

# ASX Release

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## **SUDA UPDATE ON DISCUSSIONS WITH HC BERLIN PHARMA RECEIVER**

**PERTH, AUSTRALIA – 27 February 2017:** SUDA LTD (ASX: SUD), a leader in oro-mucosal drug delivery, advises that discussions with the Receiver for HC Berlin Pharma estate (“Receiver”) have been constructive following a recent ruling in the German courts.

As reported on 3 June 2016, the Receiver issued a Statement of Claim on SUDA for €4 million plus 5% interest and costs from August 2008. This relates to an alleged failed in-kind capital contribution in 2008 when SUDA (formerly Eastland Medical Systems) licensed manufacturing rights for SUDA’s anti-malarial spray ArTiMist® to HC Berlin Pharma, allegedly for 8 million one euro shares. SUDA took legal advice and believed that the claim was without merit. The matter was discussed in the 2016 Annual Accounts (The Directors’ Report, page 21 and Note 17, page 67)

In a closed hearing on Friday 20 January 2017 in the German courts, the judge ruled that the original 2008 in-kind contribution had failed and was thus invalid. The Company received verbal notification of the judgement at 6:30pm on Monday 23 January 2017 and the Board thought it prudent to request a trading halt on 24 January pending receipt and legal clarification of the written judgement.

Based on the judgement full ownership of the ArTiMist® manufacturing rights revert to SUDA.

On 30 January 2017, the Company’s Chairman and CEO met with the Receiver in Berlin with the intention of discussing a settlement to the matter. Whilst the meeting was constructive it became apparent that the Receiver was awaiting the outcome of an Appeal lodged in 2014 by the Receiver against an earlier judgment handed down in favour of German auditors Ebner Stolz in 2013. Ebner Stolz was originally retained by HC Berlin Pharma in 2007 to prepare a valuation of the ArTiMist® manufacturing rights as a court prerequisite to finalising the issue of shares to SUDA in relation to the now disputed in-kind contribution.

During the recent meeting, the Receiver indicated that any settlement with SUDA could prejudice the Receiver’s claim against Ebner Stolz. The Receiver further advised that a final court ruling on the Appeal (lodged in 2014) is expected in 2017. Based on the outcome of this ruling, or any negotiated settlement with Ebner Stolz, the Receiver may choose to withdraw or assign its claim against SUDA.

SUDA is entitled to, and has now initiated an Appeal against the recent court judgement. Based on legal advice, the Board of SUDA believes the judgment contains both errors in fact and in law. Upon lodgement of the Notice to Appeal by SUDA the judgement against SUDA is automatically stayed in Germany and cannot be enforced unless the Receiver places a security equal to the judgement plus 10% (€4.4 million) with the courts.

The Receiver has verbally committed to a stay on any proceedings until there is an outcome in the Ebner Stoltz case. It is the Board's opinion that the Appeal lodged by SUDA is unlikely to be determined until 2018 at the earliest.

Any registration and subsequent enforcement of the judgment against SUDA in Australia (under the applicable Australian legislation) is not possible whilst the judgment is stayed in Germany.

Mr Stephen Carter, SUDA's Managing Director & CEO, commented: "Following the German court judgement, we are pleased that the manufacturing rights for ArTiMist® revert to SUDA. Whilst we have had constructive discussions with the Receiver, the inability of the Receiver to agree to a settlement at this time resulted in the Board taking legal advice on the merits and process of Appeal in Germany, as well as the enforcement process in Australia. We have taken our time to consider the implications and have agreed with our advisors that the most prudent path forward was to initiate the Appeal process in Germany.

The Company had pro-forma cash as at 31 December 2016 of \$2.1 million, based on the reported cash of \$1.2 million plus the R&D Tax Incentive refund of \$0.9 million received in February 2017. The current cash burn rate, in the absence of anticipated income from licensing deals, is approximately \$0.2 million per month. Based on this and on the understanding that the Company has access to additional capital if strengthening the balance sheet becomes prudent and/or is of strategic value to the Company, the board is confident that the Company has access to sufficient funds to continue trading.



**Further information:**

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**NOTES TO EDITORS:**

**About SUDA LTD**

SUDA LTD (ASX: SUD) is a drug delivery company focused on oro-mucosal administration, headquartered in Perth, Western Australia. The Company is developing low-risk oral sprays using its OroMist® technology to reformulate existing pharmaceuticals. The many potential benefits of administering drugs through the oral mucosa (ie: cheeks, tongue, gums and palate) include ease of use, lower dosage, reduced side effects and faster response time. SUDA's product pipeline includes Zolpimist™, a first-in-class oral spray of zolpidem for insomnia. Zolpimist™ is marketed in the USA and SUDA has rights to the product outside of North America. SUDA's most advanced development-stage product, ArTiMist®, is a novel sublingual malaria treatment for children. In a Phase III trial, ArTiMist® was shown to be superior to intravenous quinine. Other products in development include oral sprays for the treatment of migraine headache, chemotherapy-induced nausea and vomiting, erectile dysfunction and pre-procedural anxiety. For more information, visit [www.sudaltd.com.au](http://www.sudaltd.com.au)