

**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>Peter P. Liapis</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Peter P. Liapis (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated April 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 IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV, V and IX benefits.
2. Appellant has been deemed eligible for EIF Matrix Level IV benefits for a periprosthetic fracture, Matrix Level V benefits for a permanent injury, and Matrix Level IX benefits for depression.
3. Appellant also seeks Matrix Level IV benefits for reduced circulation in right leg, foreshortening of right leg, non-union of a trochanteric osteotomy, permanent nerve injury, pain and functional deficit; Matrix Level V benefits for permanent nerve and vascular injuries; and Matrix Level IX benefits for changes in ability to perform daily activities, reduced longevity, pain, attorney fee benefit, fractured calcar, use of screws to affix acetabular shell on August 26, 2000 and December 20, 2000, angioplasty, and surgery of April 7, 2003.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV benefits for reduced circulation in right leg, foreshortening of right leg, non-union of a trochanteric osteotomy, permanent nerve injury, pain and functional deficit; Matrix Level V benefits for permanent nerve and vascular injuries; and Matrix Level IX benefits for changes in ability to perform daily activities, reduced longevity, pain, attorney fee benefit, fractured calcar, use of screws to affix acetabular shell on August 26, 2000 and December 20, 2000, angioplasty, and surgery of April 7, 2003.

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Appellant has not appealed the Final Determination regarding his EIF Matrix Level IV claims for reduced circulation in right leg, foreshortening of right leg, non-union of a trochanteric osteotomy, permanent nerve injury, pain and functional deficit; his Matrix Level V claims for permanent nerve and vascular injuries; or his Matrix Level IX claims for changes in ability to perform daily activities, reduced longevity, pain, fractured calcar, use of screws to affix acetabular shell on August 26, 2000 and December 20, 2000, and angioplasty. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and may not be further contested or appealed.

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. 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.

Matrix Level IX – Surgery of April 7, 2003

Appellant underwent an APRS on December 20, 2000 at which time he was implanted with a Non-Affected Product. That Non-Affected Product was removed on April 7, 2003.

Appellant seeks EIF Matrix Level IX benefits for the April 7, 2003 procedure, which occurred more than two years after his APRS.

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) 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 of the Settlement Agreement and CAP 27 anticipated and provided for Non-Affected Product Revision Surgeries (NAPRS's). Section 7(c) of CAP 27 and Annex IV of the Settlement Agreement state "Class Members who have undergone a Non-Affected Product Revision Surgery on or before the date that is one hundred and eighty (180) days after the date of an APRS" may be eligible for benefits under Matrix Level III, and "the Claims Administrator may, at his discretion, extend this compensable time period by 180 days...".

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Since Appellant's surgery of April 7, 2003 was a NAPRS, it was contemplated by Matrix Level III. Therefore, Appellee did not abuse his discretion in denying this Matrix Level IX claim.

Appellant's contention that "A denial of benefits for Claimant's April 7, 2003, surgery based upon procedures formulated and published on June 17, 2003 appear to be abhorrent to both the spirit and letter of the entire settlement process and agreement" is erroneous. The Settlement Agreement itself prescribes the timeframe for Class Members to undergo a NAPRS and be eligible for Matrix Level III benefits.

In order to be eligible for EIF Matrix Level III benefits, the latest possible date for Appellant to undergo a NAPRS would have been 360 days after his APRS, or December 16, 2001. It is not disputed that Appellant's NAPRS was performed on April 7, 2003, more than fifteen months after that deadline.

Appellee does not have the authority to extend the EIF Matrix Level III deadline for undergoing an NAPRS past the 360 days prescribed by the Settlement Agreement. Therefore, Appellant is not eligible for Matrix Level III benefits.

Matrix Level IX – Attorney Fee Benefit

The Settlement Agreement does not provide payment of an Attorney Fee benefit to a Class Member who is not, and was not, represented by counsel.

Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IX benefits for attorney fees not incurred.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim for his surgery of April 7, 2003 and an attorney fee benefit 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:**

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

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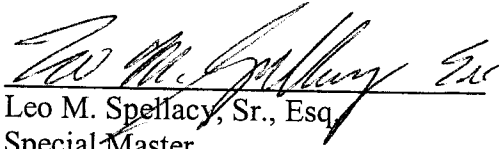
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If no response is received (postmarked) by AUG 02 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUL 16 2004
Date


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