

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to:

Cynthia Lamoureux,

Plaintiff,

v. Civil No. 06-1567 (DWF/AJB)
Guidant Corporation,
a Foreign corporation,

Defendant.

ORDER

Cynthia Lamoureux commenced this action in the Middle District of Florida on February 28, 2006, and the case was subsequently transferred to this Court on May 22, 2006. She died on September 4, 2006. The Court granted a Motion to Substitute Party by Suggestion of Death on December 6, 2006, and allowed Cynthia Lamoureux's husband, Howard Lamoureux, in his capacity as the anticipated Executor for the Estate of Cynthia Lamoureux, to be substituted as the plaintiff. Pursuant to Federal Rule of Civil Procedure 17, Guidant then filed a Motion to Dismiss for Lack of Standing on January 9, 2007, because Howard Lamoureux has not yet been appointed Personal Representative of the Estate of Cynthia Lamoureux.

As it did in a previous motion to dismiss for lack of standing, Guidant seeks dismissal with prejudice, without addressing why such a dismissal is warranted. In

response, Howard Lamoureux explains that he will file the necessary documents with the Florida Probate Court as soon as he receives an official copy of Cynthia Lamoureux's death certificate, which he has already requested. He asks for a 90-day extension to be appointed as Personal Representative of his wife's estate, or at a minimum, that the case be dismissed without prejudice.

Rule 17 allows an executor or an administrator to sue on behalf of a deceased person and provides in relevant part that "[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection." Fed. R. Civ. P. 17(a). Here, a reasonable time has not elapsed from the time of Cynthia Lamoureux's death and Guidant's objection. The Court hopes that Guidant considers the spirit of Rule 17 before filing future motions to dismiss for lack of standing, especially those where it asks for dismissal with prejudice.

Based on a review of the file and the submissions of the parties, **IT IS HEREBY ORDERED:**

1. Guidant's Motion to Dismiss for Lack of Standing (Civ. No. 06-1567 (DWF/AJB), Doc. No. 7; MDL No. 05-1708 (DWF/AJB), Doc. No. 1075) is **DENIED**. If Howard Lamoureux fails to be appointed as Personal Representative of the Estate of Cynthia Lamoureux within 90 days from the date of this Order, and the parties cannot reach an agreement on this issue, Guidant may renew its motion to dismiss.

Dated: February 6, 2007

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court