

**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>Susan Berey</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Susan Berey, by and through her attorney Mark London, Esq. of the Law Firm London & Mead (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated October 30, 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 Levels IV 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 IV and EIF Matrix Level IX benefits.
2. Appellant seeks EIF benefits as a result of a wound infection and related treatment that occurred after implantation of an Affected Product but prior to her APRS.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Levels IV and IX benefits because her wound infection and related treatment occurred prior to a Covered Revision Surgery.

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LIABILITY LITIGATION**

Notice of Special Master Determination

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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.

Section 8(b) of CAP 27 states, in pertinent part, "Wound infections which occur before a CRS [Covered Revision Surgery] ... are not compensable from the EIF".

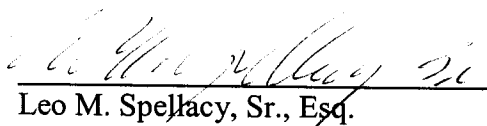
Appellant's wound infection was prior to a CRS and, therefore, is not compensable under the EIF in accordance with CAP 27. Further, Appellant does not qualify under Matrix Level IX: Discretionary. The awards under this section are solely within the discretion of the Claims Administrator. The Settlement Agreement limits awards under Matrix Level IX to complications that were neither anticipated nor provided for in other Matrix Levels. Since wound infections were anticipated complications in the Settlement Agreement, Appellant does not qualify for Discretionary benefits. Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for EIF Matrix Levels IV and IX benefits.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) 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 December 23, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

December 8, 2003

Date

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