

**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 DISMISSING
CLAIMS OF PLAINTIFFS
LISTED IN EXHIBIT A**

This multi-district litigation (“MDL”) commenced in November 2005, when the Judicial Panel on Multidistrict Litigation consolidated certain actions and transferred them to the District of Minnesota for pre-trial proceedings against Defendants Guidant Corporation, Guidant Sales Corporation, Cardiac Pacemakers, Inc., Boston Scientific Corporation, and Guidant Puerto Rico Sales Corporation (collectively “Guidant”). These actions were brought for injuries alleged to have been caused by certain allegedly defective implantable defibrillator devices and pacemakers manufactured by Guidant.

In December 2007, the Plaintiffs’ Lead Counsel Committee (“LCC”) and Guidant entered into a Master Settlement Agreement (“MSA”) that requires, among other things, that each claimant who has a filed lawsuit must submit a stipulation of dismissal with prejudice in order to qualify as a Participating Claimant.

On March 16, 2009, the parties filed their First Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice, which outlined a procedure for stipulating to the dismissal of each case filed by, or on behalf of, an MDL plaintiff who participates in any final

settlement reached in accordance with the terms of the MSA. The First Joint Multi-Plaintiff Stipulation also requested the dismissal with prejudice of each case filed by, or on behalf of, each plaintiff who had settled in accordance with the provisions of the MSA and who had already been allocated settlement funds pursuant to either the Confidential Order Approving Allocation Report Pursuant to Section IV.C.2 of Amended Master Settlement Agreement (December 10, 2008) or the Confidential Order Approving Second Allocation Report Pursuant to Section IV.C.2 of Amended Master Settlement Agreement (January 13, 2009).

On April 6, 2009, the Court issued an Order Dismissing All Claims of Plaintiffs Listed in Exhibit A to the parties' First Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice. The Court's April 6, 2009 Order also approved the parties' proposed procedure for dismissing all settled MDL cases going forward and anticipated that the parties would file additional stipulations of dismissal following subsequent allocation orders.

On September 8, 2009, the parties filed their Second Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice and Exhibit A, which is a list of the plaintiffs who have settled in accordance with the provisions of the MSA and who have been allocated settlement funds pursuant to either the Confidential Order Approving Special Masters' Third Allocation Report Pursuant to Section IV.C.3 of Amended Master Settlement Agreement (February 25, 2009) or the Confidential Order Approving Fourth

Allocation Report Pursuant to Section IV.C.3 of Amended Master Settlement Agreement (April 17, 2009) (as amended April 29, 2009).¹

On September 24, 2009, the Court issued an Order Dismissing All Claims of Plaintiffs Listed in Exhibit A to the parties' Second Joint Multi-Plaintiff Stipulation of Dismissal with Prejudice.

On March 23, 2010, the parties filed their Third Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice and Exhibit A, which contains a list of the plaintiffs who have settled in accordance with the terms of the MSA and who have been allocated settlement funds pursuant to either the Confidential Order Approving Fifth Allocation Report Pursuant to Section IV.C.3 of Master Settlement Agreement (June 22, 2009), and the Confidential Order Approving Special Masters' Sixth Allocation Report Pursuant to Section IV.C.3 of the Master Settlement Agreement (October 7, 2009).

On April 16, 2010, the Court issued an Order Dismissing All Claims of Plaintiffs Listed in Exhibit A to the parties' Third Joint Multi-Plaintiff Stipulation of Dismissal with Prejudice.

The parties request that all claims of each plaintiff listed in Exhibit A to their Fourth Joint Stipulation, against all named Defendants – including but not limited to Guidant Corporation, Guidant Sales Corporation, Cardiac Pacemakers, Inc., Boston

¹ In addition to the plaintiffs allocated settlement funds on June 22, 2009 and October 17, 2009, Exhibit A includes one plaintiff who was subject to the parties' Second Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice, but whose claims have not yet been entirely dismissed because they had a duplicate case on file.

Scientific Corporation, and Guidant Puerto Rico Sales Corporation – be dismissed in their entirety with prejudice, each party to bear its own costs. *See* Doc. No. 4647.

The parties served a copy of the Fourth Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice and Exhibit A upon counsel of record for each individual plaintiff who is listed in Exhibit A. In addition, the parties served a copy of the Fourth Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice and Exhibit A by U.S. Mail upon each individual *pro se* plaintiff who is listed in Exhibit A.

Pursuant to the parties' stipulation and according to the procedure previously endorsed by this Court on April 6, 2009, if counsel or a *pro se* plaintiff identified any inadvertent errors in Exhibit A, he or she was required to file with the Court a notice of such error within fifteen (15) days of the filing of the Fourth Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice. In addition to filing with the Court, he or she was required to serve a copy of such notice on the LCC and on Guidant.² If counsel or a *pro se* plaintiff failed to file a notice regarding an error within fifteen (15) days of the filing of the Fourth Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice, such failure was to be considered a waiver of the error.

The parties' Fourth Joint Stipulation and this Court's April 6, 2009 Order made clear that after the expiration of this 15-day period, the Court, pursuant to Federal Rule of

² As set forth in the parties' Fourth Joint Stipulation and in the Court's prior order, a notice of error filed on the Electronic Case Filing ("ECF") system will be considered served on the LCC and on Guidant pursuant to Local Rule 5.4. A notice of error filed by means other than ECF (e.g., paper filing), must be served on the LCC and on counsel for Guidant at the addresses listed in the parties' First Joint Stipulation, the Court's April 6, 2009 Order, and the parties' Fourth Joint Stipulation.

Civil Procedure 41(a)(2), would enter a global order dismissing each case filed by, or on behalf of, each plaintiff listed in Exhibit A to Doc. No. 4647.

Accordingly, **IT IS HEREBY ORDERED** that:

1. More than fifteen days have passed since the parties filed their Fourth Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice. The Court received only one Notice of Error concerning any plaintiff included in Exhibit A. (Doc. No. [4670].) Therefore, with the exception of Plaintiff Steven S. Willis (the plaintiff listed in Doc. No. 4670), the Court deems any inadvertent errors in the preparation of Exhibit A waived. With the exception of Plaintiff Steven S. Willis, Exhibit A to Doc. No. 4647 is hereby approved and incorporated by reference into this Order.

2. Pursuant to Federal Rule of Civil Procedure 41(a)(2), all cases and claims of each plaintiff (with the exception of Plaintiff Steven S. Willis) listed in Exhibit A to the parties' Fourth Joint Multi-Plaintiff Stipulation of Dismissal With Prejudice against all named Defendants (Doc. No. [4647]) are **DISMISSED** in their entirety **WITH PREJUDICE**, and each party shall bear its own costs.

3. Plaintiff, Steven S. Willis, Individually and as Administrator of the Estate of Karen S. Andel, deceased, shall contact the Court, Guidant, and the PLC within ten days after obtaining a decision from the Court of Common Pleas, Probate Division of Geauga County, Ohio, to advise the parties if his settlement has been approved by that court.

Dated: August 30, 2010

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