



NUMBER 13-06-00036-CV
COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI - EDINBURG

**IN RE: GUIDANT CORPORATION, GUIDANT SALES CORPORATION,
GUIDANT PUERTO RICO SALES CORPORATION & CARDIAC
PACEMAKERS, INC.**

On Petition for Writ of Mandamus

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Garza
Memorandum Opinion Per Curiam**

This mandamus proceeding concerns an agreed confidentiality order entered in December 2005 that governed the handling of discovery materials in the underlying proceeding. On January 13, 2006, the trial court struck the stipulated protective order and the agreement to comply with the order. On January 19, 2006, relators, Guidant Corporation, Guidant Sales Corporation, and Guidant Puerto Rico Sales Corporation and Cardiac Pacemakers, Inc., filed a petition for writ of mandamus and a motion for emergency temporary relief challenging the trial court's January 13 order. In a *per curiam*

order, on January 19, 2006, this Court granted the requested emergency relief, stayed the trial court's January 13 order, and requested a response from the real parties in interest, Louis E. Motal and Beatrice O. Hinojosa.

Between January 24, 2006 and March 6, 2008, the parties filed twenty-one joint motions to stay the proceeding pending the parties' efforts to mutually resolve the issues raised in relators' petition for writ of mandamus. In each motion, relators and real parties in interest asked this Court to postpone our request for a response and to refrain from considering the merits of this mandamus action until the date specified in the motion. They did not ask us to otherwise modify our January 19 order. In each motion, the parties also informed the Court that they have entered into an agreement to attempt to resolve the issue of confidentiality protections for discovery materials in the underlying proceeding—the same issues raised in relators' petition for writ of mandamus.

On September 2, 2008, relators filed their twenty-second joint motion to stay the proceeding asking this Court to again postpone our request for a response and to again stay our consideration of the petition for writ of mandamus this time until March 9, 2009. After more than two and one-half years during which time this case has become long overdue, we decline to do so. We recognize and commend the efforts of the parties to work toward a resolution of this matter. At the same time, based on those efforts, we conclude that the filing of the mandamus is premature. Therefore, we dismiss relators' petition for writ of mandamus as premature, without prejudice to any parties' rights and without prejudice to refiling a petition utilizing records prepared in this cause. Additionally, we lift the stay imposed on January 19, 2006, and, based on the numerous agreed motions filed

in this matter, presume that the parties will reach an agreement that the trial court will grant below. See TEX. R. APP. P. 52.8(a).

Moreover, relators' twenty-second joint motion to stay the proceeding is denied as moot.

PER CURIAM

Memorandum Opinion delivered and
filed this 15th day of September, 2008.