



## Medical Law Perspectives

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### What Factors Affected the Dialysates Products Action Settlement?

In February 2016, the defendants and plaintiffs' executive committee announced that a settlement in principle had been achieved in **In Re: Fresenius Granuflo/NaturaLyte Dialysate Products Liability Litigation** pending in federal court in Massachusetts. If ratified, the settlement will establish a fund of approximately \$250 million to compensate plaintiffs allegedly injured. Several factors likely affected the settlement in the dialysates products action and will affect the degree to which individual plaintiffs decide to opt in or opt out of the settlement. Plaintiffs who opt out will be able to continue to litigate their cases.

The first factor is the underlying family economics of the majority of dialysis patients. Many, if not most, dialysis patients are unable to have regular jobs due to their necessarily rigorous dialysis schedule, so household income is often limited. In this case, many dialysis patients who suffered injury, death, increased risk of injury or death, or decreased life expectancy subsequently faced an increase in household expense due to increased medical expenses, travel expenses, and/or funeral expenses. While many patients on dialysis have health insurance, Medicaid, or Medicare, insurance does not necessarily cover all medical expenses, and families already on a limited income are then faced with mounting medical and other expenses.

Second, underlying health conditions are a factor. For many patients, dialysis actually improves their underlying health conditions relative to pre-dialysis because they are suddenly under the supervision of medical staff three days a week and typically have a dietician and social worker with which to consult. On the other hand, underlying health conditions may mean that the life expectancy of dialysis patients, even when the patient is properly cared for, is generally below that of healthy individuals.

Third, legal factors also affected the settlement. One consideration was whether punitive damages were legally and/or factually available. The degree of negligence also affected the likelihood or desirability of settlement as well as the aggregate and individual values of the cases. Additionally, administration of dialysis usually involves complex interaction between the nephrologist and the dialysis units, so there are often multiple entities with potential liability. Some plaintiffs may, therefore, have already received compensation from other sources.

These factors primarily lead to the settlement in this litigation. Because every case is different, counsel must consider the factors affecting the likelihood of settlement in counsel's litigation.

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Stuart M. Paynter is Principal of **The Paynter Law Firm PLLC**. Mr. Paynter's practice concentrates exclusively on plaintiff-side commercial litigation with a focus on complex commercial class actions on behalf of consumers nationwide.

He is one of the trial counsel in the **Dial v. Fresenius** case being tried in the Fresenius MDL (**In Re: Fresenius Granuflo/NaturalLyte Dialysate Products Liability Litigation**).

Mr. Paynter received his law degree from Stanford University, and a B.A. in History from Cornell University.

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