

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED

2004 JAN 23 PM 1:08  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

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

*This document relates to:  
Barbara Edwards*

) **Civil Action No.: 01-CV-9000**  
)  
) **ALL CASES**  
)  
) **(MDL No. 1401)**  
)  
) **Judge Kathleen M. O'Malley**

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Barbara Edwards, by and through her attorneys Leila J. Noel, Esq. and Matthew M. Clarke, Esq. of the Law Firm Cappello & McCann ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 5, 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 III benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted various EIF claims, including a claim for EIF Matrix Level III benefits.
2. Appellant has been awarded benefits under Matrix Level IV for a pulmonary embolism, and Matrix Level IX for a second stage resection arthroplasty/reimplantation.
3. Appellant seeks EIF Matrix Level III benefits for an alleged NAPRS.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III benefits.

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Notice of Special Master Determination

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After a thorough review of the appeal submitted by the Appellants 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.

On December 8, 2000, Appellant underwent a procedure in which an Affected Product was removed and a temporary antibiotic-impregnated cemented prosthesis (antibiotic spacer) was inserted. That prosthesis was removed on August 7, 2001 (a procedure for which Appellant will receive benefits under Matrix Level IX)

CAP 27 § 7(b) states "Surgeries that are not NAPRS for the purposes of Matrix Level III include, but are not limited to, surgical revisions of femoral components, plastic liners, *antibiotic spacers*, screws, cement or circleage wires."

The surgery of December 8, 2000 was not a NAPRS for the purposes of Matrix Level III, and Appellant's contention that CAP 27 modifies the Settlement Agreement and Annex IV is erroneous. The Special Master does not have the authority to nullify the Order of the United States District Court that requires the Claims Administrator to evaluate claims for EIF benefits according to the policies and procedures set forth in CAP 27.

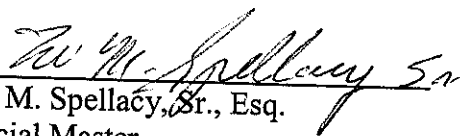
The surgery for which Appellant is seeking EIF Matrix Level III benefits is specifically barred by the terms of CAP 27 and, therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this claim.

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

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 9, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 23, 2004

Date

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