



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

-----X

IN RE: FLOAT-SINK LITIGATION

Hon John A. Hutchison

-----X

Civil Action No. 11-C-5000000

THIS DOCUMENT APPLIES TO ALL CASES

-----X

QUALIFIED PROTECTIVE ORDER

Counsel for Plaintiffs has sought the entry of a Protective Order from the Court in order to facilitate settlement. It is understood that no defendant objects to the entering of this Protective Order.

Counsel for Plaintiffs in the above-captioned matter have provided to the Centers for Medicare & Medicaid Services ("CMS"), the West Virginia Department of Health and Human Services ("WVDHHR"), the Ohio Department of Health and Human Services ("ODHHR") and the Florida Department of Health and Human Services ("FHHR") a list of Plaintiffs named in the above-captioned matter to determine which Plaintiffs are Medicare and/or Medicaid beneficiaries. See attached hereto as Exhibit A- List of Plaintiffs. The above-referenced agencies have asserted, may assert or are expected to assert, statutory liens or reimbursement claims for medical expenses covered by either Medicare and/or Medicaid that relate to or arise from the claims asserted by Plaintiffs, where applicable, against the settlement proceeds to be paid to those Plaintiffs who are Medicaid and/or Medicare recipients.

The entry of a Health Insurance Portability & Accountability Act (HIPPA) compliant Qualified Protective Order is necessary in this action in order to permit CMS, HMS and the state

agencies to transmit protected health information directly to Plaintiffs' counsel to assist in addressing and ultimately resolving any and all Medicare and/or Medicaid-related issues that pertain to the resolution of Plaintiffs' claims.

The Panel, being sufficiently advised, HEREBY ORDERS as follows:

1. 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 Section 431, Subpart F, titled "Safeguarding Information on Applicants and Recipients" and other applicable state law, created, received or collected from Medicaid and/or Medicare-eligible Plaintiffs by CMS, state agencies or HMS, including, but not limited to: (a) names and addresses, dates of birth, social security numbers, Medicaid or Medicare identification numbers and other demographic information that identifies, or could be used to identify, Medicaid and/or Medicare-eligible Plaintiffs; (b) eligibility and entitlement information of Medicaid and/or Medicare-eligible Plaintiffs; (c) claims information relating to the past, present or future health care of Medicaid and/or Medicare-eligible Plaintiffs; (d) claims information relating to the provision of healthcare to Medicaid and/or Medicare-eligible Plaintiffs; and (e) claims information relating to the past, present or future payment for the provision of healthcare to Medicaid and/or Medicare-eligible Plaintiffs.

2. In order to assist in the resolution of Medicaid and Medicare-related issues, CMS, state agencies and HMS are hereby authorized and directed to transmit to Plaintiffs' counsel or Andrew A. MacQueen III, Esq., as the Fund Administrator (or any other identified Fund Administrator), any information, including Medicaid and Medicare claims information and

other protected health information, for those Medicaid and/or Medicare-eligible Plaintiffs in the above-captioned matter against whom CMS, state agencies and HMS assert liens or reimbursement claims.

3. Plaintiffs' counsel 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.

4. Plaintiffs' counsel 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 Plaintiffs' counsel with respect to its own confidential proprietary information.

5. At the conclusion of this litigation, Plaintiffs' counsel shall return any protected health information or individually identifiable health information subject to this Qualified Protective Order to CMS, state agencies and HMS or certify to CMS, state agencies and HMS that the protected health information or individually identifiable health information, including all copies made, has been destroyed.

6. The applicable time period covered by this Qualified Protective Order begins with the date of first alleged exposure by each Medicaid and/or Medicare-eligible Plaintiff in the above-captioned matter and ends sixty (60) days from the effective date of any settlement for any Plaintiff.

ENTERED this 3rd day of May, 2013.

/s/ John A. Hutchison
Lead Presiding Judge
Float-Sink Litigation

AGREED TO BY:

Plaintiffs' Counsel

/s/Kevin W. Thompson

Kevin W. Thompson, Esquire WV Bar # 5062
David R. Barney, Jr., Esquire WV Bar #7958
Thompson Barney
2030 Kanawha Boulevard, East
Charleston, West Virginia 25311
(304) 343-4401

William A. Walsh, Esquire WV Bar #11758
WEITZ & LUXENBERG
700 Broadway
New York, New York 10003
(212) 558-5800

Thomas F. Basile, Esquire WV Bar #6116
Law Office of Thomas F. Basile
P.O. Box 2149
Charleston, West Virginia 25328
(304) 925-4490

Defense Counsel

Webster J. Arceneaux III, Esquire WV Bar # 155
Lewis Glasser Casey & Rollins, PLLC
300 Summers Street, Suite 700
Charleston, West Virginia 25301-1639
(304) 345-2000

Jon L. Anderson, Esquire
Jackson Kelly, PLLC
1600 Laidley Tower
Charleston, West Virginia 25301
(304) 340-1000