

**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:

Brenda Sue Abernathy; Stephen Adams;
Gilberto Alaniz; Clara Arrendondo; Sharon
Bailiff; Roy Baker; Evangelia Ball; Mark
Bartholomew; Barbara Bartnik; Greg Batey;
Judith Beckett; Mildred Benton; Louis
Bertini; Steve Boyle; Margaret Branham;
Tannisha Bright; William Brill; Shirley
Brydie; Billie Buckingham; Dorothy Burns;
James Byrne; Phyllis Cady; Rona Cantrell;
Francis Carbonneau; Daniel Carlson; Albert
Carmody; Lilly Carter; Rudell Collins; Cindy
Cook; Billy Couch; Robert F. Cox; John
Crandall; William R. Crocker; Elizabeth
Curry; Joshua Darby; Felton Davenport;
Elizabeth Davidson; Darvin Davis; Lacy John
Day; Kaylene Dial; Raleigh W. Dickey;
Cindy Duke; Wesley C. Dunlap; Phillip
Edelman; Rose Eisenberg; Virginia Eko;
Sharlene Eldridge; Wayne Elliot; Thomas
Emerson; Kathleen Ethridge; Eugene Evans;
Thomas Everhart; William Farr; Bruno
Fenoglio; Anton Feretich; Irene Firedancer;
Mickie Sue Flear; Gladys Flouger; Emily
Franklin; John Friedle; Sally Fulton; David
Garside; Alice Gatti; Genevieve Gawrych;
Marsha Gilby; Pearline M. Glass; Michael
Gleason; Robert Gordon; Kelly Grady;
Doyle N. Gragg; Adolphine Gresham; Lucille
Griffey; Martha Guy; Jay E. Hadnod; James
Hall; John Hargrove; Don Harmon; Janice
Harris; Florence Hilkens; Ruth Hoadley;
Johnny Horne; Theodis Howell; Sherion
Hoyt; Hope Hubbard; Leo Huron; Maurice

ORDER

Imonti; James Iott; Charlie Ivy; Ogden Jackson; Dorothy Janda; Teresa Jenkins; Claude Johnson; Donald Johnson; Jessie Johnson; Lois Johnson; Rita Jones; Alice Josing; Michael Kalin; Josef Kalter; Don Keesler; Arlene Kennedy; Orval King; Stanley Klein; Norbert Kopp; Christopher Lancaster; Marcia Lancaster; Richard Landberg; Gary Lautzenhiser, Sr.; Carl Lee; Mimi Leiner; Deborah Lindsay; Randy Littlejohn; Joyce Lubeski; Rodney Lunde; Diane Lyman; Justin Mahoney; Albert Maiorano; Richard Major; Mary Marshall; Lonzetta Marshall-Burgess; Gina Marshburn; Toni Martin; Denise McCulloch; Molly Jane McCurry; Cynthia McIntosh; Beverly Medley; Charlotte Metcalf; Cecilia Miller; Alton Mitchell; Cary Mitchell; Lee Connie Morris; Fred Morrison; Julian T. Morton; James Mosby; Phillip Mosley; Myrtle Murphy; Joan Murray; Beverly Myers; Charles Neihoff; James B. Newman; Glenn Niceley; Doris Olsen; Patricia Ostiguy; Richard Overmann; Bill E. Page; Timothy Page; Kelly Palmer; Thelma Patterson; Sharon Peterson; Thomas Albert Phelps; Beverly Phillips; Jack Pike; Ida Polinsky; Terry R. Pringle; Charlie Provorse; Miguel Quintana; Mary Rainer; Terry Ralph; Bobby K. Ramsey; Dorothy Ramsey; Frank Requist; Terry C. Rhodes; Janice Richmond; David Rider; Victoria Rider; Glenda Ripley; Gerald Roberts; Alpha Joy Robertson; Walter Robertson; Jessie Robinson; Charles Rogers; Phaedra Rogers; Marcella Rone; George Rowland; Ty Rubedor; John Scaglione; John Scarpinato; James Scherzi; Elmer Schmidt; Billy Lloyd Schnase; Eileen Schweitzer; Elouise Scott; Annette Sharp; Maurice Sheffield; Charlene Simek; William Skultety; Conley W. Smith; David Smith; Sandra Smith; Lisa L. Spanier; Ruth Stephens; Joseph Stevens; George W. Stone; Virginia

Street; Peter Susov; Patricia Tranberg; Giovanna Urbano; Eddie Vaughan; Don Vaughan; Jack Verdote; Iliana Vonhonenstein; Jack Warren; Arlene Weinhaus; Linda Wells; John Whitworth; David Wilke; Bernice S. Williams; Wayne Williams; William Williamson; Daniel Wilson; Donna Wilson; Robert Wilson; Ron Wilson; Frank Winzeler; Constance Wood; Robert Wright; Calvin W. Yeargin; and James Hoadley,

Plaintiffs,

v. Civil No. 07-4048 (DWF/AJB)

Guidant Corporation; Guidant Sales Corporation; Boston Scientific Corporation; and Cardiac Pacemakers Inc.,

Defendants.

(as to Plaintiff Don Keesler only)

Eric N. Roberson, Esq., Patrick J. Mulligan, Esq., and Reid Stewart, Esq., The Mulligan Law Firm, counsel for Plaintiffs.

Timothy A. Pratt, Esq., Shook Hardy & Bacon LLP, and Joseph M. Price, Esq., Faegre & Benson LLP, counsel for Defendants.

The Mulligan Law Firm commenced this action on September 21, 2007 on behalf of Plaintiff Don Keesler. By and through counsel, Plaintiff filed a Stipulation of Dismissal Without Prejudice (Civ. No. 07-4048 (DWF/AJB), Doc. No. 3) pursuant to Federal Rule of Civil Procedure 41(a)(1) on January 4, 2008. On January 16, 2008, Keesler's counsel, Patrick Mulligan, Esq., from the Mulligan Law Firm ("the Mulligan

Firm”) filed a Motion to Withdraw as Counsel (Civ. No. 07-4048 (DWF/AJB), Doc. No. 4)¹. In a letter dated January 18, 2007, the Court asked Keesler to respond in writing to the motion, which he did by letter dated January 22, 2008. In Keesler’s letter, he indicates that he has communicated to people at the Mulligan Firm that he “did not want to pursue any litigation against Guidant Corporation.” (*See* attached Exhibit A.) Keesler also requested that his name be removed from any further proceedings.

An attorney may be permitted to withdraw as counsel of record only by order of the Court. D. Minn. LR 83.7(a). “Withdrawal without substitution may be granted only by a motion before the Court, for good cause shown.” D. Minn. LR 83.7(c). The Mulligan Firm acknowledges that Keesler sent a letter to them asking to be withdrawn from the settlement and requesting that the Mulligan Firm no longer represent him. There is no evidence that the Mulligan Firm withdrew as Keesler’s counsel at that time. Now, however, the Mulligan Firm asserts that they cannot dismiss Keesler’s case with prejudice because the Mulligan Law Firm does not represent Keesler.

Based on the submissions of the parties, the Court finds that good cause exists to allow the Mulligan Firm to withdraw from representing Keesler. Keesler’s January 22, 2008 letter demonstrates that Keesler does not want the Mulligan Law Firm to continue any litigation on his behalf. Further, given the exchanges that have taken place between the Mulligan Firm, Keesler, and the Court, the Court concludes that Keesler’s interests

¹ Counsel for Plaintiff filed the Stipulation of Dismissal Without Prejudice and the Motion to Withdraw as Counsel only in the original case. They should have filed their Stipulation and Motion in both the original case Civil No. 07-4048 (DWF/AJB) and in the master case MDL No. 05-1708 (DWF/AJB).

are best served if he is dismissed from the MDL and allowed to find new counsel to represent him, if he should choose to pursue litigation in another venue.

The Court notes, however, that it is a bit perplexed with the Mulligan Firm's conduct. It is not apparent through any of the submissions why the Mulligan Firm has waited until January 2008 to file its motion to withdraw when it concedes that it received a letter from its client in November 2007 asking the Mulligan Firm to cease its representation of him. Further, the Mulligan Firm asserts in its motion to withdraw that they cannot dismiss Keesler's case with prejudice because they do not represent Keesler. The Court, however, questions the basis for this assertion, as the Mulligan Firm had not filed a prior motion to withdraw as Keesler's attorney, substitution of counsel, or even provided notice to the Court that either the Mulligan Firm or Keesler perceived there no longer to be an attorney-client relationship between them. This, along with other filings or issues brought to the Court's attention regarding some of the Mulligan Firm's cases, indicate that the Mulligan Firm is not monitoring its cases closely enough. The Court strongly suggests that it do so, as it only causes frustration to both their clients and the Court.

That aside, based upon the Stipulation, and on a review of the file and the submissions of the parties, **IT IS HEREBY ORDERED** that:

1. All claims of Plaintiff Don Keesler (Civil No. 07-4048 (DWF/AJB)) against Guidant Corporation, Guidant Sales Corporation, Boston Scientific Corporation, and Cardiac Pacemakers, Inc. are **DISMISSED WITHOUT PREJUDICE** in their entirety and each party shall bear its own costs.

2. The Mulligan Firm's Motion to Withdraw as Attorney (Civ. No. 07-4048 (DWF/AJB), Doc. No. 4) is **GRANTED**.

3. The Mulligan Firm shall inform Keesler of the substance of this Order (by U.S. Mail) and provide him with the contact information for Guidant and the Plaintiff's Lead Counsel Committee. It shall also provide Keesler with his file and all case documents, at no cost to him.

4. The Mulligan Firm shall provide Guidant and the Plaintiff's Lead Counsel Committee with Keesler's current contact information, including mailing address, telephone numbers, and e-mail address.

5. Keesler is encouraged to immediately seek new counsel if he chooses to commence his action in a different venue. If he cannot afford to do so, the Court encourages him to investigate the possibility of a volunteer attorney service in his area. The Court also encourages Keesler to contact MDL Plaintiff Elizabeth Peterson at 612-341-0400 to discuss whether he would like his case to be dismissed with prejudice rather than without prejudice. If Keesler prefers to have his case dismissed with prejudice, the Court requests that Keesler inform the Court as to his preference, and an amended Order can be provided at that time.

6. The Clerk of Court shall mail a copy of this Order to Don Keesler at 710 W. Hughs Street, Bolivar, MO 65613-2853.

**LET JUDGMENT BE ENTERED ACCORDINGLY AS TO PLAINTIFF DON
KEESLER ONLY.**

Dated: January 30, 2008

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