

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: LEVAQUIN PRODUCTS) MDL NO. 08-MD-1943 (JRT/AJB)
LIABILITY LITIGATION)

WILLIAM VOSS, et al.) FILE NOS. CA 06-3728 (JRT/AJB)
) CA 07-1584 (JRT/AJB)
 vs.) CA 07-1661 (JRT/AJB)
) CA 07-1862 (JRT/AJB)
 JOHNSON & JOHNSON, et al.) CA 07-2999 (JRT/AJB)
)
)

) Courtroom 13 East
) Minneapolis, Minnesota
) Tuesday, August 7, 2007
) 2:30 P.M.

HEARING ON DEFENDANTS' MOTIONS TO TRANSFER

[DOCKET NOS. 15, 16, 17, 18]

BEFORE THE HONORABLE JOHN R. TUNHEIM
UNITED STATES DISTRICT JUDGE

TIMOTHY J. WILLETTE, RDR, CRR, CBC, CCP
Official Court Reporter - United States District Court
1005 United States Courthouse
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* * * * *

1 (2:30 p.m.)

2 **P R O C E E D I N G S**

3 **I N O P E N C O U R T**

4 THE COURT: You may be seated. Good afternoon.

5 This is civil case -- actually, there's a number of
6 them here. The top one listed is 06-3728 and then there's
7 four others. William Voss, et al. vs. Johnson & Johnson,
8 et al.

9 Counsel, would you note your appearances for the
10 hearing today.

11 MR. RUDD: Good afternoon, your Honor. Gordon
12 Rudd and Stacy Hauer from Zimmerman Reed on behalf of
13 Plaintiffs, and I'd like to introduce to the Court
14 Jennifer Frank from Portland, Maine, who will be arguing
15 today on behalf of Plaintiffs.

16 THE COURT: Good afternoon to all of you.

17 MS. AMPULSKI: Your Honor, Jennifer Ampulski from
18 Meagher & Geer on behalf of Defendants, and with me is
19 Bill Robinson.

20 THE COURT: Good afternoon to both of you.

21 We have the defendants' motions to transfer, five
22 separate motions. Ms. Ampulski, are you going to make the
23 argument?

24 MS. AMPULSKI: I am, your Honor.

25 THE COURT: Go right ahead.

1 MS. AMPULSKI: Your Honor, as the Court noted
2 earlier, there are actually six separate motions that are
3 before the Court involving six different plaintiffs, all of
4 whom have filed claims in the Federal District Court for the
5 District of Minnesota alleging injuries arising out of their
6 consumption of the drug, the antibiotic, Levaquin.

7 The basis for the motions, the most recent of which
8 added to this case was the Parr case, all six of these
9 plaintiffs have no contacts to Minnesota whatsoever. They
10 are based on facts, on medical records, on witnesses and
11 witness testimony that all occur outside of the District of
12 Minnesota and in fact occur in the various locations where we
13 are seeking to transfer.

14 The plaintiffs have attempted to strengthen their
15 argument by saying the fact that we filed all these motions
16 to be heard at the same time and are arguing them at the same
17 time somehow strengthens their argument that these cases
18 should be heard together when, in fact, I would submit that I
19 don't think that's a reason to criticize Defendants' motions
20 at all. I think it actually strengthens Defendants' motions,
21 that each one of these six plaintiffs has absolutely no
22 contact to Minnesota. So the arguments most certainly are
23 the same because of the fact that what Plaintiffs have tried
24 to do in each one of these cases is try to take advantage of
25 what they believe is more favorable law or something to that

1 effect to the inconvenience of the parties. So that's why we
2 are seeking a Section 1404(a) transfer for the convenience of
3 the parties and the witnesses and in the interest of justice.

4 There's a two-step analysis that the court takes
5 for such motions. The first step there doesn't appear to be
6 any dispute about because the plaintiffs can't. We have met
7 their requirement of showing the Court that all of these
8 plaintiffs could have filed their actions in their home
9 states and there doesn't appear to be any dispute about that.
10 That's because that's where they consumed the product, that's
11 where it was prescribed to them, that's where they treated
12 with their physicians, it's where their injuries occurred
13 that they're claiming are related to the consumption of
14 Levaquin, so there is no dispute about that. So the dispute
15 really rests on whether the convenience to the parties in the
16 interest of justice require transfer of these six cases.

17 The plaintiffs seem to be confusing inconvenience
18 to the attorneys with inconvenience to the parties and the
19 witnesses, and attorneys' inconvenience is not a basis for
20 refusing a motion to transfer. In fact, there's case law
21 that says that an attorney's inconvenience is not a basis for
22 a motion to transfer. All of these plaintiffs are residents
23 of the states where Defendants seek to transfer the cases.
24 And in fact, just for point of clarification, there's a
25 couple of these, three of them, actually, where we're seeking

1 severance and transfer as well, just so that the record is
2 clear.

3 Plaintiffs cannot dispute, and so they don't, that
4 it would be more convenient for them to have these cases
5 located in the venue where they reside because it's closer to
6 home. They don't need to incur the additional expenses of
7 traveling for depositions, of having to travel to attend
8 independent medical examinations, to have to travel to attend
9 court-ordered conferences, or to have to travel to attend
10 their respective trials, and Plaintiffs seem to be intimating
11 in their papers that these cases would all somehow be tried
12 together. There is no order consolidating these cases for
13 trial. They are at this point all separate with the
14 exception of the cases that have been filed with I think the
15 Voss case, the very first case that the Court mentioned,
16 which has three plaintiffs, but certainly Defendants will be
17 moving to sever them for the purposes of trial in any event.
18 So, there is nothing to indicate that this would be -- moving
19 to their home state would somehow be more inconvenient for
20 them. It can only be more convenient and to argue otherwise
21 would be disingenuous.

22 The plaintiffs claim that their choice of forum is
23 therefore entitled to deference, and while that is certainly
24 the case in most contexts when the plaintiff's chosen forum
25 has absolutely no connection to the events that give rise to

1 it, then that rule is not given greater weight. Convenience
2 to the defendants is the same. It's undisputed that
3 Defendants' corporate residents -- excuse me -- corporate
4 witnesses do not reside in Minnesota. And in fact, the drug
5 that is at issue here was given FDA approval in 1997, and
6 most of the corporate witnesses do not even work for
7 Johnson & Johnson anymore. Most of them don't even reside in
8 New Jersey anymore and are scattered around the country
9 themselves, so it certainly is not going to be Defendants'
10 convenience to have it here in Minnesota. Rather, the
11 greater weight of the evidence and witnesses are located in
12 the areas where the plaintiffs reside.

13 As far as convenience to the witnesses goes,
14 Plaintiffs attempt to dismiss the defendants' arguments that
15 that their treating physicians are indispensable witnesses to
16 this case, because they say: Well, we aren't going to be
17 calling them as experts. Our experts are going to be a few
18 experts. We're going to be addressing the issues common to
19 all the plaintiffs. But what they seem to forget is that
20 there's two causation issues here.

21 There's a causation issue as it relates to the
22 warnings that were given when the plaintiffs' physicians were
23 prescribing the Levaquin, but then there's also a causation
24 issue that relates to the specific injuries that these
25 plaintiffs suffered. And the question really is, number one,

1 whether Levaquin caused these injuries, and number two,
2 whether there may have been other pre-existing conditions,
3 whether there could have been other concomitant drugs that
4 the plaintiffs took could have also resulted in their tendon
5 injuries, claimed tendon injuries, and their medical history
6 is going to be very important for the Defendants' defense.
7 Therefore, those witnesses are indispensable, and so
8 Plaintiffs attempting to sweep that under the rug by saying,
9 well, they're not as important to our case is really
10 irrelevant, because they are most certainly relevant to the
11 Plaintiffs' treating history, et cetera.

12 The witnesses in the plaintiffs' home states, and
13 not just talking about the doctors here, but also any fact
14 witnesses, before-and-after witnesses, friends, family,
15 relatives, people who were there who actually saw what may or
16 may not have occurred that resulted in the injury, all of
17 those witnesses likely, because these injuries all took place
18 in the plaintiffs' home states, are all within that venue.
19 And those witnesses, while the plaintiffs point out can be
20 subpoenaed to appear for a deposition, they cannot be
21 subpoenaed to appear for a deposition or for trial in
22 Minnesota.

23 So what essentially we're going to have here if the
24 Court maintains jurisdiction over all of these cases is, when
25 these cases come up for trial, we're going to have

1 essentially what is going to be a video trial. All of the
2 defendants' representatives likely will be testifying by
3 video if the plaintiffs choose to take those depositions.
4 The plaintiffs' treating physicians, if they can't be
5 subpoenaed to come to show -- appear in person in Minnesota,
6 are going to be testifying by deposition. All of the
7 witnesses, fact witnesses, will then be appearing by video
8 deposition and certainly that is not what is intended when
9 the Court considers what would be important for a jury and
10 for weighing of the evidence, and in fact the law is clear
11 that live testimony is preferred over video testimony.

12 With respect to the issue of the locus of operative
13 facts, the law is clear that when the operative facts upon
14 which the litigation is brought bears little material
15 connection to the chosen forum, then the courts need not
16 defer to the plaintiff's choice of venue and that certainly
17 is the case here.

18 In addition, the plaintiffs appear to want the
19 Court to at the very least defer its decision whether to
20 transfer these cases to the plaintiffs' home state. And
21 while on the one hand they argue that it makes more judicial
22 and economic sense to keep all the cases here because we've
23 already only had one Rule 26(f) conference and one Rule 16
24 conference; therefore, splitting the cases up is somehow
25 going to drive up the cost of litigation, so they want to

1 wait and have the Court weigh in on that, I would submit that
2 waiting is actually going to drive up the cost of litigation,
3 because it's going to require additional travel for everyone
4 as it relates to traveling to the various locations where
5 these witnesses are located rather than having them appear in
6 their home forum.

7 In addition, we have already spoken to Plaintiffs'
8 counsel about keeping costs of litigation down by allowing
9 them to take our corporate representatives' depositions one
10 time and being able to use those depositions in all of their
11 cases, so any concerns that the plaintiffs have about driving
12 up the cost of litigation really should be allayed by that
13 assurance.

14 Turning now to the interests of justice, you know,
15 the plaintiffs, as I stated, won't really suffer any greater
16 inconvenience or more economic loss by litigating their cases
17 in their home states. In fact, they should incur less in the
18 way of costs and have more convenience if we litigate these
19 cases in their home states.

20 As we stated -- or as I've stated with respect to
21 the issues about the motions all being heard at once and the
22 Rule 16 conference and one judge and one magistrate, what the
23 plaintiffs fail to acknowledge in their motion, their
24 responsive memorandum, is that they have now -- we initially
25 filed five motions to transfer and that's what we had before

1 the Court. Subsequent to that time, the plaintiffs filed a
2 new action. That's the Parr case that I mentioned earlier.
3 We asked the Court to allow us to have that heard at the same
4 time as these other five motions. However, we haven't had
5 our Rule 26(f) conference yet, we haven't had the Rule 16
6 conference yet, and the plaintiffs' counsel has already told
7 us on at least one if not more occasions that they have other
8 cases that they intend to file here and that they aren't all,
9 or the majority of them are not, Minnesota residents. So as
10 far as any judicial economy as it relates to Rule 16
11 conferences and 26(f) conferences, all of that is going to be
12 lost with respect to any future cases and certainly with
13 respect to the Parr case.

14 The plaintiffs also argue that there will be
15 confusion by six different federal judges deciding identical
16 issues of law. This argument is not -- the argument that the
17 plaintiffs are proffering doesn't -- shouldn't sway the
18 Court, because it is no different than any other case out
19 there. Any other case involving any other issue may have
20 similar questions of law that courts are considering, but the
21 facts are all different and that is what the case is here.
22 All of these plaintiffs have different modes of injury. They
23 all have different injuries. They may all actually have some
24 sort of tendon-type injury, but they all are relating to --
25 they're all different facts, they're all different doctors,

1 they're all different supporting facts, basically, and as a
2 result, there is nothing about these cases that's different
3 than anything else. And basically what happens when you have
4 several courts looking at similar legal issues is, courts are
5 aware of previous issues, previous rulings that have been
6 made, and to the extent that those rulings are entitled some
7 deference, they'll give deference to those rulings;
8 otherwise, they'll look to their own circuit's law to
9 determine what law should apply. That should not be the
10 basis for denying this motion to transfer.

11 Finally, the plaintiffs argue that because the
12 defendants acknowledge that the rule is that when the
13 transfer -- when a transfer happens that the transferor's
14 court rules apply to the transferee court, that that somehow
15 supports their argument that the cases shouldn't be
16 transferred.

17 First of all, it's important to note that that rule
18 only applies to substantive and not procedural law.

19 Secondly, the other thing that's important to note
20 is that the rule actually says that you look to that to
21 determine whose choice-of-law analysis applies and then that
22 choice-of-law analysis determines which substantive law
23 applies. That can happen if the cases stay here in Minnesota
24 as well. Simply because the cases are venued here in
25 Minnesota doesn't mean that the substantive law of Minnesota

1 necessarily will apply to the claims that the plaintiffs have
2 brought under a Minnesota choice-of-law analysis. So simply
3 because there may be a rule that says that the transferee
4 court accepts at least the choice-of-law analysis initially
5 from the transferor court, that is not again a basis to deny
6 the motions to transfer.

7 Unless the Court has any questions, that concludes
8 my presentation.

9 THE COURT: That's fine, Ms. Ampulski. Thank you
10 very much.

11 MS. AMPULSKI: Thank you.

12 THE COURT: Ms. Frank?

13 MS. FRANK: Thank you, your Honor.

14 Because the interest of justice favors keeping
15 these case here in Minnesota, the Court should not grant
16 Defendants' motion. And in order to adequately apply the
17 1404(a) criteria to the facts in this case, I want to take a
18 moment and brief the Court on the issues presented by these
19 cases.

20 THE COURT: Can I ask you one question first,
21 Ms. Frank? Ms. Ampulski alluded to the fact that there may
22 be other cases. What is the potential scope here? Is there
23 any idea at this point in time, or don't we know?

24 MS. FRANK: We do have more cases and I took a
25 look at that. I think that we have about 15 other Minnesota

1 cases that we intend to file in the next 12 months and we
2 have probably another 50 or more cases that we are still
3 considering, but we are -- haven't made a determination on
4 those cases, but we do have about 50 that we do think we
5 could file.

6 THE COURT: Is there consideration given to
7 multi-district litigation treatment of these cases or has
8 that not been addressed yet?

9 MS. FRANK: We actually did discuss that with
10 Defendants and at this point we only had the present cases,
11 so at this point we thought it wasn't ripe for multi-district
12 consideration. And the defendants have said that they would
13 oppose treatment for multi-district consolidation and I think
14 we would support such consolidation, but only at a point when
15 we had enough cases and it's warranted.

16 THE COURT: Okay. Thank you.

17 MS. FRANK: So this case is about the antibiotic
18 Levaquin, which is prescribed for sinus infections,
19 bronchitis and upper respiratory infections and also more
20 serious infections, but what these cases have in common is
21 that these plaintiffs were prescribed it for typical upper
22 respiratory infections.

23 And Levaquin has a very unusual adverse reaction.
24 In addition to the typical ones that we are used to with
25 antibiotics, such as nausea and diarrhea, Levaquin causes a

1 tendon -- a very serious tendon injury. In all the cases
2 before this Court it has caused bilateral Achilles tendon
3 rupture, so -- and this presented itself within days, maybe a
4 week after taking the antibiotic.

5 And what happens is, the client takes Levaquin and
6 the typical presentation is a few days later all of a sudden
7 they can't walk. Their Achilles tendon, which is the tendon
8 responsible -- it's the most weight-bearing tendon in our
9 bodies -- and they can't walk. The swelling is severe. It
10 usually starts off as an Achilles tendinitis. They do not
11 know to link it to the antibiotic that they're taking. They
12 might see another doctor, an orthopedist, or their present
13 doctor. Their present doctor also is not aware that an
14 antibiotic causes this unusual reaction.

15 So in the beginning there is -- no one usually
16 insists that they stop taking the drug. The drug continues,
17 eventually the doctor looks at the warning and says: Wow, it
18 says something about tendon injury in this warning. Maybe
19 it's the drug. And inevitably, especially after an MRI shows
20 complete disintegration of the tendon, doctors in these cases
21 have linked these injuries to Levaquin. So, Levaquin causes
22 a signature injury different from a lot of other
23 pharmaceutical torts.

24 These clients before -- these cases before this
25 Court involve mostly elderly clients. William Voss is 73 and

1 after a few days on Levaquin suffered a bilateral Achilles
2 tendon rupture.

3 Sharon Johnson was 55. She suffered a bilateral
4 Achilles tendon rupture after just two days on the drug.

5 Harold Wampler, he was in the hospital with an
6 exacerbation of his bronchitis and he was given Levaquin, and
7 in the hospital bed he suffered bilateral Achilles
8 tendinitis.

9 Burton Griner, 89 years old, bilateral Achilles
10 tendon rupture after a week on the antibiotic.

11 All these cases share the same facts. They share
12 many common issues of liability.

13 Richard Kirkes, Minnesota resident, 79 years old,
14 took the -- was prescribed Levaquin for what the doctors said
15 was a very bad cold and suffered -- he's the only person
16 without a rupture -- bilateral Achilles tendinitis and years
17 and years of therapy and the injury doesn't go away. This is
18 a permanent injury.

19 The last two cases, William Laufenberg, Achilles
20 tendon rupture in just one leg. He was prescribed Levaquin
21 at the age of 74 for a chest cold.

22 All of these cases, this is the first time they've
23 ever used the drug Levaquin.

24 The one person that doesn't fit the elderly model
25 is Billie Johnson. She was just 31 years old when she took

1 Levaquin and it caused bilateral Achilles tendonitis.

2 So the -- Levaquin is a fluoroquinolone antibiotic.
3 Other fluoroquinolones that we know of are ciprofloxacin.
4 That's been around since the eighties. And fluoroquinolones
5 generally can have a pretty complicated safety profile. Many
6 of them have been recalled. Trofan is one that we might
7 remember was recalled because it caused serious hepatic liver
8 failure. Recently, Tequin has been associated with serious
9 hyperglycemic events. So although fluoroquinolones are --
10 share the same nucleus, each fluoroquinolone has a different
11 set of molecules that make it its unique drug and we believe
12 and we assert that Levaquin has its unique property. It
13 doesn't cause the kind of liver failure that Trofan does, but
14 what Levaquin does is cause these serious, serious tendon
15 injuries.

16 And the FDA in 1996 before the -- before Levaquin
17 was put on the market had gotten -- had learned of a handful
18 of tendon injuries, so for the first time the FDA said, well,
19 there's this unique injury and we encourage and we want the
20 manufacturers of fluoroquinolones to put the risk of tendon
21 injury in your warning, but that warning was fairly benign
22 because the FDA certainly didn't understand the propensity of
23 Levaquin or any particular fluoroquinolone to cause a type of
24 tendon injury that Levaquin does.

25 Under that backdrop, Levaquin is put on the market

1 in 1997 and sales began to steadily increase, and as those
2 sales increased, so did the amount of tendon ruptures. And
3 we've received the adverse event database from the FDA and we
4 took a look at the amount of tendon injuries that have been
5 reported from 1999 to 2005, so just six years, and there was
6 1,000 tendon injuries in that time frame and the warning has
7 never changed with regard to the post-market surveillance.
8 So the warning today in 2007, as of at least about two weeks
9 ago, was the same as in 1997 and there was never any
10 indication or any marketing or any educational material that
11 we know of to physicians highlighting the fact that there is
12 this unusual event that Levaquin causes and it especially
13 occurs and seems to occur in senior citizens.

14 This case is about a design defect, the fact that
15 we shouldn't have to take an antibiotic and not be able to
16 walk for two years or never work normally again. People in
17 their golden years of their lives can no longer play golf, go
18 fishing, or walk on any type of uneven surface. Tendon
19 injuries are -- these type of tendon injuries are not
20 repairable. Surgery is not usually allowed for this
21 population and has been contraindicated in most of our
22 clients. And indeed, MRIs, as I said before, show that
23 Levaquin seems to cause a tendon cell death and disintegrates
24 that tendon, making surgery difficult.

25 It is also a failure-to-warn case, since physicians

1 do not understand that tendon injuries are a consequence of
2 Levaquin use and that it can be exacerbated by
3 corticosteroids, which ironically is the very treatment for a
4 tendon injury.

5 So we have a case where the person, our client,
6 Sharon Johnson here, took Levaquin, had the Achilles
7 tendinitis bilaterally, was given a corticosteroid to treat
8 the tendinitis, which then put her into a full-fledged
9 bilateral Achilles tendon rupture.

10 THE COURT: Is it your theory that the drug only
11 affects tendon cells and not other cells in the body?

12 MS. FRANK: Exactly. It affects tendon cells not
13 only in the Achilles area, but all of our tendons, and the
14 reason that it affects the Achilles more than any other is
15 because it is the most weight bearing. But the warning does
16 say that it can affect your arms, shoulders and hands.

17 So, the common issues -- and I wanted to just talk
18 about the facts of this case to show the overwhelming facts
19 that are common to all of these cases. Every single case is
20 going to be about what Defendants knew and when they knew it.
21 It's going to be about their marketing of this drug. They
22 marketed it as a first-line treatment to the elderly. That
23 was their marketing group, the same population that is
24 plagued with the tendon injury. These issues aren't going to
25 go away and they're not going to be made any easier if they

1 are going to be litigated in seven different jurisdictions,
2 or six different jurisdictions.

3 We are guided by 1404(a), the three-prong criteria,
4 in deciding whether these cases should stay in Minnesota or
5 be transferred.

6 And a lot of the cases, if not all of them, that
7 were cited in Defendants' briefs have to do with motions to
8 transfer that had to do with one case, not a consolidated
9 case such as this.

10 But I did find a quote by Judge Doty in the **Graff**
11 **vs. Qwest Communications Corporation** case which seemed to sum
12 up the issues in this particular case. And even though Judge
13 Doty granted defendant's motion to transfer, he says:

14 "As an initial matter, the Court finds untenable
15 the simultaneous pendency of two separate actions relating to
16 the same facts in different courts. Resolution of all
17 related claims in one forum will eliminate duplicative
18 discovery and the possibility of conflicting orders."

19 THE COURT: Are there other cases elsewhere?

20 MS. FRANK: Not that we know of, and that came up
21 during our conference with the magistrate and Defendants
22 didn't know of any at that time.

23 So, at least at this point there isn't litigation
24 going on in other courts, and if there has been in the last
25 few months, this litigation is probably more advanced.

1 In fact, motions to transfer sometimes as a basis
2 have been to transfer cases to where other litigation is
3 going on because the interests of justice are well served
4 when related cases can be consolidated and heard together so
5 that common issues that affect every case can be just tried
6 and heard once instead of multiple times. We have benefited
7 already from these cases just being heard together.

8 Additionally, by having these cases before one
9 court, we'll be able to litigate the issues of expert
10 testimony, **Daubert** issues, preemption issues and discovery
11 disputes, which will be -- if they are not all heard in this
12 one court, those same exact issues and those same exact
13 experts will be forced to go through the same process in all
14 these different jurisdictions.

15 And most recently, we came upon just this morning
16 the transcript of a motion to transfer before Chief Judge
17 Rosenbaum, and he is presiding over drug litigation called
18 Mirapex. And Mirapex is a drug used to treat restless leg
19 syndrome and apparently also causes a compulsion to gamble.
20 And the plaintiffs in that case, represented by Robins
21 Kaplan, had 25 cases filed in this court before Chief Judge
22 Rosenbaum, and the defendants moved to transfer saying that
23 20 out of those 25 cases were from non-Minnesotans. They
24 were out-of-state plaintiffs. And they said pretty much the
25 identical arguments that defendants say here, that this case

1 is -- the defendant said that these cases should be
2 transferred to the courts around the country where the
3 plaintiffs reside because that's where the witnesses are.

4 And I brought for your Honor -- we gave this to
5 Defendants right before the hearing. We didn't give them
6 much time, but I have a copy of the transcript that I
7 received. May I approach the bench?

8 THE COURT: Sure.

9 (Documents handed to the Court)

10 MS. FRANK: And Chief Judge Rosenbaum in
11 considering the issues that defendants presented and
12 plaintiff's opposition found that, at least at this
13 injunction, that he would keep the cases in this court.

14 And he says on page 25 that: "What I'm saying," he
15 says, "is that at this point it seems to me reasonable why in
16 the world I need to have 15 magistrates around the country
17 hearing discovery questions when they seem quite common to
18 each other and why I need to be concerned about those kinds
19 of questions. And if there's a summary judgment issue, I'm
20 sure I'll be glad to take it up rather than having 15 of my
21 colleagues doing the same thing. That doesn't mean that
22 every one of the cases are decided the same, but at least in
23 general many of the these theses or themes seem to be
24 similar."

25 So I conclude by saying that, you know, in Mirapex,

1 those cases seem particularly client specific. You need a
2 lot of witnesses to support somebody having -- support a
3 claim that you became addicted to gambling because of a drug
4 and you weren't gambling prior to the drug. You need a lot
5 of witnesses.

6 This case is a signature injury case. There are
7 not a lot of witnesses that are going to be testifying with
8 regard to causation. In fact, I would presume that
9 defendants are going to largely base causation on expert
10 testimony rather than on the treaters, especially since the
11 treaters seem to be saying it's Levaquin induced.

12 So the specific causation issue is going to be
13 based on expert testimony, a lot of this case is going to be
14 based on expert testimony, and I think weighing the interests
15 of justice, these cases should stay here.

16 THE COURT: Thank you, Ms. Frank.

17 MS. FRANK: Thank you.

18 THE COURT: Ms. Ampulski, do you have anything
19 else?

20 MS. AMPULSKI: Yes, your Honor, just briefly.

21 First of all, as Ms. Frank noted, we just got a
22 copy of this transcript. We briefly tried to skim through it
23 before your Honor came out and took the bench. We would like
24 the opportunity if the Court is going to consider this to
25 have a brief written response to this.

1 I do note that the court in this case notes that
2 people from different states depending on how you apply
3 conflicts of law may have rights to different remedies, so
4 even Judge Rosenbaum zeroed in on the issue that we have here
5 about conflicts of laws and the fact that a Minnesota jury
6 here is going to be required to sit and resolve a dispute
7 between non-Minnesota residents about facts and circumstances
8 that didn't take place here in Minnesota.

9 And I don't know if I was as clear as I would have
10 liked to have been in my initial opening comments about the
11 causation issues.

12 There's two issues when you're talking about
13 causation. The first issue is whether Levaquin does cause
14 tendon injuries, and we do dispute the plaintiffs' theory as
15 it relates to Levaquin in general causing these types of
16 tendon injuries.

17 But more importantly as it relates to these motions
18 is the second causation issue of whether Levaquin caused the
19 injuries that the plaintiffs are claiming in their specific
20 cases. There are many potential reasons for tendon ruptures
21 and tendinitis. Indeed, there was in fact a warning on the
22 label about there possibly being a relationship between
23 tendon problems and Levaquin which is contrary to I think
24 what Ms. Frank stated, and in addition, the warning was
25 indeed changed in 2002 with FDA approval. Different warnings

1 may apply to different physicians who are prescribing
2 Levaquin, because not all of these injuries, either the
3 injuries or the prescriptions, were prescribed, used,
4 consumed all at the same time, so there will be different
5 issues as it relates to warnings and what these physicians
6 knew.

7 In response to the Court's question about whether
8 there are other cases, there indeed are other cases that are
9 going on in other jurisdictions right now. We're not exactly
10 sure as we sit here the number of those cases, but we are
11 aware that there are other cases going on and we don't think
12 that they're within the last couple of months, but we're not
13 a hundred percent sure about that, so I don't want to make
14 any misrepresentations to the Court.

15 As I said before -- I think my last point here -- I
16 think I already said we would like an opportunity to respond
17 to the submission --

18 THE COURT: That's fine. You can respond by
19 letter within a week if you wish.

20 MS. AMPULSKI: Thank you, your Honor.

21 THE COURT: And then if there's any needed reply
22 to that, you can let us know whether you'd like to reply to
23 that.

24 Mr. Rudd?

25 MR. RUDD: That would be fine, your Honor. I just

1 want the record to be clear that we obtained this transcript
2 just several hours ago. We haven't been hiding it or
3 anything. It was difficult to get from the reporter.

4 THE COURT: That's fine. I understood that, so --

5 MR. RUDD: Thank you.

6 THE COURT: Did you have anything else Ms. Frank?

7 MS. FRANK: No, your Honor.

8 THE COURT: Okay. Thank you.

9 Thank you for your arguments today, counsel. The
10 Court will take the motions under advisement. We'll look for
11 any response. If you're not going to submit a response,
12 would you call and let us know so we're not waiting?

13 MS. AMPULSKI: Yes, your Honor.

14 THE COURT: And the Court will issue a written
15 order just as quickly as possible. Thank you very much.

16 Court is in recess.

17 (Proceedings concluded at 3:10 p.m.)

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C E R T I F I C A T E

I, **TIMOTHY J. WILLETTE**, Official Court Reporter for the United States District Court, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes, taken in the aforementioned matter, to the best of my skill and ability.

/s/ Timothy J. Willette

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