

**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 three actions listed on Schedule A—two of which are pending in the Central District of California and one in the Northern District of Mississippi—move to vacate our order that conditionally transferred the actions to the District of Massachusetts for inclusion in MDL No. 2428. All responding defendants (hereafter, Fresenius)<sup>1</sup> oppose the motions.

In their motions to vacate, plaintiffs in all the actions 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 generally is an insufficient basis to vacate a conditional transfer order.<sup>2</sup> 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).

The plaintiff in the Northern District of Mississippi *Hood* action also argues that *Hood* involves unique factual and legal issues because that action involves a claim under the Mississippi Consumer Protection Act brought by the state attorney general, whereas most of the actions in the MDL are personal injury actions. As plaintiff well knows, this distinction alone is not an impediment to transfer. *See In re Plavix Mktg., Sales Practices & Prods. Liab. Litig. (No. II)*, MDL No. 2418, ECF No. 248 (J.P.M.L. Oct. 2, 2013) (rejecting Attorney General Hood’s argument that an action asserting a claim under the Mississippi Consumer Protection Act should not be centralized with personal injury actions). Our review of the pleadings indicates that, while plaintiff in *Hood* may seek

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<sup>1</sup> Responding defendants include: Fresenius USA, Inc.; Fresenius USA Manufacturing, Inc.; Fresenius Medical Care Holdings, Inc.; and Fresenius USA Marketing, Inc.

<sup>2</sup> 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. In the Northern District of Mississippi *Hood* action, Chief Judge Michael P. Mills has specifically declined to rule on the remand motion prior to our decision on transfer. In the Central District of California *Brown* action, Judge Jesus G. Bernal has deferred consideration of the remand motion until the transferee court renders its decision on the citizenship of defendant Fresenius USA, Inc.

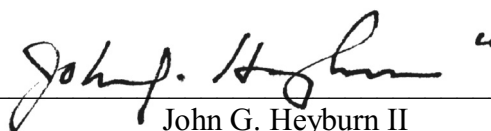
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different relief, his claim is based on the same underlying facts as the actions already in MDL No. 2428—namely, that use of GranuFlo Acid Concentrate (GranuFlo) or NaturaLyte Liquid Acid Concentrate (NaturaLyte) allegedly resulted in alkalosis in patients, and that Fresenius failed to provide adequate warnings regarding the risks associated with these products. Moreover, as we have repeatedly observed, the existence of unique claims is not a bar to transfer where common factual issues exist. *See, e.g., In re MF Global Holdings Ltd. Inv. Litig.*, 857 F. Supp. 2d 1378, 1380 (J.P.M.L. 2012) (“Where actions share factual questions, the Panel has long held that the presence of disparate legal theories is no reason to deny transfer.”).

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 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 (or, in *Hood*, citizens of the State of Mississippi) 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.

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  
DIALYSATE PRODUCTS LIABILITY LITIGATION**

MDL No. 2428

**SCHEDULE A**

Central District of California

JACQUELINE V. BROWN, ET AL. v. FRESENIUS USA, INC., ET AL.,

C.A. No. 2:14-01561

VIRGINIA YASSIN, ET AL. v. FRESENIUS USA, INC., ET AL.,

C.A. No. 2:14-01636

Northern District of Mississippi

HOOD v. FRESENIUS MEDICAL CARE HOLDINGS, INC., ET AL.,

C.A. No. 3:14-00050