

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

**In re: GUIDANT CORP.
IMPLANTABLE DEFIBRILLATORS
PRODUCT LIABILITY
LITIGATION**

MDL No. 05-1708 (DWF/AJB)

EMMETT DAVID BROWN

Case No. 0:07-cv-1487 (DWF/AJB)

Plaintiff,

v.

GUIDANT CORPORATION, an Indiana Corporation; ENDOVASCULAR TECHNOLOGIES, INC., a California Corporation and a Division of GUIDANT CORPORATION; GUIDANT SALES CORPORATION, an Indiana Corporation; DR. LELAND B. HOUSMAN, M.D.; et al.

Defendants.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO SEVER MEDICAL MALPRACTICE ACTION AND
REMAND CASE BACK TO SUPERIOR COURT FOR THE STATE OF
CALIFORNIA, COUNTY OF SANTA CLARA**

Defendant, LELAND B. HOUSMAN, M.D. submits the following Memorandum of Points and Authorities in support of his motion to sever

plaintiff's medical malpractice claim from his products liability claims pursuant to Federal Rule of Civil Procedure 21.

Once severed, there would be no Federal jurisdiction for the malpractice claim, which would then be remanded to Superior Court for the State of California, County of Santa Clara from which it was originally removed.

I.

FACTS

On October 24, 2006, plaintiff, a California resident, filed a complaint for damages against product manufacturer GUIDANT CORPORATION (and various subsidiaries) and DR. HOUSMAN, also a resident of California. The complaint contains ten causes of action relating to GUIDANT'S conduct, including multiple theories of products liability, fraud, and violation of consumer protection statutes (See Exhibit "A"). In contrast, the complaint contains just a single cause of action for medical negligence against DR. HOUSMAN.

On January 22, 2007, GUIDANT removed the case to Federal Court based on diversity of citizenship and requested severance of DR. HOUSMAN. (See Exhibit "B") On February 16, 2007, the case was transferred to the Multidistrict Litigation.

II.

LAW AND ARGUMENT

Federal Rule of Civil Procedure 21 provides: "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately."

It is within the discretion of the court to order a severance when the joinder of a party is not proper under Rule 20, including circumstances where there is 'no question of law or fact common to all parties.'

1. PLAINTIFF'S MEDICAL MALPRACTICE CLAIM AGAINST DR. HOUSMAN SHOULD BE SEVERED AND REMANDED TO STATE COURT TO PROMOTE EFFICIENCY.

As outlined by GUIDANT in their Notice of Removal, the claims against DR. HOUSMAN and GUIDANT are legally distinct and none of the causes of action overlap. (See Notice of Removal, paragraphs 25-35). Furthermore, the factual claim against DR. HOUSMAN involves the quality of medical care rendered to plaintiff, irrespective of the products used in that treatment. In contrast, the claims against GUIDANT for the design and manufacture of the defibrillator have nothing to do with the standard of care for any health care provider, including DR. HOUSMAN.

Plaintiff has alleged eleven causes of action, only one of which is directed to DR. HOUSMAN. The causes of action against GUIDANT are lengthy and fact specific and include claims for punitive damages (See Plaintiff's Complaint, paragraphs 11-37 and 41-118). The allegations are wide-ranging including knowingly marketing and selling a defective product and making false statements to the FDA.

Furthermore, in terms of fairness and judicial economy, proceeding with the medical malpractice claim within the more complex structure of the Multidistrict Litigation is completely impractical. DR. HOUSMAN will be forced to expend significant resources on the products liability issues that have no bearing whatsoever on his care. To date, DR. HOUSMAN has had to file this Motion to Sever in three different courts while plaintiff and GUIDANT battle over venue.

Based on the independent nature of the medical negligence action and the proximity of the parties and percipient witnesses to that action, it will be significantly more efficient to sever DR. HOUSMAN from the products

liability/fraud claims and allow the narrow issue of medical malpractice to proceed in a separate action in state court.

2. PLAINTIFF'S CAUSE OF ACTION AGAINST DR. HOUSMAN SHOULD BE SEVERED TO SIMPLIFY THE CASE.

The placement of the epicardial leads is a straightforward medical issue that is easily resolved by expert testimony. Similarly, the damages from the placement of the leads, if any, will be self-evident in the medical records.

In contrast, the allegations against GUIDANT take nearly 90 paragraphs in the complaint and cover a broad spectrum of products liability, corporate ratification, fraud, misrepresentation, and violations of consumer rights. Lumping the simple claim against DR. HOUSMAN with the complex and voluminous claim against GUIDANT will unnecessarily complicate the case for all concerned, including the jury if it gets that far.

Finally, the law applicable to DR. HOUSMAN via MICRA and related statutes is different from the law applicable to GUIDANT.

3. PLAINTIFF'S CAUSE OF ACTION AGAINST DR. HOUSMAN SHOULD BE SEVERED TO AVOID PREJUDICE.

Severance is permissible under CCP § 1048(b) where a party would be prejudiced by remaining in the lawsuit. As the case is currently configured, DR. HOUSMAN runs a tremendous risk of substantial prejudice.

First, DR. HOUSMAN will incur many unnecessary expenses by being forced to participate in the discovery by and against GUIDANT, which will likely be exhaustive based on the allegations in the complaint.

In addition, the claims against GUIDANT include multiple allegations of conduct that either recklessly, fraudulently, and/or intentionally caused harm to

plaintiff and other individuals. DR. HOUSMAN had no part in any of that conduct and should not be exposed to any risk of guilt by association.

Finally, depending on the outcome of this action, DR. HOUSMAN can be reported to the medical board, which has the ability to impose severe discipline. Given the independent nature of the claims against each defendant, DR. HOUSMAN should be afforded the opportunity to focus his defense strictly on the claim made against him.

III.

CONCLUSION

Based on the above arguments and Federal Rule 21, defendant respectfully requests the Court grant his Motion to Sever the claims against LELAND HOUSMAN, M.D. and remand the claims against DR. HOUSMAN to State Court for further proceedings. Remanding to the State Court is proper because once Plaintiff's claims against DR. HOUSMAN are severed, the Federal Court will no longer have diversity jurisdiction under 28 U.S.C. 1441.

Respectfully submitted.

Dated: May 18, 2007

/s/ David P. Burke

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