

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

PRETRIAL ORDER NO. 25

After considering the parties' arguments presented in their letters concerning the March 2007 trial-ready date for the bellwether cases, the Court hereby orders the following:

1. **Trial Start Date:** The bellwether trial for Leopoldo Duron, Jr. (explant without complications) will begin on July 16, 2007. Trial will occur at the interim courthouse located at 180 East 5th Street, 7th Floor, St. Paul, Minnesota 55101.
2. **Trial Length:** Based on the parties' submissions and representations to the Court, the Court concludes that the trial can be conducted in no more than eight days. However, with input from the parties, the Court reserves the right to shorten or lengthen the trial and allocate time to each party. Typically, a trial day runs from 9:00 a.m. until 12:00 p.m. and from 1:15 p.m. until 5:00 p.m., and a trial week runs Monday through Thursday.
3. **Scheduling Order:** The following is a scheduling order for the *Duron* trial.

	<u>No Later Than</u>
Fact discovery closes	February 15, 2007
Parties disclose experts	February 15, 2007
Plaintiff's experts' reports due	March 1, 2007
Guidant's experts' reports due	March 15, 2007
Dispositive motions/ <i>Daubert</i> motions filed	April 2, 2007
Opposition to dispositive motions/ <i>Daubert</i> motions filed	April 30, 2007
Replies to dispositive motions/ <i>Daubert</i> motions filed	May 7, 2007
Dispositive motions/ <i>Daubert</i> motions hearing	May 18, 2007
Dispositive motions/ <i>Daubert</i> motions ruling	June 18, 2007
Pretrial conference	July 9, 2007 at 9:00 a.m.

Based on these deadlines, the parties shall agree to deadlines for expert rebuttal reports, if any, and for depositions of the expert witnesses. In addition, the parties shall meet to discuss discovery limitations, as outlined in the PLCC's November 27, 2006 letter.

4. **Trial Submissions:** Prior to thirty (30) days before the trial start date for each trial, the parties shall meet and confer to discuss stipulations related to all uncontested facts and matters not in controversy and which exhibits may be received without objection prior to trial. Then, the parties shall submit the following documents to the Court:

Document	E-file	E-mail ¹	No Later Than
<p>A. Statement of the Case. A statement of the case indicating the facts that the party intends to prove and indicating any unresolved substantive, evidentiary and procedural issues. The statement shall include the citation and discussion of authority upon which the party relies for its positions on the unresolved issues.</p>	✓		<u>June 25, 2007</u>
<p>B. Exhibit List. If exhibits are to be offered at trial, the following procedure must be followed:</p> <p>(i) Mark all exhibits for identification. All exhibits shall be marked, as much as possible, in the sequence they will be offered, with Arabic numbers. Each exhibit should also be marked with the case number. Example: Pltf. or Def. #1 Civ. 04-397 (Multiple parties list name, <i>e.g.</i>, Pltf. <u>Smith</u> #1)</p> <p>(ii) Counsel shall make available for examination and, if requested, copying by all counsel, all exhibits which will be offered into evidence at trial. Only exhibits so made available shall be offered into evidence at trial, except for good cause shown.</p>			<u>June 25, 2007</u>

¹ Email to Frank_Chambers@mnd.uscourts.gov in Microsoft Word 2000 format.

Document	E-file	E-mail ¹	No Later Than
(iii) Submit a list of exhibits that will be presented at trial on behalf of their client(s). The list shall indicate the exhibits the parties agree are admissible. For the exhibits not so agreed upon, the list shall include the grounds for objection. Only exhibits so listed shall be offered into evidence at trial, except for good cause shown.	✓		<u>June 25, 2007</u>
C. Witness List. The list shall include the names and addresses of the witnesses, along with a short statement of the substance of the expected testimony of each witness. Only witnesses so listed shall be permitted to testify except for good cause shown.	✓	✓	<u>June 25, 2007</u>
D. List of Deposition Testimony. (i) List of deposition testimony to be offered into evidence in lieu of live testimony. The list shall designate those specific parts of depositions to be offered at trial. Only depositions so listed shall be offered into evidence at trial except for good cause shown.	✓		<u>June 25, 2007</u>
(ii) Any party who wishes to object to listed deposition testimony shall submit objections.	✓		<u>July 2, 2007</u>
E. Motions in limine. (i) All motions must be filed as outlined in Local Rule 5.1. If a motion has tabbed attachments, please mail or deliver to the Court's chambers.	✓		<u>June 25, 2007</u>
(ii) All responses to motions in limine must be filed as outlined in Local Rule 5.1. If a response has tabbed attachments, please mail or deliver to the Court's chambers.	✓		<u>July 2, 2007</u>

Document	E-file	E-mail ¹	No Later Than
F. Joint Statement of the Case. The Court expects the parties to jointly submit a proposed statement of the case. The statement of the case should be a summary of the case, including the title, nature of the action, plaintiff's position, nature of the defense, and defendant's position. (The Court's intent is to give the parties input into the statement that will be read to the jury during voir dire.)	✓	✓	<u>July 2, 2007</u>
G. Proposed Voir Dire Questions.	✓	✓	<u>June 25, 2007</u>
H. Proposed Jury Instructions. Exceptions are provided for those instructions whose need could not be foreseen. Each proposed instruction shall be numbered and on a separate page and shall contain citation to legal authority. Jury instructions are to be submitted in the following format: (i) The parties are required to jointly submit one set of agreed upon instructions. To this end, the parties are required to serve their proposed instructions upon each other two weeks prior to the filing deadline. The parties should then meet, confer, and submit one complete set of agreed upon instructions.	✓	✓	<u>June 25, 2007</u>
I. Proposed Special Verdict Forms.	✓	✓	<u>June 25, 2007</u>

In addition, the parties shall deliver two courtesy copies of the foregoing documents to the Court's chambers at 180 East 5th Street, 7th Floor, St. Paul, Minnesota 55101.

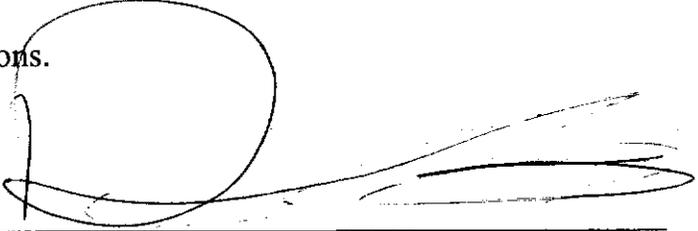
5. **Subsequent Trials:** To the extent five bellwether cases have been selected, the Court, with input from counsel, reserves the right to set a sixth case for trial. For

now, the subsequent bellwether trials will begin on the following dates: Eugene Clasby (explant with complications) on August 13, 2007; Leland Braund (explant without complications) on September 10, 2007; Stanley Beranek (non explant/psychological injury) on October 9, 2007; and Joyce Valls (non-explant/psychological injury) on November 5, 2007.

The parties shall meet and confer to agree upon scheduling orders for each subsequent bellwether case. The scheduling orders shall contain similar deadlines as those imposed for the *Duron* trial. The parties shall submit proposed scheduling orders for the four subsequent trials no later than December 22, 2006.

6. **Amendments:** The trial and pretrial conference dates announced in this Order are firm. The parties, by agreement, may change dates in the scheduling orders so long as any changes do not shorten the time the Court has to consider dispositive motions, *Daubert* motions, or pretrial submissions.

Dated: November 28, 2006



DONOVAN W. FRANK
Judge of United States District Court