

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: Guidant Corp. Implantable Defibrillators  
Products Liability Litigation

MDL No. 05-1708 (DWF/AJB)

This Document Relates to All Actions

**PRETRIAL ORDER NO. 2**

The Judicial Panel on Multidistrict Litigation has transferred actions in the above-captioned matter to this Court for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 as part of a nationwide litigation involving implantable defibrillators and pacemakers. Pursuant to this Court's jurisdiction over these actions, this Court hereby enters the following order:

1. Consolidation of Related Actions. Any other actions filed, whether filed directly in the United States District Court for the District of Minnesota or in any other United States District Court (whether by original filing or removal), that are related to this litigation are hereby consolidated into one action (the "Consolidated Action") for all pre-trial purposes, pursuant to Rule 42 of the Federal Rules of Civil Procedure and MDL Order dated November 7, 2005, under 28 U.S.C. § 1407(a).

2. Caption of Case. All Orders, pleadings, motions and other documents served or filed in this Consolidated Action shall have the following caption:

Exhibit A

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In re: GUIDANT CORP. IMPLANTABLE  
DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to [“All Actions” or specify by title and case number the individual applicable cases if the document relates to less than all of the consolidated cases.]

The original of this Order shall be filed by the Clerk and a copy thereof shall be filed in each subsequently filed or transferred action, which is related to and consolidated with this action.

The Clerk of Court will maintain docket and case files under this caption, and pursuant to the procedures set forth in paragraph 3, below.

3. Docket and Filing Procedures.

- A. Master Docket and File. The Clerk will maintain a Master Docket and case file under the style set forth in paragraph 2, above. All Orders, pleadings, motions and other documents will, when filed and docketed in the master case file, be deemed filed and docketed in each individual case to the extent applicable. The Master Docket is set up with the following parties: Plaintiffs’ Lead Counsel, Plaintiffs’ Liaison Counsel, and individual Defendants. These parties will appear in the docket report. Plaintiffs from the other cases will be added as MDL - Notice Only party types, but will not appear on the docket report. See Attachment A (the procedural instructions and the MDL attorney registration form to obtain CM/ECF login and password).

- B. Separate Dockets and Files. The Clerk will maintain a separate docket for each case removed or transferred to this Court. Each such case will be assigned a new case number in this Court.
- C. Captions and Separate Filing. Orders, pleadings, motions and other documents will bear the caption set forth in paragraph 2, above. If generally applicable to all consolidated actions, they shall include in their caption the notation that they relate to “ALL ACTIONS” and shall be filed and docketed only in the master file. As set forth in paragraph 2, documents intended to apply only to particular cases will indicate in their caption the case number of the case(s) to which they apply and will be filed and docketed in the master case file and specified individual case file(s).
- D. Address, Number of Copies, and Electronic Filing. When filing documents relating to “ALL ACTIONS” with the Court, the parties will comply with the Court’s requirements as to electronic filing and the documents shall be filed on the ECF system under the Master File or, if electronic filing is not possible, a signed original shall be sent to the Clerk, U.S. District Court, District of Minnesota, Suite 202, 300 South Fourth Street, Minneapolis, Minnesota 55415 for filing in the Master File. When filing documents relating to a particular case or cases, the documents shall be filed on the ECF system under both the Master File and the particular case, or, if electronic filing is not possible, one signed original shall be sent for the Master File and an additional copy for each particular case to which the matter related. For all motions and briefs, send two courtesy copies of memoranda and one copy of the attachments to Chambers (The Honorable Donovan W. Frank, Warren E. Berger Federal Building, 316 North Robert Street,

Room 738, St. Paul, Minnesota 55101). In addition, proposed orders should be sent in WordPerfect or Word to the Chambers mail box at frank\_chambers@mnd.uscourts.gov.

- E. Discovery Requests and Responses. Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the Court except when specifically ordered by the Court or to the extent offered in connection with a motion.
  - F. Rules of Civil Procedure. All actions listed in the Schedule A attached to the JPML's Transfer Order of November 7, 2005, as well as any other actions subsequently transferred to or filed in this proceeding, shall be governed by the Federal Rules of Civil Procedure and the Local Rules for the District of Minnesota, including Local Rules 72.1 ("Magistrate Judge Duties") and 72.2 ("Review of Magistrate Judge Rulings").
4. Consolidation of Additional Actions. Any other action pending, subsequently filed or transferred to this Court, which arises out of the acts or transactions alleged in the Consolidated Action will be reassigned to this Court, and shall be consolidated herewith if and when they are called to the Court's attention.
5. Applicability of Order. This Order applies automatically to all actions listed in the Schedule A attached to the JPML's Transfer Order of November 7, 2005, as well as any other actions subsequently transferred to or filed in this proceeding, without the necessity of future motions or orders. Should parties in any subsequently transferred or filed action object to the terms of this Order, they must do so within thirty (30) days of receipt of this Order from Plaintiffs' Liaison Counsel.
6. Service List. This Order is being mailed to the persons shown on Attachment B, which has been prepared from the list of counsel forwarded to this Court by the Judicial Panel on

Multidistrict Litigation. Counsel on this list are requested to forward a copy of the Order to other attorneys who should be notified of its contents. An updated and corrected service list will be prepared as the litigation progresses. The Liaison Counsel for each party shall be responsible for establishing a service list and conferring with the Clerk of the Court to ensure that a Master Service List is established and kept current and which shall include all parties and counsel that may join this action.

7. List of Affiliated Companies and Counsel. To assist the Court in identifying any issues or matters of recusal or disqualification, counsel will submit to the Court, no later than 15 days, a list of all companies affiliated with the parties and all counsel associated in the litigation.

8. List of Related Cases. Lead Counsel (as set forth below) shall confer among themselves and jointly submit to the Court, no later than thirty days, a list of all related cases pending in state and federal court and their current status, to the extent known.

9. Admission of Counsel. Attorneys admitted to practice and in good standing in any United States District Court are admitted as mdl attorneys in in this litigation. Association of local co-counsel is not required. All counsel are expected to familiarize themselves with the Local Rules of this Court, the American Bar Association's *Civil Discovery Standards*, as well as *The Manual for Complex Litigation 4<sup>th</sup>* (Federal Judicial Center 2004), which the Court and parties may be called upon to refer to as a resource in the case management of this litigation. It is necessary to obtain a login and password to file electronically. Instructions regarding electronic filing and how to obtain a login and password in the District of Minnesota will be available on the website and will also be distributed to parties.

10. Organization and Responsibilities of Plaintiffs' Counsel. As noted in the Court's Pretrial Order No. 1 dated December 19, 2005, to act on behalf of Plaintiffs, the Court designates the following counsel:

A. Plaintiffs' Lead Counsel Committee (LCC)

The Court designates the following counsel, who will also be members and direct the work of the Plaintiff Steering Committee, to serve as Plaintiffs' Lead Counsel Committee:

Richard Arsenault  
NEBLETT, BEARD & ARSENAULT  
2220 Bonaventure Court  
Alexandria, LA 71301  
[rsenault@nbalawfirm.com](mailto:rsenault@nbalawfirm.com)  
Phone: 318.487.9874  
Facsimile: 318.561.2591

Elizabeth Cabraser  
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 30th Floor  
San Francisco, CA 94111-3339  
[ecabraser@lchb.com](mailto:ecabraser@lchb.com)  
Phone: 415.956.1000  
Facsimile: 415.956.1008

Seth R. Lesser  
LOCKS LAW FIRM, PLLC  
110 East 55<sup>th</sup> Street  
New York, NY 10022  
[slesser@lockslawny.com](mailto:slesser@lockslawny.com)  
Phone: 212.838.3333  
Facsimile: 212.838.3735

Charles S. Zimmerman  
ZIMMERMAN REED  
651 Nicollet Mall, Suite 501  
Minneapolis, MN 55402  
[csz@zimmreed.com](mailto:csz@zimmreed.com)  
Phone: 612.341.0400  
Facsimile: 612.341.0844

B. Responsibilities of the Plaintiffs' Lead Counsel Committee. The Counsel on Plaintiffs' Lead Counsel Committee shall be responsible for coordinating the activities of Plaintiffs during pretrial proceedings and, in consultation and, with the assistance of the Plaintiffs' Steering Committee, shall:

- i. Determine (after consultation with other members of Plaintiffs' Steering Committee and other co-counsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the Plaintiffs on all matters arising during pretrial proceedings;
  - ii. Coordinate the initiation and conduct of discovery on behalf of Plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure relating to discovery or any other subsequent order of this Court;
  - iii. Conduct settlement negotiations on behalf of Plaintiffs, but not enter binding agreements except to the extent expressly authorized;
  - iv. Delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the Plaintiffs is conducted effectively, efficiently, and economically;
  - v. Enter into stipulations, with opposing counsel, necessary for the conduct of the litigation;
  - vi. Prepare and distribute to the parties periodic status reports;
  - vii. Maintain adequate time and disbursement records covering services of designated counsel and establish guidelines, for approval by the Court, as to the keeping of time records and expenses;
  - viii. Monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;
  - ix. Perform such other duties as may be incidental to proper coordination of Plaintiffs' pretrial activities or authorized by further Order of the Court;
- and

- x. Submit, if appropriate, additional committees and counsel for designation by the Court.

Counsel for Plaintiffs who disagree with Lead Counsel Committee (or those acting on behalf of lead counsel) or who have individual or divergent positions may present written and oral arguments, and otherwise act separately on behalf of their client(s) as appropriate, provided that in doing so they do not repeat arguments, questions, or actions of the Lead Counsel Committee.

C. Plaintiffs' Steering Committee. After carefully reviewing all requests received, the Court designates the following counsel, in addition to the members of the Lead Counsel Committee, to serve on Plaintiffs' Steering Committee:

William M. Audet  
Alexander, Hawes & Audet, LLP  
300 Montgomery St.  
Suite 400  
San Francisco, CA 94104

Daniel E. Becnel  
Law Offices of Daniel E. Becnel, Jr.  
106 West Seventh St., P.O. Drawer H  
Reserve, LA 70084

John R. Climaco  
Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co., L.P.A.  
1220 Huron Road, Suite 1000  
Cleveland, Ohio 44115

Mr. C. Brooks Cutter  
Kershaw, Cutter & Ratinoff, LLP  
980 9th St.  
Suite 1900  
Sacramento, CA 95814

Mr. Lance A. Harke  
Harke & Clasby LLP  
155 S. Miami Ave.  
Suite 600  
Miami, FL 33130

Mr. Irwin B. Levin  
Cohen & Malad, LLP  
One Indiana Square  
Suite 1400  
Indianapolis, IN 46204

Richard A. Lockridge  
Lockridge Grindal Nauen, PLLP  
100 Washington Avenue South  
Suite 2200  
Minneapolis, MN 55401

Mr. Ramon R. Lopez  
Lopez, Hodes, Restaino, Milman & Skikos  
450 Newport Center Dr.  
Second Floor  
Newport Beach, CA 92660

Mr. Tobias L. Millrood  
Schiffirin & Barroway, LLP  
280 King of Prussia Rd.  
Radnor, PA 19087

Ms. Stacey L. Mills  
Heins, Mills & Olson, PLC  
3550 IDS Center  
80 South 8th St.  
Minneapolis, MN 55402

Timothy M. O'Brien  
Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A.  
316 South Baylen Street, Suite 600  
Pensacola, FL 32501

Mr. Paul J. Pennock  
Weitz & Luxenberg, P.C.  
180 Maiden Lane  
New York, NY 10038

Mr. Christopher A. Seeger  
Seeger Weiss LLP  
One William St.  
New York, NY 10004

Mr. Hunter J. Shkolnik  
Rheingold, Valet, Rheingold, Shkolnik & McCartney LLP  
113 E. 37th St.  
New York, NY 10016-3042

Mr. Thomas M. Sobol  
Hagens Berman Sobol Shapiro, LLP  
One Main Street  
4th Floor  
Cambridge, MA 02142

Ms. Silvija A. Strikis  
Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC  
Sumner Square, Suite 400  
1615 M Street N.W.  
Washington, DC 20036-3209

Ms. Teresa Toriseva  
Hill Toriseva & Williams, PLLC  
89 Twelfth St.  
Wheeling, WV 26003

Mr. Sol Weiss  
Anapol, Schwartz, Weiss, Cohan, Felman and Smalley, PC  
1900 Delancey Place  
Philadelphia, PA 19103

Mr. Justin Witkin  
Aylstock, Witkin & Sasser, PLC  
4400 Bayou Blvd.  
Suite 58  
Pensacola, FL 32503

The Court acknowledges that a number of competent and qualified attorneys who have submitted requests to be placed on Plaintiffs' Steering Committee were not selected. However, it is the expectation of the Court that these attorneys and others will be consulted and, from time to time, placed on working committees. The Court has already communicated this expectation to members of Plaintiffs' Lead Counsel Committee.

The members of Plaintiffs' Steering Committee shall consult with the Plaintiffs' Lead Counsel Committee in coordinating the Plaintiffs' pretrial activities and in planning for trial.

D. Plaintiffs' Liaison Counsel. The Court designates Charles S. Zimmerman to serve as Plaintiffs' Liaison Counsel. Plaintiffs' Liaison Counsel shall:

- i. **Service List:** Maintain and distribute to co-counsel and to Defendants' Liaison Counsel an up-to-date service list;
- ii. **Accept Service:** Receive and, as appropriate, distribute to co-counsel Orders from the Court and documents from opposing parties and counsel; and
- iii. **MDL Case File & Document Depository:** Maintain and make available to co-counsel and other Plaintiffs' counsel at reasonable hours a complete file of all documents served by or upon each party, and shall establish and maintain an electronically accessible document depository no later than January 25, 2006.

11. Defendants' Lead and Liaison Counsel.

Lead Counsel for Defendants is:

Timothy A. Pratt  
SHOOK HARDY & BACON LLP  
2555 Grand Blvd.  
Kansas City, MO 64108-2613  
[tpratt@shb.com](mailto:tpratt@shb.com)  
Phone: 816.474.6550  
Facsimile: 816.421.5547

Liaison Counsel for Defendants is:

Joseph M. Price  
FAEGRE & BENSON  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
[jprice@faegre.com](mailto:jprice@faegre.com)  
Phone: 612.766.7000  
Facsimile: 612.766.1600

12. Privileges Preserved. No communication among Plaintiffs' Counsel or among Defendants' Counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

13. Service of Documents.

A. **Orders.** A copy of each Order will be provided to Defendants' Lead and Liaison Counsel, and to the Plaintiffs' Lead Counsel Committee for distribution as appropriate to other counsel and parties. To clarify the meaning of this paragraph, service through CM/ECF only goes to those who have filed a case and are in ECF. In cases that will be transferred here (but are not here yet), the new plaintiffs are not in the system yet. ECF can only notice those that are in the system at the time the document was filed. It therefore remains the responsibility of the lead or liaison counsel to affect service. While the Court can assist counsel with counsel's service list, at least in the beginning of this litigation, the list will contain parties and attorneys that are not in our system yet.

B. **Pleadings, Motions, and Other Documents.** Each member of the Plaintiffs' Lead Counsel Committee and Defendants' Lead and Liaison Counsel shall be provided with one copy of each document served and/or filed by a party, including any and all attachments, to be delivered by electronic mail. Lead and Liaison Counsel shall also be provided with one non-electronic copy of each document served and/or filed by a party, including any and all attachments. Pursuant to Fed. R. Civ. P. 5, service on Plaintiffs' Lead Counsel Committee, including Liaison Counsel, constitutes service on other attorneys and parties for whom Counsel is acting, such service shall be deemed effective seven (7) days after service on Plaintiffs' Lead Counsel Committee.

14. Official Court Website. The Court has created and will maintain a website devoted solely to the Guidant Implantable Defibrillators Products Liability Litigation, found at <http://www.mnd.uscourts.gov/>. Through the website, parties may access, as may be established,

Court Orders, Court Minutes, Court Calendar, the Master Service List, Frequently Asked Questions, Court Transcripts, Court Docket, Current Developments and information as to Plaintiffs' Lead Counsel Committee and Liaison Counsel as well as Defendants' Lead and Liaison Counsel. Plaintiffs' Lead Counsel Committee and Liaison Counsel and Defendants' Lead and Liaison Counsel shall confer with the Court regarding the content of the website.

15. Transcript Payment. The Official Transcript of all hearings shall be posted on the Guidant Litigation website. The cost of the expedited Official Transcript shall be borne by the Plaintiffs and Defendants equally. Payment is to be made within fourteen (14) days of receipt of the Court Reporter's invoice.

16. Pleadings. Deadlines for answers or responses to the Complaints in all actions are hereby suspended until further Order of this Court.

17. Discovery. The following discovery propounded in *Brennan v. Guidant Corp.*, Case No. 1:05-cv-0827-DFH-TAB (S.D. Ind.) and *In re: Guidant Litigation*, Master File No. 05-1411 (DWF/AJB), and responses or objections thereto, are hereby adopted as if served in this MDL litigation:

Plaintiffs' First Request for Production of Documents (served under Brennan case caption on August 10, 2005)

[Guidant's] Responses to Plaintiffs' First Request for Production of Documents (served September 15, 2005)

Plaintiffs' First Joint Set of Requests for Production of Documents and Notice of Documents for Which Priority Production is Requested (served under Brennan and In re: Guidant Litigation case captions on October 7, 2005);

Defendant Guidant Corporation's Responses to Plaintiffs' First Joint Set of Requests for Production of Documents and Notice of Documents for Which Priority Production is Requested (served November 16, 2005);

Defendant, Guidant Sales Corporation's, Responses to Plaintiffs' First Joint Set of Requests for Production of Documents and Notice of Documents for Which Priority Production is Requested (served November 16, 2005);

Defendant, Cardiac Pacemakers, Inc.'s, Guidant Corporation's Responses to Plaintiffs' First Joint Set of Requests for Production of Documents and Notice of Documents for Which Priority Production is Requested (served November 16, 2005);

Plaintiffs' Second Joint Set of Requests for Production of Documents (served under Brennan and In re: Guidant Litigation case captions on October 27, 2005)

18. Document Repository. Within thirty (30) days of entry of this Order, Plaintiffs Lead Counsel Committee shall establish an electronic document repository, to which all plaintiffs can obtain access, subject to the Protective Order and the imposition of certain charges, if necessary, to cover related costs. The parties shall produce all documents and electronic data in electronic format, unless specifically requested or agreed upon otherwise.

19. Preservation of Evidence. The Amended Order for the Preservation of Evidence, entered by this Court on September 19, 2005 (copy annexed as Attachment C hereto) is hereby adopted for this litigation and shall be issued as a separate Order of this Court under the caption set forth in paragraph 2 and shall be applicable to all parties and all actions in this litigation.

20. Protective Order. The Protective Order previously agreed upon by the parties thereto and entered by the Court in *Brennan v. Guidant Corp.*, Case No. 1:05-cv-0827-DFH-TAB (S.D. Ind.) (copy annexed as Attachment D hereto), is hereby adopted for this litigation and shall be issued as a separate Order of this Court and shall be applicable to all counsel, parties and all actions in this litigation pursuant to its terms. Notwithstanding the adoption of the Brennan Protective Order, counsel and parties in this Consolidated Action are not required to execute Attachment "A" to the Protective Order.

21. Status Conferences. The Court will convene Status Conferences in its discretion. Counsel for each side shall meet and confer in advance of each Status Conference and submit to the Court a joint Agenda and Status Conference report listing matters to be considered by the Court at the Status Conference.

Status Conferences shall be regularly scheduled by the Court to permit substantial advance notice to all parties. Except as otherwise provided herein, and to accommodate the schedules of the Court and the parties, all argument or hearing on any motion will be scheduled to coincide with calendared Status Conferences. Any hearing or oral argument deemed necessary by the Court on motions that require a ruling on an expedited basis will be scheduled with notice of at least five business days. If circumstances warrant, the Court may shorten a notice period.

The next Status Conference is scheduled for Tuesday, January 24, 2006, at 9:00 a.m., in Courtroom 15E, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota. At the next and all future Status Conferences, the parties are to provide the Court, within four business days before each Status Conference an agreed upon agenda for the conference, and to provide a brief—one to two paragraph—summary of the party positions as to any disputed issues.

Further, unless otherwise ordered herein, it shall be the intent of the Court to meet in chambers with lead counsel for Plaintiffs and lead counsel for Defendants 45 minutes before each Status Conference.

Beginning in February 2006, unless otherwise ordered by this Court, Status Conferences shall be held on the third Tuesday of each month at 9:00 a.m. The location will be announced prior to the hearing and will take place in either the United States Courthouse in Minneapolis, 300 South Fourth Street, Minneapolis, Minnesota, or in the temporary United States Courthouse in St. Paul at 180 East Fifth Street, 7<sup>th</sup> Floor, St. Paul, Minnesota.

22. Disputed Issues Known to the Court to be Addressed at the January 24, 2006, Status Conference.

A. Timing and sequencing of discovery, including, but not limited to document production deadlines.

B. Fact-witness discovery.

C. Class certification discovery. Merit discovery issues including an overall discovery schedule with meaningful deadlines.

D. Necessity of a Master Complaint. The parties should be prepared to discuss and present any appropriate oral argument on these issues, absent agreement. Moreover, the parties should be prepared to submit a proposed discovery schedule to the Court addressing these specific issues on January 24, 2006. The Court will then rule, either contemporaneous with the hearing, or within one week of the Status Conference, absent further order of the Court or stipulation of the parties.

23. Additional Agenda Items.

A. A selection process for trials and trial dates including reasonable efforts to propose and identify so-called bellwether cases for trial before the Court in an expeditious manner. The Court is especially concerned about plaintiffs who are elderly or otherwise have serious health conditions.

B. Inventory and discuss the status of any remand motions and Rule 12 motions.

C. Necessity of a Plaintiffs' State Liaison Counsel.

D. The Court would like Plaintiffs' Lead Counsel and Defendants' Lead Counsel to prepare a brief written summary indicating their joint understanding of the facts involved in the litigation and the important factual legal issues. Specifically, the Court will give input to counsel for the summary of the case that will appear on the Court's website entitled "Introduction." In the event the parties cannot agree on what the substance of the "Introduction" or summary should be, the parties should note what they agree on and what they do not agree on so that the Court, within one week of the Status Conference can place a summary on the Court's website.

E. Use of telephonic conferences.

F. Discovery status in state court cases.

G. Objection to Stipulated Protective Order.

24. The Court approves the Plaintiff's Fact Sheet (attached hereto as Attachment E).

The Court is prepared to discuss at the next status conference a time line for completion of Plaintiff Fact Sheets and production of documents called for by Plaintiff Fact Sheets for each Plaintiff whose case has already been transferred to this Court and for any Plaintiff whose case is transferred to this Court after the date of this Order.

Dated: January 6, 2006

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court