

Frequently Asked Questions

Guidant Hotline #: 1-800-887-8029

MDL

What is multidistrict litigation (MDL)?

28 USC 1407 allows civil actions, pending in different districts, involving one or more common questions of fact to be transferred to any district for coordination or consolidated pretrial proceedings. The decision to coordinate and transfer is made by the Judicial Panel on Multidistrict Litigation. For further information on MDLs see the Panel's website at <http://www.jpml.uscourts.gov/> and/or the Manual for Complex Litigation, chapters 20 and 22.

How does a case "join" the MDL? Why am I here?

Cases filed in state courts will more than likely be removed to federal court on diversity and then transferred to the MDL by the Judicial Panel of Multidistrict Litigation. Likewise, cases filed directly into any United States District Court will be removed to the MDL court by the Judicial Panel on Multidistrict Litigation. A case may also be filed directly into the United States District Court for the District of Minnesota (the MDL court for this action). Upon transfer to the MDL court, each case will be assigned a case number for the MDL court (PTO 29 paragraph 3).

Do I need to be admitted to practice before the MDL court?

Attorneys admitted to practice and in good standing in any United States District Court are admitted as MDL attorneys for this litigation. See PTO 29 paragraph 18.

What is the LCC? What is the PSC?

The Lead Counsel Committee (LCC) members and their responsibilities can be found in PTO 1. In general, the LCC is responsible for coordinating the activities of Plaintiffs during pretrial proceedings. For a more in depth description see PTO 1.

The Plaintiffs' Steering Committee (PSC) members and their responsibilities can be found in PTO 2. In general, the PSC shall consult with the LCC in coordinating the Plaintiffs' pretrial activities and in planning for trial. For a more in depth description see PTO 2.

What jurisdiction does the MDL judge have over my case?

Per 28 USC 1407, the MDL judge may exercise the powers of a district judge in any district for the purpose of conducting pretrial proceedings. The MDL judge may rule on motions both pending before transfer and those filed after transfer into the MDL. The court may also terminate actions by granting summary judgment or pursuant to settlement agreements. Generally, the MDL court takes a broader approach and concerns itself with global issues such as common discovery, general pre-trial motions such as preemption, punitive damages, Third Party Payor actions and Medicare as Secondary Payor Act motions, and global settlement. In most cases the MDL court will suspend any discovery in individual cases until the global discovery is complete. The MDL court has only

limited jurisdiction to try cases. Case not tried in the MDL court will be remanded, unless settled, to the transferor court at an appropriate time.

What are my responsibilities as an individual attorney now that my claim is in the MDL?

Individual attorneys are ultimately responsible to their client for the MDL claim. While a case is in the MDL, each individual attorney is responsible for monitoring the activity in the MDL (viewing PTOs, reading transcripts of court proceedings, being diligent about meeting court set deadlines, etc), communicating with your client and acting as the attorney of record for you client. Individual attorneys are responsible for filling out the Plaintiff Fact Sheet (PFS) for each client, turning over client's devices for testing, responding to deficiency letters from the Defendants, and evaluating each of their claims based on information gained through global discovery and specific client discovery as obtained through the MDL (i.e. Defendant Fact Sheets and Device Testing Results). Individual attorneys also have the responsibility for trial of their own cases, based in part on discovery generated in the MDL.

What is the notice of appearance requirement?

All counsel must file a Notice of Appearance in the Master Docket (only) after their initial filing or transfer of an individual case. A Notice of Appearance must be filed for each Plaintiff that an attorney represents. Along with the filing of the Notice of Appearance each attorney must register for ECF (see ECF question and answer below). For further discussion see PTO 29, paragraph 4.

Where can I find PTOs? Transcripts? Court information?

Information regarding the litigation, including court Pre-Trial Orders (PTOs), counsel contact information, transcripts of court proceedings, court contact information and the court calendar can be found on the court's MDL website, http://www.mnd.uscourts.gov/Guidant_Mdl/index.htm.

How do I file a case directly into the MDL?

If you want to file the case directly into Minnesota federal court, you can do so without local counsel. For further discussion see PTO 10.

Waiver of Service:

Defense counsel, Tim Pratt at Shook, Hardy & Bacon, 2555 Grand Blvd., Kansas City, MO, 64108-2613, has been accepting service on behalf of Guidant Corp. and Guidant Sales Corp. You are required to forward a copy of the complaint, two copies of a "Waiver of Service of Summons" form with a self-addressed, postage paid envelope directly to him.

ECF

How do I work CM/ECF?

Case Management, Electronic Case Files (CM/ECF) is the MDL courts electronic filing system. In order to electronically file anything with the MDL court an ECF login and password must be obtained by the attorney. (See Attachment A to PTO 29 found under the FORMS link on the MDL website) MDL attorneys have a special form that must be

filled out in order to obtain an ECF login and password. This form is available at <http://www.mnd.uscourts.gov/cmecf/index.htm> by clicking on the link Registration Form for E-Filing - MDL Attorneys or in Attachment A to PTO 29.

Additional ECF information:

ECF User's Manual and ECF Procedures Guide are available from the court's website: <http://www.mnd.uscourts.gov/>.

Additional aides are available at: <http://www.mnd.uscourts.gov/cmecf/index.htm>.

ECF also has a help desk number for questions: 612-664-5155 or toll free 888-325-4975.

Motions/Forms

If my claim had a motion pending in the transferor court, what happens to it in the transferee (MDL) court? How do I get my motion heard in the MDL court?

Any motions that were pending in an action before it was transferred to the Guidant MDL court will be no longer pending after transfer. If a party wishes for a motion that was previous pending in the transferor court to be heard by the MDL court, that party must re-file the motion within the MDL.

How do I file something in my individual case?

Documents intended to apply only to particular cases must indicate this in the caption of the filing. The filings must be filed and docketed in both the master case file and the specified individual case file. See PTO 29 paragraph 5. All documents filed by the parties in the MDL, excluding the initiation documents, must be filed by ECF. See PTO 29 paragraph 6.

What is the Master complaint and how can I use it?

The Master complaint is an aide provided by the LCC, and stipulated to by the Defendants, for Plaintiffs to use when filing their claims in this litigation. The Master complaint may be used in new filings or may be adopted by claims already filed in the MDL.

What are the MDL assessments? When does the assessment happen? Who is assessed? Do I have to sign up for assessments?

The MDL assessments are costs you pay if your case is transferred to the MDL and ultimately resolved here. The Guidant MDL has two different assessment rates. Each Plaintiff must agree to one. For the first assessment the Plaintiff must complete and return the "90 Day Participation Agreement" found as Attachment A to PTO 6. This form must be completed and returned to Liaison Counsel within 45 days of docketing their case in the MDL. The second assessment rate is for all those Plaintiffs who do not complete and return the 90 Day Participation Agreement within 45 days of docketing within the MDL. These Plaintiffs must fill out the Post 90 Day Participation Agreement found as Attachment B to PTO 6 and return it to Liaison Counsel. If you do not complete one of these two agreements, the Post 90 Day Participation Agreement shall apply to your case.

See PTO 6 for a detailed description of common benefit fees and costs of the MDL.

When can a case be “fast-tracked” in the MDL process?

Generally, once a case is in the MDL it follows the same path as all other cases like it. But if there is a medically exigent reason to move the case faster, such a motion can be made and the court will make a ruling.

Plaintiff Fact Sheet (PFS)

What is it?

The Plaintiff Fact Sheet is an “interrogatory” agreed upon by the Defendants and the LCC that applies to all Plaintiffs in the MDL. The approved form allows the Defendants and the LCC to get a basic understanding of each claim filed in the MDL and a general appreciation for the MDL as a whole. The Defendants use the PFS as the basis for their individual discovery requests. The LCC and Defendants both use the forms to evaluate each case for possible representative trial applicability. The Defendants also use the forms when weighing their settlement possibilities.

Where to find a copy of the PFS?

A copy of the PFS can be found on the court’s MDL website (listed above). The PFS, available in Word or PDF format, is available as Attachment B to PTO 29 and available for download under the FORMS section of the MDL website.

When is the PFS due?

The PFS is due to the Defendants 30 days after the date the case is docketed in the MDL. See PTO 29, paragraph 20. In rare cases, Plaintiffs have been dismissed for failure to supply the Defendants with a completed PFS.

Who should the PFS be sent to?

The court requires (per PTO 2) that the completed PFS be sent to Defense counsel at the following address: Shook Hardy & Bacon, Attention: Jane Bartley, 2555 Grand Blvd., Kansas City, MO, 64108-2613. The MDL lead counsel request that a copy of the completed PFS also be sent to Plaintiffs’ Liaison Counsel, Zimmerman Reed, Attn: Tina Olson, 651 Nicollet Mall, Suite 501, Minneapolis, MN 55402.

Can I get an extension past the initial 30 days? How do I get an extension?

An extension can be requested from Jane Bartley at Shook Hardy & Bacon. Historically Shook Hardy & Bacon has been willing to grant one time 30 day extensions. It is not likely that Shook Hardy & Bacon will grant more than on PFS extension.

What do I do about these deficiency letters I get after completing my PFS?

It is understood that since the PFS is agreed to by both parties, all questions on the PFS must be answered as completely as possible. Each question should have some sort of response noted, even if it is simply, “no”, “unknown”, “not applicable” or “to be supplemented at a future date.” The Defendants have not accepted “See attached medical records” as a compliant response. Any legitimate deficiencies should be remedied in a reasonable time frame. Not responding to deficiencies can lead to Defendants filing a motion to compel with a subsequent ruling from the court.

Defendant Fact Sheets (DFS)

What is it?

A stipulated and court ordered form that the Defendants must complete for each Plaintiff in the MDL litigation regarding Guidant's information pertaining to the Plaintiff's device and interactions with Plaintiff's physicians.

When do I receive it?

Per stipulations between the parties, the Defendants owe a DFS for each Plaintiff 30 days after the PFS is considered substantially complete. The Defendants provide the DFSs and the corresponding documents to Liaison Counsel who then sends out the DFS and documents via e-mail to the attorneys listed on ECF for that Plaintiff.

What will I receive?

The documents will vary for each Plaintiff. Each Plaintiff will receive a completed DFS form. The Guidant documents accompanying each DFS vary greatly from Plaintiff to Plaintiff. A general list of documents that could be provided is: warranty form, patient verification form, MedWatch form, event summary, returned product report summary, call logs, physician letters, physician agreements, trace history reports and/or credit memo.

Document Depository

What is it?

PTO 2 paragraph 18 establishes the Guidant MDL document depository. The document depository houses discovery documents produced by Guidant, documents produced through third party subpoenas, deposition transcripts, deposition exhibits and plaintiff devices that have been sent to Liaison Counsel for testing by Guidant per PTO 15.

Where is it?

The depository's physical location is adjacent to Liaison Counsel's office at Zimmerman Reed, 651 Nicollet Mall, Suite 501, Minneapolis, MN 55402. Though there is a physical location the document depository itself is an electronic depository and available online wherever internet accessible is available.

Who can have access?

Any Plaintiff within the MDL can obtain access to the document depository subject to the Protective Order entered by the MDL court. (PTO 2 paragraph 18).

How do I get access?

To gain access to the Guidant MDL depository please provide the following:

- a. Your name
- b. Firm's name
- c. Firm's address
- d. Contact phone number
- e. E-mail address
- f. Case(s) pending in the MDL (including Court file number)

Once this information is verified you will be provided with a login and password for the depository.

Who do I contact about the depository?

Elizabeth Peterson
Zimmerman Reed
651 Nicollet Mall
Suite 501
Minneapolis, MN 55402
E-mail: eap@zimmreed.com

Where are Medical Records being stored and how can I access them?

Medical Records are not being collected globally by the LCC. Each individual attorney is responsible for collecting their clients' medical records. The Defendants have set up a medical records repository through MRC Records in Houston, Texas and have agreed to share access and costs with each individual attorney. To gain access to the medical records collected by the Defense for your clients go to <https://www.mrcrecords.com/RecordRetrieval.asp?Mode=Logon> and click on the link for New User. Fill out the MRC form and once MRC confirms that you are listed as an attorney of record for an MDL case they will send you a login and password to enter the system. For security reasons, MRC will only allow you access to Plaintiffs' records for which you are listed as counsel. Please note, you will be charged for copies of any records you request from MRC.

Device Testing

What is it?

The MDL court has ordered that each device in the MDL litigation, if available, must be provided to Guidant for standard testing.

When is it?

Per court order, device testing occurs every 2 weeks. This timeline can change by agreement of the parties when there are not enough devices present to make testing on the 2 week schedule efficient use of both parties' resources. Contact Liaison Counsel for questions concerning when the next device testing will be.

When do I have to turn over my device?

Per PTO 15 and Amended PTO 15, Plaintiffs in possession of their devices need to have these devices turned over to Liaison Counsel within 30 days of the docketing of their cases in the MDL court.

Where do I send my device?

Plaintiff's device should be sent to Liaison Counsel:

Ron Goldser
Zimmerman Reed
651 Nicollet Mall
Suite 501
Minneapolis, MN 55402

The devices will be cataloged upon arrival and stored in a secure spot until the day of testing.

How do I send my device?

Devices can be sent by any method that the Plaintiff or Plaintiff's attorney chooses. Please make sure to insulate and package the device well. It is suggested that the sender label the outside packaging with "Medical Device: DO NOT SCAN." This is a precaution against the possibility that the scanner mechanisms may interfere with the device and corrupt the testing results. Please note, you should be prepared to show the chain of custody for your device.

Does my case have to be filed in order for the device to be tested?

Historically, Guidant has been willing to test devices for claims that have not been filed yet. Defendants reserve the right to change this practice in the future if they deem it necessary.

What is the protocol for device testing?

Devices are sent to Liaison Counsel. Upon arrival each device is cataloged and then placed in secure storage until the next testing date. On the day of testing the devices are taken from the depository to Guidant by an MDL representative. The MDL representative remains with the devices while they are at Guidant for testing. Each device is put through 3 different "tests." The first is a visual inspection by a Guidant technician. Visual observations are noted and pictures may be taken. The device is then put through a memory download where the memory is saved directly into a Guidant laptop. The final "test" is the interrogation where the device is interrogated by a Guidant interrogation device and the information is saved to a disk. After completing each of these tests the device is given back to the MDL representative and returned to the packaging that it was received in. At the end of the testing group, chain of custody forms are signed for each device and all of the devices are brought back to the depository by the MDL representative.

When will I see results?

Device results are sent to Liaison Counsel for distribution. Historically, the device results begin to be received by Liaison Counsel 8-10 weeks after testing. Complete results have not always been provided at one time. Counsel may receive several different emails containing device results as they are received by Liaison Counsel.

What kinds of results are being given?

Generally Defendants have provided the following results for each device: photos of the device, a spreadsheet of visual observations, possible copy of printouts that were produced on the day of testing and a report entitled “PERL PGPRT Tool Report.”

Will I get the device back?

Devices will not be returned to the attorney after testing unless specifically requested. If such a request is made the device will be returned via Federal Express in the original packaging (as much as reasonably possible) along with the chain of custody form.

Can I send the device to my own expert?

Per PTO 15, Guidant must have first access to run testing on any device in the MDL litigation. After testing by Guidant, the Plaintiff may request that the device be sent to an expert for independent evaluation. This evaluation must correspond with the limitations set out in the Amended Preservation of Evidence order (Attachment C to PTO 2). Absolutely no destructive testing may be done at this time.

Does the LCC have a device expert I can use?

At this time, the LCC recommends that individual counsel find an electro physiologist (EP) in their area who is willing to interrogate the Plaintiff’s device. This interrogation is the same procedure as the interrogation that is done during a patient check-up or visit to a device clinic. This should provide the attorney with a print out of the devices performance since the last interrogation.

If I don’t have the device what am I required to do?

If the Plaintiff does not have the device or does not know where the device is a letter must be sent to Defense Liaison Counsel, Joe Price at Faegre and Benson, 2200 Wells Fargo Tower, 90 South Seventh Street, Minneapolis, Minnesota, 55402-3901, stating this. If a Plaintiff does come into possession of their device after the 30 day deadline has passed, Amended PTO 15 instructs the Plaintiff to send the device to Liaison Counsel for testing within 30 days of acquiring the device.

Do I need a protective order to get the device?

Most hospitals and/or medical providers must turn explanted devices over to Guidant as part of their contractual protocol. A Plaintiff may request that the device be turned over to the Plaintiff instead. In these cases a hospital may request a protective order before handing a device over to a Plaintiff after explant. Historically the court has provided protective orders requested by MDL Plaintiffs. The court has stated it will not provide protective orders to individuals who are not currently docketed in the MDL.