

**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>Theo Edwards</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Theo Edwards, by and through his attorney Joseph H. Saunders, Esq. of the Saunders & Walker Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 29, 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 Matrix Level IX benefits for a Non-Affected Product Revision Surgery and for prolonged pain.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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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.

Non-Affected Product Revision Surgery

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.”

Annex IV of the Settlement Agreement and CAP 27 anticipated and provided for Non-Affected Product Revision Surgeries (“NAPRS”) under Matrix Level III. Since Appellant’s NAPRS was contemplated by Matrix Level III, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IX claim.

Section 7 of CAP 27 and Annex IV of the Settlement Agreement state “Class Members who have undergone a Non-Affected Product Revision Surgery on or before the date that is one hundred and eighty (180) days after the date of an APRS” may be eligible for benefits under Matrix Level III, and “the Claims Administrator may, at his discretion, extend this compensable time period by 180 days where a Class Member’s treating orthopedic surgeon causally relates (to a medical probability) the NAPRS to the APRS and/or to the original implantation of the Affected Product.”

Appellant underwent an APRS on December 18, 2000. In accordance with the terms of the Settlement Agreement and CAP 27, in order to be eligible for EIF Matrix Level III benefits, the latest possible date for Appellant to have undergone a NAPRS would have been 360 days after his APRS, or December 13, 2001. It is not disputed that Appellant’s NAPRS was performed on May 28, 2002, more than five months after that deadline.

Appellee, Claims Administrator, does not have the authority to extend the EIF Matrix Level III deadline for undergoing a NAPRS past the 360 days prescribed by the Settlement Agreement and, therefore, Appellant is not eligible for Matrix Level III benefits.

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Pain

CAP 27 §13(a)(2) provides that “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.”

It is not disputed that Appellant’s pain was associated with his APRS and also was the basis for his undergoing a NAPRS on May 28, 2002.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for pain that is specifically barred by the terms of CAP 27.

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:**

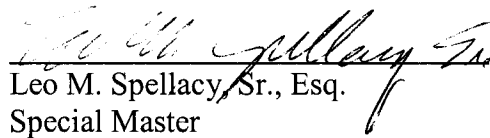
Leo M. Spellacy, Sr., Esq.  
Special Master to the Sulzer Settlement Trust  
c/o Liaison Counsel  
1600 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

**APR 30 2002**

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 2002**

\_\_\_\_\_  
Date

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