

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: FLUOROQUINOLONE PRODUCTS  
LIABILITY LITIGATION**

MDL No. 2642

**TRANSFER ORDER**

**Before the Panel:**\* Plaintiff in the action listed on Schedule A (*Kester*), proceeding *pro se*, moves under Panel Rule 7.1 to vacate our order conditionally transferring her action to MDL No. 2642. Defendant Janssen Pharmaceuticals Inc., opposes the motion to vacate and supports transfer.<sup>1</sup>

After considering the parties' arguments, we find that this action shares 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 centralized actions, *Kester* involves factual questions arising from allegations that fluoroquinolone antibiotics (here, Levaquin) cause or substantially contribute to the development of irreversible peripheral neuropathy and that the warnings provided by defendant 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 this action will benefit from common discovery and pretrial proceedings, and that transfer to the MDL is warranted. Moreover, as plaintiff *Kester* acknowledges, she had a prior action in MDL No. 2642, alleging substantially the same injuries from Levaquin.<sup>2</sup> This second action is factually indistinguishable, and like her first action, is appropriate for inclusion.

In opposition to transfer, plaintiff argues that (1) her new action is an individual, personal injury action and thus not appropriate for inclusion in an MDL involving mass tort litigation; (2) she does not wish to participate in settlement proceedings that allegedly are underway in the MDL; and (3) transfer away from her home state to a distant forum would be inconvenient. We find these arguments unconvincing.

First, the status of plaintiff's action as an individual personal injury action does not prevent transfer. While her action is an individual one, her factual allegations overlap substantially with the actions pending in the MDL, which also are individual actions alleging peripheral neuropathy, or

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\* Judge Lewis A. Kaplan took no part in the decision of this matter.

<sup>1</sup> Janssen Pharmaceuticals Inc., asserts that plaintiff incorrectly named "Janssen Scientific Affairs" as the defendant, and has appeared in the underlying action and the Panel proceedings to defend against the claims.

<sup>2</sup> *Kester v. Johnson & Johnson*, C.A. No. 16-1584 (D. Minn.).

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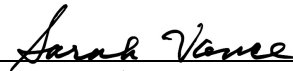
symptoms of peripheral neuropathy, from use of fluoroquinolone antibiotics – the same type of action and injuries as plaintiff’s. Plaintiff emphasizes her reliance on individualized evidence – her prescriptions, injuries, medical treatment history, and damages. But as the Panel observed in the initial transfer order, “the existence of individualized factual issues does not negate the efficiencies gained by centralization,” noting that the common questions of fact in this litigation are “multiple and complex.”<sup>3</sup> As defendant notes, plaintiff’s case, like the MDL cases, will focus on what defendant knew or should have known about the alleged relationship between Levaquin and peripheral neuropathy; general causation; and the background science, regulatory history, and labeling.

Second, plaintiff’s decision not to participate in an alleged settlement with defendant is immaterial to transfer. There are ongoing common pretrial proceedings in the MDL which will serve the just and efficient conduct of this litigation, including common discovery and pretrial motions.

Plaintiff’s objection to transfer based on her preference for keeping her action in the district where she resides also is unpersuasive. Although we are sympathetic to plaintiff’s concerns about inconvenience, they do not justify denial of transfer. The Panel looks to “the overall convenience of the parties and witnesses, not just those of the parties to a single action.” *See, e.g., In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1352 (J.P.M.L. 2012).

IT IS THEREFORE ORDERED that the action listed on Schedule A is 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  
Ellen Segal Huvelle  
Catherine D. Perry

Charles A. Breyer  
R. David Proctor

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<sup>3</sup> *See In re: Fluoroquinolone Prods. Liab. Litig.*, 122 F. Supp. 3d at 1379.

**IN RE: FLUOROQUINOLONE PRODUCTS  
LIABILITY LITIGATION**

MDL No. 2642

**SCHEDULE A**

Eastern District of Oklahoma

KESTER v. JANSSEN SCIENTIFIC AFFAIRS, C.A. No. 6:18-00041