

**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>Belinda Davis</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Belinda Davis, by and through her attorneys Thomas Pirtle, Esq. and Michael J. Lowenberg, Esq. of the Law Firm O'Quinn, Laminack & Pirtle ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated May 11, 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 III, IV, V and IX benefits.
2. Appellant has been deemed eligible for Matrix Level IV benefits for internal bleeding, Matrix Level V benefits for iliopsoas tendonitis/bursitis, and Matrix Level IX benefits for lost wages.
3. Appellant also seeks Matrix Level III benefits for her surgeries of April 30, 2001 and July 8, 2002; Matrix Level IV benefits for her surgery of July 8, 2002 and a dislocation; and Matrix Level IX benefits for revision of a reprocessed shell, multiple revisions, internal bleeding and iliopsoas tendonitis/bursitis.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III benefits for her surgeries of April 30, 2001 and July 8, 2002; Matrix Level IV benefits for her surgery of July 8, 2002 and a dislocation; and Matrix Level IX benefits for revision of a reprocessed shell, multiple revisions, internal bleeding and iliopsoas tendonitis/bursitis.

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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:

Appellant has not appealed the Final Determination regarding her EIF Matrix Level III claim for her surgeries of April 30, 2001 and July 8, 2002, or her Matrix Level IX claim for iliopsoas tendonitis/bursitis. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and 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. 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.

Matrix Level IV – Dislocation / Subluxation

In order to be eligible for Matrix Level IV benefits, CAP 27 § 8 (c) requires that "Class Members must submit documentation proving that the dislocation required a reduction under general anesthesia or intravenous sedation. Dislocations that occur more than ninety days from a CRS and dislocations that do not require a reduction under general anesthesia or intravenous sedation are not compensable under the EIF."

There is no evidence that the dislocation / subluxation that occurred in September 2002 required a reduction under general anesthesia or intravenous sedation, as required by CAP 27.

Appellee did not abuse his discretion in denying this Matrix Level IV claim for a dislocation / subluxation that did not require a reduction under general anesthesia or intravenous sedation.

Matrix Levels IV and IX– Surgery of July 8, 2002, Revision of Reprocessed Shell and Multiple Revisions

Section 3.4(a) of the Settlement Agreement provides that "Class Members who have undergone or who undergo Affected Product Revision Surgery within the time periods set forth in Sections 3.4(b) and (c) below shall be entitled to receive an *aggregate* payment value of \$160,000 for each such Affected Product for which such Class Member undergoes Affected Product Revision Surgery..."

Appellant has been awarded APRS benefits for both of her revision surgeries. In

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accordance with Section 3.4(a) of the Settlement Agreement, her APRS awards are the total benefit to which she is entitled for those Affected Products.

Appellee did not abuse his discretion in denying Appellant's EIF Matrix Level IV claim for her APRS of July 8, 2002 or her Matrix Level IX claims for revision of reprocessed shell, and multiple revisions.

Matrix Level IX – Internal Bleeding

Appellant has been deemed eligible for EIF Matrix Level IV benefits for the internal bleeding that occurred following her July 8, 2002 CRS. She is not eligible for additional compensation under Matrix Level IX for that injury.

Appellee did not abuse his discretion in denying this claim for Matrix Level IX benefits for an injury that has been compensated for under Matrix Level IV.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IV claim for her surgery of July 8, 2002 and a dislocation / sublucation, and her Matrix Level IX claim for revision of reprocessed shell, multiple revisions and internal bleeding 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:**

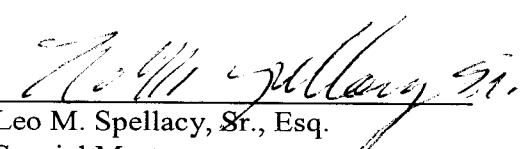
Leo M. Spellacy, Sr., Esq.  
Special Master to the Sulzer Settlement Trust  
c/o Liaison Counsel  
1600 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

**AUG 26 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 11 2004**

Date

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