

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: FLUOROQUINOLONE PRODUCTS
LIABILITY LITIGATION**

MDL No. 2642

TRANSFER ORDER

Before the Panel: Plaintiffs in the actions listed on Schedule A (*Zloch* and *Wolbach*) move under Panel Rule 7.1 to vacate our orders conditionally transferring their actions to MDL No. 2642. Defendants oppose the motions to vacate and support transfer.¹

Plaintiffs in *Zloch* and *Wolbach* acknowledge that, like the actions in MDL No. 2642, their complaints allege that, as a result of using fluoroquinolone antibiotics, they suffer from peripheral neuropathy or symptoms of peripheral neuropathy and that the warnings provided by defendants concerning that risk were inadequate.² But they oppose transfer, arguing principally that (1) they have suffered additional injuries unrelated to peripheral neuropathy, and (2) their actions present unique factual issues concerning the risk of concomitant injury to multiple body systems, which allegedly has been the subject of distinct federal regulatory proceedings. They further argue that, as a result of these differences, inclusion of their actions in the MDL would not be just or efficient, asserting that the likelihood of overlapping discovery or risk of inconsistent pretrial rulings is low.

We find these arguments unconvincing. The factual allegations in *Zloch* and *Wolbach* concerning the alleged risk of peripheral neuropathy presented by fluoroquinolones and defendants' conduct overlap substantially with the actions in MDL No. 2642. Indeed, in the Panel briefing, plaintiffs concede that the allegations concerning peripheral neuropathy are a "major part" of their claims. The addition of factual allegations concerning injuries that allegedly are unrelated to peripheral neuropathy³ does not warrant exclusion of the actions. Transfer does not require a complete identity of factual issues, and the presence of additional facts or differing legal theories is

¹ Bayer HealthCare Pharmaceuticals Inc., and Merck Sharp & Dohme Corp. (f/k/a Schering Corporation (together, Bayer); Janssen Pharmaceuticals, Inc. (f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc.), Janssen Research & Development, LLC, and Johnson & Johnson (together, Janssen); and Ivax Pharmaceuticals, Inc.

² In *Zloch*, plaintiffs allege that their injuries resulted from generic levofloxacin. In *Wolbach*, plaintiffs allege that their injuries resulted from generic ciprofloxacin.

³ Although plaintiffs allege other injuries in addition to neuropathy, certain of these injuries, including "tingling and burning" in their limbs, "chronic pain," and skin and sense dysfunction, have been identified by the U.S. Food and Drug Administration as symptoms of peripheral neuropathy.

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not significant when, as here, the actions arise from a common factual core. *See In re: New England Compounding Pharmacy, Inc., Prods. Liab. Litig.*, 38 F. Supp. 3d 1384, 1385-86 (J.P.M.L. 2014). In addition, the regulatory proceedings on multiple system disabilities, which plaintiffs characterize as unique to their actions, encompass the risk of peripheral neuropathy and are included in the master complaint in MDL No. 2642.⁴

Plaintiffs further object to transfer on the ground that they will be unable to obtain discovery on the claims unrelated to peripheral neuropathy, alleging that defendants oppose any such discovery in the MDL. Defendants' intention to object to plaintiffs' case-specific discovery is not material to transfer. Plaintiffs may raise their case-specific discovery concerns to the transferee judge, who has "broad discretion to employ any number of pretrial techniques – such as establishing separate discovery and/or motion tracks – to address any differences among the cases and efficiently manage the various aspects of th[e] litigation."⁵ Additionally, plaintiffs likely will benefit from the common discovery in the MDL concerning peripheral neuropathy and the regulatory background and science of fluoroquinolones, which is ongoing.

Plaintiffs also object to transfer based on the alleged inconvenience of the transferee district. Although we are sympathetic to plaintiffs' concerns about inconvenience, they do not justify denial of transfer. While transfer of a particular action might inconvenience some parties to that action, transfer often is necessary to further the expeditious resolution of the litigation taken as a whole. *See In re: Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001).

After considering the argument of counsel, we find that these actions share questions of fact with the actions transferred to MDL No. 2642, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Like many of the already-centralized actions, these actions involve factual questions arising from allegations that fluoroquinolone antibiotics cause or substantially contribute to the development of irreversible peripheral neuropathy and that the warnings provided by defendants concerning that risk were inadequate. *See In re: Fluoroquinolone Prods. Liab. Litig.*, 122 F. Supp. 3d 1378, 1380 (J.P.M.L. 2015). Thus, we find that these actions will benefit from common discovery and pretrial proceedings, and their transfer to the MDL is warranted.

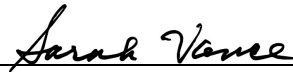
⁴ *See In re: Fluoroquinolone Prods. Liab. Litig.*, No. 15-md-2642, Doc. No. 241, ¶¶ 102-08 (D. Minn. Aug. 12, 2016) (Second Am. Master Compl.).

⁵ *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 731 F. Supp. 2d 1352, 1355 (J.P.M.L. 2010); *see also In re: Pfizer Inc. Secs., Derivative & "ERISA" Litig.*, 374 F. Supp. 2d 1348, 1350 (J.P.M.L. 2005) ("Any concerns of the objecting . . . plaintiffs that Section 1407 centralization will somehow retard the pace at which their claims progress should be addressed to the transferee judge").

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IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the District of Minnesota and, with the consent of that court, assigned to the Honorable John R. Tunheim for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
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**IN RE: FLUOROQUINOLONE PRODUCTS
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SCHEDULE A

Northern District of Illinois

ZLOCH, ET AL. v. JOHNSON AND JOHNSON, INC., ET AL., C.A. No. 1:16-10116

Eastern District of Pennsylvania

WOLBACH, ET AL. v. BAYER HEALTHCARE PHARMACEUTICALS, INC., ET AL.,
C.A. No. 5:16-03711