

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE  
DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This document applies to:

ALL ACTIONS

**ORDER CONCERNING MAY 7, 2009  
STATUS CONFERENCE BETWEEN  
THE COURT AND  
PATRICK J. MULLIGAN, ESQ.**

On May 7, 2009, the Court held a status conference with Patrick J. Mulligan, Esq., of the Mulligan Law Firm to discuss a variety of communications the Court had received from Mr. Mulligan's Guidant MDL clients. Specifically, these clients contacted the Court directly about the Mulligan Law Firm's lack of communication with them and, more importantly, the fact that the Mulligan Law Firm did not communicate the amount of certain clients' proposed settlement awards at the time that the clients were asked to sign releases. Mr. Mulligan, Charles Zimmerman, Esq., Plaintiffs' Liaison Counsel and member of the Plaintiffs' Lead Counsel Committee, and Elizabeth Peterson, Esq., appeared at the status conference. Jeff Nelson, Esq., counsel for Guidant, appeared via telephone.

At the status conference, Mr. Mulligan discussed some of his communications with his Guidant MDL clients. Mr. Mulligan acknowledged that he and his staff only informed his clients of the aggregate settlement award of \$240 million before the clients

signed the releases.<sup>1</sup> Specifically, Mr. Mulligan never provided his clients with a projected range of settlement. He withheld this information despite the fact that the Special Masters issued an Order on March 19, 2008, approving of the Allocation Committee's proposed Guidant Settlement Allocation Plan. (MDL No. 05-1708 (DWF/AJB), Doc. No. 2654; *see also* MDL No. 05-1708 (DWF/AJB), Doc. No. 3134, Ex. A. (in which Mr. Mulligan discusses the low recovery amounts for 353 of his clients).) All Plaintiffs' counsel, including Mr. Mulligan, received a copy of the Guidant Settlement Allocation Plan well before the deadline expired for eligible claimants to sign releases in order to become participating claimants.<sup>2</sup> The Guidant Settlement Allocation Plan contained a formula for calculating settlement ranges based on a variety of fixed and known factors including whether an eligible claimant's device was recalled, whether the device was explanted, and the time between implant and explant surgeries. To ensure that the individual settlement amounts were fair and reasonable and that individual Claimants entered into the settlements with full knowledge, the Special Masters, Plaintiffs' Lead Council Committee, and the Allocation Committee, among others, expended much time and effort implementing and educating Plaintiffs' attorneys about

---

<sup>1</sup> Mr. Mulligan also confirmed this practice in writings to the Court. (MDL Doc. No. 05-1708 (DWF/AJB), Doc. No. 3833, Ex. A; Civ. No. 07-3217 (DWF/AJB), Doc. No. 8.)

<sup>2</sup> At the status conference, Mr. Mulligan (intentionally or not) confused the terms eligible and participating claimants. The classifications of claimants are defined in the Master Settlement Agreement. *See* Master Settlement Agreement, Section I(D); Section III(F)(3); Section IC(C)(2).

the Guidant Settlement Allocation Plan protocol. This is consistent with the language contained in the Confidential Release, Indemnity, and Assignment, which required claimants and their counsel to “acknowledge and agree that, to the best of their knowledge, this Settlement is fair [and] reasonable . . . .” (Master Settlement Agreement, Ex. B, Section F.) In previous Orders, the Court has approved of that process, and it continues to do so. This Order in no way condemns that process or questions the fairness of individual awards to claimants.

Although Mr. Mulligan admitted withholding the settlement ranges from his clients, Mr. Mulligan indicated to the Court that he was confident that his clients were given “full disclosure” before they signed the releases, and that the clients signed the releases with “informed consent.” He also stated that the Texas Ethics Board had issued an Ethics Opinion approving of his practice of not disclosing settlement ranges to his Guidant MDL clients.<sup>3</sup> Mr. Mulligan promised to send the Court a copy of that Ethics Opinion, but, to date, the Court has received nothing from Mr. Mulligan.

As noted at the status conference, the Court’s primary concern throughout this litigation has been and will continue to be with protecting claimants and maintaining the integrity of the justice system. The Court noted that it is indeed a sad day for the legal profession if Mr. Mulligan’s conduct towards his clients in this MDL is the low standard

---

<sup>3</sup> Later, in response to a question from the Court as to whether Mr. Mulligan had informed the Texas Ethics Board that he had access to projected ranges of settlements that he did not share with his clients, Mr. Mulligan indicated that the Texas Ethics Board had merely dismissed a complaint filed against him.

that lawyers are required to meet. Finally, the Court questioned the integrity and validity of the releases signed by Mr. Mulligan's clients, who signed releases without knowing whether they were to receive \$1, \$500, or \$240 million.

The Court is aware of jurisprudence concerning disclosures of aggregate settlement amounts. At this time, the Court declines to formally sanction Mr. Mulligan for his actions. Instead, the Court will review, among other things, opinions concerning aggregate settlement disclosures, the ethics rules applicable to lawyers practicing in this Court, the transcript from the status conference, and the Texas Ethics Board opinion concerning Mr. Mulligan.<sup>4</sup> In the interim, the Court hereby orders and reserves the following:

1. Within one week of the date of this Order, Mr. Mulligan shall provide to the Court, Guidant, and the PLC, all documents in his possession received from or submitted to the Texas Ethics Board, State Bar of Texas, and/or any committee or subdivision of either entity or related entity concerning this MDL or any other matter related to this MDL.

2. The Court reserves the right to contact Mr. Mulligan's clients and former clients to ascertain what communications they received from him and/or his firm

---

<sup>4</sup> Even if the Court ultimately finds that Mr. Mulligan's interaction with the Texas Ethics Board, along with the jurisprudence surrounding this issue, permits Mr. Mulligan to continue his practice of withholding settlement ranges from his clients in aggregate settlements, the Court finds it difficult to conclude that Multi-District Litigation will continue to serve the interests of litigants or the interest of justice if such a practice is freely allowed.

regarding the Guidant MDL settlement prior to the clients signing the releases. This may lead to potential malpractice claims.

3. The Court reserves the right to sanction Mr. Mulligan for his actions if it determines that he has once again contributed to the common detriment of this MDL. Such sanctions could include disgorgement of attorney fees and reporting Mr. Mulligan's actions to certain states' ethics boards.

4. The Court reserves the right to ask Mr. Mulligan to submit documentation concerning contingency fees as required by the Court's August 21, 2008 Order. (MDL No. 05-1708 (DWF/AJB), Doc. No. 3201.) Specifically, the Court may require Mr. Mulligan to demonstrate his compliance with the contingency fee cap set by that Order.

**IT IS SO ORDERED.**

Dated: May 19, 2009

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