

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This document Relates to ALL ACTIONS

**ORDER AMENDING THE AUGUST 7,
2009 ORDER AMENDING THE
DISTRIBUTION OF FUNDS FOR
CLAIMANTS WITH A CURRENT
COURT ORDERED HOLDBACK OF 25%**

Pursuant to agreement between the parties and approval by this Court, a Distribution Order was filed by this Court on December 19, 2008, ordering partial distribution of payment-eligible claimants' settlement funds. The parties and the Court agreed to a partial distribution at that time, in order to provide payment eligible claimants with access to a portion of their allocated settlement funds before the settlement process was complete for all participating claimants. Again pursuant to agreement between all parties and approval by this Court, an Amended Distribution Order was filed by this Court on August 7, 2009. The remaining funds held back were contingent on future Medicare lien payments, future Medicaid lien payments, possible participation in a Private Lien Resolution Program (PLRP), and future ratchetback under Section II(A)(1) of the Master Settlement Agreement.

Prior to this August 7, 2009 Order, Counsel for Blue Cross Blue Shield and United Healthcare Third-Party Payors (TPPs) and the Lead Counsel Committee (LCC) reached agreement on a Private Third-Party Payor Lien Resolution Program (PLRP) available, on

a voluntary basis, to Guidant MDL settlement claimants identified by Blue Cross Blue Shield and/or United Healthcare to satisfy any outstanding lien reimbursement issues. The Court's August 7, 2009 Confidential Amended Distribution Order required a 25% holdback for these claimants.

Participation forms for these claimants have been processed and the parties have now reached agreement regarding the reimbursement amounts for some claimants participating in Blue Cross Blue Shield Healthcare Lien Resolution Program¹ ("BCBS-LRP). Claimants choosing Option 1 under the BCBS-LRP agreed to pay Blue Cross Blue Shield no more than 15% of their Amended Gross Allocation as satisfaction of their outstanding lien.² These claimants who chose Option 1 are listed on Exhibits B and C attached to this order. Claimants choosing Option 2 under the BCBS-LRP have reached a negotiated agreement with Blue Cross Blue Shield as to the amount to be paid

¹ Blue Cross Blue Shield has provided the LCC with final payment amounts under the global resolution program for claimants from the following Blue Cross Blue Shield plans: WellPoint, Inc., Blue Cross and Blue Shield Association, Blue Cross and Blue Shield of Florida, Blue Cross and Blue Shield of Michigan, Blue Cross Blue Shield of California, Horizon, Blue Cross Blue Shield HealthCare Services, Blue Cross Blue Shield of Tennessee, Wellmark, Blue Cross Blue Shield of Rhode Island, Blue Cross Blue Shield of Alabama, Excellus, Blue Cross Blue Shield of Idaho, Premera, Blue Cross Blue Shield of Louisiana, and Regence. Blue Cross and Blue Shield of Florida, Blue Cross and Blue Shield of Michigan, and the Blue Cross and Blue Shield Association have final payment amounts for Option 1, uncontested claims, and for the most part, Option 2, contested claims. The LCC will file a similar motion supplementing the payment amounts for these three Blue Cross Blue Shield plans upon receipt.

² "Amended Gross Allocation Amount" is the gross settlement payment allocated to an MDL settling claimant reduced by the final ratchet-back percentage as calculated by Section II(A)(1). This amount is calculated before attorney fees, administrative fees, litigation expenses or any other costs are deducted.

in satisfaction of the outstanding lien. These claimants who participated under Option 2 are listed on Exhibit A attached to this order. Claimants who were originally listed as having an alleged lien by Blue Cross Blue Shield but Counsel for Blue Cross Blue Shield plans does not have authority to release any alleged liens are listed on Exhibit D. Finally, claimants whose lien was resolved prior to the creation of the BCBS-LRP are listed on Exhibit E.

Payment amounts due to Blue Cross Blue Shield for claimants listed on Exhibits A, B, and E are final. Pursuant to the agreement, the claims administrator is now able to pay Blue Cross Blue Shield for Claimants listed on Exhibits A and B. For Claimants on Exhibits A, B, D, and E, the remainder of the held-back funds are no longer required to satisfy an outstanding Blue Cross Blue Shield lien obligation and should be released by order of this Court.

Lien amounts due to Blue Cross Blue Shield for claimants listed on Exhibit C are not final. Until the ratchetback is finalized pursuant to the Master Settlement Agreement, no payment amount to Blue Cross Blue Shield can be calculated. But, pursuant to the terms of the BCBS-LRP, claimants on Exhibit C can pay no more than 15% of their Gross Allocation. Currently, the Court is holding 20% for satisfaction of liens under the BCBS-LRP. Therefore, the LCC requests this Court release the 5% difference between the Court-ordered holdback and the maximum amount due under the terms of the BCBS-LRP. For Claimants on Exhibit C, this 5% remainder of the heldback funds is no longer required and should be released by order of this Court.

As has been done with previous distribution orders, pursuant to the MSA, The Garretson Firm has been working on behalf of the participating claimants to reach final global lien resolution to resolve all public liens with Medicare and Medicaid. Pursuant to the latest status report from The Garretson Firm, a handful of participating claimants' liens have been finalized and any excess hold back funds can be easily discerned and released with Order of this Court by the claims administrator.

Based on the above information, the LCC avers, that the previously ordered percentage of funds held-back for claimants eligible for participation in the Blue Cross Blue Shield Resolution Program who are listed on Exhibits A - E is no longer appropriate. Therefore, the LCC proposes it is now proper for the Court to amend its August 7, 2009 Amended Distribution Order in regard to claimants found on attached Exhibits A - E and reduce the amount of funds currently held-back for those claimants listed in the seven (7) previously approved Special Masters' Allocation Reports and Lists (hereinafter "Allocation Reports 1-7").³

IT IS HEREBY ORDERED:

1. All awards shall be issued by Analytics on checks drawn from the held back funds remaining in the Settlement Fund Escrow Account.

2. For claimants found on Allocation Reports 1-7, Analytics shall release funds held-back pursuant to The Garretson Firm's Medicare and/or Medicaid initial hold-back that are in excess of the amount necessary to satisfy any final Medicare and/or

³ Special Masters Allocation Reports were approved on December 10, 2008; January 13, 2009; February 25, 2009; April 17, 2009 (Amended April 29, 2009); June 19, 2009; October 7, 2009; and May 20, 2010.

Medicaid reimbursement, as set forth by The Garretson Firm. For those claimants for whom The Garretson Firm has yet to determine a final Medicare and/or Medicaid reimbursement amount, no funds shall be released at this time in relation to the Medicare and/or Medicaid hold-back;

3. For payment-eligible claimants found on Allocation Reports 1-7 who received a gross allocation of \$7,500.01 or more, and who were subject to an alleged third-party payor lien or claim asserted by Blue Cross Blue Shield, and have been identified by the parties as participating in the Blue Cross Blue Shield PLRP under Option 2 (found on Exhibit A) that Analytics forward the funds listed on Exhibit A to Blue Cross Blue Shield in accordance with the terms of the Blue Cross Blue Shield Private Lien Resolution Program; and

4. For payment-eligible claimants found on Allocation Reports 1-7 who received a gross allocation of \$7,500.01 or more, and who were subject to an alleged third-party payor lien or claim asserted by Blue Cross Blue Shield, and have been identified by the parties as participating in the Blue Cross Blue Shield PLRP under Option 2 (found on Exhibit A) and wherein 25% of their allocation was held-back by the Court's August 7, 2009 Amended Distribution Order, Analytics shall release all held-back funds not forwarded to Blue Cross Blue Shield excluding 5% of their gross allocation.

5. For payment-eligible claimants found on Allocation Reports 1-7 who received a gross allocation of \$7,500.01 or more, and who were subject to an alleged third-party payor lien or claim asserted by Blue Cross Blue Shield, and have been

identified by the parties as participating in the Blue Cross Blue Shield PLRP under Option 1 (found on Exhibit B) that Analytics forward the funds listed on Exhibit B to Blue Cross Blue Shield in accordance with the terms of the Blue Cross Blue Shield Private Lien Resolution Program; and

6. For payment-eligible claimants found on Allocation Reports 1-7 who received a gross allocation of \$7,500.01 or more, and who were subject to an alleged third-party payor lien or claim asserted by Blue Cross Blue Shield, and have been identified by the parties as participating in the Blue Cross Blue Shield PLRP under Option 1 (found on Exhibit B) and wherein 25% of their allocation was held-back by the Court's August 7, 2009 Amended Distribution Order, Analytics shall release all held-back funds not forwarded to Blue Cross Blue Shield excluding 5% of their gross allocation; and

7. For payment-eligible claimants found on Allocation Reports 1-7 who received a gross allocation of \$7,500.01 or more, and who were subject to an alleged third-party payor lien or claim asserted by Blue Cross Blue Shield, and have been identified by the parties as participating in the Blue Cross Blue Shield PLRP under Option 1 (found on Exhibit C) and wherein 25% of their allocation was held-back by the Court's August 7, 2009 Amended Distribution Order, Analytics shall release 5% their gross allocation leaving each claimant with 20% of their gross allocation continuing to be held-back; and

8. For payment-eligible claimants found on Allocation Reports 1-7 who received a gross allocation of \$7,500.01 or more, and who originally were listed as

subject to an alleged third-party payor lien or claim asserted by Blue Cross Blue Shield, but have now been identified by Counsel for Blue Cross Blue Shield as not being eligible to participate in the Blue Cross Blue Shield PLRP (found on Exhibit D) and wherein 25% of their allocation was held-back by the Court's August 7, 2009 Amended Distribution Order, Analytics shall release to the claimant all held-back funds excluding 5% of their gross allocation; and

9. For payment-eligible claimants found on Allocation Reports 1-7 who received a gross allocation of \$7,500.01 or more, and who originally were listed as subject to an alleged third-party payor lien or claim asserted by Blue Cross Blue Shield, but who resolved their obligation to Blue Cross Blue Shield outside the PLRP (found on Exhibit E) and wherein 25% of their allocation was held-back by the Court's August 7, 2009 Amended Distribution Order, Analytics shall release to the claimant all held-back funds excluding 5% of their gross allocation.

10. Each attorney of record may withhold from the check payable to his or her client the amount of attorney fees described in this Court's Order dated August 21, 2008, in proportion to the following formula:

Amended Gross Allocation = Gross Allocation * 0.95

Attorney Fees to be taken from current Distribution: (Amended Gross

Allocation * contingency fee allowed under the Court's August 21, 2008

Order) – (Attorney fees taken already from claimant's previous

distributions).

11. Additionally, each attorney of record may withhold from each claimant's check distributed under this Order, attorney's out of pocket expenses allocable to that claimant that were not reimbursed pursuant to the Court's previous distribution orders.

12. Before mailing a settlement check to any claimant's attorney of record or *pro se* claimant, Analytics shall provide written verification to the Court, the LCC, and Guidant that the amount of each check to be distributed complies with the terms of this Order and the terms of Pretrial Order No. 38 (in which Analytics was "directed to withhold ten percent (10%) of the net of those *pro se* Claimants' awards").

Date: June 16, 2010

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge