

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

)	Civil Action No.: 01-CV-9000
)	(MDL NO. 1401)
IN RE: SULZER HIP PROSTHESIS)	
AND KNEE PROSTHESIS PRODUCT)	JUDGE O'MALLEY
LIABILITY LITIGATION)	
)	THIS DOCUMENT PERTAINS
)	TO ALL CASES
)	

MEMORANDUM IN SUPPORT OF
MOTION FOR APPROVAL OF SETTLEMENT WIND UP PROCEDURES

James J. McMonagle, Claims Administrator (“Claims Administrator”) for the Sulzer Settlement Trust (“Trust”), pursuant to Settlement Agreement § 1.1(p), as amended, in *In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, MDL No. 1401 (“Settlement Agreement”) files this Memorandum in Support of the accompanying Motion for Approval of Settlement Wind Up Procedures.

Since the Court approved the Settlement Agreement in 2002, the Claims Administrator has received and reviewed more than 19,000 Claims from more than 11,000 Claimants. As a

result of those reviews, the Claims Administrator has disbursed more than \$1.02 billion in Class Member benefits. Approximately \$59.4 million remain in the Sulzer Settlement Trust.

As discussed more comprehensively in the accompanying Motion, nearly all the deadlines applicable to Class Members to submit a Claim for Settlement benefits have passed and nearly all the pending Claims for Settlement benefits have been finalized and resolved.

Settlement Agreement § 9.1 vests the Court with exclusive and continuing jurisdiction over the Settlement Agreement and its implementation. Settlement Agreement §§ 5.2 and 15.6 prescribe means by which the residue of the Sulzer Settlement Trust may be disbursed. Upon satisfaction of the rights and responsibilities prescribed by the Settlement Agreement, the Court may order termination of the Sulzer Settlement Trust. Trust Agreement § 5.03.

To aid the Court in its determinations regarding how to disburse the remainder of the Sulzer Settlement Trust and how to wind up the remaining activities required by the Settlement Agreement, the Claims Administrator has submitted the accompanying Status Report of Claims Administration activity and Motion for Approval of Wind Up Procedures. The Status Report identifies the nature and extent of administration activity completed and pending. The Motion sets forth the principle duties and obligations required by the Settlement Agreement and identifies the extent to which they have been fulfilled. Where future work is necessary to fulfill a duty or obligation, the Motion sets forth a recommended course for doing so as well as a recommendation for cash reserves related to the duty or obligation.

The Motion recommends that the single largest portion of the remaining assets of the Sulzer Settlement Trust be disbursed to APR and Representative Claimant Class Members on a *pro rata* basis. The Claims Administrator's recommendation is that APR's and Representative Claimants of APR's receive a share of the disburseable portion of the Trust proportionate to the

share of APRS and EIF benefits they have already been awarded from the Trust. An APR, for example, who had been awarded 1% of the total of APRS and EIF benefits paid to all Class Members would receive, in the distribution proposed in the Motion, 1% of the total amount of the residue disbursed in the *pro rata* distribution.

The motion also recommends that no Claims for benefits against the Trust be permitted after June 30, 2012, and that the Trust be terminated as of December 31, 2012.

The Settlement of the class action in *In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation* has been successful. Legal challenges to the Settlement have been unsuccessful, funding of the Settlement has been timely and complete, and Class Member payments have been substantially consistent with those projected by the parties and anticipated by the Settlement Class. For these reasons, and those in the accompanying Motion for Approval of Settlement Wind Up Procedures, the Claims Administrator respectfully urges the Court approve the Settlement administration efforts undertaken to date and enter an order permitting expeditious disbursement and sufficient reserve of the remaining assets of the Sulzer Settlement Trust.

Respectfully submitted,

JAMES J. McMONAGLE, CLAIMS ADMINISTRATOR

By counsel

Cullen D. Seltzer
Cullen D. Seltzer, Attorney at Law PLC
Bank of America Center
1111 E. Main Street, Suite 1720
Richmond, Virginia 23219
(804) 672-4545 – voice
(866) 672-4540 – facsimile
cseltzer@lawyerconsult.com

CERTIFICATE OF SERVICE

I certify that on September 28, 2006, I did cause to be filed a copy of this Memorandum in Support of Motion for Approval of Wind Up Procedures electronically through the Court's electronic filing system which will notify all other parties of this filing.

/s Cullen D. Seltzer

Cullen D. Seltzer

Cullen D. Seltzer, Attorney at Law PLC

Attorney for the Claims Administrator

Bank of America Center

1111 E. Main Street, Suite 1720

Richmond, Virginia 23219

(804) 672-4545 - voice

(866) 672-4540 - facsimile

cseltzer@lawyerconsult.com

Virginia State Bar Number: 35923