

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:22-MD-3036-RJC-DCK**

**IN RE: GARDASIL PRODUCTS LIABILITY
LITIGATION**

MDL No. 3036

**THIS DOCUMENT RELATES TO
ALL CASES**

**REQUEST FOR APPOINTMENT OF PLAINTIFFS CO-LEAD COUNSEL BY BIJAN
ESFANDIARI POSITION STATEMENT AND RECOMMENDATIONS FOR
LIAISON COUNSEL**

Undersigned counsel, Bijan Esfandiari, respectfully requests appointment to serve as Plaintiffs' Co-Lead Counsel in the Gardasil Multidistrict Litigation ("Gardasil MDL").

A. Educational Background

I received my Bachelor of Arts (B.A.) *cum laude* from the University of California, Los Angeles (UCLA) in 1999 and my Juris Doctor (J.D.) from UCLA School of Law in 2002. I spent the first five years of my legal career at a national defense firm working on a variety of cases spanning multiple areas of the law. In September 2007, I joined my current firm, Baum Hedlund Aristei & Goldman, P.C. ("Baum Hedlund") where I have dedicated my practice almost exclusively to representing people who have been injured by pharmaceutical products and medical devices.

B. Licensing Status

I have been licensed in the State of California since 2002 and have remained in good standing with the California State Bar throughout my legal career. As I represent clients in pharmaceutical litigations in multiple jurisdictions, I have also been admitted to more than a

dozen federal district courts and courts of appeal throughout the country, including the United States Supreme Court.¹

C. Professional Experience

Presently I am a Board Member and Senior Shareholder at Baum Hedlund and, in the 15 years I have been at Baum Hedlund, I have been involved in multiple mass-tort litigations and have handled cases both at the trial and appellate court levels in multiple jurisdictions. A small sampling of pharmaceutical and medical device cases for which I was lead counsel of record and which resulted in published decisions include:

- *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 101 A.3d 467 (2014) (drafted and argued the appeal)
- *Mason v. SmithKline Beecham Corp.*, 596 F.3d 387 (7th Cir. 2010) (drafted and argued appeal)
- *Hricik v. Stryker Biotech, LLC*, 89 F. Supp. 3d 694 (E.D. Pa. 2015)
- *Boutte v. Stryker Biotech, LLC*, 67 F. Supp. 3d 732, 734 (M.D. La. 2014)
- *Dorsett v. Sandoz, Inc.*, 699 F.Supp.2d 1142 (C.D.Cal. 2010)
- *Tucker v. SmithKline Beecham Corp.*, 701 F.Supp.2d 1040 (S.D.Ind.2010)
- *Forst v. SmithKline Beecham Corp.*, 602 F.Supp.2d 960 (E.D.Wis. 2009)
- *Knipe v. SmithKline Beecham*, 583 F.Supp.2d 602 (E.D.Pa. 2008)

My firm, Baum Hedlund, is a nationally well-regarded plaintiffs' products liability firm. We have represented tens of thousands of individuals domestically and globally in the areas of aviation and pharmaceutical litigation and have recovered billions of dollars for our clients

¹ Additional relevant biographical information is attached here to as **Exhibit 1**, which is a text copy of my biography from my firm's website.

through settlements and verdicts. Most recently, my firm obtained a \$2 billion jury trial verdict against Monsanto in a case involving a husband and wife who alleged they got cancer following years of using Monsanto's popular weed killer, RoundUp, on their properties. *Pilliod v. Monsanto Co.*, 67 Cal. App. 5th 591 (2021). Throughout its decades of existence, my firm has developed a reputation for breaking new legal ground, handling challenging cases, holding Fortune 500 companies accountable for their transgressions, influencing public policy, raising public awareness, and improving product safety.

Throughout the years, my firm has been involved in more than two dozen MDL and state-coordinated proceedings, including appointment as Lead counsel in: *In re Celexa & Lexapro Marketing and Sales Practices Litigation*, 09-MDL-2067 (NMG) (D. Mass.), *In re Paxil Products Liability Litigation*, 03-MDL-2067 (C.D. Cal.), *In re Cymbalta Drug Cases*, JCCP No. 4825 (Los Angeles Sup. Ct); *In re Ranitidine (Zantac)* JCCP No. 5150 (Alameda Sup. Ct); and *In re Roundup Prod. Liab. Litig.*, MDL No. 2741 (N.D. Cal).

I have been involved in Gardasil litigation since at least 2019, when my firm was brought in by another attorney to help him litigate what at the time was the first Gardasil case in active litigation, *Robi v. Merck* (Los Angeles Superior Court). When I arrived on the case, Merck had only produced 700 pages of documents even though the case had been pending for a few years. I immediately propounded discovery and, after multiple (more than a dozen) discovery hearings over the course of several months, I obtained orders and agreements compelling Merck to produce millions of pages of records. My office, thereafter, retained additional cases and I drafted and filed the first federal complaint, *Gramza v. Merck* (D. Arizona) and proceeded to file several more cases across the country. The *Gramza* complaint was the complaint used by many other plaintiffs when they began to file Gardasil cases.

In the past two years, I have dedicated myself, nearly full time, to litigating Gardasil cases, which has included opposing Merck's various motions to dismiss filed in several state and federal cases; filing motions to compel; engaging in multiple meet and confers with Merck's counsel concerning various issues; assembling and working with a team of professionals both internally and with co-counsel, including but not limited to members of Paul Pennock's firm (who is also applying for co-lead counsel); overseeing the team's review of documents produced by Merck; retaining and working with various medical consultants to assist with the case; and handling the day to day affairs of the cases. During this time, I have led a team of lawyers, paralegals, and staff in litigating the Gardasil cases. My partner, Michael Baum, who is a seasoned pharmaceutical products liability lawyer with more than 30 years of experience and who has personally obtained court appointed positions in more than two dozen MDLs has also been working closely with me on the Gardasil cases and will continue to do so, as well as with the other attorneys on these Gardasil cases.

Once other firms began getting involved in the litigation and the volume of cases reached a threshold where consolidation was required, I filed a successful motion with the Judicial Panel on Multidistrict Litigation (JPML) to consolidate these Gardasil cases and create an MDL, and I was the lead attorney to argue the motion at the JPML hearing. *In re Gardasil Prod. Liab. Litig.*, MDL 3036, 2022 WL 3138681 (J.P.M.L. Aug. 4, 2022).

Once the MDL was formed, I coordinated with other attorneys who had Gardasil cases and took the lead to set up numerous Zoom calls to comply with the Court's First Pre-Trial Order. Participants in these various Zoom meetings and calls included the other applicants for co-lead and liaison counsel as well as nearly all other known lawyers currently representing clients who have filed or were expected to file Gardasil cases in federal court. To the best of my

knowledge, there is unanimity amongst the lawyers for my appointment along with the appointment of Paul Pennock and Rachel Lanier as co-lead counsel, and the appointment of Allison Mullins as liaison counsel.

During these Zoom meetings, the plaintiffs' attorneys also discussed that, in addition to co-leads and liaison counsel, there is need for a strong and robust Plaintiffs Executive Committee (PEC) and Plaintiffs Steering Committee (PSC). Several well-credentialed, experienced, and diverse candidates have emerged for committee positions whose involvement in my view will be essential for the efficient prosecution of this MDL. While I realize the court will not be considering the formal appointment of PEC and PSC committee at the upcoming hearing, we look forward to presenting on this issue, obtaining a protocol from the Court for the formal appointment of PEC and PSC members and to answer any questions the Court may have on this issue.

While I have never personally held a leadership position on an MDL, as outlined above, I believe my years of experience in being lead trial and appellate counsel at my firm on various pharmaceutical and medical device cases, including mass tort cases, my experience in working in other MDLs, my substantial involvement in the Gardasil cases for the past three years, my knowledge of the facts and legal issues in the Gardasil cases, and my ability and willingness to work cooperatively with others and commit myself and my firm's resources to this important litigation, make me a well-qualified candidate for co-lead counsel.

I have the trust of the other firms involved in this litigation and I took the lead responsibility for preparing the initial draft of Plaintiffs' Position Statement, obtained input from the other attorneys, including but not limited to the other co-lead and liaison counsel applicants, and prepared the final statement for filing. My firm is financially secure and is willing and

prepared to invest the necessary resources to successfully prosecute this litigation. My firm has already invested considerable sums both in sweat equity, man hours, and costs in working up our cases to their current procedural posture and, if appointed as co-lead, will continue to do so throughout the MDL. To the best of my knowledge, I have the unanimous support of the other plaintiffs' attorneys and firms for my appointment as co-lead counsel, and I look forward to working with the other co-leads, Ms. Lanier and Mr. Pennock, as well liaison counsel, Ms. Mullins and any other attorneys who will be involved in committee positions in this litigation to prosecute this litigation in an honorable, professional, expeditious and competent manner. Should there be common benefit attorneys' fees accorded to me, I would request the rate of \$900 per hour for same.

I therefore respectfully request that I, along with Ms. Lanier and Mr. Pennock, be jointly appointed as co-lead counsel in this MDL, and that Ms. Mullins be appointed as liaison counsel.

Dated: September 20, 2022

Respectfully submitted,

/s/ *Bijan Esfandiari*

Bijan Esfandiari (SBN: 223216)

besfandiari@baumhedlundlaw.com

**BAUM, HEDLUND, ARISTEI, &
GOLDMAN, P.C.**

10940 Wilshire Blvd., Suite 1600

Los Angeles, CA 90024

Telephone: (310) 207-3233

Facsimile: (310) 820-7444

EXHIBIT 1

Bijan Esfandiari - Bio

Bijan Esfandiari is a pharmaceutical product liability litigation attorney and senior shareholder at Baum Hedlund Aristei & Goldman in Los Angeles. Since joining the firm in 2007, Bijan has worked as lead counsel on several cutting-edge pharmaceutical and medical device cases. His legal work has helped thousands of clients secure compensation for their injuries and shaped the law for the benefit of those harmed by dangerous drugs and medical devices.

Bijan spent the first five years of his legal career as a defense attorney at a major national law firm. While working on a variety of cases spanning multiple disciplines, including entertainment law, intellectual property, and toxic torts, he became discontented with representing corporate polluters. Recalling that he went to law school to help those who were harmed by the greed and neglect of others, Bijan left the defense firm and joined Baum Hedlund, where he immediately found a committed group of lawyers and colleagues that shared his dedication to helping people harmed by corporate malfeasance.

Since his arrival, Bijan has successfully represented clients in state and federal courts across the nation at both the trial and appellate level in wrongful death and catastrophic personal injury cases. Utilizing the discovery process, he has fought to de-designate internal corporate documents demonstrating that pharmaceutical manufacturers intentionally concealed dangers associated with their products simply to maintain sales and profits. In a noteworthy case against drugmaker GlaxoSmithKline (GSK), Bijan obtained, examined, and presented evidence to the Court, which later ruled that: "internal GSK documents suggest that Defendant acted with a wanton and willful disregard for the safety of its consumers...Given such evidence, Plaintiffs may be able to establish at trial that Defendant knew of the risks of pediatric use of its drug yet failed to warn solely to increase the commercial profitability of Paxil." The ruling allowed Bijan's clients to proceed with claims for punitive damages and resulted in a successful resolution of the case.

Bijan routinely works on challenging cases for severely injured clients that other law firms refuse to represent due to the costs and legal hurdles. His efforts have not only helped these clients that other attorneys turned away; they also led to precedent-setting legal rulings that have benefited all plaintiffs and consumers.

Many of these precedential successes came in the form of defeating pharmaceutical and medical device companies' claims that they are immune (preempted) from liability by virtue of their products being approved by the FDA. In 2014, Bijan successfully briefed and argued the first and only medical device preemption case at the time before the Maryland Court of Special Appeals. In an issue of first impression, the three-judge panel in *McCormick v. Medtronic, Inc.*, 219 Md. App.485, unanimously agreed with Bijan's arguments that the device manufacturer was not entitled to immunity and held that the plaintiff could proceed with his claims against the medical device manufacturer.

This appellate success led to thousands of other similarly injured plaintiffs being able to successfully bring and maintain claims against the device manufacturer.

In a similar proceeding, Bijan successfully briefed and argued the first drug preemption case before the United States Court of Appeals for the Seventh Circuit. The three-judge panel in *Mason v. SmithKline Beecham Corp.*, 596 F.3d. 387 unanimously agreed with Bijan's arguments, finding that plaintiffs' claims against the drug manufacturer were not preempted by federal law.

The significance of these and other landmark rulings cannot be overstated. They ensure that drug and medical device companies that engage in deceptive or impermissible conduct are not entitled to immunity and that they can be held accountable in a court of law for any injuries they or their products cause to consumers.

Aside from obtaining substantial monetary recoveries for his clients, the cases Bijan and his colleagues have worked on helped give the public and medical community a chance to learn more about previously undisclosed risks associated with drugs, devices, and products. In multiple instances, his casework helped lead to labeling changes or dangerous products being removed from the market to prevent consumers and patients from suffering harm.

The son of an infectious disease scientist, Bijan was surrounded by members of the medical community from a young age. In addition to the joy he receives from representing and obtaining justice for his clients, a favorite part of Bijan's legal practice is that it allows him to learn from some of the world's leading medical experts in their respective fields, retained in the pharmaceutical and medical device cases he handles.

Practice Areas

Class Actions
Complex and Multi-District Litigation
Consumer Fraud Litigation
Defective Medical Devices
Personal Injury
Prescription Drugs
Gardasil Vaccine Lawsuit
Pharmaceutical Drug Product Liability
Zantac Cancer Lawsuit
Product Liability Law
Whistleblower Protection
Wrongful Death Law

Education

University of California, Los Angeles (B.A., cum laude, 1999)
University of California School of Law, Los Angeles, California (J.D., 2002)

Member, UCLA School of Law Moot Court Honors Program

Court Admissions

California, 2002
U.S. District Court, Central District of California, 2002
U.S. Court of Appeals, Ninth Circuit, 2002
U.S. District Court, Southern District of California, 2005
U.S. District Court, Eastern District of California, 2005
U.S. Court of Appeals, Tenth Circuit, 2008
U.S. District Court, Western District of Michigan, 2008
U.S. District Court, Eastern District of Wisconsin, 2008
U.S. Court of Appeals, Third Circuit, 2008
U.S. Court of Appeals, Seventh Circuit, 2009
U.S. Supreme Court, 2011
U.S. District Court, Northern District of California, 2012
U.S. Court of Appeals, First Circuit, 2013
U.S. District Court, Western District of Wisconsin, 2021
U.S. District Court for the District of New Mexico, 2021

Awards and Honors

The Best Lawyers in America® 2022
Lawdragon 500 Leading Plaintiff Consumer Lawyers, 2022
California Power House, Law360 Regional Powerhouse Series, 2021
Products Liability Trial Lawyers Association – Top 25
The National Trial Lawyers Top 100 Trial Lawyers
Selected to: Southern California Super Lawyers®, 2017 – 2022
Selected to: Southern California Super Lawyers® – Rising Stars, 2009 – 2016
Up-and-Coming 100: 2016 Southern California Rising Stars – Top List
Avvo.com Superb Score 10 out of 10
UCLA School of Law Moot Court Honors Program

Member

State Bar of California
American Association for Justice: Leader's Forum
Consumer Attorneys Association of Los Angeles
Member, UCLA Journal of International Law & Foreign Affairs
Contributing Author to The Docket, a UCLA School of Law Publication

Presentations / Speeches

Topic: Co-Chair Welcome; Gardasil Litigation; Gardasil and Autoimmune Injury: Diving Into the Science
Organization: HarrisMartin

Event: HarrisMartin's MDL Conference: Recalled Infant Formula and Gardasil
Location: Pittsburgh, Pennsylvania
Date: May 25, 2022

Program: Medtronic InFUSE Litigation Group
Topic: Status of Cases That Have Survived Preemption Motions and Discovery
Strategies and Different Venue Options
Organization: American Association for Justice
Event: 2014 AAJ Annual Convention
Location: Baltimore, Maryland
Date: July 26 – 30, 2014

Topic: "Status of the Infuse Litigation"
Organization: Mass Torts Made Perfect
Event: Medtronic Infuse Litigation Update
Location: Las Vegas, Nevada
Date: October 10, 2013

Topic: Panel: Corruption
Organization: Selling Sickness
Event: Selling Sickness, People Before Profits, Session VI
Location: Washington, D.C.
Date: February 20 – 22, 2013

Topic: "Living with the Mensing Decision"
Organization: Mass Torts Made Perfect
Event: Actos and Pelvic Mesh Litigation Update
Location: Philadelphia, Pennsylvania
Date: February 8, 2012

Topic: "Legal Implications of Pharmaceutical Ghostwriting"
Organization: Faculty of Law's Conference
Event: The Ethics of Ghost Authorship in Biomedical Research: Concerns and
Remedies Workshop
Location: University of Toronto
Date: May 4, 2011

Topic: "Oral Advocacy Competition Participant"
Organization: American Bar Association
Event: ABA Forum on Communications Law – Media Advocacy Workshop
Location: Key Largo, Florida
Date: February 8, 2007

Topic: "Strategies for Litigating Copyright Cases When Infringement is Uncontested"
Organization: San Fernando Valley Bar Association
Event: Intellectual Property, Entertainment Law & Internet Law Section

Location: Woodland Hills, California
Date: February 17, 2006

Author

[Challenging Medical Ghostwriting in US Courts](#) – PLOS Medicine, January 24, 2012

[Reason Magazine Perpetuates False Information About Safety and Efficacy of Antidepressants](#), September 30, 2011

[Levine To Mensing — A Journey From The Sublime To The Ridiculous](#) – LexisNexis® Mealey's™ Emerging Drugs & Devices, Volume 16, Issue #16, August 18, 2011

Outsmarting the 'Learned-Intermediary Doctrine' Defense – The Advocate, February 2010, pg 62

[Preemption's Requiem in the Wake of Wyeth v. Levine](#) – LexisNexis® Mealey's™ Emerging Drugs & Devices, Volume 14, Issue #10, May, 2009

[Complete Tort Immunity For Drug Manufacturers Is Bad For The Public Health: A Commentary On Colacicco v. Apotex And Other Recent Preemption Decisions](#) – LexisNexis® Mealey's™ Litigation Report: Antidepressant Report, Volume 4, Issue #10, May, 2008

Caught Without a License – Marketing Management – Marketing Law, November/December, 2007

YouTube Sued: It's a Riot – American Bar Association, Tort Trial & Insurance Practice Section (TIPS) Media Privacy Committee Newsletter, Fall, 2006

Camisoles: Providing Thin Protection, IP – Law 360, September 28, 2006

Grokster: Inducing Further Litigation – ABA Tort Trial & Practice Section, Intellectual Property Law Committee Newsletter, Fall, 2005

Pro Bono and Civic Activities

Member, Representative Assembly of the Palms Neighborhood Council
Public Counsel Volunteer Attorney, 2007

Published Cases

Hricik v. Stryker Biotech, LLC, 89 F. Supp. 3d 694 (E.D. Pa. 2015) (granting plaintiff's motion to remand the case back to state court)

Boutte v. Stryker Biotech, LLC, 67 F. Supp. 3d 732, 734 (M.D. La. 2014) (denying defendant's motion to dismiss and permitting plaintiff to proceed with his products liability claims against medical device manufacturer)

McCormick v. Medtronic, Inc., 219 Md. App. 485, 101 A.3d 467 (2014) (unanimously reversing the trial court's preemption/dismissal ruling and holding that injured patient's claims arising out of medical device manufacturer's off-label promotion of its medical device were not preempted by federal law and thus allowing plaintiff to proceed with his meritorious claims)

Cabana v. Stryker Biotech, LLC et al., Case No. BC465313, 2012 WL 3729227 (Cal.Super. Ct., August 20, 2012) (holding that injured patient's state law claims arising out of medical device manufacturer's off-label promotion of its bone morphogenetic protein [Infuse] were not expressly nor impliedly preempted by federal law)

Dorsett v. Sandoz, Inc., 699 F.Supp.2d 1142 (C.D.Cal. 2010) (denying defendants' preemption motion and holding that both name-brand and generic drug manufacturers have an affirmative duty to issue warnings)

Tucker v. SmithKline Beecham Corp., 701 F.Supp.2d 1040 (S.D.Ind.2010) (denying defendant's learned intermediary defense and further allowing plaintiffs' experts to testify regarding the causal association between antidepressants and increased suicidal behavior)

Mason v. SmithKline Beecham Corp., 596 F.3d 387 (7th Cir. 2010) (unanimously reversing the trial court's preemption ruling and allowing plaintiffs' claims to proceed to a trial on the merits)

Forst v. SmithKline Beecham Corp., 639 F.Supp.2d 948 (E.D.Wis.,2009) (holding that plaintiffs' claims are not preempted by federal law)

Forst v. SmithKline Beecham Corp., 602 F.Supp.2d 960 (E.D.Wis. 2009) (holding that Wisconsin has not adopted the learned intermediary doctrine and allowing all of plaintiffs' claims, including, negligence, fraud and punitive damages to proceed to the jury)

Cunningham v. SmithKline Beecham, 255 F.R.D. 474 (N.D.Ind. 2009) (ordering defendant to produce documents and awarding sanctions)

Knipe v. SmithKline Beecham, 583 F.Supp.2d 602 (E.D.Pa. 2008) (holding that a drug manufacturer owes a duty to warn regarding risks associated with off-label uses and allowing plaintiffs' claims for compensatory and punitive damages to proceed to the jury)

Knipe v. SmithKline Beecham, 583 F.Supp.2d 553 (E.D.Pa 2008) (holding that plaintiffs' claims are not preempted by federal law)

Tucker v. SmithKline Beecham Corp., 596 F.Supp.2d 1225 (S.D.Ind. 2008) (granting plaintiff's motion for reconsideration and holding that plaintiff's claims are not preempted by federal law)

Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc. (2005) 131 Cal.App.4th 802

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on the date indicated below using the Court's ECF system, which will provide notice of this filing to all counsel of record.

This, the 20th day of September 2022.

/s/ Bijan Esfandiari

Bijan Esfandiari