

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

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>John Bainbridge</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member John Bainbridge, by and through his attorney Michael J. Ryan, Esq. (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 6, 2004 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 deny Appellant’s claim for EIF Matrix Level IX benefits.

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 a wound infection, surgical hematoma and stitch abscess.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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

Notice of Special Master Determination

John Bainbridge

Page 2 of 3

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

Appellant has not appealed the Final Determination regarding his claim for EIF Matrix Level IX benefits for a wound infection. Therefore, Appellee's Final Determination of ineligibility regarding that claim is final and it may not be further contested or appealed.

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.

Regardless of whether Appellant's claim is considered under Matrix Level IX or Matrix Level IV, the Settlement Agreement and CAP 27 require that the injury or complication be catastrophic and extraordinary. Catastrophic shall mean that the complication suffered prevented the Class Member from engaging in an activity of daily living. Extraordinary shall mean that the complication suffered was unique compared to other Class Members similarly situated.

In his response, Appellee states "Appellant did not proffer the records documenting the medical treatment he received." However, he does not indicate that the medical records submitted with Appellant's appeal were not submitted within 45 days of the Preliminary Determination. Therefore, the Special Master will consider those records.

The April 2, 2001 office note of Vero Orthopaedics indicates that Appellant "has been having some increasing drainage about the lateral aspect of his hip" and "he denies any increased temperature or chills." The treatment for this increasing drainage, or surgical hematoma, was an April 4, 2001 outpatient procedure to irrigate and drain his hip. The next office note, of April 10, 2001, states "he has minimal pain" and "SP I&D hematoma of right hip which is doing well."

The April 18, 2001 office note of Vero Orthopaedics indicates that Appellant "does have a small stitch abscess on the superior border of his incision" and "the staples were removed and steri-strips were placed. The small stitch abscess was opened with a #15 blade under sterile conditions."

There is no evidence that the surgical hematoma, which required an outpatient irrigation and drain procedure, or the stitch abscess, which required opening in the doctor's office, rise to the level of catastrophic or extraordinary as defined by the Settlement Agreement.

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

Notice of Special Master Determination

John Bainbridge

Page 3 of 3

Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IX benefits.

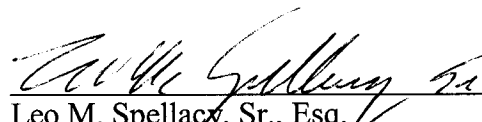
By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim is hereby **AFFIRMED**.

Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will not be considered. Submissions are to be mailed to the following address:**

Leo M. Spellacy, Sr., Esq.  
Special Master to the Sulzer Settlement Trust  
c/o Liaison Counsel  
1600 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

If no response is received (postmarked) by MAY 11 2004, then the Special Master's Decision is final and may not be further contested or appealed.

APR 26 2004  
Date

  
Leo M. Spellacy, Sr., Esq.  
Special Master