

**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>Donald Kechely</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Donald Kechely (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 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 IV benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV benefits.
2. Appellant seeks EIF Matrix Level IV benefits for atrial fibrillation that occurred following his APRS.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV benefits.

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

Notice of Special Master Determination

Donald Kechely

Page 2 of 3

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.

Neither the Settlement Agreement nor CAP 27 permits the Claims Administrator or the Special Master to consider a claim improperly asserted under Matrix Level I through VIII under Matrix Level IX. Appellant submitted a claim for Matrix Level IV benefits and that claim cannot be considered under Matrix Level IX upon appeal.

However, in order to be eligible for benefits under either Matrix Level IV or Matrix Level IX, the Claims Administrator must find that a Class Member suffered a major surgical complication or injury that was catastrophic and extraordinary. Catastrophic shall mean that the complication or injury suffered prevented the Class Member from engaging in an activity of daily living. Extraordinary shall mean that the complication or injury suffered by the Class Member was unique compared to other Class Members similarly situated.

Appellant's episode of atrial fibrillation was short in duration (lasting for several hours), and resulted in only a two day extension in the hospital. In addition, no invasive procedures were performed due to the atrial fibrillation, and treatment consisted only of monitoring and administration of anti-coagulants. There is no evidence that the changes in Appellant's life, as described in his appeal, are the result of the atrial fibrillation he suffered shortly after his APRS.

Appellant's atrial fibrillation does not rise to the level of extraordinary as defined by CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for EIF benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IV 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**

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

Notice of Special Master Determination

Donald Kechely

Page 3 of 3

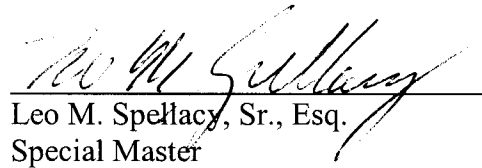
**any such submission and will not be considered. Submissions are to be mailed to the following address:**

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 APR 15 2004, then the Special Master's Decision is final and may not be further contested or appealed.

**MAR 31 2004**

Date

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