

**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

**ORDER REGARDING REQUESTS
FOR MOTIONS TO RECONSIDER
THE COURT'S MARCH 7, 2008
ORDER REGARDING
DETERMINATION OF THE
COMMON BENEFIT ATTORNEY
FEE AMOUNT AND REASONABLE
ASSESSMENT OF ATTORNEY
FEES**

This matter is before the Court pursuant to thirteen requests to file motions for reconsideration of the Court's Memorandum Opinion and Amended Order Regarding Determination of the Common Benefit Attorney Fee Amount and Reasonable Assessment of Attorney Fees (the "March 7, 2008 Order").¹

¹ On March 14, 2008, the Court received a letter, dated March 13, 2008, from Alex Alvarez, Esq., of The Alvarez Law Firm, requesting permission pursuant to Local Rule 7.1(g) to file a Motion to Reconsider the Court's March 7, 2008 Order ("the Alvarez Letter"). On March 17, 2008, the Court filed an Order setting a March 25, 2008 deadline for filing any similar requests pursuant to Local Rule 7.1(g) or responses stating any positions in regard to the Alvarez Letter. As of the date of this Order, the Court received an additional twelve letters requesting permission to file motions to reconsider the Court's March 7, 2008 Order.

(Footnote Continued on Next Page)

Pursuant to Local Rule 7.1(g), a request for leave to file a motion for reconsideration will only be granted upon a showing of “compelling circumstances.” A motion to reconsider should not be employed to relitigate old issues but to “afford an opportunity for relief in extraordinary circumstances.” *Dale & Selby Superette & Deli v. United States Dept. of Agriculture*, 838 F. Supp. 1346, 1348 (D. Minn. 1993). Here, certain Plaintiff attorneys assert that the Court should reconsider its ruling to cap individual case contingency fees at 20%. The Court, having fully considered the arguments both here and at the time that the Court issued its March 7, 2008 Order, finds that compelling circumstances do not exist to warrant reconsideration of the Order.

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The additional twelve letters received are from the following attorneys/firms: (1) Carlos R. Diez-Arguelles, Esq., of Martinez Manglardi, Diez-Arguelles & Tejedor; (2) W. Lewis Garrison, Jr., Esq., of Heninger Garrison Davis, L.L.C.; (3) David D. Bravo, Esq., of Palazzo Law Firm; (4) Niels P. Murphy, Esq., of Murphy & Anderson, P.A.; (5) Richard Kopelman, Esq., of Kopelman Law Group, P.C.; (6) Eric N. Roberson, Esq., of The Mulligan Law Firm; (7) Jon C. Conlin, Esq., of Cory Watson Crowder & DeGaris, P.C.; (8) David Hersh, Esq., of Burg Simpson Eldredge Hersh & Jardine, P.C.; (9) Melanie Muhlstock, Esq., of Parker Waichman Alonso LLP; (10) Michael Goetz, Esq., of Morgan & Morgan P.A.; (11) Charles S. Zimmerman Esq., of Zimmerman Reed, PLLP, Richard J. Arsenault, Esq., of Neblett, Beard & Arsenault, Elizabeth J. Cabraser, Esq. of Lieff, Cabraser, Heimann & Bernstein, LLP, and Seth R. Lesser, Esq. of Locks Law Firm, PLLC (collectively “the Lead Counsel Committee” or “the LCC”); and (12) Douglas M. Schmidt, Esq., Ron Rash, Esq., and Chad Aaronson, Esq.

In addition, on March 22, 2008, the Court received a letter, dated March 22, 2008, from Plaintiff Marcus J. Breen Ph.D. raising concerns he has regarding the Court’s March 7, 2008 Order. Specifically, Breen asserts that he believes that the figures the Court arrived at are “grossly inflated in favor of the legal firms and against the interests of those most affected: the patients.” (See attached Exhibit 1.)

Specifically, several attorneys assert that they were not provided notice that their contingency fees would be affected by the Court's March 7, 2008 Order. The Court disagrees. Charles Zimmerman, Plaintiffs' Liaison Counsel, provided an e-mail notice on or about January 11, 2008, to all counsel with eligible claimants in the global settlement. This notice attached a copy of the PSC's Request Pursuant to Section II.K of the Master Settlement Agreement for a Determination of the Common Benefit Attorney Fee Amount ("PSC's request") and indicated when and where the hearing on the issue would be. In the PSC's request, the PSC footnoted the following:

It should be noted that this Court has the inherent authority to order an appropriate assessment to compensate common benefit attorneys for their substantial efforts. Among other things, the Court is authorized to evaluate the propriety and appropriateness of contingency agreements between individual claimants and their attorneys.

(PSC's request 15, n.7.) Individual Plaintiffs and/or their attorneys therefore had notice that contingency fees could be affected and had the opportunity to file objections and appear at the hearing to address any concerns.²

As to the attorneys' other assertions (*i.e.*, that the Court lacks the inherent authority to limit contingency fees; that a 40% contingency agreement is approved by certain state courts and certain state bar associations; that a 20% cap is in conflict with the initial fee Order; and that this case should not be characterized as a quasi-class

² Further, even if the PSC had not raised contingency arrangements in their request, Plaintiffs' attorneys should be well aware of the case law supporting the Court's inherent right and responsibility to review contingency fee contracts for fairness. (*See* March 7, 2008 Order at 41-42 (citing cases)).

action), the Court stands by its March 7, 2008 Order. (*See* March 7, 2008 Order 40-45 (addressing contingency fees); 26-27 (addressing PTO 6).)

Further, for those attorneys who complain that the 20% cap is not fair in light of the amount of time and work that they put in on their clients' files, the Court reminds the attorneys of the process set forth at pages 44-45 of the March 7, 2008 Order. There, the Court established a procedure whereby the "parties may petition the Special Masters to have the 20% increased upward to a maximum of either 33.33%, the percentage previously agreed to in the individual cases contingent fee arrangement between the attorney and the client, or the limit imposed by state law, whichever of the three is less." (March 7, 2008 Order 44-45.)³ The Court continues to believe that this procedure will assure that all attorneys will receive fair but not excessive compensation.

As to the LCC's request to take Judicial Notice of the Stipulation to the Court on March 7, 2008, the Court acknowledges receipt of such "stipulation." But the Court continues to believe that it would not be fair for the Court to consider such "stipulation" when such "stipulation" contemplates a resolution different from what was presented in the PSC's request and is not signed by *all* attorneys involved in the global settlement.

Thus, based upon the letter submissions, the record before the Court, and the procedural history of this litigation, the Court hereby enters the following:

³ The Court notes that attorneys, in their petition, may choose to frame their argument so that it addresses all clients in total, rather than on an individual case-by-case basis. However, if attorneys choose to proceed in such a manner, internal firm economies of scale will be taken into account in the Court's ultimate decision as to whether to increase the fee cap from 20%.

ORDER

1. Alex Alvarez's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2647); Carlos R. Diez-Arguelles's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2677); W. Lewis Garrison, Jr.'s request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2668, 2669); David D. Bravo's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2676); Niels P. Murphy's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2672); Richard Kopelman's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2695); Eric N. Roberson's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2682); Jon C. Conlin's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2684); David Hersh's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2683); Melanie Muhlstock's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2681); Michael Goetz's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2678); the LCC's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2685); and Douglas M. Schmidt's request for leave to file a motion to reconsider (MDL No. 05-1708 (DWF/AJB), Doc. No. 2694) are **DENIED**.

Dated: March 28, 2008

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