

**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>Bruce Gangnath</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Bruce Gangnath, by and through his attorney Michael L. Schrag, Esq. of the Law Firm Schrag & Baum (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated March 15, 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 V and IX benefits.
2. Appellant seeks Matrix Level V or IX benefits for a permanent vascular injury, and Matrix Level IX benefits for potential wage loss.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V and 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:

Appellant has not appealed the Final Determination regarding his EIF Matrix Level V claim for a permanent vascular injury, or his Matrix Level IX claim for potential wage loss. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and may not be further contested or appealed.

The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator. When an act of discretion is under review the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

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.

In order to be eligible for Matrix Level IX benefits, CAP 27 Section 13(b)(3) requires that an injury be catastrophic and extraordinary. Catastrophic is defined as an injury that prevented the Class Member from engaging in an activity of daily living; and extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated.

Appellee has submitted no evidence that his chronic edema rises to the level of catastrophic as required by the Settlement Agreement and CAP 27.

Appellant's contention that "Mr. Gangnath's chronic edema significantly disrupts his daily life activities and is thus catastrophic under the CAP 27 definition" is not supported by the record. A disruption of activities of daily living is not the same as being prevented from engaging in an activity of daily living. Appellant alleges that he cannot participate in the recreational activities he enjoyed prior to receiving an Affected Product, but there are no medical records indicating any type of restriction on Appellant's activities. Dr. Natuzzi states that this chronic problem is treated by elevating the legs, swimming, and by wearing support stockings.

In addition, based upon his review of thousands of claims, it is the Appellee's opinion that a diminished ability to participate in recreational activities is not uncommon among Class Members, thus it is not an extraordinary injury or complication.

Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IX benefits for chronic edema that is not catastrophic or extraordinary.

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By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim for a permanent vascular injury is hereby **AFFIRMED**.

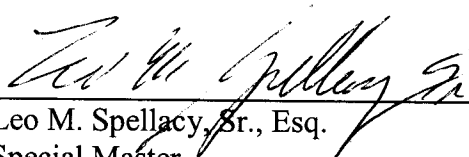
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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

If no response is received (postmarked) by JUL 30 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUL 15 2004

Date

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