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**

On October 17, 2008, the Court sent a letter to Seth Lesser, Esq., following up on his Objection to the CBAFCC Report that was filed on May 6, 2008 (the "May 6 Objection"). In that letter, which was published on ECF, the Court noted that the Court agrees with Mr. Lesser's concerns regarding the variability of time records and the CBAFCC's lack of appropriate quantitative methodology applied to the committee's proposed allocation of common benefit funds. The Court requested that Mr. Lesser supplement his objection with greater specificity, to be filed under seal with the Court. Subsequently, Mr. Lesser contacted the Court's clerk via telephone, requesting greater detail as to the Court's specific request.

In addition, on October 24, 2008, the Court received a letter from Hunter J. Shkolnik, Esq., suggesting that at least one of the alternative approaches that Mr. Lesser proposed in his May 6 Objection was unfair. Mr. Shkolnik also provided his own suggestions as to how the Court could conduct its review of the CBAFCC's recommendation. The Court also received a letter dated October 31, 2008, from the LCC and CBAFCC, requesting an in-person meeting with the Court to "explore issues of

importance that might not be apparent from a review of records and reports" and to answer questions that "will enlighten all in making the process more transparent and understandable."

The Court recognizes that its initial letter to Mr. Lesser may have been rather open-ended. Thus, this Order serves to clarify the Court's request to Mr. Lesser.

The CBAFCC Report, filed by the Court on April 24, 2008, stated as follows:

> Each CBAFCC member was provided a compact disk [CD] compiled by the PSC accountant and Seth Lesser, an LCC member, of all time records and cost submissions provided by MDL members throughout the litigation. This CD was made available for all members to use and review at their discretion.

(April 24, 2008 Order at Ex. 1 ("CBAFCC Report") at 8.) Further, the CBAFCC Report noted:

> Additionally, as Chairman of the CBAFCC, Charles S. Zimmerman, met with Kahn, Hoffman & Hocman, LLP (Certified Public Accountants) and Seth Lesser, an LCC member who was the custodian of the Time and Cost submissions required throughout the litigation. Mr. Zimmerman made inquiries of both the CPA and Mr. Lesser regarding their review of the records and further asked that they point out to the committee any inappropriate time records as defined in PTO 6. (Exhibit B). For PSC members, this was done on a monthly basis pursuant to PTO 6 reporting. For others the task was done when the records were submitted. All records as provided and adjusted in the second column of the Proposed Plan of Allocation (Exhibit C) subject to individual law firm record keeping policies and individual lawyer record keeping practice which do vary, appeared to our CPA, Mr. Lesser, and the CBAFCC to be within reason.

(CBAFCC Report at 17.)

The Court fully understands Mr. Lesser's objections regarding the CBAFCC's methodology. The CBAFCC's failure to raise the specifics of the time records in its report has left the Court with the Sisyphean task of reviewing, in minute detail, the time

records of the 60 firms who petitioned for common benefit funds. Because of his roles as the individual who allocated work and assignments by virtue of acting as the LCC's liaison to both the discovery and law and briefing committees, the individual who handled the formation and running of the PSC's working groups and committees (Lesser May 6 Objection at 1), and his additional role as the custodian of the Time and Cost submissions, Mr. Lesser is in a unique position to assist the Court. The Court requests that Mr. Lesser provide the Court with his detailed analysis regarding duplication of effort in the time records and fees that were to be excluded based on the Court's Memorandum Opinion and Amended Order Regarding Determination of the Common Benefit Attorney Fee Amount and Reasonable Assessment of Attorney Fees, March 7, 2008 at 39-40, n.27 and accompanying text.) The Court asks that Mr. Lesser flag specific instances of duplicative time and effort or non-common-benefit time in the time records that were provided to Mr. Lesser and, ultimately, to the Court. For the time being, the Court asks that Mr. Lesser not provide any further detail as to his opinions regarding the equity of the multipliers suggested by the CBAFCC.

The Court respectfully requests that Mr. Lesser provide the Court with this information, for the Court's *in camera* review, by November 25, 2008. The Court reserves the right to share Mr. Lesser's report with the affected firms and to allow those firms to inspect any records that Mr. Lesser provides. After receiving Mr. Lesser's materials, the Court will determine an appropriate means by which any firm affected by Mr. Lesser's report will be allowed to object to Mr. Lesser's recommendation.

At this time, the Court declines to hold a meeting with the LCC and CBAFCC. In addition, unless specifically requested, no party shall submit to the Court any further written communications concerning the CBAFCC Report, regardless of whether they are filed on ECF or not, given that all parties concerned have had the opportunity to file objections and responses with the Court. The Court reserves the right to conduct an on-the-record status conference with the LCC, CBAFCC, and/or any other attorney/law firm requesting Common Benefit Attorney Fees and Funds.

IT IS SO ORDERED.

Dated: November 5, 2008

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