

**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 REGARDING THIRD-PARTY
PAYOR PLAINTIFFS' ACCESS TO
INFORMATION CONCERNING
THE MDL SETTLING CLAIMANTS**

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. The Court also provided notice of the TPP Plaintiffs’ proposed order to all claimants’ counsel on January 20, 2010. (Doc. No. 4434).

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 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.¹ Having considered the request of the TPP Plaintiffs and using the language submitted in the TPP Plaintiffs' proposed order, **IT IS HEREBY ORDERED:**

1. The Court has received three objections to the TPP Plaintiffs' proposed order on behalf of MDL Claimants 17731, 15451, and 10742. (Doc. Nos. 4454-4456.) The TPP Plaintiffs shall attempt to negotiate a resolution with these Claimants. If they are unable to do so, the TPP Plaintiffs shall submit written responses to the objections no later than fourteen (14) days from the date of this Order. MDL Claimants 17731, 15451, and 10742 shall then have seven (7) days from receipt of the TPP Plaintiffs' responses to submit any replies.

2. 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 Insureds²”) 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”)

¹ “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.

² Until further Order by this Court, Non-Participating MDL TPP Insureds shall not include MDL Claimants 17731, 15451, and 10742.

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

3. 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.

4. 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.

5. 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 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: January 29, 2010

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