

SULZER SETTLEMENT TRUST CLAIMS ADMINISTRATOR PROCEDURE			
CAP No.	32	EFFECTIVE DATE	FEBRUARY 18, 2004
SUBJECT	Benefit Amounts for Matrix Levels I (APRS Medical Contraindication) and II (Non-Removal Surgery) Extraordinary Injury Fund Claims		

1. **Purpose.** Annex IV of the Settlement Agreement in *In re: Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, MDL No. 1401 (“Settlement Agreement”) identifies the Matrix Levels pursuant to which Class Members may make application for Extraordinary Injury Fund benefits. Annex IV provides in certain instances that a qualifying Claimant may be awarded EIF benefits “up to” a specified amount. Settlement Agreement § 3.7(c) also permits reduction in certain EIF benefit amounts. This Claims Administrator Procedure (“CAP”) clarifies what the benefit amounts will be for EIF Claimants who have been determined to be Eligible for a Matrix Level I (APRS Medical Contraindication) and/or Matrix Level II (Non-Removal Surgery) award. Capitalized terms not otherwise defined in this Claims Administrator Procedure (“CAP”) shall have the meaning given them in the Settlement Agreement.

2. **First Installment Payment of Matrix Level I (Contraindication) and Level II (Non-Removal Surgeries).** For Class Members who the Claims Administrator has determined to be Eligible, pursuant to Settlement Agreement § 4.6(c)(1), for Matrix Level I and/or II benefits, the Claims Administrator intends to make the following benefit awards:

- a. For each Matrix Level I award, \$120,000.
- b. For each Matrix Level II award, \$36,000.

Further, the Claims Administrator shall direct payment from the Sulzer Settlement Trust, by the later of 45 days of the effective date of this CAP, or 45 days from the date a Class Member is determined to be Eligible for a Matrix Level I or II EIF award, an initial installment payment of such an award. The initial installment payment shall be, less any applicable offsets or liens, in an amount equivalent to 50% of such award and 50% of any associated Attorney Fee benefit awarded pursuant to Settlement Agreement § 3.7(a) and CAP 9. Provided, however, that awards made to Derivative Claimants pursuant to this CAP shall be for 100% of such Derivative Claimants’ benefit.

3. **Payment of Additional Extraordinary Injury Fund Benefits.** Settlement Agreement § 4.6(c)(5) provides that EIF benefits may be paid when the Claims Administrator is able to make a reasonable estimate of the total number of valid EIF Claims to be submitted. The Claims Administrator is as of yet unable to make such a determination because of the pendency of certain appeals regarding administration of the Settlement Agreement. When the Claims Administrator is able to make a reasonable estimate of the total number of valid EIF Claims to be submitted, the Claims Administrator shall thereafter direct payment of any second installment payments, pursuant to this CAP, and/or payments of other EIF awards for Matrix Levels III to IX.

The Claims Administrator presently intends, subject to the limitations of this Paragraph, to make a second installment payment for Matrix Level I and II EIF Claims.

4. **EIF Benefits Limitation.** No Class Member may be awarded more than \$800,000 in benefits from the Extraordinary Injury Fund.

5. **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

**APPROVED:**

CLAIMS ADMINISTRATOR

By: \_\_\_\_\_

(signature)

Name: James J. McMonagle

Date: February 18, 2004

CLASS COUNSEL

By: \_\_\_\_\_

(signature)

Name: R. Eric Kennedy

Date: February 18, 2004

SPECIAL STATE COUNSEL COMMITTEE

By: \_\_\_\_\_

(signature)

Name: Ed Blizard

Date: February 18, 2004

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

<b>IN RE</b>	:	<b>MDL No. 1401</b>
	:	
<b>SULZER HIP PROSTHESIS AND KNEE PROSTHESIS PRODUCT LIABILITY LITIGATION</b>	:	<b>Case No. A:01 CV 9000</b>
	:	
	:	<b>Judge O'Malley</b>
	:	
<b>This Document Relates to All Cases</b>	:	

**ORDER \_\_\_\_\_**

**(Order Approving Claims Administrator Procedure Prescribing  
Extraordinary Injury Fund Matrix Level I and II Payment Procedures.)**

The Claims Administrator has presented to the Court a Claims Administrator Procedure (CAP No. 32) prescribing when, and in what amounts, the Claims Administrator will direct payment for Extraordinary Injury Fund payments pursuant to Matrix Level I (APRS Medical Contraindication) and Level II (Non-Removal Surgery).

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, the Court having considered the Claims Administrator's payment procedures for Extraordinary Injury Fund benefits pursuant to Matrix Levels I and II, it is hereby ORDERED that the Claims Administrator

make payments for such claims according to the policies and procedures set out in the attached CAP 32.

**BY THE COURT:**

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KATHLEEN McDONALD O'MALLEY  
UNITED STATES DISTRICT JUDGE