

**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 All Actions

**ORDER REGARDING PLAINTIFFS’
MOTION TO COMPEL
RONALD W. DOLLENS’
COMPLIANCE WITH SUBPOENA**

This matter is before the Court on Plaintiffs’ Motion to Compel Ronald W. Dollens’ Compliance with Subpoena. Dollens worked for Guidant Corporation (“Guidant”) from 1994 until November 15, 2005, during which time Plaintiffs assert that he oversaw substantial changes to the devices at issue in this MDL. At the time of his departure, Dollens was Guidant’s President and CEO. On January 30, 2007, Plaintiffs served Dollens with a subpoena requesting that he produce certain documents by February 28, 2007, and that he appear at a deposition on March 15, 2007. On February 28, 2007, Dollens served Plaintiffs with objections to the document requests. On March 13, 2007, Plaintiffs filed their Motion to Compel.

Plaintiffs assert that Dollens’ objections were untimely because they were served more than 14 days after Dollens, or his counsel, received the subpoena.¹ More

¹ While Plaintiffs are technically correct that Dollens’ objections were untimely, *see* Fed. R. Civ. P. 45(c)(2)(B), the Court suspects that the parties have established a course of dealing in which such delays are routinely accepted. Given this and without more
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importantly, they contend that his objections are without merit because the documents they seek could lead to admissible evidence and because the documents requested are narrowly tailored to specific, relevant issues, such as Defendants' marketing efforts, Defendants' communications with the Food and Drug Administration, and defects in Defendants' implantable defibrillators. Plaintiffs argue that Dollens has unique knowledge concerning what he, as Guidant's President and CEO, did or did not know about the alleged defects in Defendants' defibrillators. Finally, they point out that Dollens did not specifically object to appearing for a deposition.

Defendants² respond that Dollens should not be compelled to comply with the subpoena or appear at a deposition because courts routinely prevent plaintiffs from deposing high-level executives who possess only non-unique knowledge that plaintiffs can obtain from lower-level employees. *See, e.g., Baine v. Gen. Motors*, 141 F.R.D. 332 (M.D. Ala. 1991). Defendants explain that Guidant is the parent company to Cardiac Pacemakers, Inc. ("CPI") and that CPI, not Guidant, is the company that designed and manufactured the devices at issue in this MDL. They explain that Plaintiffs are scheduled to depose CPI's President and CEO in a few weeks. Moreover, relying on an affidavit Dollens submitted in a Texas state court case, Defendants assert that Dollens has

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information concerning the timeliness issue, the Court declines to issue a ruling based on untimeliness.

² Defendants, not Dollens, submitted an opposition to Plaintiffs' Motion. Defendants' attorneys also represent Dollens. Dollens did not file an opposition to Plaintiffs' Motion.

no unique or specialized personal knowledge related to the claims in this litigation and that the information Plaintiffs seek is available from other sources that are more convenient, less burdensome, and less expensive. Finally, Defendants note that they have produced over 13.5 million pages of documents in this MDL that are directly responsive to the documents Plaintiffs seek from Dollens, including over 28,000 pages of documents from Dollens' custodial file.³

The Court concludes that Plaintiffs are entitled to some of the documents they seek from Dollens because they are reasonably calculated to lead to the discovery of admissible evidence concerning at least one of Plaintiffs' claims or defenses. However, a review of the generic, broadly-worded document requests shows that they are not tailored specifically to Dollens. Instead, they ask for a broad array of documents both in Dollens' possession and in the possession of Dollens' "current and former employees, attorneys, agents, or other persons acting or purporting to act of his behalf." It would be unduly burdensome for Dollens if he were required to produce all the documents responsive to the document requests. Given this, the Court will modify the document requests to require Dollens to produce only his personal documents, maintained during and after his Guidant employment, that are responsive to Plaintiffs' document requests.

³ With little discussion, Defendants also claim that discovery from Dollens is automatically stayed by 15 U.S.C. § 78u-4(b)(3)(B) because of an ongoing securities punitive class action. Defendants read that statute too broadly. *See, e.g., Tobias Holdings, Inc. v. Bank United Corp.*, 177 F. Supp. 2d 162 (S.D.N.Y. 2001) (concluding that the automatic stay provisions of 15 U.S.C. § 78u-4(b)(3)(B) do not apply to diversity-based state law claims that are unrelated to federal securities claims). Moreover, assuming the statute does apply, the Court finds that Plaintiffs would be unduly prejudiced if they were prevented from obtaining discovery from Dollens.

Finally, despite Dollens' affidavit to the contrary, the Court concludes that Dollens likely has personal information that is reasonably calculated to lead to the discovery of admissible evidence concerning at least one of Plaintiffs' claims or defenses. And it would not be unduly burdensome for Dollens to appear at a deposition in Indianapolis, Indiana, where he lives, for the limited purposes described in Plaintiffs' subpoena.

Based on the foregoing, it is **HEREBY ORDERED**:

1. Plaintiffs' Motion to Compel Ronald W. Dollens' Compliance with Subpoena (Doc. No. 1322) is **GRANTED IN PART**. No later than two weeks from the date of this Order, Ronald W. Dollens shall produce documents in his personal possession, maintained during and after his Guidant employment, that are responsive to the document requests attached to the January 30, 2007 subpoena. The documents shall be produced as Dollens keeps them in his usual course of business. Absent agreement of the parties, Dollens shall appear for a deposition within three weeks from the date of this Order.

Dated: March 20, 2007

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