

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

**In re: Guidant Corp. Implantable
Defibrillators Products Liability
Litigation**

**Master File No. 05-cv-1141
MDL No. 1708 (DWF/AJB)**

This Document Relates to All Actions

**PLAINTIFFS' MOTION FOR AN ORDER COMPELLING DEFENDANTS
TO SHOW CAUSE WHY DESIGNATED DOCUMENTS SHOULD REMAIN
CONFIDENTIAL**

COME NOW Plaintiffs, by and through their counsel of record, and for their Motion for an Order to Show Cause, state as follows:

1. Plaintiffs file this Motion for an Order to Show Cause, compelling Guidant to justify its confidentiality designations on certain documents. Guidant contends that the relevant documents contain trade secret or proprietary information that, if made public, will cause substantial and irreparable harm to Guidant. *see Defendants letter to Plaintiffs' counsel dated October 9, 2006, ¶ F, attached.* In addition, Plaintiffs seek to unseal the Summary Judgment briefs related to the issue of pre-emption, from which the list of confidential documents derives.

2. This motion is made pursuant to Fed. R. Civ. P. 26 and ¶ 11 of the Court's October 12, 2005 Stipulated Protective Order (Doc. 60). That Order provides that the party objecting to the designation may file an appropriate motion with the Court; the party making the confidentiality designation then has the burden to justify the

designation. The motion is also based on this Court's recent ruling in *Cardiac Pacemakers, Inc. v. Aspen II Holding Company, Inc.*, No. 04-4048 (D. Minn., October 24, 2006).

3. The documents Plaintiffs seek to publish are the exhibits submitted as part of their reply to Defendants' Summary Judgment motion on pre-emption. These documents describe what Guidant knew, and when, concerning the alleged defects in the Ventak Prizm 2 Model 1861 and the Contak Renewal 1. The story about these defects has been well publicized in general, but the details of the story are not yet publicly known. The material sought to be published does not relate to current design or trade practices of Guidant; rather this material is now mostly historical in nature.

4. The Stipulated Protective Order, ¶ 1, delineates the information protectable as Confidential Information: information, documents, or other material that the designating party reasonably and in good faith believes or reflects trade secrets or information whose confidentiality is otherwise protectable under applicable law. This includes but is not limited to confidential research, development, or commercial information (as those terms are used in Fed. R. Civ. P 26(c)), and personal medical information, private personal information, protected health information, tax returns, and other information reasonably sought to be kept confidential.

5. The documents designated by Guidant as trade secret and thus confidential should not be afforded the safeguards under the Protective Order. In any event, the burden is on Guidant to justify its designations concerning these documents.

6. The Stipulated Protective Order, ¶ 11, requires the parties to confer in good faith in an attempt to resolve the question of whether or on what terms the document[s] or information is entitled to Confidential treatment before seeking assistance from the Court.

7. The parties have conferred in good faith and have been unable to resolve the designation of certain documents as confidential. *See attached letter from Plaintiffs' counsel dated September 29, 2006. See also Defendants' responsive letter dated October 9, 2006.*

8. Once the parties have conferred in good faith and the objecting party (Plaintiffs) have made a motion, the Stipulated Protective Order, ¶ 1, the burden of proving the propriety of the designation [of confidentiality] rests on the party who has made the designation (Defendants).

WHEREFORE, Plaintiffs respectfully request this Court to Order Defendants to Show Cause why the Documents listed in ¶ F of Defendants letter dated October 9, 2006 and the Summary Judgment briefs on preemption should remain confidential, and for such other and further relief as the Court deems just and equitable.

Respectfully Submitted,

Dated:

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s/Ronald S. Goldser

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