

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: WRIGHT MEDICAL)	MDL DOCKET NO. 2329
TECHNOLOGY, INC.,)	
CONSERVE HIP IMPLANT)	
PRODUCTS LIABILITY)	1:12-MD-2329-WSD
LITIGATION)	
)	
)	
This Document Relates To:)	
ALL CASES)	

**JOINT MOTION AND MEMORANDUM OF LAW
IN SUPPORT OF QUALIFIED PROTECTIVE ORDERS
TO FACILITATE LIEN ADMINISTRATION FOR SETTLEMENT**

Plaintiffs, through Plaintiffs’ Leadership Counsel, and Defendant Wright Medical Technology, Inc., through counsel, jointly move this Court to enter Qualified Protective Orders to streamline and facilitate lien resolution as to the Settlement Agreement previously executed by the Parties.

I. The Settlement Agreement contemplates entry of Qualified Protective Orders to streamline the lien-resolution process.

On November 1, 2016, the Parties executed a Settlement Agreement that provides a process to resolve approximately 1,300 claims pending in MDL-2329, JCCP 4710, or on court-approved tolling agreements. A key goal of the Settlement Agreement is to expeditiously resolve the pre-qualified claims, as efficiently and

inexpensively as possible. To that end, section 7.1.3 of the Settlement Agreement provides in relevant part:

Each Eligible Claimant must by December 16, 2016, provide HIPAA releases and a Medicare Proof of Representation form to LRA¹ (via submission to the electronic portal established by Claims Administrator) to facilitate lien identification and resolution; provided, however, that if the MDL court issues a qualified protective order on or before December 16, 2016 authorizing the LRA to identify, process and finalize liens on each EC's behalf then such individual HIPAA and Medicare Proof of Representation submissions shall not be needed.

To eliminate the necessity of individualized HIPAA releases and Proof of Representation forms, and the inefficiencies and delay associated therewith as well as with piecemeal lien inquiries, the Parties have agreed on two Jointly Proposed Qualified Protective Orders. The first, for Medicare Secondary Payer claims, is attached hereto as Exhibit A. The second, for Medicaid, other governmental healthcare plans and private insurance plans, is attached hereto as Exhibit B.

The Parties agree that entry of these Qualified Protective Orders is necessary to facilitate the efficient resolution of liens and implement their streamlined settlement administration process. These Qualified Protective Orders are intended

¹ "LRA" is an abbreviation for the "Lien Resolution Administrator," and Plaintiffs' Leadership Counsel have retained Providio Lien Counsel, LLC to serve as LRA.

to facilitate identification and resolution of liens and claims by healthcare providers, so that participating claimants can receive the full amount they are entitled to under the Settlement Agreement, less the amounts required to satisfy liens, as quickly as possible.

II. Qualified Protective Orders are routinely entered to implement MDL settlements.

Qualified Protective Orders have become common in the resolution of other Multi-District Litigation matters. For example, similar Qualified Protective Orders were entered by the District of Minnesota in the Stryker Rejuvenate hip-replacement litigation, MDL No. 13-2441. And many other courts have utilized similar Qualified Protective Orders. *See also In re Zyprexa Prod. Liab. Lit.*, No. 04 MD 01596 JBW, 2006 WL 2424750, at *1 (E.D.N.Y. Aug. 15, 2006) (entering Qualified Protective Order); *In re Bextra & Celebrex Mktg., Sales Practices & Prod. Liab. Lit.*, No. M-05-CV-01699CRB, 2008 WL 5480611, at *1 (N.D. Cal. Dec. 8, 2008) (entering Qualified Protective Order); *In re Vioxx Prod. Liab. Lit.*, No. MDL 1657, 2008 WL 3285912, at *3 (E.D. La. Aug. 7, 2008), *aff'd sub nom. Avmed Inc. v. BrownGreer PLC*, 300 Fed. App'x 261 (5th Cir. 2008) (explaining that the district court previously entered a Qualified Protective Order).

As the Settlement Agreement explains, in the absence of Qualified Protective Orders, each of the approximately 1,300 claimants would have to

provide two additional, individually signed documents, such that lien resolution would proceed on an individual – as opposed to group-wide – basis. Such an individualized process would take longer, delay payments to qualified claimants, and result in increased costs.

The parties are seeking similar Qualified Protective Orders from the Court in JCCP-4710.

III. Conclusion

For all of the foregoing reasons, the Parties' jointly requested Qualified Protective Orders should be entered. The Jointly Proposed Qualified Protective Orders are attached as Exhibits A and B for the convenience of the Court.

Respectfully submitted this 29th day of November 2016.

Respectfully submitted,

/s/ Michael L. McGlamry

Michael L. McGlamry

Georgia Bar No. 492515

William U. Norwood

GA Bar No. 547100

N. Kirkland Pope

GA Bar No. 584255

POPE, McGLAMRY, P.C.

3391 Peachtree Road, Suite 300

Atlanta, GA 30326

Ph: (404) 523-7706

Fx: (404) 524-1648

E-mail: efile@pmkm.com

Ray Boucher
Boucher, LLP
21600 Oxnard Street, Suite 600
Woodland Hills, CA 91367
Ph: (818) 340-5400
Fx: (818) 340-5401
Email: ray@boucher.la

Helen E. Zukin
KIESEL LAW, LLP
8648 Wilshire Blvd.
Beverly Hills, CA 90211
Ph: (310) 854-4444
Fx: (310) 854-0812
Zukin@kiesel-law.com

/s/ Dana J. Ash
Dana J. Ash
Duane Morris LLP
30 S. 17th Street, Floor 5
Philadelphia, PA 19103
Ph: (215) 979-1000
Fx: (215) 979-1020
Email: DJAsh@duanemorris.com

CERTIFICATION REGARDING FONT SIZE

Pursuant to Local rules 5.1(C) and 7.1(D), I certify that the foregoing was prepared in Times New Roman, 14 point font.

/s/ Michael L. McGlamry
Michael L. McGlamry
Georgia Bar No. 492515

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **JOINT MOTION AND MEMORANDUM OF LAW IN SUPPORT OF QUALIFIED PROTECTIVE ORDERS TO FACILITATE LIEN ADMINISTRATION FOR SETTLEMENT** with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Dana J. Ash, Esq.
J. Scott Kramer, Esq.
DUANE MORRIS LLP
United Plaza
30 South 17th Street
Philadelphia, PA 19103

Sean K. Burke, Esq.
DUANE MORRIS LLP
505 9th Street, NW, Suite 1000
Washington, DV 20004-2166

William D. Barwick, Esq.
DUANE MORRIS LLP
Atlantic Center Plaza
1180 West Peachtree Street NW, Suite 700
Atlanta, GA 30309

This 29th day of November, 2016.

/s/ Michael L. McGlamry _____

Michael L. McGlamry
GA Bar No. 492515

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: WRIGHT MEDICAL)	MDL DOCKET NO. 2329
TECHNOLOGY, INC.,)	
CONSERVE HIP IMPLANT)	
PRODUCTS LIABILITY)	1:12-MD-2329-WSD
LITIGATION)	
)	
)	
This Document Relates To:)	
ALL CASES)	

[JOINT PROPOSED]
QUALIFIED PROTECTIVE ORDER
AS TO MEDICARE SECONDARY PAYER

This Court is presiding over MDL-2329, the Conserve Hip Implant Products Liability Litigation, and has the authority to enter Orders to facilitate performance of the parties' Settlement Agreement. The individuals listed on Exhibit 1, which has been provided to the Court *in camera* and filed under seal, have filed claims in the above-captioned action that are subject to settlement under the Settlement Agreement. Plaintiffs' Leadership Counsel have engaged Providio Lien Counsel, LLC to act as lien resolution administrator on behalf of the individuals named on Exhibit 1.

To facilitate the efficient identification and resolution of Medicare Secondary Payer Claims, **IT IS HEREBY ORDERED:**

By virtue of their status as appointed representatives of individuals listed on Exhibit 1, Plaintiffs' Leadership Counsel shall, by and through Providio Lien Counsel, LLC, resolve any potential Part A and/or Part B fee for service Medicare Secondary Payer (MSP) claim(s) related to any settlement payments associated with this action for those individuals on Exhibit 1 who are or were Medicare beneficiaries.

SO ORDERED this ____ day of _____, 201__.

WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: WRIGHT MEDICAL)	MDL DOCKET NO. 2329
TECHNOLOGY, INC.,)	
CONSERVE HIP IMPLANT)	
PRODUCTS LIABILITY)	1:12-MD-2329-WSD
LITIGATION)	
)	
)	
This Document Relates To:)	
ALL CASES)	

[JOINT PROPOSED]
QUALIFIED PROTECTIVE ORDER
AS TO MEDICAID, OTHER GOVERNMENTAL HEALTHCARE
PROGRAMS AND PRIVATE HEALTH INSURANCE PLANS

This Court is presiding over MDL-2329, the Conserve Hip Implant Products Liability Litigation, and has the authority to enter Orders to facilitate performance of the parties' Settlement Agreement. Certain individuals participating in the Wright Medical Hip Implant Settlement Program have, or will have, liens asserted against them that will require resolution before distribution of settlement proceeds can be completed to those individuals.

The Settlement Agreement provides that Providio Lien Counsel, LLC (PLC), is to act as lien resolution administrator, and to identify and resolve any liens asserted by the Medicaid programs of each state and territory and of the

District of Columbia (the “Single State Agencies”) and where appropriate, any Other Governmental Healthcare Programs, including but not limited to: TRICARE, VA Healthcare and Indian Health Services (the “Other Governmental Programs”) and any Private Health Insurance plans.

Subject to the restrictions below, this Order grants PLC the authority to provide the Single State Agencies and also any Private Health plans or Insurers a list of Wright Medical Hip Implant litigation Claimants to facilitate determining the Claimants are beneficiaries of Medicaid, Other Governmental Programs, or Private Health Insurance plans. The entry of an Order that is compliant with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub.L. 104-191, 42 C.F.R. § 431 Subpart F, titled “Safeguarding Information on Applicants and Recipients” and other applicable privacy laws, is required to permit the Single State Agencies, Other Governmental Programs, and Private Health Insurance plans to transmit certain protected health information of the Claimants directly to PLC to assist in the resolution of the respective agency’s or entity’s interests. Accordingly, IT IS HEREBY ORDERED:

1. This Order shall apply to all “protected health information” and “individually identifiable health information,” as defined by 45 C.F.R. § 160.103, or information that is otherwise protected from disclosure by the Privacy Act, 5

U.S.C. § 551a, HIPAA, Pub.L 104191, 42 C.F.R. § 431 Subpart F, titled “Safeguarding Information on Applicants and Recipients,” and other applicable state law, created, received or collected from Medicaid and/or Other Governmental Program Claimants by Single State Agencies or Other Governmental Programs, or Private Health Insurance plans including, but not limited to: (a) names and addresses, dates of birth, social security numbers, Medicaid and/or Other Governmental Program identification numbers and other demographic information that identifies or could be used to identify Claimants; (b) eligibility and entitlement information of Medicaid and/or Other Governmental Program Claimants; (c) claims information relating to the past, present, or future health of Medicaid and/or Other Governmental Program and/or Private Health Insurance plans; (d) claims information relating to the provision of health care to Medicaid and/or Other Governmental Program-eligible Claimants and/or those covered under Private Health Insurance plans; and (e) claims information relating to the past, present, or future payment for the provision of healthcare to Medicaid and/or Other Governmental Program-eligible Claimants and/or those covered under Private Health Insurance plans.

2. The Single State Agencies and Other Governmental Programs and Private Health Insurance plans may disclose to PLC, and PLC is duly authorized to

receive, claim and other protected health information in accordance with 45 C.F.R. § 164.506(c)(4)(ii) “Uses and disclosures to carry out treatment, payment or healthcare operations” and any other applicable state law.

3. To assist in the resolution of any Medicaid and/or Other Governmental Program and/or Private Health Insurance plan interests, the individual Single State Agencies, Other Governmental Programs and Private Health Insurance plans are hereby authorized and directed to transmit information to PLC, including claims information and other protected health information, for those Claimants in the above-captioned matter against whom they have asserted liens or reimbursement claims.

4. PLC is authorized to provide a list of Claimants to the Single State Agencies and any Private Health Insurance plans that have been identified as a potential lien holder of respective Claimants (collectively, “the Lists”).

5. PLC shall not use or disclose any protected health information or individually identifiable health information subject to this Order for any purpose other than this litigation and the performance of its duties. Similarly, each Single State Agency, Other Government Program and Private Health Insurance plan shall only use the Lists for the specific purposes identified in this Order and shall only make the Lists available to those within its agency or organization who need access

to the Lists for the specific purpose stated in this paragraph. If a Single State Agency or Private Health Insurance plan utilizes outside vendors or companies to perform part or all of its tort recovery practices, those outside vendors or companies shall be expressly bound by all terms and conditions of this Order.

6. PLC shall maintain any protected health information or individually identifiable health information subject to this Order in a secure and safe area and shall exercise the standard of due and proper care with respect to the storage, custody, use, and/or dissemination of such protected health information required by HIPAA and other applicable privacy laws.

7. At the conclusion of this litigation, PLC shall certify that the protected health information or individually identifiable health information, including all copies made, has been destroyed.

8. The applicable time period covered by this Qualified Protective Order begins with the date of their first implant of Wright Medical Technology, Inc. hip implant components for each Medicaid-eligible and/or Other Governmental Program-eligible Claimants and/or those covered under Private Health Insurance plans and ends with November 1, 2016, the effective date of the Settlement Agreement.

SO ORDERED this _____ day of _____, 2016.

WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE