDL"), naming, among others, Defendants AstraZeneca Pharmaceuticals LP, AstraZeneca LP, AstraZeneca PLC, AstraZeneca AB, Zeneca Inc., Astra US Holding Corporation, Astra USA LLC, and KBI Sub Inc. (collectively, "Stipulating Defendants"), for injuries that allegedly resulted from Plaintiffs' use of Nexium® and/or Prilosec®.

B. Subsequent to the filing of the Master Complaint, the PSC and other Plaintiffs' counsel have filed Short Form Complaints and/or intend to bring additional lawsuits against the Stipulating Defendants on behalf of additional plaintiffs claiming injuries allegedly resulting from their use of proton pump inhibitor(s) ("PPI") (hereinafter "future PPI plaintiffs and/or claimants" or "future PPI lawsuits").

C. The parties wish to avoid motion practice regarding the naming of defendants in this litigation who it has been represented are improper and/or unnecessary parties.

1. Arnold & Porter Kaye Scholer LLP, Ice Miller LLP and McCarter & English LLP (Defendants' Counsel) represent AstraZeneca Pharmaceuticals LP, AstraZeneca LP, AstraZeneca PLC, AstraZeneca AB, Zeneca Inc., Astra US Holding Corporation, Astra USA LLC, and KBI Sub Inc. All Stipulating Defendants and their counsel are aware of this litigation and have the authority to enter into this Stipulated CMO on behalf of these entities.

2. The Stipulating Defendants deny the allegations in this litigation. Furthermore, by entering into this Stipulated CMO, the Stipulating Defendants do not waive any arguments or defenses, including but not limited to jurisdiction, venue, service, or statutes of limitations or repose except as otherwise noted herein. In the event, however, that a judgment is entered or a settlement is reached, in a matter filed in, or transferred to, the PPI MDL for Plaintiffs or future PPI plaintiffs and/or claimants, for which any of the Stipulating Defendants is/are liable, such judgment or settlement will be satisfied by AstraZeneca Pharmaceuticals LP and/or AstraZeneca LP ("AstraZeneca"), which Defendants' Counsel represent to Plaintiffs' Counsel is/are sufficiently capitalized to satisfy any such judgment or settlement. For this reason and for the additional reasons noted below (and in Paragraph C. 4), the PSC and other Plaintiffs' Counsel shall remove and dismiss from all pending lawsuits in the PPI MDL, and agree to no longer name as defendants in any future PPI lawsuits that are filed in this MDL, pursuant to Paragraph 3, the following Stipulating Defendants (the PSC does not stipulate to the accuracy of the

Defense Counsel's representations in C. 2. a. through 2. f. below but does rely upon them):

- a. *AstraZeneca PLC* ("PLC"): As represented by Defense Counsel to the PSC and the Court, PLC is a public limited company organized under the laws of England and Wales with the registered office in Cambridge. PLC does not conduct research and development, clinical trials, safety surveillance, manufacturing, sales or marketing of pharmaceutical products, including PPIs.
- b. *AstraZeneca AB* ("AB"): As represented by Defense Counsel to the PSC and the Court, AB is a Swedish corporation with its principal place of business in Sweden. Because *AstraZeneca Pharmaceuticals LP* and *AstraZeneca LP* are named, AB is an unnecessary defendant to this litigation.
- c. *Zeneca Inc.* ("Zeneca"): As represented by Defense Counsel to the PSC and the Court, Zeneca, a mere limited partner of *AstraZeneca Pharmaceuticals LP*, is incorporated in Delaware with principal place of business in Delaware. Zeneca does not conduct research and development, clinical trials, safety surveillance, manufacturing, sales or marketing of pharmaceutical products, including PPIs.
- d. *Astra US Holdings Corp.* ("Astra US Holdings"): As represented by Defense Counsel to the PSC and the Court, *Astra US Holdings*, previously a mere limited partner of *AstraZeneca Pharmaceuticals LP*, no longer exists. *Astra US Holdings* was incorporated in Delaware with principal place of business in Delaware. On or about May 1, 2013, *Astra US Holdings* was merged with and into *Zeneca Inc.*, following which *Zeneca Inc.* was the only surviving entity of the merger. During its existence, *Astra US Holdings* did not conduct research and development, clinical trials, safety surveillance, manufacturing, sales or marketing of pharmaceutical products, including PPIs.
- e. *Astra USA LLC* ("Astra USA"): As represented by Defense Counsel to the PSC and the Court, *Astra USA*, previously a mere limited partner of *AstraZeneca Pharmaceuticals LP*, no longer exists. On or about May 1, 2013, *Astra USA Inc.* converted to a limited liability company organized under the laws of Delaware with principal place of business in Delaware. On or about June 30, 2014, *Astra USA* was merged with and into *Zeneca Inc.*, following which *Zeneca Inc.* was the only surviving entity of the merger. During its existence, *Astra USA* did not conduct research and development, clinical trials, safety surveillance, manufacturing, sales or marketing of pharmaceutical products, including PPIs.

- f. *KBI Sub Inc.* (“KBI Sub”): As represented by Defense Counsel to the PSC and the Court, KBI Sub, previously a mere 1% limited partner of AstraZeneca LP, no longer exists and AstraZeneca Pharmaceuticals LP is the sole partner of AstraZeneca LP. KBI Sub, previously a Delaware corporation with principal place of business in New Jersey, was merged with and into KBI Inc. on June 30, 2014 and KBI Sub ceased to exist as a separate entity. AstraZeneca purchased KBI Inc. on the same date and, on July 30, 2014, KBI Inc. was merged with and into Zeneca Inc., following which Zeneca Inc. was the only surviving entity of the merger. AstraZeneca is responsible for whatever liabilities/obligations that KBI Sub had incurred as of that date.

3. The Court hereby directs Plaintiffs to remove and voluntarily dismiss without prejudice from all pending lawsuits in the PPI MDL, and agree to no longer name as defendants in any future PPI lawsuits filed in the MDL, AstraZeneca PLC, AstraZeneca AB, Zeneca Inc., Astra US Holding Corporation, Astra USA LLC, and KBI Sub Inc. (“Dismissed Defendants”) with Plaintiffs and Stipulating Defendants to bear their own costs. Should any Plaintiffs’ Counsel hereafter decide that any and/or all of the Dismissed Defendants are proper defendants in a case or cases, then said Plaintiffs’ Counsel may, on behalf of Plaintiffs or future PPI plaintiffs, amend an existing, or file a future, action in which AstraZeneca Pharmaceuticals LP and/or AstraZeneca LP is also named to include any or all of the Dismissed Defendants. Service of any future filed Summons and Complaint against the Dismissed Defendants may be made upon Defendants’ Counsel, but the Dismissed Defendants reserve all other bases of a personal jurisdiction defense. The Stipulating Defendants agree that, notwithstanding the dismissal of and/or requirement not to name the Dismissed Defendants, the running of any Limitations Period¹ imposed by any jurisdiction within the United States for the

¹ The parties agree that the term “Limitations Period” shall mean any and all time limitations on the assertion, prosecution, or filing or service of the lawsuit, including any and all statutes of limitations, statutes of repose, discovery statutes, time limitations in

filing of a civil action by Plaintiffs or future PPI plaintiffs against the Dismissed Defendants shall relate back to the date that the underlying action was/is filed by that Plaintiff ("underlying action"). However, the Stipulating Defendants expressly reserve and do not waive their right to assert that the Limitations Period expired prior to the date of filing of the underlying action. The parties expressly agree that this Stipulation shall not revive in any manner any claims or causes of action that were already barred by the Limitations Period prior to or on the date of filing of the underlying action.

4. AstraZeneca Pharmaceuticals LP and AstraZeneca LP will produce responsive and discoverable facts, documents, information, materials and witnesses, including F.R.C.P. 30(b)(6) depositions, of the Stipulating Defendants, including discovery of foreign entity facts, documents, information, materials and witnesses, and will not object to discovery requests on the ground that the Dismissed Defendants will no longer be named as defendants in the litigation. To the extent Plaintiffs seek discovery from the Dismissed Defendants, discovery demands and notices shall be served on counsel for AstraZeneca Pharmaceuticals LP and AstraZeneca LP. The Stipulating Defendants do not waive other objections to any discovery that Plaintiffs or future PPI plaintiffs may serve, including, but not limited to, relevancy, proportionality, privacy, confidentiality, privilege, competency, admissibility, burden and other good faith objections. However, the Stipulating Defendants stipulate and agree that any documents, information, including ESI, and materials produced by the Dismissed Defendants will be certified to be authentic under Fed. R. Evid. 902(11) and/or (12) and meet the

equity, statutory time conditions on filing suits, laches, and any other time bars as determined by the relevant statute of limitations period of the plaintiff's state of residence (without regard to conflict of laws or borrowing statutes).

requirements of Fed. R. Evid. 803(6)(A)-(C), subject to the Agreed Protective Order for Documents and ESI/Discovery Agreement in the PPI MDL.

5. The Stipulating Defendants are following their preservation obligations as of the date of reasonable anticipation of litigation and will continue to meet their preservation obligations as if they were still parties to the litigation.

6. The Stipulating Defendants stipulate that they shall not object to the deposition testimony of employees from the Dismissed Defendants or documents (including ESI) produced by the Dismissed Defendants being considered an admission of a party opponent pursuant to Fed. R. Evid. 801(d)(2), provided that the testimony and documents would otherwise be considered an admission of a party if the Dismissed Defendants were parties in this action.

7. The Dismissed Defendants are deemed stricken from the Master Complaint without need for the PSC to file an Amended Master Complaint and the Dismissed Defendants need not respond to the Master Complaint. Attached hereto this CMO as **Exhibit A** is Plaintiffs' First Amended Short Form Complaint and Jury Demand, which does not identify any of the Dismissed Defendants and shall be used as the operative Short Form Complaint from the date of this Order forward. Within sixty (60) days of entry of this Order, plaintiff(s) in each individual Complaint naming any of the Dismissed Defendants as a defendant shall dismiss without prejudice the Dismissed Defendants. The Dismissed Defendants' deadline to respond to any individual Complaints is extended indefinitely and until such dismissal occurs or if they are renamed pursuant to paragraph 3, above. Nothing herein shall otherwise preclude the

parties from amending their pleadings pursuant to the Federal Rules of Civil Procedure and the Case Management Orders entered in the PPI MDL.

IT IS SO STIPULATED.

DATED: March 19, 2018

MCCARTER & ENGLISH, LLP

By: /s/ Gregory J. Hindy
Gregory J. Hindy
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
(973) 622-4444
ghindy@mccarter.com

ARNOLD & PORTER KAYE SCHOLER
LLP

By: /s/ Arthur A. Brown
Arthur E. Brown
250 W. 55th Street
New York, NY 10019-9710
(212) 836-8000
Arthur.Brown@arnoldporter.com

ICE MILLER LLP

By: /s/ Amy K. Fisher
Amy K. Fisher
One American Square
Suite 2900
Indianapolis, IN 46281-0200
(317) 236-2100
(317) 236-2219
Amy.Fisher@icemiller.com

MCCARTER & ENGLISH, LLP

By: /s/ James J. Freebery
James J. Freebery
405 N. King Street, 8th Floor
Wilmington, DE 19801
(302) 984-6300
jfreebery@mccarter.com

Attorneys for the Stipulating Defendants

By: /s/ Christopher A. Seeger
Christopher A. Seeger (co-lead
counsel)
Seeger Weiss, LLP
550 Broad Street, Suite 920
Newark, NJ 07102
(973) 639-9100
cseeger@seegerweiss.com

/s/ Stephanie O'Connor
Stephanie O'Connor (co-lead
counsel)
Douglas & London, P.C.
59 Maiden Lane, 6th Floor
New York, NY 10038
(212) 566-7500
soconnor@douglasandlondon.com

On Behalf of Plaintiffs' Executive and
Steering Committees

SO ORDERED:

Dated: Newark, New Jersey
March 23, 2018



CLAIRE C. CECCHI
United States District Judge