

**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>Richard Metzbower</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Richard Metzbower, by and through his attorney Eugene M. Brennan, Jr., Esq. (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 21, 2004 on Appellant’s claim for 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 Matrix Level IX benefits for multiple complications/injuries that occurred following his implantation surgery.
3. Appellee issued Preliminary and Final Determinations that Appellant was ineligible for EIF Matrix Level 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.

Appellant did not appropriately complete his Green Form. Instead of identifying specific injuries for which he was submitting a claim for EIF benefits, he attached a narrative “Statement of Injuries.” Therefore, this determination will address all injuries claimed together, instead of individually.

Appellant alleges that his injuries, which include acute renal failure, decreased liver function, leaking heart valves, increased fluid build-up in his abdominal cavity, extreme and constant pain, little or no energy, a series of unresolving wound infections, guided paracentesis procedures, hernias, removal of part of his small intestine, thyroid failure, chronic fatigue and insomnia, itching, acne, and severe mood swings are related to being implanted with an Affected Product on May 16, 2000.

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 major surgical complications under Matrix Level IV.

The Settlement Agreement requires that a major surgical complication be related to a CRS in order to be eligible for Matrix Level IV benefits.

Since major surgical complications are contemplated by Matrix Level IV, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level IX benefits for those complications, and since Appellant’s complications were not related to his CRS, he is not eligible for Matrix Level IV benefits for those complications.

In addition, there is insufficient evidence causally relating Appellant’s complications and/or injuries to his Affected Product.

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The September 7, 2000 clinic note from Dr. Thuluvath states:

“1. Cirrhosis. It appears to be multifactorial caused by his chronic hepatitis C and prior excessive alcohol intake” [an opinion stated in many of his medical records]

“2. Ascites. It appears to be multifactorial probably caused by his liver disease in addition to his chronic renal insufficiency”

“3. Renal insufficiency which might be a primary process or secondary to his liver disease such as hepatorenal syndrome, or secondary to his chronic hepatitis C”

Appellant’s Physician Declaration Form does not state that the complications are related to his Affected Product.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level IX benefits for injuries and/or complications that he did not prove were caused by his Affected Product.

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:**

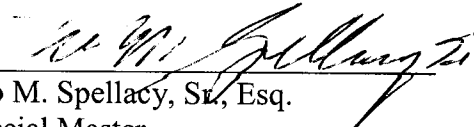
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

If no response is received (postmarked) by JUN 01 2004, then the Special Master’s Decision is final and may not be further contested or appealed.

MAY 17 2004

Date

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