

SN066 ALI-ABA 569

American Law Institute - American Bar Association Continuing Legal Education
ALI-ABA Course of Study
May 29 - 31, 2008

Mass Litigation

*569 IN RE: SULZER HIP PROSTHESIS AND KNEE PROSTHESIS PRODUCT LIABILITY LITIGATION (MDL NO. 1401): SELECTED CLAIMS ADMINISTRATOR PROCEDURES AND REPORTS

Submitted by David R. Cohen
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Cleveland, Ohio

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SULZER SETTLEMENT TRUST CLAIMS ADMINISTRATOR PROCEDURE

CAP No.	1	Effective Date	April 29, 2002
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SUBJECT	Establishment of System for Creating and Tracking Sulzer Settlement Trust Claims Administrator Procedures
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***571 1. Purpose.** The Claims Administrator will, from time to time be required to exercise his discretion in processing and paying Claims for benefits under the Class Action Settlement Agreement in *In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation* (“Settlement Agreement”). The purpose of this Claims Administrator Procedure (“CAP”) is to ensure that the Parties to the Settlement Agreement understand how the Claims Administrator will exercise his discretion, and to ensure that Claims processing policies are applied consistently to all Class Members. Capitalized terms not otherwise defined in this CAP shall have the meanings given them in the Settlement Agreement.

2. Promulgation of CAPs. When a claims processing question arises under the Settlement Agreement that needs clarification or requires the Claims Administrator’s exercise of discretion, the Claims Administrator may promulgate a CAP. CAPs shall be consistent with the terms of the Settlement Agreement and with the intent of the Parties to the Settlement Agreement and shall be not be interpreted to be inconsistent with the Settlement Agreement. Any person making an objection to any proposed CAP shall submit that objection to the Claims Administrator in writing. Pursuant to Section 9.1 of the Settlement Agreement, the Court retains the exclusive and continuing jurisdiction to interpret and enforce the terms and conditions of the Settlement Agreement.

3. Process for Implementing CAPs. Before implementing a CAP, the Claims Administrator shall seek the advice and comment of Class Counsel and the State Special Counsel Committee. Wherever feasible, CAPs shall be implemented with the concurrence of Class Counsel and the State Special Counsel Committee, but the Claims Administrator may promulgate a CAP without such concurrence.

4. Discretion of Claims Administrator. Nothing in this CAP shall be construed to limit the authority of the Claims

IN RE: SULZER HIP PROSTHESIS AND KNEE PROSTHESIS..., SN066 ALI-ABA 569

Administrator to exercise the discretion vested in him by the Settlement Agreement.

5. Dissemination of CAPs. The Claims Administrator shall deliver to the Court, Class Counsel, the State Special Counsel Committee, and to Sulzer a copy of any new CAP as soon as it is adopted. The Claims Administrator shall maintain a compendium of all CAPs and shall publish them on the Sulzer Settlement Trust website. To the extent practicable, the Claims Administrator shall send an advisory that a new CAP has been adopted by electronic mail to Class Members and/or to attorneys known by the Claims Administrator to represent Class Members, if such electronic mail address is known and available to the Claims Administrator. This advisory will direct recipients to the Sulzer Settlement Trust website to view the new CAP. *572 The Claims Administrator shall not be required to independently verify the accuracy of the electronic mail addresses for recipients of this advisory.

6. Duration of this CAP. This CAP shall apply to all Claims processed or paid after the Effective Date stated above and shall terminate upon the earlier of: (i) cancellation or modification of this CAP by the Claims Administrator; or (ii) an order of the Court canceling or modifying the terms of this CAP.

APPROVED:

SULZER

By: _____ (signature)

Name: SIDNEY A. BACKSTROM (printed or typed)

Date: APRIL 29, 2002

CLAIMS ADMINISTRATOR

By: _____ (signature)

Name: JAMES J. McMONAGLE (printed or typed)

Date: APRIL 29, 2002

SULZER SETTLEMENT TRUST CLAIMS ADMINISTRATOR PROCEDURE

CAP No.	3	Effective Date	July 10, 2002
SUBJECT	Payment of Settlement Benefit Checks to Class Members and to Attorneys Representing Class Members		

***573 1. Purpose.** A Class Member who claims benefits under the Class Action Settlement Agreement in *In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation* (“Settlement Agreement”) may have a contractual relationship with an attorney for fees and for costs advanced on the Class Member’s behalf. This CAP clarifies how the Claims Administrator will pay benefits from the Affected Product Revision Surgery Fund and the Extraordinary Injury Fund to Class Members and to their counsel.

2. Joint Payments to Class Members and their Counsel. For a Class Member, who is represented by counsel, and who is entitled to benefits from the Affected Product Revision Surgery Fund or the Extraordinary Injury Fund, the Claims Administrator shall make payment of those benefits jointly to the Class Member and any attorney or attorneys representing a Class Member. Apart from administering the limited Attorney Fee benefits provided in the Settlement Agreement, see Article 5 (Attorneys’ Fees) and Section 2.2(e)(Professional Services Fund and Plaintiffs’ Counsel Sub-Fund), the Claims Administrator and the Sulzer Settlement Trust, have no role to play in performing accountings for the disbursement of settlement benefits as between Class Members and their counsel.

3. Determination of Class Member Representation. The Claims Administrator shall deem a Class Member to be represented by an attorney if the Class Member or his/her attorney submits (i) a Claim Form, signed by the Class Member, indicating such representation or, (ii) another appropriate document, signed by the Class Member, identifying the attorney as his/her counsel. If an attorney submits a document, as described in (ii) of this section, the attorney shall also affirmatively represent that he/she has, on the date the attorney submits the document to the Claims Administrator, a valid agreement to represent the Class Member in connection with the Class Member’s claim for benefits. If a Claim does not contain evidence, as described in (i) and (ii) above, that a Class Member acknowledges representation by an attorney or attorneys who claim to represent a

IN RE: SULZER HIP PROSTHESIS AND KNEE PROSTHESIS..., SN066 ALI-ABA 569

Class Member, the Claims Administrator shall seek written confirmation from the Class Member of the claimed representation.

4. Duration of this CAP. This CAP shall apply to all Claims processed or paid after the Effective Date stated above and shall terminate upon the earlier of: (i) cancellation or modification of this CAP by the Claims Administrator; or (ii) an order of the Court canceling or modifying the terms of this CAP.

***574 APPROVED:**

CLAIMS ADMINISTRATOR

By: _____ (signature)

Name: James J. McMonagle (printed or typed)

Date: _____

CLASS COUNSEL

By: _____ (signature)

Name: R. Eric Kennedy (printed or typed)

Date: July 10, 2002

SULZER SETTLEMENT TRUST CLAIMS ADMINISTRATOR PROCEDURE

CAP No.	8	Effective Date	July 10, 2002
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SUBJECT	Approval of Claims Administrator Contracts by the Court
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***575 1. Purpose.** The Class Action Settlement Agreement in *In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation* (“Settlement Agreement”) states “Other than provided herein, the Court shall have the power to approve ... the execution of contracts as necessary and appropriate to assure the administration of this Settlement Agreement.” [SA §9.1]. This Claims Administrator Procedure (“CAP”) clarifies the process for approval by the Court of contracts entered into by the Claims Administrator. Capitalized terms not otherwise defined in this CAP shall have the meanings given them in the Settlement Agreement.

2. Satisfactory Submission to the Court. Prior to execution by the Claims Administrator of a contract which requires expenditures of \$25,000 or more by the Sulzer Settlement Trust or by Sulzer in connection with claims administration before the Funding Date, (“Proposed Contract”), the Claims Administrator shall submit the Proposed Contract to the Court and to Class Counsel. The Proposed Contract shall indicate that the party or parties with whom the Claims Administrator proposes to contract (“Contracting Party”) has the ability to perform the contracted functions in accordance with the Settlement Agreement. The Proposed Contract shall indicate that the Contracting Party has reviewed the Settlement Agreement and all CAPs in existence at the time of execution of the Proposed Contract.

3. Court’s Approval of Proposed Contract. In his submission of a Proposed Contract to the Court, the Claims Administrator shall provide a sketch Order for the Court to grant or deny approval of the Proposed Contract. The Order shall be in a form substantially identical to that in Exhibit A to this CAP.

4. Duration of this CAP. This CAP shall apply from the Effective Date stated above and shall terminate upon the earlier of: (i) cancellation or modification of this CAP by the Claims Administrator; or (ii) an order of the Court canceling or modifying the terms of this CAP.

***576 APPROVED:**

CLAIMS ADMINISTRATOR

By: _____ (signature)

Name: James J. McMonagle (printed or typed)

Date: July 10, 2002

CLASS COUNSEL

By: _____ (signature)

Name: R. Eric Kennedy (printed or typed)

IN RE: SULZER HIP PROSTHESIS AND KNEE PROSTHESIS..., SN066 ALI-ABA 569

Date: July 10, 2002

***577 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION**

IN RE: SULZER HIP PROSTHESIS AND KNEE PROSTHESIS PRODUCT LIABILITY LITIGATION

Case No. 1:01-CV-9000 (MDL Docket No. 1401) JUDGE O'MALLEY

ORDER

Pursuant to Claims Administrator Procedure No. 8, the Claims Administrator has submitted for the Court's approval a proposed contract between the Claims Administrator and [insert name]. The Court has reviewed the proposed contract and concludes that it is necessary in the furtherance of the aims of the Settlement Agreement and does hereby grant approval for the Claims Administrator to enter into such proposed contract, a copy of which is attached to this Order.

Any breach of the terms of the Settlement Agreement may void this Order. Pursuant to Section 9.1 of the Settlement Agreement, the Court retains the exclusive and continuing jurisdiction to interpret and enforce the terms and conditions of the Settlement Agreement, and to resolve any dispute or enforce any provision in respect of this contract.

SO ORDERED

Kathleen M. O'Malley Judge.

SULZER SETTLEMENT TRUST CLAIMS ADMINISTRATOR PROCEDURE

CAP No.	2	EFFECTIVE DATE	MARCH 14, 2003
	9		

SUBJECT	Extensions from Claim Processing and Submission Deadlines for Class Members
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***578 1. Purpose.** Articles 3 and 4 of the Settlement Agreement prescribe certain deadlines by which Class Members must submit Claims for Settlement benefits. Some Class Members may, by reason of inadvertence, excusable neglect, newly discovered evidence, or fraud, be unable to meet a deadline. This Claims Administrator Procedure ("CAP") clarifies the circumstances and procedure under which the Claims Administrator may grant an extension of time for the submission of a Claim or other document required by the Settlement Agreement. Capitalized terms not otherwise defined in this Claims Administrator Procedure ("CAP") shall have the meaning given them in the Settlement Agreement.

2. CAP Does Not Affect Deadlines for Accrual of Qualifying Injury. This CAP shall not be construed to permit the Claims Administrator to extend the date by which any injury, otherwise compensable by the terms of the Settlement Agreement, may occur. By way of example, Section 3.4(b) of the Settlement Agreement permits certain Class Members implanted with an Inter-Op Shell to make a Claim for APRS Fund benefits if they undergo a revision surgery by June 5, 2003. This CAP shall not be construed to permit the Claims Administrator to modify the date of injury accrual prescribed by the Settlement Agreement, except insofar as the Settlement Agreement specifically vests the Claims Administrator with such discretion. See e.g., Settlement Agreement Annex IV, footnote 1 ("The Claims Administrator may, [under certain circumstances] at his/her discretion, extend this compensable time period by 180 days.")

3. Claims Administrator May Extend Deadline for Submission of a Claim or Other Required Document. Subject to the limitations of this CAP, the Claims Administrator may grant a Class Member an extension of time in which to submit a Claim or other document required by the Settlement Agreement or applicable CAP. Such extension may be granted *nunc pro tunc* even if the date by which the submission was originally required has passed.

4. Circumstances Giving Rise to a Permissible Extension of Time. If a Class Member is unable, or was unable, to submit a Claim for Settlement benefits in the amount of time permitted by the Settlement Agreement or applicable CAP, the Claims Administrator may grant an extension of time if the failure to timely submit was related to:

- a. mistake, inadvertence, surprise, or excusable neglect;
- b. newly discovered evidence which by due diligence could not have been discovered in time to make a timely submission; or
- c. fraud, misrepresentation, or other misconduct of some party other than the Class Member or his or her counsel.

579 5. *Certain Circumstances Not Permissible Basis for Extension of Time. The Claims Administrator shall not grant an extension of time for the submission of a Claim or other required document where the Class Member's reason for requesting an extension is:

- a. the Class Member and/or his or her attorney were unaware of a deadline that was clearly articulated in the Settlement Agreement or CAP promulgated 30 days or more before the date by which the Class Member was required to make the submission for which he or she seeks an extension of time;
- b. the Class Member and/or his or her attorney was aware of how the Settlement Agreement or CAP in question prescribes a deadline should be calculated, but miscalculated by arithmetic or other error what the deadline was;
- c. the Class Member and/or his or her attorney allege that he or she did not receive adequate notice of the Settlement Agreement at or before the time the Settlement Agreement received Trial Court Approval or Final Judicial Approval;
- d. the Class Member alleges that he or she was relying on the advice and/or conduct of his or her chosen attorney to make a timely submission, and such attorney did not, and such omission or late submission by the attorney is not otherwise excused pursuant to this CAP.

6. *Certain Circumstances May Be Permissible Basis for Extension of Time.* The Claims Administrator may, in the exercise of his discretion, grant an extension of time, pursuant to Paragraphs 3 and 4 of this CAP, if a Class Member can satisfactorily allege and prove, by affidavit, or other extrinsic evidence, one or more of the following circumstances:

- a. The Class Member and/or his or her attorney were physically incapable, by reason of disease or physical condition, of performing the tasks necessary to timely make a submission and the Class Member and/or his or her attorney made the required submission as soon as physical circumstances permitted;
- b. The Class Member is a person protected by the Soldiers and Sailors Relief Act, 50 U.S.C. §§ 501 *et seq.*, from the prejudicial operation of deadlines during a qualifying time of service and makes a submission in a timely manner provided by that Act;
- c. The Class Member and/or his attorney were materially misled by some person in a position of authority upon whom he or she reasonably relied in believing that a submission was timely when in fact it was not.

7. *Claims Administrator's Considerations When Considering Extension of Time for Excusable Neglect.* When considering whether to grant an extension of time pursuant to this CAP, the Claims Administrator shall consider:

- *580 a.** the danger of prejudice to any Party or to the Sulzer Settlement Trust in granting the extension;
- b. the length of the delay caused by the untimely submission and its effect on Claims administration and/or the Sulzer Settlement Trust;
- c. the reason for the neglect, if any, including whether such neglects was in the reasonable control of the Class Member requesting an extension of time; and
- d. whether the Class Member acted in good faith.

8. *Claims Administrator's Discretion.* The reasons listed in Paragraphs 5 and 6 of this CAP for denial and consideration of a request for an extension of time are not exhaustive and the Claims Administrator may refuse or grant a request for extension of time for reasons not enumerated in those Paragraphs. The decision to grant or deny an extension of time, pursuant to this CAP, rests in the discretion of the Claims Administrator.

9. *Procedure for Requesting Extension of Time Pursuant to this CAP.* A Class Member who seeks an extension of time pursuant to this CAP shall submit a written request for such extension to the Claims Administrator at P.O. Box 94558, Cleveland, Ohio 44101-4558 by the later of 60 days of the Effective Date this CAP or 60 days from the day the Class Member learns that he or she has, or will, failed to meet a deadline prescribed by the Settlement Agreement or applicable CAP. The request shall include a statement explaining the lateness of the submission and the date on which the Class Member discovered the submission was, or would be, late.

10. *Duration of this CAP.* This CAP shall be effective from the Effective Date stated above and shall terminate upon the earlier of: (i) cancellation or modification of this CAP by the Claims Administrator, or (ii) an order of the Court canceling or modifying the terms of this CAP.

***581 APPROVED:**

CLAIMS ADMINISTRATOR

IN RE: SULZER HIP PROSTHESIS AND KNEE PROSTHESIS..., SN066 ALI-ABA 569

By: _____ (signature)

Name: James J. McMonagle

Date: 3-14-03

CLASS COUNSEL

By: _____ (signature)

Name: R. Eric Kennedy

Date: 3-13-03

SULZER SETTLEMENT TRUST CLAIMS ADMINISTRATOR PROCEDURE

CAP	3	EFFECTIVE DATE REVISED	MARCH 14, 2003 MAY 13, 2003
No.	0		

SUBJ **Procedures for Appealing a Final Determination**
ECT

***582 1. Purpose.** Section 4.6(f) of the Settlement Agreement in *In re: Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, MDL No. 1401 (“Settlement Agreement”) provides that Class Members may appeal a Final Determination issued by the Claims Administrator. This Claims Administrator Procedure (“CAP”) clarifies the procedures for conducting such an appeal. Capitalized terms not otherwise defined in this Claims Administrator Procedure (“CAP”) shall have the meaning given them in the Settlement Agreement.

2. Time and Method for Noting an Appeal. The Settlement Agreement prescribes that Class Members must give Notice of an Appeal, by filing a Notice with the Court and delivering a copy to the Claims Administrator, within 30 days of the issuance of an adverse Final Determination (“Appealed Final Determination”). Class Members shall serve the Notice of Appeal upon the Claims Administrator by letter to the Claims Administrator at P.O. Box 94558, Cleveland, Ohio 44101-4558.

3. Content of Notice of Appeal. Each Class Member’s Notice of Appeal shall contain the following information:

- The date of the Final Determination that is the subject of the appeal;
- The provision of the Settlement Agreement and/or the Claims Administrator Procedure that is the subject of the appeal;
- A narrative explanation of why the Class Member’s denial of benefits in a Final Determination is inconsistent with the identified provision of the Settlement Agreement and/or Claims Administrator Procedure;
- Copies of any documents prepared by the Claims Administrator or submitted to the Claims Administrator within 45 days of the Preliminary Determination, the contest of which gave rise to the Appealed Final Determination. Such documents must be sequentially numbered and prefaced by an index describing each document and the page at which it may be found;
- A certificate that the Notice of Appeal is true and accurate to the best of the Class Member’s and Plaintiff’s Counsel’s information *583 and belief and was delivered to the Court and Claims Administrator in accordance with the terms of Paragraph 2 of this CAP.

Items (a), (b), and (c) may be no more than 10 pages long in the aggregate. The appeal must be predicated on the documents described in item (d). No evidence, documentary or testimonial, real or illustrative, may be introduced during the course of the appeal if it was not first submitted to the Claims Administrator within 45 days of the issuance of the Preliminary Determination, the contest of which gave rise to the Appealed Final Determination. Provided, however, that the Special Master may receive such evidence if the Class Member can show that through the exercise of due diligence the evidence in question could not have been adduced within 45 days of the issuance of the Class Member’s Preliminary Determination, the contest of which gave rise to the Appealed Final Determination.

4. Claims Administrator’s Response to Notice of Appeal. Consistent with the Settlement Agreement, the Claims Administrator shall respond to a Notice of Appeal within 30 days of receipt of the Class Member’s Notice of Appeal. The Claims Administrator’s response shall contain:

- (a) The date of the Final Determination that is the subject of the appeal;
- (b) The provision of the Settlement Agreement and/or Claims Administrator Procedure that is the subject of the appeal;
- (c) The factual findings the Claims Administrator made regarding the subject of the appeal;
- (d) A narrative explanation of why the Class Member's denial of benefits in a Final Determination is consistent with the identified provision of the Settlement Agreement and/or Claims Administrator Procedure;
- (e) Copies of any documents compiled prior to the Final Determination, and previously submitted to, or prepared by, the Claims Administrator upon which the Claims Administrator relies in defending the appeal. Such documents must be sequentially numbered and prefaced by an index describing each document and the page at which it may be found; and
- (f) A certificate that the Claims Administrator's Response is true and accurate to the best of the Claim's Administrator's information and belief.

584 5. *Special Master's Questions. After reviewing the submissions of the Class Member and the Claims Administrator, the Special Master may propound written questions to the Class Member and the Claims Administrator regarding the appeal. The Special Master shall specify in propounding written questions when responses are due and in what form. No additional evidence may be adduced during the pendency of an appeal. No oral argument shall be heard by the Special Master regarding an appeal.

6. *Standard of Review.* The Special Master shall review Final Determinations issued by the Claims Administrator for an abuse of discretion by the Claims Administrator in determining facts related to a Claim and Settlement Agreement interpretation.

7. *Special Master's Decision.* The Special Master shall, by the later of (i) 60 days after receiving the Claims Administrator's Response, or (ii) 60 days after receiving any timely response to any Special Master's Questions, communicate the Special Master's Decision to the parties to the appeal by letter. The Special Master's Decision shall state (a) that the Final Determination is affirmed or reversed as to each question raised in the Notice of Appeal; and (b) the dollar amount of any Settlement benefit which was the subject of the Notice of Appeal.

8. *Finality of Special Master's Decision.* A Party may respond to the Special Master's Decision to note for the Special Master's consideration a fact or principle the Party believes the Special Master did not consider in rendering a decision. Such response may be no more than 3 pages and must be submitted by the Party within 15 days of the Special Master's decision. The Special Master shall advise the Parties within 15 days if the Special Master's Decision previously rendered is stayed or vacated. If no stay is issued, then the Special Master's Decision is final and may not be further contested or appealed. If the Special Master's Decision is stayed or vacated, the Special Master shall expeditiously lift the stay or issue a new Special Master's Decision.

9. *Duration of this CAP.* This CAP shall be effective from the Effective Date stated above and shall terminate upon the earlier of: (i) cancellation or modification of this CAP by the Claims Administrator, or (ii) an order of the Court canceling or modifying the terms of this CAP.

***585 APPROVED:**

CLAIMS ADMINISTRATOR

By: _____ (signature)

Name: James J. McMonagle

Date: 5-13-03

CLASS COUNSEL

By: _____ (signature)

Name: R. Eric Kennedy

Date: 5-13-03

***586** *In re: Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, MDL No. 1401 Summary Report of Claim Packets Mailed, Claim Forms Received and EIF Claims

A. Claim Packets Mailed

1	Claim Packets in 3/23/02 Mailing	9,116
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2	Claim Packets Mailed after 3/23/02	7,029
.		
3	Total Claim Packets Mailed (Sum of Row 1 and 2)	16,145
.		
4	Number of Addresses to which Claim Packets Mailed)	13,027
.		

B. Claim Forms Received¹

		Represented	Unrepresented	Total
1	Orange (APRS) benefits Electing GPO	3,432	637	4,069
.				
	Also Submitting Green (EIF benefits)	1,687	183	1,870
2	Orange Not Electing GPO	629	152	781
.				
	Also Submitting Green	344	58	402
3	Total Orange	4,061	789	4,850
.				
	Total Green with Orange	2,031	241	2,272
4	Blue (Unrevised Claims)	2,318	1,161	3,479
.				
	Also Submitting Green	580	138	718
5	Green without Blue or Orange Form	0	2	2
.				
6	Total Green Forms	2,298	348	2,646
.				
7	Red (Uninsured Expenses Claims)	250	40	290
.				
8	Yellow Form (for Claims by Derivative Claimants)	3,251	959	4,210
.				

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IN RE: SULZER HIP PROSTHESIS AND KNEE PROSTHESIS..., SN066 ALI-ABA 569

9 .	Total Claim Forms (Sum of Rows 3, 4, 6, 7, and 8)	12,178	3,297	15,475
1 0 .	Total Claimants in Database	8,624	2,710	11,334

FN1. These Claim totals do not take completeness or validity analysis into consideration

C. Claims for Extraordinary Injury Fund²

		Benefit Amounts³	Represented	Unrepresented	To tal
1 .	Level I - Revision Surgery Contraindicated	\$120,000	314	87	4 0 1
2 .	Level II - Non-Removal Surgery	\$36,000 - \$90,000	251	51	3 0 2
3 .	Level III - NAPRS or ANAPRS	\$80,000 - \$200,000	331	60	3 9 1
4 .	Level IV - Major Complication	\$36,000 - \$90,000	1,465	195	1, 6 6 0
5 .	Level V - Permanent Injury	\$37,894 - \$320,000	872	132	1, 0 4
6 .	Level VI - Myocardial Infarction	\$66,316 - \$360,000	23	5	2 8
7 .	Level VII - Stroke	\$66,316 - \$360,000	16	8	2 4
8 .	Level VIII - Death	\$40,000 - \$800,000	26	5	3 1
9 .	Level IX - Other Complication or Harm	\$800,000	2,518	300	2, 8 1 8
1 0 .	Total	N/A	5,816	843	6, 6 5

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FN2. Total of Matrix Level Claims is greater than the Green Forms submitted because the same Claimant may have submitted Claims for multiple Matrix benefits.

FN3. Maximum amount permitted by Settlement Agreement.

***587** *In re: Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, MDL No. 1401 Validity of Unrevised, APRS, and Uninsured APR Claims

TABLE
TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

		Blue Form	Orange Form	Red Form
A	Likely Valid	2,499	4,333	47
	1. Preliminary or Final Determination Valid	2,499	4,333	47
	2. Complete but No Prelim. Det.	0	0	0
B	Validity Unknown	0	1	0
	3. No Completeness Review Yet	0	0	0
	4. Incomplete with Supp. Info.	0	0	0
	5. Incomplete and No Supp. Info. And Incomplete Letter Sent <= 30 days ago	0	1	0
C	Incomplete and Not Cured	0	0	0
	6. Incomplete and No Supp. Info. And Incomplete Letter Sent 31 to 60 days ago	0	0	0
	7. Incomplete and No Supp. Info. And Incomplete Letter Sent 61 to 90 days ago	0	0	0
D	Likely Invalid	980	516	243
	8. Incomplete and No Supp. Info. And Incomplete Letter Sent more than 90 days ago	0	0	0
	9. Preliminary Determination Invalid	0	0	0

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	10. Final Determination of Invalid but Appeal Noted or Still Possible	0	0	0
	11. Final Determination of Invalid and No Longer Appealable	980	516	243
E	Total	3,479	4,850	290

**588 In re: Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation, MDL No. 1401 Validity of Affected Product Revision Surgery Claims by Affected Product*

TABLE
TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

		Inter-Op Shell	Tibial Baseplate	Inter-Op + Tibial Baseplate	Reprocessed
A	Likely Valid	3,527	606	4,133	200
	1. Preliminary or Final Determination Valid	3,527	606	4,133	200
	2. Complete but No Prelim. Det.	0	0	0	0
B	Validity Unknown	1	0	1	0
	3. No Completeness Review Yet	0	0	0	0
	4. Incomplete with Supp. Info.	0	0	0	0
	5. Incomplete and No Supp. Info. And Incomplete Letter Sent <= 30 days ago	1	0	1	0
C	Incomplete and Not Cured	0	0	0	0
	6. Incomplete and No Supp. Info. And Incomplete Letter Sent 31 to 60 days ago	0	0	0	0
	7. Incomplete and No Supp. Info. And Incomplete Letter Sent 61 to 90 days ago	0	0	0	0

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D	Likely Invalid	388	69	457	29
	8. Incomplete and No Supp. Info. And Incomplete Letter Sent more than 90 days ago	0	0	0	0
	9. Preliminary Determination Invalid	0	0	0	0
	10. Final Determination of Invalid but Appeal Noted or Still Possible	0	0	0	0
	11. Final Determination of Invalid and No Longer Appealable	388	69	457	29
E	Total	3,916	675	4,591	229

Unknown Product Type: 30

***589** *In re: Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, MDL No. 1401 EIF Claim Award Report

Matrix Level	# Awarded	Granata Projections ¹	# Denied	Under Review	Aggregate Trust Liability ²
I	142	153	258	1	\$17,040,000.00
II	95	268	207	0	\$3,420,000.00
III	98	161	292	1	\$7,760,000.00
IV	567	545	1,091	2	\$17,226,000.00
V	363	21	641	0	\$36,633,395.00
VI	13	16	15	0	\$1,382,108.00
VII	6	2	18	0	\$761,054.00
VIII	14	14	16	1	\$2,137,017.00
IX	408	N/A	2,409	1	\$19,939,607.08
TOTALS	1,706	1,180	4,947	6	\$106,299,181.08

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IN RE: SULZER HIP PROSTHESIS AND KNEE PROSTHESIS..., SN066 ALI-ABA 569

FN1. Based on 3,605 APRS's.

FN2. The Claims Administrator has received 4,333 valid Claims for APRS benefits.

***590 In re: Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation, MDL No. 1401 Validity of Extraordinary Injury Fund Claims by Matrix Level**

	Matrix Level									
	I	I	I	IV	V	V	V	V	IX	Total
		I	I			I	I	I		
		I	I			I	I	I		
		I	I			I	I	I		
A. Likely Valid	1	9	9	567	363	1	6	1	408	1,706
	4	5	8			3		4		
	2									
1. Eligible	1	9	9	567	363	1	6	1	408	1,706
	4	5	8			3		4		
	2									
B. Validity Unknown	1	0	1	2	0	0	0	1	2	7
2. Under Review	1	0	1	2	0	0	0	1	1	6
3. PD Ineligible < 60 days	0	0	0	0	0	0	0	0	0	0
4. PD Contested	0	0	0	0	0	0	0	0	1	1
C. Likely Invalid	2	2	2	1,09	641	1	1	1	2,40	4,94
	5	0	9	1		5	8	6	8	6
	8	7	2							
5. FD Ineligible Issued	0	0	0	0	0	0	0	0	0	0
6. FD Appealed	0	0	0	0	0	0	0	0	0	0
7. FD Affirmed/Deemed/Unappealable	2	2	2	1,09	641	1	1	1	2,40	4,94
	5	0	9	1		5	8	6	8	6
	8	7	2							
TOTAL	4	3	3	1,66	1,004	2	2	3	2,81	6,65
	0	0	9	0		8	4	1	8	9
	1	2	1							

Matrix Level Unknown: 60

***591 In re: Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation, MDL No. 1401 Summary of Sulzer Settlement Trust Assets and Liabilities**

A. Sulzer Settlement Trust Assets	As of 12/5/06	Current
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1	Affected Product Revision Surgery Fund	\$1,781,850.26	\$629,903.40
2	Extraordinary Injury Fund	\$576,498.46	\$760,193.44
3	Medical Research and Monitoring Fund	\$582,406.77	\$223,210.23
4	Plaintiff's Counsel Sub-Fund	\$1,101,339.05	\$612,461.06
5	Subrogation and Uninsured Expenses Fund	\$28,820,821.91	\$3,030,072.01
6	Unrevised Affected Product Recipient Fund	\$26,618,991.33	\$672,937.33
7	Reimbursement Request to Sulzer for Red Form Claims Exceeding \$15,000	\$312,000.00	\$0.00
	B. Sulzer Settlement Trust Future Liabilities (Estimated)	As of 12/5/06	Current
8	Maximum Value of Open Subrogation Claims (based on the face value of asserted liens)	\$3,300,000.00	\$2,200,000.00
9	Maximum Value of Open APRS Claims	\$0.00	\$0.00
10	Maximum Value of Open EIF Claims (based on the estimated value of asserted Claims)	\$800,000.00	\$100,000.00
11	Maximum Value of Common Benefit fees (amount remaining the Court could award)	\$1,471,694.00	\$500,000.00

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1 2 .	Maximum Value of Common Benefit expenses (amount remaining the Court could award)	\$50,000.00	\$10,000.00
1 3 .	Medical Monitoring Funding Awarded But Not Yet Paid (based on agreements with University Hospital)	\$550,000.00	\$178,277.00
1 4 .	Disbursement of benefits currently the subject of non-medical expense liens	\$164,806.00	\$30,385.50
1 5 .	Tax reserves	\$750,000.00	\$750,000.00
1 6 .	Future Subrogation Claims	\$1,000,000.00	\$200,000.00
1 7 .	Future Subrogation Payment to Kim West TPP Clients	\$500,000.00	\$0.00
1 8 .	Future EIF Claims (based on passage of Claim deadlines and Sulzer's likely reimbursement obligation)	\$2,000,000.00	\$250,000.00
1 9 .	Future APRS Claims (all deadlines have passed; would only apply if four valid and late Inter-Op/TB Claims)	\$200,000.00	\$200,000.00
2 0 .	Future Unrevised APR Claims (deadline for Claim passed four years ago)	\$0.00	\$0.00
2 1 .	Future Errors & Omissions Insurance Premiums -- 5 years plus three year extended reporting period (tail	\$400,000.00	\$125,000.00

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insurance)

2	Document Storage and Destruction Costs	\$7,500.00	\$771.00
2			
.			
2	Future administrative and windup fees	\$1,500,000.00	\$233,672.70
3	through 2012		
.			
2	Miscellaneous margin of error	\$306,000.00	\$1,150,671.27
4			
.			
	C. Totals	As of 12/5/06	Current
2	Total Assets	\$59,793,907.78	\$5,928,777.47
5			
.			
2	Total Liabilities	\$13,000,000.00	\$5,928,777.47
6			
.			
2	Net Sulzer Settlement Trust Assets	\$46,793,907.78	\$0.00
7			
.			

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