

**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>Joe Grippi</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Joe Grippi, by and through his attorney Christie E. Webb, Esq. (“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 I and IX benefits.
2. Appellant has been deemed eligible for Matrix Level I benefits.
3. Appellant also seeks Matrix Level IX benefits for pain and suffering that interferes with his enjoyment of the activities of daily living, and for medical expenses.
4. 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. 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 Procedures (“CAP”) 27.

Medical Expenses

Appellant indicates in his appeal that “he has presented evidence of extraordinary medical expenses related to the Affected Product” and that he is seeking additional benefits for “current and future medical treatment necessitated by the defective hip implant, including monitoring of the hip’s condition and pain management.”

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.”

Section 3.9(c) of the Settlement Agreement anticipated and provided for medical expenses of an APR necessitated by an Affected Product.

Since the Settlement Agreement contemplates medical expenses, they are not compensable under Matrix Level IX in accordance with CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IX claim.

The Claims Administrator shall, however, review Appellant’s claim as a claim for subrogation benefits and make such payments as required by the Settlement Agreement.

Pain and Interference with Enjoyment of Activities of Daily Living

In order to be eligible for EIF Matrix Level IX benefits, CAP 27 Section 13(b)(3) requires that an injury be catastrophic and extraordinary. CAP 27 and the Settlement Agreement define catastrophic as an injury or complication that prevented the Class Member from engaging in an activity of daily living, and extraordinary as an injury or complication that was unique compared to other Class Members similarly situated.

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Appellant alleges that the pain from his Affected Product, which cannot be revised due to a medical condition, have impaired his enjoyment of the activities of daily living. There is no evidence that it has prevented him from engaging in an activity of daily living.

In addition, in his appeal Appellant proves that his pain and impaired enjoyment of the activities of daily living are not unique compared to other Class Members *similarly situated* with his statement "While individuals who were able to undergo revision surgery are, presumably, able to have relief of pain and other complications, Mr. Grippi and others like him who are medically unable to have surgery, are forced to endure excruciating pain for the rest of their lives."

Appellee did not abuse his discretion in denying Appellant's Matrix Level IX claim for pain and interference with enjoyment of activities of daily living that are not catastrophic or extraordinary as those terms are defined by the Settlement Agreement.

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

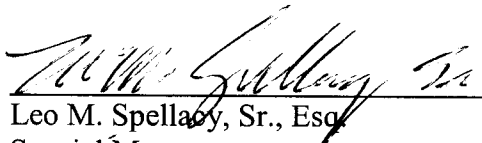
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will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

If no response is received (postmarked) by JUN 04 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 20 2004

Date

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