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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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IN RE: FRESENIUS GRANUFLO/)	
NATURALYTE DIALYSATE)	No. 1:13-md-02428-DPW
PRODUCTS LIABILITY LITIGATION)	
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BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

STATUS/SCHEDULING CONFERENCE AND MOTION HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 1
One Courthouse Way
Boston, MA 02210
Friday, June 10, 2016
4:00 p.m.

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

1 APPEARANCES:

2 ON BEHALF OF PLAINTIFFS:

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(APPEARANCES CONTINUED NEXT PAGE)

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6 ALSO PRESENT: Ronald L. Castle, Fresenius
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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, June 10, 2016):

7 THE CLERK: All rise.

8 (The Honorable Court entered the courtroom at 4:00 p.m.)

9 THE CLERK: This is Case Number 13-md-02428, In Re:
10 Fresenius GranuFlo.

11 Will the attorneys please identify themselves for the
12 record.

13 MR. GOTZ: Good afternoon, your Honor. James Gotz for
14 plaintiffs.

15 MR. TARRICONE: Good afternoon. Anthony Tarricone for
16 plaintiffs.

17 MR. KETTLEWELL: Good afternoon, your Honor. William
18 Kettlewell for the defendants.

19 MR. BENNETT: Jim Bennett, defendants.

20 MR. CASTLE: Ron Castle, Fresenius.

21 MS. HODGE: Leigh Anne Hodge for the defendants.

22 MS. DURANT: Maria Durant for the defendants.

23 THE COURT: I'm sorry. Sir?

24 MR. MIDDLETON: Attorney Nathaniel Middleton for the
25 plaintiff Daniel Coney. I received notice of this hearing,

1 your Honor.

2 THE COURT: Okay. I think there may be a
3 misunderstanding. I will hear anything that you have to say,
4 but my purpose in this hearing was really to deal with overall
5 settlement issues, and I had tried to make it clear, and may
6 not have, that the parties could participate by phone, listen
7 in by phone, rather than making the trip up here.

8 MR. MIDDLETON: That's fine, your Honor. I wanted to
9 be here.

10 THE COURT: You are welcome to Boston. I'm glad you
11 came as a general matter of hospitality, but I am not sure it
12 was absolutely necessary here. And if there is something
13 particular you want to take up, we will take it up during this
14 hearing. Okay?

15 MR. MIDDLETON: Thank you, your Honor.

16 THE COURT: Thank you.

17 And I understand that we have some folks on the phone
18 here, and I may turn to them as we move along during the course
19 of this hearing. A major issue for me, one that I took up in
20 Chambers with representatives of the Plaintiffs' Executive
21 Committee and also with defense counsel is the pace of the
22 settlement process, which is a complex one, I fully understand.
23 And I have come to the conclusion, as requested by those
24 parties, that the formal date for reporting with respect to the
25 settlement ought to be moved from July 15th to September 15th,

1 and I am prepared to do that and will do that as the formal
2 date.

3 That has ripple effects, obviously, on bellwether
4 cases, and it seems to me prudent, and requested by the
5 parties, that I move the Lastorka case, which would have been
6 in September, over into the beginning of next year. I want to
7 consult with Judge Kirpalani regarding that, and I want to
8 consult with Judge Kirpalani generally about this matter of
9 rescheduling.

10 But, fundamentally, it is this: I am satisfied that
11 the parties, particularly the Plaintiffs' Executive Committee,
12 are moving with all necessary speed to resolve the outstanding
13 issues to clarify whether or not the settlement in principal
14 is, in fact, a settlement in fact. That requires a good deal
15 of drafting and a good deal of discussion among a range of
16 plaintiff attorneys and the parties themselves, and it seems to
17 me that perhaps the original date was overly optimistic. This
18 date seems to me to be appropriate in light of the
19 developments, and it seems to me that I might appropriately
20 make that adjustment in the stay of this case and the order in
21 which, if the settlement does not prove to be one in fact, we
22 move forward on bellwether cases.

23 I do not know if the parties have anything further
24 that they want to add to that at this point.

25 Mr. Tarricone?

1 MR. TARRICONE: No, your Honor. We do need the time,
2 and we will continue to move with dispatch.

3 THE COURT: Okay.

4 MR. KETTLEWELL: Nothing from the defendant, Judge.

5 THE COURT: All right.

6 Now, that leads to a series of other issues that I
7 have not addressed directly, in part because of the stay and in
8 part because of the press of other business, but I think it is
9 something on which I need to get some clarification. I asked
10 that counsel for the defendant be present and that there be an
11 opportunity for plaintiffs' counsel in what I will call the
12 "Oklahoma cases" in which there were joined both Fresenius and
13 non-Fresenius parties to be available to discuss proceedings in
14 that direction.

15 I had indicated that I would be severing the
16 non-Fresenius parties. I put off completing what I think will
17 be a lengthy memorandum that deals with the question of
18 organizing parties and the larger question of what is termed
19 "fraudulent joinder," but, as far as I am concerned, is simply
20 better described as "inappropriate joinder" in the context of
21 MDL cases. But I do not want in any way to further burden
22 plaintiffs who want to pursue their cases, including appealing
23 the determination I made, so I wanted to get some sense of what
24 was going on with those Oklahoma cases.

25 And maybe, Ms. Hodge, you can speak to that.

1 MS. HODGE: Yes. Thank you, your Honor. I'm happy to
2 do that. Would you first like to hear about cases that still
3 are pending in state court in Oklahoma, or would you like to
4 hear about cases here in the MDL that originated in Oklahoma?

5 THE COURT: I think cases here in the MDL that
6 originated, and, as I understand it, the parties have moved
7 into the state court, but perhaps you will explain this more
8 completely to me.

9 MS. HODGE: Yes, sir. And the parties jointly filed a
10 Status Report on pending Oklahoma cases on May 6th. That's
11 Document 1743. There are a couple of updates to that document
12 that I will tell you about. But, in general, we have 276 cases
13 that originated in Oklahoma and now are here in the MDL, and
14 those cases are listed on Exhibit B to the Status Report that
15 we filed on May 6th.

16 Now, a couple of things that need to be dealt with.
17 You previously severed all of the plaintiffs in those cases.
18 There is one remaining case that was removed and transferred
19 into the MDL after the severance order where the plaintiffs are
20 still all together in the same case. That is the Baldwin case.
21 It's on your joint -- it's on Exhibit B. It's Page 26 of our
22 filing. It's Ronald Baldwin, and the Case Number is
23 1:16-CV-10585. We have seven plaintiffs in that case.

24 THE COURT: Is there a pending Motion to Sever in that
25 case?

1 MS. HODGE: There is not. We certainly can get one on
2 record, if you would like.

3 THE COURT: And who is counsel for the plaintiff in
4 the case?

5 MS. HODGE: Mr. Sill, who I believe is on the phone
6 today.

7 THE COURT: Mr. Sill, are you on the phone? I want to
8 be sure that we have you.

9 MR. SILL: (Inaudible) Sill, and plaintiffs are
10 agreeable to voluntarily severing those as well.

11 THE COURT: All right. So, we will sever those
12 plaintiffs in that case.

13 MS. HODGE: So, that's one item that needs to be taken
14 care of.

15 Now, in the cases where the plaintiffs have been
16 severed we also have 21 plaintiffs who are nondiverse, they are
17 either New York or Massachusetts citizens, and those plaintiffs
18 are listed in the report on Page 3. So, those plaintiffs in
19 those cases, because you have no diversity jurisdiction, will
20 either need to be dismissed without prejudice so they can
21 re-file, or those plaintiffs' cases need to be remanded.

22 THE COURT: And, again, plaintiffs counsel in those
23 cases?

24 MS. HODGE: Matt Sill.

25 THE COURT: And, Mr. Sill, what is your pleasure on

1 that?

2 MR. SILL: We would like to do whatever is most
3 convenient for your Honor. We think that finding additional
4 counsel to re-file cases in Massachusetts, local counsel and
5 additional filing fees, would be unnecessary at this point.
6 So, what I would suggest would be a -- we could prepare a
7 dismissal without prejudice that includes some tolling language
8 or whatever language that wouldn't prejudice their --

9 THE COURT: Let me ask this, which is, whether it
10 might not be appropriate for me to -- well, I guess they don't
11 come from Massachusetts, do they?

12 MS. HODGE: No.

13 THE COURT: Okay. Massachusetts does have a holding
14 statute here that permits filing promptly, and so what I think
15 I will do is simply dismiss those cases on the understanding
16 that they will be filed -- if plaintiffs choose to pursue them,
17 they will be filed in Massachusetts, except for those cases
18 that are just New York cases, which I do not think I can
19 dismiss on that basis, although I suppose they can still bring
20 them in Massachusetts.

21 MS. HODGE: They can still bring them in
22 Massachusetts.

23 THE COURT: Do you have all those cases, Mr. Sills?

24 MR. SILL: I do. And, your Honor, where they were
25 filed originally in Oklahoma, we also have a one-year saving

1 statute upon dismissal that preserves the statute of
2 limitations. So, if we had some agreement with defense counsel
3 that a re-filing would not be challenged on statute of
4 limitations, we could just simply dismiss without prejudice by
5 joint motion or stipulation.

6 THE COURT: Okay. So, what I am going to ask is, the
7 way I see it, anyway, most effective way, rather than
8 developing additional jurisdictions for cases, is for you to
9 submit jointly a Motion to Dismiss Without Prejudice to permit
10 re-filing in the Commonwealth of Massachusetts.

11 MS. HODGE: Yes, sir. And when would you like that
12 joint motion?

13 THE COURT: As soon as is convenient for you. But
14 maybe by next Friday? Does that do it?

15 MS. HODGE: Yes, sir. All right. The next item.
16 Go ahead, Mr. Sill.

17 MR. SILL: I apologize. Your Honor, I would like just
18 to clarify that if re-filing is unnecessary and the plaintiffs
19 choose to participate in the global settlement program that it
20 wouldn't necessarily require re-filing immediately, that they
21 could proceed and then only re-file if it becomes necessary due
22 to the failure to be included in the global --

23 THE COURT: I think Mr. Tarricone has something to
24 say. Although, obviously, they are your clients, I am
25 concerned about the clients kind of falling between two stools,

1 or at least two stools, on statute of limitations or holding
2 statutes.

3 But, Mr. Tarricone?

4 MR. TARRICONE: Yes. Your Honor, the Master
5 Settlement Agreement will have appended to it a list of all
6 cases that were pending as of April 15th. So, these cases
7 presumably are on that list and, therefore, will be covered by
8 the Master Settlement, whether they are pending on a docket or
9 not. But, obviously, not my issue. But perhaps it might make
10 sense to defer dismissing these cases until the settlement
11 moves forward. But I don't think it matters one way or the
12 other. The case does not have to be filed to participate.

13 THE COURT: What you would be saying, though, is
14 waiting till September 15th to do that, effectively?

15 MR. TARRICONE: Yes, your Honor.

16 THE COURT: Because I have not yet -- reviewing the
17 settlement, I have some idea of the settlement dimensions, but
18 I am not reviewing that aspect of it.

19 MR. TARRICONE: Or there could be a tolling agreement
20 between them, the parties.

21 THE COURT: Right.

22 MR. SILL: This is Mr. Sill. I am okay with
23 Mr. Tarricone's suggestion as well. We can put it off --

24 THE COURT: I guess I am not, just because I am trying
25 to houseclean or housekeep here, and so what I think is you can

1 stipulate to that. I view these cases as pending in this Court
2 as of the magic date, April 15, and even if not I deem them to
3 be. So, let's just get them into the Massachusetts State
4 Courts promptly and then go from there. I think that's the
5 best way to do it, but if you want to tailor it a little bit
6 more by your stipulation, that is fine. It is just that they
7 do not belong here any longer.

8 MS. HODGE: Yes, sir.

9 MR. SILL: Understood, your Honor. Thank you.

10 MS. HODGE: All right. The next item that needs to be
11 addressed in light of the severance, the anticipated severance
12 order, is on Page 4 of the Status Report that we filed back in
13 May; and on that list you will see 14 cases where there are
14 Oklahoma plaintiffs who have sued Oklahoma in-state health care
15 defendants.

16 THE COURT: Right.

17 MS. HODGE: And two of those have been fully briefed.
18 Those are the two that were in the Cook case. That's the --
19 yes, the Brown and Dillingham matters. The others have not
20 been briefed. But, in any event, those are allegedly
21 nondiverse. Some of these clinics are potentially diverse
22 claims. We haven't fully developed the facts on those. We
23 know that Saint Francis and Muskogee Regional, those are
24 briefed. Those are Oklahoma residents. They need to go back.
25 You'll see on the rest of the list that you have a smattering

1 of Fresenius clinics. Some of those clinics we believe to be
2 diverse. We believe they are incorporated in Massachusetts,
3 with principal place of business in Massachusetts. Others
4 likely are nondiverse because they are LLCs with Oklahoma
5 members. So, before we send those back, we need to have
6 further discussion.

7 What I would recommend, Judge, that we do is, once you
8 give us our master order in the Cook case, is for the parties
9 to meet and confer about proposed orders in all of these other
10 matters, the 14 that need to be dealt with, and the idea would
11 be that we could jointly submit orders to you on those. If we
12 can't agree, then we could submit competing orders and come
13 back and talk to you.

14 THE COURT: All right.

15 Let me raise this with you, Mr. Sills, because I think
16 I am going to be governed by what your disposition is on this.
17 I have and have indicated my intention to remand those cases in
18 which there is nondiversity after the severance. I have told
19 counsel that I plan on completing a rather lengthy order that
20 focuses on this but touches on larger questions of the joinder
21 of nondiverse parties, just to provide a template for others
22 who confront this kind of issue. That has taken a backseat to
23 other cases that I have had, and I guess what I would put to
24 you is I am perfectly willing to resolve with a formal order
25 directing the remand of the Brown and Dillingham matters, but

1 that would be barebones. It would take me a little bit of time
2 to do an extensive order, and that raises the question of where
3 it stands in the queue of other things that I have to do. But
4 what I do not want to do is interfere with your ability to
5 proceed against those parties in Oklahoma as promptly as you
6 choose.

7 If, however, there is a question of appeal, and this
8 is not a kind of "Mother, may I?" sort of thing, but if there
9 is a question of appeal, I would like to be able to, and it is
10 the practice in the First Circuit, that a case should not be
11 disposed of formally until the judge has provided a fully
12 reasoned explanation for the decision. That is in some ways to
13 avoid the problem that did infect some First Circuit
14 proceedings of the trial judge essentially writing another
15 brief, or the appellee, after the order had been entered.

16 The short of it is, do you need -- and this is for
17 purposes of appeal -- but do you need to have the fully
18 developed memorandum right now? Would it be better, from your
19 perspective, so you could move ahead with respect to these
20 nondiverse parties for me simply to enter the order remanding,
21 formally enter the order remanding, with an opinion to follow
22 in some reasonable time but not immediately?

23 So, I guess I leave that to you, Mr. Sill. What is
24 your view on that? Maybe I can put it a different way. If you
25 are going to appeal it, I would like to write and complete this

1 memorandum. I will do it as promptly as I possibly can, if
2 that is the case. If this is not a matter of appeal but a
3 matter of moving cases in different directions, and you would
4 just like to get going in Oklahoma, or maybe you do not want to
5 get going that fast in Oklahoma, but, in any event, you would
6 like to have it in Oklahoma, then I will do that immediately
7 with an order for remand.

8 MR. SILL: And, your Honor, the order would be
9 remanding just the claims as to the Oklahoma defendants?

10 THE COURT: Yes.

11 MR. SILL: Okay. Your Honor, we don't need a weighty
12 order on that. I believe that the Oklahoma defendants would
13 agree to this. We could sever those claims and dismiss without
14 prejudice by joint motion or stipulation and save you from
15 writing orders altogether, if that would be --

16 THE COURT: So, if you are thinking about dismissal
17 without prejudice, which I understand is agreeable to you
18 because of Oklahoma law, that gives you a holding period or
19 save-harmless period of a year, that is fine. I can do it by
20 remand. But, of course, the remand goes to the Eastern or
21 Western District of Oklahoma, and then it has to go from there
22 to the state court. That may be the scenic route, and you
23 would like a much more direct way to get there.

24 But I will leave it this way: By a week from now tell
25 me what you want me to do, either remand or you will file a

1 stipulation of dismissal without prejudice to permit the
2 pursuit of the nondiverse parties in Oklahoma, and at the same
3 time maybe you can develop more fully those other 14 cases or
4 so as to which there are some disputes about whether or not
5 they are diverse or not diverse and whether or not they should
6 be here.

7 Ms. Hodge, does that work for you.

8 MS. HODGE: Yes, sir.

9 MR. SILL: Understood, your Honor. My position is
10 just that I don't want you to have to write a long opinion.

11 THE COURT: I appreciate that. I wish more people
12 did. But this is one I am going to write on, because it is one
13 I have spent a fair amount of time thinking about, and not
14 merely in the context of the Oklahoma and severance matters,
15 but I hope to be able to add value to an understanding of the
16 concept of what I will call "improper joinder" in MDL cases,
17 and sooner or later there is going to be a lengthy opinion,
18 whether anybody likes it or not. The question is whether it is
19 sooner or later, and what do we do to make sure we are not
20 interfering with the development of your cases in Oklahoma with
21 the nondiverse parties.

22 MR. SILL: Thank you, your Honor. I will work to have
23 our best response to you in a week.

24 THE COURT: Okay. So, you will talk with Ms. Hodge
25 about that.

1 MS. HODGE: Yes, we will. We will reach out to
2 Mr. Sills and let him know which of these clinics are diverse
3 and which are not.

4 THE COURT: Which you think are not.

5 MS. HODGE: Yes. We will do that. Thank you, Judge.

6 THE COURT: All right. I think we have dealt with
7 that.

8 So, I will, as I said, formally issue an order, which
9 I will take as a result of an oral request by the parties to
10 sever the plaintiffs in what is now the Baldwin matter and
11 require that each one of them be separately filed here.

12 MS. HODGE: Yes, sir.

13 THE COURT: All right. Anything else we need to take
14 up on this?

15 MS. HODGE: Not on Oklahoma, no, sir. Thank you very
16 much.

17 THE COURT: So, that takes care, for now anyway, of
18 Oklahoma.

19 Now, I understand that we have counsel in the
20 Louisiana sovereign case here, which I also understand has come
21 back to me, and I guess I want to understand what you propose
22 to do about that, because, as I have indicated when I did write
23 an opinion, I do not think I have jurisdiction over it. I
24 gather that there has been a joinder that may have affected
25 jurisdiction, but it has recently come back to me from the MDL,

1 and I guess I want to structure something to make sure that I
2 promptly resolve that matter.

3 I will ask one question, preliminary question, of you,
4 Mr. Bennett. There was some discussion about the Mississippi
5 sovereign case going forward. I do not know what the status of
6 that is. I just want to get a sense of what that is.

7 MR. BENNETT: Certainly. It's proceeding on pace. We
8 have a September discovery cutoff and a scheduling order in
9 place, and we are litigating that in the Chancery Court in
10 Mississippi.

11 THE COURT: And with a trial date yet, or not?

12 MR. BENNETT: Yes, we have a trial date. I did not
13 bring the schedule with me. What I can confirm is it is a
14 September discovery cutoff and then dates after that. We may
15 not have a firm trial date, but we have a firm discovery
16 schedule.

17 THE COURT: And that will survive the settlement in
18 this case?

19 MR. BENNETT: I'm not certain when -- yes. Yes. It's
20 separate.

21 THE COURT: Will it be affected by that? That is,
22 there will be, I assume, plaintiffs in the settlement who are
23 Mississippi plaintiffs who might be considered to be bases for
24 recovery by the sovereign?

25 MR. BENNETT: I think mainly they are seeking to

1 recover payments made by the sovereign for the health care
2 services, and maybe there will be issues of liens and separate
3 things, but they view the claims as different than the
4 personal-injury claims.

5 THE COURT: All right. So, that tells me about
6 Mississippi.

7 So, let's go to Louisiana. I was told, I think, that
8 there is someone from the Beasley Firm who is representing the
9 Attorney General present. If you could --

10 MR. SHAUL: Yes, your Honor. Roman Shaul of the State
11 of Louisiana.

12 THE COURT: Right. And do we have -- as I understand
13 it, the additional party was Blue Cross Blue Shield. Do we
14 have counsel for Blue Cross Blue Shield present? I do not hear
15 a response to that.

16 Mr. Bennett, I'm sorry. I should have written down
17 the name of the gentleman for the State of Louisiana.

18 MR. BENNETT: Shaul.

19 MR. SHAUL: It's Shaul, your Honor. I had a brief
20 conversation with counsel for Blue Cross Blue Shield of
21 Louisiana, the intervenor yesterday, your Honor, and my
22 understanding was that they were going to be on this call, but
23 that's all the information I have.

24 THE COURT: And because I have not heard from them, I
25 guess they are not.

1 So, Mr. Bennett, maybe you can outline your position
2 on this.

3 And, Mr. Shaul, of course, yours as well.

4 MR. BENNETT: Certainly. Without -- I'm happy to get
5 into the merits of jurisdiction and everything that happened,
6 but the proposal just to move the case forward would be this:

7 At the time that the case was transferred what had
8 happened in Federal Court, at least, was that slightly before
9 trial the State Court Judge, over our objection, allowed Blue
10 Cross Blue Shield to intervene just 11 days before trial.
11 There's been no discovery of their claims. We opposed joinder.
12 They were allowed to join.

13 We moved to compel arbitration under our contracts
14 with Blue Cross. That was denied. And as part of that
15 pleading Blue Cross stated, "We aren't pursuing under our
16 contracts with you. These are subrogation claims under private
17 health plans," among other things. Therefore, that being
18 pretty much a pure-play ERISA claim, we removed the case to the
19 Middle District of Louisiana. We were assigned a District
20 Court Judge. Both Blue Cross and the State of Louisiana moved
21 to remand, two days after we removed it, moved for expedited
22 reconsideration of the remand.

23 THE COURT: Remand back to --

24 MR. BENNETT: The Parish Court and State Court. A
25 remand like normal remand, not MDL remand. And those were both

1 referred to the Magistrate Judge for decision who, on the 11th
2 of March, denied the emergency nature of the motion and took it
3 with the case, and it was then briefed down in Louisiana and
4 nothing happened. The case went to the MDL. Both sides filed
5 their position, and then the MDL transferred it to you.

6 So, as we sit here today, in the docket that came up
7 here there were two Motions to Remand. Now the State filed on
8 the 6th of June a new Motion to Remand where they cited a First
9 Circuit case and asked you to consider it, which is how it was
10 teed up last time. What our proposal simply for orderly
11 resolution of this would be to -- we assume Blue Cross would
12 file the same type of motion that they filed in the Middle
13 District of Louisiana, and that if they could do that by a
14 certain date, if they wanted to move to remand, we would then
15 respond jointly to both of those motions. Then they would
16 reply, and then we would have it heard in August, or whenever
17 you wanted to have it heard. If we don't do anything else, our
18 response under the Court's Local Rule to just the State's
19 Motion to Remand is due on the 20th, and we'll meet that, if
20 need be. Or, if the Court knew the date that you wanted to
21 have hearing on it, we could back into a briefing schedule.

22 THE COURT: Let me ask you this: The matters that
23 were filed initially in the Middle District of Louisiana, do
24 they occupy the waterfront of all the issues on remand here?

25 MR. BENNETT: Well, the main issue is that, as the

1 transferee court, you apply your own law, and so there's no
2 First Circuit law that has been discussed. We haven't looked
3 at it, having just received the State's motion, and they do
4 cite a First Circuit case now and a Fifth Circuit one before.
5 That said, I don't view the State's new motion to present
6 materially different issues than what was briefed below. I
7 think that we would like the opportunity to say, "Here is how
8 you should look at this from District of Massachusetts or First
9 Circuit perspective," but at the same time we do believe that
10 we briefed the issue, and we do have an opposition to remand
11 that is of record.

12 THE COURT: Mr. Shaul, do you have a view about this?

13 MR. SHAUL: Well, as I outlined in our brief, we
14 obviously think it needs to be remanded, but in terms of
15 looking at this issue we're okay with the defendant's
16 suggestion, your Honor, that you set a time for Blue Cross Blue
17 Shield of Louisiana to file their motion and then the
18 defendants file their response. We don't have a problem with
19 that, your Honor.

20 THE COURT: I do not mean to create another moving
21 part, but I am just trying to think of another mechanism, which
22 is, you have got your motion filed, that is, the Attorney
23 General in Louisiana has got a motion filed, and it is
24 appropriate to have a response to it, and I will set a time
25 period. I suppose I could simply require Blue Cross to file a

1 supplemental -- not require them but just offer them the
2 opportunity to file a supplemental memorandum to their
3 earlier-filed Motion for Remand and tee it that way.

4 I understand why Louisiana would have filed a separate
5 motion to kind of clarify the issues, but I am not sure that is
6 necessary here. But it does provide a vehicle. So, rather
7 than requiring the filing of a motion, there is a motion filed
8 by Blue Cross Blue Shield, as I understand. I simply might
9 solicit a supplemental memorandum after the filing that would
10 coincide with the reply right by Louisiana that would come
11 after you file your opposition to the Louisiana motion,
12 Mr. Bennett.

13 MR. BENNETT: The only observation I would make about
14 that is it leaves us -- we were thinking that it made sense for
15 us to file one response to both motions, and so I don't know if
16 Blue Cross is going to throw in some new case law or what their
17 position is going to be, but I think we really only care about
18 two things however it can happen. The first is that we get a
19 fair chance to respond to both submissions, whatever the new
20 ones are, and that we have a chance to come be heard on our
21 position whenever you are prepared to take it up.

22 THE COURT: Well, I guess what I might do, rather than
23 doing this by myself, is ask you, Mr. Shaul, and get your hands
24 on counsel for Blue Cross and give me a schedule Shaul.

25 MR. BORDELON: Your Honor, I'm on the call. Can you

1 hear me?

2 THE COURT: I can, and I take it that, although you
3 have not identified yourself yet, you represent Blue Cross Blue
4 Shield.

5 MR. BORDELON: Yes, sir. I'm sorry. I had some
6 trouble getting on. I was on the call, but I guess I missed
7 the instructions on how to get through.

8 THE COURT: No, I understand. I frequently don't get
9 the memo either.

10 Now, what is your view about this? If you could
11 identify yourself for the record, too.

12 MR. BORDELON: Yes, sir. My name is Lanson Bordelon
13 from the Dugan Law Firm, and I'm here on behalf of James Dugan,
14 the lead attorney, who is traveling. So, his position was that
15 basically we were going to rest on the briefs we had filed, and
16 I can't really give much more input than that.

17 THE COURT: Well, maybe let's just talk this through.

18 MR. BORDELON: Sure.

19 THE COURT: Mr. Bennett, how do you want to deal with
20 this question? If I were thinking about this as thrust, parry
21 and reply, there is a thrust already by the sovereign. I do
22 not know whether there would be different law for Blue Cross,
23 but apparently they are not that interested in filing something
24 separate at this stage. I think I could properly say you can
25 file a supplemental memorandum with respect to Blue Cross here

1 at the same time you file opposition to Mr. Shaul's motion,
2 Mr. Shaul will get a reply out of it, and we will see whether
3 or not Blue Cross wants something more.

4 MR. BENNETT: Your Honor, if they are, as they have
5 stated in court, that they are going to rest on their prior
6 briefing, that seems fine to me. I think if we wanted to talk
7 about process, we can talk about the specifics of the dates,
8 but your process seemed appropriate.

9 THE COURT: Okay. So, what I think I am going to say
10 is this; that I will afford Fresenius the opportunity to file
11 anything supplemental to the motion of Blue Cross Blue Shield
12 at the same time that it files its opposition to the Motion of
13 the sovereign, Louisiana, we will talk about dates in a bit,
14 and then there will be an opportunity for Louisiana to file a
15 reply.

16 So, now dates. I can have a hearing -- I do not know
17 what people in the South do for vacations in August. Boston
18 becomes a ghost town generally in August, and then border
19 states like Missouri, apparently, can go either way.

20 Mr. Shaul, are you available for a motion hearing in
21 August?

22 MR. SHAUL: Yes, your Honor, I am generally available.

23 THE COURT: And, Mr. Bennett, how about you?

24 MR. BENNETT: I am available. I just received notice
25 from the Court of Appeals for the Eleventh Circuit that I'm on

1 the argument week of August 15th, and I have another argument
2 hearing on the 12th in St. Louis. So, if we can avoid those
3 two events, I can do it any day the Court would want.

4 THE COURT: So, we are really talking about the last
5 two weeks in August?

6 MR. BENNETT: Your Honor, yeah. Are you looking for a
7 Friday again?

8 THE COURT: I am looking for a convenient date for all
9 of you.

10 MR. BENNETT: The week the 22nd through the 24th, and
11 then the 26th, and the 29th through the 31st are all fine for
12 the defendants.

13 THE COURT: Mr. Shaul, do you have a preference?

14 MR. SHAUL: Your Honor, I would say the week of the
15 22nd through the 26th would be the preference, but I'm looking
16 at my calendar, and I don't have anything I can't move.

17 THE COURT: So, if I did this, say, does Monday work
18 for you? Because both of you fellows, if you want to appear in
19 person, both of you are going to have to do some traveling. If
20 I set this on the 22nd --

21 MR. SHAUL: That works for the State, your Honor.

22 THE COURT: I'm sorry, but I may make it the 23rd. I
23 have a full day on the 22nd. On the 23rd I would do it, say,
24 at -- right now I have a trial in the morning -- do this at
25 2:00. Is that okay?

1 MR. SHAUL: Yes, your Honor, that would work for us.

2 THE COURT: I would think you would be able to get
3 back to -- are you in Baton Rouge or New Orleans?

4 MR. SHAUL: I'm actually in Montgomery, Alabama, your
5 Honor.

6 THE COURT: Oh.

7 MR. BENNETT: He's privately retained.

8 THE COURT: I don't know plane traffic to Montgomery.
9 There was a time wen I did, but I don't anymore. I remember a
10 late night flight into Montgomery -- maybe it was Pensacola.

11 But, in any event, I would like to do it on the 23rd
12 at 2:00.

13 And the fellow from Blue Cross Blue Shield, I assume
14 that that date is going to be agreeable.

15 MR. BORDELON: Yes, sir.

16 THE COURT: So, 2:00 on the 23rd to take up the
17 questions of remand posed by the Louisiana sovereign case.

18 Anything else that we need to take up on those?

19 MR. BENNETT: Only if we wanted to work backwards on a
20 briefing schedule from that date.

21 THE COURT: We might as well do that. I might as well
22 set those dates right now in a fashion that works for you. So,
23 when do you want to respond?

24 MR. BENNETT: Just looking at the schedule, and with
25 the 4th coming up in there, and given the time we have till the

1 hearing, if we could file, say, sometime around the 7th or the
2 8th or the 11th, and then they would have two weeks to reply,
3 that would give us three weeks to be fully briefed before you
4 had the hearing.

5 THE COURT: Yes, that works for me. So, the
6 opposition to the motion of the sovereign will be July 11th,
7 together with any supplement to the pending motion of Blue
8 Cross by the 11th, and then reply for the sovereign by
9 July 25th. Does that work for you, Mr. Shaul?

10 MR. SHAUL: Yes, your Honor.

11 THE COURT: All right. So, we have got a schedule for
12 it, and I will get myself back into this area by the
13 second-to-last week of August.

14 Anything else on these matters?

15 MR. SHAUL: Thank you, your Honor.

16 MR. BORDELON: Thank you, your Honor.

17 THE COURT: Now, sir, is there a particular matter
18 that you wanted to take up, the gentleman from Georgia?

19 MR. MIDDLETON: No, your Honor. We wish to get access
20 to the briefs that have been filed so we can get caught up.

21 THE COURT: Okay. So, there is nothing you are asking
22 of me right now?

23 MR. MIDDLETON: No.

24 THE COURT: And I apologize for the misunderstanding
25 here, but Boston is a nice town.

1 MR. MIDDLETON: Oh, no, I love it. Thank you.

2 THE COURT: Anything else that we need to take up at
3 this point, Mr. Tarricone?

4 MR. TARRICONE: I don't believe so, your Honor.

5 THE COURT: So, I think we have got a structure. As I
6 indicated to counsel with respect to the larger issues of
7 settlement, I am going to consult with Judge Kirpalani as to
8 the degree, if any, that we can have coordinated responses to
9 the change of the timing here as well as to the Special
10 Master's motion, which, as I indicated to counsel, I will be
11 allowing in substance for this case, if not more broadly, here,
12 and I will try to get something out promptly. But for planning
13 purposes, you can assume that Professor Green will be working
14 as a Special Master in this case more or less along the lines
15 as proposed in the recently filed motion for his appointment.
16 Okay?

17 MR. TARRICONE: Thank you, your Honor.

18 THE COURT: Thank you. We will be in recess.

19 THE CLERK: All rise.

20 (The Honorable Court exited the courtroom at 4:45 p.m.)

21 (WHEREUPON, the proceedings adjourned at 4:45 p.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: June 22, 2016

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