



May 31, 2007

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

Timothy A. Pratt

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Re: *In re Guidant Corp. Implantable Defibrillators Product Liability Litigation*
 MDL Docket No. 1708

Dear Judge Frank:

Pursuant to the Court's directives set forth in its letters of March 27 and April 30, 2007, Guidant raises the two following issues for expedited consideration:

A. IME Cancellation Expenses

Guidant moves the Court to order Bellwether Plaintiff Leland Braund's counsel to pay the costs of Mr. Braund's independent medical exam that Plaintiff's counsel unilaterally cancelled less than 24 hours before it was scheduled to occur. Guidant proposed May 15, 2007 for an independent medical exam to be conducted by Drs. Elissa Benedek and Charles Clark in Ann Arbor, Michigan. Plaintiff's counsel accepted this date on April 24 and reaffirmed the date on May 9. Exhibit A at 1; Exhibit B at 1. Moreover, upon Plaintiff's counsel's request to begin the exam later in the morning, Guidant arranged for the all-day exam to begin at 10:30 AM instead of 9:00 AM. Exhibit C at 3.

Nevertheless, at 3:24 PM on the day before the exam, Plaintiff's counsel informed Guidant that Mr. Braund would not attend his appointment. Exhibit C at 2. Plaintiff's counsel explained that Mr. Braund had just returned from out of town and was "just not physically up to driving" to Ann Arbor. *Id.* at 1. Plaintiff's counsel's failure to anticipate Mr. Braund's difficulties with an exam date immediately following his out-of-town trip is unacceptable. Plaintiff's counsel could have proposed a different date at the outset or provided transportation for Mr. Braund. Instead, they cancelled the exam at the last minute, resulting in \$1600 in fees. Plaintiff's counsel, not Guidant, should be responsible for these fees.

B. Third Party Subpoena

In addition, Guidant moves the Court to quash the subpoena served on the Stanwich Group, LLC. On May 30, 2007, plaintiffs served yet another subpoena on

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another third party, Stanwich Group, LLC. The Stanwich Group is a public relations firm that Guidant has utilized periodically. Even with the representative trial dates approaching, plaintiffs continue their pattern of serving overbroad discovery on third parties, pointlessly diverting the attention and resources of the parties from the task at hand – preparing for representative trials.

Plaintiffs' broad document requests include "[a]ll documents relating to or reflecting communications between you and Defendants that refer, relate, or in any way pertain to Defendants' implantable defibrillators or pacemakers" including eleven sub-categories. Exhibit D at 3. Another broad category includes "(a)ll documents referring to or relating to Defendants' Independent Panel" despite the fact that Guidant has already provided a vast quantity of documents on this topic. *Id.* at 4.

Guidant respectfully submits that this Court should require that plaintiffs cease this Eleventh Hour overbroad and redundant discovery to third parties.

Respectfully submitted,



Timothy A. Pratt

TAP:pcb
Enclosures

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