

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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

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MDL No. 05-1726 (JMR/AJB)

REPORT AND RECOMMENDATION  
REGARDING SCOPE OF MDL 1726  
ADDENDUM NO. 1

This Document Relates to All Actions

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Pursuant to the Report and Recommendation Regarding Scope of MDL 1726, entered March 7, 2007 (the “Report and Recommendation”), this Court adopts the following Addendum No. 1 to the Report and Recommendation:

The scope of this multidistrict proceeding, styled *In re: Medtronic, Inc., Implantable Defibrillators Products Liability Litigation*, MDL No. 05-1726-JMR/AJB (“MDL 1726”), shall be limited to and include only cases involving claims relating to the eight (8) models of Marquis Devices that are actually subject to the field action commenced by Medtronic, Inc. (“Medtronic”) in February 2005 (the “February 2005 Field Action”)<sup>1</sup> and/or the Gem DR Model 7271 (“Gem DR”) or Micro Jewel II Model 7223Cx (“Micro Jewel II”) devices that are actually subject to the field action

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<sup>1</sup> 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<sup>®</sup> VR Model 7230, Marquis<sup>®</sup> DR Model 7274, Maximo<sup>™</sup> VR Model 7232, Maximo<sup>™</sup> DR Model 7278, InSync Marquis<sup>™</sup> Model 7277, InSync II Marquis<sup>™</sup> Model 7289, InSync III Marquis<sup>™</sup> Model 7279, and InSync III Protect<sup>™</sup> Model 7285 (collectively, the “Marquis Devices.”)

implemented by Medtronic in April 2004 (the “April 2004 Field Action”).<sup>2</sup> Any cases currently included in MDL 1726 or that are filed in or transferred to MDL 1726 in the future that involve claims related to any devices not subject to either the February 2005 Field Action or the April 2004 Field Action should be severed from MDL 1726 and remanded back for further proceedings either to (i) the District of Minnesota, if such cases or claims were filed directly into this District or MDL 1726; or (ii) the original transferor courts if initially filed in or removed to a district court other than this District. In addition, any unnecessary allegations concerning or references to any devices other than the Marquis Devices, the Gem DR, and the Micro Jewel II shall be stricken from any complaint remaining in or that hereinafter becomes a part of MDL 1726. This Court has express authority from the JPML to exercise its discretion to control the scope of MDL-1726 and suggest remand of dissimilar cases that do not belong in MDL-1726. In the October 18, 2006 Transfer Order transferring the *Joey Phillips, etc. v. Medtronic, Inc.* case from the Middle District of Tennessee to MDL-1726, the Panel stated as follows:

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.

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<sup>2</sup> 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 implanted in 1997 and 1998 and containing suspect capacitors from specific component lots.

After consideration, this Court has determined that certain cases which will not benefit from remaining in MDL 1726 should therefore be remanded back to their original transferor courts. The cases selected for severance and remand do not involve the eight models of devices that were subject to the February 2005 Field Action or the two models of devices subject to the April 2004 Field Action, which the parties have stipulated and this Court has agreed shall be required of any case in order for it to remain in MDL 1726.

Cases involving devices not subject to the February 2005 or April 2004 Field Actions will not benefit from the coordinated discovery, pretrial proceedings or uniform pretrial rulings of this MDL. The core coordinated discovery in MDL 1726 is expected to include Medtronic employee witnesses related to the design, regulatory approval, manufacturing, and testing of each of the relevant devices, as well as expert witnesses on each of these topics. Such core coordinated discovery generally will not be applicable to these Non-Field Action cases involving 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 such cases involving devices that were not subject to either the April 2004 or February 2005 Field Actions.

Instead, these other cases are likely to give rise to their own separate and distinct discovery, pretrial proceedings, and legal issues, and therefore will be more appropriate for individual adjudication outside of MDL 1726 in the original transferor courts from which they arrived. MDL 1726 shall be limited to only those cases that involve devices

subject to the February 2005 Field Action or the April 2004 Field Action taken by Medtronic.

This Court therefore recommends the following actions be taken:

**1. Appendix A -- Cases to be Remanded:**

The cases on Appendix A to this Addendum No. 1 to the Report and Recommendation involve claims related to devices other than the Marquis devices subject to the February 2005 Field Action or the Gem DR and Micro Jewel II devices subject to the April 2004 Field Action. Accordingly, the cases identified on Appendix A should be included on Suggestion of Remand No. 2 to be issued by Chief Judge James M. Rosenbaum to the Judicial Panel on Multidistrict Litigation (“JPML”) for remand back to their original transferor district courts or to the District of Minnesota if such cases were filed directly into this District or MDL 1726.

**2. Appendix B -- Claims to be Severed and Remanded:**

For the multi-Plaintiff cases or putative class actions identified on Appendix B to this Addendum No. 1 to the Report and Recommendation, which include certain Plaintiffs or purported class representatives presenting claims for devices not subject to either the February 2005 Field Action or the April 2004 Field Action (the “Non-Field Action Devices”), the claims of those specific Plaintiffs related to the Non-Field Action Devices are hereby severed from the claims of the remaining Plaintiffs in each of those cases. The claims severed for any such Plaintiff should be included on Suggestion of Remand No. 2 to be issued by Judge Rosenbaum to the JPML and may be re-filed in the

transferor district courts or the District of Minnesota in the name of the Plaintiff whose claims have been severed from MDL 1726.

**3. Appendix C -- Claims to be Stricken and Dismissed Without Prejudice:**

For all cases identified on Appendix C to this Addendum No. 1 to the Report and Recommendation, in which the Plaintiffs in their respective Complaints have asserted claims related to a device subject to the February 2005 Field Action or the April 2004 Field Action along with other claims related to a Non-Field Action Device, the paragraphs set forth on Appendix C for those Complaints, which contain irrelevant allegations concerning or references to devices other than the Marquis Devices, the Gem DR, and the Micro Jewel II, are hereby stricken. For all claims in the cases identified on Appendix C that pertain to any Non-Field Action Device, it is **hereby recommended** that they be dismissed without prejudice.

Dated: April 12, 2007.

s/ Arthur J. Boylan  
The Honorable Arthur J. Boylan  
United States Magistrate Judge

## APPENDIX A

### **Cases to be included on Suggestion of Remand No. 2 to the JPML:**

- Kay Brasher, Trustee for the Heirs and Next of Kin of Bobby Brasher, Deceased v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:07-cv-00747-JMR-AJB (Gem II DR Model 7273)
- Mary Bright v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:07-cv-00272-JMR-AJB (InSync II Marquis Model 7289)
- Joseph Kuba v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:06-cv-03985-JMR-AJB (Sigma Series 300 Model SDR303B)
- John Kenneth Martin v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:07-cv-00840-JMR-AJB (InSync II Marquis Model 7289AA)
- Elaine Mountleigh v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:07-cv-00733-JMR-AJB (Sigma Series 300 Model SDR306U)
- Magdaline Moutier and Thibaut Moutier v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:07-cv-00538-JMR-AJB (Maximo VR Model 7232 CxAA)
- Terry Pogue and Cynthia Pogue v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:07-cv-00482-JMR-AJB (Maximo DR Model 7278)
- Antonio J. Diaz Sarmiento and Adriana Jimena Arizabaleta Borrero v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:07-cv-00324-JMR-AJB (Sigma Series 300 Model SDR303)
- Richard Vian v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:07-cv-00183-JMR-AJB (Maximo DR Model 7278)

*Eugene Worthy and Dorothy Worthy v. Medtronic, Inc.*  
United States District Court, District of Minnesota  
Civil Action Case No.: 0:07-cv-00952-JMR-AJB

(Maximo VR Model 7232CxAA)

## APPENDIX B

### **Plaintiffs in multi-Plaintiff or putative class actions whose claims will be severed and included on Suggestion of Remand No. 2 to the JPML:**

**George M. Anastas:** (Maximo DR Model 7278)

*George M. Anastas, Annabelle M. Anastas, Raymond H. Lambert, and Marie Lambert v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action No.: 0:07-cv-00535-JMR-AJB

**Gerald Beason:** (Gem DR Model 7271)

**Gerald Guyer:** (Gem II AT Model 7276)

*Gerald Beason, Gerald Guyer, Kathleen Hildreth, Varney Keeter, Bobby Roberts, and Alfonso Villanueva (Deceased) by and through his surviving spouse, Dolores Villanueva v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action No.: 0:07-cv-00939-JMR-AJB

**Lonnie Boyd:** (Maximo VR Model 7332Cx)

**Jaewely Coles:** (Maximo DR Model 7278AA)

**Fletcher Tinch:** (Sigma Series 200 Model SDR200)

*Sally Allen; Roy Bearden; Lonnie Boyd; Yvonne Brooks and Charles Brooks; Addie Coles, Individually and as Next Friend for Jaewely Coles, a Minor; Duncan Eva; Howard Ford; John Glenn; Lorenzo Hutchinson; Duane Johnson; Michael Kelly and Ruby Kelly; Janet Lee-Barnes; Charles Medenbach; Gary Prince and Deborah Prince; Jimmy Rogers; Benjamin Strickland; Eugene Taylor; Mark Taylor; Fletcher Tinch; Richard Trammel and Anita Trammel; Reba Walker; and Larry Williams v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00596-JMR-AJB

**Robert Conley:** (Micro Jewel II Model 7223Cx)

*Walter Clark and Sandra Clark, and Robert Conley v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00585-JMR-AJB

**Debra Darrington:** (Maximo VR Model 7232Cx)

**James Baskin:** (Maximo VR Model 7232)

**Jeanne Madison:** (Maximo VR Model 7232CxAA)

**Frances Crouch:** (Maximo VR Model 7232)

**John Daniels:** (Maximo VR Model 7232CxAA)

**Antonio Nava:** (Maximo VR Model 7232CxAA)

**Ronald Ross:** (Maximo VR Model 7232Cx)

**Ronald Hancock:** (Maximo DR 7278)

**Hazel McLendon:** (Maximo DR 7278)

**Melvin Preston:** (Maximo DR 7278)

**Anthony Finnefrock:** (Maximo VR Model 7232CxAA)

*Timothy Adams and Robin Adams, Debra Darrington and Allen Darrington, James North, James Baskin, Anthony Finnefrock and Caroline Finnefrock, Jeanne Madison and John Madison, Frances Crouch, Isaac Tucker and Geraldine Tucker, Larry West and Linda West, John Daniels, Eddie Duncan, Antonio Nava, Ronald Ross, Ronald Hancock, Hazel McLendon and Melvin Preston v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00002-JMR-AJB

**Robert L. Fuller:** (Maximo VR Model 7232Cx)

*Robert L. Fuller and August Lageman v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action No.: 0:07-cv-00483-JMR-AJB

**Milton Jacobs:** (Gem Model 7227)

*Doris Bauer, Milton Jacobs v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00860-JMR-AJB

**Gloria Jones:** (Kappa Series 700 Model KDR701)

*Gloria Abernathy; Johnny Greenhill and Mabel Greenhill; Randy Hammel; Richard Mahhon and Margaret Hannon; Amma Houston; Gloria Jones; Kurt Juech; and, Carmen Johnson-Ward v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00584-JMR-AJB

**Robert Koenig:** (Gem II DR Model 7273)

*Patricia Miranda, Robert Koenig and Lorraine G. Koenig v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-01001-JMR-AJB

**Ray Margetin:** (Marquis DR Model 7274)

*James Davis; Nicholas Devito; Ralph Goodberlet; Anthony Gugino; Patricia Herbert; Elaine Lapress; Ray Margetin; William Wiley v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00855-JMR-AJB

**Odesa Martin:** (Sigma Series 300 Model SDR303B)

*Steven Brockman and Erlinda Brockman; Sameul Long, Jr. and Carrie Long; Denna McCoy; Odessa Martin; Barbara Montgomery; and, Howard Ward and Judith Ward v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00578-JMR-AJB

**Chester McGee:** (Kappa Series 700 Model KDR701)

**Huey Shurden:** (Kappa Series 700 Model KDR701)

*Ken Dueitt; Chester McGee; Johnny Seely and Regina Seely; and, Huey Shurden and Ruby Shurden v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00572-JMR-AJB

**Horace McMurtrie:** (InSync II Marquis Model 7289AA)

*Sally McMurtrie, Individually and as Trustee for the Estate of Horace McMurtrie, and Forrest Kaylor v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00865-JMR-AJB

**Lawrence Paulsen:** (Kappa Series 700 Model KDR701)

*Lawrence Paulsen and Debra Grassi and Chris Grassi v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00566-JMR-AJB

**Carol Reuter:** (Kappa Series 700 Model KDR701)

*Esther Alexander, Carol Reuter, Edward Skinger, Douglas Sykes, and Mary Ann Townsley v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00565-JMR-AJB

**Luz Rosario:** (Sigma Series 300 Model SDR303B)

**Richard Seymour:** (Sigma Series 300 Model SDR303B)

*Robert Chiappa; Albert Cifelli; Joseph D'lorio; Alan Fish; William McIver; Luz Rosairo and Victor Rosario; Richard Seymore and Marcia Seymour; and, Joan LeBlanc v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00570-JMR-AJB

**John Schmitt, Jr.:** (Sigma Series 200 Model SDR203B)

*John Schmitt, Jr., and Linda Schmitt, Daniel Swanseger, Sr., and Norman Tousey v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00579-JMR-AJB

**John R. Shisler:** (Marquis DR Model 7274)

*Mary Anderson; Pricilla Arnold; Francis Bailey; John Botts; Danny Bricker; Carolyn Brown; Charles Chury, Sr.; James Clingan; Charlene Cook; David Crittenden; Robert Cushing; Richard Decker; Lee Domin; Ryan Donahoe; Richard Driva; Rachel Evans; Marvin Fritz; Thomas Galante, Jr.; Curtis Hill; Robert Humbach; Christine Kaminski; Linda Krawczyk; Richard Long; Veverly May; Percy McWilliams; Paul Malloy; Charles Newberry; Estel Newberry; Jeffrey Patrick; Robert Pelfrey, Sr.; Stevel Pelletier; David Puckett; Jerry Raleigh; Billie Ray; Linda Reed; Stanley Rehm; John Salter; Gilbert Sellers; John Shisler; Mark Smith; Jerry Stevens; Gerald Tomasic; Pam Warner; Steve Western; William Williams; Catherine Zeigler v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00310-JMR-AJB

**Elsa Volpe:** (Kappa Series 600 Model KDR601)

*John Niemeyer and Elsa Volpe v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00601-JMR-AJB

## APPENDIX C

**Claims and allegations pertaining to devices not subject to the February 2005 Field Action or the April 2004 Field Action to be dismissed without prejudice and/or stricken from the Complaints:**

**Raymond H. Lambert:**

*George M. Anastas, Annabelle M. Anastas, Raymond H. Lambert, and Marie Lambert v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action No.: 0:07-cv-00535-JMR-AJB

Claims to be stricken: All claims related to the Maximo VR Model 7232CxAA, Serial No. PRN605752S

Paragraphs to be stricken: ¶¶ 11.2, 14 references to Maximo VR Model 7232CxAA, Serial No. PRN605752S

**Forest Kaylor:**

*Sally McMurtrie, Individually and as Trustee for the Estate of Horace McMurtrie, and Forrest Kaylor v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00865-JMR-AJB

Claims to be stricken: All claims related to the Gem II DR Model 7273, Serial No. PJK206848H (misidentified in Complaint as Gem DR Model 7271)

Paragraphs to be stricken: ¶¶ 10 (related to Gem DR 7271), 12 and 13

**Larry West:**

*Timothy Adams and Robin Adams, Debra Darrington and Allen Darrington, James North, James Baskin, Anthony Finnefrock and Caroline Finnefrock, Jeanne Madison and John Madison, Frances Crouch, Isaac Tucker and Geraldine Tucker, Larry West and Linda West, John Daniels, Eddie Duncan, Antonio Nava, Ronald Ross, Ronald Hancock, Hazel McLendon and Melvin Preston v. Medtronic, Inc.*

United States District Court, District of Minnesota

Civil Action Case No.: 0:07-cv-00002-JMR-AJB

Claims to be stricken: All claims related to the Maximo DR Model 7278, Serial No. PRM104297H

Paragraphs to be stricken: ¶56.b reference to Maximo DR Model 7278, Serial No. PRM104297H