

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

Notice of Special Master Determination

Joseph Garrett

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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.

Matrix Level III

Section 7(c) 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's APRS was performed on December 15, 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 an NAPRS would have been 360 days after his APRS, or December 10, 2001. It is not disputed that Appellant's NAPRS was performed on December 19, 2001.

Appellee, Claims Administrator, does not have the authority to extend the EIF Matrix Level III deadline for undergoing an NAPRS past the 360 days prescribed by the Settlement Agreement and, therefore, did not abuse his discretion in denying Appellant's claim.

However, it is the opinion of the Special Master that there may have been extenuating circumstances regarding the scheduling of Appellant's surgery after the applicable deadline. Appellant alleges, in his appeal, that his NAPRS was to have taken place on December 4, 2001; however, because of limited space available at the hospital the physician postponed the second revision surgery until December 19, 2001.

In accordance with the principles of fundamental fairness, the Special Master requests that Appellant submit proof, such as a statement from the physician or the hospital, that his NAPRS was originally scheduled for December 4, 2001 and that his physician postponed that surgery until December 19, 2001. Appellant has forty-five (45) days from

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the date of this determination to file such proof with the Court, for the Special Master's review. Appellant may request an extension to this deadline from the Special Master if such proof cannot be obtained within 45 days. If an extension is not requested, or the requested information is not filed with the Court within 45 days of the date of this determination, then the Claims Administrator's Final Determination regarding Appellant's claim for EIF Matrix Level III benefits will become final.

Matrix Level IX

Appellant also seeks Matrix Level IX benefits for lost wages.

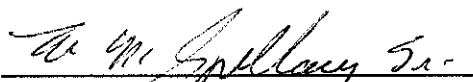
CAP 13 § 2 and 3 clarifies timeliness requirements for amendments and supplements of EIF claims. It requires that additional or amended claims be received by the Claims Administrator within forty-five (45) days of the date of the Preliminary Determination. Appellant's Preliminary Determination is dated July 9, 2003. Appellant's claim was not amended to include Loss of Income until August 26, 2003, after the deadline for amending or supplementing his claim had passed.

Appellant did not abuse his discretion in denying Appellant's untimely claim for EIF Matrix Level IX benefits for lost income.

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 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