

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

**IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

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**Civil Action No.: 01-CV-9000
(MDL NO. 1401)**

JUDGE O'MALLEY

**THIS DOCUMENT PERTAINS
TO ALL CASES**

ORDER

On motion of the Claims Administrator and for good and satisfactory reasons, and for the reasons described in the Claims Administrator's motion, and without objection, the Court hereby orders that the Claims Administrator make supplemental distributions of amounts in the Sulzer Settlement Trust not otherwise reserved for payment of present or anticipated claims against the Trust ("Disbursable Amounts") as described herein:

- a. From time to time, as the Claims Administrator determines circumstances permit, the Claims Administrator shall identify a Disbursable Amount from the Sulzer Settlement Trust.
- b. The Claims Administrator shall disburse any Disbursable Amount to Class Members who, in the Claims Administrator's discretion, were those most significantly injured. In making that determination, the Claims Administrator shall identify EIF recipients who, as reflected in their previous Claim submissions, were among the most seriously injured (“Supplemental Distribution Participants”). To these Supplemental Distribution Participants, the Claims Administrator shall disburse the Disbursable Amount, less any reserve for Targeted Awards described in Section (c) of this Order, *pro rata* in proportion to the Supplemental Distribution Participants’ previous Settlement awards.
- c. From each disbursement of available residue, the Claims Administrator may reserve up to a third of the Disbursable Amount, or \$1 million, whichever is smaller, for targeted awards (“Targeted Awards”) to Class Members who, in the Claims Administrator's discretion, present circumstances and injuries of a compelling need. Such Targeted Awards from the Disbursable Amount shall be in addition to any *pro rata* award to Supplemental Distribution Participants. In making a Targeted Award, the Claims Administrator shall confine his evaluation to the record already submitted by Claimants in connection with their prior Claims for Settlement benefits. Class Members

may make no new Claim submission in connection with a *pro rata* distribution or Targeted Award.

- d. No Class Member shall be entitled, pursuant to the Settlement Agreement or this protocol, to any award or benefit except such awards made by the Claims Administrator in his sole discretion. *Pro rata* and Targeted Awards may not be contested or appealed. Only Class Members who have been awarded, and who have cashed checks related to, previous *pro rata* awards may be eligible for payments pursuant to this protocol. Any check issued pursuant to this protocol must be cashed within 180 days of issuance or the sum shall revert to the Sulzer Settlement Trust.
- e. No Plaintiff's Counsel may collect more than 25% of any distribution made pursuant to this protocol.
- f. The Claims Administrator may distribute Disbursable Amounts from the residue of the Sulzer Settlement Trust pursuant to this protocol as he determines to be appropriate and advisable without further order of the Court.
- g. If the Claims Administrator mails a check to a Class Member or a Class Member's Plaintiff's Counsel, and the check is returned to the Claims Administrator as undeliverable, the Claims Administrator shall not reissue or re-mail that check unless notified within 180 days of the check's issuance of a valid address to which to send a reissued check.
- h. The Claims Administrator shall not undertake efforts to find Class Members or their attorneys whose mail is returned as undeliverable by the U.S. Postal

Service except to confirm that the check was sent to the last known address contained in the Claims Administrator's records.

- i. The Claims Administrator shall endeavor to limit costs and fees expended in implementation of this protocol and shall not incur fees and expenses in excess of \$200,000 without further order of the Court.

SO ORDERED

/s Kathleen McDonald O'Malley
Judge of the United States District Court
for the Northern District of Ohio