

**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 20%**

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, and future ratchetback under Section II(A)(1) of the Master Settlement Agreement.

Counsel for Third-Party Payors¹ (TPPs) and the Lead Counsel Committee (LCC) previously reached agreement on a Private Third-Party Payor Lien Resolution Program (PLRP) available, on a voluntary basis, to Guidant MDL settlement claimants to satisfy any outstanding lien reimbursement issues. Pursuant to that agreement the Lien Resolution Administrator was provided with a list of TPPs that opted to participate in the PLRP. These TPPs are listed on Exhibit A to this Order. Based on the information provided by the participating TPPs, the Lien Resolution Administrator has provided a list of claimants who chose to participate in the PLRP and who were not identified by the participating TPPs as having any outstanding lien obligation (“Not Matched Claimants”). The participating TPPs listed on Exhibit A are not pursuing claims or liens for subrogation or reimbursement for medical or pharmacy expenses against the Not Matched Claimants. These claimants are listed on Exhibits B-D to this Order. For claimants listed on Exhibit B, funds heldback for the resolution of lien obligations through the PRLP have already been released pursuant to the terms of the PLRP and/or participation in other lien resolution programs. For claimants listed on Exhibit C, funds heldback for the resolution of lien obligations through the PLRP must continue to be heldback until final determinations can be made in other lien resolution programs in the near future. For claimants listed on Exhibit D, it is no longer necessary to continue to

¹ TPPs in this motion are defined as any private insurance provider that is not United Healthcare or 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.

holdback these claimants' settlement funds for resolution of lien obligations through the PLRP.

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 Court agrees that the previously ordered percentage of funds held-back for claimants who chose to participate in the PLRP and for whom the participating TPPs are not pursuing claims or liens for subrogation or reimbursement for medical or pharmacy expenses is no longer appropriate. Therefore, it is now proper for the Court to amend its August 7, 2009 Amended Distribution Order in regard to claimants found on attached Exhibit D and reduce the amount of funds currently held-back for those claimants.

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 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 Exhibit D who received a gross allocation of \$7,500.01 or more, who chose to participate in the PLRP and for who no participating TPP provided claimant data to the Lien Resolution Administrator, and wherein 20% of their gross allocation² was held-back by the Court's August 7, 2009 Amended Distribution Order, Analytics shall release all held-back funds excluding 5% of their gross allocation.

4. 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).

5. 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.

² For the purposes of this Motion, the "gross allocation" is the total amount of the award allocated to a particular claimant by the Special Masters.

6. 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