

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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CLERK OF COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

	:	Case No. 1:01-CV-9000
	:	
IN RE: SULZER HIP PROSTHESIS	:	(MDL Docket No. 1401)
AND KNEE PROSTHESIS	:	
LIABILITY LITIGATION	:	JUDGE O'MALLEY
	:	
	:	SUPPLEMENTAL MEMORANDUM IN
	:	SUPPORT OF HACKERMAN FRANKEL'S
	:	REQUEST FOR COMMON BENEFIT
	:	FEES

TO: The Honorable Kathleen O'Malley

On or about June 12, 2003, the Court signed an order awarding certain law firms common benefit fees. The Court withheld awards to eleven firms who, although they had earned such awards, may have engaged in conduct that was detrimental to the plaintiff class. The Court ordered Hackerman Frankel, P.C. and the other firms to file a formal explanation within fourteen days. In compliance with the Court's order, Hackerman Frankel, P.C. files this memorandum.

Hackerman Frankel represented 26 clients who were implanted with hip or knee implants manufactured by Sulzer Orthopedics. Of Hackerman Frankel's 26 clients, 6 were fortunate enough to have not needed revision surgery. As of the May 2002 fairness hearing, Hackerman Frankel believed that each of its other 20 clients were members of the class entitled to the settlement benefits available to those who had undergone revision surgery.

After discovering that two clients were not class members in the fall of 2002, Hackerman Frankel immediately notified these two clients that they were not entitled to benefits under the

class settlement because they were not class members. Hackerman Frankel then contacted Sulzer's counsel to see how the company intended to deal with the claims of non-class members who had undergone revision surgeries. Sulzer's counsel replied by noting that the two clients were not in the class because their implants were manufactured at Cycam in Pennsylvania and that there was no reason to believe that the Cycam manufacturing process was defective or that the failure of the implants was Sulzer's fault. After further investigation and discussions with its two non-class clients, Hackerman Frankel declined to continue to represent them and returned their files and medical records, leaving it to the client to decide whether to pursue litigation with other counsel. Hackerman Frankel sent each client a letter documenting the reasons Hackerman Frankel was withdrawing from representing these clients in any litigation against Sulzer. If the Court requests, Hackerman Frankel will submit copies of the two letters to the Court for *in camera* inspection.

Once Hackerman Frankel concluded that it could not continue to prosecute cases against Sulzer on behalf of two non-class member clients—on the same theories asserted by the class or any other theory—Hackerman Frankel resigned from such representation. Hackerman Frankel has never participated in any conduct contrary to the interests of the certified class. Rather, Hackerman Frankel fought hard for the interests of the class members from the beginning until the end of the litigation. As a result of those efforts, each class member received substantial benefits.

For the reasons stated herein, Hackerman Frankel P.C. respectfully requests that the Court disburse the common benefit fees the Court has determined were earned by Hackerman Frankel, P.C. in connection with its work in the Sulzer litigation.

Respectfully submitted,

HACKERMAN FRANKEL, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served on the following counsel of record by Certified Mail/Return Receipt Requested on this 18th day of June, 2003.

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