

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

[PROPOSED] ORDER APPOINTING ERIC D. GREEN
AS GLOBAL SETTLEMENT SPECIAL MASTER

WOODLOCK, District Judge:

THIS MATTER, having been submitted to the Court on agreement of the parties and for good cause shown as follows:

A. BACKGROUND:

1. The Court has been advised that Fresenius Medical Care Holdings, Inc. (“FMCH”), for itself and on behalf of various other entities and persons named as “FMCH related Defendants” in this litigation (the “Fresenius Defendants”), and the “Plaintiffs’ Negotiating Committee” comprised of James Gotz, Tobias Milrood, Chris Seeger and Anthony Tarricone, have reached a settlement in principle to resolve claims against the Fresenius Defendants in the above matter involving injuries alleged to be related to the use of the Fresenius Defendants’ dialysate products known as GranuFlo and NaturaLyte.
2. The Court has been advised that the Fresenius Defendants and the Plaintiffs’ Negotiating Committee are presently in the process of negotiating and finalizing the terms of a Master Settlement Agreement for the global settlement, along with various forms and components thereto, such as the “release” and “opt-in” forms, and other forms for implementing the settlement.

3. In order to facilitate the amicable resolution of this litigation pursuant to the terms of a Master Settlement Agreement, the Court has determined that it is appropriate to appoint a Special Master to act as a mediator and liaison between the Fresenius Defendants and the Plaintiffs' Negotiating Committee so as to assist the parties in finalizing the terms of the Master Settlement Agreement and the various component documents thereto.
4. The Court also recognizes that upon the execution of the Master Settlement Agreement by the Fresenius Defendants and the Plaintiffs' Negotiating Committee that various post-settlement issues may arise between not only the Fresenius Defendants and the Plaintiffs' Negotiating Committee, but also involving the Claims Administrator that is to be retained pursuant to the Master Settlement Agreement to administer the settlement and the various individual Plaintiffs/Claimants participating in the settlement. The Court understands that the parties desire that the Special Master also be empowered to approve an Allocation Plan and to have the further role of presiding over post-settlement disputes that might arise concerning the terms and implementation of the Master Settlement Agreement.

It therefore is ORDERED AND DECREED as follows:

a. APPOINTMENT OF PROFESSOR ERIC D. GREEN AS SPECIAL MASTER:

Pursuant to FRCP 53 and the broad authority granted by 28 U.S.C. sec. 1407, the Court finds that it is in the interests of judicial and economic efficiency and the furtherance of the Parties' proposed settlement-in-principle that a Special Master be appointed to act as a mediator and liaison between the Parties. The Court therefore appoints Professor Eric D. Green, Esq. as Settlement Special Master. I find that he is well qualified to perform this role.

b. ROLE AND DUTIES OF THE SPECIAL MASTER:

- a. Assist the parties to resolve disputes relating to the final terms of the Master Settlement Agreement that cannot be settled by the parties on their own despite best faith efforts;
- b. Facilitate the implementation of the terms of the Master Settlement Agreement by and between the Fresenius Defendants and the participating Plaintiffs/Claimants and the Claims Administrator retained;
- c. Facilitate the creation of, and approve, an Allocation Plan for the distribution of settlement funds to the individual claimants who meet eligibility criteria;
- d. Facilitate the resolution of any issues that might arise concerning the parties' efforts to establish a reasonable and efficient process for the production of various medical records and records containing product identification information that Plaintiffs/Claimants may be required to produce to the Claims Administrator pursuant to the terms of the Master Settlement Agreement, including the production of such records that may be in the possession, custody or control of the Fresenius Defendants;
- e. Preside over the post settlement allocations of the global settlement amount to the Plaintiffs/Claimants pursuant to a final settlement Allocation Plan;
- f. Resolve any issues or questions raised by any counsel for Plaintiffs/Claimants related to the final settlement Allocation Plan, including the implementation and application thereof;
- g. Communicate ex parte with either party or the Court as he deems appropriate;

- h. Oversee the claims administration process, in concert with the plaintiffs' leadership and the Claims Administration firm retained to administer the settlement, with power that includes, but is not limited to, his right to:
 - i. Resolve appeals from compensation awards; and
 - ii. Resolve questions or conflicts concerning the sufficiency of submissions in support of compensation awards
- i. Address other matters generally related to the settlement process appropriate for the Special Master as he and/or the plaintiffs' leadership may identify.

c. REVIEW OF DETERMINATIONS MADE BY THE SPECIAL MASTER

The Court understands that the Master Settlement Agreement is intended by the Parties to be self-executing pursuant to the consent of the Parties and the participating Plaintiffs/Claimants and their counsel, and that the Master Settlement Agreement shall provide that review of determinations made by the Special Master to this Court is to be sought in only a rarest of circumstance.

FRCP 53 provides that determinations made by a Special Master are to be reviewed pursuant to the "clear error" standard of review. Accordingly, no Plaintiff/Claimant shall seek review by this Court of a determination made by the Special Master unless the attorney for the Plaintiff/Claimant, aware of the "clear error" standard of review set forth in FRCP 53 and applicable to Court review of the Special Master's determination of eligibility or amount of payment to an individual plaintiff, has a good faith belief that the Special Master's findings and application of the Allocation Plan with respect to the particular claimant was clearly erroneous.

d. COMPENSATION FOR THE SPECIAL MASTER

The Court understands that Professor Green has generously offered to perform his role *pro bono* and will not charge the parties for his services.

e. REPORTING TO THE COURT

Professor Green shall report from time to time to this Court, as requested, with a status of the settlement program and to address any other matters as may arise relating to same.

IT IS SO ORDERED.

Signed this ____ day of May, 2016.

Douglas P. Woodlock, District Judge