

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS LIABILITY LITIGATION

Case No. 1:01-CV-9000
(MDL Docket No. 1401)

JUDGE KATHLEEN M. O'MALLEY

(This Document Relates to All Cases)

NOTICE

REGARDING THE STATUS OF THE PRELIMINARILY APPROVED CLASS ACTION SETTLEMENT AGREEMENT

TO ALL CITIZENS OR RESIDENTS OF THE UNITED STATES WHO HAVE HAD PLACED IN THEIR BODIES EITHER A SULZER INTER-OP™ ACETABULAR SHELL HIP IMPLANT OR A SULZER NATURAL KNEE II® TIBIAL BASEPLATE KNEE IMPLANT.

Read this notice carefully. You may be entitled to share in the settlement proceeds of a class action lawsuit. Your rights to money and other benefits may be affected.

This is not a lawsuit against you. You are not being sued. Rather, this is a notice to update you on the status of the preliminarily approved class action settlement agreement. In the following notice, you are given important information that will help you decide whether you would like to participate in this class action settlement.

This is an Update

You are being provided with this Notice to update you on the status of a Class Action Settlement Agreement, which this Court has preliminarily approved. Preliminary Notice was sent to Class Members in October of 2001. The Preliminary Notice outlined the parties to the litigation, the claims made, and the terms of the Settlement Agreement. For a copy of the Preliminary Notice, please see the section titled "Further Information," at the end of this Notice.

New Dates

The Preliminary Notice set certain dates for the sending of Final Notice and for the Fairness Hearing. The Preliminary Notice also set deadlines for opting out or objecting to the terms of the Settlement Agreement. These dates have changed to allow for further efforts to enhance the benefits available to participating class members. The new dates are shown below.

- **Final Notice:** Final Notice, which will contain the final terms of the Final Settlement Agreement, will be mailed to Class Members on **March 1, 2002**.
- **Opt-out and Objection Deadline:** Class Members who wish to exclude themselves from the Final Settlement or who wish to object to all or any portion of the Final Settlement Agreement shall do so between receipt of the Final Notice and **April 29, 2002**. The Final Notice will outline the specific manner to properly object or opt out.
- **Fairness Hearing:** The hearing to determine the fairness of the Final Settlement Agreement will begin on **May 6, 2002**.

Recent Events

On October 19, 2001, the Court expanded the Class to include all persons who were implanted with a defective "Natural Knee II® Tibial Baseplate" knee implant manufactured by Sulzer. The inclusion of these claims will not reduce the amount of fixed base payments to class members. Further, the parties believe there is some likelihood that additional insurance proceeds will be available by virtue of the inclusion of these claims.

On December 7, 2001, the Court appointed John Calhoun Wells to serve as a mediator. Mr. Wells will work with an investment banking firm to examine the defendants' financial condition. He will also work with the parties to determine whether the Settlement Agreement should be enhanced or restructured. At the same time, Plaintiffs' Class Counsel and counsel representing plaintiffs in the state courts will continue their due diligence discovery.

Further Information

The summary discussion in this Notice does not provide a complete statement of the class action or the preliminarily approved Settlement Agreement. The Court will issue a Final Notice on March 1, 2002, fully setting out these terms. You may obtain updates on this litigation or a copy of the Preliminary Notice by visiting the website established by Plaintiffs' Class Counsel: www.sulzerimplantssettlement.com. Any questions you have about the matters discussed in this Notice should not be made to the Court, but should instead be directed to Plaintiffs' Class Counsel at this address.

Plaintiffs' Liaison Counsel
In Re Sulzer Litigation
1600 Midland Building
101 Prospect Avenue, W.
Cleveland, OH 44115
1-800-683-1861

Also, some of the papers filed in this action are available for inspection at the office of the Clerk of Court, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio 44114, or at the Court's website: www.ohnd.uscourts.gov (click on "notable cases").

As this Notice makes clear, the final terms of the Settlement Agreement are not yet complete. Please do not make any decisions about your participation in any possible settlement in this case until you receive Final Notice, which will fully inform you regarding all the benefits available.

YOU SHOULD NOT CONTACT THE COURT REGARDING THIS NOTICE.

By Order of The Honorable Kathleen M. O'Malley,
Judge of the United States District Court for the
Northern District of Ohio

Clerk, United States District Court

Sulzer Implant Newsletter

**This Newsletter is meant to provide you with an update
on the status of the class action lawsuit
against Sulzer, which manufactured your implant.**

MISINFORMATION

We have received a number of letters revealing that many implant recipients do not understand the proposed Settlement Agreement. For example, some implant recipients appear to believe that the amount they will receive under the settlement is fixed. In fact, we expect the Settlement Agreement will include \$100 million or more for claimants who suffered extraordinary injuries, *in addition* to any fixed base settlement amounts.

Also, some implant recipients appear to believe that Sulzer AG — the "grandfather company" that owned Sulzer Orthopedics — is not contributing any funds. In fact, we are vigorously pursuing this matter, and neither we nor the Court will allow Sulzer AG to avoid any liability it may have. If Sulzer AG does not participate in the settlement, no claims against it will be released under the final settlement agreement.

If you have any questions about the proposed Settlement Agreement, please visit www.sulzerimplantsettlement.com or call 1-800-683-1861.

THE COURT APPOINTS A MEDIATOR

On December 7, 2001, the Federal District Court appointed John Calhoun Wells to serve as Mediator. We suggested Mr. Wells, because he has extensive experience in handling complex litigation and we believe his participation will help ensure the fairness to you of any final settlement.

Mr. Wells will consult with financial experts, including an investment banker, to determine if the Settlement Agreement can be enhanced by additional funds from Sulzer, or by restructuring. If we are successful in negotiating enhancements to the Settlement Agreement, you will be fully informed when you receive the Final Notice, if not before. We will keep you updated with future editions of this Newsletter.

The work required by an investment banker to determine whether additional funds are available from Sulzer made it necessary to postpone certain important dates, by about two months. Final Notice, which will outline the details of the Settlement Agreement in its

final form, was scheduled to be mailed to Class Members on January 6, 2002. This date has been changed to March 1, 2002. The Fairness Hearing, which was previously scheduled for March 12, 2002, has been rescheduled for May 6, 2002. Class Members who wish to opt out of the settlement agreement or raise an objection may do so between March 1, 2002 and April 29, 2000. These date changes are all outlined in the Court's Notice of Status of Preliminarily Approved Class Action Settlement.

TIBIAL BASEPLATES INCORPORATED INTO THE SETTLEMENT AGREEMENT

On October 19, 2001, the Federal District Court preliminarily approved an amendment to the Settlement Agreement, so that the settlement now also covers claims for defective tibial baseplates. (A tibial baseplate is a part of the prosthetic used in a total knee replacement.)

This amendment will not decrease the fixed base amount any claimant will receive, and we hope it will not decrease the

additional funds available for extraordinary injuries because it appears there may be separate insurance funds available for these "knee" claims.

Approximately 1500 tibial baseplates manufactured by Sulzer were implanted into patients throughout the country.

Similar to the hip implant, patients who were implanted with the tibial baseplate have experienced "loosening," requiring revision surgery.

Basic compensation for revision surgery under the preliminarily approved Settlement Agreement is the same for both hip and knee implants.

PAYMENT FOR YOUR MEDICAL BILLS

Under the terms of the Settlement Agreement, Sulzer has agreed to pay Class Members for any out-of-pocket expenses they incurred as a result of surgery to remove the Sulzer hip or knee implant.

Further, Class Members may be contacted by Medicare or their insurance company about a "subrogation claim."

Subrogation means that Medicare and certain insurance policies can seek to recoup the amount of money they paid to cover your medical bills.

Sulzer has agreed to defend Class Members from subrogation claims by Medicare or their insurance company, and will hold the Class Members harmless from any such claims. This means that, if the settlement receives final approval, any claim made against Class Members by Medicare or their insurance company will be satisfied by Sulzer.

DISCOVERY UPDATE

Sulzer Orthopedics Inc. is the manufacturer of the hip and knee implants that are the subject of the Settlement Agreement. Sulzer Medica Ltd. is the parent company of

Sulzer Orthopedics Inc. Both of these companies are funding the Settlement Agreement. Sulzer AG is the former parent of Sulzer Medica Ltd. We are vigorously pursuing discovery to better understand the potential responsibility of Sulzer AG.

The discovery process has been ongoing since early September, 2001. More than 385,000 documents have been produced by the various Sulzer entities and more than one dozen depositions are scheduled to take place during January, 2002 in Vienna, Austria. We hope that the documents and planned testimony will shed considerable light on the potential liability of Sulzer AG.

The mediator, Mr. Wells, will also be examining this aspect of the settlement. If Sulzer AG does not participate in the settlement, no claims against it will be released under the final settlement agreement.

***For further information
visit www.sulzerimplantsettlement.com
or call 1-800-683-1861***

*In Re: Hip Prosthesis & Knee Prosthesis Products Liability Litigation
MDL No. 1401, Case No. 01-CV-9000
Federal District Court for the Northern District of Ohio, Judge Kathleen M. O'Malley*