

**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 Distributing
Claims Funds**

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 payment, future Medicaid lien payment, 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

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

(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 in Exhibit A to Plaintiffs' Motion (Doc. No. 4722). Based on the information provided by the participating TPPs, the Lien Resolution Administrator has provided a list of claimants who choose to participate in the PLRP and for whom an audited lien amount is due to the TPP. These claimants are listed in Exhibits B to Plaintiffs' Motion (Doc. No. 4722). For claimants listed on Exhibit B, it is no longer necessary to continue to holdback settlement funds after the resolution of their lien obligations under the PLRP.

In addition, the LCC has confirmed with Blue Cross Blue Shield of the last lien amount for the final settlement claimant participating in the Blue Cross Blue Shield Lien Resolution Program (BCBS-LRP). The Court made a previous distribution for some participating claimants in the BCBS-LRP on June 16, 2010 (Doc. No. 4627) and for a second group of participating claimants on August 23, 2010 (Doc. No. 4655). Final lien amounts due to Blue Cross Blue Shield for this remaining claimant is listed on Exhibit C to Plaintiffs' Motion (Doc. No. 4722). For the claimant listed on Exhibit C, it is no longer necessary to continue to holdback settlement funds after the resolution of their lien obligations under the BCBS-LRP.

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.

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 holdback 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 the BCBS-LRP and for whom a lien amount has been determined and agreed to by the parties 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 Exhibit B and C to Plaintiffs' Motion (Doc. No. 4722) and reduce the amount of funds currently held-back for those claimants.

THUS, IT IS HEREBY ORDERED:

1. Any reference made to exhibits in this Order references exhibits filed in connection with Plaintiffs' Motion, which are incorporated by reference into this Order. *See* Doc. No. [4722].
2. All awards shall be issued by Analytics on checks drawn from the held back funds remaining in the Settlement Fund Escrow Account.
3. For claimants found on all Allocation Reports, 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.

4. For payment-eligible claimants found on Exhibit B who received a gross allocation of \$7,500.01 or more, who choose to participate in the PLRP and who did not object to the Lien Resolution Administrator's audited lien amount, and wherein 15% of their gross allocation is currently being held-back after the Court's June 23, 2010 Amended Distribution Order, Analytics shall distribute the amount of funds listed on Exhibit B to the Counsel for the TPPs through wire transfer and to the Lien Resolution Administrator pursuant to the PLRP terms.

5. For payment-eligible claimants found on Exhibit B who received a gross allocation of \$7,500.01 or more, who choose to participate in the PLRP and who did not object to the Lien Resolution Administrator's audited lien amount; and wherein 15% of their gross allocation is currently being held-back after the Court's June 23, 2010 Amended Distribution Order, Analytics shall distribute the remainder of any held-back funds not paid to Counsel for the TPPs or the Lien Resolution Administrator through this Order to the claimant.

6. For payment-eligible claimants found on Exhibit C 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 C to Blue Cross Blue Shield in accordance with the terms of the Blue Cross Blue Shield Private Lien Resolution Program.

7. For payment-eligible claimants found on Exhibit C 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.

8. 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:

Attorney's 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).

9. 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").

10. Plaintiffs' Motion to Amend/Correct (Doc. No. [4722]) is **GRANTED**.

Date: September 23, 2010

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