

**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:

**ORDER**

All Actions

On July 24, 2009, the Plaintiffs' Steering Committee (the "PSC") filed its Request Pursuant to Section II.K of the Master Settlement Agreement for a Determination and Payment of Common Benefit Attorneys' Fees and Costs for Common Benefit Work Conducted Between February 1, 2008 and February 1, 2009. In the PSC's request, the PSC requested fees and costs that exceeded, rather significantly, the Court's previous set-aside for such fees. Notably, the PSC's request did not include fees and costs for the period from February 1, 2009, to present. The PSC attributed the amount of costs and fees to the "fairly unique and labor intensive administrative issues" it encountered in the case. (PSC Request at 2.) The PSC noted that the "scope, breadth and number of claimants, along with Guidant's intense involvement" made this MDL "considerably more challenging to manage than many other MDLs." (*Id.*) Then, in Footnote 14 of page 49 of the PSC's request, the PSC suggested that it may be appropriate for the Court to place a portion of the burden of increased attorney fees on Guidant.

On August 11, 2009, Guidant filed a Response to the PSC's request. (Doc. No. 4042.) In its Response, Guidant strongly objected to the PSC's suggestion that the Court should impose additional common benefit fees and costs upon Guidant. (Response at 2.) In support of this objection, Guidant pointed to Section II.K of the Master Settlement Agreement ("MSA"), which provides that Guidant shall have no financial obligation beyond the amounts required to be paid under the MSA.

The PSC has not yet submitted everything that the Court needs in order to fully evaluate the PSC's request. The Court has asked the PSC to set forth a timeline of many of the events for which it seeks fees and costs in its request, as well as an explanation of how the costs so significantly increased since the PSC estimated its costs in a letter to the Court on September 5, 2008. The Court intends to evaluate each of the PSC's summary submissions, as well as all submitted time records and cost records, in detail.

The Court has considered the record currently before the Court, as well as the language of the MSA. At this time, and prior to the Court issuing a detailed Order on the PSC's request, the Court has no intention of assessing any additional fees or costs to Guidant or to individual Claimants above what previously has been set aside for such fees and costs by the Court. The Court anticipates that any overages on common benefit costs or fees will be accommodated by either: (a) discounting, either on a proportional or individual basis, fees and costs for all firms who have applied for common benefit fees or costs; or (b) vacating that portion of the Court's December 23, 2008 Order in which the Court allowed for potential enhancements for the four lead firms in this litigation, and

using those additional funds to accommodate the overages. (*See* December 23, 2008 Order at 77.)

The Court expects that this Order will clear up any misconceptions or concerns that the PSC, Guidant, individual Claimants, or their attorneys may have regarding the manner in which common benefit costs and fees will be considered by the Court. In the unlikely event that the Court later determines that Guidant is somehow responsible for generating additional fees and costs in this matter, the Court will request responsive briefing from Guidant before ordering any such fees or costs to be paid.

Dated: August 12, 2009

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