

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

IN RE: BIOMET M2a MAGNUM HIP)	
IMPLANT PRODUCTS LIABILITY)	CAUSE NO. 3:12-MD-2391
LITIGATION (MDL 2391))	
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)	
This Document Relates to All Cases)	
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QUALIFIED PROTECTIVE ORDER

Before the Court is Thomas R. Anapol’s Motion for Entry of Qualified Protective Order. Thomas R. Anapol, acting in his capacity as Plaintiffs’ Co-Lead Counsel (“PCC”), on behalf of all Plaintiffs’ counsel in the above captioned matter (“Counsel”) and all Plaintiffs in the above captioned matter, has retained the Garretson Resolution Group, Inc. to serve as the PCC’s and Counsel’s agent to resolve Plaintiffs’ health insurance reimbursement claims and/or liens, as the Lien Resolution Administrator (“LRA”). The LRA shall implement and administer the settlement agreement related to the above-captioned action regarding claim and/or lien identification and resolution for all settling Plaintiffs in the above captioned matter. The LRA’s duties and functions include (1) the authority to act as agent for the PCC and Counsel for the benefit of all Plaintiffs for purposes of claim and/or lien identification and resolution, (2) the authority to receive and release identifiable health information, and (3) the authority to resolve any and all potential recovery claims for medical items, services, and/or prescription drugs with Governmental Payers,¹ Medicare Part C and/or Part D Program sponsors, and/or Other

¹ Governmental Payers means any federal, state or other governmental body, agency, department, plan, program, or entity that administers, funds, pays, contracts for, or provides medical items, services, and/or prescription drugs. These include CMS, the Medicare Secondary Payer Department, and the Medicaid programs of each state and territory and of the District of Columbia (each a “Medicaid Agency”).

Payers/Providers, including all private health plans whether insured or self-funded (collectively, “Payers”) associated with the above-captioned matter.

Specific Requirement for the Centers for Medicare and Medicaid Services

The LRA shall serve on behalf of Counsel and all Plaintiffs in the above-captioned matter for purposes of claim and/or lien identification and resolution of any and all potential recovery claims for medical items, services, and/or prescription drugs with Payers associated with the settlement of the above-captioned matter. The LRA shall have the exclusive authority to administer a process with the Centers for Medicare and Medicaid Services for identification and resolution of Medicare Part A and/or Part B recovery claims on behalf of all settling Plaintiffs in the above captioned matter who are or were Medicare entitled.

Having considered the record of these proceedings, the arguments and recommendation of counsel for the moving parties, and the requirements of law, the Court **GRANTS** the PCC’s motion as follows:

IT IS HEREBY ORDERED AS FOLLOWS:

1. By virtue of the LRA’s status as agent of the PCC and Counsel for all Plaintiffs in the above captioned action, the LRA shall resolve any potential Medicare Part A and/or Part B fee-for-service Medicare Secondary Payer (“MSP”) claim(s) related to settlements, judgments, awards, or other payments associated with the above-captioned matter for those Plaintiffs who are or were Medicare beneficiaries. Plaintiffs in the above-captioned matter have been informed that as the agent of their Counsel, the LRA has the authority to act in such capacity for the benefit of all Plaintiffs to resolve any and all Medicare reimbursement obligations, consistent with federal law.² Plaintiffs have further been informed that as a condition of participation in

² See 42 C.F.R. §405.910.

any settlement agreement in the above-captioned matter, each Plaintiff has agreed to LRA's protocols for global resolution, which specify that every settling Plaintiff is bound to the terms of a global resolution of all MSP claims, and understand that certain individual rights have been waived, including, but not limited to, the right to seek a waiver, compromise, and/or appeal Medicare's Part A and/or B reimbursement claim.

2. With regards to Medicare Part A and B fee-for-service, the LRA shall provide CMS with a final and verified list of qualified Medicare enrolled beneficiaries.

3. The LRA is authorized to provide to and receive from Payers lists of settling Plaintiffs, and related information, which identifies those Payers that have or may have asserted against such Plaintiffs a lien, claim, or right of subrogation, indemnity, reimbursement, conditional or other payments, or interest of any type for injury-related medical items, services, and/or prescription drugs paid on their behalf.

4. This Order shall apply to the use of all information related to Plaintiffs that the LRA creates, provides to, or receives from Payers that is or may be protected under HIPAA and its amendments,³ or other applicable federal or state law, including all Protected Health Information, as defined in 45 C.F.R. §160.103.⁴ The LRA is specifically authorized to provide to and receive from CMS, individual Medicaid Agencies, and all other entities defined as Payers

³ HIPAA shall mean the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996) and the implementing regulations issued thereunder, 45 C.F.R. Parts 160, 162, and 164, and shall incorporate by reference the provisions of the Health Information Technology for Economic and Clinical Health Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009)).

⁴ This includes demographic information that could be used to identify Medicare-eligible and/or Medicaid-enrolled Plaintiffs, information related to Plaintiffs' eligibility for and entitlement to benefits under the Medicare Program and Medicaid Program and information related to health care services rendered, including the payment of such services.

herein, lists of Plaintiffs and related information, in lieu of providing copies of individual HIPAA authorizations and information on a Plaintiff-by-Plaintiff basis.

SIGNED AND ENTERED this 14th day of April, 2014.

/s/ Robert L. Miller, Jr.
Robert L. Miller, Jr., Judge
United States District Court

Distribution:

All counsel of record via CM/ECF