

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

KENNETH ADKINS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 18SL-CC01983
)	
MONSANTO COMPANY,)	
)	
Defendant,)	

This Document Relates to All Cases

**UNCONTESTED MOTION OF PLAINTIFFS’ CO-LEAD COUNSEL TO APPOINT
LIEN RESOLUTION ADMINISTRATOR AND TO AUTHORIZE DISCLOSURE OF
PLAINTIFFS’ PROTECTED HEALTH INFORMATION**

In furtherance of the potential settlement of certain claims in the above-captioned action, Plaintiffs’ Counsel, on behalf of all plaintiffs in the above action represented by Andrus Wagstaff, PC and all plaintiffs in the above action represented by Lundy, Lundy, Soileau, & South, LLP (hereinafter referred to collectively as “Plaintiffs”), respectfully moves this Court for entry of an order (1) appointing The Garretson Resolution Group, Inc. d/b/a Epiq Mass Tort (“Epiq”) as the Lien Resolution Administrator for any settlements into which Plaintiffs may enter in this action, and (2) pursuant to 45 C.F.R. § 164.512(e)(1)(i), authorizing Governmental Payors,¹ Medicare Part C and Part D Program sponsors,² other private health plans (whether insured or self-funded),

¹ “Governmental Payors” 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 the federal Medicare fee-for-service (Parts A and B) program administered by the Centers for Medicare and Medicaid Services (“CMS”); the Medicare Secondary Payer Department; the Medicaid programs of each state and territory and of the District of Columbia; the Veterans Administration; the Defense Health Agency (previously managed by TRICARE); and Indian Health Services.

² “Medicare Part C or Part D Program” means the program(s) under which Medicare Advantage, Medicare cost, and Medicare health care prepayment plan benefits and Medicare Part D prescription drug plan benefits are administered by private entities that contract with CMS.

payors, or providers, and other Covered Entities,³ and any Business Associate⁴ of one of the foregoing persons or entities (each, a “Healthcare Entity”) to exchange Plaintiffs’ Protected Health Information⁵ with Epiq in the performance of its duties and functions as the Lien Resolution Administrator. In support of this motion, Plaintiffs’ Counsel respectfully state as follows:

1. Epiq has been retained by Andrus Wagstaff, PC and Lundy, Lundy, Soileau, & South, LLP to serve as the Lien Resolution Administrator for Plaintiffs in connection with potential settlements in the above-captioned action. In that role, Epiq will act on behalf of the Plaintiffs to resolve medical liens and/or reimbursement claims that Healthcare Entities might assert against the Plaintiffs’ settlement awards.

2. Lien resolution is one of the most complex and demanding conditions to settlement, requiring early involvement and specialized expertise to identify reimbursement obligations and facilitate timely resolution in the event a settlement is reached. Epiq is commonly engaged well prior to any settlement negotiations to help the parties understand the scope and extent of any liens or reimbursement obligations as well as the anticipated reimbursement values.

3. Each year, Epiq resolves thousands of healthcare lien obligations for firms and companies across the country. Epiq’s consolidated lien resolution programs have been utilized in numerous mass tort and class action settlements such as *In re National Football League Players’ Concussion Injury Litigation*, MDL Docket No. 2323 (E.D. Pa.), *In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La.), *In re Avandia Marketing, Sales Practices, and Product Liability Litigation*, MDL Docket No. 1871 (E.D. Pa.), and *In Re: Vioxx Products Liability Litigation*, MDL No. 1657-L (E.D. La.). Such

³“Covered Entity” has the meaning set forth in 45 C.F.R. § 160.103.

⁴ “Business Associate” has the meaning set forth in 45 C.F.R. § 160.103.

⁵ “Protected Health Information” has the meaning set forth in 45 C.F.R. § 160.103.

programs set forth uniform, compliant procedures that avoid the enormous time delays often associated with large numbers of claimants attempting to satisfy and discharge healthcare lien obligations one at a time.

4. Undertaking these transactions requires Epiq to coordinate with scores of Governmental Payors, Medicare Part C and Part D Program sponsors, and private health plans, payors, and providers and their respective recovery contractors. Having performed this work for more than fifteen years and across a wide variety of engagements, Epiq has strong and established work flow procedures with each of these entities. Consequently, Epiq is well qualified to serve as the Lien Resolution Administrator for potential settlements in this action.

5. In order to resolve the liens and recovery claims asserted by the aforementioned entities, Epiq must exchange Plaintiffs' Protected Health Information with them. Under HIPAA,⁶ a Covered Entity such as a Governmental Payor, Medicare Part C or Part D Program sponsor, or a private health plan or provider may not use or disclose Protected Health Information unless the use or disclosure is permitted by HIPAA. 45 C.F.R. § 164.502(a). One instance in which a Covered Entity is permitted to disclose protected health information is when it is presented with a valid authorization for the disclosure of that information. *Id.* § 164.502(a)(1)(iv). Another is when the disclosure is "required by law." *Id.* §§ 164.502(a)(1)(vi), 164.512(a). Specifically, the HIPAA regulations provide:

(a) Standard: Uses and disclosures required by law.

(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

⁶ "HIPAA" means 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)).

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

45 C.F.R. § 164.512(a). The regulations define “required by law” to mean “a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants” Furthermore, 45 C.F.R. § 164.512(e)(1)(i) provides, “A covered entity may disclose protected health information in the course of any judicial or administrative proceeding . . . [i]n response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order. . . .” Thus, a Covered Entity may disclose Protected Health Information in response to a court order as long as it discloses only the Protected Health Information permitted by the order.

6. Similarly, Business Associates of Covered Entities, such as the lien recovery contractors of governmental and private health plans, are generally prohibited from disclosing Protected Health Information but are permitted to do so to the extent they are presented with a valid authorization for the disclosure (and the disclosure is permitted by their business associate contracts) or the disclosure is “required by law.” 45 C.F.R. § 164.502(a)(3) (“A business associate may use or disclose protected health information only as permitted or required by its business associate contract or other arrangement pursuant to § 164.504(e) or as required by law.”).

7. In class action and aggregate settlements with numerous claimants, the task of reviewing individual HIPAA authorizations to determine their completeness and validity can place a significant administrative burden on Governmental Payors, Medicare Part C and Part D Program sponsors, and private health plans, payors, and providers, which delays the resolution of liens the release of funds to the claimants. Accordingly, courts routinely enter orders to facilitate the exchange of Protected Health Information with respect to medical liens in class action and

aggregate settlements, including in the following matters and others in which Epiq has served as the Lien Resolution Administrator:

- a. *In re National Football League Players' Concussion Injury Litigation*, Case No. 2:12-md-2323, MDL No. 2323, ECF No. 7472 (E.D. Pa. Apr. 11, 2017);
 - b. *In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*, Case No. 1:13-cv-9116, MDL No. 2492, ECF No. 279 (N.D. Ill. July 15, 2016);
 - c. *In re ACTOS (Pioglitazone) Products Liability Litigation*, Case No. 6:11-md-2299, ECF No. 5797 (W.D. La. July 30, 2015);
 - d. *In re Boston Scientific Corporation Pelvic Repair System Products Liability Litigation*, Case No. 2:12-md-2326, ECF No. 1054 (S.D. W. Va. Feb. 26, 2015);
 - e. *In re American Medical Systems, Inc., Pelvic Repair Systems Products Liability Litigation*, Case No. 2:12-md-2325, ECF No. 1144 (S.D. W. Va. Feb. 26, 2014);
 - f. *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, Case No. 2:10-md-2179, ECF No. 6673 (E.D. La. June 14, 2012); and
 - g. *In re Avandia Marketing, Sales Practices and Products Liability Litigation*, Case No. 2:07-md-01871, ECF No. 690 (E.D. Pa. June 11, 2010).
8. Entering an order appointing Epiq as the Lien Resolution Administrator and authorizing Epiq in that capacity to exchange Plaintiffs' Protected Health Information with Covered Entities, the Business Associates of Covered Entities, and other holders of healthcare liens or recovery claims in the manner set forth below would expedite the lien resolution process and would allow Plaintiffs to more quickly receive any unused portion of the amounts that may be withheld from their settlement awards to satisfy potential healthcare liens or recovery claims.

9. Accordingly, Plaintiffs' Counsel respectfully request that the Court enter an order that:

- a. appoints Epiq as the Lien Resolution Administrator in the above-captioned action;
- b. authorizes Epiq, as the Lien Resolution Administrator, to act as the agent for all Plaintiffs in the above-captioned action for the purpose of identifying and resolving potential liens and/or recovery claims for medical items, services, and/or prescription drugs with all Healthcare Entities in any manner deemed necessary or advisable by Epiq, including, but not limited to, (i) *en masse* data submissions with such Healthcare Entities for the purpose of identifying healthcare coverage and related claims itemizations for Plaintiffs, and (ii) accessing Internet-based healthcare coverage information sources, including, but not limited to, www.mymedicare.gov;
- c. specifies that Epiq's obligation to resolve any such liens or recovery claims shall be governed by the terms of Epiq's contract(s) with Plaintiffs' Counsel, Plaintiffs' counsel, and/or Plaintiffs, as applicable, and that nothing in the order shall be construed to impose any duties or obligations on Epiq;
- d. grants Epiq the exclusive authority to develop a uniform and consolidated process with CMS for the global identification and resolution of Medicare Part A and/or Part B fee-for-service reimbursement claims on behalf of all Plaintiffs in the above-captioned action who are or were Medicare beneficiaries;
- e. authorizes and requires any Healthcare Entity who receives a request from Epiq, in the performance of its functions and duties as the Lien Resolution Administrator, for a Plaintiff's Protected Health Information to disclose that information to Epiq in response to the request;
- f. authorizes any Healthcare Entity who receives a request from Epiq, in the performance of its functions and duties as the Lien Resolution Administrator, to disclose Plaintiffs' Protected Health Information in a list or other aggregated format to disclose the information in the format requested in lieu of submitting such information on a case-by-case basis;
- g. authorizes Epiq to disclose a Plaintiff's Protected Health Information to a Healthcare Entity in the performance of its functions and duties as the Lien Resolution Administrator;
- h. authorizes Epiq, in making a disclosure contemplated by Paragraph 9(g) of this motion, to disclose Plaintiffs' Protected Health Information to

Healthcare Entities in lists or other aggregated formats in lieu of submitting such information on a case-by-case basis;

- i. clarifies that the order eliminates the need for individual HIPAA authorizations for disclosures requested or made pursuant to the order, consistent with 45 C.F.R. §§ 164.512(a), (e)(1)(i).

- 10. A proposed order granting this motion is attached hereto as Exhibit A.

Dated: September 10, 2020

Respectfully Submitted,
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Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2020, the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

/s/ David J. Wool_____