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April 16, 2007

Timothy A. Pratt

The Honorable  
 Donovan W. Frank  
 Warren E. Berger Federal Building  
 316 N. Robert Street  
 738 Federal Building  
 St. Paul, Minnesota 55101

2555 Grand Blvd.  
 Kansas City  
 Missouri 64108-2613  
 816.474.6550  
 816.559.2292 DD  
 816.421.5547 Fax  
 tpratt@shb.com

Magistrate Judge Boylan  
 Warren E. Berger Federal Building  
 316 N. Robert Street  
 638 Federal Building  
 St. Paul, Minnesota 55101

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

Dear Judges Frank and Boylan:

On March 30, 2007, plaintiffs noticed the deposition of Dr. Robert J. Myerburg, plaintiff Eugene Clasby's prescribing and treating electrophysiologist. Attached to this notice were several requests for documents. Many of these requests are inconsistent, however, with Pretrial Order No. 30, as they seek documents that will reveal not only the internal deliberations of the Independent Panel, but will also make known the specific questions or comments made by Dr. Myerburg, if not others. Therefore, these requests should be denied. In any event, the Court should not permit plaintiffs to question Dr. Myerburg about his participation on the Independent Panel, as such questioning will have a negative impact on future participation on such socially-responsible panels. Therefore, we urge the Court to deny plaintiffs' requests relating to the Independent Panel and limit Dr. Myerburg's deposition to his treatment of Eugene Clasby.

Pretrial Order No. 30 specifically denied production of the Independent Panel's transcripts where they concern the internal deliberations of the Panel, testimony of non-Guidant employees, and testimony of Guidant employees who have not been and will not be deposed. Further, the Order permits redactions as to the identity of specific panel members where they ask questions or make comments. Permitting plaintiffs to gather documents from Dr. Myerburg will disrupt the confidentiality expected by the Panel and protected by Pretrial Order No. 30.

Plaintiffs specifically request the following:

1. A log of all documents provided to you by Defendants in connection with your work on the Independent Panel of Guidant Corporation.

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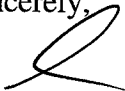
3. All documents reflecting, referring, relating, or pertaining in any way to communications between you and Defendants regarding your work on the Independent Panel of Guidant Corporation.
4. Copies of any draft reports of the Independent Panel of Guidant Corporation.

As stated above, these requests are clearly inappropriate. For example, the documents responsive to request number 1 are duplicative of documents previously produced by Guidant. Pursuant to Pretrial Order No. 7, Guidant produced documents that "were presented to the Panel" on April 24, 2006, June 8-9, 2006, and October 26, 2006. Requiring Dr. Myerburg to produce a log of such would be unnecessarily burdensome and therefore should not be required. Similarly, production of documents responsive to request numbers 3 and 4 should not be required because they would divulge the internal deliberations protected by Pretrial Order No. 30.

Further, any questioning related to Dr. Myerburg's participation in the Panel should be restricted. Such questioning is likely to lead to the discovery of internal deliberations, which the members of the Panel expected to remain confidential and whose confidentiality Pretrial Order No. 30 sought to maintain. Additionally, such questioning will undoubtedly cause the comments made by Dr. Myerburg during the Panel's discussions to become evident. The identity of the Panel members is clearly protected by Pretrial Order No. 30. Further, such questioning will likely result in a chilling effect on independent experts' willingness to undertake and fully execute on such socially responsible assignments. Even so, plaintiffs have refused to limit their questioning to Dr. Myerburg's treatment of Eugene Clasby.

For the reasons stated above, we urge the Court to deny the document requests relating to the Independent Panel, as well as limit the questioning of Dr. Myerburg in his deposition to his role as the treating physician of Eugene Clasby.

Sincerely,



Timothy A. Pratt  
Partner

TAP:jcd

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