

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

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Margaret Schoenhoffen, by and through her attorney Fabrice N. Vincent, Esq. of the Law Firm Loeff, Cabraser, Heimann & Bernstein (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated March 30, 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 IV and IX benefits.
2. Appellant has been deemed eligible for Matrix Level IV benefits for a wound infection and Matrix Level IX benefits for the reimplantation procedure of October 11, 2000.
3. Appellant also seeks Matrix Level IX benefits for adverse reaction to medication, insertion of PICC line and four additional procedures and five hospitalizations following implantation.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits for adverse reaction to medication, insertion of PICC line and four additional procedures and five hospitalizations following implantation.

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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. When an act of discretion is under review the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

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.

Insertion of PICC Line

Appellant’s PICC line was inserted in order to treat an infection that occurred following removal of her Affected Product.

The Settlement Agreement limits awards under Matrix Level IX to complications that were neither anticipated nor provided for in other Matrix Levels. Matrix Level IV provides benefits for wound infections and Appellant has been awarded Matrix Level IV benefits for the infection that required insertion of a PICC line in addition to resection arthroplasty. She is not eligible for additional compensation under Matrix Level IX.

Appellee did not abuse his discretion in denying this claim for Matrix Level IX benefits for which Appellant will receive compensation under Matrix Level IV.

Adverse Reaction to Medication

In order to be eligible for Matrix Level IX benefits, CAP 27 Section 13(b)(3) requires that an injury be catastrophic and extraordinary. Catastrophic is defined as an injury that prevented the Class Member from engaging in an activity of daily living; and extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated.

Appellant suffered a severe allergic reaction to the antibiotics prescribed to treat her hip infection “only days after and before she even had a chance to recover from her October 23, 2004 [sic] revision arthroplasty [sic].” This allergic reaction required her to be re-admitted to the hospital on November 1, 2000. Her antibiotics were changed and she was discharged on November 3, 2000.

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Appellant's allergic reaction did not extend or delay her recuperation. Therefore, Appellee did not abuse his discretion in denying this claim because it does not rise to the level of catastrophic as required by the Settlement Agreement and CAP 27.

Four Additional Procedures and Five Hospitalizations

Appellant seeks Matrix Level IX benefits for the procedures she underwent on July 11, 2000, October 11, 2000, October 23, 2000 and November 1, 2000, and for hospitalizations on July 4, 2002, July 11, 2000, October 11, 2000, October 23, 2000 and November 1, 2000.

In order to be eligible for Matrix Level IX benefits, CAP 27 Section 13(b)(3) requires that an injury be catastrophic and extraordinary. Catastrophic is defined as an injury that prevented the Class Member from engaging in an activity of daily living; and extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated.

Appellee indicates, and the Special Master agrees, that Appellant's emergency room visit of July 4, 2000 due to intense pain was not unusual for Class Members requiring an APRS. Therefore it does not rise to the level of extraordinary as required by CAP 27.

Section 3.4(a) of the Settlement Agreement provides an aggregate payment value of \$160,000 for each APRS (the procedure and the hospitalization) a Class Member undergoes. Appellant has been awarded APRS benefits for her July 11, 2000 surgery. She is not eligible for additional compensation under Matrix Level IX for that procedure and hospitalization.

Appellant's has been awarded Matrix Level IX benefits for her October 11, 2000 reimplantation procedure and associated hospitalization. She is not eligible for duplicative Matrix Level IX benefits.

The Settlement Agreement limits awards under Matrix Level IX to complications that were neither anticipated nor provided for in other Matrix Levels. Appellant's October 23, 2000 hospitalization, insertion of PICC line and revision arthroplasty were due to the infection for which she will receive Matrix Level IV benefits. She is not eligible for additional compensation for those injuries under Matrix Level IX.

Appellant's November 1, 2000 hospitalization was due to a severe allergic reaction to antibiotics, which was a separate Matrix Level IX claim already addressed by the Special Master in this Determination.

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Appellee did not abuse his discretion in denying Appellant's claim for four additional procedures and five hospitalizations as each of those procedures and hospitalizations were claimed as separate injuries.

By order of the Special Master, Appellee's Final Determination of ineligibility regarding Appellant's Matrix Level IX claim for insertion of PICC line, adverse reaction to medication, and four additional procedures and five hospitalizations following implantation is hereby AFFIRMED.

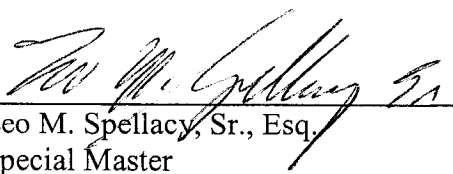
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 AUG 02 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUL 16 2004

Date

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