

January 16, 1997

NOTICE REGARDING FOIA REQUESTS

In the past 60 days, a large number of persons have sent to the court or Claims Office similarly-worded requests for certain information under the Freedom of Information Act relating to the Revised Settlement Program and its implementation. This notice is being sent to such persons as a response, and will be posted on the Webpage for MDL926. (In the future, the court and Claims Office will not respond individually to such requests).

Under Title 5, Section 551(1)(B) of the United States Code, courts of the United States are excluded from the definition of the agencies to which the Freedom of Information Act applies. Nor does the FOIA apply to the Claims Office established under the Lindsey case.

Although not subject to the FOIA, the court nevertheless believes that much of the information being requested is of a type that is of general interest to participants in the settlement program and may properly be disclosed without compromising the privacy interests of breast implant recipients. For this reason, the court since mid-Summer 1996 has posted periodic notices on its Webpage summarizing activities of the Claim Office under the Revised Settlement Program, including claims processed, claims approved, claims paid, opt-outs, etc. This summary can be found under the topic "Important Deadlines and Recent Developments" on the first page of the Website, which can be accessed over the Internet at:

<http://www.fjc.gov/mdl926.html>

This summary was last updated on 11/25/96. Not surprisingly, there was a flurry of filings around the time of the 12/16/96 deadlines that affected not only claimants under the Revised Settlement Program but also claimants under the separate Mentor and Bioplasty settlement funds. An update of the summary has been deferred until completion of the initial processing of these filings. The court expects that an updated summary will be posted by the end of January (and that there will be periodic revisions posted over the following months). The court will review the items contained in these recent purported "FOIA" requests to see if, perhaps, some additional matters should be included in the future summaries.

One item in the purported "FOIA" requests merits special mention; namely, the request for information regarding fees and expenses of the Plaintiffs Steering Committee members and the expenses of administering the settlement. Neither of these items has affected or will affect the amounts received or to be received by implant recipients under the Revised Settlement Program. There is a separate and special fund into which is paid an amount equal to 6% of amounts paid to implant recipients in settlements (including amounts paid under the Revised Settlement Program) and which is being held to pay "common benefit" fees and expenses. No attorneys fees have thus far been paid from this fund to PSC members, and a Special Master appointed by the court is currently involved in establishing procedures by which attorneys may make claims for reimbursement of "common benefit" expenses from this fund. Substantial administrative expenses have been incurred and will continue to be incurred by the Claims Office and Escrow Agent in reviewing and paying claims--these amounts are, however, separately paid by the settling defendants (in addition to amounts paid for settlement benefits) and do not diminish the amounts payable to implant recipients under the Revised Settlement Program. As previously described in the Notices regarding the Mentor and Bioplasty settlement funds, benefits payable to recipients of such implants are affected by administrative costs attributable to implementation of those settlements; the amount of these costs will be determined and disclosed at the time of division and distribution of the Mentor and Bioplasty settlement funds, currently anticipated to be late February 1997.