

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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**IN RE: SULZER HIP PROSTHESIS** ) **Civil Action No.: 01-CV-9000**  
**AND KNEE PROSTHESIS PRODUCT** )  
**LIABILITY LITIGATION** ) **ALL CASES**  
)  
*This document relates to:* ) **(MDL No. 1401)**  
*Brunhilde Hengesbach* )  
) **Judge Kathleen M. O'Malley**

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Brunhilde Hengesbach, by and through her attorneys Steven M. Tindall, Esq., Richard M. Heimann, Esq. and Donald C. Arbitblit, Esq. of the Law Firm Lieff, Cabraser, Heimann & Bernstein ("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 IX 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 IX benefits.
2. Appellant seeks EIF benefits for cellulitis in her left hip that occurred prior to her APRS.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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Notice of Special Master Determination

Brunhilde Hengesbach

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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 EIF Matrix Level IX benefits for cellulitis in her left hip that occurred prior to her APRS. In her appeal, Appellant defines cellulitis as "an acute spreading infection of the skin that extends deeper than erysipelas and involves the subcutaneous tissues."

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."

Annex IV-7 of the Settlement Agreement and CAP 27 anticipate and provide for infections. CAP 27 § 8(b) states, in pertinent part, "Wound infections which occur before a CRS [Covered Revision Surgery] ... are not compensable from the EIF."

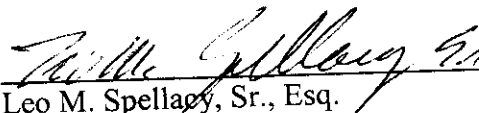
Since Appellant's infection was contemplated by Matrix Level IV, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IX claim. In addition, since Appellant's infection occurred prior to her CRS, she is not eligible for Matrix Level IV benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's 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 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