

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: MEDTRONIC, INC.
IMPLANTABLE DEFIBRILLATORS
PRODUCTS LIABILITY LITIGATION

MDL No. 05-1726 (JMR/AJB)

This Document Relates to All Actions

SUGGESTION FOR REMAND

On December 7, 2005, the Judicial Panel on Multidistrict Litigation (“JPML”) issued its initial Transfer Order establishing “*In re: Medtronic, Inc., Implantable Defibrillators Products Liability Litigation*, MDL No. 05-1726-JMR/AJB (“MDL 1726”) in this Court. The JPML opted to create MDL 1726 and to transfer 24 cases from federal district courts around the country to the District of Minnesota because “centralization...will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.” December 7, 2005 Transfer Order. The JPML subsequently transferred numerous additional cases to MDL 1726 for the purposes of coordinated or consolidated proceedings pursuant to 28 U.S.C. §1407.

In issuing the original Transfer Order, the JPML noted that all of the originally transferred cases “share allegations that certain Medtronic implantable defibrillator devices, known as implantable cardioverter defibrillators (“ICDs”) and implantable cardiac resynchronization therapy defibrillators (“CRT-Ds”), were defective...” See December 7, 2005 Transfer Order. Subsequently, upon transferring the *Joey Phillips v.*

Medtronic, Inc., C.A. No. 2:06-19 (M.D. Tenn.) action to MDL 1726, despite an objection to transfer from Medtronic, the JPML instructed this Court clearly as to its recourse upon determining that certain cases or claims were too dissimilar to remain in MDL 1726:

Should the circumstances regarding any MDL-1726 action develop such that the transferee judge determines that continued inclusion of a claim or action (such as *Phillips*, which the parties agree involves an allegedly defective device not subject to Medtronic's February 2005 recall) no longer remains advisable, and accordingly the transferee court deems Section 1407 remand of any claim or action appropriate, procedures are available whereby this may be accomplished with a minimum of delay following a suggestion of remand to the Panel by the transferee judge.

October 18, 2006 Transfer Order (internal citations omitted). As preliminary preemption discovery and motion practice have proceeded and the parties have conferred and briefed the issue of the scope of MDL 1726 to this Court, it has become apparent that the core issues presented by MDL 1726 center around Medtronic devices that were subject to a voluntary Field Action in February 2005, with a smaller secondary set of cases that involve devices subject to an April 2004 Field Action.

After careful review of these issues and consideration of the JPML's instructions as to the appropriate method by which this Court may control the scope of MDL 1726, this Court has determined that certain of the cases in MDL 1726, which were served on or before December 31, 2006, involve Medtronic products that do not share the common facts or issues of these core cases comprising MDL 1726, because they do not involve

devices subject to the “February 2005 Field Action” involving certain Marquis Devices¹ or the “April 2004 Field Action” involving certain Gem DR Model 7271 (“Gem DR”) and Micro Jewel II Model 7223Cx (“Micro Jewel II”) devices² that form the crux of this litigation (the “Non-Field Action Cases”).

As a result, the core coordinated discovery in MDL 1726, which is generally expected to include Medtronic employee witnesses related to the design, regulatory approval, manufacturing, and testing of each device, as well as expert witnesses on each of these topics, will generally not be applicable to these Non-Field Action Cases that involve different devices with different design, regulatory and manufacturing histories and different product components and alleged failure mechanisms. Thus, these Non-Field Action Cases are unlikely to benefit from consolidated pretrial proceedings in MDL 1726, and the purposes of section 1407 will not be served by the continued inclusion of cases involving devices not subject to the February 2005 or April 2004 Field Actions.

This Court, therefore, suggests the cases identified on the attached Exhibit A be remanded by the JPML to their transferor district courts. This Court also suggests

¹ The term “February 2005 Field Action” refers to Medtronic’s February 2005 Health Safety Advisory issued for the following models of implantable cardioverter defibrillators (“ICDs”) and cardiac resynchronization therapy defibrillators (“CRT-Ds”) with batteries manufactured between April 2001 and December 2003: Marquis[®] VR Model 7230, Marquis[®] DR Model 7274, Maximo[™] VR Model 7232, Maximo[™] DR Model 7278, InSync Marquis[™] Model 7277, InSync II Marquis[™] Model 7289, InSync III Marquis[™] Model 7279, and InSync III Protect[™] Model 7285 (collectively, the “Marquis Devices.”)

² The term “April 2004 Field Action” refers to Medtronic’s April 2004 Health Safety Advisory issued for identified populations of the Gem DR and Micro Jewel II devices containing suspect capacitors from specific component lots and implanted in 1997 and 1998.

remand of the claims of certain Plaintiffs identified on the attached Exhibit B whose claims have been severed from MDL 1726, for re-filing in the appropriate transferor district courts in the name of the respective severed Plaintiffs. The Clerk of this Court is hereby ORDERED to provide copies of this Entry to those transferor district courts and to the Clerk of the Judicial Panel on Multidistrict Litigation.

So ORDERED, this 7th day of March, 2007.

s/James M. Rosenbaum
JAMES M. ROSENBAUM
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Ross Akins and Betty E. Akins v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-02416-JMR-AJB

(Gem DR Model 7271)

Jacky Lynn Banks v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-03472-JMR-AJB

(Maximo VR Model 7232 Cx)

Karoline Berman v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04077-JMR-AJB

(InSync II Marquis Model 7289)

Richmond Bradshaw v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-00952-JMR-AJB

(Micro Jewel II Model 7223 Cx)

*Robert Charles Bridges and Deborah J. Bridges
v. Medtronic, Inc.*
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04064-JMR-AJB

(Marquis DR Model 7274)

*Robert Earnest Bright and Margot Scott-Bright
v. Medtronic, Inc.*
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04075-JMR-AJB

(Maximo VR Model 7232 Cx)

Albert William Brink and Doris Brink v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04079-JMR-AJB

(Maximo VR Model 7232 Cx)

Demetrus Claude Clark v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04078-JMR-AJB

(Maximo DR Model 7278)

Rosemarie Clive v. Medtronic, Inc.
United States District Court, Middle District of Florida
Civil Action Case No.: 5:06-cv-00098-WTH-GRJ
MDL Civil Action Case No.: 0:06-cv-04742-JMR-AJB

(Gem DR Model 7271)

Michael Corumia v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-00541-JMR-AJB (Gem DR Model 7271)

Lisa Dash, Individually and as Next Friend of A Minor Child v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: :06-cv-02052-JMR-AJB (Sigma 200SR Model SSR203B)

Annise Davenport and Lacy Davenport v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04084-JMR-AJB (Intrinsic Model 7288)

Andrea Dechter, as Trustee for the Heirs and Next of Kin of Sylvia Fireman, Deceased v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-01212-JMR-AJB (InSync II Marquis Model 7289)

Marvin Edwards, et ux. and Charles James, et ux. v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-03785-JMR-AJB (Gem II DR Model 7273 and InSync Model 7272) (Maximo DR Model 7278)

Kurt Joseph Fabre and Brenda Fabre v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04073-JMR-AJB (Gem Model 7227 Cx)

Carolyn Goode, Individually and on behalf of the Estate of Robert C. Goode, Deceased v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-00937-JMR-AJB (Gem DR Model 7271)

Patricia Hammonds, Individually and as Representative of the Estate of Truitt W. Hammonds, Deceased v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-01349-JMR-AJB (InSync ICD Model 7272)

Luciana Hampton v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-01434-JMR-AJB (Micro Jewel II Model 7223 Cx)

Constance Howell, as Next Friend of Albert Ralph Fisher, Deceased v. Medtronic, Inc.

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04071-JMR-AJB

(InSync IPG Model 8040)

Gwen Idlett, Individually and on behalf of the Estate of Robert Idlett, Deceased v. Medtronic, Inc.

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-01278-JMR-AJB

(Gem DR Model 7271)

Johnnie Curtis Jackson and Barbara H. Brown v. Medtronic, Inc.

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04062-JMR-AJB

(Gem III AT Model 7276)

Gilbert Lankford, Individually and as Next Friend of Laquita Lankford, Deceased v. Medtronic, Inc.

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04063-JMR-AJB

(Maximo DR Model 7278)

Barry Lichtenstein and Janis Lichtenstein v. Medtronic, Inc.

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04080-JMR-AJB

(Marquis DR Model 7274)

Charles Locklear v. Medtronic, Inc.

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-01308-JMR-AJB

(Gem DR Model 7271)

Marta Lynn, as Personal Representative of the Estate of Patrick Lynn, Deceased v. Medtronic, Inc.

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-00430-JMR-AJB

(InSync IPG Model 8040)

Carolyn Oakley v. Medtronic, Inc.

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04811-JMR-AJB

(Sigma 200SR Model SSR203B)

Steven Perkins and Lynn Perkins v. Medtronic, Inc.

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-02415-JMR-AJB

(Maximo VR Model 7232 Cx)

*Joey Phillips, Individually and as Next-of-Kin of
Kenneth Phillips, Deceased v. Medtronic, Inc.*
United States District Court, Middle District of Tennessee
Civil Action Case No.: 2:06cv00019
MDL Civil Action Case No.: 0:06-cv-04259-JMR-AJB (InSync II Marquis Model 7289)

James Ponczoch v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04568-JMR-AJB (Kappa 700 Series Model
KDR701)

*Zella Roland, Individually and on behalf of the Estate of
Gerald Roland, Deceased v. Medtronic, Inc.*
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-00603-JMR-AJB (Gem DR Model 7271)

*Agnes Sabol, Individually and as Executrix of the Estate of
Stephen J. Sabol, Deceased v. Medtronic, Inc.*
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04111-JMR-AJB (Sigma 300SR Model SSR303B)

Lawrence Stewart v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-01098-JMR-AJB (Gem II DR Model 7273)

Dwight Surgick v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-01307-JMR-AJB (Gem DR Model 7271)

Alice Thomas v. Medtronic, Inc.
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-02322-JMR-AJB (Maximo DR Model 7278)

*Carmeleta H. Wagner, Individually and as Administrator
of the Estate of Hobert W. Wagner, Deceased
v. Medtronic, Inc.*
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04539-JMR-AJB (Micro Jewel II Model 7223 Cx)

*Wanda Walker, Individually and as Personal
Representative of the Estate of Harley Walker, Sr.,
Deceased v. Medtronic, Inc.*
United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-05104-JMR-AJB (Micro Jewel II Model 7223 Cx)

*Larry Russell Wardle and Elizabeth Ann Wardle
v. Medtronic, Inc.*

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04070-JMR-AJB

(InSync II Marquis Model 7289)

*Gerald Washington and Angela Washington
v. Medtronic, Inc.*

United States District Court, District of Minnesota
Civil Action Case No.: 0:06-cv-04068-JMR-AJB

(Maximo VR Model 7232 Cx)

EXHIBIT B

Amelia Castaneda: (Maximo VR Model 7232 Cx)

Jose Castaneda, as Next Friend of Amelia Castaneda, Deceased; John Dagenhart; Estela Espinoza; Arnulfo Garcia; Alfredo Maldonado; Martin Mungaray; Guillermina Ortiz; and Ina Tyler vs. Medtronic, Inc.

United States District Court for the Eastern District of Texas

Civil Action Case No.: 5:06-cv-00214-DF

MDL Civil Action No.: 0:06-cv-04858-JMR-AJB

Alfred Maldonado: (Marquis VR Model 7230)

Jose Castaneda, as Next Friend of Amelia Castaneda, Deceased; John Dagenhart; Estela Espinoza; Arnulfo Garcia; Alfredo Maldonado; Martin Mungaray; Guillermina Ortiz; and Ina Tyler vs. Medtronic, Inc.

United States District Court for the Eastern District of Texas

Civil Action Case No.: 5:06-cv-00214-DF

MDL Civil Action No.: 0:06-cv-04858-JMR-AJB

William McGonigle: (Gem DR Model 7271)

Marcelino Brontonel and William McGonigle v. Medtronic, Inc.

United States District Court, District of Minnesota

Civil Action Case No.: 0:06-cv-04988-JMR-AJB

Guillermina Ortiz: (Maximo DR Model 7278)

Jose Castaneda, as Next Friend of Amelia Castaneda, Deceased; John Dagenhart; Estela Espinoza; Arnulfo Garcia; Alfredo Maldonado; Martin Mungaray; Guillermina Ortiz; and Ina Tyler vs. Medtronic, Inc.

United States District Court for the Eastern District of Texas

Civil Action Case No.: 5:06-cv-00214-DF

MDL Civil Action No.: 0:06-cv-04858-JMR-AJB

James Reavis: (Maximo DR Model 7278)

Robert Morelli, Ben Franklin Serrett, Donald Larry Sigman, Jr., John Donald Smith, Lorene Waller, Mary J. Bowen, Albert N. Porter, Kenneth W. Brazzell, Jackson Bradley Taylor, Joe David Reeves, Lloyd Dilldine, Lois A. Thompson, Robert Marvin Donahoe, James A. Young, Jr., James Edward Reavis, Mark Dale McCormack, Inez D. Jacobs, James William Bewley, Danny Lee Stephens v. Medtronic, Inc.

United States District Court for the Middle District of Tennessee

Civil Action Case No.: 3:06-cv-00112

MDL Civil Action Case No.: 0:06-cv-01541-JMR-AJB

Michael Scacco: (Marquis DR Model 7274)

Thomas Collins and Deborah Collins, Dine Erickson and James Erickson, Leonard Nobles, Nada Dodd, Chester Floyd and Donna Floyd, Kris Hagen and Teri Hagen, Frank Lepre, Peter Pezzella and Ann Pezzella, Michael Scacco and Sylvia Scacco, Robert Kenesky and Larry Burch v. Medtronic, Inc.

United States District Court, District of Minnesota

Civil Action Case No.: 0:06-cv-03837-JMR-AJB

Danny Lee Stevens: (Maximo DR Model 7278)

Robert Morelli, Ben Franklin Serrett, Donald Larry Sigman, Jr., John Donald Smith, Lorene Waller, Mary J. Bowen, Albert N. Porter, Kenneth W. Brazzell, Jackson Bradley Taylor, Joe David Reeves, Lloyd Dilldine, Lois A. Thompson, Robert Marvin Donahoe, James A. Young, Jr., James Edward Reavis, Mark Dale McCormack, Inez D. Jacobs, James William Bewley, Danny Lee Stephens v. Medtronic, Inc.

United States District Court for the Middle District of Tennessee

Civil Action Case No.: 3:06-cv-00112

MDL Civil Action Case No.: 0:06-cv-01541-JMR-AJB

Bobby Sullivan: (Gem II AT Model 7276)

Robert Morgan, Lee Etta Gamble, Bobby Joe Sullivan, Frederick Nelson, Joseph Carrico, Debra Morgan v. Medtronic, Inc.

United States District Court for the Western District of Kentucky

Civil Action Case No.: 1:06-cv-00020-M

MDL Civil Action Case No.: 0:06-cv-02892-JMR-AJB

Rodney Tutt: (Maximo VR Model 7232)

Don DeYoung, on behalf of himself and all others similarly situated, Ira Fine, on behalf of himself and all others similarly situated, Glen Scott, on behalf of himself and all others similarly situated, Judy Sprague, on behalf of herself and all others similarly situated, Rodney Tutt, on behalf of himself and all others similarly situated v. Medtronic, Inc. and Medtronic USA, Inc.; United States District Court for the Southern District of Florida

Civil Action Case No.: 9:05-cv-80853-KLR

MDL Civil Action Case No.: 0:06-cv-00179-JMR-AJB

Marilyn Kuchta: (InSync II Marquis Model 7289)

Kenneth A. Willis, Sr., Joseph E. Hiott, and Marilyn Kuchta, on behalf of themselves and all others similarly situated v. Medtronic, Inc.

United States District Court, District of South Carolina

Civil Action Case No.: 3:05-cv-02020-RBH

MDL Civil Action Case No.: 0:05-cv-02851-JMR-AJB

