

PLAN OF DISTRIBUTION

Bhatia, et al. v. 3M Company, File. No. 0:16-cv-01304-DWF-DTS
(U.S. District Court, D. Minn.)

1. **Claim periods:** There will be two claim periods. The Claim Period¹ will cover full or partial debonds that the Class Member repaired or paid to have repaired on or before the Bar Date. The Supplemental Claim Period will cover full or partial debonds that the Class Member repaired or paid to have repaired after the Bar Date and on or before June 15, 2020.

2. **Debonds:** A Class Member may make claims for dental crowns that the Class Member milled from 3M ESPE Lava Ultimate CAD/CAM Restorative and seated on or before June 15, 2015, where the patient experienced one or more full or partial debonds (“Debonds”) on or before June 15, 2020.

3. **Use of Claim Form and Supplemental Claim Form:** Each Class Member may submit a Claim Form for any Debonds that the Class Member repaired or paid to have repaired during the Claim Period. Each Class Member may submit a Supplemental Claim Form for any Debonds that the Class Member repaired or paid to have repaired during the Supplemental Claim Period. Class Members may submit claims in one or both periods; it is not required to have submitted a Claim Form in order to submit a Supplemental Claim Form.

¹ This Plan of Distribution incorporates by reference the definitions in the Stipulation of Settlement (the “Stipulation”) dated March 25, 2019, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.

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4. Choice of making claim in a Fixed Amount or a Documented Amount: For each Debond, the Claimant may claim either a Fixed Amount of \$250 or a Documented Amount. The Documented Amount is the amount of unreimbursed out-of-pocket loss that the Claimant is able to show, through provision of the information and documents required by the Claim Form and/or the Supplemental Claim Form, that the Claimant incurred as a result of the Debond. For purposes of the Settlement, out-of-pocket loss includes all unreimbursed losses incurred in reseating or repairing a Debond or otherwise treating a patient harmed as a result of a Debond, but does not include any loss related to diminution in goodwill or loss of business profits or customers. A Documented Amount claim will not be less than \$250, provided that the Claimant fully and accurately meets all of the requirements set forth in paragraph 6. An Authorized Claimant may submit claims for both Fixed Amounts and Documented Amounts.

5. Review of Claim Forms and Supplemental Claim Forms: Claim Forms and Supplemental Claim Forms will be reviewed as follows:

- (a) The Claims Administrator will review all Claim Forms and Supplemental Claim Forms to determine whether the Claimant is a Class Member, has fully and accurately completed the form, has submitted all required documents and other information, and has signed the form. Only Claimants who meet these requirements will become Authorized Claimants.
- (b) The Claims Administrator will review claims submitted for a Fixed Amount and will make a determination with respect to each Authorized

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Claimant as to the total amount allowed for that Authorized Claimant on Fixed Amount claims, if any (“Allowed Fixed Amount”).

- (c) The Claims Administrator will make an initial review, and a Settlement Counsel Review Committee (“SCRC”) comprised of five lawyers appointed by Class Counsel will make a final review, of claims submitted for a Documented Amount, and will make a determination with respect to each Authorized Claimant as to the total amount allowed for that Authorized Claimant on Documented Amount claims, if any (“Allowed Documented Amount”).
- (d) Before any distributions are made from the Net Settlement Fund, each Authorized Claimant will be given notice as provided in ¶ IV(D)(16)(d) of the Stipulation of Settlement if all or any part of its claim has not been allowed. The notice will include the amounts that have been determined to be its Allowed Fixed Amount and/or its Allowed Documented Amount, and a brief statement as to the basis for those determinations. An Authorized Claimant who wishes to contest such determination(s) must, within 20 days of the date of mailing of the notice, serve upon the Claims Administrator the materials described in paragraph ¶ IV(D)(16)(e) of the Stipulation of Settlement. If a dispute concerning a Claim Form or Supplemental Claim Form cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to retired Magistrate Judge Arthur J. Boylan, whose decision on the Claim Form and/or Supplemental Claim Form shall be

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issued within 30 days and shall be binding upon all Parties, including Class Members, without right of appeal.

6. Requirements for Fixed Amount claims: In addition to demonstrating it is an Authorized Claimant (*see* paragraph 5(a) above), a Claimant who makes a Fixed Amount claim for a Debond must submit a signed statement on the Claim Form and/or Supplemental Claim Form, made under penalty of perjury, of the total numbers of (a) Lava Ultimate blocks purchased by it during the applicable claim period, (b) Lava Ultimate blocks seated as crowns during the applicable claim period, (c) Debonds during the applicable claim period, and (d) Lava Ultimate blocks returned to 3M or a dental supply company during the applicable claim period. This information may be audited for accuracy.

7. Requirements for Documented Amount claims: In addition to demonstrating it is an Authorized Claimant (*see* paragraph 5(a) above), a Claimant who makes a Documented Amount claim for a Debond must submit the same information as stated in paragraph 6 above, plus documentation and evidence of the following on a tooth-by-tooth basis:

- (a) placement of a Lava Ultimate crown prior to June 15, 2015;
- (b) patient billing records relating to each such placement, and relating to all subsequent procedures for the tooth, including any records of payments received from the patient, an insurance provider, or other, if applicable;

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- (c) a Debond, including contemporaneous notes or records that show the Debond or indicate that repairs, reseating, replacement, or other patient treatment was necessary;
- (d) unreimbursed costs spent repairing the Debond or otherwise treating the patient as a result of the Debond, including material costs and costs to the Authorized Claimant for dental work performed by a specialist (e.g., root canals, gingivectomy procedures, extractions, or implants); and
- (e) any additional unreimbursed out-of-pocket costs attributed to the Debond that can properly be documented.

8. Final Allowed Claim of an Authorized Claimant: The determinations made as a result of the processes described in paragraph 5 above will result in each Authorized Claimant having a Final Allowed Claim for the Claim Period based upon the Claim Form, and/or a Final Allowed Claim for the Supplemental Claim Period based upon the Supplemental Claim Form. An Authorized Claimant's Final Allowed Claim for a claim period will be the sum of its Allowed Fixed Amount and its Allowed Documented Amount for that claim period.

9. Subfunds of the Net Settlement Fund: The Net Settlement Fund will be divided into two subfunds. The Primary Subfund will be comprised of 90% of the Net Settlement Fund. The Supplemental Subfund will be comprised of 10% of the Net Settlement Fund, plus any amounts remaining from the Primary Subfund after Distribution 1 (defined in paragraph 10 below).

10. Distribution of the Primary Subfund: After completion of the review process for Claim Forms described in paragraph 5 above, the Claims Administrator will add together all Final Allowed Claims from the Claim Period to calculate the Aggregate Final Allowed Claims amount for the Claim Period.

- a. If the Aggregate Final Allowed Claims amount for the Claim Period is less than the Primary Subfund, each Authorized Claimant will be entitled to receive their Final Allowed Claim for the Claim Period.
- b. If the Aggregate Final Allowed Claims amount for the Claim Period is greater than the Primary Subfund, each Authorized Claimant will be entitled to receive a portion of the Primary Subfund that represents the same percentage of the Primary Subfund as the Authorized Claimant's Final Allowed Claim from the Claim Period represents as a percentage of the Aggregate Final Allowed Claims for the Claim Period ("Distribution 1").

After any appeals are fully resolved, the Claims Administrator shall disburse Distribution 1 from out of the Primary Subfund.

11. Distribution of the Supplemental Subfund: After completion of the review process for Supplemental Claim Forms described in paragraph 5 above, the Claims Administrator will add together all Final Allowed Claims from the Supplemental Claim Period to calculate the Aggregate Final Claims Amount for the Supplemental Claim Period.

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- a. If the Aggregate Final Allowed Claims amount for the Supplemental Claim Period is less than the Supplemental Subfund, each Authorized Claimant will be entitled to receive their Final Allowed Claim for the Supplemental Claim Period.
- b. If the Aggregate Final Allowed Claims amount for the Supplemental Claim Period is greater than the Supplemental Subfund, each Authorized Claimant will be entitled to receive a portion of the Supplemental Subfund that represents the same percentage of the Supplemental Subfund as the Authorized Claimant's Final Allowed Claim from the Supplemental Claim Period represents as a percentage of the Aggregate Final Allowed Claims for the Supplemental Claim Period ("Distribution 2").

After any appeals are fully resolved, the Claims Administrator shall disburse Distribution 2 from out of the Supplemental Subfund.

12. Handling of distribution checks: The Claims Administrator will mail distribution checks to Authorized Claimants on the "Check Issuance Date" that, for Claim Forms filed during the Claim Period, occurs thirty (30) days after the later of the Effective Date or the determination of all Final Allowed Claims and that, for Supplemental Claim Forms filed during the Supplemental Claim Period, occurs thirty (30) days after the later of the Effective Date or the determination of all Final Allowed Claims. All distribution checks, including any reissued checks, will expire 121 days after the Check Issuance Date for the relevant claim period (the "Check Expiration Date"). Any distribution check not cashed or deposited before the Check Expiration

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Date will be voided. For any distribution checks returned to the Claims Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address) forty-five (45) days or more before the Check Expiration Date, the Claims Administrator will make reasonable efforts to find a valid address and resend the distribution check approximately thirty (30) days before the Check Expiration Date. In no event will an Authorized Claimant be permitted to cash a prior-round check once the Claims Administrator has issued checks during a subsequent round, or the value of uncashed checks has been paid to the *cy pres* recipient(s). The Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks.

13. Distribution of Remaining Funds, if any: If monies remain in the Net Settlement Fund after Distribution 2 (“Remaining Funds”) from lack of claims or uncashed checks, Class Counsel will make a proposal to the Court for what to do with Remaining Funds, with the priority focused on additional distributions to Class Members if it is cost-effective to do so. If it is not cost-effective, Class Counsel will propose that remaining funds be distributed to non-profit *cy pres* recipients focused on dental health and/or consumer protection. 3M will be entitled to be heard on the question of who the *cy pres* recipients should be.