

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS
LIABILITY LITIGATION

: Case No. 1:01-CV-9000
:
: (MDL Docket No. 1401)
:
: JUDGE O'MALLEY
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: MEMORANDUM AND ORDER
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This Court has entered Orders enjoining the prosecution of certain claims and proceedings “until 5:00 p.m. EST, Friday, March 15, 2002, unless otherwise agreed to by [certain] individuals . . . and ordered by the Court.” See Order at 2 (March 8, 2002) (“Injunction Order”).¹ On March 13, 2002, the Court granted the parties’ joint oral motion for preliminary approval of a proposed settlement agreement, as well as motions to amend to the class definition and to file an amended complaint. Class counsel for plaintiffs continue to spend long hours finalizing the form and content of the Final Notice of Proposed Class-Action Settlement – which must accurately reflect the terms of the conditionally approved settlement agreement, some of the terms of which were still being negotiated even yesterday.

The parties now move for a further extension of the Court’s enjoinder of the prosecution of certain proceedings contained in the Court’s Injunction Order. Specifically, the parties ask the Court to extend

¹ The Injunction Order is actually a series of Orders, beginning with an Order dated September 17, 2001 and thereafter modified by Orders dated December 20, 2001, January 31, 2002, February 1, 2002, February 21, 2002, and March 8, 2002. These latter Orders were primarily directed at extending the duration of the initial injunction; the instant Order again postpones the termination date of the injunctive relief.

the term of its Injunction Order at least through the “opt-out” date, so that the parties can seek final approval of their Settlement Agreement at the Court’s fairness hearing and gauge the receptivity of the plaintiff class to the Settlement Agreement. In other words, the parties ask the Court to give the plaintiff class an opportunity to assess the newly proposed and conditionally approved Settlement Agreement, and time to choose whether to participate. The parties also seek time to prepare adequately for the Fairness Hearing, at which time they will be required to make a more thorough presentation as to all aspects of the Settlement Agreement. The parties further state that all concerns which prompted issuance originally of the Injunction Order remain, and will remain unabated at least throughout the period opt-out period.

The Court finds the parties’ motion well-taken. “In complex cases where certification or settlement has received conditional approval, or perhaps even where settlement is pending, the challenges facing the overseeing court are such that it is likely that almost any parallel litigation in other fora presents a genuine threat to the jurisdiction of the federal court.” In re Diet Drugs, — F.3d —, 2002 WL 276128 at *10 (3rd Cir. Feb. 26, 2002) (citing Carlough v. Amchem Prods., Inc., 10 F.3d 189, 203 (3rd Cir. 1993), and In re Baldwin-United Corp., 770 F.2d 328, 337 (2nd Cir. 1985)). This circumstance only becomes more critical as the Court approaches a final fairness hearing. When a class action settlement reaches the point in time “after a conditional class certification and preliminary settlement [are] negotiated and approved by the District Court,” and approaches a final fairness hearing, “[a]ny state court action that might interfere with the District Court’s oversight of the settlement at that time . . . [is] a serious threat to the District Court’s ability to manage the final stages of this complex litigation.” Id. In other words, if anything, the need for injunctive relief has only increased.

During the next two months, counsel for the plaintiff class will complete the drafting and issuance

of Final Notice; the Court will hold a Final Fairness hearing on the Settlement Agreement, at which time it will review any objections it receives; and members of the plaintiff class will have a chance to review the Settlement Agreement and chose whether to accept or opt-out. These final stages of the settlement proceedings are as complicated and time-consuming as they are important.

Because the Court finds that continuation of the injunction as requested is critical to its ability to oversee and ultimately resolve this complex litigation, the Court now **MODIFIES** the Injunction Order again, as follows: 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**; unless otherwise agreed to by the individuals named in the Injunction Order and ordered by the Court. All other provisions of the Injunction Order remain unchanged.

Furthermore, for good cause shown and with agreement of the parties, the Court also modifies certain previously scheduled dates, as follows:

- C **Final Notice**: Final Notice, which will contain the final terms of the Final Settlement Agreement, will be mailed to Class Members on or before **March 26, 2002**.
- C **Opt-out Deadline**: 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**. All such opt-outs shall become effective **on the date five (5) business days after the Court rules on the Final Fairness of the Settlement Agreement**. Class Members who wish to do so shall submit their Notice of intent to opt out to the Court's later-designated representative anytime after April 19, 2002. The Final Notice will outline the specific manner to properly opt out.

C **Objection Deadline:** Class Members who wish to object to all or any portion of the Final Settlement Agreement shall do so between receipt of the Final Notice and **April 29, 2002**. The Final Notice will outline the specific manner to properly object.

C **Fairness Hearing:** The hearing to determine the fairness of the Final Settlement Agreement will begin on **May 6, 2002**.

IT IS SO ORDERED.

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