

**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>Marion Goss</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Marion Goss, by and through her attorney Glenn Zuckerman, Esq. of the Law Firm Weitz & Luxenberg (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 22, 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 II, IV, V and IX benefits.
2. Appellant has been deemed eligible for Matrix Level II benefits for her surgery of March 16, 2001.
3. Appellant also seeks Matrix Level IV benefits for a wound infection and a dislocation, Matrix Level V benefits for degenerative lumbar spine disease, and Matrix Level IX benefits for recurrent dislocations.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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Appellant's Matrix Level IV claim for a wound infection, and her Matrix Level V claim for degenerative lumbar spine disease are not subject to this appeal and will not be addressed in this Determination.

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. 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.

CAP 27 § 13(a)(3) states "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 dislocations. Therefore, Appellee did not abuse his discretion in denying Appellant's Matrix Level IX claim for dislocations that must meet the requirements of Matrix Level IV in order to be eligible for EIF benefits.

CAP 27 § 8(c) provides that a Class Member must have undergone a CRS and later suffered a dislocation of the prosthetic femoral head to be eligible for EIF Matrix Level IV benefits.

Appellant argues that a Non-Removal Surgery should be included (and was intended to be included) as a CRS. The Special Master disagrees. If the parties to the Settlement Agreement had intended for a Non-Removal Surgery to be considered a CRS they would have included it in the definition of a CRS. Section 1.1(x) of the Settlement Agreement defines a CRS as an Affected Product Revision Surgery, Non-Affected Product Revision Surgery or an Additional Non-Affected Product Revision Surgery.

Since Appellant did not undergo a CRS, as that term is defined by the Settlement Agreement, she is not eligible for Matrix Level IV benefits for recurrent dislocations.

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

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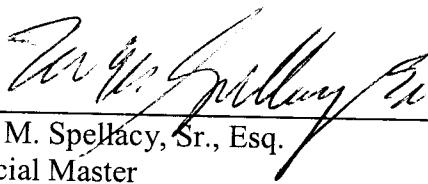
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Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits 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 JUN 28 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 11 2004  
Date

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