

**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 DISMISSING ALL CLAIMS
OF PLAINTIFFS LISTED IN
EXHIBIT A**

This multi-district litigation (“MDL”) commenced in November 2005, when the Judicial Panel on Multidistrict Litigation consolidated certain actions and transferred them to the District of Minnesota for pre-trial proceedings against Defendants Guidant Corporation, Guidant Sales Corporation, Cardiac Pacemakers, Inc., Boston Scientific Corporation, and Guidant Puerto Rico Sales Corporation (collectively “Guidant”). These actions were brought for injuries alleged to have been caused by certain allegedly defective implantable defibrillator devices and pacemakers manufactured by Guidant.

In December 2007, the Plaintiffs’ Lead Counsel Committee (“LCC”) and Guidant entered into a Master Settlement Agreement (“MSA”) that requires, among other things, that each claimant who has a filed lawsuit must submit a stipulation of dismissal with prejudice in order to qualify as a Participating Claimant.

On March 16, 2009, the parties filed their First Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice, which outlined a procedure for stipulating to the dismissal of each case filed by, or on behalf of, an MDL plaintiff who participates in any final settlement reached in accordance with the terms of the MSA. The First Joint

Multi-Plaintiff Stipulation also requested the dismissal with prejudice of each case filed by, or on behalf of, each plaintiff who had settled in accordance with the provisions of the MSA and who had already been allocated settlement funds pursuant to either the Confidential Order Approving Allocation Report Pursuant to Section IV.C.2 of Amended Master Settlement Agreement (December 10, 2008) or the Confidential Order Approving Second Allocation Report Pursuant to Section IV.C.2 of Amended Master Settlement Agreement (January 13, 2009).

On April 6, 2009, the Court issued an Order Dismissing All Claims of Plaintiffs Listed in Exhibit A to the parties' First Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice. The Court's April 6, 2009 Order also approved the parties' proposed procedure for dismissing all settled MDL cases going forward and anticipated that the parties would file additional stipulations of dismissal following subsequent allocation orders.

On September 8, 2009, the parties filed their Second Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice and Exhibit A, which is a list of the plaintiffs who have settled in accordance with the provisions of the MSA and who have been allocated settlement funds pursuant to either the Confidential Order Approving Special Masters' Third Allocation Report Pursuant to Section IV.C.3 of Amended Master Settlement Agreement (February 25, 2009) or the Confidential Order Approving Fourth

Allocation Report Pursuant to Section IV.C.3 of Amended Master Settlement Agreement (April 17, 2009) (as amended April 29, 2009).¹

The parties request that all claims of each plaintiff listed in Exhibit A to their Second Joint Stipulation, against all named Defendants—including but not limited to Guidant Corporation, Guidant Sales Corporation, Cardiac Pacemakers, Inc., Boston Scientific Corporation, and Guidant Puerto Rico Sales Corporation—be dismissed in their entirety with prejudice, each party to bear its own costs.

The parties served a copy of the Second Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice and Exhibit A upon counsel of record for each individual plaintiff who is listed in Exhibit A. In addition, the parties served a copy of the Second Joint Multi-Plaintiff Stipulation of Dismissal with Prejudice and Exhibit A by U.S. Mail upon each individual *pro se* plaintiff who is listed in Exhibit A.

Pursuant to the parties' stipulation and according to the procedure previously endorsed by this Court on April 6, 2009, if counsel or a *pro se* plaintiff identified any inadvertent errors in Exhibit A, he or she was required to file with the Court a notice of such error within fifteen (15) days of the filing of the Second Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice. In addition to filing with the Court, he or she

¹ In addition to the plaintiffs' allocated settlement funds on February 25, 2009 and April 17, 2009, Exhibit A includes three plaintiffs who were subject to the parties' First Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice, but whose claims have not yet been entirely dismissed because they had duplicate cases on file. Exhibit A also includes two plaintiffs who were allocated settlement funds pursuant to the Court's December 10, 2008 allocation order but inadvertently omitted from the parties' First Joint Multi-Plaintiff Stipulation of Dismissal with Prejudice.

was required to serve a copy of such notice on the LCC and on Guidant.² If counsel or a *pro se* plaintiff failed to file a notice regarding an error within fifteen (15) days of the filing of the Second Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice, such failure was to be considered a waiver of the error.

The parties' Second Joint Stipulation and this Court's April 6, 2009 Order made clear that after the expiration of this 15-day period, the Court, pursuant to Federal Rule of Civil Procedure 41(a)(2), would enter a global order dismissing each case filed by, or on behalf of, each plaintiff listed in Exhibit A.

Accordingly, **IT IS HEREBY ORDERED** that:

1. More than fifteen days have passed since the parties filed their Second Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice, and the Court has received no Notice of Error concerning any plaintiff included in Exhibit A. Thus, the Court deems any inadvertent errors in the preparation of Exhibit A waived. Exhibit A is hereby approved and is attached to this Order.
2. Pursuant to Federal Rule of Civil Procedure 41(a)(2), all cases and claims of each plaintiff listed in Exhibit A to the parties' First Joint Multi-Plaintiff Stipulation of

² As set forth in the parties' Second Joint Stipulation and in the Court's prior order, a notice of error filed on the Electronic Case Filing ("ECF") system will be considered served on the LCC and on Guidant pursuant to Local Rule 5.4. A notice of error filed by means other than ECF (e.g., paper filing), must be served on the LCC and on counsel for Guidant at the addresses listed in the parties' First Joint Stipulation, the Court's April 6, 2009 Order, and the parties' Second Joint Stipulation.

Dismissal With Prejudice against all named Defendants are **DISMISSED** in their entirety **WITH PREJUDICE**, and each party shall bear its own costs.

Dated: September 24, 2009

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