

**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. 26**

After considering the parties' arguments presented at the status conferences and in their December 8, 2006 letters concerning whether the *Harkonen* case should be a bellwether trial, the Court hereby orders the following:

1. As discussed at the May 2, 2006 status conference, the parties agreed to select six cases for bellwether trials—one death case, one explant-with-complications case, two explant-with-complications cases, and two anguish-only cases. At the most-recent status conference, the parties stated that they had agreed not to try a death bellwether case because a death case would not be instructive to the MDL process.

Based on this agreement, the Court determines that there will be five bellwether trials:

*Leopoldo Duron, Jr.* (explant without complications) will begin on July 16, 2007; *Eugene Clasby* (explant with complications) on August 13, 2007; *Leland Braund* (explant without complications) on September 10, 2007; *Stanley Beranek* (anguish-only) on October 9, 2007; and *Joyce Valls* (anguish-only) on November 5, 2007.

2. Because the Court had previously agreed to conduct six bellwether trials, Plaintiffs seek to add *Harkonen* as a sixth bellwether trial. *Harkonen* is an explant-with-complications case. Plaintiffs assert that the fact pattern at issue in this case would be very instructive to the MDL process, given that the plaintiff's device was replaced with a non-Guidant device and because a loss of consortium claim is involved. Guidant opposes this request, arguing that the case would not be useful since the percentage of explant-with-complications cases in the MDL is small. The Court agrees with Guidant. Plaintiffs agreed to both the number and type of bellwether cases to be tried and to the removal of death cases from the bellwether process. Without more, they have failed to show why the Court should interfere with those agreements. Therefore, the Court denies Plaintiffs request that *Harkonen* be tried as the sixth bellwether trial. With this decision, however, the Court reserves the right to add additional bellwether trials to its trial calendar, if it determines, at any time during the bellwether trial process, that additional trials (whether they be explant with or without complications or anguish-only cases) would be instructive to the MDL process.

Dated: December 22, 2006

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