

Zuckerman, Glenn

From: Zuckerman, Glenn
Sent: Monday, April 22, 2002 7:31 PM
To: 'sback@datasync.com'
Subject: Laurie Iodice

Sid -- Thanks for speaking with me last week. I got a little sidetracked and intended to get this info to you faster. In any event here it is.

We have a unique situation which I would like you to address.

1) **Laurie Iodice:** This client had a Sulzer implant put in on June 6, 2000. Shortly after the implantation she developed symptoms consistent with the recall including groin pain, difficulty standing, start-up pain when walking... After the recall was announced she received a recall letter from Dr Nichols in Vero Beach Florida. She was treated by Dr Nichols almost monthly after the implantation and her pain was worsening. Shortly after the recall, Ms Iodice received a recall letter from Sulzer and her Dr. On May 8, 2001 Laurie underwent a revision surgery and Dr Nichols noted aseptic loosening related to the Sulzer recall as the reason for the surgery. I have the shell in my possession and there was absolutely no bone ingrowth.

Recently we received her complete medical records and notice that her lot number 1391586 was not included in the recall and as such she is currently not included as a class member. Ms Iodice is very confused and needless to say very unhappy. She has made it clear that she would opt-in if she was a class member and has instructed Weitz & Luxenberg to proceed to trial if she is not. Her case is currently pending in Beaumont County and as soon as the opt-out deadline has passed we will advise the Court that we are prepared to take this case to trial.

Kindly look into this situation. The fact that Ms. Iodice had a late implantation date, early aseptic loosening with no bone ingrowth, received a recall letter, and had a revision - we feel she should be included in the class. We are also very confident that we will be successful at trial in Beaumont but would like to resolve this issue now so as to benefit all involved by avoiding trial in Beaumont.

Please let me know if you need more information or if you have any questions.

Thanks.

Glenn Zuckerman

Zuckerman, Glenn

From: Zuckerman, Glenn
Sent: Wednesday, April 24, 2002 12:31
To: 'Sidney A. Backstrom'
Subject: RE: Laurie Iodice

Thanks for your email. I understand the other possible causes for early loosening and have discussed them with Laurie. Her case is identical to all those covered under this settlement except her implant is just outside the recall numbers. I think we will have a very good chance at obtaining a verdict on her case in light of the circumstances and as you know our venue is very favorable. I use the term late implantation date because as you know a 1997, 1998 and even 1999 surgery date could be defended by Sulzer a lot easier than a mid 2000 implantation. Having reviewed the thousands of documents exchanged in this case I think we will be able to demonstrate at trial the level of confusion regarding the recall - the arbitrary manner in which the recall lot numbers were chosen, and the likelihood that Laurie Iodice's implant was in fact defective. Her complete lack of bone ingrowth on her shell is consistent with the presence of oil.

Since she is not a Class Member - she is not considered an opt-out. Ms. Iodice will be going forward with her lawsuit because she is very disappointed in the failure of the Sulzer implant, her pain and suffering for several months and her subsequent revision surgery. While she has improved since the revision she is far from 100% and if I was in her shoes I would also proceed with a lawsuit against Sulzer based on the facts and circumstances involved. Advising her otherwise so as to assist other clients amounts to malpractice.

I appreciate your investigation and I would be more than happy to send you the 2 recall letters which she received and subsequently gave to me. If you would like - I can fax them to you - please reply with you fax number.

Ms Iodice is not asking for special treatment - she understands the financial situation of the company and while she thinks her case is worth more than the settlement figures, in light of the circumstances - if she were a class member she would opt-in. I would think, at this time, that it would be in Sulzer's best interest to include her in the affected lot numbers.

Please feel free to contact me if you would like to discuss this matter.

Glenn Zuckerman

(212) 558-5583

By the way - 29 opt outs are not that many and how many of those are revision cases?

-----Original Message-----

From: Sidney A. Backstrom [mailto:sback@datasync.com]
Sent: Wednesday, April 24, 2002 10:03 AM
To: Zuckerman, Glenn
Subject: Re: Laurie Iodice

Glenn,

Thanks for the information on your client. I would like to see the letters from the Doctor and from Sulzer. I should note to you that a letter from a doctor is not necessarily instructive as many doctors who used Sulzer products sent out letters to implantees after their implants regardless of whether the lot number for the part implanted was recalled or not. You can understand why a doctor would do something like this I'm sure.

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As to your other points, you should know that early aseptic loosening is not uniquely consistent with a Sulzer defect. If a hip replacement is unsuccessful, for any reason, e.g., infection, aseptic loosening will be the failure mechanism. I'm sure you are aware also that hip replacements, in normal settings, do result in some low percentage of failures, commonly referred to as the background rate. For lots not recalled by Sulzer, the background rate is almost zero, which in a recall setting is phenomenal according to many of the experts Sulzer has retained.

Finally, I should note to you that the implant date is not late. Dr. Dorr, the physician credited with discovering this problem, first notified the company around the time frame when your client received her implant, if not later, of a phenomenon that he was experiencing but certainly that concern did not rise to the level of the need for a recall.

I point all of this out to you, not to argue points about your case but to give you an understanding of what the real facts are so that you can know the same and advise your client of the same in discussing her proceeding with her suit. I know that if I were to give my client advise to go forward with her case after giving her an explanation that she should based on the late implant date, unique Sulzer failure mode, etc., it would be an easy decision for her to move forward. However, if I told her that her case was not that great based on almost no failures in her lot, no recall, the fact that nobody knew of the defect when she was implanted, and the fact that there is a background failure rate that she was previously informed about, I would think that my recommendation to her to not pursue the case would be followed.

That being said, I will look into the specific lot number implanted into Ms. Iodice and ensure that it was supposed to be recalled. Moreover, I will attempt to get you the failure statistics for the same so that you can see why that lot wasn't recalled assuming it wasn't.

Keep in mind also that the Company was a very low tolerance for opt outs and as of the last report, there existed 29 to date. Too many (and we may already be at that number) will lead to no deal for anyone.

I look forward to getting the additional information I requested and will speak with you soon.

"Zuckerman, Glenn" wrote:

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Zuckerman, Glenn

From: Zuckerman, Glenn
Sent: Monday, April 29, 2002 3:08
To: 'Sidney A. Backstrom'
Subject: RE: Laurie Iodice

Thanks. Ideally, if in Sulzer's opinion it should have been recalled it would have been recalled already. I assume that we will deal with these 2, one way or another, after the opt-out deadline has passed.

How many opt-out are currently registered and how many of those are revision cases.

Thanks.

GZ

-----Original Message-----

From: Sidney A. Backstrom [mailto:sback@datasync.com]
Sent: Monday, April 29, 2002 3:07 PM
To: Zuckerman, Glenn
Subject: Re: Laurie Iodice

Glenn,

I checked your second lot number. It was not and should not have been recalled. Moreover, the revision statistics are well below background.

SID

"Zuckerman, Glenn" wrote:

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Glenn Zuckerman

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