

**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>Vivian Block</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Vivian Block, by and through her attorney Brian J. Connelly, Esq. of the Law Firm Gould, Cooksey, Fennell, O'Neill, Marine, Carter & Hafner ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated January 21, 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 IV and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV and IX benefits.
2. Appellant seeks EIF Matrix Level IV benefits for a wound infection, and Matrix Level IX benefits for antibiotic treatment, a hematoma, depression, decline of function, and medical expenses.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV and IX benefits.

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

Notice of Special Master Determination

Vivian Block

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:

In his response to Appellant's appeal, Appellee indicates that Appellant is eligible for Matrix Level IV benefits for a wound infection and Matrix Level IX benefits for depression. Therefore, this Determination will not address those claims. The Special Master hereby directs the Claims Administrator, if he has not already done so, to immediately furnish Appellant with a revised benefit determination regarding those claims. Appellant retains her right to appeal that benefit determination in accordance with CAP 30.

Appellant has not appealed the Final Determination regarding her EIF Matrix Level IX claim for decline of function. 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.

Matrix Level IX – Antibiotic Treatment and Hematoma

According to Appellant's appeal, her hematoma and antibiotic treatment are related to, and therefore a part of, her wound infection (in fact, it was the hematoma that required the surgical debridement).

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for additional compensation under Matrix Level IX for an injury/complication that has been awarded benefits under Matrix Level IV.

Matrix Level IX – Medical Expenses

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."

Section 3.9(c) of the Settlement Agreement anticipated and provided for medical expenses of an APR necessitated by an Affected Product.

Since medical expenses are contemplated by the Settlement Agreement, they are not

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

Notice of Special Master Determination

Vivian Block

Page 3 of 3

compensable under Matrix Level IX. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IX claim.

However, the Claims Administrator shall review Appellant's claim as a claim for subrogation benefits and make such payments as required by the Settlement Agreement.

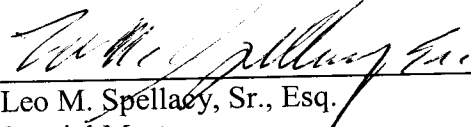
By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim for a hematoma, antibiotic treatment, and medical expenses is hereby AFFIRMED.

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 JUN 16 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 01 2004  
Date

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