

**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:

Robert F. Bauman,

v. Civil No. 06-2183 (DWF/AJB)

Guidant Corporation and Guidant Sales
Corporation,

**ORDER REGARDING
GUIDANT'S SECOND MOTION
TO COMPEL PRODUCTION OF
MEDICAL RECORD
AUTHORIZATIONS AND
PLAINTIFF FACT SHEETS**

Tracy Carter, as rightful heir at law and
next of kin of Ethel Charlotte Meadows,
decedent,

v. Civil No. 06-2191 (DWF/AJB)

Guidant Corporation and Guidant Sales
Corporation,

Shelia Ettinger,

v. Civil No. 06-23 (DWF/AJB)

Guidant Corporation and Guidant Sales
Corporation,

Roland R. Foreman,

v. Civil No. 06-2192 (DWF/AJB)

Guidant Corporation and Guidant Sales
Corporation,

Betty Ann Martin, as rightful heir at law
and next of kin of Frederick William
Martin, Sr., decedent,

v. Civil No. 06-2193 (DWF/AJB)

Guidant Corporation and Guidant Sales
Corporation,

On November 20, 2006, Guidant filed a Second Motion to Compel Production of Medical Records Authorization and Plaintiff Fact Sheets with respect to certain plaintiffs in seven cases. Guidant later withdrew its motion in two of those cases. (*See* MDL 05-1708 (DWF/AJB), Doc. Nos. 950 and 961; Civ. No. 06-2419 (DWF/AJB), Doc. No. 7; Civ. No. 05-2598 (DWF/AJB), Doc. No. 14.)¹ With respect to the remaining plaintiffs, the parties engaged in three rounds of briefing relating to Guidant's motion.

Four primary issues appeared in the briefing. First, based on the parties' representations, the Court understands that all but one of the remaining plaintiffs have now completed all of the necessary medical authorization forms and therefore, this issue raised in Guidant's motion is moot. The Court addressed the issue of medical authorization forms in numerous orders, most recently in its September 22, 2006 and November 28, 2006 Orders. (*See* MDL 05-1708 (DWF/AJB), Doc. Nos. 650 and 951.) Although the Court is certain that there is no misunderstanding about the Court's rulings on this issue, the Court notes that Guidant's use of the adjective "court-approved"

¹ The Court reminds all plaintiffs that they must file documents in both the master MDL case and their own individual cases.

immediately preceding the phrase “blank authorization” in correspondence after September 22, 2006, is misleading. The Court is certain that Guidant will clarify its correspondence in the future.

Second, one round of briefing was dedicated solely to if and when attorneys returned each other’s calls and read each other’s documents. The Court wonders if future disputes could be avoided if Guidant’s contact information on the Court’s website was updated to include additional contact information for Guidant’s lead discovery attorney, who appears to be Jane Bartley. Alternatively, Guidant’s lead attorney, Timothy Pratt, could include contact information on his outgoing voicemail or email messages.²

Third, the remaining plaintiffs and Guidant all seek attorney fees and sanctions as a result of this motion. After reviewing the correspondence between the parties, the Court concludes that such sanctions are not appropriate at this time. Plaintiffs and Guidant are equally responsible for this motion. Therefore, the Court denies all requests for attorney fees and sanctions.

Fourth, Guidant has outstanding discovery requests that have not been answered by the remaining plaintiffs. The Court has reviewed the correspondence between the parties and notes that Guidant did not consistently ask for the documents and/or requests it now seeks. Instead, some letters included certain requests when later letters did not. This omission was likely confusing to plaintiffs, who, for example, objected to document requests and therefore thought the issue was Guidant’s responsibility to pursue further.

² The PLC might also consider updating its MDL website contact information so that plaintiffs could be directed to at least one attorney who could immediately answer their calls and/or questions.

Nonetheless, the Court reviewed its Orders relating to the plaintiff fact sheets (“PFS”) and concludes that the document requests are included in the court-approved PFS. Moreover, as discussed in PTO No. 14, Guidant is entitled to information about a plaintiff’s family/primary care physician for the last ten years.

Based on the foregoing, the Court finds that the individual plaintiffs’ discovery failures have prejudiced Guidant’s ability to prepare its defense and have threatened the efficient and expeditious operation of this MDL. The Court therefore orders the following:

1. Plaintiff Sheila Ettinger shall provide Guidant with a response to Section VI.D. of the PFS and signed medical authorization forms for the doctors listed in Section VI.D no later than thirty (30) days from the date of this Order.

2. Plaintiffs Robert Bauman, Tracy Carter, Roland Foreman, and Betty Ann Martin shall provide Guidant with documents responsive to Document Request No. 8 no later than thirty (30) days from the date of this Order.

IT IS SO ORDERED.

Dated: December 22, 2006

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