

**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>Margaret Martindale</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Margaret Martindale, by and through her attorney Mark A. Weycer, Esq. (“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 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 deep vein thrombosis surgery and for a contralateral surgery.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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

Notice of Special Master Determination

Margaret Martindale

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.

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 IX – Deep Vein Thrombosis Surgery

Appellant alleges that “although surgery was recommended on the left leg where the Sulzer device was implanted as far back as August of 2001, Ms. Martindale was unable to have surgery at that time.” That is incorrect. Appellant’s medical records indicate that she underwent a total right hip replacement on August 28, 2001. She could have undergone an APRS on August 28, 2001 but, because she was having more trouble with her right hip than her left, she chose to have her right hip replaced rather than a revision of her left hip.

There were no medical records submitted to prove that her deep vein thrombosis surgery was in any way related to her Affected Product or her APRS. In addition, she did not submit a Physician Declaration Form addressing this claim, which renders the claim incomplete and, therefore, ineligible.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s incomplete Matrix Level IX claim for deep vein thrombosis surgery.

Matrix Level IX – Contralateral Surgery

CAP 27§13(b)(2) provides Matrix Level IX benefits for Class Members who, *as a result of an APRS*, suffered injury to the opposite joint that required either the surgical implant of a prosthesis or the revision of an existing prosthetic implant to the contralateral joint.

Appellant’s contralateral surgery on her right hip was performed prior to her APRS and, therefore, it could not possibly have been as a result of her APRS, as required by CAP 27.

Appellant argues that “the records show that as a result of the Sulzer implant, Ms. Martindale was required to have a contralateral surgery on her right hip.” This is erroneous. The problems with Appellant’s right hip existed prior to implantation of her Affected Product, as evidenced by the August 16, 2000 operative report of her implantation surgery which lists the preoperative and postoperative diagnosis as “painful

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

Notice of Special Master Determination

Margaret Martindale

Page 3 of 3

right and left hip with degenerative changes secondary to vascular necrosis, hypertension, history of pulmonary embolus status post vena cava filter, chronic swelling of left lower extremity.”

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s Matrix Level IX claim for a contralateral surgery that is specifically barred by CAP 27.

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

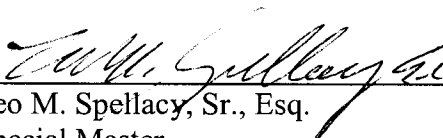
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 APR 30 2004, then the Special Master’s Decision is final and may not be further contested or appealed.

**APR 15 2004**

Date

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