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CLEVELAND

**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

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| **IN RE: SULZER HIP PROSTHESIS AND KNEE PROSTHESIS PRODUCT LIABILITY LITIGATION** | ) | **Civil Action No.: 01-CV-9000** |
| | ) | **ALL CASES** |
| *This document relates to: Ronald Wagner* | ) | **(MDL No. 1401)** |
| | ) | **Judge Kathleen M. O'Malley** |

## NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Ronald Wagner, by and through his attorney Michael H. Feldman, Esq. of the Law Firm Ashcraft & Gerel ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 10, 2003 on Appellant's claim for Extraordinary Injury Fund ("EIF") benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his decision to award EIF Matrix Level IX benefits in the amount of Zero Dollars ($0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IX benefits.

2. Appellant seeks EIF Matrix Level IX benefits for an alleged wound infection, lost wages, and for medical expenses incurred as a result of the wound infection.

3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

After a thorough review of the appeal submitted by the Appellant and the response submitted by the Appellee, the Special Master finds as follows:

> The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator.
>
> By Order of the United States District Court, the Claims Administrator shall evaluate claims for EIF benefits according to the policies and procedures set forth in Claims Administrator Procedure ("CAP") 27.
>
> Appellant seeks EIF Matrix Level IX benefits for a wound infection that occurred after his implantation surgery.
>
> CAP 27 § 13(a)(3) provides that "injuries contemplated by the Settlement Agreement or a CAP, but which are not compensable under the Settlement Agreement or the CAP in question, shall not be compensable