

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

In re: Guidant Corp. Implantable  
Defibrillators Products Liability Litigation

This Document Relates to  
Leopoldo Duron, Jr.

vs. Case No. 06-00025  
Guidant Corp., et al.

MDL No. 1708  
(DWF/AKB)

**DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT BASED  
ON LACK OF BREACH OF  
WARRANTIES**

Defendants Guidant Corporation, Guidant Sales Corporation, and Cardiac Pacemakers, Inc., respectfully submit this Motion to dismiss the following of Plaintiff's claims and state as follows:

1. California does not permit implied warranty claims for products such as Mr. Duron's absent a manifest defect. *See American Suzuki Motor Corporation v. Superior Court*, 37 Cal. App. 4th 1291 (Cal. Ct. App. 1995); *Khan v. Shiley Inc.*, 217 Cal. App. 3d 848 (Cal. Ct. App. 1990).
2. There is no genuine dispute that Mr. Duron's device functioned normally and exhibited no defect or malfunction during the life of the device.
3. California does not permit implied warranty claims absent privity of contract. *See U.S. Roofing v. Credit Alliance Corp.*, 228 Cal. App. 3d 1431 (1991). Privity of contract does not exist where a plaintiff's doctor chooses the medical device, not plaintiff. *See Evraets v. Intermedics Intraocular, Inc.*, 29 Cal. App. 4th 779 (Cal. Ct. App. 1994).
4. There is no genuine dispute that Mr. Duron's doctor selected Mr. Duron's device, not Mr. Duron.
5. California does not permit express warranty claims absent an affirmation or promise made as part of the basis of the bargain and a breach of that affirmation or promise. CAL. COMMERCIAL CODE § 2313 (West 2007).
6. There is no genuine dispute that Mr. Duron does not remember receiving written materials from Guidant or speaking to a Guidant employee before he received his device. Nor is there any genuine dispute that Mr. Duron's device functioned normally and exhibited no defect or malfunction during the life of the device.

7. As such, Mr. Duron cannot establish the following claims:

**Breach of Implied Warranty of Merchantability (Count IX)**

**Breach of Implied Warranty of Fitness (Count IX)**

**Breach of Express Warranty (Count VIII)**

WHEREFORE, Defendants pray that the Court grant Defendants' Motion and dismiss the aforementioned claims with prejudice.

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

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