

**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>Joan Dormer</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Joan Dormer, by and through her attorney Wendy R. Fleishman, Esq. of the Law Firm Loeff, Cabraser, Heimann & Bernstein (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 2, 2003 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 award EIF Matrix Level IV and IX benefits in the amount of Zero Dollars (\$0.00) to Appellant.

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 and IX benefits for a wound infection and for out of pocket medical expenses.
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 and reply 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.

Appellant seeks Matrix Level IV and IX benefits for a wound infection following her APRS.

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 and IX - Infection

CAP 27 § 13(a)(1) states that “Injuries such as bone, tissue or muscle loss, nerve damage, fracture, dislocation, *infection*, deformed hip, knee or femur...are properly classified as Permanent Injuries and/or Major Complications which must be Claimed under Matrix Level IV or V, and to be compensable must meet the criteria of Matrix Levels IV or V to qualify for EIF benefits.” Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level IX benefits for a wound infection that must be claimed under Matrix Level IV or V in accordance with the terms of CAP 27.

In order to qualify for Matrix Level IV benefits, CAP 27 § 8(b) provides that a wound infection must require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation. Appellant’s infection was treated with antibiotics. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level IV benefits for a wound infection that did not require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation, pursuant to the terms of CAP 27.

Matrix Level IX - Pain

Appellant’s Matrix Level IX claim for pain associated with her APRS and subsequent infection is barred by Section 13(a)(2) of CAP 27 which states, in pertinent part, “Claims requesting compensation for pain or mental anguish associated with injuries that form the basis of a Claim under another Matrix Level shall not be eligible for payment under Matrix Level IX. Likewise, Claims requesting compensation for pain or mental anguish associated with an APRS, CRS, or implantation surgery will not qualify for payment.”

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Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's Matrix Level IX claim for pain.

Matrix Level IX – Economic Loss

CAP 27 § 13(b) (1) states, in pertinent part, that "...a loss of income is "catastrophic" if, in the judgment of the Claims Administrator, it results in direct economic loss, provable by objective evidence, of \$20,000 or more." Since Appellant's alleged economic loss is approximately \$9,000 for out-of-pocket expenses, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IX claim pursuant to the terms of CAP 27.

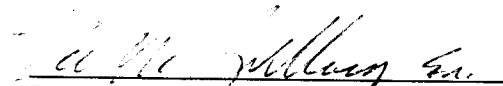
By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's Matrix Level IV and IX claim is hereby AFFIRMED.

In accordance with the request of the Appellant, this Special Master Determination is not to be posted on the official Sulzer implant settlement website.

Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by February 27, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 12, 2004

Date


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