

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MINNESOTA**

Chambers of  
**DONOVAN W. FRANK**  
DISTRICT JUDGE

Warren E. Burger Federal Building  
316 North Robert Street, Room 738  
St. Paul, Minnesota 55101  
(651) 848-1290

March 27, 2007

**BY ECF ONLY**

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**Re: In re: GUIDANT CORP. IMPLANTABLE DEFIBRILLATORS  
PRODUCTS LIABILITY LITIGATION  
MDL No. 05-1708 (DWF/AJB)  
Letter Briefs–Guidant’s March 21, 2007 Letter**

Dear Counsel:

On March 21, 2007, Guidant sent a letter by mail concerning the deposition of Dr. Hauser, Plaintiffs’ Motion to Show Cause Why Designated Documents Should Remain Confidential, the deposition of Dr. Jewel, and a stipulation regarding psychiatric expert reports. On March 22, 2007, Plaintiffs objected to the form of Guidant’s letter with respect to Plaintiffs’ Motion to Show Cause Why Designated Documents Should Remain Confidential and to the deposition of Dr. Jewel, asserting that Guidant was actually seeking relief that should have been asked for in a motion.

Guidant sent its letter after being ordered to respond to Plaintiffs’ Motion to Show Cause (Doc. No. 1354) and to file stipulations on CM/ECF (PTO Nos. 16 and 29). It also sent its letter after receiving the Court’s March 7, 2007 letter, which addressed the filing of letter briefs:

**Motions.** In the last few weeks, several issues have been raised at the status conferences, and the parties have subsequently submitted letter briefs that address those issues. I appreciate letter briefs for the purpose of keeping me

informed of upcoming issues that may arise. However, if those letters are not filed electronically either as letters or motions, there is no way for my chambers to ensure that all documents have been received on a single issue. *Therefore, I ask that you submit future letters (or preferably motions, if a ruling is requested) on CM/ECF and any responses to those letters be electronically tied to the initiating document, with its docket number included.* If documents are filed under seal, I appreciate receiving electronic copies, at a minimum, or two hard copies, as soon as possible. With documents not filed under seal, those documents may be sent by regular mail.

(Emphasis added).

I understand the parties' desire to file letter briefs, especially when the issues need to be disposed of quickly. And, I understand that it takes less time to write and send a letter brief, than it does to draft and file a motion and accompanying documents.

I have, however, three main concerns with letter briefs. First, it is difficult to track letter briefs received by mail, especially when the parties sometimes make reference to letters received many months ago, the parties refer to the same issues differently, or there are multiple rounds of letter briefs. Second, as I have stated many times, I want to make sure that the individual MDL plaintiffs do not get lost in the process. If letter briefs are not filed on CM/ECF, individual plaintiffs do not know what is happening in the MDL. Third, after a letter brief is received, the other side inevitably wants to respond, and a briefing schedule—sometimes with replies and sur-replies—is requested. Consequently, letter briefs sometimes take as much time for the parties and the Court as motions do.

I am beginning two long civil trials in April and June. Given this and the upcoming bellwether trials, it is in the Court's and the parties' interests to agree on how to handle motions and letter briefs going forward. Therefore, the following procedures will be used for motions and letter briefs until the bellwether trials are completed. These procedures, however, are not meant to be a substitute for the parties trying to work together to resolve disputes before bringing them to the Court. Before filing any non-dispositive motion or letter brief, the parties *must* meet and confer as required by Federal Rule of Civil Procedure 37 and Local Rule 37.1.

**Motion Practice:** Any party wishing to file a non-dispositive motion, may do so according to Local Rule 7.1(a). Unless I determine otherwise, there will be no oral argument on those motions, and briefing will occur, without an Order, as if a hearing would have been held 14 days after the motion was filed.

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Any party wishing to file a dispositive motion must do so in accordance with Local Rule 7.1(b) and the scheduling orders in *Duron* or the subsequent bellwether trials. On that note, I look forward to receiving your stipulations later today regarding the scheduling orders in the four other bellwether cases so that final scheduling orders in those cases can be entered.

**Letter Briefs:** If the parties feel an issue needs to be addressed expeditiously, they may raise those issues in letter briefs, in accordance with the following schedule. By 5 p.m. on every Thursday, Plaintiffs or Guidant *may file on CM/ECF* a letter brief, no more than three-pages in length, outlining issues that they feel need the Court's immediate attention. By noon on every Monday, the opposing party *may file on CM/ECF* a letter brief, which shall be no more than three pages in length and *shall be electronically tied to the opening letter brief*, responding to the opening letter brief. The responding letter brief shall not raise new issues.

Every Tuesday at 8:30 a.m., I shall conduct an on-the-record telephone conference to rule on the issues raised in the letter briefs. It is my intention to handle the conference calls; unless, after consultation with Magistrate Judge Arthur Boylan and based upon our schedules and the issues involved, we jointly determine that Magistrate Judge Boylan should handle a particular call. In general, there will be no written rulings on the issues raised in the letter briefs, unless the Court determines one is necessary. On the weeks that there are status conferences, the briefing will still occur on Thursdays and Mondays, but there will be no Tuesday conference call. Instead, I will rule on issues raised in the letter briefs at the status conferences. During any bellwether trial, the briefing (on issues not related to the current trial) will still occur on Thursdays and Mondays, but, instead of a Tuesday conference call, I will rule on any issues raised in letter briefs before the start of each Tuesday trial day. Therefore, based on the current status conference schedule, I will rule on issues raised in Thursday/Monday letter briefs, if any, on April 4, April 10, April 17, and April 25. Again, this letter-briefing schedule will continue until after the bellwether trials are completed.

Guidant and members of the PLC may be on the telephone conferences, but only one person from each side shall participate on a particular call. The people participating from Guidant and the PLC do not need to be the same each week. Unless requested by the Court, I will rule on the issues orally each Tuesday without argument from each side. If no letter briefs are filed by 5 p.m. on any Thursday, the call on the following Tuesday will be cancelled. For the convenience of the parties, I will reserve the Court's conference bridge on Tuesday mornings beginning at 8:30 a.m. I will provide lead counsel with the dial-in details for the conference bridge shortly.

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Finally, with respect to the issues raised in Guidant's March 21 letter, Guidant essentially seeks a stay concerning Plaintiffs' Motion to Show Cause Why Designated Documents Should Remain Confidential because the preemption motion was been withdrawn, thereby mooting Plaintiffs' Motion. The Court agrees. If, when Guidant files its case-specific preemption motion, it uses any of the documents Plaintiffs seek to unseal, Plaintiffs may renew their motion at that time. If the Dr. Hauser and Dr. Jewel deposition issues have not yet been resolved, Guidant shall file its March 21, 2007 letter on CM/ECF no later than 5 p.m. on Thursday, March 29, 2007, and Plaintiffs shall file its opposition to that letter on CM/ECF by noon on Monday, April 2, 2007. The Court will then rule on all of those issues at the April 4, 2007 status conference. With respect to the stipulation regarding psychiatric expert reports, the parties are directed to file any such stipulation on CM/ECF.

If the parties have any questions about this letter or the new procedure related to letter briefs, please do not hesitate to contact my chambers.

Very truly yours,

s/Donovan W. Frank

DONOVAN W. FRANK  
Judge of United States District Court

DWF:rlb

c: Honorable Arthur J. Boylan