

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: FLUOROQUINOLONE
PRODUCTS LIABILITY
LITIGATION

MDL No. 15-2642 (JRT)

This Document Relates to All Actions

**PRETRIAL ORDER #1 ON
PROCEDURAL ISSUES**

INTRODUCTION

The Judicial Panel on Multidistrict Litigation (“JPML”) has transferred actions in the above-captioned matter to this Court for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 as part of a nationwide litigation involving fluoroquinolone antibiotics allegedly designed, manufactured and/or distributed by the Defendants. The Court conducted an initial status conference on January 12, 2016.

Pursuant to this Court’s jurisdiction over these actions, and the parties’ agreement, this Court hereby enters the following order:

1. CONSOLIDATION OF RELATED ACTIONS.

Any other actions filed, whether filed directly in the United States District Court for the District of Minnesota (if permitted by subsequent order of the Court) or in any other United States District Court (whether by original filing or removal), that are related to this

litigation are, upon filing in this Court or transfer to this Court are hereby consolidated for pre-trial proceedings (the “Consolidated Action”), pursuant to the MultiDistrict Litigation (“MDL”) Order dated August 17, 2015 [Docket No. 1], under 28 U.S.C. § 1407(a).

2. CASE MANAGEMENT CONFERENCES.

The Court will hold regularly scheduled status conferences. To minimize costs and facilitate manageable conferences, parties are not required to attend but shall be represented at the conferences. Parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation; and attendance at the conference will not waive objections to jurisdiction, venue or service. The next two status conferences currently are scheduled to be held on February 24, 2016 at 1:30 p.m. and March 15, 2016 at 1:30 p.m.

A. JOINT AGENDA.

Counsel shall submit a joint agenda three days prior to each status conference.

3. CAPTION OF CASE.

All orders, pleadings, motions and other documents served or filed in this Consolidated Action shall have the following caption:

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: FLUOROQUINOLONE PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2642 (JRT)

This Document Relates to [“All Actions” or
specify by title and case number the individual
applicable cases if the document relates to less
than all of the consolidated cases.]

The original of this Order shall be filed by the Clerk and a copy thereof shall be filed in each subsequently filed or transferred action, which is related to and consolidated with this action. The Clerk of Court will maintain docket and case files under this caption, and pursuant to the procedures set forth in paragraph 4, below.

4. DOCKET AND FILING PROCEDURES.

A. Master Docket and File.

The Clerk will maintain a Master Case File, MDL No. 15-2642 (JRT). All orders, pleadings, motions and other documents will, when filed and docketed in the master case file, be deemed filed and docketed in each individual case to the extent applicable. The Master Docket shall be set up with the following parties upon appointment by the Court as set forth in paragraph 9 below: plaintiffs’ Lead Counsel, plaintiffs’ Liaison Counsel, plaintiffs’ Steering Committee, defendants’ Lead Counsel and defendants’ Liaison Counsel.

These parties will appear on the docket report in MDL No. 15-2642 (JRT) as Lead Parties. The defendants and plaintiffs from the other cases will be added to MDL No. 15-2642 (JRT) as Notice-Only Parties, but will not appear on the docket report.

B. Separate Dockets and Files.

The Clerk will maintain a separate docket for each case removed or transferred to this Court. Each such case will be assigned a new case number in this Court.

C. Notice of Appearance.

All parties shall file a Notice of Appearance in MDL No. 15-2642 (JRT) **only**. The Notice of Appearance shall specifically list the individual case to which it applies. The parties must also obtain an individual PACER account. Information on how to get individual or updated PACER account can be found on the Court's website on the NextGen ECF page at <http://www.mnd.uscourts.gov/cmecf/index.shtml> under "NextGen Information." Non-resident attorneys who want filing access in the District of Minnesota should also submit a MDL Registration form found at <http://www.mnd.uscourts.gov/MDL.shtml> . Please contact an Attorney Admissions Clerk at 651-848-1100 if you have any questions or need assistance.

D. Filing.

All orders, pleadings, motions, and other documents that are normally filed in a civil

action as required by Federal Rule of Civil Procedure 5 and that relate to an individual case shall be filed in the individual case. Those documents shall indicate in their caption the case number of the individual case to which they apply. Documents relating to all consolidated actions shall include in their caption the notation that they relate to “ALL ACTIONS” and shall be filed only in MDL No. 15-2642 (JRT).

E. Electronic Filing.

All documents filed by the parties in this MDL—with the exception of “initiating documents”—shall be filed electronically and in compliance with the District of Minnesota’s Local Rules and Electronic Case Filing Procedures. “Initiating documents” (e.g., original complaints, notices of removal), together with a civil cover sheet, and the filing fee, shall be submitted to the United States District Court for the District of Minnesota Clerk’s Office for filing. The Clerk’s office accepts initiating documents delivered to it in person or by e-mail and U.S. Mail. When filing documents relating to a particular case or cases, the documents shall be filed on the ECF system under the particular case. A copy of the Court’s electronic filing procedures is available at www.mnd.uscourts.gov. Initiating documents shall not be sent directly to the Chambers of Chief Judge John R. Tunheim.

F. Motion Filing.

Any motion or other request for a ruling from the Court must be filed

electronically as a motion on CM/ECF. Any opposition to a motion or any reply to a motion must be electronically linked to a motion on CM/ECF. In addition, the caption of any such document shall include a reference to the motion's exact title and/or docket number and, as required by paragraph 4.D above, be filed in the individual case, unless the motion applies to "ALL ACTIONS," in which case it shall be filed in MDL No. 15-2642 (JRT). The parties shall comply with the requirements of Rule 7.1 of the Local Rules for the District of Minnesota when filing both dispositive and non-dispositive motions. Absent a Court order, only those documents described in Local Rule 7.1 will be allowed to be filed with respect to a particular motion.

G. Stipulations.

Any stipulation by the parties must be filed on CM/ECF.

H. Courtesy Copies.

One courtesy copy of any document related to a motion shall be delivered to the Chambers of Chief Judge John R. Tunheim (via U.S. Mail or hand-delivery to 15 United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, 55415). The courtesy copies must contain a reference to the docket number of each particular document and be **bound and tabbed**, if necessary, in a manner that is easy to use. Unbound copies or copies with binder clips only will not be accepted.

I. Proposed Orders.

Proposed orders shall be emailed to tunheim_chambers@mnd.uscourts.gov. All proposed orders shall be **unsigned** and must **not** be filed as any attachment or separate document on CM/ECF. The subject line on the e-mail message will contain an explicit reference to the Fluoroquinolone MDL and to the motion or other matter to which the proposed order pertains.

J. Chambers Email.

Other than proposed orders and agendas, Statements of Issues, and any other document specifically requested by the Court, no other documents shall be e-mailed to the chambers' e-mail address.

K. Briefing Schedules.

Unless the Court approves other briefing schedules, the briefing schedule for all motions filed must be made pursuant to the Federal Rules of Civil Procedure and the Local Rules for the District of Minnesota.

L. Service of Documents.

Service of documents in this MDL is made pursuant to Federal Rule of Civil Procedure 5. This Order shall be mailed to the persons named as Lead or Liaison Counsel upon appointment. Said counsel are required to forward a copy of the

Order to other attorneys who have appeared in any action transferred to this Court. An updated and corrected service list shall be prepared as the litigation progresses. The Lead and Liaison Counsel for each party shall be responsible for establishing a service list and conferring with the Clerk of the Court to ensure that a Master Service List is established and kept current and which shall include all parties and counsel that may join this action. In addition, it is the responsibility of Plaintiffs' Liaison Counsel to ensure service of the Court's Orders upon any *pro se* plaintiffs.

5. APPLICABILITY OF THIS ORDER.

This Order applies automatically to all actions listed in the JPML's August 17, 2015 Transfer Order [Docket No. 1], as well as any other actions subsequently transferred to, removed to, or initiated in this Court, without the necessity of future motions or orders.

6. MOTION PENDING WHEN CASE IS TRANSFERRED TO THIS MDL.

Any motion that was pending before transfer to this MDL is hereby withdrawn without prejudice. Subject to paragraph 12.D below and any future case management orders, if a party wishes for a motion that was pending to be heard, that party must re-file the motion in this MDL.

7. RULES OF CIVIL PROCEDURE.

All actions listed in the Schedule A attached to the JPML's Transfer Order of August 17, 2015 [Docket No. 1], as well as any other actions subsequently transferred to

or filed in this proceeding, shall be governed by the Federal Rules of Civil Procedure and the Local Rules for the District of Minnesota, and the Electronic Case Filing Procedures for the District of Minnesota. The parties are expected to be familiar with the Local Rules for the District of Minnesota and the Electronic Case Filing Procedures for the District of Minnesota.

8. RULE 7.1 DISCLOSURE STATEMENT.

Counsel will file in the Master Case File in MDL No. 15-2642 (JRT), no later than thirty (30) days of receipt of this Order, statements required by Rule 7.1 and a list of all counsel associated in this consolidated action. The Rule 7.1 statements filed pursuant to this paragraph will be deemed applicable to all cases in this MDL and should be filed only once.

9. LEAD COUNSEL, LIAISON COUNSEL, AND PLAINTIFFS' STEERING COMMITTEE.

The Court intends to appoint lead counsel (or co-lead counsel) and liaison counsel for both the plaintiffs and the defendants, and a steering committee (PSC) for the plaintiffs. These counsel will have the responsibilities described in the Manual for Complex Litigation, Fourth Edition, § 40.22, subject to modification by the Court. The primary criteria for these appointments will be: (a) willingness and availability to commit to a time-consuming project; (b) ability to work cooperatively with others; (c) professional experience in this type of litigation; and (d) access to sufficient resources to advance the

litigation in a timely manner. For the PSC, the Court will consider only attorneys who have entered an appearance in one or more individual action(s) that is part of this case. Applications and nominations must be filed no later than February 19, 2016, and should address succinctly the criteria referenced above and any other relevant matters. No submission on behalf of an individual may exceed three pages. Any objections to any application or nomination must be filed no later than February 26, 2016 and are likewise limited to three pages.

10. PROCEDURES.

A. Admission of Counsel.

Attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. Association of local co-counsel is not required. Each lawyer shall indicate the Court(s) before which he or she is admitted in a page included as an attachment to the complaint labeled “List of United States Federal Courts to which Counsel for Plaintiff is Admitted” and which shall be signed and dated by counsel under the statement, “I hereby certify that I am admitted to the preceding United States District Court(s) and that I have not been disbarred or suspended from practice before any of these Courts or any other United States District Court.” In the event that counsel has been disbarred or suspended from practice before any United States District Court, counsel shall set forth in the attachment the circumstances of such disbarment or suspension from practice. In addition to familiarizing themselves with the rules discussed above, all counsel are expected to familiarize themselves with the

American Bar Association's *Civil Discovery Standards*, as well as *The Manual for Complex Litigation 4th* (Federal Judicial Center 2004), which the Court and parties may be called upon to refer to as a resource in the case management of this litigation.

B. Pleadings.

Each defendant is granted an extension of time for responding by motion or answer to the complaint(s) until such time as set forth in a future case management order.

C. Orders of Transferor Courts.

All Orders by transferor Courts imposing dates for pleadings or discovery are vacated.

11. OFFICIAL COURT WEBSITE.

The Court has created and will maintain a web page devoted to the Fluoroquinolone Products Liability Litigation, which can be found at www.mnd.uscourts.gov/MDL-Fluoroquinolone. Through this website, parties may access the orders, minutes, the calendar, transcripts, forms used in this MDL, contact information for the Court's staff, Plaintiffs' Lead and Liaison Counsel, defendants' Lead and Liaison Counsel, frequently asked questions, and agendas and reports. Plaintiffs' Lead and Liaison Counsel and defendants' Lead and Liaison Counsel shall confer with the Court regarding the content of the website.

12. MASTER COMPLAINT AND SHORT FORM COMPLAINTS

A. Deadline for Filing Master Complaint.

By March 14, 2016, the Plaintiffs' Steering Committee ("PSC") shall file a Master Complaint on behalf of all Plaintiffs asserting product liability claims in these MDL proceedings. The Master Complaint shall include allegations against every Defendant currently a party to these proceedings and may name as Defendants new parties not previously named as a Defendant in any case currently in these proceedings. With respect to any Rule 12 motion based on statute of limitations filed by Defendants pursuant to paragraph 12.D below, the PSC shall not seek leave to amend the Master Complaint to allege additional facts to support a response to any such Rule 12 motion. If the PSC later identifies additional Defendant(s), factual allegations and/or causes of action it wishes to add to the Master Complaint, it shall seek leave from the Court pursuant to Federal Rule of Civil Procedure 15 to file an Amended Master Complaint.

B. Content of Short Form Complaints.

At the time the PSC files the Master Complaint, the PSC also shall file as Exhibit "A" thereto a Short Form Complaint, which shall be an abbreviated form that Plaintiffs will complete in lieu of filing standalone complaints. Upon appointment by this Court of a PSC, the parties shall meet and confer regarding the form of the Short Form Complaint and submit either a joint proposed submission, or competing proposals, three days in advance of the next status conference, currently scheduled for February 24, 2016 at 1:30 p.m.

C. Deadlines for Short Form Complaints for Cases Filed After Master Complaint.

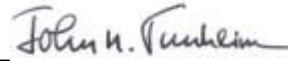
Any Plaintiff with a case currently pending in these MDL proceedings as of the date of the filing of the Master Complaint must file a Short Form Complaint on or before April 14, 2016. After the filing of the Master Complaint, any Plaintiff whose case becomes part of these MDL proceedings either by a direct filing and assignment to this Court (if permitted by subsequent order of the Court) or by transfer from another district or from another judge in this district must file a Short Form Complaint within 30 days after the date of transfer or, if originally filed in this district, assignment to this Court. For the purposes of the application of the statutes of limitation and/or repose, any Plaintiffs mentioned in this paragraph shall be deemed to have filed his or her complaint as of the date of filing of that Plaintiff's original complaint, not the date of filing of the Master Complaint.

D. Rule 12 Motions based on Statute of Limitations.

As against any case pending in these MDL proceedings as of May 15, 2016, Defendants must file any Rule 12 Motion based on the statute of limitations on or before June 1, 2016. The PSC's Opposition shall be due on or before June 30, 2016. Defendants reply shall be due on or before July 15, 2016. Any such motion shall be filed as an omnibus motion and shall specify in the case caption the case number of each individual case to which the Motion shall apply. Any other grounds to dismiss either the Master Complaint or individual cases (or if a statute of limitations defense is not apparent from the

Short Form Complaint) may be reserved until a later date.

DATED: February 12, 2016
at Minneapolis, Minnesota.



JOHN R. TUNHEIM
Chief Judge
United States District Court