

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2428

TRANSFER ORDER

Before the Panel:* Plaintiff moves under Panel Rule 7.1 to vacate our order that conditionally transferred the action listed on Schedule A (*Jerry*) to the District of Massachusetts for inclusion in MDL No. 2428.¹ Defendants Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America; Fresenius USA, Inc.; Fresenius USA Manufacturing, Inc.; and Fresenius USA Marketing, Inc. (collectively, Fresenius) oppose the motion.

In her motion to vacate, plaintiff principally argues that transfer should not take place unless and until her motion for remand to state court is decided. We have held that a motion for remand alone generally is 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.*, Transfer Order at 1-2, *In re Fresenius GranuFlo/NaturaLyte Dialysate Prods. Liab. Litig.*, MDL No. 2428 (J.P.M.L. Feb. 5, 2015), ECF No. 1023. Plaintiff can present her motion 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).

Plaintiff also contends that transfer to the District of Massachusetts will be inconvenient because she and many of the witnesses to decedent's dialysis treatment are located in Oklahoma. The Panel has held repeatedly that, while it might inconvenience some parties, transfer of a particular action often is necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g.*, *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, MDL No. 2226, 2012 WL

* Judges Marjorie O. Rendell and Lewis A. Kaplan took no part in the decision of this matter.

¹ Defendant Renal Treatment Centers-West, Inc. (Renal West) also moved to vacate the conditional transfer order. Renal West asserted that it was improperly identified in the *Jerry* action as: DVA HealthCare Renal Care Inc. d/b/a Heartland Dialysis; DaVita, Inc.; and DaVita Healthcare Partners, Inc. Those defendants recently were dismissed from the *Jerry* action. Renal West's motion to vacate thus is now moot.

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 generally has adequate time to rule on a remand motion if it decides to do so.

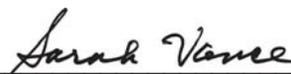
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7764151, at *1 (J.P.M.L. Apr. 16, 2012). The transferee judge is in the best position to structure proceedings so as to minimize inconvenience to any individual party.

After considering the argument of counsel, we find that *Jerry* involves 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). *Jerry* involves similar allegations that plaintiff's decedent suffered metabolic alkalosis, cardiac arrhythmia, and death as a result of the use of GranuFlo and/or NaturaLyte during hemodialysis. This action likewise involves 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 the action listed on Schedule A is 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



Sarah S. Vance
Chair

Charles R. Breyer
R. David Proctor

Ellen Segal Huvelle
Catherine D. Perry

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

MDL No. 2428

SCHEDULE A

Western District of Oklahoma

JERRY v. FRESENIUS USA, INC., ET AL., C.A. No. 5:15-00937