

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
AT LEXINGTON

IN RE: ONGLYZA (SAXAGLIPTIN) AND
KOMBIGLYZE XR (SAXAGLIPTIN AND
METFORMIN) PRODUCTS LIABILITY
LITIGATION

Master File No. 5:18-md-2809-KKC

MDL No. 2809

ALL CASES

**STIPULATED ORDER REGARDING
DIRECT FILING AND SERVICE OF COMPLAINTS**

The parties, by counsel, submit this Case Management Order regarding direct filing and service of complaints in MDL No. 2809:

This order shall apply to all Plaintiffs and their counsel for actions that are currently pending in MDL No. 2809, hereinafter subject to transfer to these proceedings, or that have been or will be filed in MDL No. 2809, and to the following Defendants and their counsel in such actions: AstraZeneca Pharmaceuticals LP, Bristol-Myers Squibb Company, and McKesson Corporation.

I. Direct Filing

- A. To promote judicial efficiency and to avoid delays associated with the transfer of cases filed in or removed from other federal district courts to this Court as part of MDL No. 2809, any plaintiff whose case would be subject to transfer to MDL No. 2809 may file her or his case directly in MDL No. 2809 in the U.S. District Court for the Eastern District of Kentucky.
- B. Cases directly filed in this Court pursuant to this Order shall not name more than a single plaintiff in each directly filed case, provided, however, that any such case may include consortium plaintiff(s) as permitted by law, and in the event of a wrongful death action, the appropriate representative(s) of the Estate.

- C. Defendants stipulate and agree not to challenge venue for pretrial proceedings for any directly filed case properly filed pursuant to this Order. The inclusion of any action in this MDL, whether such action was or will be filed originally or directly in the Eastern District of Kentucky, shall not constitute a determination by this Court that jurisdiction or venue is proper in this district.
- D. Filing a case directly in MDL No. 2809 will not determine the choice of law, including the statute of limitations; however, Defendants stipulate and agree that the filing of a complaint directly in MDL No. 2809 pursuant to this Order shall stop the running of any statute of limitations or prescriptive period, including statute of repose, as if the complaint had been filed in the district where it could otherwise have been brought absent this Order.
- E. The direct filing of actions in MDL No. 2809 is solely for the purposes of consolidated discovery and related pretrial proceedings as provided by 28 U.S.C. § 1407 and pursuant to the Judicial Panel on Multidistrict Litigation's February 2, 2018 Transfer Order ("Transfer Order"). The parties submit to this Court's personal jurisdiction and venue for those purposes only. In any complaint directly filed in the Eastern District of Kentucky pursuant to this Order, Plaintiff shall identify his or her federal district of residence in which the action otherwise would have been filed absent the direct filing procedure. Upon completion of all pretrial proceedings applicable to a case directly filed in this Court, pursuant to 28 U.S.C. § 1404(a), this Court will transfer each case to the identified federal district of residence unless the parties jointly advise the Court that a case should be transferred to another district in which venue is proper. Nothing contained in this Order shall preclude the parties from agreeing, at a future date, to try cases filed pursuant to this Order in the Eastern District of Kentucky. Additionally, nothing contained in this order constitutes a waiver by any party pursuant to *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).
- F. Nothing in this Order shall be construed as a waiver of any Defendant's right to move to remand any case directly filed in MDL No. 2809 or to move to dismiss any or all causes of action in any directly filed complaint.

- G. The caption for all direct filed complaints shall bear the same caption as instructed by this Court's February 9, 2018 Order Regarding Practice and Procedure Upon Transfer. (DE 3 in 5:18-md-2809.)
- H. All complaints must be filed electronically. Attorneys must register for and obtain an Eastern District of Kentucky CM/ECF login name and password prior to filing. The CM/ECF registration form can be found at <http://www.kyed.uscourts.gov/518-md-02809-kkc>. All instructions contained within this Court's February 9, 2018 Order Regarding Practice and Procedure Upon Transfer govern the electronic filing process, including the Local Rules for the Eastern District of Kentucky, available at <http://www.kyed.uscourts.gov/?q=local-rules>. The requirements of Local Rules 83.1 and 83.2 regarding permission to practice and *pro hac vice* admission are waived as to any attorney appearing in these actions who is admitted to practice and in good standing in any United States District Court.

II. Service of Directly-Filed Complaints

- A. Subject to the conditions set forth in this Order, Defendants AstraZeneca Pharmaceuticals, LP, Bristol-Myers Squibb Company, and McKesson Corporation (collectively, the "Defendants"), will waive formal service of process in cases directly filed in MDL No. 2809 in which they are named. No summons is required.
- B. For such cases, Plaintiffs shall send a copy of the file-stamped complaint by e-mail to the following:

AstraZeneca Pharmaceuticals, LP
OnglyzaMDL@astrazeneca.com

Bristol-Myers Squibb Company
OnglyzaMDL@bms.com

- C. For Defendant, McKesson Corporation, Plaintiffs shall send a copy of the file-stamped complaint, along with the Waiver of the Service of Summons form and a prepaid means of returning one signed copy of the form, by U.S. mail to the following:

McKesson Corporation
c/o Emily Ullman
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001-4956

- D. Service will be effective only if accomplished as set forth above, or if accomplished pursuant to the Federal Rules of Civil Procedure. General mailing to Defendants or their counsel (except as provided above) will not be sufficient to effectuate service.
- E. Counsel for Defendants, AstraZeneca Pharmaceuticals, LP and Bristol-Myers Squibb Company, shall acknowledge receipt of the file-stamped complaint with an automatic e-mail receipt to the sender.
- F. Counsel for Defendant, McKesson Corporation, shall acknowledge receipt of the file-stamped complaint with return of the Waiver of the Service of Summons form to Plaintiff's counsel.
- G. By accepting service pursuant to paragraph B. above, Defendants do not waive any claims, affirmative defense, or other defenses of any nature whatsoever except those relating to service of process. If service is otherwise perfected under the Federal Rules of Civil Procedure, Defendants do not waive any claims, defenses, or other defenses of any nature whatsoever, including those related to service of process.

Dated October 3, 2018.



Karen K. Caldwell

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY