

**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>Georgia Sakas</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Georgia Sakas, by and through her attorney Rachel Abrams, Esq. of the Law Firm Hersh & Hersh (“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 II benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level II benefits.
2. Appellant seeks EIF Matrix Level II benefits for the surgery that she underwent on September 21, 2000.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level II 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.

Annex IV of the Settlement Agreement and CAP 27 provide that Matrix Level II benefits are available to Class Members who have not undergone an APRS, but who have undergone a surgery wherein their treating surgeon has attempted to secure an Affected Product using screws, cement or some other means, as a result of non-traumatic loosening.

The fact that Appellant’s surgery of September 21, 2000 does not meet the definition of a Non-Removal Surgery as required by the Settlement Agreement and CAP 27 is not in dispute. Appellant concedes that the Affected Product was not secured during the September 21, 2000 surgery. The medical report does not state that prior to the procedure the doctor believed the Affected Product was loose, nor that he performed the surgery to secure the Affected Product.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s Matrix Level II claim for a surgery that does not qualify as a Non-Removal Surgery according to the Settlement Agreement and CAP 27.

In her appeal, Appellant requests that this claim be considered under Matrix Level IX.

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.” Since Matrix Level II contemplates non-removal surgeries, this claim is not eligible for Matrix Level IX benefits.

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

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**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 20 2004, then the Special Master's Decision is final and may not be further contested or appealed.

APR 05 2004  
Date

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