

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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In re: GUIDANT CORP. IMPLANTABLE  
DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

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**AMENDED COMPLAINT BY ADOPTION  
(Device Recipient Plaintiffs)**

This pleading relates to:

**Case No. 0:07-cv-01123 (DWF/AJB)**

CORBIN SIZEMORE,

Plaintiffs

**JURY TRIAL DEMANDED**

-Against-

GUIDANT CORPORATION, GUIDANT  
SALES CORPORATION, CARDIAC  
PACEMAKERS, INC. and BOSTON  
SCIENTIFIC CORPORATION,

Defendants

**DEVICE RECIPIENT PLAINTIFFS COMPLAINT BY ADOPTION**

1. Plaintiff Corbin Sizemore states his claim against Defendants indicated below as follows and incorporates by reference the relevant portions of Plaintiffs' Master Complaint for Personal Injury, Economic Loss, Third Party Payor and Medicare Secondary Payor Act Claims, Including Class Actions (the "Master Complaint") on file with the Clerk of the Court for the United States District Court for the District of Minnesota in the manner entitled In RE GUIDANT DEFIBRILLATORS PRODUCT LIABILITY LITIGATION, No 05-md-1708.

2. a. Plaintiff Corbin Sizemore is a citizen and resident of Will County, Illinois and claims damages as set forth below.

### **ALLEGATIONS AS TO INJURIES**

3. a. Plaintiff Corbin Sizemore is a Device Recipient Plaintiff and has suffered injuries as a result of having the following Devices manufactured:

(i) Guidant Ventak Prizm 2DR model 1861

4. As a result of the injuries that Plaintiff sustained, Plaintiff assert entitlement to recover damages and/or restitution.

5. That on or about August 29, 2001, Plaintiff Corbin Sizemore had the above referenced device (i) implanted. That on or about October 22, 2004, Plaintiff Corbin Sizemore had the above referenced device (i) explanted and a new device implanted at Provena - St. Joseph Medical Center.

6. As a result of the Device, Plaintiff suffered injuries and damages as set forth in the Master Complaint.

### **ALLEGATIONS AS TO DEFENDANTS**

7. The entities named as Defendants in the Master Complaint and the allegations with regard them thereto in the Master Complaint are herein adopted by reference.

**SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

8. Provided that Plaintiffs herein do not agree to be a member of any class, classes, or subclasses that have been or may hereafter be proposed in this litigation, whether set forth in the Master Complaint or otherwise, but reserve the right to make any class action participation decision as may be permitted by virtue of a right to opt-out as may be applicable by law, the following claims and allegations asserted in the Master Complaint and the allegations with regard thereto in the Master Complaint are herein adopted by reference:

- X INTRODUCTION;
- X PARTIES;
- X OTHER PARTIES; (Identify and plead in additional allegations)
- X JURISDICTION AND VENUE;
- X FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS;
- X CLAIMS FOR RELIEF – DEVICE RECIPIENT PLAINTIFFS:
- X COUNT I (Strict Liability – Failure to Warn);
- X COUNT II (Strict Liability – Design And/Or Manufacturing Defect);
- X COUNT III (Negligence);
- X COUNT IV (Negligence Per Se);
- X COUNT V (Breach of Implied Warranty);
- X COUNT VI (Fraud);
- X COUNT VII (Constructive Fraud);
- X COUNT VIII (Unfair and Deceptive Trade Practices Under State Law);

CA (c) Identify either State or Subparagraph number

- X COUNT IX (Under The Senior Citizen And Handicapped Person Consumer Fraud Act, Minnesota Statute § 325F.71 And/Or Similar Statutes In Effect In Other Jurisdictions, specifically **The Elder Abuse and Dependent Adult Civil Protection Act, California Welfare and Institutions Code § 15657**);
- X COUNT X (Negligent Infliction of Emotional Distress);
- X COUNT XI (Intentional Infliction of Emotional Distress);
- X COUNT XII (Gross Negligence/ Malice);
- X COUNT XIII (Loss of Consortium);
- X COUNT XIV (Wrongful Death);
- X COUNT XV (Survival Action);
- X COUNT XVI (Medical Monitoring);
- X COUNT XVII (Unjust Enrichment)

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs seeks judgment in their favor against the Defendants as follows, and following the Prayer for Relief and other allegations contained in the Master Complaint:

1. For the equitable relief requested;
2. For all compensatory and/or statutory damages or restitution, according to proof;
3. For leave to seek punitive or exemplary damages against Defendants, at the appropriate time under governing law as determined by the Court, consistent with the degree of Defendants' reprehensibility and the resulting harm or potential harm to Plaintiffs, and in an amount sufficient to punish Defendants and deter others from similar wrongdoing;

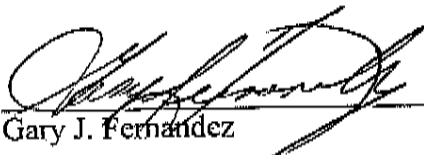
4. For declaratory judgment that Defendants are liable to Plaintiffs for all evaluative, monitoring, diagnostic, preventative, and corrective medical, surgical, and incidental expenses, costs and losses caused by Defendants' wrongdoing;
5. For medical monitoring, whether denominated as damages or in the form of equitable relief;
6. For a disgorgement of profits and restitution of all costs related to the Devices;
7. For an award of attorneys' fees and costs;
8. For prejudgment interest and the costs of suit;
9. For such other and further relief as this Court may deem just and proper; and

**JURY DEMAND**

Plaintiffs hereby demand a jury trial on all issues so triable.

Date: June 18, 2007

Respectfully submitted,

  
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Gary J. Fernandez

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