

FILED

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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

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

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

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**Civil Action No.: 01-CV-9000**

**ALL CASES**

*This document relates to:  
Rose Mary Barrilleaux*

**(MDL No. 1401)**

**Judge Kathleen M. O'Malley**

**NOTICE OF SPECIAL MASTER DETERMINATION**

Representative Claimant Rose Mary Barrilleaux, on behalf of her deceased husband Carroll Barrilleaux ("APR"), by and through her attorney James R. Dugan, II, Esq. of the Dugan & Browne Law Firm ("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 I and 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 I and IX benefits.
2. Appellant seeks EIF Matrix Level I benefits for an alleged revision surgery indicated but for a medical condition; and Matrix Level IX benefits for the death of the APR.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level I and IX benefits.

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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 out in Claims Administrator Procedure ("CAP") 27.

Matrix Level I

Appellant seeks EIF Matrix Level I benefits because the APR "probably would have benefited from revision surgery if his medical condition had permitted."

Annex IV of the Settlement Agreement provides that "Class Members for whom Affected Product Revision Surgery would be indicated but for a medical condition" may be eligible for EIF Matrix Level I benefits.

CAP 27 § 5 (a) requires that "The records submitted by the Class Member in support of his or her Claim must demonstrate that an APRS is needed and that a medical condition exists which renders the performance of the revision surgery medically inappropriate."

In order to be eligible for Matrix Level I benefits, Appellant had to prove that an APRS was indicated at the time of the APR's death, and there was no such evidence submitted. The September 19, 2003 note from Dr. Accardo, Jr. suggests that the issue of whether the APR needed a revision surgery is "hypothetical" and that he "probably would have benefited from revision surgery." APR was implanted with an Affected Product on April 17, 1999 and was confined to his bed until his death on May 20, 1999. Appellant's claim for Matrix Level I benefits is predicated on the assumption that an APRS would have been indicated had he lived. That assumption is faulty because an APRS was not indicated for all APR's, as evidenced by the Class Members who received benefits from the Unrevised Affected Product Recipient Fund. Appellee, Claims Administrator did not abuse his discretion in denying Appellant's claim for EIF Matrix Level I benefits.

Matrix Level IX

Appellant seeks Matrix Level IX benefits for the death of the APR.

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 pursuant to Matrix Level IX."

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Annex IV-10 of the Settlement Agreement and CAP 27 anticipate and provide for death as an extraordinary injury. CAP 27 § 12(b) states "Class Members may be compensated for a death that occurs neither during a CRS nor CRS hospitalization provided that the treating physician causally relates the death to the CRS."

Since the death of an APR is contemplated by Matrix Level VIII, it is not compensable pursuant to Matrix Level IX. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IX claim. In addition, since the APR's death was not causally related to a CRS (he had not undergone a CRS), Appellant is not eligible for Matrix Level VIII benefits.

Even if the APR's death were to be considered under Matrix Level IX, the Physician Declaration Form submitted by Appellant does not address a Matrix Level IX claim, and Dr. Degeyter's undated letter is contradicted by the APR's medical records.

According to the History & Physical report, Operative Procedure report, and Discharge Summary relating to Appellant's April 16, 1999 through April 23, 1999 hospitalization, the APR went to the hospital as a result of a fall at home. The x-rays taken in the emergency room showed a fracture down distal to his old hip prosthesis. He was placed in traction in the emergency room and arrangements were made for a revision of his left total hip. The following day, APR underwent a revision of his left total hip because of a pathological fracture of his left femur, during which surgery an Affected Product was implanted. After surgery the APR needed to be immobilized and in bed, and strictly non-weight bearing for at least six weeks in order to give the various bone fragments time to unite, and to give his hip and femur a chance to heal.

The medical records clearly indicate that the APR's bed confinement was due to the fracture caused by his fall at home, and not the dislocation as Dr. Degeyter, in his undated letter, opines. In addition, even if Dr. Degeyter's opinion that "the dislocation of the recently placed prosthesis [an Affected Product] interfered with his [APR's] rehabilitation and directly contributed to his death. Because of his bed confinement and traction post dislocation, he could not rehabilitate adequately and developed a nosocomial pneumonia which progressed to respiratory failure and adynamic ileus both of which contributed to his ultimate death", were supported by the APR's medical records, there is no evidence that the Affected Product caused the dislocation to which Dr. Degeyter refers.

There is no evidence that the APR's death was in any way related to his Affected Product. Therefore, Appellant would not be eligible for EIF benefits even if this claim were considered under Matrix Level IX rather than Matrix Level VIII.

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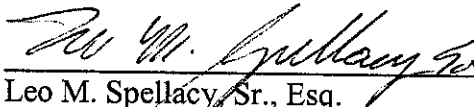
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By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's Matrix Level I and Matrix Level IX claims is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by February 9, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 23, 2004  
Date

  
Leo M. Spellacy Sr., Esq.  
Special Master