

### Multiple Documents

Part	Description
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2	Exhibit A-[Proposed] Qualified Protective Order

**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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**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, respectfully moves this Court for to enter a Qualified Protective Order, substantially in the form attached hereto as Exhibit A. In support of this motion, the PCC states as follows:

1. **The PCC 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 settling Plaintiffs.
2. The LRA’s duties and functions include: (1) the authority to act as agent for PCC and Counsel for the benefit of 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,<sup>1</sup> Medicare Part C and/or Part D Program sponsors, and/or Other Payers/Providers, including all private health plans whether insured or self-funded (collectively, “Payers”) associated with the settlement of the above captioned matter.

3. To fulfill its lien identification and resolution duties, the LRA must transmit and obtain certain information related to Plaintiffs, which is or may be protected under HIPAA and its amendments,<sup>2</sup> or other applicable federal or state law, including Protected Health Information, as defined in 45 C.F.R. § 160.103.<sup>3</sup>
4. During its ongoing discussions with the LRA, the Centers for Medicare and Medicaid Services (“CMS”) has indicated to the LRA that the Court may enter an order specifically authorizing the LRA to transmit information regarding claimants to CMS in a single list, in lieu of the LRA separately transmitting information and HIPAA authorizations on a claimant-by-claimant basis. The LRA has also informed the PCC that such an order will be integral to efficiently identifying and resolving claims by Payers other than CMS.
5. Due to the large number of Plaintiffs involved in the above captioned matter, a Qualified

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<sup>1</sup> 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”).

<sup>2</sup> 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)).

<sup>3</sup> 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.

Protective Order entered substantially in the form of the proposed order attached hereto as Exhibit A, as opposed to obtaining individual proofs of representation and HIPAA authorizations will significantly expedite the lien resolution process and administration of the settlement in the above captioned matter.

6. The PCC has conferred with counsel for the Defendants, and they do not object to the entry of the proposed order.

WHEREFORE the PCC respectfully requests that this Court enter an order, substantially in the form of the proposed order attached hereto, that authorizes the LRA to disclose lists of Plaintiffs to Payers in lieu of submitting individual names and HIPAA authorizations so that Payers may provide the LRA with information necessary to identify and/or to resolve any liens, claims, or rights of subrogation, indemnity, reimbursement, conditional or other payments, or interests of any type and authorizes the LRA, in its performance of its lien identification and resolution functions, to take such actions on behalf of the Plaintiffs to resolve any potential liens or recovery claims associated with the respective Payers.

Dated: April 11, 2014

Respectfully submitted,

PLAINTIFFS' LEAD COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served electronically on CM/ECF participants on the 11<sup>th</sup> day of April, 2014.

/s/ Robert T. Dassow, Esq.  
Robert T. Dassow, #15145-64

# **EXHIBIT A**



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.<sup>2</sup> Plaintiffs have further been informed that as a condition of participation in

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<sup>2</sup> 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,<sup>3</sup> or other applicable federal or state law, including all Protected Health Information, as defined in 45 C.F.R. §160.103.<sup>4</sup> The LRA is specifically authorized to provide to and receive from CMS, individual Medicaid Agencies, and all other entities defined as Payers

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<sup>3</sup> 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)).

<sup>4</sup> 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 \_\_\_\_ day of \_\_\_\_\_, 2014.

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Robert T. Miller, Jr., Judge  
United States District Court

*Distribution:*

All counsel of record via CM/ECF