

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

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

*This document relates to:  
Jacqueline Kuhn*

) **Civil Action No.: 01-CV-9000**  
)  
) **ALL CASES**  
)  
) **(MDL No. 1401)**  
)  
) **Judge Kathleen M. O'Malley**

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Jacqueline Kuhn, by and through her attorneys Daniel E. Barenbaum, 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 December 2, 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 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 IX benefits.
2. Appellant seeks EIF Matrix Level IX benefits for Grade IV heterotopic ossification that developed prior to her revision surgery.
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

Jacqueline Kuhn

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After a thorough review of the appeal submitted by the Appellants 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 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. *For example, a Class Member who suffers a dislocation of the prosthetic femoral head before, or more than ninety (90) days after, the date of a CRS is ineligible for benefits under both Matrix Level IV and Matrix Level IX.*” [emphasis added]

The drafters of CAP 27 could have used any Matrix Level IV Major Surgical Complication as the example in the wording of CAP 27 §13(a)(3). If heterotopic ossification had been chosen, CAP 27 §13(a)(3) would read, in pertinent part, “For example, a Class Member who suffers from heterotopic ossification before, or more than 180 days from, the date of a CRS is ineligible for benefits under both Matrix Level IV and Matrix Level IX.” The parties to the Settlement Agreement chose only to compensate those injuries that are causally related to an APRS.

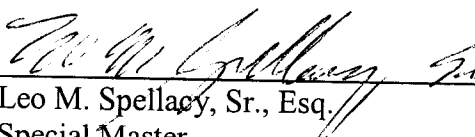
It is the opinion of the Special Master that CAP 27 § 13(a)(3) does preclude compensation under Matrix Level IX for heterotopic ossification that occurred prior to Appellant’s CRS, and the Appellee adhered to the terms of the Settlement Agreement and did not abuse his discretion in denying this claim.

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 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 March 3, 2004, then the Special Master’s Decision is final and may not be further contested or appealed.

February 17, 2004

Date

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