

**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>Laura Dorenkamp</i> |) | |
| |) | Judge Kathleen M. O'Malley |

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Laura Dorenkamp, by and through her attorney Terry L. Rogers, Esq. (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 27, 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 IX benefits.
2. Appellant seeks EIF Matrix Level IX benefits for medical expenses.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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LIABILITY LITIGATION**

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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.

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 compensable under Matrix Level IX in accordance with CAP 27. 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.

Appellant’s claim for mileage expense is not contemplated by Section 3.9 of the Settlement Agreement and was, appropriately, considered under Matrix Level IX.

CAP 27 § 13(b)(1) states that “...a loss of income is “catastrophic” if...it results in direct economic loss, provable by objective evidence, of \$20,000 or more.” CAP 27 was promulgated with the concurrence of Class Counsel and the Court.

Appellant’s economic loss, which does not include medical expenses that are eligible for compensation under the subrogation provisions of the Settlement Agreement, is substantially less than \$20,000.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s Matrix Level IX claim for an economic loss under \$20,000.

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

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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

APR 30 2004

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

APR 15 2004

Date



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