

**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>Clyde Daugherty</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Clyde Daugherty (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated May 7, 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 V and IX benefits.
2. Appellant has been deemed eligible for Matrix Level V benefits for a permanent injury.
3. Appellant also seeks Matrix Level IX benefits for undergoing an additional diagnostic surgery; six weeks of receiving twice daily injections of IV antibiotics; and chronic knee pain.
4. 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

Clyde Daugherty

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:

The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator. When an act of discretion is under review the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

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.

Diagnostic Surgery and IV Antibiotics

The Settlement Agreement limits awards under Matrix Level IX to complications that were neither anticipated nor provided for under other Matrix Levels.

Matrix Level IV provides benefits for wound infections. 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.”

Dr. Schroeder’s June 29, 2001 letter states that the right knee arthroscopy was performed “for evaluation for possible sepsis.” IV antibiotics were administered because of a suspected infection following implantation of an Affected Product but prior to his revision surgery.

In accordance with CAP 27, Appellee did not abuse his discretion in denying Appellant’s claim for EIF Matrix Level IX benefits for the procedure he underwent and intravenous antibiotics he received because of a suspected infection prior to his CRS.

Chronic Knee Pain

Appellant has been deemed eligible for permanent pain and disability under Matrix Level V. He is not eligible for additional compensation under Matrix Level IX for his “chronic pain expected to last for life.”

Appellee did not abuse his discretion in denying Appellant’s claim for Matrix Level IX benefits for chronic knee pain for which he will receive Matrix Level V benefits.

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

Notice of Special Master Determination

Clyde Daugherty

Page 3 of 3

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:**

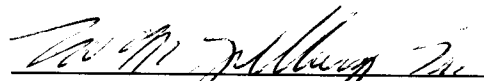
Leo M. Spellacy, Sr., Esq.  
Special Master to the Sulzer Settlement Trust  
c/o Liaison Counsel  
1600 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

SEP 01 2004

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

AUG 17 2004

\_\_\_\_\_  
Date

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