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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

5 **IN THE UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF OHIO**
7 **EASTERN DIVISION**

8 Among,
9 SULZER ORTHOPEDICS, INC.,
10 SULZER MEDICA AG,
11 SULZER AG,
12 and
13 CLASS COUNSEL ON BEHALF OF
14 CLASS REPRESENTATIVES
IN RE SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS LIABILITY
LITIGATION.

No. 1:01-CV-9000
(MDL Docket No. 1401)

**CLAIMANT MARGUERITE
MCNEILL'S APPEAL RE:
ATTORNEYS FEES**

(Judge O'Malley)

16 Pursuant to Sulzer Implant Settlement Class Action Agreement, Section 4.6F,
17 Plaintiff MARGUERITE MCNEILL, through undersigned counsel Jeffrey J. Rogers and
18 David L. Bjorgaard, hereby files her appeal to the Notice of Claims Administrator's Final
19 Determination, dated May 20, 2003. (See, **Exhibit 1** attached).

20 As for the award of attorney fee benefits being zero, this is not appropriate.
21 Article 5, Section 5.1 of the settlement states in part "nothing in this agreement is
22 intended to void or otherwise alter reasonable contingency fee contracts entered into
23 on or prior to February 2, 2002 for payments due to class members...". Section 3.4
24 states the manner in which the Sulzer Settlement Trust will calculate the portion of
25 attorneys fees to be paid from the trust. In this case, \$160,000 has already been
26 approved for payment to Ms. McNeill and \$130,000 of that has already been paid, yet
27 somehow the attorney fee award set forth in the Administrator's final determination is
28 "zero."

1 Ms. McNeill contacted a lawyer in the beginning of 2001. She ultimately entered
2 a contingency fee agreement with that lawyer, James Studwell, in July of 2001,
3 although the fee agreement was not ultimately signed by Ms. McNeill until September
4 of 2001. See, **Exhibit 2**, attached. Mr. Studwell continued to represent her through
5 and including May of 2002. See, **Exhibits 3-8**. Ultimately undersigned counsel's office
6 took over the representation of Ms. McNeill and continued in the place of Studwell. See,
7 **Exhibit 9**. In this regard, Ms. McNeill was continuously represented by an attorney
8 going back well before the February, 2002 deadline. Both Mr. Studwell's office and our
9 office entered contingency fee agreements with Ms. McNeill, copies of which you now
10 have. This was all explained to the Claims Administrator and all the attached
11 documentation was previously provided. See, **Exhibit 10**.

12 In the event Sulzer does not honor the provisions of the class action settlement
13 with respect to attorneys fees, Mr. Studwell's office and undersigned counsel's office
14 will have no other recourse but to seek out fees from the monies awarded to Ms.
15 McNeill. However, that is neither the intent nor the specific requirements of the class
16 action settlement. The position of Sulzer with respect to attorneys fees could be
17 justified if Ms. McNeill had not been represented prior to February, 2002, or had
18 otherwise not been continually represented prior to February, 2002 and continuing
19 through February, 2002 to the present. As noted previously, and as further
20 documented herein, the legal representation of Ms. McNeill continued prior to and
21 through February, 2002.

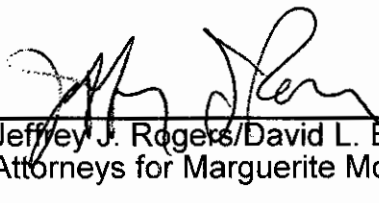
22 In addition, in the final determination, a copy of which is attached hereto, under
23 the affected product revision surgery benefits Orange Form, the table indicates that
24 GPO was not elected. However, Ms. McNeill did elect the GPO option some time ago
25 and the records reflect that.

26 For the foregoing reasons, Ms. McNeill, through undersigned counsel, is
27 requesting that this Court order Sulzer Settlement Administrator to award the attorneys
28 fees as specified in the class action settlement, said fees to be awarded to the law firm

1 of James Studwell as well as the law firm of Hirsh, Bjorgaard & Rogers, P.L.C., at which
2 point the firms will distribute the funds between the firms accordingly.

3 RESPECTFULLY SUBMITTED this 16th day of June, 2003.

4 HIRSH, BJORGAARD & ROGERS, P.L.C.

5 
6 _____
7 Jeffrey J. Rogers/David L. Bjorgaard
8 Attorneys for Marguerite McNeill

9 ORIGINAL AND ONE copy of the
10 foregoing mailed, via certified mail, this
11 16th day of June, 2003

12 Clerk of the Court
13 U.S. District Court
14 Northern District of Ohio
15 Eastern Division
16 Carl B. Stokes United States Court House
17 801 West Superior Avenue
18 Cleveland, Ohio 44113-1830

19 COPY of the foregoing mailed this
20 16th day of June, 2003:

21 Claims Administrator
22 P.O. Box 94558
23 Cleveland, Ohio 44101-4558
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