

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: Guidant Corp. Implantable
Defibrillators Products Liability Litigation

MDL No. 1708 (DWF/AJB)

This Document Relates to ALL ACTIONS

**ORDER FOR SUGGESTION
OF REMAND**

On November 7, 2005, the Judicial Panel on Multidistrict Litigation (“JPML”) issued its initial Transfer Order establishing *In re: Guidant Corp. Implantable Defibrillators Products Liability Litigation*, MDL No. 05-1708 (DWF/AJB) (“MDL 1708”) in this Court. In creating MDL 1708, the JPML transferred and consolidated cases from federal district courts around the country to the District of Minnesota because “centralization . . . [would] serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.” The JPML subsequently transferred numerous additional cases to MDL 1708 for the purposes of coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. MDL 1708 has proceeded with coordinated discovery having been conducted by both parties, with motion practice before this Court, and with bellwether cases being worked up for trial.

In November 2007, to avoid the risk and cost of continued litigation, Guidant and virtually all of the MDL Plaintiffs (hereinafter referred to as the “Settling Plaintiffs”) agreed to compromise and conclude the MDL and resolve most of the related cases and claims. Only a limited number of Plaintiffs have decided not to settle their cases or claims (hereinafter referred to as the “Non-Settling Plaintiffs”). The Non-Settling

Plaintiffs' cases and claims are included on Exhibit A, which is attached to this Order.

No party has admitted liability for, or the validity of, any claims or defenses asserted in or related to the MDL in agreeing to settle their claims or in suggesting remand. Since that time, the Court has been overseeing the settlement process, which is now nearly complete.

A transferee court is obligated to remand any remaining actions to their respective transferor courts upon the conclusion of coordinated or consolidated pretrial proceedings in the transferee district. *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, et al.*, 523 U.S. 26, 34 (1998). The Court's discretion to suggest remand is centered upon a determination that the objectives of centralized pretrial proceedings under 28 U.S.C. § 1407 have been achieved. *In re A.H Robins Co., Inc., "Dalkon Shield" IUD Prod. Liab. Litig.*, 453 F. Supp. 108, 110 (JPML 1978). The power to remand cases to a transferor court, however, lies exclusively within the province of the JPML, and it will consider remand upon the motion of any party, its own initiative, *or the suggestion of the transferee District Court*. JPML Rule 7.6(c) and (d) (emphasis added); *see also* 28 U.S.C. § 1407(a).

The Plaintiffs' Steering Committee, the Settling Plaintiffs, and Guidant have agreed that dissolution of MDL 1708 is in the best interests of the parties, and together they have submitted a joint motion for such dissolution. (Doc. No. 4546.) Given the number of cases before it and after reviewing the joint motion, the Court finds that this MDL has fulfilled the objectives set forth in 28 U.S.C. § 1407 and that dissolution of this MDL will serve the interests of the parties and result in judicial economy. Therefore, the

Court suggests that this MDL should be concluded and that the Non-Settling Plaintiffs' cases be remanded back to their respective transferor district courts.

Under certain circumstances, a district judge of one circuit may serve in another circuit pursuant to 28 U.S.C. § 292. As of March 24, 2010, there are 39 Non-Settling Plaintiffs, of which 26 plaintiffs filed claims directly in the District of Minnesota. The remaining 13 plaintiffs filed claims in other courts, and the JPML eventually transferred those cases to this Court. With respect to those 13 Non-Settling Plaintiffs, the Court will encourage them and Guidant to seek inter-circuit assignments for their claims after remand by the JPML. In the Court's view, inter-circuit assignment would allow the parties to benefit from the Court's institutional knowledge of MDL 1708, minimize delay and expense, and respect the Non-Settling Plaintiffs' forum choices, regardless of whether such inter-circuit assignment would be for the purpose of attempting to settle the case or proceed to trial. The Court will accept an inter-circuit assignment with the full understanding that it is the Court's responsibility to preside over any individual case in the transferor district.

Thus, **IT IS HEREBY ORDERED:**

1. The parties joint motion to Remand Remaining MDL Plaintiffs (Doc. No. [4546]) is **GRANTED**.
2. The Clerk of Court is directed to file a copy of this Order in each of the cases identified in Exhibit A.
3. The Clerk of Court shall provide a copy of this Order to the Clerk of the Judicial Panel on Multidistrict Litigation.

4. Upon entry of the Remand Order by the JPML, any Non-Settling Plaintiff seeking an inter-circuit assignment is directed to contact Joyce Bridges, Management Analyst with the Article III Judges Division of the U.S. Courts Administrative Office, at 202-502-1186. Ms. Bridges is prepared to assist the parties, consistent with 28 U.S.C. § 292, to seek an inter-circuit assignment.

5. Upon entry of the Remand Order by the JPML, and expiration of all appeals and potential appeals, the parties shall jointly prepare a stipulation to the Court, designating the portions of the MDL Court's record that shall be remanded to the transferor courts.

Date: March 30, 2010

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