

SULZER SETTLEMENT TRUST CLAIMS ADMINISTRATOR PROCEDURE			
CAP No.	34	EFFECTIVE DATE	JUNE 28, 2005
SUBJECT	Awarding Benefit Amounts for Extraordinary Injury Fund Claims		

1. **Purpose.** Annex IV of the Settlement Agreement provides that the Claims Administrator may, at his discretion, award benefits to Class Members up to certain amounts and, pursuant to Matrix Level IX, for certain complications. This Claims Administrator Procedure ("CAP") clarifies the process the Claims Administrator shall employ in setting and paying EIF benefit awards to Class Members who are eligible for EIF benefits. Capitalized terms not otherwise defined in this Claims Administrator Procedure ("CAP") shall have the meaning given them in the Settlement Agreement.

2. **Notice of EIF Award Determinations.** Pursuant to Settlement Agreement § 4.6(c)(4), the Claims Administrator shall issue to all Class Members determined "Eligible" an EIF Award Determination. Such EIF Award Determination shall be in the form of a Preliminary Determination which may be contested in the manner provided by Settlement Agreement § 4.6. Within 90 days of the Effective Date of this CAP, the Claims Administrator shall issue an EIF Award Determination to all Class Members who, prior to the Effective Date of this CAP, were determined to be Eligible for EIF benefits. Class Members who are determined to be Eligible for EIF benefits on or after the Effective Date of this CAP, shall be provided notice of the amount of their EIF award at the time they are determined Eligible for EIF benefits. Award Determinations made pursuant to this Paragraph and pursuant to Settlement Agreement § 4.6(c), shall include an explanation that certain second installment payments are contingent as described in Paragraph 3 below.

3. **Payment of EIF Awards.** Payment of EIF awards for Matrix Levels I and II shall be in a single installment payment equivalent to 100% of their EIF benefit award, provided that Class Members who received, prior to the Effective Date of this CAP, a 50% award of Matrix Level I and/or Matrix Level II benefits pursuant to CAP 32, shall receive a second installment payment equivalent to the difference awarded for their EIF benefits and the amount previously paid. Payment of EIF awards for Matrix Levels III, IV, V, VI, VII, VIII, and IX shall be payable in two installments, each in an amount equivalent to 50% of the amount awarded. The first such installment payment may be made as soon as practicable after adoption of this CAP. The second such installment shall be made as soon as the Claims Administrator, in consultation with Class Counsel and the Special State Counsel Committee, and upon approval by the Court, can (a) determine that the Trust may make such payments without inordinate risk of appellate challenge or reversal, (b) at such time as the value of all EIF Claims may be reasonably ascertained or projected; and (c) at such time as the Claims Administrator can ascertain that adequate funds remain in the EIF for payment of all second installment payments. Neither this CAP nor CAP 32 shall be construed to preclude a subsequent award of benefits from any residue of the Sulzer Settlement Trust as may be ordered by the Court.

4. **Determining Benefit Amounts for Matrices I to VIII.** The Claims Administrator shall award Class Members eligible for EIF benefits pursuant to Matrix Levels I to VIII the maximum award amount permitted by the Settlement Agreement for each such Matrix Level.

5. ***Determining Benefit Amounts for Matrix Level IX.*** The Claims Administrator has received thousands of Claims for EIF benefits pursuant to Matrix Level IX. Determining how much to award any Class Member pursuant to Matrix Level IX requires the Claims Administrator to review all Matrix Level IX Claims, and to consider the total amount of the EIF available to pay EIF Claims, to consider Level IX Claims compared to one another and to assess their relative severity. This analysis is complex, laborious, and is not susceptible to complete explanation as it relates to each individual Matrix Level IX award. Accordingly, the Claims Administrator's Matrix Level IX award determinations may not be challenged on appeal except for an abuse of discretion with respect to the Claim in question only and not by reference to any other benefit award received by the Claimant in question or by any other Claimant. The Claims Administrator may, in his discretion and in the interests of justice, award an additional Matrix Level IX benefit to a Class Member.

6. ***Calculating Award Amounts for Income Losses and for Future Medical Expenses.*** Pursuant to CAP 33, Claims for lost Income and/or Future Medical Expenses are compensable if an Income loss of more than \$20,000 is proved or if a Future Medical Expense of more than \$40,000 is proved. In calculating the amount of lost Income and/or Future Medical Expenses, as those terms are defined in CAP 33, the Claims Administrator shall apply the following procedure:

- (1) For lost Income Claims, the Claims Administrator shall calculate the amount of annual Income the Claimant earned before being implanted with an Affected Product ("Baseline Income") which shall be determined as follows.
 - a. To calculate the Baseline Income amount, the Claims Administrator shall, if practicable, average the Claimant's Income for the two previous years prior to the Claimant being implanted with an Affected Product. However, if a Claimant's original surgery implanting an Affected Product occurred on or after September 1 and on or before December 31, the Baseline Income shall be the average of the Claimant's Income in the calendar year of such surgery and the calendar year preceding such surgery. Provided, however, if a Claimant does not seek Lost Income benefits for the period following his or her Affected Product implantation surgery, the Claims Administrator may, in his discretion, consider a later two-year period for purposes of calculating a Baseline Income amount.
 - b. If the procedure prescribed in Sub-section (1)(a), above, is not, in the Claims Administrator's judgment, practicable, the Claims Administrator shall derive a Baseline Income amount from the evidence submitted to him in a manner he deems just and equitable.
 - c. Notwithstanding Sub-sections (1)(a) and (1)(b) of this Paragraph, Baseline Income may in no event be greater than \$150,000 per year and any calculation employed pursuant to this Paragraph resulting in a Baseline Income of greater than \$150,000 shall be deemed to result in \$150,000 per year.
 - d. The Baseline Income amount shall not be calculated using a Claimant's expected or future Income but only using Claimant's proven Income history.

- e. If a Claimant had no, or diminished, Income, in the one or two years immediately prior to being implanted with an Affected Product, that time period shall be used when calculating the Baseline Income notwithstanding whether the Claimant had greater Income in years that preceded that time of no or diminished Income.
 - f. When considering Income loss for a Claimant who has an ownership interest in a business, the Claims Administrator shall consider net profit, and not gross revenues, when calculating the Baseline Income amount for the Claimant.
- (2) When calculating lost Income or Future Medical Expenses, the Claims Administrator shall not consider Claims for:
- a. Child, spouse, parent or other relative or dependent care;
 - b. In-home care for an APR, unless provided by a medical professional, prescribed by a physician, and necessary because of the APR's Affected Product;
 - c. Travel, lodging, or food expenses to or from medical treatment or for business reasons;
 - d. Construction costs for home or business additions or improvements or modifications;
 - e. Lawn or home maintenance care.
- (3) When calculating lost Income or a Claimant's Baseline Income amount, the Claims Administrator shall not award Matrix Level IX benefits based on a Claimant's expectation of future wage or cost of living increases, or on an expectation of future increased business profitability.
- (4) After determining a Claimant's Baseline Income, the Claims Administrator shall divide that number by twelve to determine a Monthly Baseline Income.
- (5) The Claims Administrator shall also determine the Loss Period for a Claim for lost Income. The Loss Period shall be equivalent to the number of months, rounded to the nearest whole month, that the Claimant has proven disability in accordance with CAP 33. Provided, however, that the three month period of time following implantation of an original Affected Product shall not be included in the number of months of proven disability or in the Loss Period. Provided further that the Loss Period shall not include any time after the calendar year of the year in which the Claimant turned, or is expected to turn, 62 years old.
- (6) After determining a Claimant's Baseline Income and Monthly Baseline Income, the Claims Administrator shall determine the Claimant's Actual Income for the

Loss Period and the Claimant's Actual Monthly Income. To determine Actual Income for the Loss Period, the Claims Administrator shall review records of the Claimant's Income, in accordance with CAP 33, which records may include tax records, pay stubs, bank statements or such other evidence as the Claims Administrator may reasonably request of a Claimant. Actual Monthly Income shall be equal to Actual Income for the Loss Period divided by the number of months in the Loss Period.

- (7) To determine the amount of a Claimant's lost Income Claim, the Claims Administrator shall multiply the Loss Period by the Claimant's Monthly Baseline Income and, from that product, subtract the product of Claimant's Actual Monthly Income and the Loss Period.
- (8) When making an EIF Matrix Level IX award for lost Income or Future Medical Expenses, the Claims Administrator shall award benefits in accordance with the following schedule:

- | | | |
|----|---|-------------------------------------|
| a. | Loss (Income Loss Only): | \$0 to \$20,000.00 |
| | Award: | \$0 |
| | plus | |
| b. | Expense (Future Medical Expenses Only): | \$0 to \$40,000.00 |
| | Award: | \$0 |
| | plus | |
| c. | Loss (Income Loss Only): | \$20,000.01 to \$40,000 |
| | Award: | 100% of proven amount in this range |
| | plus | |
| c. | Loss/Expense: | \$40,000.01 to \$80,000 |
| | Award: | 75% of proven amount in this range |
| | plus | |
| d. | Loss/Expense: | \$80,000.01 to \$140,000 |
| | Award: | 50% of proven amount in this range |
| | plus | |
| e. | Loss/Expense: | \$140,000.01 to \$2,590,000.00 |
| | Award: | 25% of proven amount in this range |
| | plus | |

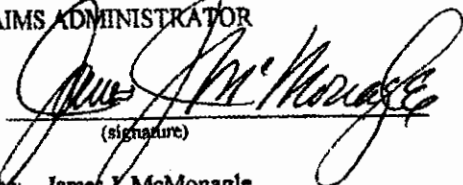
f. Loss/Expense: Greater than \$2,590,000.00

Award: 0% of proven amount in this range

7. *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:

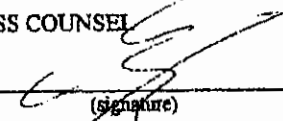
CLAIMS ADMINISTRATOR

By: 
(signature)

Name: James J. McMonagle

Date: June 7, 2005

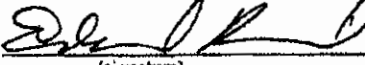
CLASS COUNSEL

By: 
(signature)

Name: R. Eric Kennedy

Date: JUNE 6 2005

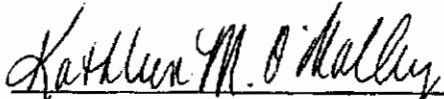
SPECIAL STATE COUNSEL COMMITTEE

By: 
(signature)

Name: Edward Blizzard

Date: June 6, 2005

BY THE COURT:


KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE