

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re:  
MEDTRONIC, INC.,  
SPRINT FIDELIS LEADS  
PRODUCTS LIABILITY LITIGATION

Multidistrict Litigation  
No. 08-1905 (RHK/JSM)

THIS DOCUMENTS RELATES  
TO ALL CASES

ORDER NO. 9

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This matter is before the Court upon plaintiffs' request for an order allowing the filing of multiple party complaints and plaintiffs' request for an order tolling the statute of limitations for all claims which could be filed or transferred into the present Multidistrict Litigation ("MDL"). The parties have agreed to handle these issues using the informal motion practice procedure set forth in paragraph 24 of this Court's First Amended Omnibus Management Order. See Order No. 7, First Amended Omnibus Management Order [Docket No. 134].

Having considered the various submissions and the arguments made by the parties at the August 27, 2008 and September 24, 2008 status conferences,

IT IS HEREBY ORDERED:

1. Plaintiffs' request for an order allowing the filing of multiple party complaints, as set forth in the parties' respective September 15, 2008 proposed orders is **DENIED**.

2. Plaintiffs' request for an order tolling the statute of limitations for all claims which could be filed or transferred into the present Multidistrict Litigation ("MDL") is **DENIED**.

Dated: October 10, 2008

*s/ Janie S. Mayeron*  
JANIE S. MAYERON  
United States Magistrate Judge

## **MEMORANDUM**

### **A. Consolidated Filings Order**

Plaintiffs have asked that this Court permit the filing of single complaints on behalf of multiple parties subject to severance upon transfer or remand from the MDL transferee court. See Joint Report for August 27, 2008 Status Conference Pursuant to Order No. 4 [Docket No. 156] (“August 27, 2008 Joint Report”) at pp. 8-9. At the August 28, 2008 status conference, this Court asked counsel for the parties to meet and confer to develop an order addressing plaintiffs’ request or submit separate proposed orders to the extent an agreement could not be reached. The parties were unable to reach agreement on an order and submitted separate proposed orders to the Court on September 15, 2008. Plaintiffs’ proposed order provides in relevant part:

1. Multiple Parties may initiate an action in this MDL in one complaint so long as the plaintiffs are residents of the same state and allege the same claims under that state’s laws.
2. Any time a complaint is filed, consistent with the terms of this Order, where multiple parties are listed on the complaint, there shall be a single filing fee charged by the Clerk.
3. This Order is entered for the purpose of facilitating and promoting the filing of claims into the MDL, and to further the efficient prosecution of this action.
4. This Order neither requires nor imposes any obligation on any Plaintiff or Defendant in this MDL and this Order does not constitute or imply a waiver of any defenses, arguments or positions by Medtronic; including, specifically, Medtronic’s position that the claims of each individual plaintiff shall be tried

separate and apart from all other plaintiffs joined in the multiple plaintiff action.

(emphasis added).

Medtronic's proposed order on the filing of multiple party complaints provided in relevant part:

1. Multiple plaintiffs may initiate an action in the MDL in one complaint so long as the plaintiffs are residents of the same state and allege the same claims under that state's laws and received treatment or care from a common healthcare provider, hospital, clinic, or physician with respect to their Sprint Fidelis leads.
2. Anytime a complaint is filed, consistent with the terms of this Order, where multiple parties are listed on the complaint, there shall be a single filing fee charged by the Clerk.
3. This Order is entered for the purpose of facilitating and promoting the filing of claims into the MDL, and to further the efficient prosecution of this action.
4. This Order neither requires nor imposes any obligation on any Plaintiff or Defendant in this MDL and this Order does not constitute or imply a waiver of any defenses, arguments or positions by Medtronic; including, specifically, Medtronic's position that the claims of each individual plaintiff shall be tried separate and apart from all other plaintiffs joined in the multiple plaintiff action. This Order is without prejudice to any defenses, arguments or positions by Medtronic concerning the propriety of joinder of multiple plaintiffs in any currently filed complaints. The filing on any multi-plaintiff action before or after this Order shall not result in such plaintiffs' claims being joined for trial or any other purposes, absent a Court order issued and a duly-noticed motion filed by plaintiffs' counsel pursuant to procedures established by this Court's pretrial orders.
5. This Order applies to all actions now pending, subsequently transferred to or filed in this proceeding, without the necessity of future motions or orders.

(emphasis added).

During oral argument at the status conference on September 24, 2008, attorneys for both sides agreed that the only substantive difference regarding their respective multiple party orders was in paragraph 1. Plaintiffs proposed that the consolidated plaintiffs be residents of the same state; Medtronic added language requiring that the consolidated plaintiffs not only be from the same state, but also have been treated for the Sprint Fidelis leads by the same doctor, hospital or clinic.

Rule 20 of the Federal Rules of Civil Procedure permits joinder of plaintiffs in an action if:

they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.

Fed. R. Civ. P. 20(a).

It is plaintiffs' position that there is no prejudice to Medtronic if they are allowed to file consolidated complaints by state, because the proposed order on consolidated filing preserves all of Medtronic's defenses. On the other hand, if their request were denied, plaintiffs submitted that each plaintiff would be forced to pay a separate filing fee and there could potentially be endless motion practice before this Court to address joinder issues. Indeed, joinder under Rule 20(a) serves the purpose of avoiding delay, expense and inconvenience to all concerned. See Mosley v. General Motors Corp., 497 F.2d 1330, 1132-33 (8th Cir. 1974) (citations omitted). However, permissive joinder is not applicable in all cases, as Rule 20 imposes two specific requisites to the joinder of parties:

(1) a right to relief must be asserted by, or against, each plaintiff or defendant relating to or arising out of the same

transaction or occurrence, or series of transactions or occurrences; and (2) some question of law or fact common to all the parties must arise in the action.

Id. at 1133.

At least two courts in the District of Minnesota have permitted multiple plaintiffs to initiate an action in MDL proceedings using bundled complaints. In the MDL case, In re Medtronic, the court allowed plaintiffs from the same state and alleging the same claims to file jointly on the basis that such a joinder “is consistent with the Court’s policy to lessen expenses and inconvenience to the parties.” In re Medtronic, MDL No. 05-1726 (JMR/AJB), January 8, 2007 Order (Consolidated Filing by Plaintiffs) [Docket No. 322]. Similarly, in the MDL case In re: Guidant Corp. Implantable Defibrillators Products Liability Litigation, the court permitted the filing of multi-plaintiff actions, but only for the purpose of the MDL. See In re: Guidant Corp., MDL No. 05-1708 (DWF/AJB), Pretrial Order No. 27 (January 30, 2007) [Docket No. 1132]. However, in Guidant, Federal District Judge Donovan Frank explicitly stated that by allowing the filing of multi-plaintiff actions, he was not making any determination that the parties were properly joined, he was not permitting joinder for trial or any other purpose absent a court order issued in response to a properly filed motion, that prior to transfer or remand of any multi-party action to another federal court, the claims of each individual plaintiff would be severed, and upon transfer or remand, each individual plaintiff would be required to pay the individual filing fees that would ordinarily apply to each separately filed action. Id. at pp. 2-3. Judge Frank further indicated that he was reaching this result based on the fact that the MDL had been in existence for over a year and he made it clear that the result would have been different had it been raised earlier. Id. at p. 2. Specifically, he stated

he would not have allowed multiple, unrelated plaintiffs “who have different health conditions, are from different states, sought treatment from different healthcare providers, were prescribed different treatments, were implanted with different devices, and were given different advice concerning whether to explant their devices” to be joined in one case. Id. at pp. 1-2. Judge Frank noted that he could see no reason why the plaintiffs were joined, “except maybe that savvy plaintiffs’ lawyers did so to escape paying filing fees.” Id. at p. 1.

On the other hand, Federal District Judge Michael Davis in another MDL case, In re: Baycol Products Liability Litigation, concluded that simply grouping plaintiffs in a complaint by judicial district or for the purposes of filing convenience did not satisfy the terms of Rule 20. See In Re: Baycol Products Liability Litigation, Case No. 03-2931, MDL No.1431 (Pretrial Order 31), 2002 WL 32155269 at \*2 (D. Minn. July 05, 2002); see also In Re: Baycol Products Liability Litigation, Case No. 03-2931, MDL No.1431 (Pretrial Order 31), 2003 WL 22341303 at \*4 (D. Minn. 2003) (“This Court has previously found that the fact that plaintiffs were residents of the same state, and who alleged claims against Bayer AG, Bayer Corporation and GlaxoSmithKline based on injuries suffered as a result of ingesting Baycol, without more, did not satisfy the requirements of Rule 20.”).<sup>1</sup> Relying on three cases – In re: Orthopedic Bone Screw

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<sup>1</sup> This Court notes that plaintiffs claimed that the court in the Baycol MDL concluded that plaintiffs with similar claims from the same court district could be joined under the same complaint. See August 27, 2008 Joint Report at p. 8 (citing In re Baycol, MDL 1431, PTO 88). However, Judge Davis only allowed the joinder of three of the plaintiffs because they were all from the same state, were all born before 1939, displayed the same muscle injury from the drug at issue, and none of them were co-prescribed an additional medication. See In re: Baycol Products Liability Litigation, MDL No. 1431, Pretrial Order No. 88 (July 16, 2003). Judge Davis noted that in contrast to the plaintiffs’ previous motion to bundle, in which the plaintiffs had provided the court with

Products Liability Litigation, MDL 1014, 1995 WL 428683 at \*2 (E.D. Pa. July 17, 1995);  
In re: Rezulin Products Liability Litigation, 168 F. Supp.2d 136, 145 (S.D.N.Y. 2001);  
and In re Diet Drugs, No. Civ.A. 98-20478, 1203, 1999 WL 554584 at \*4 (E.D. Pa. July  
16, 1999) – Judge Davis stated the following:

As noted by the court in Bone Screw,

there are many differences between the unique histories of each plaintiff. This case is not one where all of the plaintiffs were harmed at the same location or worked for the same company and allegedly suffered employment discrimination at the hands of one employer. In this case, plaintiffs from many states went to different doctors or teams of doctors and medical facilities and providers ... for different reasons, and underwent surgery at different times in what could likely be surgery at different times in what could likely be over one thousand different medical providers locations staffed by different personnel. To simply group the plaintiffs by judicial district or to simply group them primarily for filing convenience, would not satisfy the terms required in Rule 20 nor the purpose for which Rule 20 seeks to ease the burden of litigation in groups of similarly situated persons.

In re: Baycol Products Liability Litigation, 2002 WL 32155269 at \*2-3 (citing Bone Screw  
at \*2). Judge Davis also observed:

The fact that defendants' conduct is common to all of plaintiffs' claims and that the legal issues of duty, breach of duty and proximate cause and resulting harm are common do not satisfy Rule 20's requirements. Instead, joinder may be proper only where the plaintiffs' claims arise from the same basic set of facts.

Id. at \*2 (citing to Diet Drugs, 1999 WL 554584 at \*4).

This Court finds Judge Davis' reasoning in Baycol, along with the observations raised by Judge Frank in Guidant, to be persuasive. It is not enough that plaintiffs used

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no information from which it could determine that joinder was appropriate, the three plaintiffs had demonstrated that their claims had many common characteristics, and that their claims arose from the same set of circumstances. Id.

a Medtronic Sprint Fidelis lead for this Court to find that their claims arise out of the same transaction or occurrence for the purpose of joinder. See In re Prempro Products Liability Litigation, 417 F. Supp.2d 1058, 1060 (E.D. Ark. 2006) (noting that the only commonality among plaintiffs is that they took an HRT drug, but that plaintiffs were residents of different states, were prescribed different HRT drugs from different doctors, for different lengths of time, in different amounts, and suffered different injuries). Likewise, as in Baycol, it is not enough to group plaintiffs by a common locality. 2002 WL 32155269 at \*2. Rule 20(a)'s "transaction or occurrence" element "requires at a minimum that the central facts of each plaintiff's claim arise on a somewhat individualized basis out of the same set of circumstances." See In re Orthopedic Bone Screw Products Liability, 1995 WL 428683 at \*2 (citations omitted); In re: Baycol Products Liability Litigation, 2002 WL 32155269 at \*2 ("[J]oinder may be proper only where the plaintiffs' claims arise from the same basic set of facts."). Here, presumably the plaintiffs have different medical histories, have gone to different doctors or treatment centers, and have suffered different injuries allegedly arising from the malfunction of the Sprint Fidelis leads. To simply group plaintiffs by state, primarily for the purpose of convenience, does not satisfy the requirements of Rule 20. At this juncture, plaintiffs have failed to demonstrate to this Court that they had any common characteristics or that their claims arose from the same set of circumstances.

Medtronic, in its proposed order, while preserving all of its rights to pursue severance down the road, agreed to consolidated complaints so long as the consolidated plaintiffs were residents of the same state, alleged the same claims under that state's laws and received treatment or care from a common healthcare provider,

hospital, clinic, or physician with respect to their Sprint Fidelis leads. It is true that there are courts which have intimated that the requirement for permissive joinder under Rule 20(a) may be met when the claimants seeking to be joined in one complaint received or purchased the product at issue from the same medical provider. See e.g., Simmons v. Wyeth Laboratories, Inc., Nos. CIV.A.96-CV-6631, 1996 WL 617492, at \*3 (E.D. Pa. Oct. 24, 1996) (noting that if several “plaintiffs received identical information from the defendants through identical means or sources at the same point in time, and were implanted with the drug by the same doctor at the same facility, joinder under the standards of Rule 20 may well be appropriate”); In re Orthopedic Bone Screw Products Liability, 1995 WL 428683 at \*2 (suggesting that “plaintiffs who underwent surgery at the same medical provider, involving the same manufacturer’s device, or combination of devices, could, in obedience to Rule 20, be grouped into a complaint or number of complaints that would allow a plaintiff to be identified with a co-plaintiff in accordance with Rule 20’s standards.”). However, in Simmons, the court granted Wyeth’s motion to sever and then gave plaintiffs the opportunity to refile their complaints to assert claims that arose “from the same transactions or occurrences or series of transactions or occurrences.” In Bone Screw, the court recognized that “[i]t may be that certain plaintiffs in the same medical provider cannot be grouped with other plaintiffs treated at that same medical provider for a number of reasons that will still not allow Rule 20 to be applied, and those plaintiffs will have to file separately.” In re Orthopedic Bone Screw Products Liability, 1995 WL 428683 at \*2. The point is, like Baycol, where Judge Davis allowed the joinder of three plaintiffs because they all shared several common characteristics, the courts in Simmons and Bone Screw recognized that a case-by-case

approach should be used to determine whether a particular factual situation constituted a single transaction or occurrence, the primary consideration being whether the events were logically related. See Mosley, 497 F.2d at 1333 (citations omitted). In this case, this Court has no information before it to determine whether there are sufficient common characteristics among the plaintiffs to allow them to be joined in one complaint. To allow the plaintiffs to bundle their claims in one complaint solely on the basis that they saw the same medical provider would unfairly shift the burden to Medtronic to argue severance, and ultimately, to the transferring court to address whether plaintiffs are properly joined under Rule 20(a). See Simmons, 1996 WL 617492, at \*4. Bundling of the complaints at this juncture, while creating efficiencies for now, will only save for a later day the analysis that should have been performed in the first place. It is up to plaintiffs who wish to be joined together to establish at the front end the prerequisites for joinder; that burden should not be shifted to Medtronic or some other court to address severance down the road. As such, this Court cannot accept Medtronic's proposal regarding consolidated complaints.

Finally, the Court is satisfied that the burden of filing individual complaints in the present MDL has been mitigated to some degree by the Complaint by Adoption Form Order and the agreement by Medtronic to accept service of complaints via electronic service on its counsel, as set forth in Order No. 7, First Amended Omnibus Management Order [Docket No. 134].

For all the reasons stated above, this Court denies plaintiffs' request for consolidated filing.<sup>2</sup>

**B. Tolling Order**

Plaintiffs have asked for an order from this Court tolling the statute of limitations pursuant to American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974). In particular, plaintiffs proposed that this Court issue a tolling order that states the following:

1. Any applicable statute of limitations is tolled under the *American Pipe* doctrine for any claims against the Defendants from the date of the Order until sixty (60) days after final resolution of the class motions in the District of Minnesota;
2. The tolling of the statute of limitations under this Order shall be limited to those cases pending in or subsequently filed in the District of Minnesota.
3. This Order does not release any statute of limitations defense which could have been asserted prior to the date of this Order.

See Plaintiff's September 15, 2008 Proposed Order on Tolling

Plaintiffs argued that tolling of the statute of limitations would advance the efficiency and economy of the present litigation because it would keep potential class members from filing duplicative placeholder suits in order to preserve individual interventions to the extent that a class is not certified. See August 27, 2008 Joint

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<sup>2</sup> By virtue of this Order, this Court also denies the Motion Requesting Leave to File Fourth Amended Complaint [Docket No. 27] in Gilberto Colon Perez et al. v. Medtronic, Inc., Civil No. 08-485 (RHK/JSM), to add four additional plaintiffs on the basis that they are residents of Puerto Rico. See Civil Action Complaint and Jury Demand [Docket No. 27-2, Civil No. 08-485], ¶ 7. An order denying the motion to amend will be separately issued by this Court in Gilberto Colon Perez et al. v. Medtronic, Inc., Civil No. 08-485 (RHK/JSM).

Report at p. 5; Joint Report for September 24, 2008 Status Conference Pursuant to Order No. 4 [Docket No. 169] (“September 24, 2008 Joint Report”) at p. 4. Further, plaintiffs argued that Medtronic would not be prejudiced by a tolling order because Medtronic would not be precluded from making any arguments that a particular statute of limitations applies to a particular case. See August 27, 2008 Joint Report at p. 4; September 24, 2008 Joint Report at p. 3. In fact, according to plaintiffs, their proposed order expressly does not release any statute of limitations defense which Medtronic could have been asserted prior to the date of this Order. September 24, 2008 Joint Report at p. 3.

Medtronic opposes the entry of a general tolling order by this Court that would toll all statute of limitations periods for all subsequently filed cases for unspecified claims by putative class members. See August 27, 2008 Joint Report at p. 5; September 24, 2008 Joint Report at p. 4. Medtronic contended that the applicability of the statute of limitations and tolling under American Pipe is a case-specific determination that must take into account the relevant state law, and because there is currently no controversy before this Court, plaintiffs are seeking nothing more than an advisory opinion. Id. Further, Medtronic questioned the validity of a general tolling order when there are significant doubts as to whether any class will be certified.<sup>3</sup> See August 27, 2008 Joint Report at pp. 6-7. Medtronic also argued that having notice of some claims in a

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<sup>3</sup> This Court will not entertain, via this nondispositive motion, Medtronic’s intimation that class certification in mass personal injury cases are inappropriate. However, this Court notes that at least one court has challenged the propriety of tolling in mass tort cases. See generally, In re Rezulin Prods. Liab. Litig., MDL 1348, 2005 WL 26867, at \*3 (S.D.N.Y. Jan. 5, 2005) (citation omitted) (noting that the “wisdom of adopting the American Pipe rule in mass tort cases is, to say the least, highly debatable”).

personal injury context is insufficient notice to mount a sufficient defense of all possible cases (including claims by unknown persons) because individual circumstances vary. See September 24, 2008 Joint Report at p. 4. Finally, Medtronic maintained that any inefficiencies created by duplicative filing were remedied by the coordinated pretrial process afforded by the MDL procedures in place. Id. at p. 5.

This Court concludes that there is no basis for or reason to enter a general tolling agreement. First, in American Pipe, the United States Supreme Court held that “where class action status has been denied solely because of failure to demonstrate that ‘the class is so numerous that joinder of all members is impracticable,’ the commencement of the original class suit tolls the running of the statute for all purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status.” 414 U.S. at 552-53. The policy behind this decision is that a contrary rule would induce multiplicity of actions and judicial inefficiency because potential class members would end up filing motions to intervene or join in the event that the court denied class certification, simply to preserve their claims, exactly what Federal Rule of Civil Procedure 23 was designed to avoid. Id. at 553-54. In Crown, Cork & Seal Co. v. Parker, 462 U.S. 345 (1983), the Supreme Court clarified the scope of American Pipe ruling that a class action tolls a statute of limitations for all asserted members of the class including those class members who file actions on their own, and not just potential intervenors. Id. at 349-50. Thus, this Court finds that while tolling from the commencement of a class action may be appropriate to the extent that class certification motions are denied, there is no need to toll the relevant statute of limitations when this Court has yet to even entertain such motions. See McMillian v.

AMC Mortg. Services, Inc., 560 F. Supp.2d 1210, 1215 (S.D. Ala. 2008) (finding in a MDL matter that a plaintiff's claims were not subject to American Pipe class action tolling in part because "plaintiffs have made no showing that class certification was denied in those cases, such that all appearances are that plaintiffs are attempting to manipulate the American Pipe rule to support the inefficient proliferation of litigation."); In re Community Bank of Northern Virginia, 467 F. Supp.2d 466, 480 (W.D. Pa. 2006) ("We conclude that, because class certification has not been denied, American Pipe does not apply to this case.").

Second, a general tolling agreement is inappropriate because it does not take into account the various applicable state laws regarding the statute of limitations and tolling that would apply to the numerous individual plaintiffs residing all over the country. Jurisdiction in this case is based on diversity jurisdiction under 28 U.S.C. § 1332(a). See Amended Master Consolidated Complaint for Individuals [Docket No. 129], ¶ 12 and Third Party-Payors [Docket No. 129], ¶ 12. As such, it is the laws of the states of the various plaintiffs that govern the determination of whether a case is barred by the applicable statute of limitations:

When a transferee court receives a case from the MDL Panel, the transferee court applies the law of the circuit in which it is located to issues of federal law. Temporomandibular Joint (TMJ) Implant Recipients v. E.I. Du Pont De Nemours and Co. (In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.), 97 F.3d 1050, 1055 (8th Cir.1996). When considering issues of state law, however, the transferee court must apply the state law that would have applied had the cases not been transferred for consolidation. Id. All parties agree that Pennsylvania law, including its statutes of limitations, would have applied in these cases had they not been transferred. See also Larsen v. Mayo Med. Ctr., 218 F.3d 863, 866 (8th Cir. 2000)

(statutes of limitations are components of a state's substantive law).

In re General American Life Ins. Co. Sales Practices, 391 F.3d 907, 911 (8th Cir. 2004); see also Great Plains Trust Co. v. Union Pacific R. Co., 492 F.3d 986, 995 (8th Cir. 2007) (“Because this case arises under our diversity jurisdiction, we apply state tolling law but also apply federal procedural law.”). In this regard, the United States Supreme Court has found that the federal interest in assuring the efficiency and economy of class actions filed in its courts, after a class certification is denied, is:

vindicated as long as each unnamed plaintiff is given as much time to intervene or file a separate action as he would have under a state savings statute applicable to a party whose action has been dismissed for reasons unrelated to the merits, or, in the absence of a statute, the time provided under the most closely analogous state tolling statute.

Chardon v. Fumero Soto, 462 U.S. 650, 661 (1983); see also Adams Public School Dist. v. Asbestos Corp., Ltd., 7 F.3d 717, 719 (8th Cir. 1993) (same) (citing Chardon, 462 U.S. at 661)). Under Chardon and Adams, a court must determine whether a plaintiff was given sufficient time to re-file his action after the denial of a class certification according to the applicable state savings or tolling statute. If a plaintiff was “afforded this opportunity, then the federal interest underlying the American Pipe rule has been sufficiently protected.” Great Plains Trust Co., 492 F.3d at 998. However, even if the state law provides no relief, the Eighth Circuit has stated that it views “the federal interest here as sufficiently strong to justify tolling in a diversity case when the state law provides no relief.” Adams Public School Dist., 7 F.3d at 718-19; see also In re General American Life Ins. Co. Sales Practices, 391 F.3d at 915 (“We have stated, however, that the federal interest in ‘the efficiency and economy of the class-action

procedure' outweighs any state interest and therefore justifies tolling in diversity cases where the otherwise-applicable state law provides no relief.") (citation omitted).

Based on American Pipe and Eighth Circuit jurisprudence, the tolling and relief contemplated by American Pipe only comes into play if the law of a particular state does not afford relief consistent with American Pipe. Until such time as class certification is denied, and Medtronic asserts a particular plaintiff's claims are barred by the applicable state statute of limitations in concert with that state's tolling or savings clause (if any), this Court has no basis for applying the American Pipe tolling doctrine and finds that it would be premature to invoke it at this time. This Court is unwilling at this time to enter into a general tolling order in a vacuum or that ignores the applicable state statutes of limitations and state tolling provisions.

Finally, this Court notes that its ruling does not run afoul of American Pipe. If class certification is successful, there is no need for tolling; if class certification is denied, the law of this circuit can afford relief consistent with American Pipe and its stated purpose of protecting the efficiency and economy of class actions.

For all the reasons stated above, this Court rejects plaintiffs' request for a general tolling order.

J.S.M.