

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: FRESenius GRANUFLO/NATURALYTE
DIALYSATE PRODUCTS LIABILITY LITIGATION**

MDL No. 2428

TRANSFER ORDER

Before the Panel:* Plaintiffs in the seven actions listed on Schedule A move under Panel Rule 7.1 to vacate our orders that conditionally transferred these actions to MDL No. 2428.¹ The responding defendants (collectively, Fresenius)² oppose the motions.

In their motions to vacate, plaintiffs principally argue that transfer should not take place unless and until their motions for remand to state court are decided. We have held repeatedly that a motion for remand alone is generally an insufficient basis to vacate a conditional transfer order.³ Indeed, we have rejected similar arguments in support of motions to vacate conditional transfer orders in this litigation. *See, e.g., In re Fresenius GranuFlo/NaturaLyte Dialysate Prods. Liab. Litig.*, MDL No. 2428, ECF No. 993, at 1 (J.P.M.L. Dec. 11, 2014) (Transfer Order). Plaintiffs can present their motions for remand to the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7, 9 (2d Cir.

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

¹ Defendants Renal Treatment Centers-West, Inc., and Chris M. Sholer, M.D. (collectively, Renal West), also moved to vacate the conditional transfer orders in these actions. Renal West subsequently was dismissed from the actions listed on Schedule A, however, and its motions to vacate are now moot.

² The responding defendants that oppose the motions to vacate include: Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America; Fresenius USA, Inc.; Fresenius USA Manufacturing, Inc.; Fresenius USA Marketing, Inc.; Fresenius Medical Care Pharmacy Services, Inc.; Bio-Medical Applications of Oklahoma, Inc. d/b/a Fresenius Medical Care Southwest Oklahoma City; Fresenius Medical Care OKCD, LLC d/b/a Fresenius Medical Care Oklahoma Kidney Care Dialysis; Fresenius Medical Care Central Oklahoma City Dialysis Center, LLC; Miami Regional Dialysis Center d/b/a Fresenius Medical Care Miami Midwest; Fresenius Medical Care Edmond, LLC; and Fresenius Integris, LLC d/b/a Fresenius Medical Care South Oklahoma City.

³ Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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1990); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

Plaintiffs also argue that transfer is not warranted because these actions involve non-Fresenius defendants—specifically, providers of dialysis services—that do not manufacture or design GranuFlo Acid Concentrate (GranuFlo) or NaturaLyte Liquid Acid Concentrate (NaturaLyte). This argument is not persuasive. All of the non-Fresenius clinic defendants have been voluntarily dismissed from these actions by plaintiffs. Furthermore, like all the actions in MDL No. 2428, these actions involve allegations that GranuFlo and NaturaLyte were defective and that Fresenius failed to provide adequate warnings about the risks associated with these products. Other actions pending in the MDL involve similar claims against dialysis centers and medical providers. In any event, transfer under Section 1407 does not require a complete identity or even a majority of common factual issues as a prerequisite to transfer. *See In re National Sec. Agency Telecomms. Records Litig.*, 444 F. Supp. 2d 1332, 1334 (J.P.M.L. 2006).

After considering the argument of counsel, we find that the actions listed on Schedule A involve common questions of fact with the actions previously transferred to MDL No. 2428, 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 the litigation. In our order centralizing this litigation, we held that the District of Massachusetts was an appropriate Section 1407 forum for actions sharing factual questions arising out of allegations that plaintiffs suffered injury or death caused by the use of GranuFlo or NaturaLyte during hemodialysis, which allegedly may cause metabolic alkalosis in patients resulting in low blood pressure, hypokalemia, hypoxemia, hypercapnia, cardiac arrhythmia, or cardiopulmonary arrest. *See In re Fresenius GranuFlo/NaturaLyte Dialysate Prods. Liab. Litig.*, 935 F. Supp. 2d 1362 (J.P.M.L. 2013). The actions listed on Schedule A involve similar allegations that plaintiffs or their decedents suffered metabolic alkalosis as a result of the use of GranuFlo and/or NaturaLyte during hemodialysis. These actions likewise involve factual questions relating to whether these products were defectively designed or manufactured, whether Fresenius, the manufacturer of these dialysate products, knew or should have known of the alleged propensity of these products to cause injury, and whether it provided adequate instructions and warnings with these products.

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IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the District of Massachusetts and, with the consent of that court, assigned to the Honorable Douglas P. Woodlock for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Sarah S. Vance", is positioned above a horizontal line.

Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

**IN RE: FRESenius GRANUFLO/NATURALYTE
DIALYSATE PRODUCTS LIABILITY LITIGATION**

MDL No. 2428

SCHEDULE A

Western District of Oklahoma

BURRIS, ET AL. v. FRESenius USA, INC., ET AL., C.A. No. 5:14-01065
BODNAR, ET AL. v. FRESenius USA, INC., ET AL., C.A. No. 5:14-01083
COOK, ET AL. v. FRESenius USA, INC., ET AL., C.A. No. 5:14-01104
SCHULTZ, ET AL. v. FRESenius USA, INC., ET AL., C.A. No. 5:14-01113
NICHOLSON, ET AL. v. FRESenius USA, INC., ET AL., C.A. No. 5:14-01114
LASKOWSKI, ET AL. v. FRESenius USA, INC., ET AL., C.A. No. 5:14-01154
HAWK, ET AL. v. FRESenius USA, INC., ET AL., C.A. No. 5:14-01162