

Multiple Documents

Part	Description
1	4 pages
2	Exhibit Class Action Settlement Agreement

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CERTIFICATE OF SERVICE

A copy of the foregoing has been served electronically via email on this 22th day of August, 2001; to all counsel identified and attached to "Plaintiffs' Amended and Consolidated Class Action Complaint" and to the following:

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**CLASS ACTION
SETTLEMENT AGREEMENT**

Among

**SULZER ORTHOPEDICS INC. AND AFFILIATED ENTITIES
INCLUDING
SULZER MEDICA LTD.**

and

**CLASS COUNSEL ON BEHALF OF CLASS REPRESENTATIVES
IN RE INTER-OP HIP PROSTHESIS PRODUCTS LIABILITY LITIGATION
MDL Docket No. 01-CV-9000 (MDL No. 1401)**

dated as of

August 15, 2001

Amended and Restated as of August 23, 2001

Exhibit "A"

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**CLASS ACTION SETTLEMENT AGREEMENT
WITH SULZER ORTHOPEDICS INC., et. al.**

This SETTLEMENT AGREEMENT, dated as of August 15, 2001, as amended and restated as of August 23, 2001, is entered into by and among Sulzer Orthopedics Inc., a Delaware corporation (“SOUS”), and its affiliated entities (including Sulzer Medica Ltd., a limited company organized under the laws of Switzerland (“SML”), and each of the other SML direct or indirect subsidiaries (such subsidiaries, together SOUS, SML and any other direct or indirect subsidiaries of SML, are referred to collectively herein as “Sulzer”), on behalf of themselves and the other Released Parties hereunder, and the undersigned Class Counsel on behalf of the Class Representatives (in each case, as defined herein). The Class Representatives, together with Sulzer, are sometimes referred to herein as the “Parties”. This Settlement Agreement, as amended and restated hereby, shall amend and supercede any prior agreement of the Parties with respect to the subject matter hereof, including without limitation, the Settlement Agreement dated August 15, 2001.

RECITALS

WHEREAS, Sulzer and the Class Representatives hereby agree to a class action settlement, subject to the approval of the District Court, with respect to Class Members in the United States which would resolve, on the terms set forth in this Settlement Agreement, Settled Claims against Sulzer and other Released Parties arising from the Affected Products, pending in various courts, including but not limited to claims which have been made in the actions that have been or will be transferred for coordinated or consolidated pretrial proceedings to the United States District Court for the Northern District of Ohio, Eastern Division (In Re Inter-Op Hip Prosthesis Product Liability Litigation (MDL No. 1401)), and in numerous other courts.

WHEREAS, this Settlement Agreement shall not be construed as evidence of or as an admission by Sulzer of any liability or wrongdoing whatsoever or as an admission by the Class Representatives or Class Members of any lack of merit in their claims.

WHEREAS, the Parties heretofore entered into the Settlement Agreement dated as of August 15, 2001 and desire hereby to amend and restate such original agreement.

NOW, THEREFORE, Sulzer and the Class Representatives hereby agree, subject to Final Judicial Approval, compliance with applicable legal requirements, and other conditions, all as set forth below, that the Patient Benefit Fund, Research Fund, Medical Monitoring Fund and Extraordinary Injury Fund shall be established, from which the benefits described herein will be paid to the Class Members of the proposed Settlement Class, and that the Settled Claims against Sulzer and other Released Parties, as defined herein, will be settled, compromised and released, in accordance with the following terms.

ARTICLE 1. DEFINITIONS

Section 1.1 **DEFINITIONS**. For purposes of this Settlement Agreement the following terms shall have the meanings set forth in this Article 1. Terms used in the singular shall be deemed to include the plural and vice versa.

(a)“\$” shall denote United States dollars.

(b)“ADR Depository” shall have the meaning set forth in Section 6.1.

(c)“ADRs” shall mean the American Depositary Receipts of Sulzer (NYSE ticker symbol: SM), issued pursuant to that certain Deposit Agreement between SML and Citibank, N.A., as Depository thereunder, each representing one American Depository Share (as defined in the Deposit Agreement).

(d)“Affected Products” shall mean, collectively, (1) InterOp™ Acetabular shells (“InterOp Shells”) identified in the SOUS’s Safety Alert dated December 5, 2000 and certain other InterOp Shells machined after porous coating, (2) Natural Knee™ Tibial Baseplates identified in SOUS’s Special Notification dated May 17, 2001 and (3) Reprocessed Shells sold prior to the date of this Settlement Agreement, in each case as identified by part and lot numbers on an addendum to be submitted to the Court after the date of this Settlement Agreement, approved by the Parties and the Court and attached as Annex II hereto.

(e)“Affected Product Recipients” shall mean persons in whose bodies one or more Affected Products have been or are now implanted in an operation or other surgical procedure, whether or not any such Affected Product has been or may in the future be removed.

(f)“Affected Product Related” shall mean arising out of, based upon, relating to, or involving an Affected Product.

(g)“Annual Payment Amount” shall have the meaning set forth in Section 2.9(d).

(h)“Business Day” shall mean any day other than Saturday, Sunday or any federal holiday.

(i)“CHF” shall denote Swiss francs.

(j)“Change of Control” means (i) the acquisition by any “person” or “group” (as such terms are used in Section 13(d)(3) of the Exchange Act) of ADRs and/or Shares such that such person becomes the ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of more than 50% of the total voting power of the Shares on a fully-diluted basis or (ii) any merger, consolidation, amalgamation or other similar transaction involving SML whereby the beneficial holders of Shares immediately prior to such transaction hold less than a majority of the outstanding voting power with respect to SML (or, if SML shall not be the surviving entity following such transaction, such successor entity) immediately following such transaction or (iii) the date on which less than a majority of the members of SML’s board of directors (“continuing directors”) serving on the date of this Settlement Agreement shall no longer serve on SML’s board of directors, provided that any board member whose nomination is approved by continuing directors shall also be deemed to be a continuing director for purposes of this clause (iii); *provided, however*, that a Change of Control shall not be deemed to have occurred if any action contemplated by clauses (i), (ii) or (iii) of this definition is approved by at least a majority of the continuing directors of SML.

(k)“Claims Administrator” shall mean any person or persons to be appointed by mutual agreement of the Parties, subject to approval of the Court, to administer claims for benefits and to make determinations under this Settlement Agreement and the Trust Documents and give instructions to the Trustee in connection therewith.

(l)“Class Counsel” shall mean those attorneys executing this Settlement Agreement on behalf of the Class Representatives, or such other attorneys as shall be approved by the Court as counsel to the Settlement Class.

(m)“Class Members” shall mean members of the Settlement Class.

(n)“Class Representatives” shall mean, with respect to Subclass I, George Yasanchak and Mary Jane Yasanchak (as Derivative Claimant), with respect to Subclass II, Harlan N. Herman, Brenda K. Herman (as Derivative Claimant) and Linda F. Wells or different persons as shall be designated by the Court as the representatives of the Settlement Class, in the action captioned In Re Inter-Op Hip Prosthesis Product Liability Litigation (MDL Docket No. 01-CV-9000, MDL No. 1401).

(o)“Code” shall mean the Internal Revenue Code of 1986, as amended, or any successor statute.

(p)“Consolidated Net Income” means, with respect to Sulzer for any period, the aggregate of the net income (used to compute earnings per share) of SML and its consolidated subsidiaries for such period, on a basis consistent with past practices, determined in United States dollars in accordance with IAS, as publicly reported in its annual report.

(q)“Court” and/or “Trial Court” and/or “Federal District Court” means the United States District Court for the Northern District of Ohio, Eastern Division.

(r)“Credit Facility” shall have the meaning set forth in Section 2.8(a).

(s)“Credit Facility Liens” shall have the meaning set forth in Section 2.8(a).

(t)“Derivative Claimant” shall mean any person asserting the right to sue Sulzer, independently or derivatively, by reason of their personal relationship with a Affected Product Recipient, including without limitation, spouses, parents, children, dependents, other relatives or "significant others".

(u)“Extraordinary Injury Fund” shall have the meaning set forth in Section 2.1(e).

(v)“Extraordinary Injury Fund Amounts” shall have the meaning set forth in Section 2.5(a).

(w)“Fairness Hearing” means the hearing conducted by the Court to determine the fairness, adequacy and reasonableness of this Settlement Agreement under Fed. R. Civ. P. 23(e).

(x)“Fairness Hearing Date” means the date on which the Fairness Hearing takes place.

(y)“Final Approval Funding Amount” shall have the meaning set forth in Section 2.9(c).

(z)“Final Judicial Approval” refers to the approval of the Settlement Agreement by the Federal District Court and such approval becoming final by the exhaustion of all appeals. Final Judicial Approval shall be deemed not to have been obtained in the event that Trial Court Approval is denied, and the period for appealing such denial has expired without any such appeal having been taken.

(aa)“Final Judicial Approval Date” shall mean the date on which Final Judicial Approval occurs.

(bb)“Funds” means, collectively, the Research Fund, Medical Monitoring Fund, Patient Benefit Fund and Extraordinary Injury Fund.

(cc)“IAS” means International Accounting Standards as promulgated by the International Accounting Standards Board.

(dd)“Initial Funding Requirement” shall have the meaning set forth in Section 2.9(d).

(ee)“Insurance Proceeds” shall mean the insurance proceeds payable for the benefit of SOUS, SML or any SML subsidiaries and affiliates (up to applicable policy limits) by Winterthur International Insurance Company and Winterthur Swiss Insurance Company pursuant to and under the following policies: (i) Master Policy No. 3.307.351 (4/1/2000 to 4/1/2001); (ii) Excess Policy No. 3.307.352 (4/1/2000 to 4/1/2001); (iii) Excess Policy No. 3.307.353 (4/1/2000 to 4/1/2001); (iv) Excess Policy No. 3.167.933 (4/1/2000 to 4/1/2001); (v) Excess Policy No. 3.167.934 (4/1/2000 to 4/1/2001); and (vi) Excess Policy No. 3.312.133 (4/1/2000 to 4/1/2001).

(ff)“Liens” shall mean, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset.

(gg)“Matrix” shall have the meaning set forth in Section 3.5(a).

(hh)“Matrix Compensation Benefits” shall have the meaning set forth in Section 3.5(a).

(ii)“Maximum Amount” shall have the meaning set forth in Section 2.9(d).

(jj)“Medical Monitoring Fund” shall have the meaning set forth in Section 2.1(e).

(kk)“Medical Monitoring Fund Amounts” shall have the meaning set forth in Section 2.3(a).

(ll)“Medical Monitoring Period” shall have the meaning set forth in Section 2.3(a)(ii).

(mm)“Opt-Out Period” shall mean the period to be established by the Court during which Class Members may exercise the Opt-Out Right described in Section 3.6.

(nn)“Opt-Out Right” shall have the meaning set forth in Section 3.6(a).

(oo)“Parties” shall have the meaning set forth in the preamble.

(pp)“Patient Benefit Fund” shall have the meaning set forth in Section 2.1(e).

(qq)“Patient Benefit Fund Amounts” shall have the meaning set forth in Section 2.4(a).

(rr)“Plaintiffs’ Counsel” shall mean any contingent-fee attorney who represents one or more individual Class Members pursuant to a written agreement executed and delivered by such Class Member on or prior to August 2, 2001.

(ss)“Preliminary Approval” shall mean the Federal District Court’s conditional certification of the Settlement Class and preliminary approval of this Settlement Agreement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

(tt)“Preliminary Approval Date” shall mean the date on which Preliminary Approval occurs.

(uu)“Released Parties” shall mean:

(i) SOUS and each of its affiliates, including SML and each of SML's other past, present and future parent companies and direct or indirect subsidiaries, including without limitation those entities listed on Annex III, together with each of their respective past, present and future directors, officers, affiliates, insurers and agents, including without limitation, sales agents;

(ii) Sulzer AG, a limited company organized under the laws of Switzerland, and all of its past, present and future parent companies and direct or indirect subsidiaries, its and their respective past, present and future directors, officers, affiliates, insurers and agents;

(iii) Winterthur and all of its past, present and future parent companies and direct or indirect subsidiaries, its and their respective past, present and future directors, officers, affiliates, insurers and agents;

(iv) all surgeons who performed primary and/or Revision Surgery with respect to Affected Products and affiliated physicians or physician groups, *provided*, that such surgeons, physicians or physician groups shall only be Released Parties hereunder to the extent that alleged liability is based on the recommendation or use of an Affected Product, and not with

respect to any claims based on their independent negligence or culpable conduct other than such recommendation and use of an Affected Product; and

(v) organized medical specialty organizations, raw material or other suppliers of Sulzer of materials used in the manufacture of the Affected Products, distributors of the Affected Products, and any other person or entity involved in the design, manufacture, distribution, implant or explant of an Affected Product, *provided*, in each case, solely with respect to strict liability claims or other claims as to which such person or persons would have a contractual, statutory or common-law right of indemnity against Sulzer and not with respect to any claims based on any such person's independent negligence or culpable conduct.

(vv) "Representative Claimant" shall mean an estate, administrator or other legal representative, heir or beneficiary of an Affected Product Recipient.

(ww) "Reprocessed Shells" shall mean InterOp Shells identified in SOUS's Safety Alert dated December 5, 2000 that were not previously implanted and were then re-cleaned and implanted.

(xx) "Research Fund" shall have the meaning set forth in Section 2.1(e).

(yy) "Research Fund Amounts" shall have the meaning set forth in Section 2.2(a).

(zz) "Revision Surgery" means surgical replacement of an Affected Product for reason other than trauma.

(aaa) "Secured Assets" shall have the meaning set forth in Section 2.8(a).

(bbb) "Securities Act" shall have the meaning set forth in Section 6.2.

(ccc) "Security Agreement" shall have the meaning set forth in Section 2.8(a).

(ddd) "Settled Claims" shall mean any and all claims, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or arising in the future by any or all members of the Settlement Class arising out of or relating to the Affected Products. These "Settled Claims" include, without limitation and by way of example, all claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, for:

(i) personal injury and/or bodily injury, damage, death, fear of disease or injury, mental or physical pain or suffering, emotional or mental harm, or loss of enjoyment of life;

(ii) loss of wages, income, earnings, and earning capacity, medical expenses, doctor, hospital, nursing, and drug bills;

(iii) loss of support, services, consortium, companionship, society or affection, or damage to familial relations, by spouses, parents, children, other relatives or “significant others” of Settlement Class Members;

(iv) wrongful death and survival actions;

(v) medical screening and monitoring, injunctive and declaratory relief;

(vi) consumer fraud, refunds, unfair business practices, deceptive trade practices, Unfair and Deceptive Acts and Practices (“UDAP”), and other similar claims whether arising under statute, regulation, or judicial decision;

(vii) compensatory damages, punitive, exemplary, statutory and other multiple damages or penalties of any kind including, without limitation, economic or business losses or disgorgement of profits arising out of personal injury; and

(viii) pre-judgment or post-judgment interest.

(eee) “Settlement Class” shall mean all persons or entities wherever located, who have or may in the future have any unsatisfied claim (whether filed or unfiled, pending or reduced to judgment, existing or contingent, and specifically including claims for alleged injuries and damages not yet known or manifest), including assigned claims (e.g., subrogation claims by workers compensation insurers, employers and/or health care insurers or providers), against any or all of Sulzer and the other Released Parties and arising out of, based upon, related to, or involving Affected Products, including (1) all Affected Product Recipients (whether or not such Affected Product has been or may be removed), (2) all Derivative Claimants and (3) all Representative Claimants. The Settlement Class specifically includes persons who have or may have claims with respect to injuries not yet manifested. The Settlement Class shall expressly exclude any person or entity that entered into a settlement with Sulzer (which included a release) related to claims arising out of the implantation of an Affected Product.

(fff) “Settlement Trust Brokerage Account” shall mean the brokerage account established by the Trustee for the purpose of holding and distributing ADRs pursuant to this Settlement Agreement, as to which the Settlement Trust shall be the sole owner of any and all securities deposited therein until distributed to Class Members and Plaintiffs' Counsel in accordance herewith, provided that the Trustee shall not exercise voting rights with respect to the ADRs (to the extent such restrictions are permitted under the laws of the State of New York).

(ggg) “Shares” means the shares, CHF 30 nominal value, of Sulzer Medica Ltd.

(hhh) “SML” shall have the meaning set forth in the Preamble.

(iii) “SOUS” shall have the meaning set forth in the Preamble.

(jjj) “Spouse” shall mean a spouse or other statutory spousal beneficiary of an Affected Product Recipient who was so at the time of the implant of the Affected Product.

(kkk)"Subclass I" shall mean all Class Members who have an unsatisfied claim arising out of (i) Revision Surgery performed prior to the Final Judicial Approval Date and/or (ii) facts that exist prior to the Final Judicial Approval Date that may be a basis for such Class Member to receive benefits under the Extraordinary Injury Fund.

(lll)"Subclass II" shall mean all Class Members who have an unsatisfied claim arising out of (i) Revision Surgery performed on or after the Final Judicial Approval Date and/or (ii) facts that exist on or after the Final Judicial Approval Date that may be a basis for such Class Member to receive under the Extraordinary Injury Fund.

(mmm)"Sulzer" shall have the meaning set forth in the Preamble.

(nnn)"Term Sheet" shall have the meaning set forth in Section 14.11.

(ooo)"Trial Court Approval" shall mean the granting, by order entered on the docket thereof, of the approval of the Settlement Agreement by the Federal District Court.

(ppp)"Trial Court Approval Date" shall mean the date upon which Trial Court Approval occurs.

(qqq)"Trust" or "Settlement Trust" shall mean a trust established to receive funds to be paid by Sulzer as provided in this Settlement Agreement pursuant to the Trust Agreement.

(rrr)"Trust Documents" shall mean the Trust Agreement and the Security Agreement.

(sss)"Trustee" shall mean that person or entity approved by the Court as Trustee of the Settlement Trust in accordance with the Trust Agreement, and any successor Trustee and will serve subject to the jurisdiction and supervision of the Court.

(ttt)"Trust Agreement" shall mean the Settlement Trust Agreement substantially in the form to be agreed to by the Parties and the Trustee, which shall be approved by the Court.

(uuu)"Winterthur" shall have the meaning set forth in Section 2.9(b).

ARTICLE 2. SETTLEMENT TRUST AND FUNDS

Section 2.1 ESTABLISHMENT OF SETTLEMENT TRUST

(a) The Settlement Trust shall be established to receive the Research Fund Amounts, Medical Monitoring Fund Amounts, Patient Benefit Fund Amounts and Extraordinary Injury Fund Amounts to be paid by Sulzer and to receive the ADRs to be transferred by Sulzer under the terms of this Settlement Agreement pursuant to the terms of the Trust Agreement.

(b) Promptly following the execution and delivery of this Settlement Agreement, the Parties shall agree on an interim Trustee to serve as Trustee of the Settlement Trust. At any time following Preliminary Approval (but in any event, no later than Final Judicial Approval), there shall be a single corporate Trustee of the Settlement Trust. The Trustee shall be a bank

organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$500,000,000, subject to supervision and examination by federal or state authority and shall be jointly appointed by Sulzer and Class Counsel, subject to the approval of the Court. The Trustee may serve as the paying agent responsible for distribution of payments at the direction of the Claims Administrator, as specified in Article 3 herein.

(c) The Settlement Trust will begin as a reversionary trust and will become non-reversionary upon Final Judicial Approval. If Final Judicial Approval is not obtained, or if this Settlement Agreement is terminated in accordance with Article 10 hereunder, all amounts of cash or property remaining in the Settlement Trust, after payment of any charges and expenses that the Settlement Agreement expressly authorized or required to be incurred and expended or accrued prior to the reversion date, including any amounts expended to assist in seeking Final Judicial Approval, shall be returned to Sulzer. To the extent that funds in the Settlement Trust are insufficient for paying all such accrued and unpaid expenses at the time of any termination of this Settlement Agreement prior to Final Judicial Approval, Sulzer shall pay such additional amounts to the Settlement Trust as are necessary to satisfy the Trust's obligations, including unpaid fees and out-of-pocket expenses of the Trustee (it being contemplated that the Trustees' fees and out-of-pocket expenses will be satisfied out of the trust estate following Final Judicial Approval).

(d) Sulzer shall have no right to any of the funds previously deposited into or property previously transferred to, nor to any of the funds subsequently deposited into or property subsequently transferred to, the Settlement Trust, as of the Final Judicial Approval Date. Sulzer shall have no further claim to such funds or property for any purpose. Upon satisfaction in full of all obligations hereunder, any remaining funds and property shall be distributed in accordance with Section 14.7 hereunder.

(e) Subject to the conditions set forth in this Settlement Agreement, Sulzer shall be obligated to make or cause to be made payments as set forth in Section 2.2 (the "Research Fund"), Section 2.3 (the "Medical Monitoring Fund"), Section 2.4 (the "Patient Benefit Fund") and Section 2.5 (the "Extraordinary Injury Fund") below to the Settlement Trust, in each case in accordance with the terms of this Settlement Agreement. Such payments shall be made by wire transfer. If any date of payment provided herein is not a Business Day, such payment shall be due and payable on the first Business Day following such date.

Section 2.2 RESEARCH FUND

(a) The Settlement Trust shall allocate to the Research Fund (the "Research Fund Amounts") such payments that become due and payable as follows:

(i) \$2.0 million on the 180th day following the Preliminary Approval Date; and

(ii) \$2.0 million on the 30th day following the Final Judicial Approval Date.

(b) Cash payments made into the Research Fund pursuant to this Section 2.2 shall be paid in accordance with and subject to Section 2.9 below.

(c) To the extent any Research Fund Amounts remain in the Research Fund upon the satisfaction of obligations thereunder, such amounts shall be transferred to the Extraordinary Injury Fund.

Section 2.3 MEDICAL MONITORING FUND

(a) The Settlement Trust shall allocate to the Medical Monitoring Fund (the “Medical Monitoring Fund Amounts”) such payments that become due and payable as follows:

(i) \$2.0 million on the 30th day following the Final Judicial Approval Date; and

(ii) subject to Section 2.3(b) below, at any time during the 5-year period following the Final Judicial Approval Date (the “Medical Monitoring Period”), amounts necessary in order to maintain a minimum balance of \$1.0 million at all times and such that the aggregate of all amounts delivered to the Medical Monitoring Fund prior to the end of the 5-year period equals \$20.0 million.

(b) The aggregate amount of all of payments to the Medical Monitoring Fund shall not exceed \$20.0 million.

(c) Cash payments made into the Medical Monitoring Fund pursuant to this Section 2.3 shall be paid in accordance with and subject to Section 2.9 below.

(d) Upon the expiration of the Medical Monitoring Period, any remaining Medical Monitoring Fund Amounts shall be transferred to the Extraordinary Injury Fund.

Section 2.4 PATIENT BENEFIT FUND

(a) The Settlement Trust shall allocate to the Patient Benefit Fund (the “Patient Benefit Fund Amounts”) such payment that become due and payable as follows:

(i) on or prior to the Final Judicial Approval Date, an amount equal to the payments owed to Class Members pursuant to Sections 3.4(a)(i), 3.4(b)(i), 3.4(c)(i) and 3.4(d)(i) hereunder; and

(ii) at any time on or after the Final Judicial Approval Date, upon approval by the Claims Administrator of a Claim, in accordance with the Claims Approval Procedures to be agreed upon by the Parties, payments in the full amount of such Claim.

(b) Cash payments made into the Patient Benefit Fund pursuant to this Section 2.4 shall be paid in accordance with and subject to Section 2.9 below.

Section 2.5 EXTRAORDINARY INJURY FUND

(a) The Settlement Trust shall allocate to the Extraordinary Injury Fund (the “Extraordinary Injury Fund Amounts”) such payments that become due and payable as follows:

(i) \$10.0 million on the 30th day following the Final Judicial Approval Date; and

(ii) subject to Section 2.5(b) below, at any time prior to the termination of the Settlement Trust in accordance with its terms, amounts necessary in order to maintain a minimum balance of \$10.0 million at all times.

(b) Sulzer shall not be obligated to make payments that aggregate in excess of \$10.0 million during the first year following the Final Judicial Approval Date and \$20.0 million during the first 25 months following the Final Judicial Approval Date. The aggregate amount of all payments to the Extraordinary Injury Fund shall be \$30.0 million plus any amounts transferred from other Funds pursuant to this Settlement Agreement.

(c) Cash payments made into the Extraordinary Injury Fund pursuant to this Section 2.5 shall be paid in accordance with and subject to Section 2.9 below.

Section 2.6 SETTLEMENT TRUST BROKERAGE ACCOUNT

(a) SOUS and/or SML shall deliver ADRs to the Settlement Trust Brokerage Account as follows:

(i) on or prior to the 10th Business Day after the Final Judicial Approval Date, a number of ADRs then sufficient to cover the non-cash portion of the distributions then owed to (x) Class Members pursuant to Sections 3.4(a)(i), 3.4(b)(i), 3.4(c)(i) and 3.4(d)(i) hereunder and (y) Plaintiffs' Counsel pursuant to Sections 5.2 and 5.3 hereof with respect to payments made to Class Members pursuant to Sections 3.4(a)(i), 3.4(b)(i), 3.4(c)(i) and 3.4(d)(i) hereunder; and

(ii) from time to time at the written request of the Claims Administrator as additional distributions become due hereunder, a number of ADRs sufficient to fund the non-cash portion of such distributions owed to Class Members pursuant to Sections 3.4(b)(ii) and 3.4(c)(ii) and owed to Plaintiffs' Counsel pursuant to Sections 5.2 and 5.3 hereunder; *provided*, that Sulzer agrees to deliver a minimum number of ADRs pursuant to the terms of this Settlement Agreement necessary to satisfy the obligation to deliver ADRs hereunder assuming a total of 35,000 Affected Product Recipients, 4,500 of which would undergo a single Revision Surgery on or prior to December 31, 2008.

(b) Notwithstanding the foregoing, Section 2.6(a) above shall not limit SOUS's or SML's right or ability to deliver a greater number of ADRs to the Settlement Trust Brokerage Account at any time.

Section 2.7 OTHER PROVISIONS

(a) The Parties agree that the Settlement Trust is being established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an

event (or related series of events) that has occurred and has given rise to claims asserting liability arising out of a tort. The Settlement Trust shall be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Code and related Treasury Regulations and will contain customary provisions for such trusts including obligations of the Settlement Trust to provide such information to Sulzer as Sulzer shall reasonably request for financial, legal, regulatory and tax purposes.

(b)The Parties agree that all of the amounts being paid to or on behalf of Class Members or Spouses pursuant to the terms of this Settlement Agreement are being paid as damages (other than punitive damages) on account of alleged physical personal injuries or alleged physical sickness of the members of the Settlement Class including alleged emotional harm, as described in Section 104(a)(2) of the Code. The Parties further agree that the claims set forth in the definition of Settled Claims in Article I have their origin in such alleged physical personal injuries or physical sickness.

(c)Sulzer shall have no financial obligations under this Settlement Agreement other than the payment obligations explicitly set forth in this Settlement Agreement. Neither Sulzer nor any of the other Released Parties shall have any responsibility for the management of the Settlement Trust or any liability to any Class Member arising from the handling of claims by the Trustee and/or Claims Administrator.

(d)All cash and property transferred into the Settlement Trust from and after the Final Judicial Approval Date shall be the sole property of the Settlement Trust, and the Trustee shall withhold taxes as required and shall have tax reporting obligations with respect to distributions to Class Members and Plaintiffs' Counsel pursuant to the terms of this Settlement Agreement.

Section 2.8 SECURITY ARRANGEMENTS

(a)Promptly following the execution date of this Settlement Agreement (but in any event within 10 Business Days following such date), Sulzer shall execute and deliver a security agreement (the "Security Agreement"), the form of which to be agreed to by the Parties and the Trustee, which shall be approved by the Court, granting a security interest to the Settlement Trust in all Sulzer's assets (including intangibles such as intellectual property, patents and trademarks other than goodwill) that may be the subject of a Lien under applicable law (the "Secured Assets") for the purposes of securing Sulzer's payment obligations under this Settlement Agreement. The Security Agreement shall provide that all Liens created thereby shall be senior to any other Liens or liquidated or unliquidated interests or claims against Secured Assets, including without limitation, claims brought by or on behalf of Affected Product Recipients who exercise Opt-Out Rights (subject to prior perfected Liens); *provided, however*, that such security interests shall be junior and subordinated to any Liens granted by Sulzer on any assets to a financial or other lending institution or institutions (the "Credit Facility Liens") for the purposes of securing Sulzer's obligations under a working capital credit facility (collectively, the "Credit Facility"); *provided*, that the terms of the Credit Facility shall be subject to the prior approval by Class Counsel (such approval not to be unreasonably withheld). Notwithstanding the foregoing, the Security Agreement will provide that as security for the Trustee's rights to receive compensation for its services, reimbursement for its expenses and to

indemnification hereunder, the Trustee shall have a lien prior to all other persons (other than the Credit Facility Liens, as to which the Trustee shall have a *pari passu* lien) upon the Secured Assets under the Security Agreement. During definitive documentation of such Credit Facility, the Parties agree that the Trust shall enter into such agreements and documents as reasonably necessary, including without limitation an intercreditor agreement agreeing that the obligations under this Settlement Agreement and Liens created by the Security Agreement shall be subordinated to the obligations and Credit Facility Liens securing such obligations under the Credit Facility. Concurrently with or promptly following the execution and delivery of the Security Agreement, Sulzer shall execute and deliver pursuant to the terms of the Security Agreement (i) financing statements (on UCC-1 or such successor or other applicable form) necessary to perfect a security interest in the Secured Assets that constitute personal property under applicable law and (ii) mortgages and deeds of trust necessary to perfect a security interest in the Secured Assets that constitute real property or fixtures under applicable law, in each case to the extent necessary or permitted under the applicable jurisdiction governing such Secured Assets. Pursuant to the terms of the Security Agreement, the Trustee shall promptly file and/or record such financing statements, mortgages and deeds of trust as are necessary to perfect the Settlement Trust's security interest in the Secured Assets.

(b) Upon the satisfaction of all of Sulzer's payment obligations under this agreement, the Security Agreement shall terminate and Liens on the Secured Assets shall be released. Upon termination of the Security Agreement, the Trustee shall execute, file and/or record such termination instruments (including without limitation, UCC-3s or other evidence of release of Lien or mortgage as applicable) as may be necessary to release all Liens on Secured Assets thereunder.

(c) In the event that Final Judicial Approval is not obtained or if this Settlement Agreement is terminated in accordance with Article 10 hereunder, the Trustee, on behalf of the Trust, shall execute, file and/or record such termination instruments (including without limitation, UCC-3s or other evidence of release of Lien or mortgage as applicable) as may be necessary to release all Liens on Secured Assets, and the Security Agreement shall terminate and be of no force and effect.

(d) The Security Agreement shall provide that the Trustee shall have a right to exercise remedies with respect to the Secured Assets only after Sulzer fails to deliver to the Funds, (i) cash totaling \$25 million (not including Insurance Proceeds) on the due date of any Annual Payment Amount or (ii) after the termination of Sulzer's obligation to deliver the Annual Payment Amount pursuant to Section 2.9(g), a quarterly payment (not to exceed \$12.5 million) due for any additional amounts owed for claims under the terms of this Settlement Agreement; *provided, however*, that no right to exercise such remedies shall arise unless Sulzer fails to make up any shortfall within six months of the applicable due date.

(e) If Sulzer fails to make any required Annual Payment Amount (or quarterly claims-made payment pursuant to Section 2.9(g)) hereunder when due, Sulzer shall use its commercially reasonable efforts to raise capital for the purposes of making such payment (by borrowings, sale of assets, etc.).

(f) In the event that Sulzer sells assets for business purposes or for the purposes of satisfying its payment obligations hereunder, the Trustee, on behalf of the Trust, shall execute and deliver such termination instruments and/or other documents as may be necessary to release Liens on the Secured Assets subject to sale under such agreements, so long as the net proceeds therefrom are not used to pay judgments or claims of Class Members that have exercised their Opt-Out Right.

Section 2.9 FUNDING

(a) Sulzer shall fund its obligations hereunder with the following assets:

(i) Insurance Proceeds; (ii) cash from operations as described in Sections 2.9(c), 2.9(d) and, if necessary, 2.9(g), and (iii) ADRs, as described in Section 2.6.

(b) As promptly as practicable following Preliminary Approval (but in any event, no later than seven (7) days following the Preliminary Approval Date), SOUS and SML shall use commercially reasonable efforts to cause Winterthur Swiss Insurance Company and/or its insurance subsidiaries, including Winterthur International Insurance Company, together with their respective subsidiaries and affiliated companies (collectively "Winterthur") to fund the aggregate cash proceeds of the Insurance Proceeds up to the amount of such remaining policy limits into an interest-bearing trust or escrow account maintained for the purpose of delivering such Insurance Proceeds to the Patient Benefit Fund and Extraordinary Injury Fund pursuant to the terms of this Settlement Agreement. The Insurance Proceeds shall be used solely for the purposes of (i) paying medical reimbursement expenses for Class Members pursuant to Section 3.3 hereof, (ii) paying Class Member benefits pursuant to Sections 3.4(b), 3.4(c), and 3.4(d) hereof, (iii) paying Matrix Compensation Benefits to Class Members pursuant to Section 3.5 hereof, (iv) paying attorneys' fees pursuant to Article 5 hereof with respect to Class Member payments payable under Sections 3.3, 3.4(b), 3.4(c), 3.4(d) and 3.5 hereof, (v) paying medical reimbursement expenses on behalf of Class Members to Medicare or third-party insurers, (vi) prior to Final Judicial Approval, paying unreimbursed medical expenses directly to Class Members (to the extent that such Class Members would be entitled to such amounts pursuant to the terms of this Settlement Agreement) and (vii) settling claims relating to Affected Products with non-U.S. residents on terms no more favorable than those for which such non-U.S. resident would have received pursuant to the terms of this Settlement Agreement. All payments made by Winterthur under this Settlement Agreement are subject to applicable limits and terms of the relevant policy or policies of insurance identified in the definition of "Insurance Proceeds" herein, including without limitation, that such policies relate only to payments on behalf of Class Members who have had Revision Surgery with respect to hip replacements with InterOp Shells (including Reprocessed Shells), and nothing in this Settlement Agreement shall expand the limits of such insurance coverage. By entering into this Settlement Agreement, Class Members agree that they have no standing under the Winterthur policies or rights with respect to the Insurance Proceeds, and any agreement between SML or SOUS regarding such policies, coverage, limits and payment of Insurance Proceeds shall be binding on all Class Members. The Parties also agree that, pending Final Judicial Approval, Sulzer may settle non-U.S. claims with such Insurance Proceeds. The Insurance Proceeds shall be paid to the Patient Benefit Fund and Extraordinary Injury Funds as follows:

(i) on the 30th day after Final Judicial Approval Date, an aggregate of \$10.0 million of Insurance Proceeds shall be deposited in the Extraordinary Injury Fund for the purpose of paying claims pursuant to Section 3.4 of this Settlement Agreement; and

(ii) following such Final Judicial Approval Date, the Insurance Proceeds shall be paid to the Patient Benefit Fund and Extraordinary Injury Fund for the purpose of paying claims to Class Members pursuant to and in accordance with this Settlement Agreement, less those amounts required to remain in the escrow or trust account for the purposes of settling medical expense reimbursement claims on behalf of Class Members with Medicare or third-party insurers and settling claims relating to Affected Products with non-U.S. residents, such aggregate amount to be agreed to by the Parties and approved by the Court; *provided, however*, that, in the event that any such Insurance Proceeds have been paid into the Patient Benefit Fund or Extraordinary Injury Fund and no claims for payment with respect to insurable benefits in either Fund remain, then the Insurance Proceeds in either such Fund may be transferred to the other Fund for purposes of making payment for insurable claims thereunder; *provided, further*, to the extent that any such Insurance Proceeds shall be insufficient to pay all claims due and payable under this Settlement Agreement in both the Extraordinary Injury Fund and Patient Benefit Fund, the Trustee shall allocate, at the direction of the Claims Administrator, such Insurance Proceeds first to the Patient Benefit Fund to pay benefits to Class Members pursuant to Sections 3.4(b), 3.4(c) and 3.4(d), with the remainder (if any) to be paid to the Extraordinary Injury Fund to pay Matrix Compensation Benefits thereunder.

(c) In addition to payments made pursuant to Section 2.9(b) hereof, within 30 days following the Final Judicial Approval Date, Sulzer shall deliver (or cause to be delivered) to the Settlement Trust (to be allocated among the Funds pursuant to the terms of Article 3 hereof), an amount in cash equal to (x) cash and liquid cash equivalents of Sulzer as of the Final Judicial Approval Date, plus (y) the maximum amount of borrowings available under any Credit Facility on the Final Judicial Approval Date, if any, less (z) 30 days of budgeted working capital cash requirements of Sulzer, which amount is currently estimated to be \$100.0 million (the "Final Approval Funding Amount"); *provided*, that Sulzer shall not be obligated to deliver to the Settlement Trust any portion of the Final Approval Funding Amount that, together with any Insurance Proceeds and prior Annual Payment Amount(s) delivered to the Settlement Trust, exceeds the Final Approval Funding Requirement (as defined in Section 2.9(d) below), if any.

(d) In addition to the payments made pursuant to Sections 2.9(b) and 2.9(c), and subject to Section 2.9(g) below, Sulzer agrees that, within 120 days following the end of each fiscal year beginning with fiscal year ended December 31, 2002, Sulzer shall deliver (or cause to be delivered) to the Settlement Trust (to be allocated among the Funds pursuant to the terms of Article 3 hereof) an amount equal to the greater of (x) \$25 million or (y) one-half (1/2) of Sulzer's Consolidated Net Income for the prior fiscal year (the "Annual Payment Amount"). Notwithstanding the foregoing sentence, Sulzer shall not be obligated to deliver an amount pursuant to this Section 2.9(d) with respect to any fiscal year that would cause all amounts paid pursuant to this Section 2.9(d) from the date of this Settlement Agreement to exceed (1) the product of (A) \$50 million times (B) the number of fiscal years from and including fiscal year ended December 31, 2002 (inclusive of this fiscal year in which payment owed) plus (2) the amount, if any, by which the total amounts payable under this Settlement Agreement within 30 days after the Final Judicial Approval Date (the "Final Approval Funding Requirement")

exceeded the Final Approval Funding Amount and Insurance Proceeds actually paid to the Settlement Trust by such date (the "Maximum Amount"). In the event that an Annual Payment Amount for any given fiscal year shall cause all amounts paid pursuant to this Section 2.9(d) to exceed the Maximum Amount, Sulzer shall only be obligated to deliver (or cause to be delivered) to the Settlement Trust an amount equal to the difference between the total amount of payments made up to the applicable fiscal year and the Maximum Amount.

(e) In the event that Sulzer fails to deliver any required Annual Payment Amount, interest shall accrue on any amount owed following the payment due date until paid at the prime lending rate of the Bank of New York as in effect from time to time. Any payment made by Sulzer under the terms of this Settlement Agreement to any of the Funds shall be applied first to the oldest interest-bearing obligation.

(f) Notwithstanding anything in this Settlement Agreement to the contrary, no Class Member, or Plaintiffs' Counsel shall be entitled to any cash payment under Sections 3.4, 3.5 or Article 5, and Sulzer shall not be in breach of its payment obligations under any such sections or any other provisions of this Settlement Agreement, to the extent that it has complied with its obligations under this Section 2.9, and no interest shall accrue on any such amounts owed to Class Members and/or Plaintiffs' Counsel as result of a deficiency of amount in the Funds for the purpose of making such payments. To the extent that the Settlement Trust has payment obligations to Class Members or Plaintiffs' Counsel pursuant to the terms of Sections 3.4, 3.5 or Article 5, the Trustee, at the direction of the Claims Administrator, may make partial payments to such beneficiaries on a pro rata basis, pending additional funding from Sulzer or the Insurance Proceeds, subject to the restrictions on use of Insurance Proceeds set forth in the applicable policies.

(g) The obligation of Sulzer to make the Annual Payment Amount pursuant to Section 2.9(d) (or any portion of such amount) shall terminate at such time as the aggregate amount of all cash payments to the Settlement Trust pursuant to Sections 2.9(b), 2.9(c) and 2.9(d) equal the amount necessary to pay all cash obligations and/or benefits outlined in this Settlement Agreement (assuming a total of 35,000 Affected Product Recipients, 4,500 of which would undergo a single Revision Surgery on or prior to December 31, 2008). After such time, if necessary, Sulzer shall deliver any such additional amounts that may be required by the Settlement Trust to pay any additional obligations (including any accrued and unpaid expenses of the Settlement Trust) pursuant to the terms of this Settlement Agreement on a quarterly basis as such claims come due and are presented to Sulzer for payment by the Claims Administrator; *provided, however*, that Sulzer shall not be obligated to pay more than an aggregate of \$12.5 million with respect to any one quarter for such additional payment obligations hereunder.

ARTICLE 3. CLASS MEMBER RIGHTS AND BENEFITS

Section 3.1 MEDICAL RESEARCH AND EDUCATION

(a) The Research Fund Amounts shall be used to finance medical research relating to reconstructive orthopedic implants, specifically hip and knee implants, for the benefit of Class Members as directed by the Court (with input from Class Counsel).

Section 3.2 MEDICAL MONITORING SERVICES

(a) Class Members who have not already undergone a Revision Surgery with respect to any Affected Product prior to the Final Judicial Approval Date shall be entitled to payment for the reasonable unreimbursed costs of one physician's visit and one set of x-rays associated therewith during each of the annual periods ending on the second year, third year and fifth year following the date of such implant surgery.

(b) Amounts paid to or on behalf of Class Members pursuant to 3.2(a) above shall be paid out of the Medical Monitoring Fund.

Section 3.3 MEDICAL EXPENSES FOR REVISION SURGERIES

(a) The Settlement Trust shall pay the reasonable and necessary unreimbursed medical expenses of Class Members who undergo a Revision Surgery with respect to any Affected Product on or before December 31, 2008. No Class Member shall be entitled to payment for reimbursement of medical expenses hereunder that have been paid or provided for by Sulzer other than pursuant to this Settlement Agreement.

(b) Amounts paid to or on behalf of Class Members pursuant to 3.3(a) above shall be paid out of the Patient Benefit Fund.

Section 3.4 PAYMENTS TO CLASS MEMBERS

(a) Class Members Who Have Not Undergone Revision Surgery.

(i) Class Members who have not undergone Revision Surgery with respect to an Affected Product on or before the Final Judicial Approval Date shall be entitled to receive, by the date that is the later of the 30th day following the Final Judicial Approval Date and the date of identification of such Class Member by the Claims Administrator as an Affected Product Recipient (x) a cash payment in the amount of \$750.00 and (y) 392 ADRs (less any amounts sold pursuant to Section 6.7).

(ii) Cash amounts paid to Class Members pursuant to Section 3.4(a)(i) above shall be paid out of the Patient Benefit Fund. ADRs distributable to Class Members pursuant to Section 3.4(a)(i) above shall be satisfied out of the Settlement Trust Brokerage Account.

(b) Class Members Who Undergo One Revision Surgery.

(i) Class Members who have undergone Revision Surgery with respect to one and only one Affected Product prior to the Final Judicial Approval Date shall be entitled to receive, by the date that is the later of the 30th day following the Final Judicial Approval Date and the date of identification of such Class Member by the Claims Administrator as an Affected Products Recipient (x) a cash payment in the amount of \$37,500 and (y) 3,922 ADRs (less any amounts sold pursuant to Section 6.7).

(ii) Class Members who have not previously undergone Revision Surgery with respect to an Affected Product and who undergo Revision Surgery with respect to one Affected Product on or after the Final Judicial Approval Date and prior to December 31, 2008 shall be entitled to receive, by the date that is the later of the 30th day following the date of such Revision Surgery and the date of identification of such Class Member by the Claims Administrator as an Affected Product Recipient (x) a cash payment in the amount of \$37,500 (less any cash payment received pursuant to Section 3.4(a)(i) above) and (y) 3,922 ADRs (less any ADRs received pursuant to Section 3.4(a)(i) above and less any amounts sold pursuant to 6.7).

(iii) Cash amounts paid to Class Members pursuant to Section 3.4(b)(i) or Section 3.4(b)(ii) above shall be paid out of the Patient Benefit Fund. ADRs distributable to Class Members pursuant to Section 3.4(b)(i) or Section 3.4(b)(ii) above shall be satisfied out of the Settlement Trust Brokerage Account.

(c) Class Members Who Undergo Multiple Revision Surgeries.

(i) Class Members who have undergone Revision Surgery with respect to two or more Affected Products prior to the Final Judicial Approval Date shall be entitled to receive, by the date that is the later of the 30th day following the Final Judicial Approval Date and the date of identification of such Class Member by the Claims Administrator as an Affected Product Recipient (i) a cash payment in the amount of \$63,500 and (ii) 6,667 ADRs (less any amounts sold pursuant to Section 6.7).

(ii) Class Members who undergo Revision Surgery with respect to one or more Affected Products on or after the Final Judicial Approval Date and prior to December 31, 2008, and who have already undergone Revision Surgery with respect to an Affected Product either before or after the Final Judicial Approval Date, shall be entitled to receive, by the date that is the later of the 30th day following the date of such Revision Surgery and the date of identification of such Class Member by the Claims Administrator (x) a cash payment in the amount of \$63,500 (less any cash payments received pursuant to Section 3.4(a)(i), Section 3.4(b)(i), Section 3.4(b)(ii) above) and (y) 6,667 ADRs (less any ADRs received pursuant to Section 3.4(a)(i), Section 3.4(a)(ii) and/or Section 3.4(b)(ii) above and less any amounts sold pursuant to Section 6.7).

(iii) Cash amounts paid to Class Members pursuant to Section 3.4(c)(i) or Section 3.4(c)(ii) above shall be paid out the Patient Benefit Fund. ADRs distributable to Class Members pursuant to Section 3.4(c)(i) or Section 3.4(c)(ii) above shall be satisfied out of the Settlement Trust Brokerage Account.

(d) Spousal Payments.

(i) The Spouse of a Class Member that is entitled to payments pursuant to Section 3.4(a) shall be entitled to receive a cash payment in the amount of \$500 to be paid no later than the 30th day following the Final Judicial Approval Date.

(ii) The Spouse of a Class Member that is entitled to payments pursuant to Section 3.4(b) or Section 3.4(c) shall be entitled to receive a cash payment in the amount of

\$5,000 (less any cash payment received pursuant to Section 3.4(d)(i) above) to be paid no later than the 30th day following the Financial Judicial Approval Date.

(iii) Cash amounts paid to Spouses pursuant to Section 3.4(d)(i) and Section 3.4(d)(ii) above shall be paid out of the Patient Benefit Fund.

(e) Maximum Benefits.

(i) No individual Class Member shall receive benefits pursuant to this Section 3.4 in excess of those provided for in Section 3.4(c)(i) above. By way of example, if a Class Member has not had a Revision Surgery as of the date of Final Judicial Approval and receives benefits under Section 3.4(a) above, subsequently has one Revision Surgery and receives benefits under Section 3.4(b) above (less the amounts previously paid pursuant to Section 3.4(a)) and subsequent to that time has one additional Revision Surgery, such Class Member shall be entitled to the benefits under Section 3.4(c), less all amounts previously paid to the Class Member pursuant to Sections 3.4(a) and 3.4(b), such that the maximum benefits that may be received by such Class Member pursuant to this Section 3.4 cannot exceed those provided for in Section 3.4(c)(i).

(ii) No Spouse shall receive benefits pursuant to this Section 3.4 in excess of those provided for in Section 3.4(d)(ii) above.

(iii) To the extent that Sulzer has made any advance or other payments to any Class Member prior to the Final Judicial Approval Date, any amounts owed to such Class Member pursuant to Sections 3.2, 3.3 and 3.4 shall be reduced by the amount of such advance or other payment.

Section 3.5 **COMPENSATION BENEFITS PAYABLE FROM EXTRAORDINARY INJURY FUND**

(a) In addition to the benefits set forth in Sections 3.2, 3.3, and 3.4 above, Class Members may be eligible to receive additional compensation under this Settlement Agreement (“Matrix Compensation Benefits”) pursuant to the payment matrix (the “Matrix”), to be agreed to by the Parties, approved by the Court and subsequently attached hereto as Annex I.

(b) The Claims Administrator, together with any other personnel appointed by the Court shall have the authority to authorize payments in excess of the Matrix Compensation Benefits specified in the Matrix with respect to any Class Member; provided, however, in no event shall the aggregate of all Matrix Compensation Benefits authorized by the Claims Administrator pursuant to this Section 3.5 exceed the maximum amount allocated to the Extraordinary Injury Fund pursuant to Section 2.5(b).

(c) In the event that any Class Member disagrees with any determination of the Claims Administrator with respect to Matrix Compensation Benefits, such Class Member shall have the right to appeal the decision of the Claims Administrator to the Court.

(d) The Matrix Compensation Benefits paid to Class Members pursuant to Section 3.5(a) above shall be paid out of the Extraordinary Injury Fund.

Section 3.6 OPT-OUT RIGHTS

(a) All Class Members (except as provided in Section 3.6(b) below) are eligible to opt out of settlement represented by this Settlement Agreement (the "Opt-Out Right"). Each Class Member wishing to exercise an Opt-Out Right must sign and submit timely written notice to the Claims Administrator. The Claims Administrator shall then submit all such notices to the Court, with copies to Class Counsel, Sulzer and Plaintiffs' Counsel representing such Class Member (if any). To be effective, this written notice must be signed and submitted by the expiration of the Opt-Out Period. The Parties will recommend that the Court approve an appropriate Opt-Out Period.

(b) In the event that there is both an Affected Product Recipient or a Representative Claimant and one or more Derivative Claimants, the Affected Product Recipient's or the Representative Claimant's exercise or failure to exercise an Opt-Out Right shall be binding on the associated Derivative Claimant(s).

(c) Any Class Member may revoke an election to exercise an Opt-Out Right and thereby receive the benefits pursuant to this Settlement Agreement, *provided*, that the revocation takes place prior to the date specified in the opt-out notice, prior to the commencement of jury selections in any litigation of any claim with respect to an Affected Product by such Class Member, and with the written consent of the Parties, which consent shall not be unreasonably withheld.

Section 3.7 EFFECT OF OPT-OUTS ON SULZER PAYMENT OBLIGATIONS

The exercise of Opt-Out Rights by any Class Members shall in no way effect Sulzer's funding obligations pursuant to Section 2.9 hereunder.

ARTICLE 4. CLAIMS ADMINISTRATION

Section 4.1 In connection with the request for Preliminary Approval of this Agreement, the Parties shall request that the Court approve the appointment of an interim Trustee and/or interim Claims Administrator to act on behalf of the Settlement Trust.

Section 4.2 The administration of claims and payments to Class Members and Plaintiff's Counsel under this Agreement shall be done under the supervision of the Court in accordance with the claims administration procedures agreed to by the Parties and submitted to the Court for approval.

ARTICLE 5. ATTORNEYS' FEES

Section 5.1 Contingency-fee Plaintiffs' Counsel representing individual Class Member(s) pursuant to a written agreement that was executed and delivered by such Class Member(s) on or prior to August 2, 2001 shall be entitled to payment of attorneys' fees with respect to such Class Member(s) solely pursuant to the terms of this Settlement Agreement.

Section 5.2 The amount of the fee paid to such contingency-fee Plaintiffs' Counsel shall equal one-third (1/3) of the total payments made to or on behalf of each such represented Class

Member under Sections 3.3 and 3.4 of this Settlement Agreement; provided, that solely for purposes of determining the amount of the fee payable under this Section 5.2 with respect to any Class Member, the amount paid to or on behalf of any such Class Member pursuant to Section 3.3 shall be deemed to be \$25,000 and each ADR transferred to such Class Member shall be valued at \$5.10.

Section 5.3 The total attorneys' fee payable to the contingency-fee Plaintiffs' Counsel with respect to each Class Member shall be paid two-thirds (2/3) in cash and one-third (1/3) in ADRs. The number of ADRs to be issued shall be determined by dividing (i) an amount equal to one-third (1/3) of the total amount due to such Plaintiffs' Counsel pursuant to Section 5.2 above by (ii) \$5.10, rounded down to the nearest whole number.

Section 5.4 Class Counsel shall also be entitled to reasonable attorneys' fees and reimbursement of their expenses, to be paid by Sulzer and approved by the Court.

Section 5.5 Cash amounts payable to contingency-fee Plaintiffs' Counsel pursuant to this Article 5 shall be paid out of the Patient Benefit Fund. Amounts payable hereunder to contingency-fee Plaintiffs' Counsel and Class Counsel are in addition to payments owed to Class Members hereunder.

Section 5.6 Upon application to and approval of the Claims Administrator, attorneys' fees may be paid to Plaintiffs' Counsel for Class Members entitled to receive Matrix Compensation Benefits; *provided*, that such Plaintiffs' Counsel had a written agreement of representation with such Class Member executed on or prior to August 2, 2001. Such attorneys' fees, if approved by the Claims Administrator, shall be payable out of the Extraordinary Injury Fund and shall be in addition to attorneys' fees awarded pursuant to Sections 5.2 and 5.3 above, but shall be in lieu of any amounts owed by the Class Member under private fee contracts.

ARTICLE 6. ISSUANCE AND DISTRIBUTION OF ADRS

Section 6.1 On or prior to the tenth (10th) Business Day following the Final Judicial Approval Date, Sulzer shall take all action reasonably necessary to (a) reserve out of its authorized but unissued share capital, a sufficient number of shares, CHF 30 nominal value per share, necessary to issue to Citibank, N.A., as depository for the ADRs (the "ADR Depository"), in order to satisfy its obligations under Sections 3.4 and Article 5 of this Settlement Agreement, and authorize the ADR Depository to issue such ADRs upon the terms of this Settlement Agreement and (b) cause such ADRs to be authorized for listing on the New York Stock Exchange, subject to official notice of issuance.

Section 6.2 The ADRs to be delivered to the Settlement Trust Brokerage Account for distribution to Class Members and Plaintiffs' Counsel pursuant to Section 3.4 and Article 5 of this Settlement Agreement shall be issued by Sulzer in the United States pursuant to an exemption from registration under the Securities Act of 1933, as amended (the "Securities Act") by virtue of Section 3(a)(10) of the Securities Act. Sulzer shall take all action reasonably necessary to comply with the rules and regulations of the Securities and Exchange Commission and interpretations of the staff thereof to exempt the issuance of ADRs pursuant to Section 3(a)(10) of the Securities Act. It is the intent of the Parties that the ADRs received by

Class Members and Plaintiffs' Counsel in the United States shall be freely tradable by such persons upon issuance, subject to the restrictions contained in Section 6.4 below.

Section 6.3 In the event that the Trustee is unable to distribute ADRs to Class Members who reside in Canada due to Canadian securities law restrictions, the Trustee may sell such ADRs after the first anniversary of the Class Member's right to receive such ADRs hereunder and deliver the net proceeds to such Canadian Class Member, in lieu of the delivery of such ADRs.

Section 6.4 The ADRs issued pursuant to Sections 3.4 and Article 5 of this Settlement Agreement will be restricted and not transferable by the Class Member or Plaintiffs' Counsel as follows; all ADRs issued pursuant to the terms of this Settlement Agreement shall be restricted for a period of six months following the date of issuance thereof, and one-half (1/2) of the aggregate number of ADRs issued to any Class Member or Plaintiffs' Counsel shall continue to be restricted for an additional period of six months after the initial six-month period (it being understood that all ADRs issued pursuant to this Settlement Agreement shall become transferable on the first anniversary of the date of issuance thereof). The Parties agree that certificates representing such ADRs may bear a restrictive legend to the effect of the foregoing restriction, and may issue "stop transfer" or similar instructions to the transfer agent and registrar for such ADRs for the purpose of enforcing the foregoing restrictions.

Section 6.5 In the event of any share dividend, subdivision, split, reclassification or other change in the Shares and/or the ADRs following the date of this Settlement Agreement but prior to the issuance of ADRs hereunder, appropriate adjustment shall be made to the number of ADRs issuable pursuant to Sections 3.4 and Article 5 hereof to reflect such action. The purpose of the foregoing provision is to ensure that Class Members receive the same benefits (other than cash dividends or distribution) as if they held such ADRs on the date of this Settlement Agreement.

Section 6.6 The Settlement Trust shall be the holder of record of all shares held in the Settlement Trust Brokerage Account until released therefrom and delivered to a Class Member or Plaintiffs' Counsel in accordance with Section 3.4. and Article 5 hereof, and shall be entitled to all dividends or other distributions in respect of such ADRs until so delivered, provided that the Trustee shall not exercise any voting rights with respect to the ADRs (to the extent such restrictions are permitted under the laws of the State of New York).

Section 6.7 In the event that the fair market value of the ADRs to be delivered to a Class Member or Plaintiffs' Counsel pursuant this Settlement Agreement exceeds the fair market value of such ADRs at the time of delivery of such ADRs to the Settlement Trust Brokerage Account, the Trustee shall have the right to sell that number of ADRs necessary to satisfy the Trust's tax on the appreciation of such ADRs and deliver the balance to the Class Member or Plaintiffs' Counsel.

ARTICLE 7. GENERAL TERMINATION AND RELEASE

Section 7.1 The Parties Agree that this Settlement Agreement is made in good faith and in accordance with the laws of the jurisdictions in which Affected Products Related lawsuits have

been filed. If required by any court or tribunal, Class Counsel agree to cooperate with Sulzer and the other Released Parties by providing affidavits and/or testimony concerning the circumstances of the settlement contemplated by this Settlement Agreement and attesting to the fact that it is a good faith settlement.

Section 7.2 Unless this Settlement Agreement shall have been terminated in accordance with Article 10 hereof prior to Final Judicial Approval, and after the Court approves this Settlement Agreement as a good faith, fair, adequate and reasonable settlement, the Parties hereby agree that every Settled Claim of each Class Member shall be conclusively compromised, settled and released as to Sulzer and each other Released Party. Such releases shall remain effective regardless of changes in the circumstances or condition of Sulzer, the other Released Parties or Class Members, discovery of new or additional facts, or changes in applicable law. In making such releases the Settlement Class expressly acknowledges and waives the provisions of Section 1542 of the Civil Code of the State of California, which provides that “[a] general release does not extend to claims which the creditor does not know or suspect exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor,” as well as any similar provisions of other states. Consistent with the provisions of Article 10 of this Settlement Agreement, the releases herein shall extinguish any claims for contribution and/or indemnification against Sulzer or the other Released Parties.

Section 7.3 The Parties hereby agree to request that the Court enter an order finding this Settlement Agreement to be a good faith settlement and barring and enjoining, to the extent permitted by applicable law, the commencement and prosecution of any contribution and/or indemnification claim or action by any third-party against Sulzer or any other Released Party for reimbursement for payments made or to be made to or on behalf of any Class Member for Affected Products Related claims, actions or injuries, or for expenses incurred in defending against any such claims, actions or proceedings. The Parties agree that Sulzer and the other Released Parties shall be entitled to dismissal with prejudice of any claims against them by any third party that violate or are inconsistent with this bar.

Section 7.4 The Parties agree that no Class Member (other than Class Members who properly and timely exercise their Opt-Out Rights) shall recover, directly or indirectly, any sums from Sulzer or any other Released Party other than those received under this Settlement Agreement.

Section 7.5 Each Class Member otherwise entitled to receive benefits under this Settlement Agreement shall be required, as a further condition to receive benefits hereunder, to execute and deliver a separate proof of claim and release with respect to Affected Products Related claims.

ARTICLE 8. SUBROGATION CLAIMS

Section 8.1 Unless foreclosed by prior agreement, to the extent that any person has rights of subrogation by virtue of a payment or payments made to or for the benefit of any specific Class Member who has not properly and timely exercised an Opt-Out Right, such rights of subrogation may be asserted with respect to the Trustee’s obligation to make payments, at the direction of the Claims Administrator, to that Class Member from the applicable Fund but shall

not be asserted directly against Sulzer and/or the Released Parties except to the extent required by applicable Federal or State law. Sulzer will promptly notify in writing the Trustee, the Claims Administrator, and the affected Class Member of the assertion of such a subrogation claim against Sulzer. The Parties shall move the Court, upon granting Trial Court Approval, to enter a bar order to preclude the assertion of such subrogation claims against Sulzer and/or the Released Parties, except to the extent that it would be impermissible to bar such claims under provisions of applicable law. The Settlement Trust shall defend and hold Class Members and Plaintiffs' Counsel harmless against any claims by a subrogee directly against such Class Member or Plaintiffs' Counsel for reimbursement of medical expenses otherwise payable by the Settlement Trust pursuant to the terms of this Settlement Agreement.

Section 8.2 The Trustee and/or Claims Administrator shall provide notice of subrogation claims received by the Trustee or the Claims Administrator to affected Class Members and afford them an opportunity to contest, otherwise object to or compromise any such claims. In making distribution of any amounts to which Class Members are entitled from any applicable Fund, the Trustee shall recognize and pay subrogation claims, at the direction of the Claims Administrator, but only to the extent that the subrogation claim is recognized by applicable law and not foreclosed by prior agreement. Unless the law clearly sets forth different principles, the Claims Administrator shall not recognize a subrogation claim unless: (a) it is affirmatively brought to their attention prior to distribution of funds to a Class Member; (b) it is based on a positive provision of law or a valid enforceable contract; (c) the putative subrogee clearly establishes that the subrogee actually made a payment or payments to or for the benefit of the Class Member which is of a type that the putative subrogee would be entitled to recover against Sulzer and/or the Released Parties, and then (d) only to the extent of the lesser of the actual payment made and the amount otherwise payable to such Class Member less an equitable debit for attorneys' fees, and any other allowable or appropriate charges against the putative subrogee. The failure of a subrogee to timely assert subrogation claims as set forth above and pursuant to the claims administration procedures agreed to by the Parties and approved by the Court shall constitute a waiver of such claims.

ARTICLE 9. CONTINUING JURISDICTION

Section 9.1 The Court shall retain exclusive and continuing jurisdiction of the Complaint, the Parties, all Class Members, Sulzer and the Released Parties, and over this Settlement Agreement with respect to the performance of the terms and conditions of the Settlement Agreement, to assure that all disbursements are properly made in accordance with the terms of the Settlement Agreement, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement. Other than provided herein, the Court shall have the power to approve the designation, appointment and removal of auditors, consultants and disbursing agents, and the execution of contracts as necessary and appropriate to assure the administration of this Settlement Agreement. Any dispute that arises under this Settlement Agreement shall be submitted to the Court. If any dispute is so submitted, each party concerned shall be entitled to 15 days' written notice (or otherwise as the Court may for good cause direct) and the opportunity to submit evidence and to be heard on oral argument as the Court may direct. To the extent that additional or different procedures for dispute resolution are provided, or standards to be applied in connection therewith are devised, under any other provision of this Settlement Agreement, such other provisions shall control.

ARTICLE 10. TERMINATION

Section 10.1 Sulzer shall have the option to terminate and withdraw from this Settlement Agreement, in its sole discretion, at any time prior to the date that is seven (7) days prior to the Trial Court Approval Date by giving written notice to the Court and to Class Counsel.

Section 10.2 The Class Representatives, on behalf of the Class Members, shall have the option to terminate and withdraw from this Settlement Agreement in the event that the closing price per ADR as reported by the New York Stock Exchange as of the date that is one week prior to the Final Judicial Approval Date is below \$5.10 and Sulzer has not agreed to either (a) pay an amount in cash that represents the difference between \$5.10 and the price per ADR times the number of ADRs it is obligated to transfer to the Settlement Trust pursuant to Section 2.6(a)(i) hereunder, or (b) issue additional ADRs with an aggregate value based on such price equal to the difference between \$5.10 and the price per ADR times the number of ADRs it is obligated to transfer to the Settlement Trust hereunder, by the Final Judicial Approval Date. If the Class Representatives elect to exercise such right, they shall do so by giving written notice to the Court and to Sulzer immediately prior to the Final Judicial Approval Date.

Section 10.3 The Class Representatives, on behalf of the Class Members, shall have the option to terminate and withdraw from this Settlement Agreement in the event that, in the course of any due diligence performed pursuant to Section 14.3 below, such Class Representatives have discovered facts that are materially different from the facts and circumstances as represented by Sulzer as of the date of this Settlement Agreement, including, but not limited to issues relating to the issue of the culpability of Sulzer AG and others. In addition, Class Representatives shall have the option to terminate and withdraw from this Settlement Agreement in the event that they are advised by counsel that the ADRs will not be issued in the United States in a transaction exempt from registration under the Securities Act and freely tradable in the hands of non-affiliated Class Members or the Liens created under the Security Agreement are insufficient to create a security interest in all the assets of Sulzer, subject to prior Liens and applicable law; *provided*, that no such termination right shall exist to the extent that Sulzer agrees to take reasonable action to cure such deficiencies. If the Class Representatives elect to exercise such right, it shall do so by giving written notice to the Court and to Sulzer within five Business Days prior to the Fairness Hearing Date.

Section 10.4 In the event that any of the conditions set forth in Section 13.3 have not been satisfied or waived by Sulzer (and such conditions are no longer capable of being satisfied), Sulzer shall have the right to terminate and withdraw from this Settlement Agreement by written notice to the Court and Class Counsel.

Section 10.5 In the event that either Party terminates and withdraws from this Settlement Agreement in accordance with Sections 10.1, 10.2, 10.3 or 10.4 above, neither party shall have any further obligations hereunder.

ARTICLE 11. SULZER AG SETTLEMENT OF CLAIMS

Section 11.1 Promptly after the date of this Settlement Agreement, Sulzer shall use commercially reasonable efforts to enter into an agreement with Sulzer AG, a limited company

organized under the laws of Switzerland, to provide for “most favored nations” treatment of settlements with Class Members prior to Final Judicial Approval. Specifically, such agreement shall provide that Sulzer AG shall not enter into any settlement agreement or arrangement with any putative Class Member (a) unless such settlement provides a general release by such putative Class Member with respect to all Released Parties on substantially the terms contained in this Settlement Agreement and (b) in the event that such settlement terms are any more favorable, from a financial point of view, than those that such Class Member would have received under the terms of this Settlement Agreement, Sulzer AG shall also pay all Class Members under this Settlement Agreement as such excess financial consideration.

ARTICLE 12. CHANGE OF CONTROL; ACCELERATION OF PAYMENTS

Section 12.1 In the event a Change of Control occurs prior to the satisfaction of Sulzer’s obligations to fund any payments owed to the Settlement Trust pursuant to the terms of this Settlement Agreement, then Sulzer shall be obligated to immediately pay to the Settlement Trust the full amount payable and then unpaid pursuant to this Settlement Agreement, including accrual and unpaid interest thereon under the Research Fund, the Patient Benefit Fund and the Extraordinary Injury Fund.

Section 12.2 From and after the date a Change of Control occurs, the provisions of the Security Agreement with respect to cure periods on failures to make payments pursuant to this Settlement Agreement shall automatically be amended to be “one month” instead of “six months” as described in Section 2.8(d) of this Settlement Agreement.

Section 12.3 In the event of any Change of Control involving a transaction with a third-party to which SML is a party, SML shall require (to the extent reasonably possible) that, as a condition to such transaction, the successor company or entity shall agree to honor (or cause Sulzer to honor) the payment obligations of Sulzer under this Settlement Agreement.

ARTICLE 13. SETTLEMENT IMPLEMENTATION

Section 13.1 GENERAL

(a) In order to become effective, this Settlement Agreement must receive Final Judicial Approval, as well as necessary SML board of director and shareholder approval for the transactions contemplated hereby.

Section 13.2 APPROVAL PROCESS PROVISIONS

(a) Within 10 days after executing this Settlement Agreement, the Parties shall jointly move the Court, by filing a motion for the entry of an order granting Preliminary Approval.

(b) No later than 120 days following the Preliminary Approval Date, the Parties shall file a joint motion to distribute and publish notice of settlement and request that the Court schedule a Fairness Hearing.

(c) Sulzer shall pay up to a maximum \$4.5 million of the total actual costs of (i) printing, publishing and otherwise disseminating the notice and (ii) administering the terms of this Settlement Agreement pursuant to the Claims Administration Procedures agreed to by the Parties; provided, that Sulzer's maximum obligation to pay such costs shall not exceed \$2.5 million in the first annual period following the date of this Settlement Agreement, \$1.0 million in the second annual period following the date of this Settlement Agreement and \$1.0 million in the third annual period following the date of this Settlement Agreement. To the extent of any such costs exceed \$4.5 million, they will be paid by the Settlement Trust.

(d) Sulzer shall retain its right to contest class certification for any purposes other than the approval of this Settlement Agreement.

(e) The Parties shall cooperate and assist in all of the filings and proceedings relating to the obtaining of Preliminary Approval as well as Trial Court Approval and in any further filings and proceedings necessary to obtain Final Judicial Approval of the settlement, and in any related appeals.

(f) Upon Final Judicial Approval, the Class Counsel and all Class Members shall cooperate with Sulzer and any other Released Party to cause the dismissal, with prejudice and without costs, of any action against Sulzer or any Released Party asserting a Settled Claim brought by or on behalf of any Class Member entitled to benefits hereunder, including but not limited to class actions, whether or not certified as such, which are pending in any State or federal court. Upon Trial Court Approval, the Class Counsel and all such Class Members shall cooperate with Sulzer and any other Released Party to cause further proceedings in all such settled actions to be stayed pending Final Judicial Approval.

Section 13.3 **CONDITIONS**

(a) Sulzer's obligations under this Settlement Agreement, will be subject to the following conditions:

(i) Trial Court Approval of the settlement, which approval order or orders shall:

(1) Confirm the certification of the Settlement Class, under Fed. R. Civ. P. 23(a) and 23(b)(3) for Settlement purposes only;

(2) Confirm the appointment of the Class Representatives as the representatives of the Settlement Class;

(3) Approve this Settlement Agreement in its entirety pursuant to Fed. R. Civ. P. 23(e) as fair, reasonable, adequate, and non-collusive;

(4) Dismiss with prejudice and without costs all claims and actions asserting Settled Claims against Sulzer pending before the Court, with the condition that such complaints may be reinstated in the event that Final Judicial Approval is not obtained;

(5) Bar and enjoin all Class Members entitled to benefits hereunder from asserting and/or continuing to prosecute against Sulzer or any other Released Party any and all Settled Claims which the Class Member had, has, or may have in the future in any federal or State court;

(6) Bar and enjoin the commencement and/or prosecution of any claim or action against Sulzer in any federal, state or territorial court based on rights of subrogation by virtue of a payment or payments made to or for the benefit of a Class Member arising out of or in relation to any Settled Claims, except to the extent that it would be impermissible to bar such claims under provisions of applicable law and other than contractual claims by Medicare or third-party insurers with respect to payments for medical expense reimbursement otherwise agreed to by Sulzer and such party or parties in writing;

(7) Reserve the Court's continuing and exclusive jurisdiction over the Parties, including Sulzer and the Class Members, to administer, supervise, interpret, and enforce this Settlement Agreement in accordance with its terms and to supervise the operation of the Settlement Trust; and

(8) Enter such other orders as are needed to effectuate the terms of the Settlement Agreement;

(ii) Final Judicial Approval of this Settlement Agreement; and

(iii) the Insurance Proceeds shall be delivered in accordance with Section 2.9(b) hereunder.

ARTICLE 14. MISCELLANEOUS

Section 14.1 Any information provided by or regarding a Class Member or otherwise obtained pursuant to this Settlement Agreement shall be kept confidential and shall not be disclosed except to appropriate persons to the extent necessary to process Claims or provide benefits under this Settlement Agreement or as otherwise expressly provided in this Settlement Agreement. All Class Members shall be deemed to have consented to the disclosure of this information for these purposes.

Section 14.2 This Settlement Agreement shall be binding on the successors and assigns of the Parties.

Section 14.3 Class Members shall have the right to conduct due diligence on all issues related to this Settlement Agreement prior to the Fairness Hearing Date. Sulzer agrees to cooperate in such due diligence by providing reasonable access to any such information reasonably requested by the Class Representatives on behalf of the Class Members. Sulzer also agrees to use commercially reasonable efforts to obtain Sulzer AG's cooperation in such due diligence investigation if reasonably necessary.

Section 14.4 The Parties to the settlement, including Sulzer, the Released Parties, or any Class Member, shall not seek to introduce and/or offer the terms of the Settlement Agreement, any statement, transaction or proceeding in connection with the negotiation, execution or

implementation of this Settlement Agreement, any statements in the notice documents appended to this Settlement Agreement, stipulations, agreements, or admissions made or entered into in connection with the fairness hearing or any finding of fact or conclusion of law made by the Trial Court, or otherwise rely on the terms of this Settlement Agreement, in any judicial proceeding, except insofar as it is necessary to enforce the terms of the Settlement Agreement (or in connection with the determination of any income tax liability of a Party). If a Class Member who is not entitled to benefits hereunder seeks to introduce and/or offer any of the matters described herein in any proceeding, the restrictions of this Section 14.4 shall not be applicable to Sulzer and the Released Parties with respect to that Class Member. If a Class Member who has timely and properly exercised an Opt-Out Right seeks to introduce and/or offer any of the matters described herein in any proceeding, the restrictions of this Section 14.4 shall not be applicable to Sulzer and the Released Parties with respect to that Class Member.

Section 14.5 Neither this Settlement Agreement nor any Annex, Exhibit, document or instrument delivered hereunder nor any of the statements in the notice documents attached to this Settlement Agreement or in connection herewith, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Settlement Agreement, is intended to be or shall be construed as or deemed to be evidence of an admission or concession by Sulzer or the Released Parties of any liability or wrongdoing or of the truth of any allegations asserted by any plaintiff against it or them, or as an admission by the Class Representatives or members of the Settlement Class of any lack of merit in their claims, and no such statement, transaction or proceeding shall be admissible in evidence for any such purpose except for purposes of obtaining approval of this Settlement Agreement in this or any other proceeding.

Section 14.6 The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

Section 14.7 Unless otherwise indicated in this Settlement Agreement, all amounts allocable to any particular Fund and amounts remaining in the Settlement Trust that are not used to satisfy the obligations of such Fund at the time such obligation has been satisfied in full, shall automatically revert to the Extraordinary Injury Fund. The Court shall make a determination with respect to the disposition of any amounts remaining in the Extraordinary Injury Fund upon the satisfaction in full of all obligations to pay Class Members and Plaintiffs' Counsel pursuant to this Settlement Agreement, which may include a *pro rata* distribution to Class Members or a donation to a neutral medical research institute or university or to charity; *provided, however* that the Claims Administrator shall first use any amounts remaining in the Extraordinary Injury Fund after satisfaction of all obligations to Class Members to either pay for or create a reserve for payment of all administrative expenses that have been or will be incurred in connection with the winding-up of the administration of the Settlement Trust.

Section 14.8 Any notice, request, instruction or other document to be given by Sulzer to Class Counsel or Class Counsel to Sulzer shall be in writing and delivered personally or sent by Federal Express or facsimile as follows, or as otherwise instructed by a notice delivered to the other Party pursuant to this subsection:

(i) If to Sulzer:

Sulzer Medica USA Inc.
3 East Greenway Plaza, Suite 1600
Houston TX 77046-0391
Attention: David S. Wise, Esq.
Facsimile: (713) 561-6300

with copies to:

Crosby, Heafey, Roach & May
Two Embarcadero Center
Suite 2000
San Francisco, CA 94111
Attention: Kenneth M. Seeger, Esq.
Facsimile: (415) 391-8269

and

Weil, Gotshal & Manges LLP
100 Crescent Court, Suite 1300
Dallas, TX 75201
Attention: Martin A. Sosland, Esq.
Facsimile: (214) 746-7777

(ii) If to the Class Representatives or Class Counsel:

Weisman, Goldberg & Weisman Co., L.P.A.
1600 Midland Building
Landmark Office Towers
Cleveland, Ohio 44115
Attention: R. Eric Kennedy, Esq.
Facsimile: (216) 781-6747

Section 14.9 Any form or other documentation required to be submitted under this Settlement Agreement shall be deemed timely if postmarked on or before the date by which it is required to be submitted under this Settlement Agreement.

Section 14.10 No provision of this Settlement Agreement or any Exhibit or Annex hereto is intended to create any third-party beneficiary to this Settlement Agreement.

Section 14.11 This Settlement Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous agreements, negotiations, and commitments in writings between the Parties hereto with respect to the subject matter hereof, including without limitation that certain term sheet dated as of August 2, 2001 (the "Term Sheet"). This Settlement Agreement may not be changed or modified in any manner unless in writing and signed by a duly authorized officer of Sulzer and by a duly authorized representative of the Class Representatives.

Section 14.12 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflict of laws principles thereunder.

Section 14.13 The Parties acknowledge and agree that in the event that SML, SOUS and any other subsidiary of SML shall file for bankruptcy protection under any applicable bankruptcy or insolvency laws, or a petition for an involuntary bankruptcy or insolvency proceeding is initiated against any such party prior to the termination of this Settlement Agreement, any plan of reorganization or liquidating plan shall incorporate the terms of, and continue to implement, this Settlement Agreement.

Section 14.14 In the event that the Court approves a certification of the Settlement Class other than that contemplated by this Settlement Agreement, the parties hereby agree that they shall amend this Settlement Agreement to reflect such certification.

Section 14.15 Sulzer shall bear all costs associated with the issuance of ADRs to the Settlement Trust and filing of financing statements and other instruments pursuant to the Security Agreement.

Section 14.16 Sulzer agrees that it shall not enter into any settlement agreement or compromise any claim of any Class Member resident in the United States with respect to a claim arising out of or relating to an Affected Product from and after the Preliminary Approval Date through the Final Judicial Approval Date, other than with the consent of Class Counsel (which consent shall not be unreasonably withheld); *provided*, that nothing in this Section 14.16 shall prevent Sulzer from entering into settlements with Medicare or third-party insurers with respect to the reimbursement of health care expenses.

Section 14.17 The Parties hereby agree that Sulzer may, in lieu of issuing ADRs to Class Members and Plaintiffs' Counsel hereunder, issue other securities of equivalent economic value as such ADRs to be otherwise issued to any such Class Member or Plaintiffs' Counsel, and the issuance of such equivalent securities shall be deemed to satisfy Sulzer's obligations to issue ADRs hereunder; *provided*, that such security has been agreed to by Class Counsel and approved by the Court.

Section 14.18 This Settlement Agreement may be signed in multiple counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Class Action Settlement Agreement among SOUS and SML and the Class Representatives, by their respective counsel as set forth below, as of the 23rd day of August, 2001.

SULZER ORTHOPEDICS INC.

By: /s/David Flloyd, President

SULZER MEDICA LTD.

By: /s/Gabor-Paul Ondo, Chief Risk Officer

By: /s/Stephan Rietiker, President and CEO

CLASS COUNSEL

/s/Stanley M. Chesley
Stanley M. Chesley, Esq.
Waite, Schneider, Bayless & Chesley Co.,
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/s/John R. Climaco
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Climaco, Lefkowitz, Peca, Wilcox & Garofoli
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/s/Richard S. Wayne
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/s/Wendell Gauthier

Wendell Gauthier, Esq.
James R. Dugan, II, Esq.
Gauthier, Downing, LaBarre, Beiser & Dean
3500 N. Hullen Street
Metairie, LA 70002

Annex I

MATRIX COMPENSATION BENEFITS

[TO BE ATTACHED AFTER COURT APPROVAL]

Annex II

**AFFECTED PRODUCTS
PART AND LOT NUMBERS**

[TO BE ATTACHED AFTER COURT APPROVAL]

Annex III

SUBSIDIARIES

Sulzer Medica USA Holding Company
Sulzer Biologics Inc.
Sulzer Carbomedics Canada Ltd.
Sulzer Carbomedics Inc.
Sulzer Carbomedics International Holding Co.
Sulzer Carbomedics UK Ltd.
Sulzer Cardiovascular AG
Sulzer Cardiovascular Inc.
Sulzer Cardiovascular SA
Sulzer Dental Corp.
Sulzer Dental GmbH
Sulzer Dental Inc.
Sulzer Dental Ltd.
Sulzer Dental Sarl
Sulzer IntraTherapeutics Inc.
Sulzer Medica Canada Inc.
Sulzer Medica International FSC Inc.
Sulzer Medica USA Inc.
Sulzer Mitroflow Corp.
Sulzer Orthopedics Canada Inc.
Sulzer Orthopedics Inc.
Sulzer Spine-Tech Inc.
Sulzer Spine-Tech Surgical Inc.
Sulzer Vascutek USA Inc.