

**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

**SHOW CAUSE ORDER FOR  
DISMISSAL WITH PREJUDICE OF  
NON-RESPONDING SETTLEMENT-  
ELIGIBLE PLAINTIFFS**

This multi-district litigation, MDL No. 05-1708, *In re: Guidant Corp. Implantable Defibrillators Products Liability Litigation*, has been pending for nearly four years. The settlement of the vast majority of plaintiffs' cases in MDL No. 05-1708 is in its final stages, and over 8,100 plaintiffs and claimants have resolved their claims through the settlement process to date.

The Court is informed by the Defendants and the Plaintiffs' Lead Counsel Committee that there are 128 plaintiffs who have cases pending in this Court, who are eligible to participate in the current settlement, and who, as of the date of this Order, have not indicated to the Court or the parties (despite repeated requests) whether they intend to settle or to pursue their claims pending before this Court (or, if they have once indicated

an intent to participate in the settlement, they have not followed through by submitting the required forms).<sup>1</sup>

In a letter dated November 21, 2008, the Court previously attempted to ascertain the intent of these plaintiffs by requiring them to return a Declaration of Intent by December 5, 2008. On the Declaration of Intent, each plaintiff was to indicate whether he or she wished to participate in the settlement or, if not interested in settling, to indicate whether he or she intended to pursue his or her lawsuit. The great majority of the 128 non-settling plaintiffs who are subject to the present Order did not return a Declaration of Intent. A few of these plaintiffs did return a Declaration of Intent indicating a desire to participate in the settlement, but have not followed through by submitting the required forms. Thus, these 128 plaintiffs are primarily individuals who have neither demonstrated an interest in the settlement nor done anything to indicate an intent to pursue litigation outside the settlement.

The Court must now determine whether any of these 128 non-settling plaintiffs intend to litigate their claims. For those plaintiffs who do intend to litigate their claims--and who appear in person for a case management conference and satisfy the requirements imposed at that conference as ordered below--the Court will begin taking steps to coordinate and oversee such litigation going forward. For those plaintiffs who

---

<sup>1</sup> In issuing this Order, the Court has taken into consideration the October 15, 2009 affidavits of Elizabeth A. Peterson, on behalf of Plaintiffs' Liaison Counsel, and Jeffrey S. Nelson, counsel for the Guidant Defendants, regarding the process that the parties have employed to contact pro se plaintiffs and other plaintiffs who have not  
(Footnote Continued on Next Page)

fail to appear in person for a case management conference (without advance permission from the Court), and for those plaintiffs who so appear for that case management conference but who fail to satisfy the conditions imposed at that conference, the Court will dismiss their cases with prejudice. A plaintiff may request advance permission from the Court to attend the conference other than in person by contacting Elizabeth Peterson of Plaintiffs' Liaison Counsel's office, as set forth below in Paragraph 3.

Accordingly, **IT IS HEREBY ORDERED:**

1. That Plaintiffs' Liaison Counsel shall send a copy of this Order to each Plaintiff listed on Exhibit A to this Order.

2. That all counsel for plaintiffs and all *pro se* plaintiffs (i.e., plaintiffs who have no counsel and who represent themselves) listed in Exhibit A to this Order must appear in person before this Court for a case management conference on November 9, 2009 to show cause why their cases should not be dismissed with prejudice. The case management conference shall take place in Courtroom 7C at the Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, at 3:00 p.m. CDT.

3. That in-person attendance at this conference is mandatory. Failure of counsel for each plaintiff or failure of a *pro se* plaintiff to appear in person, without advance permission from the Court, will result in the immediate dismissal of that

---

(Footnote Continued From Previous Page)  
responded to attempts to ascertain their interest in the MDL No. 05-1708 Settlement Program.

plaintiff's case with prejudice. A plaintiff may request advance permission from the Court to attend the conference other than in person by contacting Elizabeth Peterson of Plaintiffs' Liaison Counsel's office. Ms. Peterson can be reached by e-mail at [Elizabeth.Peterson@zimmreed.com](mailto:Elizabeth.Peterson@zimmreed.com) or by telephone at 1-800-755-0098. The Court recognizes that, in some cases, dismissal with prejudice may be the result desired by the plaintiff. In such cases, the plaintiff may simply have his or her case dismissed with prejudice by choosing not to appear for the case management conference.

4. That for those non-settling plaintiffs who do wish to pursue their cases, among the issues to be discussed at the case management conference shall be the requirement that each such plaintiff must provide, within 30 days of the conference, the following: (1) signed authorizations for the release of medical records (or updated authorizations if previously provided and no longer valid); and (2) a Plaintiff Fact Sheet (or an updated Plaintiff Fact Sheet if previously provided). The failure of any plaintiff to satisfy the preceding requirements within 30 days of the case management conference shall constitute cause for the dismissal of that plaintiff's case with prejudice.

5. That all parties present at the case management conference must also be prepared to discuss setting a briefing schedule for any early dispositive motions (e.g., preemption motions).

Dated: October 16, 2009

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