

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

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Richard Ott, by and through his attorney Mark Hilkert, Esq. of the Scanlon & Gearing 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 III benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III benefits.
2. Appellant seeks Matrix Level III benefits for an alleged Non-Affected Product Revision Surgery that he underwent on December 31, 2002.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III benefits.

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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.

Section 7 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 where a Class Member’s treating orthopedic surgeon causally relates (to a medical probability) the NAPRS to the APRS and/or to the original implantation of the Affected Product.”

Appellant’s APRS was performed on August 22, 2001. In accordance with the terms of the Settlement Agreement and CAP 27, in order to be eligible for EIF Matrix Level III benefits, the latest possible date for Appellant to have undergone a NAPRS would have been 360 days after his APRS, or August 17, 2002. It is not disputed that Appellant’s NAPRS was performed on December 31, 2002, more than four months after that deadline.

The Federal District Court has explained the importance of the deadlines prescribed in the Settlement Agreement [*In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, 01-CV-9000 at 1 through 20 (N.D.O. February 6, 2004) (Docket #1714)].

Appellee, Claims Administrator, does not have the authority to extend the EIF Matrix Level III deadline for undergoing a NAPRS past the 360 days prescribed by the Settlement Agreement and, therefore, did not abuse his discretion in denying Appellant’s claim.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF Matrix Level III 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:**

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Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

MAY 11 2004

If no response is received (postmarked) by _____, 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