

**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:

Kimberly Bailey; James Baker; Melita Bena,
individually and as Representative of the
Estate of Lawrence Bena; Jerri Ceccarelli;
Donald Dobbs; Eugene Fezi; Charles
Gaumer; Theodore Holl; Patrick Kelly;
William Lauenroth; Frank Stewart; and Frank
Rocha,

Plaintiffs,

v. Civil No. 07-08 (DWF/AJB)

Guidant Corporation; Guidant Sales
Corporation; Cardiac Pacemakers Inc.;
Devices for Vascular Intervention, Inc.; Heart
Rhythm Technologies, Inc.; Origin
Medsystems, Inc.; Minimally Invasice
Systems Group; and Boston Scientific
Corporation,

Defendants.

(as to Plaintiff Melita Bena, individually and
as Representative of the Estate of Lawrence
Bena only)

ORDER

Robert G. Simpson, Esq., Reiner, Simpson & Slaughter, counsel for Plaintiffs.

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

On February 6, 2008, Plaintiff Melita Bena's counsel, Robert G. Simpson, Esq., of Reiner, Simpson & Slaughter ("the Reiner Firm") filed a Motion to Withdraw as Counsel of Record (MDL No. 05-1708 (DWF/AJB), Doc. No. 2583; Civ. No. 07-08 (DWF/AJB), Doc. No. 14). In a letter dated February 7, 2008, the Court asked Bena to respond in writing to the motion. As of the date of this Order, the Court has not received a response from Bena.

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). Mr. Simpson asserts that Bena "has been apprised of the currently proposed and pending settlement with Defendants and the proposed allocation of funds with respect to a Ventak AV III DR 1831, Serial Number 105108, device." (MDL No. 05-1708 (DWF/AJB), Doc. No. 2583-2; Civ. No. 07-0008 (DWF/AJB), Doc. No. 14-2.) Mr. Simpson also asserts that Bena has "indicated her desire, as Successor in Interest, to not accept the settlement and/or allocation plan and desires to pursue the case against Guidant outside the parameters of the proposed settlement[,]" and has declined to execute a Substitution of Attorneys. (*Id.*) Therefore, Mr. Simpson asserts that the Reiner Firm "has no alternative but to file this Motion to Withdraw." (*Id.*)

Based on a review of the file, and given the requirements necessary to proceed under the Master Settlement Agreement, the Court finds that good cause exists to allow Mr. Simpson and the Reiner Firm to withdraw from representing Bena. The Court

concludes that Bena's interests are best served if she is allowed to find new counsel to represent her.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Reiner Firm's Motion to Withdraw as Counsel of Record (MDL No. 05-1708 (DWF/AJB), Doc. No. 2583; Civ. No. 07-08 (DWF/AJB), Doc. No. 14) is **GRANTED**.

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

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

4. Bena is encouraged to immediately seek new counsel. If she cannot afford to do so, the Court encourages her to investigate the possibility of a volunteer attorney service in her area.

5. The Clerk of Court shall mail a copy of this Order to Melita Bena at 13765 Creek Trail, Redding, CA 96003.

Dated: February 21, 2008

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