

**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:

Benjamin Lebow,

Plaintiff,

v. Civil No. 07-2351 (DWF/AJB)

Guidant Corporation; *et al.*,

Defendants.

**ORDER REGARDING  
BENJAMIN LEBOW**

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. As of October 16, 2009, however, there were 128 plaintiffs who had cases pending in this Court and were eligible to participate in the settlement but had not yet indicated to the Court or the parties (despite repeated requests) whether they intended to settle or to pursue their claims (or, if they had once indicated their intent to participate in the settlement, they had not followed through by submitting the required forms).

Therefore, on October 16, 2009, the Court issued a Show Cause Order For Dismissal With Prejudice of Non-Responding Settlement-Eligible Plaintiffs and scheduled a case management conference for November 9, 2009. (MDL 05-1708 (DWF/AJB), Doc. No. 4139.) In the Order, the Court stated that it would dismiss with prejudice the claims of those plaintiffs who either failed to appear in person for a case management conference (without advance permission from the Court) or failed to satisfy the conditions imposed at that conference.

Prior to the November 9, 2009 case management conference, Benjamin Lebow, who is *pro se*, contacted Elizabeth Peterson of the Plaintiffs' Liaison Counsel and expressed his desire to have his case dismissed without prejudice. On November 13, 2009, the Court issued an Order stating, in relevant part:

There is nothing in the record to indicate why plaintiff Benjamin Lebow's case should be treated differently than the other cases at issue in this Order. Therefore, if Mr. Lebow wishes for his case to be dismissed without prejudice, he must file an appropriate motion requesting such a dismissal. Mr. Lebow must file such a motion no later than November 20, 2009. If Mr. Lebow instead chooses either to participate in the settlement or continue with his litigation, he must complete and submit either an updated Plaintiff's Fact Sheet and medical authorization forms or settlement paperwork to Ms. Peterson and Guidant no later than November 20, 2009. Failure to file the appropriate motion or to complete and submit either an updated Plaintiff's Fact Sheet and medical authorization forms or settlement paperwork by November 20, 2009, will result in the dismissal of all claims with prejudice.

(MDL 05-1708 (DWF/AJB), Doc. No. 4170.) On November 23, 2009, Mr. Lebow submitted a response to the Court, in which he discusses in detail his medical history relating to his Guidant device and explains why he has not yet completed an updated Plaintiff's Fact Sheet. (Civ. No. 07-2351 (DWF/AJB), Doc. No. 12.) Mr. Lebow does

not, however, address his desire to have his case dismissed without prejudice. (*Id.*)

Pursuant to the Court's November 25, 2009 Order (MDL 05-1708 (DWF/AJB), Doc. No. 4243), Guidant responded to Mr. Lebow's submission on November 17, 2009, urging the Court to treat Mr. Lebow's case as it has other cases in the MDL. (Civ. No. 07-2351 (DWF/AJB, Doc. No. 13.)

On December 15, 2009, the Special Masters issued an Order Regarding Deadline for Settlement Documents Required under Section III(F) of the Master Settlement Agreement. (MDL 05-1708 (DWF/AJB), Doc. No. 4345.) That Order specifically sets a December 31, 2009 final deadline for participating in the Guidant MDL:

1. Claimants eligible to participate in the Guidant MDL No. 05-1708 Settlement who have not, to date, successfully completed and submitted all the required settlement documentation, or who have submitted deficient settlement documentation, have until December 31, 2009 to submit the documents required under Section III(F) of the Master Settlement Agreement.
2. Claimants who have not submitted complete and deficiency-free settlement documents by December 31, 2009 will no longer be eligible to participate in the Guidant MDL 05-1708 Settlement. The claims of those claimants who fail to submit complete and deficiency-free settlement documents by December 31, 2009 – and whom the Court ordered to do so by November 20, 2009 in its November 13, 2009 Order for Dismissal with Prejudice Pursuant to October 16, 2009 Show Cause Order– shall be dismissed with prejudice. Those claimants who fail to submit complete and deficiency-free settlement documents by December 31, 2009, but who are not subject to the Court's November 13, 2009 Order, will continue their cases against Guidant pursuant to future orders of this Court.

(*Id.*)

The Court has conferred with Ms. Peterson concerning her office's numerous contacts with Mr. Lebow. Based on Ms. Peterson's representations and a detailed review of Mr. Lebow's submission to the Court, the Court understands that Mr. Lebow now wishes to participate in the settlement. In order to do so, he must complete settlement documentation no later than December 31, 2009. If he wishes instead to continue with his litigation, he must complete an updated Plaintiff's Fact Sheet and a medical release authorization form. (Civ. No. 07-2351 (DWF/AJB, Doc. No. 13 (discussing documents needed from Mr. Lebow to continue with the litigation).)

Therefore, based on a review of the record and proceedings herein, **IT IS HEREBY ORDERED:**

1. No later than **December 31, 2009**, Benjamin Lebow shall either submit his deficient settlement documentation, as required under Section III(F) of the Master Settlement Agreement, or complete an updated Plaintiff's Fact Sheet and medical release authorization form.

2. If Mr. Lebow fails to submit sufficient documentation either to enter into the settlement or continue with his litigation, his complaint shall be dismissed with prejudice.

Dated: December 28, 2009

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