

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2004 JAN 27 PM 1:35

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

Civil Action No.: 01-CV-9000

ALL CASES

This document relates to:
Mildred Esposito)

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Representative Claimant Mildred Esposito, on behalf of her deceased husband Robert Esposito ("APR"), by and through her attorney Wendy R. Fleishman, Esq. of the Lieff, Cabraser, Heimann & Bernstein Law Firm ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 10, 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 VIII 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 I and VIII benefits.
2. Appellant has been deemed eligible for Matrix Level I benefits.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level VIII benefits.

1407, 1272

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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 out in Claims Administrator Procedure ("CAP") 27.

Appellant seeks Matrix Level VIII benefits for the death of the APR.

Annex IV-10 of the Settlement Agreement and CAP 27 anticipate and provide for death as an extraordinary injury. CAP 27 § 12(a) states "To be eligible for benefits, a Class Member must provide medical evidence which indicates that the Affected Product Recipient died either during a CRS or during the hospitalization associated with a CRS" and CAP 27 § 12(b) provides that "Class Members may be compensated for a death that occurs neither during a CRS nor CRS hospitalization provided that the treating physician causally relates the death to the CRS."

The APR was implanted with an Affected Product on June 13, 2000. He did not undergo a CRS. Since the APR's death was not causally related to a CRS, Appellant is not eligible for Matrix Level VIII benefits. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level VIII claim.

In her appeal, Appellant requests that this claim be considered under Matrix Level IX if it is denied under Matrix Level VIII.

The Special Master does not have the authority, nor does the Claims Administrator, to consider a claim made under another Matrix Level as a Matrix Level IX claim.

In addition, 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." Since the death of an APR is contemplated by Matrix Level VIII, it is not compensable pursuant to Matrix Level IX.

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

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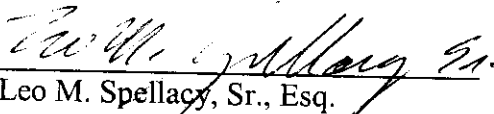
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In accordance with Appellant's request, this Determination is not to be posted on the official Sulzer implant settlement website.

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 11, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 27, 2004

Date


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