

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

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In re:) Civil 05-MD-1708 (DWF/AJB)

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GUIDANT CORPORATION) STATUS CONFERENCE

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IMPLANTABLE DEFIBRILLATOR)

PRODUCTS LIABILITY)

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LITIGATION,)

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This Document Relates)

To All Actions) 9:15 o'clock, a.m.

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) August 16, 2006

) St. Paul, Minnesota

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15 BEFORE THE HONORABLE JUDGE DONOVAN W. FRANK AND

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17 THE HONORABLE MAGISTRATE JUDGE ARTHUR J. BOYLAN

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19 UNITED STATES DISTRICT COURT JUDGE AND MAGISTRATE JUDGE

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21 CIVIL STATUS CONFERENCE PROCEEDINGS

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1 (In open court.)

2 THE HONORABLE JUDGE FRANK: Thank you. You
3 may all be seated. Welcome to beautiful Downtown St.
4 Paul. This is set for a status conference today, an
5 on-the-record status conference.

6 Judge Boylan and I can indicate that we met
7 with the lawyers this morning, as we always do, from
8 eight until the present time. I may be taking things a
9 bit out of order. I think we have agreed upon September
10 21st at 8:00 a.m. for the next live conference, for the
11 first get-together at 8:00 in the morning, and then
12 followed by the 9:15 or thereafter in court. It will
13 begin in St. Paul. In part, that is coordinated with --
14 Judge Leary will be meeting with lawyers in the State of
15 Minnesota cases that afternoon, as I understand it, on
16 the 21st for his second status conference. So, that is
17 part of the reason we have set it up that way.

18 And then perhaps we can wait until we get to
19 that appropriate time on the agenda where we will talk
20 about the September 8th at 8:00 in the morning and then
21 some particular issues that are being teed up or put
22 before us for court decision at that time.

23 So, we can go through the agenda, unless you
24 have anything you want to begin with, Judge Boylan?

25 Who would like to begin?

1 MR. ZIMMERMAN: If it please the Court, Your
2 Honor, Charles Zimmerman for the PSC. We will go
3 through the agenda in the order that it was submitted to
4 the Court. And it is the joint agenda for the status
5 conference of August 16th.

6 THE HONORABLE JUDGE FRANK: And perhaps --
7 and why don't you just stay right there. I will just
8 repeat in one minute or less what I said to the group of
9 lawyers this morning. There have been two or three
10 orders filed this week by the Court, two orders
11 involving individual Plaintiffs' requests to vacate or
12 reconsider the dismissal motions. One was filed for
13 failure to complete the Plaintiffs' fact sheet. One
14 order was filed and should be on the web before the day
15 is out this morning. One was filed yesterday. The
16 Ernst & Young issue was filed earlier in the week by me.
17 And the issue on redactions both under the HIPAA issue
18 and the FDA issue will be filed before the day is out
19 and go up on the web. And that is just consistent with
20 what I noted earlier this morning.

21 So, go ahead, Mr. Zimmerman.

22 MR. ZIMMERMAN: Thank you, Your Honor. The
23 first item on the agenda is the status of cases filed in
24 the Federal Court and transferred into the MDL. Also, I
25 think a subpart of that will be -- just if we can report

1 to the Court briefly on the status of the consolidated
2 State of Minnesota proceedings, as well, it is kind of
3 contained within that. But, I think Mr. Pratt will give
4 the report on the status of Federal cases, and I will
5 give the status of what is happening in Ramsey County.

6 MR. PRATT: The numbers, Your Honor -- Tim
7 Pratt, Lead Counsel for Guidant -- are as follows.
8 There are currently 423 cases in the MDL, having been
9 filed here or transferred here by the Judicial Panel.
10 There are an additional 75 cases pending transfer that
11 have been caught up in tag-along motions.

12 I believe that in terms of filed oppositions
13 to transfers, we only have two of them pending, waiting
14 resolution by the Judicial Panel. So, that will get us
15 close to 500 total cases when the final tally of cases
16 get transferred by the Judicial Panel. We also have 68
17 cases in State Court presently. Some of those are
18 removable and will be removed and caught up in the MDL
19 process.

20 As Mr. Zimmerman mentioned, we do have 25
21 State Court cases here in Minnesota that have been
22 consolidated before Judge William Leary. We had our
23 first hearing in front of Judge Leary just two days ago
24 this past Monday.

25 We are to meet and confer with the Plaintiffs

1 in that matter. We have been urging the coordination of
2 the State Court consolidated proceedings with what has
3 happened here in the Federal MDL, and we hope that gets
4 accomplished. But, we are in the very early stages of
5 discussions with the Plaintiffs in that Minnesota
6 consolidated proceeding. And we think things will work
7 well, and we will keep the Court advised on how they are
8 proceeding.

9 THE HONORABLE JUDGE FRANK: Thank you.

10 MR. ZIMMERMAN: With regard to the State of
11 Minnesota cases, the consolidation order that was issued
12 by the Supreme Court, I also notice Gale Pearson is here
13 who I think is interim liaison counsel subject to
14 approval by the judge, which I am sure will be
15 forthcoming. I don't know, Gale, if you want to provide
16 anymore information to the Court on the 25 cases in the
17 Ramsey County consolidation?

18 MS. PEARSON: I think you are doing fine.

19 MR. ZIMMERMAN: Appreciate that. Do I get a
20 gold star?

21 MS. PEARSON: Well, yeah. I will get my kids
22 to bring their stars next time.

23 MR. ZIMMERMAN: Appreciate that. Unless the
24 Court has any questions about what transpired in the
25 State proceedings, we will move to the next item on the

1 agenda.

2 THE HONORABLE JUDGE FRANK: All right.

3 MR. ZIMMERMAN: Which is the representative
4 trial process update.

5 I think, Your Honor, that process is running
6 very smoothly without giving you all of the nitty-gritty
7 about all of the meetings and all the winnowing process.
8 We are working cooperatively to narrow that field as
9 ordered by the Court.

10 We have met, and we have done one round of
11 cuts. We have another round set for, I think,
12 September --

13 MR. PRATT: 7.

14 MR. ZIMMERMAN: -- 7. And we are working out
15 some discovery issues with regard to the adding of those
16 cases. I don't think we have any issues for the Court
17 on it. It is really more of an update on where we are.
18 And I think we are happy to report that the process is
19 moving smoothly and cooperatively.

20 I expect we will have some issues before the
21 Court on certain discovery with regard to the cases as
22 they get a little more narrow, because now as we move
23 into the next phase there is some more discovery that is
24 going to take place, formal discovery of each of those
25 cases. But, we don't have that issue joined, as yet,

1 and we are still discussing.

2 THE HONORABLE JUDGE FRANK: The only
3 observation I would make about that, more for the
4 benefit of the lawyers who were not in the meeting this
5 morning, is that I would characterize the meeting as
6 simply confirming that the March trial date, to begin
7 trying these cases -- I mean, the phrase has been used,
8 but we haven't really defined that phrase yet as back to
9 back, six cases; that is, the schedule, essentially, is
10 in place and the deadlines, at least at this time,
11 people are operating within them.

12 So, probably enough said.

13 Mr. Pratt?

14 MR. PRATT: Yes, Mr. Zimmerman is correct in
15 terms of where we stand in the process. We are on pace
16 to cut the 20 bellwethers down to six on September 7.

17 We are conducting what I call phase two
18 discovery in those 20 cases. We are taking depositions
19 of physicians. We have a bit of a dispute that we are
20 trying to resolve over the recent scope of depositions
21 of sales representatives within those cases. And I
22 think we are working to together to tweak the process to
23 make it easier on all parties still to accomplish the
24 goal of getting down to the six representative trial, or
25 bellwether trial candidates from September 7th.

1 If an issue pops up that we need quick
2 judicial resolution, I believe we know the phone numbers
3 of Your Honors, and we will be able to get them
4 resolved. But, it is actually moving as Mr. Zimmerman
5 said, fairly smoothly.

6 MR. ZIMMERMAN: The next item, Your Honor, is
7 the objections to Plaintiffs' third-party discovery. A
8 and this is a Defendant issue and I will let the
9 Defendant take the lead on this one.

10 THE HONORABLE JUDGE FRANK: Unrelated to
11 that, before Mr. Pratt begins, if one or more lawyers
12 are out in the audience saying: Well, the agenda for
13 today's meeting was not -- because Lowell, we had some
14 issues where we were not entirely convinced that an
15 agenda was popped up there.

16 THE CLERK: It was popped up, I think, this
17 morning, Judge.

18 THE HONORABLE JUDGE FRANK: Because there
19 were some issues, and so it is an example of, hopefully,
20 of none of the things to follow.

21 And unlike last month, it wasn't on for a
22 variety of reasons that I promise you no one here is
23 interested in with a technological snafu, so to speak.
24 But, hopefully that won't repeat itself next month,
25 because we promise to get it up. And I wouldn't call

1 proper notice the morning of the scheduling conference
2 to roll it up on the website. So, Mr. Pratt?

3 MR. PRATT: Thank you, Your Honor. On the
4 objections to the third-party discovery Plaintiffs
5 assert, this is an issue I raised at the last
6 conference. It is really, as things are developing, up
7 for a report, presently, as opposed to judicial
8 resolution.

9 The Plaintiffs have served, I believe, 21
10 third-party subpoenas. We have been in discussions with
11 them about the number of third-party subpoenas they
12 served, as well as the scope of those individual
13 subpoenas.

14 We will continue discussions with them in
15 hopes to resolve as much as we can to perhaps remove
16 from the table certain third-party subpoenas that have
17 been worked out or are in the process of being worked
18 out. I think that the thought is that we will provide
19 after those discussions, perhaps, a letter brief to the
20 Court that focuses the Court's attention on the
21 individual issues that we need resolution on.

22 The Plaintiff then will have an opportunity
23 to respond to that, and that can be taken up at a
24 telephone conference or maybe resolved without need for
25 further discussion.

1 Again, the hope and goal is to try to resolve
2 them satisfactorily without getting the Court involved,
3 but if that fails, we will let the Court know by letter
4 brief.

5 THE HONORABLE MAGISTRATE JUDGE BOYLAN: The
6 only thing that I was going to say about letter briefs
7 is that I think it puts the law clerks -- they start to
8 tremble when they hear the term letter brief, because
9 they are afraid something is going to get lost between
10 the cracks, and they want to make sure that whatever is
11 served by brief, by informal letter brief, that it is
12 served both not only on the Court, but also that the law
13 clerks get a copy of whatever you are serving. So, if
14 you would just make sure, I think we talked about that
15 before, it is important to them. And it is important to
16 us that they get a copy.

17 THE HONORABLE JUDGE FRANK: And I think here
18 might be the simple resolution. We have put a different
19 protocol in place so we can expedite things. And Ms.
20 Gernon, why don't you, if I misstate something -- we
21 talk about this -- I think whether it is this item or
22 the next item where we say: Well, let's make sure the
23 Judge has everything that we have submitted over time,
24 whether it was an informal agenda item or a letter brief
25 that came in. I think, for example, whether it is item

1 3 or 4 in the agenda today, if you were to say, we are
2 going to call a motion and notice of motion and attach
3 to it everything, just to make sure everything is in one
4 place. Here is a letter brief we filed three weeks ago,
5 that is Attachment A. And here is the new document we
6 have got coming in. I think that will solve it.

7 In other words, that way -- part of it is the
8 deficiency in the ECF system nationwide that that is a
9 triggering event, this motion. So, I think even if it
10 is a one-page notice of motion motion, but those are
11 identified, whether they have been previously filed or
12 not, I think that actually will solve the problem
13 globally, really.

14 MR. PRATT: The whole process makes us
15 tremble, too, because the last thing we want to do is
16 offend the Judge's Law Clerk, of all people on the
17 planet.

18 THE HONORABLE MAGISTRATE JUDGE BOYLAN: I
19 think you have your priorities right on that.

20 MR. PRATT: I think we have learned lessons
21 from this. I think things did slip and it was our
22 fault, truly. So, I think we now have a system in place
23 where we know who needs to get what and how we can sort
24 of congregate things so we can have easy access to them.

25 When that fails, I think the law clerk has my

1 phone number.

2 THE HONORABLE JUDGE FRANK: Well, in
3 fairness, when we called either side of the aisle, we
4 have always got a prompt response. We have always been
5 able to get it resolved. But, I think the triggering
6 event of the motion will, that will -- it doesn't have
7 to really affect the content of everything or the
8 agreement we have on how it is going to be submitted,
9 but that gives us a way to organize, well, here is what
10 they want us to review, whether it was filed a month ago
11 or it was filed contemporaneous with the motion. All
12 right?

13 MR. PRATT: Precisely.

14 THE HONORABLE JUDGE FRANK: All right?

15 MR. ZIMMERMAN: Your Honor, the next item is
16 a Plaintiff issue which is the update of Plaintiffs'
17 discovery letter brief of July 21st. I believe we had a
18 discussion about that.

19 Seth, do you want to bring us up-to-date on
20 where we are on that?

21 MR. LESSER: On July 21st, Plaintiffs
22 submitted what, in essence, was an omnibus discovery
23 letter highlighting issues, highlighting specific
24 issues, highlighting general issues regarding discovery
25 disputes.

1 And then subsequently on the telephonic
2 conference call two weeks ago or so the Court ordered
3 the parties to meet and confer yet again, and we did.
4 And without going item by item through the list or the
5 -- I could do so, but most of the issues or many of the
6 issues, particularly the specific disputes between the
7 two sides, we have either successfully worked out or we
8 are in the process of doing so.

9 For example, there was an issue about the
10 propriety of a subpoena on Boston Scientific. The
11 parties have agreed that Boston Scientific and Guidant
12 will, particularly since Guidant is now -- Boston
13 Scientific is now being named in individual complaints
14 every day, that the objection that they are not in this
15 MDL will be reconsidered. There was an issue about, for
16 example, adverse event summaries, whereby what have been
17 produced to the Plaintiffs appear to differ from what we
18 obtained from other sources.

19 And it turns out that what was produced was
20 apparently incomplete. And we are going to get a
21 complete reproduction of the adverse event summaries on
22 the 1861 devices. So, those are what are called
23 interstitial issues, and I think we are working very
24 well at resolving any of those issues.

25 The more significant issues, which are still

1 open, involve particularly the discovery of back-up and
2 or e-mail server files, electronic materials that the
3 Defendants have, which have not yet been searched. And
4 the parties to some degree on this have apparently
5 reached a loggerhead, which is that the Plaintiffs
6 believe it is important that these electronic back-up
7 tapes and or e-mail servers be searched, because
8 needless to say, that is where it is very likely there
9 is relevant information. And Defendants have taken the
10 position that it is going to be too burdensome.

11 And in chambers earlier today we have worked
12 out a schedule whereby this will all be -- I don't think
13 the dates need to be repeated -- but, in essence, this
14 will all be submitted and be heard, so that there is no
15 further agreement, but I doubt there will be, at the
16 next status conference in September.

17 THE HONORABLE JUDGE FRANK: September 8th at
18 8:00 a.m.?

19 MR. LESSER: No, this would be the in-person
20 status conference on the 21st. And there will be a
21 briefing schedule and that will then be up to the Court
22 to review.

23 THE HONORABLE JUDGE FRANK: Right.

24 MR. LESSER: Another issue which may be
25 coming to the floor, which was addressed in the July

1 21st letter has to do with privilege assertions. And
2 the parties are still discussing the scope of those from
3 Plaintiffs' perspective. We believe that we are seeing
4 privilege assertions that we don't agree with. Whether
5 or not this will quickly come to the Court, we don't
6 know.

7 And the last issue the Plaintiffs have raised
8 in this respect is the issue of completeness and when
9 the 1861, which is where we have been focused for the
10 representative trials come March, when that production
11 will be complete.

12 And what we have undertaken to do on the
13 Plaintiffs' side is to prioritize custodians,
14 individuals whose files have not been searched as yet,
15 to move that process along. Additionally, the
16 discussion about the back-up tapes, the e-mail service
17 and the like is related to that. And I suspect we will
18 have further discussions on that as we go forward.

19 But, since this is a question that we do get
20 asked on the Plaintiff's Steering Committee all of the
21 time, where is the discovery, when will it be completed,
22 how is the trial prep going, we thought it important to
23 raise with the Court now to make sure that in the months
24 between now and March that we do, eventually, reach
25 closure.

1 Without going into all of the details, I
2 think that pretty much covers the discovery letter of
3 July 21st and the present status of discovery, unless
4 the Court has any questions.

5 THE HONORABLE JUDGE FRANK: No questions.

6 MR. CARPENTER: Your Honors, Andrew Carpenter
7 for Defendants.

8 What Mr. Lesser said is correct, we have had
9 some very productive meet and confers, both Friday and
10 yesterday. We either got a lot of these issues
11 resolved, or we are in the process of getting them
12 resolved.

13 I do want to make a correction on the record
14 of something that we put in our July 28th letter
15 responding to Plaintiff's July 21st omnibus letter on
16 the discovery issues. There was an issue in which
17 Plaintiffs had requested several event summaries be
18 produced. We believe they had been produced and
19 represented they had been produced July 14th.

20 Plaintiffs sent another letter subsequently
21 saying, we don't think so. Where are they? We looked
22 again. They weren't. We promptly produced them August
23 4th, so our information that we had, although we
24 double-checked it, did turn out to be inaccurate. And I
25 want to correct that on the record and make sure that is

1 absolutely right. Honest mistake. We will try to
2 minimize those.

3 I think much of what Mr. Lesser said is
4 accurate. We are working on various issues. We are
5 obviously not going to probably have much agreement on
6 the back-up tape issue. By Monday the 21st, we are
7 going to see if we can be in a position where we can log
8 what back-up tapes we have available.

9 If that is a problem, we will get that to the
10 Court's attention as soon as possible before that date.
11 We may have some disputes on privilege issues.
12 Plaintiffs identified about 247 different documents for
13 which they had specific privilege questions. We took
14 those back, looked at each one of them, reconsidered
15 them, changed our position on some of them, said on most
16 of the others, we think our position is correct, and
17 sent Plaintiffs a document-by-document letter that
18 outlines what our position is on each one of those.

19 So, we are just waiting for Plaintiffs to
20 take a look at that and see where they are. And if
21 necessary, we will see where we go from there.

22 On the completeness issue, we are still
23 working with Plaintiffs' counsel. We are happy to
24 prioritize who they want prioritized and we are here to
25 get whatever input they want on who needs to be looked

1 at first, and we're happy to cooperate on that. Thank
2 you.

3 MR. ZIMMERMAN: Unless there are any
4 questions, Your Honor, the next item is the deposition
5 issues. I am going to ask first for Richard Arsenault
6 to report on where we are with the deposition program,
7 what has been completed, what has been noticed what's
8 been done and see where we go with a response on that.

9 MR. ARSENAULT: Good morning, Your Honor,
10 Rich Arsenault, Lead Counsel Committee. Thus far, there
11 have been seven individual depositions taken by the
12 Plaintiffs in the MDL. There have been five 30(b)6
13 depositions taken.

14 We currently have five depositions scheduled
15 as we speak. There is a deposition being taken now with
16 Keith Johnson, who is the Director of Reliability,
17 Engineering and Device Analysis. We have nine
18 depositions that we are in the process of scheduling and
19 working out dates with regard to those.

20 As Mr. Pratt indicated a little earlier with
21 regard to the third-party subpoenas, there have been 25
22 of those that have been served. They are in various
23 stages of either objections or productions of those
24 various documents.

25 With regard to the representative trial

1 selection process, the Defendants to date have noticed
2 39 Plaintiff depositions and those have been taken.
3 They have noticed nine fact witness depositions
4 associated with this latest group, the narrowed group of
5 20. There are nine physician depositions that have been
6 noticed by the Defendants. And the Plaintiffs have
7 noted 41 sales representative depositions.

8 So, that is essentially the status of the
9 depositions.

10 THE HONORABLE JUDGE FRANK: Thank you.

11 MR. PRATT: We do have -- by the way, Mr.
12 Arsenault, I believe, is correct. I don't have the
13 precise numbers in front of me. I think that pretty
14 much tracks where we are in terms of the process. One
15 of the issues that I wanted to bring to the Court's
16 attention, at least to report, is some disputes we are
17 having with the Plaintiffs' Steering Committee with
18 respect to depositions that are noticed, agreed to, and
19 at the last minute postponed because of some document
20 issues.

21 We have had one instance recently involving
22 Dale DeVries in which we were, the morning of the
23 deposition, ready to proceed with it. And they
24 announced they weren't ready to complete the deposition.
25 They took five hours, reserving two hours for another

1 time.

2 We are working with the Plaintiffs' Lead
3 Counsel Committee very closely to minimize those kinds
4 of things from happening and creating a disruption in my
5 client's business and for the individuals who are going
6 to be deposed. We are trying to work out a system so
7 that they get the documents they need to be allowed to
8 take a complete deposition of the witness that we have
9 produced, and that they will allow us to do our direct
10 examination and sort of be done with that witness for
11 purposes of the MDL.

12 Those discussions are ongoing, complicated by
13 the fact that we do have document issues that are
14 unresolved. But, it is, from my standpoint, something
15 we need to try to work out for the convenience of the
16 parties.

17 And if the system operates appropriately, I
18 think it is nice to know that we have completed the
19 depositions in anticipation of the March 2007 trials.
20 The more that remain open, I think the greater the
21 uncertainty that is brought to the process.

22 So, like on all matters, we are working
23 cooperatively with the Plaintiffs' Lead Counsel
24 Committee to try to minimize those events from
25 happening.

1 We hope to work out a protocol among
2 ourselves that they get what they want in advance of the
3 depositions, so that we can take a complete deposition.
4 And we then are assured that a witness being produced
5 has been produced one time and one time only.

6 We do, by the way, with respect to
7 depositions, have one other issue that came up at the
8 Minnesota coordinated proceedings this past Monday. We
9 are working with the Minnesota State Plaintiff lawyers
10 on a protocol that allows not just for cross noticing
11 which we have been doing right along, but ensures their
12 participation in the process.

13 We are meeting and conferring with them
14 probably in the next ten days to two weeks. We can see
15 if we can work things out with Ms. Pearson and her
16 colleagues in the State Court in hopes of working out a
17 system where we don't have to produce witnesses two
18 times. So, that is also in play as a deposition issue
19 here in the MDL.

20 THE HONORABLE JUDGE FRANK: Thank you.

21 MR. ARSENAULT: Your Honors, very briefly
22 with regard to the Dale DeVries issue, we addressed that
23 in chambers moments ago. This is an important deponent
24 whose documents we thought were completely produced in
25 April. The deposition moved forward in August. And

1 days before the deposition -- and we are sensitive to
2 the issues associated with producing documents and the
3 difficulties associated with that. Having said that, we
4 have our issues, and when we are prepared to take a
5 deposition and documents are produced at the last
6 minute, it creates an issue for us. Do we cancel the
7 deposition?

8 MR. ARSENAULT: Your Honors, when faced with
9 that issue, we have several options, obviously. One, we
10 are going to try to seek intervention from the Court and
11 seek guidance. If it continues, what we tried to --
12 first of all, we tried to address it on a
13 deponent-by-deponent basis.

14 We meet on our side first and decide what we
15 can do to salvage that date and what can be of the least
16 amount of inconvenience to defense counsel and to the
17 witness. And we tried to do that on a case-by-case
18 basis.

19 More often than not, what we have tried to do
20 is proceed with the deposition and try to allocate a
21 certain amount of time based on the documents that have
22 come in at the last moment through no fault of ours, not
23 necessarily through any fault of Defendants, but the
24 issue is when documents come in at the last minute, it
25 is an issue for us. We are trying to deal with it. We

1 are trying to cooperate with the Defendants. And we
2 have come up on several occasions with the protocol of
3 reserving a modest amount of time that would give us an
4 opportunity to examine the witness, if necessary, on the
5 documents that are produced right before the deposition.

6 THE HONORABLE JUDGE FRANK: Okay, thank you.

7 MR. ZIMMERMAN: I believe that concludes the
8 deposition issue update.

9 And next we move to Defendant case profile
10 forms. I am happy to report that there is no issue on
11 the agenda of Plaintiff profile forms, which had been a
12 subject of much debate and discussion in previous
13 hearings.

14 That one has been moving smoothly, and I
15 think for the most part most of those issues have now
16 been resolved. It was a Herculean effort to get
17 ourselves on track, but we have gotten on track and
18 those issues have for the most part been resolved and
19 have dissipated.

20 We have a Defendant profile form now, and I
21 believe a proposed order has been submitted to Your
22 Honor on the effective dates and starting dates for
23 that, is that correct? Have they all been submitted.

24 THE HONORABLE JUDGE FRANK: I don't think so.

25 MR. ZIMMERMAN: It says proposed order "to

1 be" submitted.

2 THE HONORABLE JUDGE FRANK: Close enough,
3 good enough for government work, as they say.

4 MR. ZIMMERMAN: Yeah, close enough. At any
5 rate, I think the issue has to do with when the start
6 date and when the completion date for these forms from
7 the Defendants, the information we need from them, will
8 be commenced and will be completed.

9 So, we are reporting to the Court, watch for
10 an order. It will be coming.

11 Any issues on those fact sheets?

12 MR. PRATT: I think we have an agreed order
13 on it with respect to that, so I don't think there is an
14 issue on the Defendant's fact sheets. On the
15 Plaintiffs' fact sheets, I was sort of proud we didn't
16 have them on the agenda, but that is not to say there is
17 not an issue. We do still have 59 cases in which
18 Plaintiff fact sheets have not been timely submitted.
19 So, we are still going to have to deal with it. I just
20 drew weary of adding it every month. I thought we took
21 it off and now Mr. Zimmerman brought it back on the
22 table.

23 THE HONORABLE JUDGE FRANK: And since you've
24 brought it up, I think a review of the two orders,
25 because the decisions were not the same in these two

1 facts sheets, because of the way in which they were
2 filled out. I think it may give a little glimpse to
3 other folks out there of some of the, one, the
4 differences of what is likely to occur, depending on how
5 they were filled out, when they were filled out, and the
6 consequences of not doing it.

7 So, like I said, when we began, the Harvey
8 case was filed yesterday, the Darose case this morning,
9 so they will probably both be on the website before the
10 day is out if they are not already.

11 MR. ZIMMERMAN: I believe that concludes the
12 formal agenda, Your Honor, except for the next status
13 conference which we have now put on the record, and the
14 discovery conference which I believe is now set for
15 September 8th at 8:00.

16 THE HONORABLE JUDGE FRANK: 8:00 a.m..

17 MR. ZIMMERMAN: So, just for the record, the
18 Court's status conference is September 21st with the
19 8:00 in counsel --

20 THE HONORABLE JUDGE FRANK: Here in St. Paul.

21 MR. ZIMMERMAN: Meeting in St. Paul. And in
22 this courtroom, Courtroom 3, I believe it is, at 9:15 on
23 September 21st.

24 And then the call-in discovery conference
25 will be at 8:00 a.m. on September 8th. So, Your Honors,

1 that concludes the formal agenda.

2 If there is anything else, we are here to
3 respond to questions or concerns.

4 THE HONORABLE JUDGE FRANK: I don't have
5 anything. I know Judge Boylan does. But, before we go
6 to Judge Boylan, if that is agreeable with him, are
7 there any other counsel here that want to be heard or
8 inquire of the Court or place anything on the record
9 that have not been heard thus far today?

10 MR. BECNEL: One thing, Your Honor, Daniel
11 Becnel. Since we are going to be in St. Paul, is it
12 fair to say if I have Judge Magnuson on the Viagra
13 matter scheduled about 11:00 that that would give you
14 all enough time to handle your agendas?

15 THE HONORABLE JUDGE FRANK: It will. It
16 will.

17 THE HONORABLE MAGISTRATE JUDGE BOYLAN: It
18 should for the most part.

19 THE HONORABLE JUDGE FRANK: Judge Boylan?

20 MR. BECNEL: And Judge Boylan, also, I know
21 you act as kind of a liaison between both of the courts.
22 I notice that usually what we do is do Medtronics the
23 day after. But, I notice that that is a Jewish holiday,
24 starting at sun down, I think, Roshashana. And I am
25 sure with Viagra, we won't be an hour or two there,

1 also. If it would suit your fancy and Judge Rosenbaum,
2 if need be, that maybe we could do that one over in
3 Minnesota (SIC) at 3:00. Can we do that?

4 THE HONORABLE MAGISTRATE JUDGE BOYLAN: I
5 have the Medtronic MDL on my internal calendar for 9:00
6 clock that morning, again. But I think what we are
7 going to do is probably move that in light of the fact
8 that I know that now Guidant is going to be scheduled
9 for 8:00 and 9:15 in-court proceedings. I believe the
10 State Court proceeding is at one?

11 MR. PRATT: 1:30.

12 THE HONORABLE MAGISTRATE JUDGE BOYLAN: 1:30.
13 So, to the extent there is a need for an MDL meeting in
14 Medtronic, I am willing to do it that same day. And
15 what happens -- what we need to do is, I will wait and
16 talk with counsel on the MDL matter and set a time that
17 is convenient to everyone, given all of your other
18 responsibilities, both in Viagra, as well as the State
19 Court Guidant matter, and the proceedings before Judge
20 Frank in this matter.

21 MR. BECNEL: I just wanted to bring those up.
22 It is so hard getting back and forth right now with
23 planes.

24 THE HONORABLE MAGISTRATE JUDGE BOYLAN: And I
25 am glad you reminded me about the holiday that evening,

1 because that may have an impact on a number of people
2 and we want to be open to those concerns, as well.

3 THE HONORABLE JUDGE FRANK: I think Mr. Pratt
4 or someone has suggested you all have your private jet
5 sitting down here in the airport. Don't you?

6 MR. HOPPER: I think Mr. Pratt should fly us
7 all in on a private jet, Your Honor, right here to St.
8 Paul.

9 MR. BECNEL: His partner just got the MDL in
10 Bausch & Lomb sent to South Carolina. I just made a
11 proposal to Mr. Pratt that they charter the jet, stop in
12 Louisiana, pick us up to get to South Carolina, because
13 other than that we have got to go through Atlanta, which
14 is like going through Beirut, Lebanon right now.

15 THE HONORABLE JUDGE FRANK: Mr. Price?

16 MR. PRICE: To my knowledge, Your Honor, that
17 is the first time that I am aware of that a Jewish
18 holiday and Viagra have been linked.

19 MR. HOPPER: Well, as Judge Magnuson says,
20 Your Honor, he is leaving all of those sidebar
21 conversations alone.

22 THE HONORABLE MAGISTRATE JUDGE BOYLAN: That
23 is off the record.

24 Does anybody else have anything? Because I
25 wanted to say something about the settlement conference

1 that we have scheduled for September 11th. Through my
2 fault, alone, an order was issued yesterday that was
3 really my standard order that I send out in most
4 settlement matters. And it was sent out, as I say it
5 was my fault, because my judicial assistant asked me
6 about whether or not I was making myself available for
7 the entire day. I said I was. And she said she was
8 going to send out a notice. And I didn't realize that
9 the notice that she filed was going to be the usual
10 scheduling order that I have.

11 So, what I would like to do is tell folks at
12 least what my thoughts were, given what I hoped to
13 accomplish on September 11th. Here is what I am
14 ordering. I am going to order that the Defendant
15 appear -- and Mr. Pratt, I am going to ask that you
16 appear personally and with one additional person. I am
17 hoping that is going to be an in-house attorney.

18 I am going to order Mr. Zimmerman -- you are
19 the person I am going to ask to be here on behalf of the
20 Plaintiffs, and I would like you to choose one of your
21 colleagues to accompany you to the settlement on
22 September 11th. I want to limit it to two persons per
23 side. I don't want you to bring any paralegals. I
24 don't want any judicial assistants. I want four people
25 in total, two from Plaintiff, two from the Defendant.

1 I want all four people to understand that we
2 are going to start at nine o'clock a.m.. and I don't
3 want anyone to tell me they have problems leaving early
4 because they have got some transportation matters that
5 they have to attend to, a plane ticket at 5:00 or a
6 plane ticket at 7:00 or 9:00, or midnight for that
7 matter.

8 I want to have the entire day and evening
9 devoted to visiting with me. So, whether we use it all
10 or not, I just don't want to cut it short because
11 someone has to run out the airport. I just wanted to
12 tell you what my thoughts were.

13 And then finally, before we leave today, what
14 I would like to do is visit just for five minutes with
15 Mr. Zimmerman and Mr. Pratt in my chambers so that you
16 have some idea as to what my expectations will be when I
17 see you on September 11th. Okay?

18 THE HONORABLE JUDGE FRANK: And just before
19 we go --

20 (Discussion off the record.)

21 THE HONORABLE MAGISTRATE JUDGE BOYLAN: I
22 will say this, Judge Frank just reminded me that it
23 might be important, given the fact that other people are
24 here, and they won't be there on September 11th, that
25 anything that takes place on September 11th, I consider

1 confidential, and I consider confidential in that I do
2 not pass that information on to Judge Frank.

3 THE HONORABLE JUDGE FRANK: That is right.

4 THE HONORABLE MAGISTRATE JUDGE BOYLAN: With
5 that understanding, I will put that on the record, so
6 that you will know that is at least one of the -- that
7 is rule number one.

8 So, I just wanted to assure everyone that
9 that indeed is the case. Okay?

10 ALL COUNSEL: Okay.

11 THE HONORABLE JUDGE FRANK: All right. Thank
12 you all for coming. We are adjourned. Thank you.

13 (Adjournment.)

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Certified by: _____

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Jeanne M. Anderson, RMR-RPR
Official Court Reporter

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