

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

In re: Guidant Corp. Implantable
Defibrillators Products Liability Litigation

Master File No. 05-md-1708

(DWF/AJB)

This Document Relates to:

Tamela Ivens v. Guidant Corp., et al.
No. 05-cv-1491

AFFIDAVIT OF DAVID M. CIALKOWSKI

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

David M. Cialkowski, being first duly sworn on oath, hereby declare as follows:

I am an Attorney at Law admitted to practice in the State of Minnesota, and an associate at the law firm Zimmerman Reed, P.L.L.P. I am a member in good standing of the State Bar of Minnesota. I have personal knowledge of the statements contained in this Affidavit and if called to testify, I could and would testify competently to them.

1. Exhibit A is a true and correct copy of page 20-22 of 2004 Annual Report of the Board of Trustees of the Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds, *available at* <http://www.cms.hhs.gov>.

2. Exhibit B is a true and correct copy of Amy Goldstein, *Medicare Will Go Broke by 2018, Trustees Report*, Washington Post, May 2, 2006.
3. Exhibit C is a true and correct copy of Report of the Independent Panel of Guidant Corporation, Miami, FL, dated March 20, 2006.
4. Exhibit D is a true and correct copy “Inquiry Arranged by Guidant May Aid Lawsuits and Critics,” a March 22, 2006, New York Times.
5. Exhibit E is a true and correct copy of the September 15, 2005, letter from Guidant to the Food and Drug Administration.
6. Exhibit F is a true and correct copy of the December 22, 2005, Warning Letter from the Food and Drug Administration to Guidant.
7. Exhibit G is a true and correct copy of the Food and Drug Administration’s Press Release entitled “FDA Releases Results of Study on Defibrillator and Pacemaker Malfunctions Part of Agency Drive to Improve Device Safety Monitoring and Public Communications,” dated September 16, 2005.
8. Exhibit H is a true and correct copy of Associated Press article entitled “Guidant recalls thousands of pacemakers” dated September 22, 2005.
9. Exhibit I is a true and correct copy of the MedPage Today article entitled “Guidant Recalls 170,000 Pacemakers” dated September 23, 2005.
10. Exhibit J is a true and correct copy of Medicare Secondary Payer Manual, Ch. 1 (Effective September 7, 2005).
11. Exhibit K is a true and correct copy of Medicare Secondary Payer Manual, Ch. 2 (Effective May 8, 2006).

12. Exhibit L is a true and correct copy of Medicare Benefit Policy Manual, Ch. 16 (Effective October 1, 2003).

13. Exhibit M is a true and correct copy of Brief of Amicus Curiae Senator Charles E. Grassley in Support of Appellants in *Glover v. Liggett Group, Inc.*, Case No. 05-14219-JJ (11th Cir.).

14. Exhibit N is a true and correct copy of *Tuttle v. Eats and Treats Operations, Inc.*, 2005 U.S. Dist. LEXIS 15302 (D. Kan. May 23, 2005).

15. Exhibit O is a true and correct copy of FDA News Posting, dated July 1, 2005, FDA Updates Consumers on Guidant Corporation's Implantable Defibrillators.

16. Exhibit P is a true and correct copy of *Manning v. Utilities Mutual Insurance Company*, 2004 WL 235256 , 2004 U.S. Dist. Lexis 1674 (S.D.N.Y. 2004).

FURTHER YOUR AFFIANT SAYETH NOT.

s/David M. Cialkowski
David M. Cialkowski

Subscribed and sworn to before me
this 8th day of September, 2006.

s/Julie L. Tinkham
Notary Public