

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

**IN RE: INTER-OP HIP PROSTHESIS
PRODUCT LIABILITY LITIGATION**

**: Case No. 1:01-CV-9000
:
: (MDL Docket No. 1401)
:
: JUDGE O'MALLEY
:
: MEMORANDUM AND ORDER
:**

On March 12, 2002, the parties in this national class action lawsuit submitted to the Court a proposed Settlement Agreement and a joint motion for preliminary approval. The Court granted that motion on March 13, 2002, and directed that Final Notice of the proposed Settlement be published to members of the class. The Final Notice explained the terms of the Settlement Agreement; advised class members of their right to participate in, enter objections to, and/or opt out of the proposed Settlement Agreement; and informed the Class that the “final fairness hearing” was scheduled to begin on May 6, 2002.

Before the final fairness hearing, the Court received two motions – one from the Sulzer defendants and one from the Plaintiff Class – each asking the Court to enter an Order certifying the Plaintiff Class and granting final approval to the Settlement Agreement (docket nos. 315, 328). Appended to these two lengthy motions were a banker’s box worth of declarations and other evidence in support of the parties’

motions. The Court also received seven written objections to certain terms of the proposed settlement.¹ On May 6-7, 2002, the Court held its final fairness hearing to take additional evidence regarding the fairness, reasonableness, and adequacy of the proposed Settlement Agreement, the propriety of final class certification, and the propriety of granting final approval to the proposed Settlement Agreement.

During this hearing, the Court received testimony from 13 witnesses, all testifying in support of the settlement. Though given the opportunity, no objector spoke at the hearing. The Court undertook its own questioning of witnesses and pursued the concerns raised by all of the objectors, including those who had withdrawn their objections prior to the hearing. It is not an overstatement to say that the evidence weighing in favor of the proposed settlement agreement was overwhelming. Attorneys who represent hundreds of class members and who had objected strongly to an earlier proposed settlement agreement joined in a chorus of support for the current proposed Settlement Agreement. A large number of attorneys and witnesses representing disparate interests all averred they believe the Settlement Agreement has extracted from the defendants close to the best terms possible without forcing the defendants into bankruptcy – an alternative that all felt would be disastrous for the Class. One witness – who had earlier opposed both national class certification and the terms of the first proposed settlement agreement – summed up when he testified he believes the current Settlement Agreement is “the best opportunity for the most people to

¹ The Court originally received approximately 30 objections. Notably, however, many of the objectors had an incomplete or incorrect understanding of the Settlement Agreement. After speaking with Plaintiffs’ Class counsel and reviewing the Settlement Agreement in greater detail, the vast majority of the objectors withdrew their objections. Currently, there remain only seven objections. This is remarkable, given a class membership in excess of 30,000 persons.

recover the most money the soonest.’² Essentially, the message the Court received, from both represented and unrepresented Class members, was that it would be unjust and unfair if the Court did not approve the proposed Settlement Agreement.

The Court has carefully considered the sum of the evidence presented, and has also done substantial independent legal analysis of the standards applicable to the pending motions. For reasons the Court will explain at length in a separate memorandum to follow, the Court concludes that the pending motions are well-taken. That is, the Court concludes that:

- C the class (and subclasses) identified in the Fifth Amended and Consolidated Class Action Complaint, and also in the Settlement Agreement, satisfies the requirements of Fed. R. Civ. P. 23(a), as well as Fed. R. Civ. P. 23(b)(2) and (b)(3); and
- C the Notice that was sent to the Class was the best practicable under the circumstances, and satisfies the requirements of Fed. R. Civ. P. 23(c)(2) & (e); and
- C the proposed settlement was reached after extensive arms-length negotiations and is premised upon substantial inquiry into and discovery relating to all legal and factual issues relevant to the propriety of the proposed Settlement Agreement; and
- C the proposed Settlement Agreement is fair, adequate, and reasonable, and meets the requirements of Fed. R. Civ. P. 23(e).

Indeed, the Court finds that the sizeable and detailed record compiled by the parties compels the conclusion that this settlement represents an eminently fair and reasonable resolution for the entire Plaintiff Class.

² As another witness stated, “this is the best mechanism for resolution in this particular case under these particular circumstances.”

Accordingly, the parties' motions seeking an Order certifying the Plaintiff Class and granting final approval to the Settlement Agreement are both **GRANTED**.

Finally, the Court notes that, in its Order dated March 14, 2002, the Court recited the following critical dates:

- C “the Injunction Order shall remain in force until 5:00 p.m. EST, on the date twenty-one (21) business days after the Court rules on the Final Fairness of the Settlement Agreement;” and
- C “Class Members who wish to exclude themselves from the Final Settlement shall submit Notice of their intent to opt out on the date five (5) business days after the Court rules on the Final Fairness of the Settlement Agreement.”

Order at 3. Given that the Court has ruled on the final fairness of the Settlement Agreement as of May 8, 2002, the Injunction Order shall remain in force until 5:00 p.m. EST, June 7, 2002, and the opt-out deadline shall be May 15, 2002.

This Order is entered on Wednesday, May 8, 2002.

IT IS SO ORDERED.

s/Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE