

**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

PRETRIAL ORDER NO. 38

On August 13, 2008, the Court entered Pretrial Order (“PTO”) No. 36. (MDL No. 05-1708 (DWF/AJB), Doc. No. 3189.) In that Order, the Court noted the increasingly large number of *pro se* Claimants in this MDL and explained that it believed that the *pro se* Claimants should bear some of the costs associated with receiving assistance in this MDL. The Court ordered the Plaintiffs’ Lead Counsel Committee (“PLC”) to submit a letter brief summarizing its work on behalf of *pro se* Claimants, estimating the expenses associated with that work, and stating their views on a *pro se* assessment. The PLC did so on September 19, 2008. (MDL No. 05-1708 (DWF/AJB), Doc. No. 3276.) The Court also gave *pro se* Claimants the opportunity to submit their views on a *pro se* assessment. No *pro se* Claimant submitted anything in response to PTO No. 36.

In their submission, the PLC explained that a certain provision of the Master Settlement Agreement is the reason for the increasingly large number of *pro se* Claimants. The provision essentially requires attorneys to withdraw from representing non-participating Claimants in order to continue to represent participating Claimants. The PLC explained that it has employed a full-time paralegal to work exclusively with

the *pro se* Claimants to administratively assist them, if they wish to participate in the settlement, in submitting the proper settlement paperwork. The PLC provided a detailed description of the steps this paralegal completes with respect to each *pro se* Claimant. The PLC explained that, at a minimum, the paralegal sends at least two letters and has several telephone calls with the majority of the *pro se* Claimants. In addition, the PLC has employed other individuals to assist it in locating some of the *pro se* Claimants. Finally, the PLC recommended that the Court apply a twelve percent (12%) assessment to the gross allocations of all participating Claimants' who have benefited from the administrative assistance provided by the PLC.

After considering the PLC's submission and given the Court's knowledge of the settlement process, and under both its inherent authority and its authority to assist in the implementation and execution of the MSA, the Court determines that the *pro se* Claimants who have received administrative help from the PLC should be assessed a reasonable assessment to compensate the PLC for that assistance. Accordingly, **IT IS HEREBY ORDERED** that:

1. A ten percent (10%) *pro se* assessment shall be imposed against the net of those *pro se* Claimants' allocations who have received administrative assistance from the PLC. The funds generated from the *pro se* assessment shall be distributed in the Common Cost Fund to be used to reimburse the PLC for the administrative assistance it provided to these *pro se* Claimants.

2. Prior to any distribution of Claimant funds, the PLC shall provide the Claims Administrator with updated lists of the *pro se* Claimants in this litigation to whom this assessment should apply.

3. The Claims Administrator is then directed to withhold ten percent (10%) of the net of those *pro se* Claimants' awards.

Dated: December 15, 2008

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