

**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 Distributing Claims Funds for
Remaining Claimants with a Current
Court-Ordered Holdback of 25%**

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. The parties agreed, and the Court ordered, that the remaining funds would be held-back by the claims administrator until potential ratchet back and minor deficiency issues were resolved so that a final distribution of settlement funds could be made. On August 7, 2009, this Court entered a Confidential Order Amending the December 19, 2008 Order Distributing Claims Funds reducing the amount of funds heldback for claimants.

Prior to this August 7, 2009 Order, Counsel for Blue Cross Blue Shield Third Party Payor 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 to satisfy any outstanding lien reimbursement issues. This Court's August 7, 2009 Confidential Amended Distribution Order required a 25% holdback for these claimants. Of that 25% holdback, 20% was designated for satisfaction of Blue Cross Blue Shield liens.

Participation forms for these claimants have been processed and the parties have now reached agreement regarding the reimbursement amounts for claimants participating in Blue Cross Blue Shield Healthcare Lien Resolution Program¹ ("BCBS-LRP"). This Court made a previous distribution for some participating claimants on June 16, 2010 (Doc. No. 4627). This Order is for the small number of claimants participating in the BCBS-LRP whose lien amount was not resolved in time to be included in that June 16th Order and one claimant whose lien amount was incorrectly listed in the previous June 16, 2010 Order. Therefore, based on the files, records, and proceedings herein, **IT IS ORDERED** that:

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.

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 payment-eligible claimants found on Exhibit A 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, that Analytics forward the funds listed in Exhibit A to Blue Cross Blue Shield in accordance with the terms of the Blue Cross Blue Shield Private Lien Resolution Program; and

3. For payment-eligible claimants found on Exhibit A 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, Analytics release all held-back funds to the claimant.

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:

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).

5. 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”).

6. Plaintiffs’ Motion to Amend/Correct (Doc. No. [4652]) is **GRANTED**.

Date: August 23, 2010

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