

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE: GUIDANT  
DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to All Actions

**ORDER AND MEMORANDUM**

On May 3, 2006, this Court entered Pretrial Order No. 9, which discussed the details of the selection of representative or bellwether cases from the pool of MDL cases that were filed as of March 23, 2006. On May 9, 2006, Plaintiffs' Lead Counsel Committee submitted a letter to the Court requesting that the Court modify Pretrial Order No. 9 to permit the inclusion of cases that were filed after March 23, 2006, but before April 24, 2006 (apparently, a total of four to six cases), in the potential pool for bellwether selection.

Plaintiffs' request is, in effect, a request for reconsideration pursuant to Local Rule 7.1(g). "Motions to reconsider are prohibited except by express permission of the Court, which will be granted only upon a showing of compelling circumstances." D. Minn. L.R. 7.1(g).

The Court has considered the parties' submissions and finds no compelling circumstances to merit reconsideration of the Court's Pretrial Order No. 9. Thus, the Court hereby enters the following:

## ORDER

1. Plaintiffs' request for leave to file a motion for reconsideration of Pretrial Order No. 9 is **DENIED**.
2. Consistent with Pretrial Order No. 9, the parties will be allowed to select representative cases from the pool of the MDL cases that were filed as of March 23, 2006.
3. Plaintiffs will have until 5:00 p.m. on May 30, 2006, to present their twenty proposed representative cases to Guidant. For each case selected by Plaintiffs, consistent with prior orders of this Court, properly completed Plaintiffs' fact sheets, along with any medical records and any medical authorizations, must be provided. Plaintiffs may not limit the healthcare providers from whom Defendants can obtain records. Nor may Plaintiffs restrict the periods of time from which records may be obtained.
4. Guidant will have until 5:00 p.m. on June 7, 2006, to present its twenty proposed representative cases to Plaintiffs.

Dated: May 19, 2006

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

## MEMORANDUM

Plaintiffs have made much ado of the pool from which the bellwether or representative cases may be selected, and here, have attempted to convince the Court that the inclusion of an additional four to six cases will alter the representative nature of their selected cases. However, the Court finds no compelling reason to reconsider its initial

decision that the parties may only select from cases that were filed prior to March 23, 2006. Plaintiffs have not demonstrated that they are unable to come up with a list of twenty representative cases within the confines of that deadline.

Moreover, regardless of the pool from which such cases may be selected, the Court will carefully consider the parties' selections to determine if the selections are truly representative. Ultimately, if the Court does not view the pool as truly representative, the Court will take other measures to determine the cases that will be tried as representative in Spring 2007, whether that be by random selection or otherwise.

D.W.F.