

**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:

Alphonzo Allen, individually and on behalf
of all others similarly situated,

Plaintiff,

v. Civil No. 06-21 (DWF/AJB)

Guidant Corporation, individually and on
behalf of all others similarly situated,

Defendant.

Leonard Mayem,

Plaintiff,

v. Civil No. 06-17 (DWF/AJB)

Guidant Corporation,

Defendant.

**ORDER ON GUIDANT'S
REQUEST TO FILE A MOTION
FOR RECONSIDERATION**

Adel A. Nadji, Esq., Joseph E. Russell, Esq., and William M. Audet, Esq., Alexander, Hawes & Audet, LLP, and Dario B. deGhetaldi, Esq., and George R. Corey, Esq., Corey, Luzaich, Pliska, deGhetaldi & Nastari, LLP, counsel for Plaintiff Alphonzo Allen.

Adel A. Nadji, Esq., Joseph E. Russell, Esq., and William M. Audet, Esq., Alexander, Hawes & Audet, LLP, and Ramon Rossi Lopez, Esq., Lopez, Hodes, Restaino, Milman & Skikos, counsel for Plaintiff Leonard Mayem.

Timothy A. Pratt, Esq., Shook Hardy & Bacon LLP, counsel for Defendant.

Pursuant to Local Rule 7.1(g), Guidant requests permission from this Court to file a Motion to Reconsider the Court's September 22, 2006 Order. Guidant asks the Court to reconsider its ruling because it will "result in needless additional correspondence and motion practice by both parties as Guidant attempts to obtain additional provider-specific authorizations." According to Guidant, a new order "requiring [all] plaintiffs to execute non-provider-specific authorizations would benefit all parties and prejudice none." The PLCC opposes Guidant's request.¹

In the September 22, 2006 Order, the Court denied Guidant's First Motion to Compel Production of Completed Plaintiff Fact Sheets and Executed Medical Authorization Forms as it related to Plaintiffs Allen and Mayem because it concluded that Allen and Mayem had submitted completed medical authorization forms. The Court also summarized its prior Orders relating to medical authorization forms:

Taken together, the Court's Orders do not stand for the proposition that a properly executed medical authorization form is one that is signed by a plaintiff but is not provider specific. Rather, a plaintiff must complete an authorization form, limited only in time as described in PTO No. 14, for

¹ In response to the Court's request, the PLCC submitted a response to Guidant's request on November 17, 2006.

each and every provider listed on a plaintiff's PFS. A plaintiff may not limit the healthcare providers from whom Guidant can obtain records by failing to give a medical authorization form for a specific provider. Finally, as in all cases, under Federal Rule of Civil Procedure 26(e), every plaintiff has a continuing duty to supplement his or her disclosures, including providing additional executed authorization forms, if a plaintiff learns that information disclosed to Guidant is incomplete or incorrect.

(September 22, 2006 Order at 5.)

In doing so, the Court did not simply engage in an exercise of semantics. Rather, it carefully looked at the text of its previous Orders and the context under which each was entered, especially given that many of the Orders were based on proposed orders submitted by Guidant. Importantly, prior to the entry of those Orders, Guidant never raised, suggested, or gave any notice of its intention to seek the use of blank or generic medical authorization forms.

Based on Guidant's description of its efforts in the bellwether cases, the Court is well aware of the difficulties Guidant faces when individual plaintiffs do not submit or delay in submitting additional provider forms. As stated in the September 22, 2006 Order, however, the burden is on the plaintiff, not Guidant, to ensure that additional executed authorization forms are provided. *See* Fed. R. Civ. P. 26(e). There are real and serious consequences to plaintiffs if they fail to obey the discovery rules. *See* Wright, Miller, & Marcus, *Federal Practice and Procedure: Civil 2d* §§ 2050; 2282 (summarizing sanctions imposed for violations of Rule 26(e)).

A request for leave to file a motion for reconsideration will only be granted upon a showing of "compelling circumstances." D. Minn. L. R. 7.1(g). A motion to reconsider should not be employed to relitigate old issues but to "afford an opportunity for relief in

extraordinary circumstances.” *Dale & Selby Superette & Deli v. United States Dept. of Agriculture*, 838 F. Supp. 1346, 1348 (D. Minn. 1993). Here, Guidant has not presented any compelling circumstances to warrant reconsideration.

A motion to reconsider is not the proper vehicle for what Guidant seeks. If Guidant wants an order for blank authorization forms, it should ask for it in a proper motion, as opposed to in a motion to compel premised on its own interpretation of the Court’s Orders. Then the Court would be able to properly consider the merits of Guidant’s request. The parties are in the process of negotiating a streamlined Plaintiff’s Fact Sheet. During those discussions, the Court is hopeful that the parties can also assuage Guidant’s concerns over supplementing medical authorization forms and contemplate consequences—similar to those imposed for failure to produce devices for testing—for failure to timely supplement medical authorization forms.

Therefore, for the reasons stated above, **IT IS HEREBY ORDERED:**

1. Guidant’s request pursuant to Local Rule 7.1(g) to file a motion to reconsider is **DENIED**.

Dated: November 28, 2006

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