

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MINNESOTA

Chambers of
DONOVAN W. FRANK
DISTRICT JUDGE

Warren E. Burger Federal Building
316 North Robert Street, Room 738
St. Paul, Minnesota 55101
(651) 848-1290

June 4, 2007

BY U.S. MAIL & ECF

Timothy O'Brien, Esq.
Kimberly Lambert, Esq.
Levin, Papantonio, Thomas, Mitchell
Echsner & Proctor, PA
316 South Baylen Street, Suite 600
Pensacola, FL 32502-5996

Re: *Pamela Barber, Nancy Boozer, et al. v. Guidant Corporation, et al.*
Civil No. 07-2407 (DWF/AJB)
AND
Nancy Boozer v. Guidant Corporation et al.
Civil No. XX-XXXX (DWF/AJB)

Dear Mr. O'Brien and Ms. Lambert:

On May 22, 2007, The Law Office of Patrick J. Mulligan, PC ("the Mulligan Law Firm") filed a Complaint by Adoption on behalf of Nancy Boozer, among others. The Complaint states that Nancy Boozer is a citizen and resident of Clarkshill, South Carolina, and on November 19, 2001, was implanted with Guidant Device Model #1861, Serial #214711 at University Hospital in Augusta, Georgia. On May 23, 2007, the District of Minnesota Clerk's Office received a Complaint from you to be filed also on behalf of Nancy Boozer. This Complaint states that Nancy Boozer is a citizen and resident of McCormick County, South Carolina, and on November 19, 2001, was implanted with Guidant Device Model #1861, Serial #214711 at University Hospital in Augusta, Georgia.

The Court's original belief was that both Complaints were filed by the Mulligan Law Firm. Therefore, through letter communication dated May 25, 2007, the Court asked the Mulligan Law Firm to respond explaining the situation comprising the dual filings and whether one of the two cases should be and/or will be withdrawn. (*See* May 25, 2007 letter.) On May 30, 2007, the Mulligan Law Firm responded, representing that they contacted Ms. Boozer whereby she indicated that she wanted the Mulligan Law Firm to represent her, and representing that they had notified you of Ms. Boozer's wishes and asked you to move to dismiss without prejudice the case that you had sent for filing. (*See* May 30, 2007 letter, with enclosures.)

Through this letter, I am giving you the chance to respond in writing to explain the situation comprising the dual filings, and whether one of the two cases should be and/or will be withdrawn. Please respond within one week of receipt of this letter. You may send your response in writing (316 North Robert Street, St. Paul, Minnesota 55101); by fax (651-848-1292); or by e-mail (frank_chambers@mnd.uscourts.gov). If you agree that the

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second case sent for filing by you should be withdrawn, it is agreeable to the Court to have all attorneys (including you and the attorneys from the Mulligan Law Firm) and Ms. Boozer sign a stipulation explaining the parties' agreement to have the second Complaint sent for filing (dated May 23, 2007) withdrawn and returned along with the filing fee. If you contend that the second Complaint should not be withdrawn, the Court will then go ahead and have the second Complaint filed and Order the parties to file respective Motions to Dismiss in the pending cases where Ms. Boozer is a named Plaintiff. The Court will not allow Ms. Boozer to remain a named Plaintiff in two separate cases.

I am electronically filing a copy of this letter so that Plaintiffs' Lead Counsel and Guidant's attorneys will receive a copy of this letter.

After I receive a response, I will determine the appropriate course of action based on the papers submitted or schedule a telephone conference to discuss the filings.

Very truly yours,

s/Donovan W. Frank

DONOVAN W. FRANK
Judge of United States District Court

DWF:rlb
Enclosures

c: Patrick J. Mulligan, Esq. (By U.S. Mail & ECF)
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