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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: FRESINIUS GRANUFLO/	)	
NATURALYTE DIALYSATE	)	
PRODUCTS LIABILITY LITIGATION	)	No. 1:13-md-02428-DPW
	)	
	)	
	)	

BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

TELEPHONIC STATUS AND SCHEDULING CONFERENCE

John Joseph Moakley United States Courthouse  
Courtroom No. 1  
One Courthouse Way  
Boston, MA 02210  
Friday, October 30, 2015  
10:00 a.m.

Brenda K. Hancock, RMR, CRR  
Official Court Reporter  
John Joseph Moakley United States Courthouse  
One Courthouse Way  
Boston, MA 02210  
(617) 439-3214

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1 (The following proceedings were held in open court  
2 before the Honorable Douglas P. Woodlock, United States  
3 District Judge, United States District Court, District of  
4 Massachusetts, at the John J. Moakley United States Courthouse,  
5 One Courthouse Way, Courtroom 1, Boston, Massachusetts, on  
6 Friday, October 30, 2015)

7 THE CLERK: All rise.

8 (The Honorable Court entered the courtroom at 10:00 a.m.)

9 THE CLERK: You may be seated. This is Civil Action  
10 13-2428, In Re: Fresenius GranuFlo Litigation.

11 Will counsel on the phone please identify themselves  
12 for the Court and for the record.

13 THE COURT: Counsel identify themselves, please.  
14 Start with the plaintiff.

15 MR. GOTZ: Your Honor, good morning. For the  
16 plaintiffs, James Gotz, G-o-t-z, and, your Honor, with me on  
17 this call today also for the plaintiffs is another PEC member,  
18 Chris Seeger. Chris is with the firm Seeger Weiss and will be  
19 co-lead counsel for the first trial, Lastorka.

20 THE COURT: And for the defendant?

21 MR. KETTLEWELL: Good morning, your Honor. William  
22 Kettlewell for the defendants.

23 THE COURT: Let me start, Mr. Kettlewell, with you. I  
24 had understood that I was going to be receiving any response  
25 regarding the Drs. Colton and Zydney Supplemental Report on

1 Wednesday, and I am told by the Clerk's Office one has not been  
2 received, and I wondered what the status was.

3 MR. KETTLEWELL: Your Honor, Maria Durant is on phone,  
4 and I would defer to her at the moment.

5 THE COURT: All right.

6 MS. DURANT: Good morning, your Honor. Maria Durant  
7 on behalf of the Fresenius North American entities.

8 Our apologies. We did serve that timely on the  
9 plaintiffs, my error in not recognizing that it should go to  
10 the Court, but immediately after this call we could have it  
11 served upon the Court.

12 THE COURT: Oh, yes. It is actually not served on the  
13 Court. It is filed with the Court --

14 MS. DURANT: Sorry, your Honor, filed with the Court.

15 THE COURT: -- I guess is the proper way to describe  
16 it. But, in any event, I hate being the last to know, so if  
17 you can get it over here so that I can start looking at it. I  
18 assume that a copy is being filed or served on Judge Kirpalani  
19 as well?

20 MS. DURANT: Yes, your Honor. And, again, my  
21 apologies.

22 THE COURT: All right. So, let me make this  
23 relatively brief, but I do want to be sure that I have gotten  
24 things straightened away here. The schedule that you are  
25 talking about in your proposal is fine with me, but I want to

1 be sure that we are all on the same wavelength with it, and  
2 part of it is my concern that I am trying to squeeze in other  
3 cases so that I can be sure that I can give full attention to  
4 you. I assume that the parties are agreeable to using the  
5 80-hour schedule that Judge Kirpalani has imposed in Ogburn,  
6 and that in that connection you are thinking that it is going  
7 to be full days. Am I correct on that for the trials?

8 MR. GOTZ: Yes, for the plaintiffs, your Honor.

9 THE COURT: Mr. Kettlewell, is that your view, or,  
10 Ms. Durant?

11 MS. BROOKS: Your Honor, Juanita Brooks for the  
12 defense. We have had the position with the plaintiffs on the  
13 Judge Kirpalani case that we really only needed perhaps 30  
14 hours per side, but in order to reach a resolution of a timed  
15 trial we agreed to the 40. I think that issue may be informed  
16 better after we have a trial before Judge Kirpalani that we may  
17 not need 40 hours per side. We were cognizant, though, of your  
18 Honor's schedule, which I believe runs from early in the  
19 morning to the beginning of the afternoon, and then your Honor  
20 has other matters in the afternoon. So, that was what we  
21 thought your trial schedule would be.

22 THE COURT: Yes. I will tell you what I have done in  
23 this connection. You are correct in the way in which  
24 ordinarily I try a case, which is 9:00 to 1:00, but I have  
25 opened up the afternoons by and large. There may be one or two

1 things that will get in the way for this afternoon or that  
2 afternoon, but I have assumed that that is the way the parties  
3 had anticipated trying the case. My hope is not to depart, at  
4 least knowingly, from things, even procedural things, that  
5 Judge Kirpalani has put in place so that the bellwethers can  
6 fairly be compared against each other, and for my purposes I am  
7 perfectly happy to go the full days, if that is what you want  
8 to do, and I say that because you are talking about carving out  
9 essentially three weeks for Lastorka. There is a holiday in  
10 the middle of it, and I am not sure you get your full 80 hours  
11 out of that if you are going 9:00 to 1:00.

12 So, any views about that?

13 MR. SEEGER: Your Honor, it's Chris Seeger. Do you  
14 mind if I address that first?

15 THE COURT: Sure.

16 MR. SEEGER: Well, I just heard Ms. Brooks say that it  
17 sounds like the defendant will be open to even less time. I  
18 just wanted to weigh in and say that I'm also open to that. I  
19 have tried cases like this in less time. We managed to get it  
20 done.

21 THE COURT: Just so you know, Mr. Seeger, you are  
22 going to have a great deal of assistance from me in making it  
23 less time as well.

24 (Laughter)

25 THE COURT: So, what I am talking about is the time

1 limit at which I step off the Bench and start throttling  
2 counsel.

3 MR. SEEGER: No, I am used to that, your Honor, I have  
4 to admit. And I know a little bit about Ms. Brooks and Tom,  
5 and I know they're phenomenal trial lawyers. So, I think we  
6 can probably figure out how to get this in efficiently. We  
7 probably should talk to each other a little bit about it. But  
8 I am open to less time. I do like a full trial day, but only  
9 if the Court can accommodate that.

10 THE COURT: I can accommodate it. Ordinarily what I  
11 do not do, and the reason I do not do it is not merely to open  
12 up the afternoons for other matters for me, but at least the  
13 experience in this District has been that jurors are more  
14 comfortable with the 9:00 to 1:00 schedule. It gives them a  
15 little bit of time to do things while they are on trial, not a  
16 lot, but some, and so I am open to that.

17 But I guess what I am suggesting is this: that I am  
18 carving out the weeks of January 11th, January 19th,  
19 January 25th, as you have indicated, for this trial, and I  
20 think I would like to have you look at your cases and tell me  
21 what you want to do. I now am in a position to essentially  
22 give you full trial days during those three weeks, and I am  
23 happy to accommodate whatever both of you agree to or resolve,  
24 if you cannot agree on that. You will get back to me, in any  
25 event. Those three weeks are fine with me.

1 MR. GOTZ: Your Honor, Mr. Gotz here. Just to be  
2 clear, we had requested jointly a one-week postponement on the  
3 trial start date from the 11th to the 18th.

4 THE COURT: Oh, I'm sorry, I missed that, and I should  
5 have changed my schedule here, but I can give you those dates.  
6 The 18th, however, I think is a holiday, and let me just double  
7 check it. The 18th would be the Martin Luther King Holiday.

8 MR. GOTZ: So, maybe the next day.

9 THE COURT: My staff is not necessarily, but I am  
10 happy to go on holidays.

11 You are fortunate that this is being conducted by  
12 telephone so you do not see the nonverbal expressive conduct by  
13 some of my colleagues.

14 (Laughter)

15 THE COURT: But I cannot bring in jurors on that day,  
16 so it would start on the 19th. I have available that week of  
17 February 1st, too, so we can do it then. So, if you could get  
18 back to me. So, we start on January 19th, we have the 25th and  
19 we have February 1st, and for all intents and purposes it could  
20 be full days.

21 I will offer one other alternative, but I really am  
22 going to be deferential to how you want to try your case. But  
23 an alternative is that I would not sit in this case on Fridays  
24 those weeks. That is another way that I have used to kind of  
25 keep up with my other homework.



1           So, talk amongst yourselves on that and just get back  
2 to us by the beginning of next week, because I am doing  
3 scheduling that would include afternoons or the Fridays in the  
4 next week or two for that time period, setting things down for  
5 that. Understood?

6           MS. BROOKS: We will do that, your Honor.

7           MR. SEEGER: Yes, your Honor.

8           THE COURT: So I will have my nose pressed against the  
9 windowpane waiting for that to come in.

10           Now, turning to Dial, the one thing that has got me a  
11 little bit puzzled here is the Daubert pretrial motions which  
12 you have got for the week of January 26th, which is in the  
13 middle of the Lastorka trial, which would be a self-inflected  
14 conflict.

15           MS. BROOKS: Your Honor, this is Juanita Brooks again.  
16 I believe the thinking on that was that your Honor was going to  
17 have the 9:00 to 1:00 schedule, and, therefore, the Dial  
18 hearing could be the afternoon, but if it is going to be full  
19 days, obviously, then we would need to move those dates.

20           THE COURT: Well, again, talk amongst yourselves about  
21 that. That is a conflict that I did identify on the assumption  
22 that I might have full-day trials, but I want to be deferential  
23 to your trial demands on this or the demands on you for  
24 purposes of trial. So, you tell me how you want to do it and  
25 we will do it. I can, obviously, have that time available if I

1 am not trying Lastorka at some point during that time period,  
2 and I cannot imagine more than a day or two of pretrial  
3 motions, because at that point you will have had some sense  
4 from me from Lastorka and some sense more generally from Judge  
5 Kirpalani from Ogburn about the kinds of approaches that we are  
6 going to be taking to it, so it may expedite things. But why  
7 don't you, again, plug that into your thinking and get back to  
8 me on it, just so we do not have conflicts.

9 MR. KETTLEWELL: Will do, your Honor.

10 MS. BROOKS: Yes, your Honor.

11 THE COURT: Now, apart from those matters, are there  
12 any others that we need to take up? This tells me enough to at  
13 least set up my trial schedule for other matters for the time  
14 period between now and the now January 19th date, and I am  
15 going to be, as I say, trying to fill other trials in there in  
16 other cases so that I can pay attention to you and keep up with  
17 everything else. But for purposes of my scheduling motions and  
18 so on, it will be helpful to know as quickly as possible what  
19 your intentions are, and, as I say, I will defer to however you  
20 agree to go forward.

21 As far as I am concerned, I am sure you know, but I  
22 view these cases as kind of my priority, and so if I have to  
23 make adjustments with other cases, I will. I just do not want  
24 to be making adjustments in fits and starts.

25 All right?

1 MR. SEEGER: Understood.

2 THE COURT: Anything else we need to chat about?

3 MR. GOTZ: Nothing from the plaintiffs.

4 MR. KETTLEWELL: No, your Honor.

5 MS. BROOKS: Nothing. Thank you.

6 THE COURT: Thank you very much. We will be in  
7 recess.

8 MR. SEEGER: Thank you, your Honor.

9 MR. KETTLEWELL: Thank you, your Honor.

10 (WHEREUPON, the proceedings adjourned at 10:15 a.m.)

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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of *In Re: In Re: Fresenius GranuFlo/ Naturalyte Dialysate products Liability Litigation*, No. 1:13-md-02428-DPW.

Date: November 18, 2015

/s/ Brenda K. Hancock  
Brenda K. Hancock, RMR, CRR  
Official Court Reporter