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December 21, 2009

The Honorable Donovan Frank  
Judge of the United States District Court  
700 Federal Courts Building  
316 North Robert Street  
St. Paul, MN 55101

The Honorable Arthur J. Boylan  
United States Magistrate Judge  
700 Federal Building  
316 North Robert Street  
St. Paul, MN 55101

Re: *In re: Guidant Corp. Implantable Defibrillators Products  
Liability Litigation, MDL No. 1708 (D. Minn.)*

*In re: Minnesota State Court Guidant Corp. Implantable Defibrillators  
Products Liability Litigation, Court File No. 62-C4-06-006672 (Ramsey Cnty.  
Dist. Ct.)*

Dear Your Honors:

On behalf of the third-party-payor plaintiffs (collectively the "TPP Plaintiffs") in on-going litigation in state court in Minnesota relating to certain products that were also at issue in MDL No. 1708, I write today to submit a proposed Order Regarding Third-Party Payor Plaintiffs' Access to Information Concerning the MDL Settling Claimants. The language of the enclosed proposed Order has been negotiated and approved by counsel for the state court TPP Plaintiffs (Kim West and Tim Branson) and counsel for Guidant (Jeff Nelson). I request that the Court enter the enclosed proposed Order.

If the Court has any questions or requires further information, please let me know.

Very truly yours,

Timothy E. Branson

cc w/enc.: Robert Hopper, Esq.  
Charles S. Zimmerman, Esq.  
Elizabeth Peterson, Esq.  
Jeff Nelson, Esq.  
Kim West, Esq.

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In re: GUIDANT CORP. IMPLANTABLE	)	MDL No. 05-1708 (DWF/AJB)
DEFIBRILLATORS PRODUCTS	)	
LIABILITY LITIGATION	)	
	)	
This document applies to:	)	<b>ORDER REGARDING</b>
ALL ACTIONS	)	<b>THIRD-PARTY-PAYOR</b>
	)	<b>PLAINTIFFS' ACCESS TO</b>
	)	<b>INFORMATION</b>
	)	<b>CONCERNING THE MDL</b>
	)	<b>SETTLING CLAIMANTS</b>
	)	
	)	

The Court has received a request from approximately 50 United Healthcare entities, including United Healthcare Services, Inc., and from the Blue Cross and Blue Shield Plans and WellPoint, Inc., all of whom are third-party-payor plaintiffs (collectively the "TPP Plaintiffs"), in on-going litigation in state court in Minnesota relating to certain products that were also at issue in MDL No. 1708. *See In re: Minnesota State Court Guidant Corp. Implantable Defibrillators Products Liability Litigation, Court File No. 62-C4-06-006672 (Ramsey Cnty. Dist. Ct.)* ("Ramsey County case"). A copy of the request by the TPP Plaintiffs was also served on the "Plaintiffs Lead Counsel Committee" in the MDL (the "PLCC") and counsel for Defendants. In connection with a proposal offered to individuals covered by plans administered or underwritten by the TPP Plaintiffs who also elected to participate in the settlement of this MDL, the TPP Plaintiffs have requested an Order from this Court granting the TPP Plaintiffs access to and authorizing the TPP Plaintiffs to use (a) the names and addresses

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of individual MDL settling claimants who choose not to participate in the settlement being offered and of their representing Counsel, and (b) their Amended Gross Allocation Amounts.<sup>1</sup> Having considered the request of the TPP Plaintiffs, IT IS HEREBY ORDERED AS FOLLOWS:

1. The TPP Plaintiffs are granted access to and are authorized to use (a) the names and addresses of individual MDL settling claimants who choose not to participate in the settlement being offered (“Non-Participating MDL TPP Insureds”) and of their representing Counsel, and (b) their Amended Gross Allocation Amounts ((a) and (b) collectively are defined as “Settlement Data for Non-Participating MDL TPP Insureds”) for the purpose of seeking recovery from any source or for the purpose of pursuing any claims against or relating to the Non-Participating MDL TPP Insureds or others. The Settlement Data for Non-Participating MDL TPP Insureds shall be used by the TPP Plaintiffs solely for the purposes described above and/or for the Ramsey County case. In all respects, the Settlement Data for Non-Participating MDL TPP Insureds shall be governed by the confidentiality provisions of the Confidentiality Order entered by this

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<sup>1</sup> “Amended Gross Allocation Amount” is the gross settlement payment allocated to an MDL settling claimant reduced by the maximum ratchet-back percentage of 5% of the gross allocated settlement amount. This amount is calculated before attorneys’ fees, administrative fees, litigation expenses or any other costs are deducted.

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Court on November 19, 2007, a copy of which has been provided to counsel for the TPP Plaintiffs.

2. Defendants are also granted access to and are authorized to use the Settlement Data for Non-Participating MDL TPP Insureds. The Settlement Data for Non-Participating MDL TPP Insureds shall be used by Defendants solely to address the TPP Plaintiffs' claims relating to the Non-Participating MDL TPP Insureds and/or the Ramsey County case. In all respects, the Settlement Data for Non-Participating MDL TPP Insureds shall be governed by the confidentiality provisions of the Confidentiality Order entered by this Court on November 19, 2007.

3. Upon request by counsel for the TPP Plaintiffs, the PLCC, and/or counsel for Defendants, the MDL settlement claims administrator shall deliver to counsel for the TPP Plaintiffs and to counsel for Defendants the Settlement Data for Non-Participating MDL TPP Insureds.

4. For payment-eligible claimants who both (a) appear on Allocation Reports 1-6 and were identified by Analytics, pursuant to the Court's August 7, 2009 Order Amending the December 19, 2008 Order Distributing Claims Funds, as claimants who are subject to an alleged third-party payor lien or claim by one or more of the TPP Plaintiff named entities in the Minnesota state-court actions of Blue Cross and Blue Shield Association, et al. v. Guidant Corporation, et al., Court File No. C6-06-4938 (Ramsey County District Court, Second Judicial District) and United HealthCare Services, Inc., et al. v. Guidant Corporation, et al., File No. 62-CX-06-007759 (Ramsey County District Court, Second Judicial District), wherein 25% of their allocation was

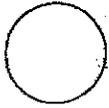
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held back, and (b) appear on a list provided by the TPP Plaintiffs of Non-Participating MDL TPP Insureds, Analytics shall release all of their held-back funds excluding 5% of their gross allocation to their representing Counsel, who shall keep such funds in representing Counsel's trust account until such Non-Participating MDL TPP Insured has reached a written agreement with the TPP Plaintiffs authorizing the release of such funds or April 30, 2010, whichever occurs first, so long as the TPP Plaintiffs have not secured further judicial relief requiring further retention of such funds in representing Counsel's trust account. In the event any party requests it for an individual case, an extension will be considered by this Court to allow for resolution of a possible TPP's lien.

Dated: December \_\_\_\_, 2009

\_\_\_\_\_  
DONOVAN W. FRANK  
Judge of United States District Court

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ZIMMERMAN REED  
ATTORNEYS AT LAW

January 12, 2010

CHARLES S. ZIMMERMAN  
Attorney in Minnesota  
[csz@zimmermanreed.com](mailto:csz@zimmermanreed.com)

REPLY TO MINNEAPOLIS

The Honorable Donovan W. Frank  
Judge of U.S. District Court  
Warren E. Burger Federal Building  
316 North Robert St., Room 738  
St. Paul, MN 55101

RE: *In Re: Guidant Corp. Implantable Defibrillators Products Liability Litigation, MDL 1708*

Dear Judge Frank:

The Lead Counsel Committee (LCC) understands that Counsel for United Healthcare and Blue Cross Blue Shield have provided the Court with a letter request for "Orders from the Court granting the United and Blue Cross TPP Plaintiffs access to and authorizing the United and Blue Cross TPP Plaintiffs to use the names and addresses of the Non-Participating MDL TPP Insureds, their Gross Allocation Amounts . . . and the amount of any MDL holdback amount pertaining to Non-Participating MDL TPP Insureds for the purpose of seeking recovery from any source or for the purpose of pursuing any claims against or relating to the Non-Participating MDL TPP Insureds or others." Counsel for the two TPPs has also recently provided this Court with a proposed order for the above described release of names emailed on December 21, 2009. Though the LCC has no position on this issue, other Plaintiffs' Counsel whose clients' maybe affected by such an order may wish to be heard on this matter. The LCC believes that the proposed order affects claimants represented by no fewer than 70 different Plaintiffs' attorneys. The LCC believes these attorneys should receive notice of the TPPs request and be afforded an opportunity to be heard on this matter, if they so require, before this Court enters any order.

The LCC would be happy to provide such notice to Plaintiffs' Counsel for the 8550 but at this time do not believe any motion by the TPPs has been filed on ECF allowing for distribution.

Respectfully,

ZIMMERMAN REED, PLLP

s/ Charles S. Zimmerman

Charles S. Zimmerman  
Plaintiffs' Co-Lead Counsel

cc: LCC  
Tim Branson  
Kim West  
Jeff Nelson

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Kim West  
<kwest@wallacejordan.com>

01/14/2010 10:27 AM

To 'Elizabeth Peterson' <Elizabeth.Peterson@zimmreed.com>, "Laura\_Johnson@mnd.uscourts.gov" <Laura\_Johnson@mnd.uscourts.gov>, "Nelson, Jeff (SHB)" <JNELSON@shb.com>, "Branson.Tim@dorsey.com" <Branson.Tim@dorsey.com>, "Richard J. Arsenault" <rsenault@nbawfirm.com>, bcc

Subject RE: In re: Guidant Products Liability Litigation

Dear Bucky: While not agreeing with your letter, please be advised of a definitional issue -- the term "Blue Cross and Blue Shield" used in the motion also includes my client, WellPoint, Inc. I simply wish to make it clear that it is the party's intent for WellPoint to be included. Thanks, Kim

**From:** Elizabeth Peterson [mailto:Elizabeth.Peterson@zimmreed.com]

**Sent:** Wednesday, January 13, 2010 4:07 PM

**To:** 'Laura\_Johnson@mnd.uscourts.gov'; 'Amy\_Gernon@mnd.uscourts.gov'; 'frank\_chambers@mnd.uscourts.gov'; 'boylan\_chambers@mnd.uscourts.gov'

**Cc:** 'Nelson, Jeff (SHB)'; Branson.Tim@dorsey.com; Kim West; 'Richard J. Arsenault'; Cabraser, Elizabeth; 'seth.lesser@kiafterolsen.com'; Keenan, Matthew (SHB); Charles Zimmerman

**Subject:** In re: Guidant Products Liability Litigation

Judge Frank,

Please see attached letter from Mr. Zimmerman regarding United Healthcare and Blue Cross Blue Shield's proposed order submitted to Your Honor on December 21, 2009.

Thank you for your consideration.

**Elizabeth Peterson**

Attorney

Zimmerman Reed, PLLP  
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