

**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

**PRETRIAL ORDER NO. 9**

**BELLWETHER CASE SELECTION PLAN**

On January 31, 2006, and March 23, 2006, the Court entered Orders addressing the issue of so-called representative, instructive, or bellwether cases. The parties have since come up with a schedule for selecting the bellwether cases. Two issues remain to be decided by the Court. First, the parties dispute whether the pool from which representative cases are selected should be limited to those cases already filed in or transferred to this MDL. Second, the parties have been unable to reach agreement as to whether each party should be allowed to select an equal number of potential bellwether cases, or if Plaintiffs should be allowed to select a greater portion of the cases that will be the subject of targeted discovery.

Based upon the additional presentations, proposals, and submissions of the parties, and the Court having reviewed the contents of the file in this matter, and being otherwise duly advised in the premises, the Court hereby enters the following:

## **ORDER**

1. Except to the extent modified herein, all existing case management orders of this Court shall remain in full force and effect.
2. 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 and Defendants will each be allowed to select twenty (20) potential bellwether cases.

Dated: May 3, 2006

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

## **MEMORANDUM**

The Court has considered the issues raised by the parties regarding the selection of potential bellwether cases. First, the Court sees no logical reason to allow Plaintiffs to select a disproportionate amount of the potential bellwether pool of forty cases. Thus, each side will be allowed to select twenty potential bellwether cases according to the timetable that the parties have mutually agreed on. Second, the Court finds that the pool from which potential bellwether cases may be selected should be limited to those cases that were already filed in or transferred to this MDL as of March 23, 2006, the date on which the Court issued its key order on the bellwether selection process. The Court finds that it would be unfair to Defendants to allow Plaintiffs to select from a pool that includes

the Plaintiffs' unfiled case inventory. Moreover, the Master Complaint has already been submitted and does not include this unfiled inventory.

The Court commends the parties for coming up with the joint proposed pretrial schedule for representative trials to commence in March 2007, as well as the categories from which to select cases.

The Court remains confident that the parties will work with one another and the Court, and come up with truly representative cases in the interests of all parties. The Court accepts that it has the responsibility to carefully review the selection process and the pool of cases as the pool is narrowed to ensure that the cases selected are indeed representative cases.

D.W.F.