

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: WATSON FENTANYL PATCH  
PRODUCTS LIABILITY LITIGATION

MDL No. 2372

ORDER DENYING TRANSFER

**Before the Panel:** Pursuant to 28 U.S.C. § 1407(c), plaintiff in a Northern District of Alabama action, listed on Schedule A, moves for transfer of the action (*Schneider*) to the Northern District of Illinois for inclusion in MDL No. 2372. Defendants<sup>1</sup> oppose the motion to transfer.

Based on our review of the progress of this litigation and in consultation with the transferee judge, we conclude that inclusion of this action in MDL No. 2372 is no longer necessary to achieve the just and efficient conduct of the litigation. *See* 28 U.S.C. § 1407(a). As we have observed previously, “multidistrict litigation is not static.” *See* MDL No. 1769, *In re: Seroquel Prods. Liab. Litig.*, Order Vacating Conditional Transfer Order, at 1 (Feb. 5, 2010) (J.P.M.L. doc. no. 344). The relative merits of transferring new tag-along actions to an MDL can change over time as the transferee court completes its primary tasks, and the point at which the advantages of continuing to transfer tag-along actions outweigh the disadvantages is never absolutely clear. *See id.* After a certain point, however, the benefits of transfer should not be assumed to continue. *Id.* We are of the opinion that this MDL has now reached that point.

Thus, after considering all argument of counsel, we will deny plaintiff’s motion to transfer. The Panel ordered centralization in this docket in August 2012. All actions to the litigation at the time of transfer were “wrongful death or survivor actions sharing factual questions concerning alleged defects in the design, manufacture and marketing of the Watson fentanyl patch. Specifically, plaintiffs contend[ed] that the reservoir design of the Watson patch is defective and prone to leakage and that the Watson fentanyl patch the decedent was wearing at the time of his or her death malfunctioned and delivered too much fentanyl, resulting in a lethal overdose.” *In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351 (J.P.M.L. 2012). All actions have been settled, and, while *Schneider* is unquestionably factually related to the previously-transferred cases, it would be the only action pending in this MDL if we were to grant plaintiff’s motion to transfer. In these circumstances, we are of the opinion that the parties can more efficiently and conveniently litigate their dispute in the district in the Northern District of Alabama, where *Schneider* was filed.

In reaching this conclusion, we observe that plaintiff’s primary justification for transfer is to obtain discovery produced in other similar Watson fentanyl patch cases. Transfer to an MDL

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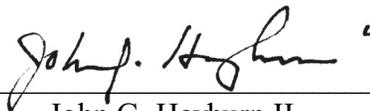
<sup>1</sup> Actavis, Inc. (f/k/a Watson Pharmaceuticals, Inc.), Watson Laboratories, Inc. (Delaware), Watson Laboratories, Inc. (Nevada), and Actavis Pharma, Inc. (f/k/a Watson Pharma, Inc.).

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proceeding, however, is not the exclusive avenue through which to secure such information. Plaintiff can pursue such information in the Northern District of Alabama court. We also note that the presiding judge in *Schneider* may find useful guidance in Judge Kennelly's pretrial rulings and scheduling orders. Finally, though we are denying transfer, we nevertheless encourage the parties to pursue various alternative approaches, should the need arise, to minimize the potential for duplicative discovery and inconsistent pretrial rulings. *See, e.g., In re Eli Lilly and Co. (Cephalexin Monohydrate) Pat. Litig.*, 446 F. Supp. 242, 244 (J.P.M.L. 1978); *see also Manual for Complex Litig., Fourth*, § 20.14 (2004).

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, the motion for transfer of the action listed on Schedule A for inclusion in MDL No. 2372 is denied.

PANEL ON MULTIDISTRICT LITIGATION



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John G. Heyburn II  
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Ellen Segal Huvelle

Charles R. Breyer  
Sarah S. Vance  
R. David Proctor

**IN RE: WATSON FENTANYL PATCH  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2372

**SCHEDULE A**

Northern District of Alabama

SCHNEIDER v. ACTAVIS, INC., ET AL., N.D. Alabama, C.A. No. 2:14-333