

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

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

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Joann Collins, by and through her attorney Andrew S. Goldwasser, Esq. of the Law Firm Ciano & Goldwasser (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 29, 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 an alleged extensor mechanism disruption, and Matrix Level IX benefits for bone cement interface.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV 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 forth in Claims Administrator Procedure (“CAP”) 27.

Matrix Level IV

Appellant seeks Matrix Level IV benefits for an alleged extensor mechanism disruption. The Physician Declaration Form indicates that the Major Surgical Complication is a non-union of a tibial tubercle osteotomy. The Affidavit of Dr. Curran does not even indicate the nature of the Major Surgical Complication, stating only “I attest the Major Surgical Complication occurred within 180 days of the Corrective Revision Surgery.” The November 19, 2003 letter contesting the Preliminary Determination reads “Ms. Collins underwent surgical repair on October 28, 2003.” However, the operative report of Appellant’s October 28, 2003 surgery does not mention repair of an extensor mechanism disruption. In fact, despite submitting many medical records that have absolutely nothing to do with Appellant’s claim, there were no medical records submitted evidencing that Appellant suffered from an extensor mechanism disruption that required surgical repair. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s Matrix Level IV claim.

Matrix Level IX

Appellant also seeks Matrix Level IX benefits for bone cement interface that resulted in a Non-Affected Product Removal Surgery on October 28, 2003.

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.”

Annex IV of the Settlement Agreement and CAP 27 anticipated and provided for Non-Affected Product Revision Surgeries (NAPRS’s). Section 7(c) of CAP 27 and Annex IV of the Settlement Agreement state “Class Members who have undergone a Non-Affected Product Revision Surgery on or before the date that is one hundred and eighty (180) days after the date of an APRS” may be eligible for benefits under Matrix Level III, and “the Claims Administrator may, at his discretion, extend this compensable time period by 180 days...”.

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Since Appellant's surgery of October 28, 2003 was a NAPRS, it was contemplated by Matrix Level III. Therefore, Appellee did not abuse his discretion in denying her Matrix Level IX claim.

In accordance with the terms of the Settlement Agreement and CAP 27, in order to be eligible for EIF Matrix Level III benefits, the latest possible date for Appellant to undergo a NAPRS would have been 360 days after her APRS. Appellant's NAPRS occurred almost ten months after that deadline. Appellee does not have the authority to extend the EIF Matrix Level III deadline for undergoing a NAPRS past the 360 days prescribed by the Settlement Agreement. Therefore, Appellant is not eligible for Matrix Level III benefits.

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

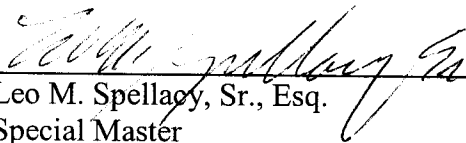
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 APR 20 2004, then the Special Master's Decision is final and may not be further contested or appealed.

APR 05 2004

Date


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