

SULZER SETTLEMENT TRUST CLAIMS ADMINISTRATOR PROCEDURE			
CAP No.	33	EFFECTIVE DATE	JUNE 19, 2004
SUBJECT	Extraordinary Injury Fund Claims for Lost Income and Future Medical Expenses Pursuant to Matrix Level IX		

1. Purpose. Annex IV of the Settlement Agreement provides that the Claims Administrator may, at his discretion, award benefits to Class Members for catastrophic loss of income and/or extraordinary medical expenses. This Claims Administrator Procedure (“CAP”) clarifies the process the Claims Administrator shall employ to quantify the value of lost income Claims and to determine whether, and to what extent, Class Members are eligible for EIF benefits for lost income and certain medical expenses. Capitalized terms not otherwise defined in this Claims Administrator Procedure (“CAP”) shall have the meaning given them in the Settlement Agreement.

2. Claims for Lost Income. The Claims Administrator shall review EIF Claims for lost income to assess the actual loss of wages, tips, earnings, commissions, profits, or other income (“Income”) suffered by the Class Member. In considering a Claim for lost Income, the Claims Administrator shall not make any award for a Claim based on:

- (i) Lost retirement benefits;
- (ii) Lost health or other insurance benefits;
- (iii) Lost anticipated increases in pay;
- (iv) Lost stock options or other employee opportunities to purchase an equity or other interest in a company or business;
- (v) A Claim that is not proximately caused by an Affected Product or related Covered Revision Surgery or Non-Removal Surgery.

3. Disability. The Claims Administrator shall not award EIF benefits for lost Income unless a Claimant proves, under the totality of the circumstances, which evidence shall include an appropriately completed Physician Declaration, that he or she is or was totally disabled during the time period for which he or she seeks compensation and reasonably unable to earn income in any other vocation, including a vocation other than the Claimant’s vocation before the time of his or her permanent disability. Provided, however, that if a Claimant is partially disabled, he or she may make a Claim for lost Income which Claim shall take into account the Income the Claimant did earn, or could have earned, during his or her Claimed period of disability.

4. Future Lost Income and Medical Expenses. To the extent that a Claimant can satisfy the requirements of this CAP and all other applicable provisions of other CAP’s and the Settlement Agreement, a Claimant may seek compensation for future lost Income and/or Future Medical Expenses, the provisions of CAP 27, Paragraph 13(a)(4) notwithstanding. This CAP

shall not be construed to amend or modify any other provision of the Settlement Agreement or CAP except CAP 27, Paragraph 13(a)(4), and that provision only with respect to Claims for lost future Income and/or Future Medical Expenses as described in this CAP. The Claims Administrator, in evaluating a Claim for lost Income and/or Future Medical Expenses shall retain the discretion to decide whether any Claimed future Income and/or Future Medical Expense is certain or speculative and shall not award benefits with respect to any Claim for future lost Income that is, in the judgment of the Claims Administrator, uncertain.

5. *Extraordinary Future Medical Expenses.* To the extent a Class Member has already incurred medical expenses, those expenses shall not be compensable from the EIF. Rather, they shall be compensable only to the extent they fall within the ambit of Section 3.9(c) of the Settlement Agreement and then shall be compensable from the Subrogation and Uninsured Expenses Sub-Fund of the Professional Services Fund. To the extent that a Class Member has a need for future medical care related to his or her Affected Product, which shall mean only medical care that has not yet occurred but which the Claimant avers will be necessary in the future for reasons proximately caused by an Affected Product (“Future Medical Expenses”), those Future Medical Expenses may be compensable provided:

- (i) that the expectation of Future Medical Expenses is supported by an appropriate Physician Declaration Form;
- (ii) that the Future Medical Expenses are not covered pursuant to any private or public benefit plan or insurance policy, or any other private or public program for payment or reimbursement of medical expenses of any type, to any extent;
- (iii) that the Claimant’s participation, or planned participation, in any program described in section (ii) of this Paragraph be affirmatively disclosed in the Claimant’s request for Future Medical Expenses;
- (iv) that the Appellant explain why neither Medicare nor Medicaid will be responsible for payment of the Future Medical Expenses;
- (v) that the Future Medical Expenses, to the extent they are not paid as described in section (ii) of this Paragraph, exceed \$40,000; and
- (vi) that the Future Medical Expenses be, in the judgment of the Claims Administrator, certain to occur.

6. *Other Payments and Benefits.* In calculating lost Income or Future Medical Expenses, the Claims Administrator shall subtract from any Claimed loss the amount a Claimant has received, or expects to receive, in insurance benefits, disability benefits, Social Security benefits, retirement benefits or annuity, private or governmental plan or program of payment or reimbursement, or any other source of Income. Any Claim for lost Income shall include record evidence of any such Third Party Payments or a statement, attested by the Claimant and Counsel, that the Claimant has neither received, nor expects to receive, nor believes himself or herself eligible to receive, such other payments or benefits, .

7. *Lost Income and Future Medical Expense Benefits Available Only to APR’s or associated Representative Claimants.* Only Affected Product Recipients or their associated

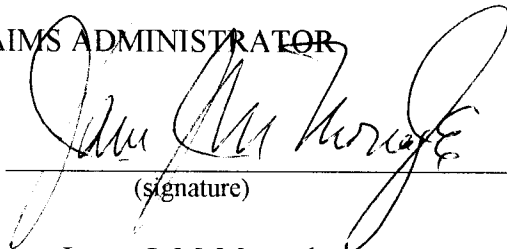
Representative Claimants may be eligible for lost Income or Future Medical Expenses attributable to an Affected Product Recipient. No Representative Claimant or Derivative Claimant shall be eligible for their own lost Income or Future Medical Expense. This Paragraph shall not be construed to amend or limit any other CAP or provision of the Settlement Agreement.

8. Time for Making a Claim. A Class Member who seeks to make a Claim for benefits pursuant to the terms of this CAP shall submit a Green Form requesting Matrix Level IX benefits and noting a request for Lost Income and/or Future Medical Expenses by the later of the date that is 90 days from the Effective Date of this CAP or the date that a Matrix Level IX Claim would otherwise be due pursuant to the terms of the Settlement Agreement or CAP 18.

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.

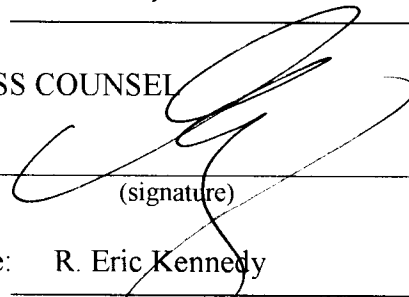
APPROVED:

CLAIMS ADMINISTRATOR

By: 
(signature)
Name: James J. McMonagle

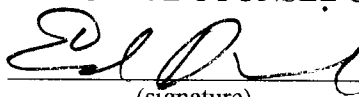
Date: June 17, 2004

CLASS COUNSEL

By: 
(signature)
Name: R. Eric Kennedy

Date: June 17, 2004

SPECIAL STATE COUNSEL COMMITTEE

By: 
(signature)

Name: Edward Blizzard

Date: 6/19/04