

**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 MODIFYING PRETRIAL ORDER NO. 15

On July 24, 2006, this Court issued Pretrial Order No. 15 (“PTO No. 15”), the text of which Guidant proposed. PTO No. 15 established guidelines and deadlines for the production of devices at issue in this litigation and information pertaining to those devices. Guidant now seeks to amend Paragraph 3 of PTO No. 15, which is entitled “Schedule for Device Production,” and it has submitted a proposed order to modify PTO No. 15.

At the October 26, 2006 status conference, the parties agreed that PTO No. 15 should be extended to apply to all future actions docketed in the MDL, and they disagreed about two items in Guidant’s proposed order: (1) the wording of proposed subsection F, concerning the consequences of failing to comply with PTO No. 15; and (2) the location of the testing of plaintiffs’ devices.

Based upon the presentations of counsel and a review of the file, the Court hereby enters the following amendment to PTO No. 15:

1. PTO No. 15 shall apply to each future action transferred to, or filed in MDL No. 05-1708 (DWF/AJB).

2. The PTO No. 15 deadlines for actions transferred to, or filed in, MDL No. 05-1708 (DWF/AJB) after July 24, 2006, shall be calculated from the date the case is docketed in MDL No. 05-1708 (DWF/AJB).

3. Paragraph 3 of PTO No. 15 entitled "Schedule for device production" shall be amended as follows:

A. Plaintiffs' Liaison Counsel will inform Defendants' Liaison Counsel two business days in advance of the designated testing date of the number and types and serial numbers of devices to be tested. Device testing shall take place every alternate Tuesday at Defendants' facilities, at 9:00 a.m.¹ The first such testing date will occur on the second Tuesday after entry of this Order. It will be the responsibility of the Plaintiffs' Liaison Counsel to transport all devices for testing to Defendants' facilities for all testing sessions.

B. The testing sessions shall be conducted in a cooperative, professional manner. Plaintiffs' Counsel and their agents, including experts, paralegals or other staff, are permitted to observe and videotape all testing. Defense Counsel, and their agents involved in testing, are required to permit the observation of all testing. Plaintiffs' counsel and their agents will not interfere with the testing process. As soon as

¹ Guidant asserts that testing at its facilities will increase the efficiency and speed of the testing sessions. The Court also assumes that testing at Guidant's facilities will not increase costs, if any, to be incurred by plaintiffs. In fact, it should decrease the costs to be incurred by both parties. If costs charged to plaintiffs are increased by this location change, the Court reserves the right to allocate those costs to Guidant.

reasonably practicable, Defendants and their agents shall provide all information recorded before, during, and after testing of the device, in all forms in which such data is obtained, and all information extracted in the performance of “Save to Disk” and “Hex Dump” download functions, in paper and electronic form. Thereafter, Defendants have a continuing obligation to produce any further analysis gleaned or data gathering conducted on the downloaded information or testing results in a timely fashion.

C. At the end of the day of testing, all devices presented for testing will be returned to Plaintiffs’ Counsel.

D. Plaintiffs who are in possession of their devices and alleging death must produce their devices before the first testing date subsequent to entry of this Order to Ronald S. Goldser, Esq., Zimmerman Reed, 651 Nicollet Mall, Suite 501, Minneapolis, Minnesota 55402-4123.

E. Each plaintiff shall, within 30 days after the docketing of his or her case in the MDL transferee Court, produce his or her explanted device to Plaintiffs’ Liaison Counsel, Ronald S. Goldser, Esq., Zimmerman Reed, 651 Nicollet Mall, Suite 501, Minneapolis, MN 55402-4123. If a plaintiff does not have possession of his or her device, plaintiff shall communicate that information in writing to Plaintiffs’ Liaison Counsel and Defendants’ Liaison Counsel, Joseph Price, Esq., Faegre and Benson, 2200 Wells Fargo Tower, 90 South Seventh Street,

Minneapolis, MN 55402-3901. If a Plaintiff first acquires physical possession of his or her explanted device later than 30 days after docketing of his or case in the MDL transferee Court, that Plaintiff shall then provide his or her device to Plaintiffs' Liaison Counsel within 30 days after first acquiring his or her device. No plaintiff has an obligation to exhume the body of any decedent in order to acquire the relevant device required under this Order. This Order does not apply if Plaintiffs or their counsel do not have possession of the device at issue.

F. Absent good cause shown, failure to timely produce a device for testing shall preclude the use at trial by plaintiff of evidence regarding the device's performance.

IT IS SO ORDERED.

Dated: November 17, 2006

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