

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

Notice of Special Master Determination

Scott Reed

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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.

Appellant underwent an Affected Product Revision Surgery (APRS) on July 9, 2001. During that surgery his Affected Product was removed and replaced with a Non-Affected Product. The Non-Affected Product was then removed during a surgery on May 20, 2003.

Appellant seeks EIF Matrix Level IX benefits for the May 2003 surgery, which occurred more than 22 months 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...".

Since Appellant's surgery of May 2003 was a NAPRS, it was contemplated by Matrix Level III. Therefore, Appellee did not abuse his discretion in denying his Matrix Level IX claim. 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 undergo an NAPRS would have been 360 days after his APRS, or July 4, 2002. 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.

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

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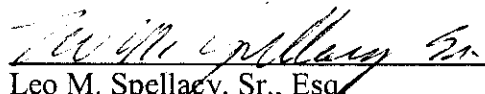
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Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by February 11, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 27, 2004

Date


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