

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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In re: GUIDANT CORP. IMPLANTABLE  
DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION

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MDL No. 05-1708 (DWF/AJB)

**AMENDED COMPLAINT BY ADOPTION  
(Device Recipient Plaintiff)**

This pleading relates to:

[JURY TRIAL DEMANDED]

ETHEL SMITH,  
-and-  
FRANK SMITH,

Case No. 0:06-cv-04631-DWF-AJB

Plaintiffs,

-against-

GUIDANT CORPORATION, *et al.*,

Defendants.

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**DEVICE RECIPIENT PLAINTIFF AMENDED COMPLAINT BY ADOPTION**

1. Plaintiffs, Ethel Smith and Frank Smith, state their claims against Defendants indicated below as follows and incorporate by reference the relevant portions of Plaintiffs' First Amended Master Complaint for Personal Injury, Economic Loss, Third Party Payor and Medicare Secondary Payor Act Claims, Including Class Actions (the "First Amended Master Complaint") on file with the Clerk of the Court for the United States District Court for the District of Minnesota in the manner entitled In RE GUIDANT DEFIBRILLATORS PRODUCT LIABILITY LITIGATION, No 05-md-1708.

2. Plaintiff, Ethel Smith, is a citizen and resident of York County, Pennsylvania, and claims damages as set forth below.

2a. Plaintiff Spouse, Frank Smith, is a citizen and resident of York County, Pennsylvania, and claims damages as set forth below. Plaintiff and Plaintiff Spouse have been married since approximately 1946.

**ALLEGATIONS AS TO INJURIES**

3. The Plaintiff is a Device Recipient Plaintiff and has suffered injuries as a result of having the following Device manufactured:

Contak Renewal Model H135, Serial# 99900

Defendants listed by their actions or inactions proximately caused Plaintiff's injuries.

4. As a result of the injuries that Plaintiff has sustained, Plaintiff asserts entitlement to recover damages and/or restitution.

5. That on or about June 23, 2003, Plaintiff had the above-referenced Device implanted at Hahnemann University Hospital, Broad & Vine Streets, Philadelphia, PA by David Kleinmann, MD.

6. As a result of the Device, Plaintiff suffered injury and damages as set forth in the First Amended Master Complaint.

7. Plaintiff Spouse re-alleges the facts averred in paragraphs 3-6 above as if fully set forth herein. Plaintiff Spouse has suffered injury and damages as set forth in the First Amended Master Complaint.

**ALLEGATIONS AS TO DEFENDANTS**

8. The entities named as Defendants in the First Amended Master Complaint and the allegations with regard them thereto in the First Amended Master Complaint are herein adopted by reference.

**SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

9. Provided that Plaintiffs herein do not agree to be a member of any class, classes, or subclasses that have been or may hereafter be proposed in this litigation, whether set forth in the First Amended Master Complaint or otherwise, but reserve the right to make any class action participation decision as may be permitted by virtue of a right to opt-out as may be applicable by law, the following claims and allegations asserted in the First Amended Master Complaint and the allegations with regard thereto in the First Amended Master Complaint are herein adopted by reference:

  X INTRODUCTION;

  X PARTIES;

  X JURISDICTION AND VENUE;

  X FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS;

CLAIMS FOR RELIEF – DEVICE RECIPIENT PLAINTIFFS:

  X COUNT I (Strict Liability – Failure to Warn);

  X COUNT II (Strict Liability – Design And/Or Manufacturing Defect);

  X COUNT III (Negligence);

  X COUNT IV (Negligence Per Se);

  X COUNT V (Breach of Implied Warranty);

  X COUNT VI (Fraud);

- X   COUNT VII (Constructive Fraud);
- X   COUNT VIII (Unfair and Deceptive Trade Practices Under State Law);
- MN & PA   Identify either State or Subparagraph number
- X   COUNT IX (Under The Senior Citizen And Handicapped Person Consumer Fraud Act, Minnesota Statute § 325F.71 And/Or Similar Statutes In Effect In Other Jurisdictions); [List Specific Statute, it appropriate]
- X   COUNT X (Negligent Infliction of Emotional Distress);
- X   COUNT XI (Intentional Infliction of Emotional Distress);
- X   COUNT XII (Gross Negligence/ Malice);
- X   COUNT XIII (Loss of Consortium);
- COUNT XIV (Wrongful Death);
- COUNT XV (Survival Action);
- X   COUNT XVI (Medical Monitoring);
- X   COUNT XVII (Unjust Enrichment)
- X   COUNT XXXI (Punitive Damages)

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs seek judgment in their favor against the Defendants as follows, and following the Prayer for Relief and other allegations contained in the First Amended Master Complaint:

1. For the equitable relief requested;
2. For all compensatory and/or statutory damages or restitution, according to proof;
3. For punitive or exemplary damages against Defendants, at the appropriate time under governing law as determined by the Court, consistent with the degree of Defendants’

reprehensibility and the resulting harm or potential harm to Plaintiffs, and in an amount sufficient to punish Defendants and deter others from similar wrongdoing;

4. For declaratory judgment that Defendants are liable to Plaintiffs for all evaluative, monitoring, diagnostic, preventative, and corrective medical, surgical, and incidental expenses, costs and losses caused by Defendants' wrongdoing;

5. For medical monitoring, whether denominated as damages or in the form of equitable relief;

6. For a disgorgement of profits and restitution of all costs related to the Devices;

7. For an award of attorneys' fees and costs;

8. For prejudgment interest and the costs of suit;

9. For such other and further relief as this Court may deem just and proper; and

**JURY DEMAND**

Plaintiffs hereby demand a jury trial on all issues so triable.

Date: April 1, 2007

Respectfully submitted,



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