

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: FRESENIUS GRANUFLO/ ) MDL NO. 13-02428-DPW  
NATURALYTE DIALYSATE )  
PRODUCTS LIABILITY LITIGATION )  
)  
)  
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)  
This Order Relates To: )  
)  
)  
ALL CASES )

MEMORANDUM AND ORDER APPOINTING ERIC D. GREEN  
AS SETTLEMENT SPECIAL MASTER  
June 27, 2016

I have 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 private 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.

In particular, I have 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 "release" and "opt-in" forms, and other forms for implementing the settlement.

I am satisfied that in order to facilitate the amicable resolution of this litigation pursuant to the terms of a Master Settlement Agreement, it is appropriate formally 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.

I also recognize 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 it is anticipated will be retained pursuant to the Master Settlement Agreement to administer the settlement among the various individual Plaintiffs/Claimants participating in the settlement. The parties desire that the Special Master be empowered to develop and approve an Allocation Plan and to have the further role of resolving any post-settlement disputes among the various individual plaintiff's that might arise

concerning the terms and implementation of the Master Settlement Agreement.

ACCORDINGLY:

The plaintiff's Executive Committee having moved for the appointment of such a Special Master, it therefore is ORDERED AND DECREED as follows:

**A. APPOINTMENT OF PROFESSOR ERIC D. GREEN AS SPECIAL MASTER:**

Pursuant to Federal Rule of Criminal Procedure 53 and authority granted by 28 U.S.C. § 1407, I find that it is in the interests of judicial and economic efficiency and in furtherance of the Parties' proposed settlement-in-principle that a Special Master be appointed to act as a mediator and liaison among the Parties. To this end, Professor Eric D. Green, Esq. whom I find well qualified to perform this role, is hereby appointed as Settlement Special Master.

**B. ROLE AND DUTIES OF THE SPECIAL MASTER:**

The Special Master is authorized to:

1. Assist the parties in resolving 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;

2. 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;
3. Facilitate the creation of, and approve, an Allocation Plan for the distribution of settlement funds to the individual claimants who meet eligibility criteria;
4. 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;
5. Preside over the post settlement allocations of the settlement amount to the Plaintiffs/Claimants pursuant to a final settlement Allocation Plan;

6. 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;
7. Communicate ex parte with any party as he deems appropriate;
8. Communicate in camera and/or ex parte with the Court, recognizing that the Court's disposition will be thereafter to spread any such communications upon the public record in the absence of good cause to proceed otherwise;
9. 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:
  - (a) Resolve appeals from compensation awards; and
  - (b) Resolve questions or conflicts concerning the sufficiency of submissions in support of compensation awards.
10. Address any 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 Master Settlement Agreement is to be a private agreement intended by the Parties to be self-executing pursuant to the consent of the Parties and the participating Plaintiffs/Claimants and their counsel. The Master Settlement Agreement is also anticipated to provide that judicial review of determinations made by the Special Master will be sought on only the most limited basis. Such review may be had in this proceeding only over cases properly within the jurisdiction of this court.

Fed. R. Civ. P. 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 Fed. R. Civ. P. 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 and can properly seek such review consistent with Fed. R. Civ. P. 11.

**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, regarding the status of the settlement program and to address any other matters as may arise relating to same.

**IT IS SO ORDERED.**

*/s/ Douglas P. Woodlock*  
DOUGLAS P. WOODLOCK  
UNITED STATES DISTRICT JUDGE