

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

| | | |
|-------------------------------------|---|-------------------------------------|
| IN RE: SULZER HIP PROSTHESIS |) | Civil Action No.: 01-CV-9000 |
| AND KNEE PROSTHESIS PRODUCT |) | |
| LIABILITY LITIGATION |) | ALL CASES |
| |) | |
| <i>This document relates to:</i> |) | (MDL No. 1401) |
| <i>Daniel E. Kent</i> |) | |
| |) | Judge Kathleen M. O'Malley |

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Daniel E. Kent, by and through his attorney David W. Edmonds, Esq. of the Law Firm Edmonds, Cole, Hargrave, Givens, Ryan & Woodson (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 20, 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 III benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III, IV, V and IX benefits.
2. Appellant has been deemed eligible for Matrix Level IV benefits for dislocations of August 10, 2001 and October 15, 2001.
3. Appellant also seeks Matrix Level III benefits for his surgeries of November 12, 2001 and November 13, 2001, Matrix Level V benefits for range of motion and altered gait, and Matrix IX benefits for range of motion and altered gait.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III benefits for his surgeries of November 12, 2001 and November 13, 2001, Matrix Level V benefits for range of motion and altered gait, and Matrix IX benefits for range of motion and altered gait.

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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:

Appellant has not appealed the Final Determination regarding his claim for EIF Matrix Level III (for his surgery of November 12, 2001), V or IX benefits. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and it may not be further contested or appealed.

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 § 7(b) states, in pertinent part, "Surgeries that are not a NAPRS for the purposes of Matrix Level III include, but are not limited to, surgical revisions of femoral components, *plastic liners*, antibiotic spacers, screws, cement or circlewires." [emphasis added]

In response to the Special Master's Questions of July 16, 2004, Appellant indicates that his surgery of November 13, 2001 involved the removal and replacement of the plastic liner; the acetabular component of the hip prosthesis was not replaced.

Appellee did not abuse his discretion in denying this claim for Matrix Level III benefits for a surgery that was not a NAPRS pursuant to the CAP 27 § 7(b).

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

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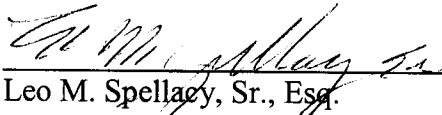
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Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

If no response is received (postmarked) by **SEP 16 2004**, then the Special Master's Decision is final and may not be further contested or appealed.

SEP 01 2004

Date



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