

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: FRESENIUS GRANUFLO/NATURALYTE
DIALYSATE PRODUCTS LIABILITY LITIGATION

MDL No. 1:13-md-2428-DPW

This Document Relates to:

All Cases

CASE MANAGEMENT ORDER NO. 2
(Initial Scheduling Order)

THIS MATTER, having been submitted to the Court on consent of the Parties, and for good cause shown and the submissions and suggestions of counsel in connection with the Initial Status Conference held on September 27, 2013, **IT IS HEREBY ORDERED** as follows:

I. APPLICABILITY OF ORDER

1. This Order shall govern all cases (a) transferred to this Court by the Judicial Panel on Multidistrict Litigation, pursuant to its Order of March 29, 2013; (b) any tag-along actions subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.4 of the Rules of Procedure of that Panel; and (c) all related cases originally filed in this Court or transferred or removed to this Court.

II. DISCOVERY

2. Generic Written Discovery:

a) The parties may serve an initial set of Generic Requests for Production and/or Interrogatories beginning on October 28, 2013.

b) Written responses shall be due and rolling document production shall begin on or before January 6, 2014.

c) Defendants shall serve Production Certification of completion on or before March 31, 2014, which may be extended for good cause shown.

3. Jurisdictional Discovery:

a) In the event that any named Defendant challenges jurisdiction by motion pursuant to Rule 12(b)(2), discovery limited to jurisdictional issues with respect to any moving Defendant shall proceed expeditiously thereafter.

b) With respect to any defendant objecting to personal jurisdiction, the discovery obligations set forth herein will be imposed in the event that personal jurisdiction is established, to commence expeditiously upon order of the Court.

4. Plaintiff and Defendant Fact Sheets:

a) The Parties will agree upon Plaintiff and Defendant Fact Sheets and will submit the agreed-upon forms to the Court no later than October 28, 2013.

b) Plaintiff Fact Sheets ("PFS"), relevant, non-privileged medical records in Plaintiffs' possession, and authorizations for additional records of a plaintiff or claimant for pending cases shall be served no later than November 27, 2013.

c) Defendant Fact Sheets ("DFS") for pending cases shall be served no later than January 31, 2014.

d) PFSs for subsequently filed cases will be served no later than 45 days after service of the defendants' answer and the DFS will be served no later than 60 days after receipt of the PFS.

5. Generic Fact (Non-Expert) Witness Depositions

a) Depositions of generic fact witnesses, including Rule 30(b)(6) depositions, and third-party discovery, may commence on or after October 28, 2013.

b) All case-specific discovery other than the exchange of Fact Sheets and relevant, non-privileged medical records and authorizations is stayed until further order of the Court.

6. Bellwether Process

a) On January 6, 2014 the Parties shall submit a proposed CMO addressing the bellwether process, which the parties agree will address case specific discovery.

III. ANTICIPATED ADDITIONAL PRE-TRIAL ORDERS

7. The parties have met and conferred in good faith to negotiate the following additional Case Management Orders: (a) treatment of confidential materials, (b) preservation of documents; (c) a protocol for product identification; and, (d) a protocol for discovery of documents and Electronically Stored Evidence (ESI). The parties are continuing discussions and will submit proposed orders in the coming weeks.

8. The parties shall meet and confer regarding the desirability and feasibility of an order facilitating the direct filing of actions into the MDL and Master Pleadings (*Master Complaint*, a *Master Answer* and a *Short Form Complaint*). A proposed Case Management Order governing the filing of Master Pleadings and direct filing of actions into the MDL shall be filed with the Court no later than November 27, 2013.

9. The parties shall meet and confer in good faith to negotiate additional Case Management Orders relating to: (a) privilege which shall include guidelines that shall govern, (1) the protocol that shall be followed regarding the preparation of privilege logs pursuant to Fed. R. Civ. P. 26(b)(5)(A)(i)-(ii), and (2) the method for resolving privilege disputes by and among Plaintiffs and Defendants and (b) service of pleadings and discovery. Such proposed Case Management Orders shall be filed with the Court no later than January 6, 2014.

10. Please refer to “Exhibit A” for a timeline of all anticipated due dates.

11. Additional Events. Additional pre-trial events not addressed in this Order, including expert discovery and dispositive motions, will be the subject of future Case Management Orders.

IV. FILING OF PLEADINGS

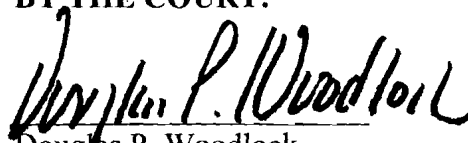
12. All motions, requests for discovery or other pre-trial proceedings with respect to Plaintiffs shall be initiated by and/or coordinated through the Plaintiff Steering Committee (“PSC”), to be filed by and through the Chair of the Plaintiffs’ Executive Committee (“PEC”). No motion, request for discovery or other pre-trial proceedings shall be initiated or filed except by the Chair of the PEC without prior order of this Court.

V. SUPPLEMENTATION AND AMENDMENTS TO THIS ORDER

13. This Order may be modified in the interests of justice, expedience, or judicial economy on the Court’s own motion or a motion by the parties for good cause shown.

IT IS SO ORDERED.

BY THE COURT:



Douglas P. Woodlock
United States District Judge



