

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: FRESENIUS GRANUFLO/)	
NATURALYTE DIALYSATE)	No. 1:13-md-02428-DPW
PRODUCTS LIABILITY LITIGATION)	
)	
This Document Relates To:)	
)	
<i>Oklahoma Cases</i>)	

JOINT STATUS REPORT ON PENDING OKLAHOMA CASES

At the Court’s request, FMCNA and the PEC jointly submit this status report relating to cases that were filed in Oklahoma courts.

I. Cases Pending in Oklahoma State Courts

There are 5 cases involving FMCNA currently pending in Oklahoma state courts. Although none of those cases has been stayed, only one case has a trial setting (in the Spring of 2017) and there has been no substantive progress in the others.¹ A chart summarizing the cases now pending in Oklahoma state courts is attached as **Exhibit A**.

II. Cases Pending in the MDL

There are 276 cases currently pending in the MDL that were originally filed in Oklahoma. As the Court will recall, most of the plaintiffs were joined in 9 multi-plaintiff cases that were filed in state court and then removed to federal court and transferred to the MDL. The plaintiffs filed motions to remand, and FMCNA filed oppositions to those motions, in the federal court before transfer. In the MDL, the parties re-briefed the jurisdictional issues in the *Carol*

¹ At the last status conference, counsel for FMCNA mistakenly reported that the Oklahoma state-court cases had been stayed. Although a motion to stay was filed in the *Angelena James* case, that motion was withdrawn after the state court entered a new scheduling order that postponed a trial until the Spring of 2017.

Cook case, anticipating that the Court's ruling in that case could be applied to the remaining multi-plaintiff cases presenting the same or similar issues. (*Carol Cook* Docs. 86-87 (Plaintiffs' motion to remand); *Carol Cook* Doc. 91 / MDL Doc. 956 (FMCNA opposition to Plaintiff's motion to remand); *Carol Cook* Doc. 94 (Plaintiffs' reply in support of motion to remand).)

Specifically, FMCNA argued (1) that each plaintiff should be severed from the others and (2) that any plaintiff's medical-malpractice claims against a non-FMCNA defendant should be severed from his or her product-liability claims against FMCNA, and the severed medical-malpractice claims remanded to state court. (*Carol Cook* Doc. 91 / MDL Doc. 956.) FMCNA also separately filed a formal motion in the *Carol Cook* case to sever the plaintiffs and the medical-malpractice claims against hospital and clinic defendants. (*Carol Cook* Docs. 89-90 / MDL Docs. 954-55 (FMCNA motion to sever) & *Carol Cook* Doc. 100 / MDL Doc. 987 (reply).) Plaintiffs opposed that motion. (*Carol Cook* Doc. 98.)

FMCNA and the plaintiffs in the 9 multi-plaintiff cases then filed an assented-to motion to sever the plaintiffs' cases from one another. (MDL Doc. 979). On June 3, 2015, the Court entered an order in those cases—*Littrell, Carol Cook, Hawk, Laskowski, Schultz, Nicholson, Paul Cook, Bodnar, and Burris*—requiring severance of each plaintiff from the others, so that each plaintiff would have his or her own case. (MDL Doc. 1183.) That order effectively mooted the portion of FMCNA's original motion to sever in the *Carol Cook* case that related to severance of plaintiffs. The remainder of FMCNA's motion to sever—relating to severance of medical-malpractice claims against hospital and clinic defendants—has not been decided and remains pending.

At the Court's request, the PEC has reached out to counsel for the plaintiffs in the Dillingham and Brown cases. Notwithstanding that the amended short form complaints in those

cases do not identify non-Fresenius defendants, counsel in those cases has indicated that he intends to pursue claims against the hospital providers in Oklahoma.

Several charts cataloguing the cases now pending in the MDL are attached in **Exhibit B**.

In summary:

- There are now 21 cases (listed below) in which the plaintiffs are citizens of Massachusetts or New York and thus are not diverse from FMCNA.

Kathleen Palmaccio (MA) 1:15-cv-12474	Theresa Swinson-Callender (MA) 1:15-cv-12657
Patrick Wyatt (NY) 1:15-cv-12497	Marie Pszeny (MA) 1:15-cv-12714
Robert Herbele (MA) 1:15-cv-12505	Jessica Reed (MA) 1:15-cv-12704
Susan Hurley (NY) 1:15-cv-12615	Dolores Cichetti (MA) 1:15-cv-12586
Helena Hughes (MA) 1:15-cv-12549	Ullysis Cruz (NY) 1:15-cv-12544
Donna Matheux (MA) 1:15-cv-12625	Ambrose Davis (NY) 1:15-cv-12470
Patricia Tobin (MA) 1:15-cv-12516	Modesta Diaz (NY) 1:15-cv-12533
Joan Rodriguez (MA) 1:15-cv-12754	Lorraine Bloise (NY) 1:15-cv-12483
Alice Rosa (NY) 1:15-cv-12604	Kenya Paul (MA) 1:15-cv-12779
Dionne Small (NY) 1:15-cv-12748	Sherry Gomez (MA) 1:15-cv-12436
Kevin Jefferson (NY) 1:16-cv-10585	

(not yet severed from <i>Baldwin</i>)	
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- In addition, there are now 14 cases (listed below) in which Oklahoma plaintiffs have sued clinic, hospital, or physician defendants who are alleged to be citizens of Oklahoma.

	Allegedly Non-Diverse Hospital, Clinic, or Physician Defendant
Eli Brown 1:15-cv-12794	St. Francis Hospital
Geraldine Dillingham 1:15-cv-12796	Muskogee Regional Medical Center
Claire Hawk 1:15-cv-10298	FMC South Oklahoma City
Dianna Holt 1:15-cv-12792	Black Hills Dialysis
Gerland Scott 1:15-cv-12627	FMC SW OKC
Rose Shoemaker 1:15-cv-12650	FMC Miami Midwest
Charles Wolford 1:15-cv-12612	FMC Heritage Park
Joy Nicholson 1:15-cv-10301	FMC Edmond
Debra Prather 1:15-cv-12699	Midwest Regional Medical Center
Michael Disney 1:15-cv-12693	FMC Northwest Oklahoma City

Sequita Ervin
1:15-cv-12720

FMC North Central Oklahoma City

Paula Bodnar
1:15-cv-10303

FMC Oklahoma Kidney Care

Nyree Burris
1:15-cv-10304

FMC Southwest Oklahoma City

Carlotta Jerry
1:15-cv-14121

Dr. Zahif Ahmad
Dr. Lukas Haragsim

The parties have explained their positions on the appropriate disposition of the severance and remand issues in the *Carol Cook* case. If the Court needs more information from the parties on those issues, or on proper application of any ruling in *Carol Cook* on the cases identified above, the parties will be prepared to address those issues in supplemental briefs or at the next scheduled status conference.

May 6, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William H. Kettlewell, hereby certify that a true and correct copy of the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 6, 2016.

/s/ William H. Kettlewell _____
William H. Kettlewell