

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION**

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Civil No. 05-md-1 726 JMR/AJB

In re: Medtronic, Inc. Implantable  
Defibrillator Product Liability Litigation

This Document Relates to All Actions

**SECOND AMENDED  
PRETRIAL SCHEDULING  
ORDER**

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This matter is before the Court, Magistrate Judge Arthur J. Boylan, for purposes of case management and discovery scheduling pursuant to Fed. R. Civ. P. 16. Based upon the file and submissions by counsel, **IT IS HEREBY ORDERED** that the Pretrial Scheduling Order, dated February 8, 2007, is hereby amended and discovery and pretrial preparation in this multi-district litigation shall proceed as follows:

**Fact Sheets**

1. Individual plaintiffs in all cases filed (e.g., directly into or transferred pursuant to an order of transfer or a certified CTO from the Judicial Panel on Multidistrict Litigation (JPML)) on or before January 31, 2007, shall serve on defendant's Lead Counsel (Lori G. Cohen, Esq.) a completed court approved fact sheet by **March 15, 2007**, via overnight delivery or any other appropriate means of delivery so long as Defendant's Lead Counsel receives the fact sheets no later than March 16, 2007. Plaintiffs in all cases filed after January 31, 2007, shall serve their fact sheets via overnight delivery or any other appropriate means of delivery so long as Defendant's Lead Counsel receives the fact sheets no later than March 16, 2007, or **30 days** following

the filing in or transfer<sup>1</sup> of the case to the MDL, whichever date is later. In addition, plaintiffs shall use their best efforts to serve a hard copy of the fact sheet, executed originals of the declaration page and applicable authorizations, and all documents produced with the fact sheet (collectively, the “fact sheet”) as well as a copy of the fact sheet on three separate CDs or DVDs. Failure to serve the fact sheet in hard copy and on three CDs or DVDs shall not be grounds in and of itself for a deficiency notice under paragraph 3, below.

2. Defendant shall serve on plaintiff’s individual counsel and Plaintiffs’ Liaison Counsel its completed court approved fact sheet for all cases filed on or before January 31, 2007, by **April 16, 2007**, via overnight delivery or any other appropriate means of delivery so long as counsel receives the fact sheets no later than April 17, 2007, and fact sheets for cases filed after January 31, 2007, shall be served via overnight delivery or any other appropriate means of delivery within **30 days** of receipt of each completed plaintiff fact sheet. In addition, defendant shall use its best effort to serve a hard copy of the fact sheet and all documents produced with the fact sheet as well as a copies of the fact sheet and accompanying documents on three separate CDs or DVDs. Failure to serve the fact sheet and the documents in hard copy and on three CDs or DVDs shall not be grounds in and of itself for a deficiency notice under paragraph 3, below.

3. Counsel shall advise opposing counsel (for plaintiffs: individual counsel and Plaintiffs’ Liaison Counsel, and for defendant: Lead Counsel), in writing sent

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<sup>1</sup> The date of transfer shall be the date in which a transfer order or a certified CTO is filed in the District of Minnesota.

electronically or via facsimile, of any alleged deficiencies in a completed fact sheet within 30 days following receipt of a fact sheet and shall meet and confer for purposes of addressing and curing alleged deficiencies relating to completion of a fact sheet within 10 business days thereafter. Failure to timely serve a sufficiently completed fact sheet will not constitute grounds for a motion to dismiss in the absence of a meet and confer certification, a motion to compel discovery, and an affidavit establishing failure to comply with an order on motion to compel.

### **General Discovery**

1. General MDL discovery may commence immediately and may be conducted concurrently with any plaintiff-specific discovery that is otherwise permitted pursuant to this Order. General discovery shall proceed as follows:

- a) Each side may serve no more than **25 interrogatories**.
- b) Each side may serve no more than **50 requests for production of documents**.
- c) Each side may serve no more than **25 requests for admissions**.
- d) Each side shall be permitted to take no more than **10** depositions relating to common MDL fact issues. Each deposition may not exceed **7 hours** in duration. Each 7 hours of a Rule 30(b)(6) deposition shall count as one of the allowed depositions.
- e) Each side may identify 3 experts to testify at deposition and/or trial with respect to general MDL issues. Plaintiffs shall identify general expert(s) by **May 1, 2007**. Plaintiff expert reports shall be disclosed

by **June 15, 2007**. Defendant shall identify general experts by **June 1, 2007**. Defendant expert reports shall be disclosed by **July 15, 2007**. General MDL issue expert depositions shall be completed by **October 15, 2007**. For purposes of scheduling expert depositions, disclosing parties shall provide three alternative dates for depositions of each expert at the time reports are disclosed. Expert depositions should not commence before one week after all expert reports have been disclosed.

General discovery, including depositions and expert discovery shall be completed by **October 15, 2007**.

2. As general discovery in **third-party payor cases**, discovery may commence immediately and shall proceed as follows:

- a) Each side may serve no more than **15 interrogatories** per third-party payor action.
- b) Each side may serve no more than **25 requests for production of documents** per third-party payor action.
- c) Each side may serve no more than **15 requests for admissions** per third-party payor action.
- d) Third-party payor written discovery shall be served on defendant by March 15, 2007, and defendant's responses shall be due by **April 15, 2007**. Defendant's written discovery shall be served on third-party

payor counsel by **April 15, 2007**, and plaintiffs' responses shall be due by **May 15, 2007**.

- e) Each side shall be permitted to take no more than **5** fact depositions per third-party payor action, except as provided in 2(f) below. Each deposition may not exceed **7 hours** in duration. Each 7 hours of a Rule 30(b)(6) deposition time shall count as one of the allowed depositions.
- f) In addition to the discovery in 2(e), each side shall be permitted to take depositions/discovery of no more than 20 third parties pursuant to Fed. R. Civ. P. 45.
- g) Discovery (including third-party discovery pursuant to Fed. R. Civ. P. 45) of insureds of the named plaintiff third-party payors and their relations, treating physicians, and hospitals is stayed pursuant to the Court's February 8, 2007 Order until the Court resolves any motion for class certification, at which time the Court will enter an appropriate order as to whether, and if so how, such discovery may be conducted.
- h) Fact discovery in the third-party payor cases, as set forth above, shall be completed by October 1, 2007.

**Class Certification in Third-Party Payor Cases**

1. The following schedule will govern class certification in the third-party payor cases:

- a) Any motion for **class certification** in third-party payor cases shall be served and filed on **October 1, 2007**, at which time plaintiffs shall also identify any experts (“class certification experts”) and disclose any expert reports on which they intend to rely in support of their motion for class certification.
- b) Defendant shall have until **October 31, 2007** to depose Plaintiffs’ class certification class certification experts.
- c) Defendant shall have until **November 30, 2007** to file any opposition to plaintiffs’ motion for class certification, at which time Defendant shall also identify any class certification experts and disclose any expert reports on which it intends to rely in opposing any motion for class certification.
- d) Plaintiffs shall have until **December 31, 2007** to depose Defendants class certification experts.
- e) Plaintiffs shall have until **January 30, 2008** to file any reply in support of any motion for class certification.
- f) Additional discovery or scheduling matters with respect to the Third-Party Payor actions will be addressed in a subsequent order of court.

**Bellwether Cases**

1. Counsel for the parties shall meet and confer within **seven days** following the date of this Order and shall thereafter promptly submit a joint report to advise the court as to separate categories into which individual cases might be assigned and thereby

establish broad parameters for separate bellwether actions. No more than **6** categories of cases should be designated.

2. On or before **April 1, 2007**, plaintiffs' counsel shall submit a report to the court and defense counsel, therein assigning each plaintiff who has served on defendant a completed fact sheet to one of the jointly selected categories of cases based upon plaintiff fact sheet information. On or about **April 19, 2007**, the court will randomly select plaintiffs in each category to be potential subject cases for bellwether trial. An odd number of randomly selected plaintiffs will be chosen in each category, the number equaling approximately **ten percent** of the plaintiffs in each category, but in no event fewer than **5** plaintiffs. On or about **May 7, 2007**, **three potential bellwether cases** for each category will be selected. The three potential bellwether actions will be chosen by the parties through use of alternating peremptory strikes until only three cases remain in each category. Plaintiffs will have the first peremptory strike in the first randomly selected category, defendant will have the first peremptory strike in the next randomly selected category, and so on.

3. The parties may conduct case specific discovery in each of the three selected bellwether cases in each category as follows:

- a) Parties may serve no more than **25 case specific interrogatories** with respect to each plaintiff;
- b) Parties may serve no more than **10 case specific requests for production of documents** with respect to each plaintiff;

- c) Parties may serve no more than **10 case specific requests for admissions** with respect to each plaintiff.
- d) Each party may take no more than **4 fact depositions**. Each deposition may not exceed **7 hours** in duration.

4. Discovery in bellwether pool cases may not duplicate general discovery or fact sheet discovery. Fact discovery in bellwether cases shall be completed by **October 15, 2007**.

5. With respect to each plaintiff in each category, the parties may identify 3 expert(s) to testify at deposition and/or trial with respect to case specific issues, to include any medical expert(s) retained under Fed. R. Civ. P. 35 or medical experts testifying as treating physicians or professionals. (Case specific experts are in addition to 3 general experts as provided in this order.) Plaintiffs shall identify all bellwether trial expert(s) by June 1, 2007. Plaintiff expert reports shall be disclosed by **July 1, 2007**. Defendant shall identify bellwether experts and shall schedule examinations pursuant to Rule 35 by **June 15, 2007**. Defendant expert reports, except Rule 35(b) reports, shall be disclosed by **July 15, 2007**. Independent examinations of plaintiffs pursuant to Rule 35 shall be completed by **August 15, 2007**. Rule 35(b) reports shall be disclosed by **September 1, 2007**.

Expert depositions for bellwether trial purposes shall be completed by **October 15, 2007**.

6. On or before **November 1, 2007**, the parties shall meet and confer and shall thereafter submit a report to the court providing a joint recommendation as to which of the three bellwether pool cases in each category should proceed to bellwether trial. The parties shall further submit a joint recommendation as to the order in which the finally

selected cases should be tried. In the event the parties are unable to reach agreement for purposes of joint recommendations, the court will select the bellwether trial case(s) and the order in which such trials will proceed.

**Motion to Amend Complaint**

Any motion to amend the master complaint in this MDL action must be served by **May 1, 2007**.

**Dispositive Motions**

Dispositive motions in individual cases shall be served and filed by the parties by **November 1, 2007**. (Counsel are advised that they must schedule this hearing by calling Calendar Clerk Heather Labat, 612-664-5053.) Such motions shall be scheduled, filed and served in compliance with Local Rule 7.1.

**MDL Trials**

Bellwether cases shall be ready for trial by **January 1, 2008**, or upon resolution of any pending dispositive motions relating to bellwether cases.

**Discovery Stay**

Except as provided in this Pretrial Scheduling Order, specific case discovery in individual actions is **hereby stayed** until January 1, 2008, or as further ordered by the court.

Dated: April 12, 2007

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