

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

<b>IN RE: ATRIUM MEDICAL CORP. C-QUR MESH PRODUCTS LIABILITY LIGATION</b>	<b>Master File No. 1:16-md-02753-LM MDL No. 2753</b>
<b>THIS DOCUMENT RELATES TO:</b>	<b>LANDYA B. MCCAFFERTY U.S. DISTRICT JUDGE</b>
<b>ALL CASES</b>	

**PLAINTIFFS' UNOPPOSED MOTION FOR ENTRY OF A QUALIFIED PROTECTIVE  
ORDER**

By this motion, Jonathan Orent in his Capacity as Lead Counsel seeks the entry of the attached Qualified Protective Order as reason thereof, Plaintiffs' rely on the attached memorandum of law. Defendant, Atrium does not oppose this Motion.

DATED: December 10, 2021

Respectfully submitted,

/s/ Jonathan D. Orent, Esq.  
Jonathan D. Orent  
MOTLEY RICE LLC  
55 Cedar Street, Suite 100  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has this date been filed electronically with the Clerk of Court using the CM/ECF system. Notice of these filings will be sent to all counsel of record and parties by operation of the Court's electronic filing system.

/s/ Jonathan D. Orent  
Jonathan D. Orent

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS UNOPPOSED MOTION  
FOR ENTRY OF A QUALIFIED PROTECTIVE ORDER**

By this motion, Jonathan Orent in his Capacity as Lead Counsel (“Claimants’ Counsel”) seeks the entry of the attached Qualified Protective Order allowing protected health information and/or individually identifiable health information as defined by 45 C.F.R. 160.103 or information that is otherwise protected from disclosure by Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)<sup>1</sup> or other applicable state law, regarding the individuals participating in the settlement program established by the Master Settlement Agreement, to be transmitted to undersigned counsel and any third-party authorized by undersigned counsel to assist in the resolution of potential liens and reimbursement claims. Defendant, Atrium (hereinafter “Defendant”) does not oppose this Motion.

Defendant has entered into a confidential Master Settlement Agreement with plaintiffs and claimants asserting similar claims against Defendant.

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<sup>1</sup> HIPAA shall mean the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936 (1996) and the implementing regulations issued thereunder including 45 C.F.R. Parts 160 and 164. HIPAA allows the Secretary of Health and Human Services to implement any appropriate or necessary regulations. *Murphy v. Dulay*, 768 F.3d 1360, 1368 (11<sup>th</sup> Cir. 10/10/2014). The Secretary of Health and Human Services promulgated 45 C.F.R. Parts 160 and 164 to address the privacy and disclosure of protected health information and/or individually identifiable health information. *Id.*

The confidential Master Settlement Agreement requires the appointment of a Lien Resolution Administrator to assist in the resolution of potential liens and reimbursement claims, including, but not limited to, those that may be asserted with respect to federal Medicare benefits as contemplated by the Medicare Secondary Payer Act, 42 U.S.C. § 1395y and interpreting case law, including but not limited to private carriers that have provided coverage pursuant to Medicare Part C (any Medicare Advantage Plan); Prescription Drug Sponsors (“Medicare Part D private carriers”), the Social Security Administration; Medicaid liens; other governmental healthcare programs with statutory reimbursement or subrogation rights (including, by way of example without limitation, TRICARE, VA, and Indian Health Services benefits); any other local, state, or federal agency; or private insurers. The Lien Resolution Administrator’s duties and functions include the authority to act as agent for undersigned counsel for purposes of lien identification; to receive and release identifiable health information; and to resolve liens and reimbursement claims.

In order to complete the duties and functions described above, the Lien Resolution Administrator will need access to protected health information and/or individually identifiable health information as defined by 45 C.F.R. 160.103 or information that is otherwise protected from disclosure by HIPAA or other applicable state law.

45 C.F.R. 164.512(e)(1)(i) provides:

(e) Standard: Disclosures for judicial and administrative proceedings. (1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding: (i) In 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....

The attached Qualified Protective Order has satisfactory safeguards in place to limit the disclosure and use of protected health information and/or individually identifiable health information as defined by 45 C.F.R. 160.103 or information that is otherwise protected from

disclosure by HIPAA or other applicable state law because the information cannot be used for a purpose other than the settlement of this litigation and the information must be destroyed at the conclusion of this litigation.

Wherefore, the Claimants' Counsel respectfully requests that this Motion for Entry of a Qualified Protective Order be granted.

DATED: December 10, 2021

Respectfully submitted,

/s/ Jonathan D. Orent, Esq.  
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Plaintiffs' Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has this date been filed electronically with the Clerk of Court using the CM/ECF system. Notice of these filings will be sent to all counsel of record and parties by operation of the Court's electronic filing system.

/s/ Jonathan D. Orent  
Jonathan D. Orent

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**QUALIFIED PROTECTIVE ORDER**

Plaintiffs in MDL 2753 have asserted claims against defendant in the above captioned action. These individuals have retained Counsel to represent them in relation to the above-captioned action. This Court has appointed Lead Counsel to represent the interests of all Plaintiffs in the Litigation and Lead Counsel agrees that they represent these plaintiffs as part of a global resolution of the cases in the MDL.

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. Lead Counsel has retained Epiq Mass Tort (“Epiq”) to identify and resolve potential healthcare liens with Medicare, Medicare Secondary Payers, Medicare Advantage Organizations (“Medicare Part C private carriers”), Prescription Drug Sponsors (“Medicare Part D private carriers”), the Social Security Administration, Medicaid agencies, TRICARE, Veteran’s Administration, Department of Defense, Indian Health Services, any other local, state, or federal agency, and private health insurers, (hereinafter, collectively “the Agencies”) related to settlements, judgments, awards, or other payments associated with the above captioned action for those settling plaintiffs who are or were beneficiaries of the Agencies.

2. The entry of this HIPAA-compliant qualified protective order is necessary in this action in order to permit the Agencies to transmit lists of information, including protected health information and other related information regarding the settling individuals to Epiq, rather than providing copies of individual HIPAA authorizations and information on a claimant-by-claimant basis, including any third party authorized by Epiq or the Court to assist in the resolution of the Agencies' potential liens and reimbursement claims.
3. As such, it is hereby ordered:
  - a. This Qualified Protective Order shall apply to all "protected health information" and "individually identifiable health information," as defined by 45 CFR § 160.103, or information that is otherwise protected from disclosure by the Privacy Act, 5 U.S.C. § 551a, the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 42 CFR § 431 Subpart F, titled "Safeguarding Information on Applicants and Recipients" and other applicable state law, created, received or collected from plaintiffs and claimants by the Agencies, including, but not limited to: (a) names and addresses, dates of birth, social security numbers, identification numbers and other demographic information that identifies, or could be used to identify the settling plaintiffs; (b) eligibility and entitlement information for the settling individuals; (c) claims information relating to the past, present, or future health care of the settling plaintiffs; (d) claims information relating to the provision of healthcare to the settling plaintiffs; and, (e) claims information relating to the past, present, or future payment for the provision of healthcare to the settling plaintiffs.



- b. Each Agency is hereby authorized and directed to transmit to Epiq to assist in the resolution of potential liens or reimbursement claims, any information, including claims information and other protected health information, for those settling plaintiffs against whom they may assert liens or reimbursement claims.
- c. Epiq shall not use or disclose any protected health information or individually identifiable health information subject to this Qualified Protective Order for any purpose other than this litigation, including compliance with any applicable Court orders or other legal obligations. Similarly, the Agencies shall only use the information of settling plaintiffs for the specific purposes of transmitting to Epiq any information, including claims information and other protected health information, for those settling plaintiffs in the above-captioned matter against whom the Agencies have asserted liens or reimbursement claims, or in whose potential settlements the Agencies may have an interest. The Agencies shall only make the information for the settling plaintiffs available to those within their respective Agency who need access to the information for the settling plaintiffs for the specific purpose stated in this paragraph. If the Agency utilizes outside vendors or companies to perform part or all of their tort recovery practices, the outside vendors or companies shall be expressly bound by all terms and conditions of this Qualified Protective Order.
- d. Epiq shall maintain any protected health information or individually identifiable health information subject to this Qualified Protective Order in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such protected health information as

is exercised by Epiq with respect to its own confidential proprietary information.

**IT IS SO ORDERED.**

, 2021.

Enter:

Order:

Judge

Clerk

Presented by:

/s/ Jonathan D. Orent, Esq.

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**LEAD COUNSEL FOR CLAIMANTS**