

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In Re:

MEDTRONIC, INC.  
SPRINT FIDELIS LEADS  
PRODUCTS LIABILITY LITIGATION

Multidistrict Litigation

No. 08-1905 (RHK/JSM)

**JOINT REPORT FOR JANUARY 28,  
2009 STATUS CONFERENCE**

Pursuant to Pretrial Order No. 4, counsel for Plaintiffs and Medtronic, Inc., Medtronic International Technology, Inc. (f/k/a Medtronic Puerto Rico, Inc.), Medtronic USA, Inc., and Medtronic Puerto Rico Operations Co. (collectively, “Medtronic”) respectfully submit this joint status report and agenda for the upcoming status conference on January 28, 2009, at 9:30 a.m.

**1. Summary of Activities Since Last Conference.**

Since the last status conference and hearing before this Court on December 17, 2009, the Court issued its January 5, 2009 ruling (the “January 5 Ruling”) granting Medtronic’s motions to dismiss the Master Consolidated Complaint for Individuals and the Master Consolidated Complaint for Third-Party Payors. The Court also issued an Order to Show Cause on that same date; and, on January 9, 2009 entered an Amended Order to Show Cause. Counsel have had discussions concerning the logistics of this process and other issues further described below in preparation for the status conference on January 28.

Attached hereto as Exhibit A for the Court’s convenience is an updated list of related pending cases not yet transferred and pending state court cases.

**2. Proposed Agenda.**

Counsel agree on the following proposed agenda for the January 28, 2009 status conference:

**A. Plaintiffs' Request for Leave to File a Motion for Reconsideration.**

On January 20, 2009, Lead Counsel for Plaintiffs submitted a two-page letter to the Court seeking leave to file a motion for reconsideration. Mr. Jerry Parker and Mr. Daniel Becnel also filed letters seeking permission to file motions to reconsider on behalf of the individuals that they represent. Medtronic intends to respond to Lead Counsel's letter under Local Rule 7.1(g) in advance of the January 28 Status Hearing and opposes Plaintiffs' request for leave to file a motion for reconsideration. Though the Court has not yet entered its January 5 Ruling in any of cases identified and though their letters are virtually identical to that submitted by Lead Counsel for Plaintiffs, Medtronic intends to respond to the letters submitted by Mr. Becnel and Mr. Parker as well unless the Court advises counsel that it is unnecessary. Medtronic likewise opposes the requests made by Mr. Becnel and Mr. Parker.

**B. Plaintiffs' Intent to File a Motion for Leave to Amend the Master Consolidated Complaint for Individuals and TPPs.** Plaintiffs have advised Medtronic that they intend to file a motion for leave to amend the Master Consolidated Complaints for Individuals and for TPPs, but have not yet committed to a time for doing so.

Plaintiffs request that the Court set a date for hearing on the motion to amend in March. In Medtronic's view, the Court has already addressed this issue in its January 5 Ruling and no motion should be filed.

**C. Tolling Agreement/Tolling Order.** Plaintiffs have advised Medtronic that they intend to seek an order tolling the statute of limitation pending the outcome of the motion practice before this Court and any appeal of the Court's January 5 Ruling. Plaintiffs have not yet tendered a proposed order, but Medtronic opposes entry of such an order. Medtronic maintains that no further briefing on this issue is necessary given the prior briefing and argument of this same subject which resulted in Order No. 9 entered on October 10, 2008 by Magistrate Judge Mayeron denying a previous request for entry of a tolling order. Plaintiffs request that the Court set a date for hearing on the motion for a tolling order after resolution of all other motions.

**D. Entry of Judgments – Complaints Adopting the Master Complaint.** Medtronic has advised Plaintiffs that it will ask the Court to enter orders of dismissal with prejudice and judgment orders immediately in all of the cases pending before the Court where Plaintiffs have simply adopted the Master Consolidated Complaint for Individuals with no additional claims asserted by using the Complaint by Adoption Form approved by the Court. Medtronic likewise seeks entry of an order of dismissal with prejudice and judgment in the single pending third-party payor complaint brought by Blue Cross Blue Shield of Louisiana. Plaintiffs believe that any such ruling should be deferred pending the rulings on any motion for reconsideration, the motion for leave to amend, or other motions that may be forthcoming. Plaintiffs further believe that wholesale entry of judgments in multiple cases is not proper without a ruling on choice of law issues so that the appellate courts can address the law to be applied against which parallel claims can be judged.

**E. Coordination of Submissions Under Amended Order to Show Cause.**

Medtronic has suggested that the submission made by Plaintiffs under the Court's Amended Order to Show Cause, presently due on March 13, 2009, should be coordinated by the Plaintiffs' Steering Committee to avoid unnecessary repetition of arguments that may be offered by multiple plaintiffs and to eliminate the additional administrative burden of multiple individual filings. In Medtronic's view, such coordination into a single filing would not deprive any individual plaintiff from making any appropriate argument, but would simply require such arguments to be coordinated and consolidated into a single filing by the Plaintiffs' Steering Committee in compliance with the Court's Amended Order to Show Cause.

**F. Unredacted FDA Documents.** At the outset of this case, certain Plaintiffs' counsel made FOIA requests to the FDA for all documents related to the approval of the root device and subsequent changes. Through today, the FDA has responded with an incomplete production of documents. Plaintiffs seek to have Medtronic immediately authorize the FDA to produce to Plaintiffs' counsel unredacted copies of all FOIA-requested pre-market approval and subsequent documents on file with the FDA if Medtronic is unwilling to produce such documents itself. These public documents are similar in nature to the documents this Court relied upon in its January 5 Ruling. To the extent the issue is one of confidentiality, that issue was resolved by the Court's Protective Order dated June 20, 2008. Medtronic will not agree to this request and opposes entry of an order requiring such production.

**G. State Court Litigation Update.** Pursuant to the request of Judge Denise Reilly of the Fourth Judicial District, counsel for Medtronic and certain Plaintiffs are currently scheduled to attend a status conference before Judge Reilly on January 28, 2009 at 1:00 p.m. Plaintiffs believe that a state court liaison should now be appointed. Medtronic does not oppose appointment of a state court liaison.

**H. Additional Motions.** Plaintiffs are still considering other motions.

**3. Parties' Positions on Disputed Items.**

**A. Plaintiffs' Request for Leave to File a Motion for Reconsideration.**

The Parties' preliminary positions are set forth in Plaintiffs' January 20 letters signed by Daniel Gustafson, Jerry Parker, and Daniel Becnel and the forthcoming response letter from Medtronic.

**B. Plaintiffs' Intent to File a Motion for Leave to Amend the Master Consolidated Complaint for Individuals.**

**Plaintiffs' Position:** Plaintiffs' intend to move for leave to amend the Master Consolidated Complaint. Plaintiffs believe that the issue should be briefed and argued before the Court and seek that the Court set a scheduling order to do so.

**Medtronic's Position:** Medtronic believes that the Court disposed of this issue in its January 5 Ruling. Medtronic further notes that Plaintiffs do not even hint at the nature of such an amendment, further supporting the Court's decision in its January 5 Ruling. Should the Court allow Plaintiffs to file such a motion for leave to amend, the Court should set an expedited schedule and Medtronic would respond promptly to any such motion.

**C. Tolling Agreement/Tolling Order.**

As noted above, the general positions of the parties on this issue have been previously discussed, briefed, argued and ruled upon by the Court.

**D. Entry of Judgments – Complaints Adopting the Master Complaint.**

**Medtronic's Position:** Presently, there are 229 cases pending before this Court which adopt the Master Consolidated Complaint for Individuals with no additional claims. Each of the cases filed only the approved Complaint by Adoption Form. Under the terms of the Court's Amended Order to Show Cause and as a matter of fact and law, Medtronic maintains that Plaintiffs in such cases cannot show any difference between their claims and the claims disposed of in the Court's January 5 Ruling. As such, there is no reason to delay entry of dismissal and judgment in favor of Medtronic for such cases. There is likewise no reason to delay entry of judgment in the single third-party payor action filed by Blue Cross Blue Shield of Louisiana as it is merely derivative of the claims dismissed by the Court. (For the Court's convenience, Medtronic has prepared the attached Exhibit B identifying the cases in which Plaintiffs adopted the Master Consolidated Complaint for Individuals and added no other claims.) Entry of orders of dismissal with prejudice and judgment orders in this group of cases will allow the appellate process to begin promptly on any or all of the issues raised by the Court's January 5 Ruling should Plaintiffs choose to appeal. To the extent that the Court's rulings on any submissions made by Plaintiffs under the Amended Rule to Show Cause may raise additional issues specific to individual complaints, Medtronic believes there is no reason to delay the appellate process on the core rulings made by the Court in its

January 5 Ruling. All of the Parties have an interest in prompt resolution of such an appeal.

Setting aside the possible, but unwarranted, delay in entry of judgment should the Court allow Plaintiffs to file a motion for reconsideration or a motion for leave to amend, none of the reasons offered by Plaintiffs below support any delay in entry of judgment in the group of cases adopting the Master Complaint. Apart from confirming the list in Exhibit B, there is no need to review each case in that group for unspecified changes related to “choice of law” as that has no bearing on the Court’s January 5 Ruling. There is no basis for plaintiffs in this group of cases to file any, let alone, multiple Rule 59 motions. As to the prospect for multiple judgments or “piecemeal” judgments, the process set up in the Amended Order to Show Cause to give Plaintiffs, including plaintiffs in cases newly transferred to or filed in the MDL after March 1, the ability to make submissions to avoid dismissal with prejudice, necessarily means that the Amended Order to Show Cause Process will continue on an ongoing basis. Indeed, it is not at all clear that all plaintiffs will even make submissions per the Show Cause Order and thus the Court could and should enter judgments in any such cases shortly after March 13 in advance of cases where submissions have been made. Accordingly, it is unlikely that all cases will or could be disposed of on a single date such that the timing of the appellate process would be identical for all. Medtronic’s proposal actually creates an orderly process to obtain review of the Court’s January 5 Ruling for a significant number of the cases now pending before this Court. Finally, the Eighth Circuit has multiple procedural tools for dealing with multiple appeals raising similar issues.

**Plaintiffs' Position:** Nothing is gained by Medtronic's suggested approach, which instead presents multiple problems. First, the Court will be forced to review each case filed to see if any changes would be appropriate based on choice of law principles or other legal arguments. Second, many of the forthcoming motions (i.e. to amend) will help resolve these issues. If the Court enters judgment in a piecemeal fashion, it will face multiple Rule 59 motions, and the Eighth Circuit will face hundreds of appeals in a similar piecemeal fashion. If the Court grants Plaintiffs' request for reconsideration or other motions, the Court may then consider and resolve these issues in a coordinated and centralized matter, thereby avoiding duplicative efforts and expense, and waste of judicial resources.

**E. Coordination of Submissions Under Amended Order to Show Cause.**

Medtronic's position is set forth above.

**F. Unredacted FDA Documents.**

**Plaintiffs' Position:** Plaintiffs seek to have Medtronic agree to authorize the FDA to produce to Plaintiffs' counsel unredacted copies of all FOIA requested pre-market approval documents on file with the FDA or produce such documents themselves.

**Defendants' Position:** Medtronic cannot comment on what requests Plaintiffs may have made to or what documents they may have received from the FDA, but Plaintiffs offer no rationale for why the Court should order the discovery sought by Plaintiffs following the Court's January 5 Ruling and Medtronic maintains – at it has maintained from the beginning of this MDL – that no such discovery should be permitted. Suggesting that the issue is merely one of confidentiality addressed by the

protective order in this litigation ignores the stay of discovery previously entered by this Court and the dismissal with prejudice of the Master Consolidated Complaints. The Court had ample discretion and legal authority to order a stay of discovery pending a ruling on the motions to dismiss the Master Consolidated Complaints as supported by the authorities cited in Medtronic's May 19, 2008 Rule 26(f) Report. There is certainly no basis to alter that decision now. Plaintiffs should not be permitted to engage in discovery in the hopes of somehow creating a viable claim given the nature of the Plaintiffs' allegations, the Plaintiffs' theory of the case, and the arguments fully addressed in the Court's January 5 Ruling.

**G. State Court Litigation Update.**

**Plaintiffs' Position:** Plaintiffs suggest appointment of state court liaison counsel.

**Defendants' Position:** Defendants do not oppose appointment of state court liaison counsel.

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