

**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:

Oliver Brown,

v. Civil No. 06-1572 (DWF/AJB)

Guidant Sales Corporation, also known as
Guidant Corporation, and Medical
Association of Northeast Louisiana Inc.

ORDER

Pursuant to Federal Rules of Civil Procedure 37(b)(2) and 41(b), Guidant filed a Motion to Dismiss for Failure to Comply with this Court's January 31, 2006 Order on August 22, 2006. (Civ. No. 06-1572 (DWF/AJB), Doc. No. 3.) Guidant did not request oral argument. On September 20, 2006, the Court ordered Brown to respond to Guidant's motion no later than October 10, 2006. (Civ. No. 06-1572 (DWF/AJB), Doc. No. 6.) Brown failed to do so.¹

The Court has discretion to dismiss a case with prejudice when a party fails to comply with a court's order or permit discovery. *See* Fed. R. Civ. P. 37(b)(2) and 41(b); *Hutchins v. A.G. Edwards & Sons, Inc.*, 116 F.3d 1256, 1260 (8th Cir. 1997). Bowman's failures to comply with the Court's Orders demonstrates a pattern of intentional delay,

¹ In addition, on October 10, 2006 in PTO No. 22, the Court ordered all parties in the MDL action to file a notice of appearance, familiarize themselves with the Court's Orders, and actively participate in their cases. (MDL No. 05-1708 (DWF/AJB), Doc. No. 708.) Plaintiffs' Lead and Liaison Counsel served (electronically and by U.S. mail) Brown a copy of PTO No. 22 on October 12, 2006. To date, Brown has failed to comply with PTO No. 22.

prejudices Guidant's ability to mount a defense, and adversely impacts this Court's ability to manage its MDL docket. Moreover, Bowman's repeated failures to comply with the Court's Orders and respond to Guidant's motions have caused Guidant to incur unnecessary attorney fees and expenses.

Based on a review of the record and recognizing that dismissal is an extreme sanction, the Court hereby orders:

1. Brown shall comply with the Court's January 31, 2006 Order and respond to Guidant's motion to dismiss no later than seven (7) days from the date of this Order. If Brown fails to do so, the Court will find that Brown acted in bad faith for failing to comply with the Court's January 31, September 20, and October 19, 2006 Orders. The Court will then immediately dismiss Brown's case with prejudice.

2. Federal courts possess the inherent power to sanction misconduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). As a direct result of Brown's disregard of the Court's January 31, 2006 Order, Guidant has incurred unnecessary attorney fees and expenses in filing its motion to dismiss. For that reason and under the Court's inherent powers, the Court orders Brown to reimburse Guidant \$1,000 for reasonable attorney fees and expenses incurred as a result of his misconduct. Brown shall make this payment to Guidant no later than seven (7) days from the date of this Order.

Dated: October 19, 2006

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