

**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 March 3, 2010 and
June 16, 2010 Orders Amending the
Distribution of Funds for Claimants
With a Court Ordered Holdback of 20%**

On December 1, 2008, Plaintiffs provided Guidant with settlement documents for 95% of the eligible settlement participants. Upon 95% participation, the Guidant MDL settlement was guaranteed to go forward. After reaching this participation threshold, the parties agreed that the vast majority of claimants' obligations under the Master Settlement Agreement (MSA) had been met and further agreed that these claimants were eligible for payment. Accordingly, on December 19, 2008, the Court ordered a partial distribution of settlement funds so as to provide payment eligible claimants with access to a portion of their allocated settlement funds. The held back funds, although already paid by Guidant and Boston Scientific into the settlement fund, were not to be released to claimants until further order of this Court. Counsel for Blue Cross Blue Shield and United Healthcare Third Party Payors (TPPs) and the Lead Counsel Committee (LCC) reached agreement on two separate Private Third Party Payor Lien Resolution Programs 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.

On March 2, 2010, this Court released the held back funds for Guidant MDL Settlement claimants who had participated in the United Healthcare Private Lien Resolution Program. (Doc. No. 4555.) On June 16, 2010, this Court released the held back funds for Guidant MDL Settlement claimants who had participated in the Blue Cross Blue Shield Private Lien Resolution Program. (Doc. No. 4627.) At the time of both of these Orders, the parties could not calculate the final lien amount to due to United Healthcare and Blue Cross Blue Shield for claimants participating under Option 1 of the programs.¹

On June 23, 2010, this Court filed its Order amending the distributions for all claimants in the Guidant MDL Settlement pursuant to the terms of the Master Settlement Agreement. This Order reduced all claimants' allocations by 2.7432856%. (Doc. No. 4633.) Under the June 23, 2010 Order, the parties have now calculated the final lien amount due to United Healthcare and Blue Cross Blue Shield for claimants participating under Option 1 of those programs. Therefore, based on the files, records, and proceedings herein, **IT IS ORDERED** that:

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

¹ Pursuant to the Programs, claimants participating under Option 1 agreed to pay Blue Cross Blue Shield or United Healthcare 15% of their final gross allocation. Until the ratchetback was finalized pursuant to the MSA, no payment amount to United Healthcare or Blue Cross Blue Shield could be calculated.

2. For payment-eligible claimants found on Exhibit A, who were subject to an alleged third-party payor lien or claim asserted by United Healthcare, and have been identified by the Court in its March 3, 2010 Order as participating in the United Healthcare Lien Resolution Program under Option 1, that Analytics forward the funds listed in Exhibit A to United Healthcare in accordance with the terms of the United Healthcare Private Lien Resolution Program.

3. For payment-eligible claimants found on Exhibit B, 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 Court in its June 16, 2010 Order as participating in the Blue Cross Blue Shield Lien Resolution Program under Option 1, that Analytics forward the funds listed in Exhibit B to Blue Cross Blue Shield in accordance with the terms of the United Healthcare Private Lien Resolution Program.

4. For payment-eligible claimants found on Exhibits A and B who were subject to an alleged third-party payor lien or claim asserted by United Healthcare or Blue Cross Blue Shield and have been identified by the Court as participating in the corresponding Lien Resolution Program under Option 1, Analytics shall release all held-back funds not forwarded to United Healthcare or Blue Cross Blue Shield to the claimant.

5. 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:

Attorneys Fees to be taken from current Distribution: (Final Amended

Gross Allocation Amount from the Court's June 23, 2010 Order *

contingency fee allowed under the Court's August 21, 2008 Order) –
(Attorney's fees taken already from claimant's previous distributions).

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").

7. Plaintiffs' Motion to Amend/Correct (Doc. No. [4648]) is **GRANTED**.

Date: August 23, 2010

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