

**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>Dennis Leal</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Dennis Leal, by and through his attorney Matthew M. Clarke, Esq. of the Cappello & Noel Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 21, 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 and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV and IX benefits.
2. Appellant seeks EIF benefits for a subcutaneous hematoma that occurred after his implantation surgery but prior to his revision surgery.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV and 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.

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.

Matrix Level IV – Major Surgical Complication

The Settlement Agreement and CAP 27 require that a Major Surgical Complication must relate to a CRS in order to be compensable under Matrix Level IV.

Appellant’s subcutaneous hematoma occurred prior to his APRS and, therefore, was not related to his CRS.

Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IV claim pursuant to the terms of the Settlement Agreement and CAP 27.

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

Matrix Level IX - Discretionary

Settlement Agreement, Annex IV-6 provides that “Class Members who feel they are entitled to EIF benefits as a result of complications that were neither anticipated, nor provided for under Matrix Levels I-VIII may apply for benefits under Matrix Level IX.

Appellant seeks benefits pursuant to Matrix Level IX for the hematoma and treatment that occurred within four weeks of being implanted with an Affected Product on November 27, 2000.

On December 23, 2000 Dr. Carl J. Peus’ examination revealed a large subcutaneous hematoma at the distal third of the incision with drainage.

The preoperative diagnosis described the hematoma as “being a deep, excessively large hematoma containing approximately 3 units of blood, all old and coagulated.”

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There is sufficient evidence to relate the hematoma to the implantation of the Affected Product.

Appellant suffered a great deal of pain and was confined to bed for 37 days due to the subcutaneous hematoma. His injuries were such that they prevented him from engaging in an activity of daily living and were unique as compared to other Class Members.

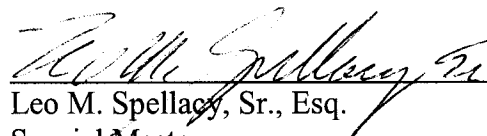
Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim relating to his subcutaneous hematoma is hereby REVERSED and this claim is remanded back to the Claims Administrator for further determination pursuant to the Settlement Agreement

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 MAY 11 2004, then the Special Master's Decision is final and may not be further contested or appealed.

APR 26 2004
Date


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