

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

IN RE	:	MDL No. 1401
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SULZER HIP PROSTHESIS AND: KNEE PROSTHESIS PRODUCT LIABILITY LITIGATION	:	Case No. A:01 CV 9000
	:	
	:	Judge O'Malley
	:	
This Document Relates to All Cases	:	

ORDER

**(Protective Order Concerning Release of Certain Confidential and Non-Confidential
Information of the Claims Administrator to Sulzer)**

The matter is before the Court pursuant to Sulzer’s Motion filed June 19, 2003, and the Court’s continuing exclusive jurisdiction to administer, supervise, interpret and enforce the Settlement Agreement in this action, dated March 13, 2002, (as amended on May 2, 2002, May 3, 2002, May 5, 2002, May 8, 2002, and May 22, 2002)(the “Settlement Agreement”), as retained in Section 9.1 of the Settlement Agreement and in this Court’s Order approving the Settlement Agreement, entered on June 4, 2002. Upon Sulzer’s Motion and finding good cause to do so, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Purposes of this Order. The Court enters this Order: (i) to implement Section 15.1 of the Settlement Agreement, which requires that any information provided by or regarding a Class Member or otherwise obtained pursuant to the 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 the Settlement Agreement or as otherwise expressly provided in the Settlement Agreement; and (ii) to permit the successful and orderly

implementation of the Settlement Agreement by preserving the confidentiality of proprietary information regarding the internal procedures and policies of the Claims Administrator to the Sulzer Settlement Trust (“Claims Administrator”), and any of his employees, contractors, and advisors that has been or will be generated in the course of the implementation of the Settlement Agreement. The Court finds that the need to implement Section 15.1 of the Settlement Agreement, the need to protect the privacy of the medical information of Class Members included in their claims, and the need for Sulzer to obtain certain information for legitimate business purposes related to its ongoing financial obligations to the Settlement Trust, constitute good cause of the entry of this Order.

2. *Incorporation of Settlement Agreement Definitions.* Any capitalized term not specifically defined in this Order shall have the meaning ascribed to such term in the Settlement Agreement.

3. *Definition of Confidential Information.* “Confidential Information” as used in this Order means all of the following information in whatever form or medium:

- (a) except as to the Class Member (and the Class Member’s attorney, if any) who provided the information, all information provided by or regarding a Class Member (including Class Members who exercised or attempted to exercise an Opt-Out Right), referred to in this Order as “Confidential Class Member Information,” and which includes:
 - (1) identifying information regarding a Class Member, such as name, address, telephone number, e-mail address, social security number and other personal identifying information;
 - (2) the claim file regarding a Class Member, including all Claim Forms, the information reflected in such Claim Forms, and all Medical Information relating to the Class Member;
 - (3) all communications between the Claims Administrator and the Class Member;

- (4) all communications between the Claims Administrator and/or any other person or entity regarding a Class Member; and
 - (5) information relating to the processing of the Claim of an individual Class Member, including the benefits determinations relating the Claim, the Class Member's elections, any benefits paid or provided to the Class Member, and the disposition of the Claim;
- (b) the names of Class Members in list form who comprise a specific group or category of claimants, e.g., Sulzer in its Motion seeks the identity of the first 64 claimants seeking benefits for reprocessed shell revision surgery;
 - (c) information relating to the internal procedures and policies of the Claims Administrators and/or the Trust, including claims processing policies and methods; minutes of meetings of the Claims Administrator and his agents or advisors; information regarding services rendered the Claims Administrator by any of his employees, independent contractors, and advisors; and the work product and communications generated by the employees, independent contractors, and advisors of the Claims Administrator; and
 - (d) any other designated as "Confidential Information" by the Court, the Claims Administrator, or any authorized designees of the Claims Administrator or the Court.

4. Information Not Included in the Definition of Confidential Information.

"Confidential Information" does not include the following, provided that such information does not contain any Confidential Class Member Information:

- (a) the information to be reported by the Trustee of the Sulzer Settlement Trust ("Trust") on an annual and monthly basis under Section 4.05 of the Settlement Trust Agreement; and
- (b) statistics related to the number of persons who have submitted Claims or Claim Forms of the various types allowed pursuant to the Settlement Agreement, total amounts paid in relation to Claims, the total number of Claims or Claim Forms rejected, disallowed or ruled to be invalid by the Claims Administrator and other general statistical information regarding Claims and Claim Forms submitted on behalf of Class Members.

5. Definition of Authorized Persons. "Authorized Persons" for the purpose of this Order means:

- (a) Sulzer and its counsel, and its employees, independent contractors, advisors (including counsel, officers, directors, employees, agents, contractors, experts, accountants and auditors), and the successors and assigns of any of the foregoing, but only as to information described in Paragraph 3 of this Order.

6. *General Rule of Nondisclosure of Confidential Information.* Confidential Information obtained by Sulzer pursuant to this Order shall be kept strictly confidential and shall not be disclosed except as permitted under this Order or by further order of this Court.

7. *Disclosure to Authorized Persons.* Confidential Information may be disclosed only to the extent reasonably necessary to (i) allow Sulzer to fulfill its financial reporting and forecasting obligations related to its continuing financial obligations to the Settlement Trust, and (ii) assist Sulzer when necessary in the defense of ongoing claims and lawsuits by individuals who submitted Claims Forms or other information to the Claims Administrator or Settlement Trust. Such Confidential Information may be issued for the foregoing purposes only and cannot be used for any other purpose. Before disclosing any Confidential Information to an Authorized Person, the person making such disclosure shall provide a copy of this Order to the Authorized Person. Immediately upon termination of their status as an Authorized Person for any reason, including termination or expiration of employment, contract, or agency, all Authorized Persons who have received any Confidential Information shall return to the person who provided it to them all Confidential Information in their possession, custody, or control, and the restrictions imposed by this Order shall apply permanently to all such persons. All Authorized Persons who receive Confidential Information thereby consent to the personal jurisdiction of this Court for the purposes of any proceeding relating to enforcement of this Order.

8. *Disclosure of Confidential Class Member Information in Litigation.* In any proceeding, including claims and lawsuits, against Sulzer and/or any of the Released Parties

arising from or relating to an Affected Product or Non-Affected Product, Sulzer may disclose in pleadings and otherwise such Confidential Information relating to the Class Member(s) involved in that litigation as is reasonably necessary in the defense of such proceeding or to enforce the provisions of this Settlement Agreement and any other Orders of this Court.

9. Disclosure of Confidential Class Member Information as Authorized by the Class Member. Confidential Class Member Information relating to a particular Class Member may be disclosed as specifically authorized in writing and signed by that Class Member. Authorized disclosures under this paragraph are not subject to any of the restrictions imposed by this Order.

10. Process for Requesting Disclosure of Information Included in the Definition of Confidential and Non-Confidential Information. Any person or entity seeking disclosure of Confidential and Non-Confidential Information contemplated by this Order shall direct any such request in writing to the Claims Administrator. Any person or entity requesting such information shall provide to the Claims Administrator or its representatives reasonable payment for the cost and expense associated with obtaining such information.

11. Right of Access and Inspection of Claims Files Designated "Invalid" by Claims Administrator. This Order contemplates and grants Sulzer the right of access and physical inspection of the Claims Files designated "Invalid" by the Claims Administrator.

12. Preservation of Confidential Information. The Claims Administrator shall preserve all Confidential Information until further order of this Court, provided, however, that the Claims Administrator may dispose of duplicates of materials containing Confidential

Information as the Claims Administrator and/or this Court deem necessary and appropriate, in accordance with Paragraph 11 of this Order.

13. *Disposition of Confidential Information.* Any person or entity disposing of any materials containing any Confidential Information shall destroy such materials by shredding or such other means that renders the Confidential Information in such material permanently illegible.

14. *Violations of this Order.* Any violation of this Order by any person or entity shall be treated as a violation of an order of this Court and shall be punishable as contempt and may subject the violator to sanctions or other penalties as the Court deems appropriate.

15. *Inadvertent Disclosure.* Inadvertent disclosure of Confidential Information to a person who is not an Authorized Person does not waive the status of that information as Confidential Information. If the disclosing party discovers that it has inadvertently provided Confidential Information to a person who is not an Authorized Person, it shall immediately provide notice of the inadvertent disclosure and request its return. The recipient shall immediately cooperate to return all copies and to take necessary steps to preserve the confidentiality of the information.

16. *Continuing Jurisdiction.* All claims regarding violations of this Order and any claim seeking or requiring an interpretation of this Order shall be brought exclusively in this Court.

17. *Term.* The restrictions imposed by this Order shall remain in effect until further order of this Court.

DATED: _____

BY THE COURT:

Kathleen O'Malley
Judge

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