

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
Southern Division

IN RE: )  
)  
SILICONE GEL BREAST IMPLANT ) Master File No. CV-92-P-10000-S  
PRODUCTS LIABILITY LITIGATION )  
(MDL 926) )

**ORDER NO. 33C**

**APPROVING BIOPLASTY PRODUCT CLAIMANT TRUST FEES AND EXPENSES, THE TRANSFER OF TRUST LIQUID ASSETS TO COMPASS BANK, AND LIQUID ASSET ESCROW AND CUSTODIAN AGREEMENTS, AND REQUIRING REPAYMENT OF LOAN MADE TO THE PLAINTIFFS' NATIONAL STEERING COMMITTEE**

To facilitate the distribution of funds as provided in the distribution plan for the Bioplasty Product Claimant Trust (the "Trust"), as approved by Order No. 33A entered October 14, 1996, the Court will require the transfer of liquid Trust assets, other than Trust stock in the Debtors of the Bioplasty Consolidated Bankruptcy or Trust accounts receivable from the Debtors (the "Liquid Assets") to a separate fund, to be named the Bioplasty Settlement Fund, to be held by Compass Bank, Birmingham, Alabama ("Compass Bank"), as Custodian, and managed by Edgar C. Gentle, III, Esq., as Escrow Agent.

Prior to said transfer, the charges against the liquid assets of the Trust that are approved by this Order are to be paid by the Trustees of the Trust. Shortly after the transfer, the Common Benefit Litigation Expense Fund, on behalf of the Plaintiffs' National Steering Committee (the "PSC"), shall be required to repay to the Trust, by transfer to the Bioplasty Settlement Fund, the balance on the \$1 million loan made by the Trust to the PSC on September 13, 1994 (the "Bioplasty Loan").

**I.**

**APPROVAL OF TRUST CHARGES**

The Court hereby approves, and, further, authorizes empowers and directs the Trust to pay on or before December 31, 1996, (i) legal fees and expenses of \$9,419.73 to Trust counsel, Lindquist & Vennum, P.L.L.P.; (ii) Trustee fees of \$3,250.00 to Mr. F.G. Hamilton; and (iii) Trustee fees of \$6,000.00 to Ms. Sybil Niden Goldrich.

On October 3, 1996, Charles S. Zimmerman, Esq., on behalf of the law firm of Zimmerman Reed, P.L.L.P. ("Zimmerman Reed"), submitted to the Court a proposed fee application for services rendered and expenses incurred

on behalf of the Trust from May 19, 1993 through September 27, 1996, in connection with representing the interests of Bioplasty Product Claims in the Chapter 11 bankruptcy proceeding of Bioplasty, Inc., Bio-Manufacturing, Inc., and Uroplasty, Inc. (the "Debtors").

Upon reviewing the fee application of Zimmerman Reed, the Court finds that the total number of 852.40 hours requested should be reduced by 55.55 hours, the time expended by Zimmerman Reed before the April 29, 1993 opening of the Consolidated Bankruptcy Estates of the Debtors. Therefore, this Court approves payment for 796.85 of the 852.40 hours requested. The Court finds the following compensation to be fair and reasonable: (i) 480.25 hours for Charles Zimmerman, Esq., at a rate of \$200.00 per hour, for a total of \$96,050.00; (ii) 3.80 hours for Barry Reed, Esq., at a rate of \$200.00 per hour, for a total of \$760.00; (iii) 1.40 hours for Ronald Goldser, Esq., at a rate of \$200.00 per hour, for a total of \$280.00; (iv) 4.00 hours for Frederick McNeill, Esq., at a rate of \$195.00 per hour, for a total of \$780.00; (v) 2.10 hours for Robert Hopper, Esq., at a rate of \$195.00 per hour, for a total of \$409.50; (vi) 102.35 hours for J. Gordon Rudd, Jr., Esq., at a rate of \$160.00 per hour, for a total of \$16,376.00; (vii) 62.80 hours for Keelyn Friesen, Esq., at a rate of \$80.00 per hour, for a total of \$5,024.00; (viii) 89.55 hours for Keelyn Friesen, Esq., at a rate of \$110.00 per hour, for a total of \$9,850.50; (ix) 26.95 hours for Keelyn Friesen, Esq., at a rate of \$175.00 per hour, for a total of \$4,716.25; (x) 14.75 hours for Jennifer Sustacek, Esq., at a rate of \$110.00 per hour, for a total of \$1,622.50; (xi) 4.20 hours for Hart Robinovitch, Esq., at a rate of \$110.00 per hour, for a total of \$462.00; and (xii) 4.70 hours for Mr. John Lorentz, at a rate of \$75.00 per hour, for a total of \$352.50; for total compensation in the amount of \$136,683.25.

Zimmerman Reed also applied for the reimbursement of expenses incurred on behalf of the Trust in the amount of \$33,243.74. The Court finds that the expenses incurred are reasonable and are due to be reimbursed.

The Court hereby determines that a fair amount of interest should be paid on the outstanding fee balance of Zimmerman Reed. The Court finds that Zimmerman Reed is due to be paid interest in the amount of \$16,569.27, which was determined by applying the Applicable Federal Rate under the Internal Revenue Code of 1986 for imputed interest, for each semi-annual period covered by the fee request, to the outstanding fee balance.

Therefore, the Court hereby approves Zimmerman Reed's application for compensation in the amount of \$186,496.26.

Accordingly, the Court hereby authorizes and directs the Trust to pay to Zimmerman Reed the amount of

\$186,496.26 on or before December 31, 1996, constituting payment of Zimmerman Reed's fee application for services and expenses incurred on behalf of the Trust.

## **II.**

### **TRANSFER OF TRUST LIQUID ASSETS TO COMPASS BANK**

To facilitate the establishment of the Bioplasty Settlement Fund with the Trust Liquid Assets, it is hereby ORDERED, ADJUDGED and DECREED as follows:

(i) The Court authorizes, empowers and directs the Trust to transfer the Trust Liquid Assets, on January 2, 1997, from the Trust, currently being managed by U.S. Trust, to Compass Bank, as Custodian for the Bioplasty Settlement Fund. Upon such Liquid Asset transfer, the Trustees of the Trust, Charles S. Zimmerman, Sybil Niden Goldrich, and F.G. Hamilton, shall have no duties or liabilities in connection with the future management thereof. Upon the creation of additional Trust Liquid Assets, due to the liquidation of the remaining assets in the Trust, the Trustees shall transfer such additional Trust Liquid Assets to Compass Bank, as Custodian of the Bioplasty Settlement Fund;

(ii) The Court approves the Escrow Agreement for the Liquid Assets of the Trust to comprise the Bioplasty Settlement Fund, a copy of which is attached as Exhibit A and is incorporated herein by reference, with Edgar C. Gentle, III serving as the Escrow Agent for the Bioplasty Settlement Fund, and the Court hereby authorizes, empowers and directs the PSC to enter into the Escrow Agreement on behalf of the Bioplasty Settlement Fund; and

(iii) The Court approves the Agreement for Custodian Services by and between the Bioplasty Settlement Fund and Compass Bank, a copy of which is attached as Exhibit B and is incorporated herein by reference, and the Court hereby authorizes, empowers and directs Edgar C. Gentle, III, as Escrow Agent, to enter into the Custodian Agreement on behalf of the Bioplasty Settlement Fund.

## **III.**

### **REPAYMENT OF THE BIOPLASTY LOAN**

The Court takes judicial notice of the \$1 million Bioplasty Loan made by the Trust to the PSC on September 13, 1994, without a stated interest rate. The Applicable Federal Rate imputed to the Bioplasty Loan in accordance with the Internal Revenue Code of 1986 results in a Bioplasty Loan balance of \$1,146,620.67 as of January 1, 1997. In order to provide the Bioplasty Settlement Fund with additional liquid reserves prior to the

payment of claims, the Court hereby ORDERS and DECREES that the Common Benefit Litigation Expense Fund, on behalf of the PSC, shall pay to the Bioplasty Settlement Fund, for receipt on behalf of the Trust, the Bioplasty Loan balance of \$1,146,620.67 on or before January 15, 1997.

Dated this 10th day of December, 1996.

/s/ Sam C. Pointer, Jr.

Sam C. Pointer, Jr.

United States District Court Chief Judge