

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2428

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs in the five actions listed on Schedule A—two of which are pending in the Central District of California, two in the Southern District of California, and one in the District of South Carolina—move to vacate our orders that conditionally transferred the actions to the District of Massachusetts for inclusion in MDL No. 2428. All responding defendants (hereafter, Fresenius)¹ oppose the motions.

In their motions to vacate, plaintiffs in all five actions principally argue that transfer should not take place unless and until their pending motions for remand to state court are denied. We have held repeatedly, however, that a motion for remand alone is generally an insufficient basis to vacate a conditional transfer order.² 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. 413 (J.P.M.L. Dec. 13, 2013) (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. 1990); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

Plaintiffs in the *Arballo* and *Emerson* actions also argue that those actions involve unique factual and legal issues relating to the local dialysis centers named as defendants in each action. We are not persuaded, however, that any such unique questions of fact will overwhelm the common questions of fact and law shared by these actions and those pending in the MDL. To the contrary,

* Judges Paul J. Barbadoro and Lewis A. Kaplan took no part in the decision of this matter.

¹ Responding defendants include: Fresenius USA, Inc.; Fresenius USA Manufacturing, Inc.; Fresenius Medical Care Holdings, Inc.; Fresenius USA Marketing, Inc.; Fresenius USA Sales, Inc.; San Diego Dialysis Services, Inc., d/b/a Kearny Mesa Dialysis Center a/k/a Fresenius Balboa Kearny Mesa; and Bio-Medical Applications of South Carolina, Inc., d/b/a Fresenius Medical Care - Rock Hill.

² 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 wishing to rule upon the remand motion generally has adequate time in which to do so.

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it appears that the claims against the dialysis centers necessarily implicate the very communications, instructions, and warnings that are being litigated in the MDL. That the claims against these defendants raise some purportedly unique issues is of no moment—we have repeatedly observed that Section 1407 does not require a complete identity or even a majority of common factual issues as a prerequisite to transfer. *See In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 780 F. Supp. 2d 1379, 1381 (J.P.M.L. 2011). And, the transferee court is as well placed to adjudicate remand motions involving these entities as the transferor courts.

After considering all argument of counsel, we find that these actions involve common questions of fact with the actions previously transferred to MDL No. 2428, and that transfer 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 Acid Concentrate (GranuFlo) or NaturaLyte Liquid Acid Concentrate (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). All of 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. These actions also 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.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, 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.

PANEL ON MULTIDISTRICT LITIGATION



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**IN RE: FRESENIUS GRANUFLO/NATURALYTE
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MDL No. 2428

SCHEDULE A

Central District of California

Michael Rodriguez, et al. v. Fresenius USA, Inc., et al., C.A. No. 2:13-07182
Josephine Arballo v. Fresenius USA, Inc., et al., C.A. No. 2:13-08153

Southern District of California

Romeo M. Rasing, et al. v. Fresenius USA, Inc., et al., C.A. No. 3:13-02321
Kathy Schmidt, et al. v. Fresenius USA, Inc., et al., C.A. No. 3:13-02575

District of South Carolina

Treneece L. Emerson v. Fresenius Medical Care Holdings, Inc., et al., C.A. No. 0:13-02729