



## United States District Court

District of Minnesota

February 9, 2006

CHAMBERS OF  
DONOVAN W. FRANK  
DISTRICT JUDGE

WARREN E. BURGER FEDERAL BUILDING  
316 NORTH ROBERT STREET, SUITE 738  
SAINT PAUL, MINNESOTA 55101-1461  
(651) 848-1290

Honorable Ronald Bauer  
Superior Court of the State of California  
Orange County  
700 Civic Center Drive West  
Complex Civil  
Dept CX103  
Santa Ana, CA 92701

Honorable Nathan E. White, Jr.  
District Court of Collin County, Texas  
- 366th District Texas  
Collin County District Courts  
Collin County Government Center  
210 S. McDonald Street  
McKinney, TX 75069

Honorable Derek C. Swope  
Circuit Court of Mercer Co., West Virginia  
Mercer County Court House  
1501 W. Main Street  
Princeton, West Virginia 24740

Honorable Marva Crenshaw  
Circuit Court of the 13th Judicial Circuit,  
Hillsborough County, Florida  
800 E. Twiggs St.  
Tampa, FL 33602

Honorable Jack Hunter  
28th Judicial District Court of Nueces County,  
TX  
94th District Court  
901 Leopard Street, Rm 901  
Corpus Christi, TX 78401

Honorable Robert Lopez Cepero  
In the Circuit Court of Cook County, State of  
Illinois  
Richard Daley Center  
50 W Washington  
Attn: Law Division, Room 801  
Chicago, IL 60602

Honorable Thomas Grady  
Circuit Court of St. Louis, MO  
Civil Courts Building  
10 N. Tucker Blvd.  
St. Louis, MO 63101  
Honorable Lee H. Haworth  
Circuit Court of 20th Judicial Circuit,  
Sarasota County, Florida  
Sarasota County Justice Center  
2071 Ringling Boulevard  
Sarasota, FL 34237

Honorable Rose Vela  
148th Judicial District Court,  
Nueces County, Texas  
901 Leopard Street, Room 903  
Corpus Christi, TX 78401

Supreme Court: State of New York,  
County of New York  
60 Centre Street, Room 161  
New York, NY 10007

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Honorable Jon M. Alander  
Superior Court JD of New Britain,  
Connecticut  
Complex Litigation Docket  
400 Grand St.  
Waterbury, CT 06702

Honorable Marc Baldwin  
Superior Court of NJ, Burlington Co.  
Burlington Vicinage  
49 Rancocas Road  
Mt. Holly, NJ 08060

Honorable Lorenzo Arredondo  
Circuit Court of Lake County, IN  
2292 North Main St.  
Crown Point, IN 46307

Court of Common Pleas of Lancaster County,  
PA  
Court of Common Pleas-Civil Office of  
Prothonotary  
50 N. Duke Street  
P.O. Box 83480  
Lancaster, PA 17608

Honorable Jim Meyer  
District Court of McLennan County, TX  
501 Washington Ave., #303  
Waco, TX 76701

Honorable Richard C. Terrell  
Jim Wells County; State of Texas  
200 N. Almond  
Alice, TX 78333

Honorable Kathy M. Flanagan  
In the Circuit Court of Cook County,  
Illinois, Law Division  
2005 Richard J. Daley Center  
Chicago, IL 60602

Honorable Judge Binkard  
Nebraska Court for Dakota County  
P.O. Box 566  
Dakota City, NE 68731-0039

Honorable Harold Erwin  
Circuit Court of Jackson County, AR  
Division I  
Jackson County Courthouse  
Newport, AR 72112

**Re: In re: GUIDANT CORP. IMPLANTABLE DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION  
MDL No. 05-1708 (DWF/AJB)**

Dear State Court Judges:

By order dated November 7, 2005, the Judicial Panel on Multi-District Litigation determined that a number of federal Guidant cases involved common questions of fact and that centralization of the *Guidant* cases was appropriate. The Panel ordered that such cases be transferred to the United States District Court - District of Minnesota and assigned to me to coordinate discovery and other pretrial matters. To date, over 125 *Guidant* cases have been transferred and assigned to me. Magistrate Judge Arthur J. Boylan is also teaming with me on these cases. Magistrate Judge Boylan will be available as the case progresses for specialized pretrial issues, including discovery issues.

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His assistance will expedite the matter. Also, the Court has directed that Lead Counsel for each party confer separately with Magistrate Judge Boylan on the issues of mediation and settlement. Magistrate Judge Boylan has already advised the parties as to his role as an ADR neutral and his availability for early settlement efforts on more than one issue, as set forth in the Court's Pretrial Order No. 4, filed on January 31, 2006.

Counsel in this MDL case have informed me that a number of *Guidant* cases are also being litigated in state courts across the country. Presently, that number would appear to be approximately 20. Prior to coming to the federal bench in 1998, I was a state court judge for 14 years here in Minnesota. I should also note that Magistrate Judge Boylan was on the state bench for 10 years prior to becoming a federal magistrate judge. As a result of my state court experience, I am hopefully aware and sensitive to the issues confronting state court judges when they have individual cases involved in a MDL case. In setting a schedule for the MDL case, I am mindful of the balance I must keep to serve the interests of justice and the parties. On the one hand, the Court must ensure that these cases proceed ahead expeditiously by the Court's efforts to coordinate discovery and move toward trial. Yet, on the other hand, the Court must ensure that the cases are not brought to trial in too hasty a manner, leading to a verdict for either side that does not represent a fair attempt at discovery and thus does not characterize the essence of the lawsuits.

I am writing this letter to you because I understand that you currently have one of those state cases and I would like your input concerning the coordination of the state and federal cases. There is an increasing concern that certain lawyers are attempting to undermine or are undermining confidentiality orders entered in the MDL case and other state cases across the country. I have been informed that in previous MDL cases, the state and federal courts, with few exceptions, were able to coordinate pretrial matters to effectuate a meaningful and prompt resolution of those cases. My goal, of course, is to minimize courts issuing conflicting orders concerning document production, document preservation, discovery deadlines, protocols for electronic document production, and scheduling of depositions and deposition protocol. In fact, one of my pretrial orders has set up a system for cross-noticing depositions to avoid unnecessary duplication of effort. One benefit, of course, of state-federal coordination may be to prevent two or more courts from deciding the same issue. Similarly, I will do my part in minimizing the same witness being deposed more than once.

I have issued a number of pretrial orders that address issues regarding docket and filing procedures, confidentiality issues, preservation of records, and deposition guidelines. Recently, I issued an order setting up the procedure by which the lawyers involved in the case will identify up to five bellwether or representative cases to be tried starting in March of 2007, or earlier if need be. My schedule will accommodate earlier trial dates if the interests of justice and the interests of the parties would be served by doing so.

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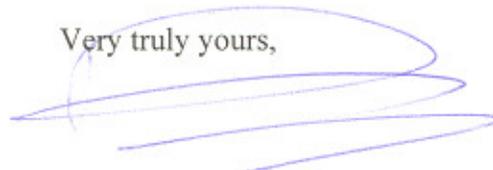
I have also appointed counsel to represent the interests of Plaintiffs and I have appointed a Plaintiffs' Steering Committee. At least monthly Status Conferences are being conducted by me at this time. The District of Minnesota has also established a website dedicated to this litigation to inform Plaintiffs, potential Plaintiffs, counsel, and the general public as to the status of the case. The website's address is: [www.mnd.uscourts.gov](http://www.mnd.uscourts.gov).

I would greatly appreciate your input on anything that we can do to increase the coordination of state and federal cases without compromising the rights of individual litigants, while, at the same time, respecting the discretion of individual judges across the country.

If you have any questions, please do not hesitate to contact me. My e-mail address is: [dwfrank@mnd.uscourts.gov](mailto:dwfrank@mnd.uscourts.gov). Also, as I mentioned above, you can view any orders that I have issued thus far, and otherwise monitor the events in this case, by viewing Guidant Corporation MDL 05-1705 at: [www.mnd.uscourts.gov](http://www.mnd.uscourts.gov).

Thank you for your attention to this matter. If you have any questions, please feel free to give me a call.

Very truly yours,



DONOVAN W. FRANK  
Judge of United States District Court

DWF:rlb