

AT 9:00 FILED O'CLOCK M

SEP 16 2015

MDL NO. 15-0360

LAURA HINOJOSA, CLERK
District Courts/Hidalgo County
By IN THE DISTRICT COURT Deputy#45

IN RE:

FRAUDULENT HOSPITAL LIEN
MULTIDISTRICT LITIGATION

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430th JUDICIAL DISTRICT

This document relates to all cases.

HIDALGO COUNTY, TEXAS

MOTION FOR ENTRY OF APPOINTMENT OF LIAISON COUNSEL

TO THE HONORABLE PRETRIAL JUDGE OF SAID COURT:

Plaintiffs in the member cases of the above-styled MDL file this motion ("Motion") and, pursuant to TEX. R. CIV. P. 166, TEX. R. JUDICIAL ADMIN., Rules 7 and 13, and LOCAL R. HIDALGO CNTY., TEX. DIST. COURTS, Rule 4, respectfully request the Court, after such submissions and conferences as the Court deems proper, enter a Case Management Order appointing J. Michael Moore of The Moore Law Firm to act as liaison for all Plaintiffs in member cases to this Fraudulent Hospital Lien Multidistrict Litigation, and respectfully states as follows:

I. INTRODUCTION

1. Since September 2014, over two hundred twenty-six individual lawsuits have been brought in Hidalgo County, Texas District Courts by Plaintiffs against McAllen Hospitals, LP d/b/a McAllen Medical Center and d/b/a Edinburg Regional Medical Center, Alegis Revenue Group, LLC f/k/a Meridian Revenue Solutions, LLC, and Cardon Healthcare Network, Inc. ("Defendants"). Those cases arise out of TEX. PROP. CODE § 55.002 and TEX. CIV. PRAC. & REM. CODE § 12.002, and bring claims for the fraudulent use of the hospital lien statute to collect for hospital services provided accident victims. In representing those Plaintiffs, Michael Moore ("Moore") of The Moore Law firm moved for consolidation of those cases in a Fraudulent Hospital Lien ("FHL") Multidistrict Litigation ("MDL"), or FHL MDL.

2. In the last few weeks, the Texas Multidistrict Litigation Panel has denied Defendants' motion to stay these proceedings, denied Defendants attempts to change the name of this litigation and granted Moore's motion for consolidation of those cases together with all tag-along cases ("Member Cases"), and appointed the Honorable Judge of this Court to preside over pretrial matters in the above-captioned multidistrict litigation ("Liens MDL"). Order of Multidistrict Litigation Panel, *In Re: Fraudulent Hospital Lien Litigation* (MDL No. 15-0360) (August 12, 2015); Order of Multidistrict Litigation Panel, (MDL 15-0360, August 21, 2015); *see also* Opinion on Review by the Texas Multidistrict Litigation Panel (MDL No. 15-0360, August 12, 2015).

3. Following the Courts' recent appointment for these consolidated proceedings, preliminary case management and planning is in order. The FHL MDL Plaintiffs in the cases filed by the undersigned counsel, desire to have J. Michael Moore and The Moore Law Firm participate as permitted in the management and planning of this FHL Lien MDL. During the most recent conference, it became apparent that a need exists for appointment of Liaison Counsel Defendants and Plaintiffs.

4. Plaintiffs request a Case Management Order, appointing a Plaintiffs' liaison counsel. Specifically, for reasons more fully set forth below, Plaintiffs request J. Michael Moore of the Moore Law Firm be appointed Liaison Counsel, to facilitate organization and efficiency from the beginning of this FHL MDL.

5. Plaintiffs likewise request that the Liaison Counsel be appointed to represent the Defendants since there is commonality of all claims and defenses as to each individually named Defendant.

II. REQUESTED PRELIMINARY MANAGEMENT PLANNING

6. Plaintiffs' requested preliminary conference and order is in accord with the relevant administrative,¹ procedural,² and local³ rules. Moreover, Plaintiffs' requested preliminary management planning is consistent with accepted guidelines for consolidated actions.⁴

A. Case management issues should be addressed for the interim period, pending appointment of leadership and entry of a more permanent case management order.

7. Trial courts are encouraged to undertake case management "early, continuously, and actively," and to take action for entry of a case management order "at the earliest practical date." TRJA 13.6(c); *see Id.* 7.a(6). The requested next initial status conference is the first step towards entry of an order, appropriately following familiarization with the litigation by the parties and the court, but "before any adversary activity begins." Manual § 11.11; *see* Best Practice 1A.

8. The present circumstances make this FHL MDL ripe for entry of a CMO as per the recent status conference concerning discussion of the objectives, exchanges regarding issues of fact and law, document management, discovery, scheduling, filing and service, communication among and between the parties' alignment, and now the organization of leadership. TRJA 13.6(c); *see* Manual §§ 11.12 and 11.22; Duke MDL Standard 2.

9. Organization and leadership planning is central to minimizing expense as well as enabling timely and effective communication, negotiation, and decision between the parties' alignments. *See generally* Duke SBP Commentary at *25–28. All parties involved would

¹ Texas Rules of Judicial Administration ("TRJA"), Rules 7 and 13.

² Texas Rules of Civil Procedure ("TRCP"), Rule 166. *See also* TEX. GOV'T CODE § 21.001(a) and § 74.164.

³ Local Rules of Hidalgo County, Texas District Courts ("Local Rules"), Rules 3 and 4.

⁴ Federal Judicial Center, MANUAL FOR COMPLEX LITIGATION (Fourth Ed. 2004) ("Manual"); Duke Law School, Center for Judicial Studies, MDL STANDARDS AND BEST PRACTICES (Sept. 11, 2014) (as a whole, "Duke SBP," and with therein headings, "Duke MDL Standards" and "Duke Best Practices").

benefit from the Court's quick action to place a unifying voice for the parties. Accordingly, addressing and appointing leadership as quickly as possible is necessary and desirable for a "just, speedy, and inexpensive" resolution to this MDL. *See* Manual 11.211; Duke Best Practice 2C.

10. Following this action's recent consolidation and assignment, appointment of Plaintiff's leadership—and Defendants' leadership—"as soon as practicable." Duke MDL Standard 3; *see* Duke Best Practices 2C; Manual § 10.224. Under the present status of the Member Cases, Plaintiffs believe application and appointment would not be notably contentious or contested: Especially in light of currently universal representation of Member Cases by J. Michael Moore and The Moore Law Firm, Plaintiffs anticipate neither an overly complex leadership scheme nor an extended dispute over leadership. Accordingly, leadership may be vetted and appointed in short manner. *See* Duke Best Practices 2C(ii) ("The transferee judge should designate lead counsel who will act for all parties whom they are appointed to represent and are responsible for the overall management of the litigation.").

B. Lead Liaison Counsel should be appointed immediately.

11. To prevent needless delay of these proceedings, appointment of leadership is warranted as additional filings of tag along cases have occurred by other Plaintiffs' counsel Martin Phipps. Pending entry of discovery and other scheduling orders by the Court, the appointment of a Lead Liaison Counsel should not be deferred. Plaintiffs' immediate need is appointment of Liaison Counsel, indispensable to prompt, effective, and authorized communication and coordination between the Member Cases and Defendants. Manual § 10.222.

The most successful MDLs will move forward expeditiously, without delay but also without a rush that overlooks proper planning. [¶] The transferee judge should take steps to ensure a smooth process for administration . . . issuing initial orders that address the filing procedures for counsel to follow before the leadership team is appointed. [¶] At this stage, the transferee judge should consider appointing Liaison Counsel or encourage counsel to select a proposed

liaison counsel prior to the conference, although the formal appointment will be subject to court approval.

Duke SBP at *33, Best Practices 3A(ii)–(iii); *see* Manual § 11.12.

12. Given recent consolidation of this MDL and assignment to this Court, an “initial conference at the earliest practicable time.” Best Practice 3A; *see* TRJA 13.6(c). In addition to early framing of procedures and schedules for this litigation, the requested preliminary conference and order will further serve fair and efficient disposition by “promptly set[ting] in motion the procedure for appointment of counsel. Best Practice 3A; *see* TRJA 13.6(c)(7).

13. Therefore, Plaintiffs request the Court set a second status conference, requesting counsel for all parties prepare to discuss those matters listed in Tex. R. Judicial Admin., Rule 13.6(c), notifying counsel that interim and/or final leadership will be discussed, and requiring those who intend to apply for a leadership position. Best Practices 3A and 3B; *see* TRJA 13.6; Local Rule 4; Manual § 11.21.

C. Moore’s connection with the Member Cases, local practice, knowledge of the underlying subject matter, experience in multidistrict litigation, intent to pursue regular appointment as liaison counsel, and all other factors support Moore’s appointment as interim liaison counsel.

14. J. Michael Moore has an unparalleled connection with the Member Cases forming this MDL. In September 2014, Moore filed the first thirty-four cases in this consolidation. Over the past year, Moore has continued those filings, and is lead counsel in approximately 226 cases part of this MDL. At the time Moore moved to transfer, The Moore Law Firm had filed every case subject to consolidation. Moore continues to represent the vast majority of plaintiffs in this MDL. Moore has demonstrated the competence, resources, and diligence required of MDL liaison counsel. By continuing to represent the bulk of plaintiffs, Moore continues to fairly and expertly represent nearly all plaintiff-aligned parties.

15. Moore's local office and practice would assist his performance as liaison, as he is familiar with the Local Rules and practice before the Court. Manual § 10.221; Duke SBP at *30. Moore is prepared to serve as liaison, organizing meetings and otherwise facilitating "communications between the court and other counsel, maintaining records of all orders, filings and discovery, ensuring that all counsel are apprised of developments in the litigation . . . [and] coordinating with and supporting the clerk of court." Best Practice 2C(iv); *see* Manual § 10.22. In fact, Moore has performed and continues to perform these functions for all of the Member Cases. Moore is both the most obvious and best choice for interim—and, ultimately, standing—liaison counsel.

16. Moore's reputation for cordial and professional conduct, with other counsel, parties, and non-parties alike, is well-suited for a position in liaison counsel. For many of the same reasons, the undersigned counsel and firm have entered talks to coordinate and collaborate in representing respective Member Cases. Moore is already benefiting this litigation by performing many of the tasks of a liaison. This Court's designation of Moore as Plaintiffs' Permanent Liaison Counsel would further his ability to so benefit all parties to this MDL.

III. CONCLUSION

17. Due to recent consolidation and appointment, the circumstances of this MDL warrant evaluation and discussion of scheduling, organization, and other case management matters including appointing Liaison Counsel. TRJA 7(a) and 13(c); TRCP 166(p); Local Rules 3 and 4. The parties and this MDL as a whole would benefit from such a conference to engage in such discussions, and specifically from the appointment of J. Michael Moore as Plaintiffs' Interim or Permanent Liaison Counsel made pursuant to that conference. For the foregoing reasons, Plaintiffs in the Member Cases of this FHL MDL respectfully request the Court:

- a. Schedule a conference to discuss those case management matters listed in Tex. Judicial R. Admin. 13(c);
- b. Appoint J. Michael Moore of the Moore Law Firm as Interim or Permanent Liaison Counsel, with the ordinary rights and obligations of such a liaison, including authority and duty to:
 - i. Receive and distribute notices, orders, motions, and briefs on behalf of the Plaintiffs;
 - ii. Convene meetings of counsel as necessary;
 - iii. Advise parties and attorneys of developments in the litigation;
 - iv. Receive telephone calls from the Court;
 - v. Maintain complete files with copies of all documents served upon them and make such files available to all Plaintiffs' counsel;
 - vi. Maintain and make available to all counsel and the Court an up-to-date service list;
 - vii. Resolve scheduling conflicts; and,
 - viii. Any other duties, obligations or responsibilities for which the Pretrial Court deems appropriate.
- c. Appoint an Interim or Permanent Liaison Counsel for Defendants, with the ordinary rights and obligations of such liaison counsel, including authority to and duty to:
 - i. Receive and distribute notices, orders, motions, and briefs on behalf of the Defendants;
 - ii. Convene meetings of counsel as necessary;
 - iii. Advise parties and attorneys of developments in the litigation;
 - iv. Receive telephone calls from the Court;
 - v. Maintain complete files with copies of all documents served upon them and make such files available to all Defendants' counsel;
 - vi. Maintain and make available to all counsel and the Court an up-to-date service list;
 - vii. Resolve scheduling conflicts; and,
 - viii. Any other duties, obligations or responsibilities for which the Pretrial Court deems appropriate.

- d. Plaintiffs' move for all other relief to which Plaintiffs are justly entitled as deemed appropriate by this Honorable Pretrial Court.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that on this the 15th day of September, 2015, a true and correct copy of the above and foregoing Motion for Entry of Appointment of Liaison Counsel was forwarded to all counsel of record via-electronically in accordance with the Texas Rules of Civil Procedure.

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