

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

IN RE ST. JUDE MEDICAL, INC.,  
SILZONE HEART VALVES PRODUCTS  
LIABILITY LITIGATION

MDL Docket No. 1396

**PRETRIAL ORDER NO. 18**

**ESTABLISHING PLAINTIFFS' LITIGATION EXPENSE FUND TO  
COMPENSATE AND REIMBURSE ATTORNEYS FOR SERVICES  
PERFORMED AND EXPENSES INCURRED FOR COMMON BENEFIT**

The Court finds that this order is entered to provide for the fair and equitable sharing among plaintiffs of the cost of special services performed and expenses incurred by attorneys acting for the common benefit of all plaintiffs in this complex litigation.

**Plaintiff's Litigation Expense Fund to be Established**

The Court shall establish insured interest bearing escrow accounts to receive and disburse funds as provided in this order. The Court will, by future order, designate an escrow agent to manage the account. These funds will be held as funds subject to the direction of the Court. No party or attorney has any individual right to any of these funds except to the extent of amounts directed to be disbursed to such person by order of the Court. These funds will not constitute the separate property of any party or attorney or be subject to garnishment or attachment for the debts of any party or attorney except when and as directed to be disbursed as provided by court order to a specific person. These limitations do not preclude a party or attorney from transferring, assigning, or creating a security interest in potential disbursements from the fund if permitted by applicable state laws and if subject to the conditions and contingencies of this order.

1. **Assessment**

- a. All Plaintiffs and their attorneys (except those exempted as provided herein) who, (i) either agree or have agreed – for a monetary consideration – to settle, compromise, dismiss, or reduce the amount of a claim; or (ii) with or without a trial, recover a judgment for monetary damages or other monetary relief, including compensatory and/or punitive damages, with respect to a St. Jude Medical, Inc. Silzone® related claim are subject to an assessment of the "gross monetary recovery," as provided herein.
- b. Defendants are directed to withhold this assessment from amounts paid to plaintiffs and their counsel, and to pay the assessment directly into the fund as a credit against the settlement or judgment. If for any reason the assessment is not or has not been so withheld, the plaintiff and his counsel are jointly responsible for paying the assessment into the fund promptly.
- c. No orders, praecipes or notices of dismissal or discontinuance, of any plaintiff's claim, subject to this order, shall be filed unless accompanied by a certificate of plaintiff's and defendant's counsel that the assessment has been withheld and deposited into the fund.
- d. The Plaintiffs' Executive Committee ("Leadership Committee") shall provide Defendants' Liaison Counsel, plaintiffs' counsel, the escrow agent, the Court or its designee with a list of cases and/or counsel who have entered into written agreements with the Plaintiffs' Leadership Committee. In the event there is a

dispute as to whether a case should be on the list, the Plaintiffs' Leadership Committee shall resolve the matter with the particular plaintiffs' counsel either informally or upon motion.

- e. In measuring the "gross monetary recovery":
  - i. Exclude court costs that are to be paid by the defendant,
  - ii. Exclude any payments to be made by the defendant on an intervention asserted by third-parties, such as to physicians, hospitals, and other health-care providers in subrogation related to treatment of plaintiff.
  - iii. Include the present value of any fixed and certain payments to be made in the future (except that, in lieu thereof, a plaintiff may agree to be assessed the appropriate percentage when and as future payments are received.)
- f. This Assessment Obligation:
  - i. Applies to all cases now pending, or later filed in, transferred to, or removed to, this court and treated as part of the coordinated proceeding known as *In re: St. Jude Medical, Inc., Silzone® Heart Valves Products Liability Litigation* including cases later remanded to a state court. The assessment in such cases shall be six (6) percent of the "gross monetary recovery," except for those cases described in subsections (iii) and (iv) below.
  - ii. Applies to the other federal Silzone® cases which are not transferred to this court under MDL 1396 or which are transferred back to a transferor

court by this Court or by the MDL panel for further proceedings. The assessment in such cases shall be six (6) percent of the "gross monetary recovery, except for those cases described in subsections (iii) and (iv) below.

iii. Applies to cases in a state court to the extent so ordered by the presiding judge of that court, or in the event a state court plaintiff, through counsel, consents, by written agreement with the Plaintiff's Leadership Committee or Plaintiffs' Liaison Counsel, to be subject to an MDL fee assessment. The assessment in such state court cases is limited to six (6) percent of the "gross monetary recovery."

iv. Shall not apply to cases removed from state court to federal court and then remanded to state court (based upon an order of improper removal) that have not at any time been transferred to MDL-1396 (unless subsection (iii) above applies).

g. Relief from Obligation.

The court reserves the right to relieve, wholly or partly, a plaintiff from the obligation of this order upon a showing of exceptional circumstances.

2. **Disbursements**

a. Upon order of the Court, payments may be made from the fund to attorneys who provide services or incur expenses for the joint and common benefit of plaintiffs in addition to their own client or clients. Attorneys eligible are limited to Plaintiffs' Liaison Counsel and members of the Plaintiffs' Leadership Committee, and other

attorneys called upon by them to assist in performing their responsibilities, State Liaison Counsel, and other attorneys performing similar responsibilities in state court actions in which the presiding state court judge has imposed similar obligations upon plaintiffs to contribute to this fund. All time and expenses are subject to proper and timely submission (each quarter) of contemporaneous records certified to have been timely received by Steven E. Angstreich, Esq. of Levy, Angstreich, Finney, Baldante, Rubenstein & Coren, P.C. in accord with this Court prior orders.

- b. Payments will be allowed only to companies for special services performed, and to reimburse for special expenses incurred, for the joint and common benefit of all plaintiffs.
- c. Payment may, for example, and without limitation, be made for services and expenses related to the obtaining, reviewing, indexing and paying for hard copies or computerized images of documents from the defendants; to conducting "national" and "state" depositions; and to activities connected with the coordination of federal and state litigation. The fund will not, however, be used to pay for services and expenses primarily related to a particular case, such as the deposition of a treating physician, if such activity results in some incidental and consequential benefit to other plaintiffs.

- d. Payments will not exceed the fair value of the services performed or the reasonable amount of the expenses incurred, and, depending upon the amount of the fund, may be limited to a part of the value of such services and expenses.
- e. All payments required to be made shall be made by defendants to the escrow agent. Payment to the escrow agent shall fully discharge the defendants' obligation under this order. The payments to be made to the account shall not be disclosed by the escrow agent except upon written order of the court. The purpose of maintaining confidentiality is to protect the defendants' concerns regarding disclosure of the amounts that they deposit into the escrow fund inasmuch as knowledge of such amounts would allow calculation of any sums defendants determine should be paid in satisfaction of any obligation they have to a plaintiff covered by this order. Beginning on January 1, 2003, the escrow agent shall report to the Court on a bi-monthly basis the sums that are deposited in the account together with information supplied to the agent to determine if the amount deposited is the amount required to be paid under the terms of this order. The escrow agent shall confer with the defendants and the court to determine the appropriate form that should be completed and accompany any payment to be made to the escrow agent to allow the escrow agent to verify the accuracy of any payment made.
- f. Beginning on January 1, 2003, the escrow agent shall provide Plaintiffs' Liaison Counsel and Co-Lead Counsel for Class I with a semiannual report showing only

the aggregate of the previous six months' deposits, disbursements, interest earned, financial institution charges, if any, and current balance. Plaintiffs' Liaison Counsel and Co-Lead Counsel for Class I shall not disclose the report or the information contained in the report to anyone except upon written order of the court.

- g. If defendants should reasonably conclude that the disclosure of the report to Plaintiffs' Liaison Counsel and Co-Lead Counsel for Class I is likely to compromise the confidentiality of their settlements, defendants may apply to the Court for an order prohibiting or delaying production of the semi-annual report to Plaintiffs' Liaison Counsel and Co-Lead Counsel for Class I.
- h. If the fund exceeds the amount needed to make payments as provided in this order, the Court may order a refund to those plaintiffs who have contributed to the fund. Any such refund will be made in proportion to the amount of the contributions.

3. **Modifications**

The Court reserves the power to modify the terms of this order, but no changes imposing any additional burden or obligation on plaintiffs in actions in a state court that has imposed this obligation on such parties in an order that incorporates or references this order will be made without the approval of the presiding state court judge.

IT IS SO ORDERED.

ENTERED: August 1, 2002

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Honorable John R. Tunheim