

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

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Judy Schuler, by and through her attorney Heather A. Foster, Esq. of the Lieff, Cabraser, Heimann & Bernstein Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 2, 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 IX benefits.
2. Appellant has been deemed eligible for Matrix Level IX benefits for loss of income.
3. Appellant also seeks Matrix Level IX benefits for an unstable hip, multiple, partial subluxations, potential need for abduction brace, and groin pain.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits for an unstable hip, multiple, partial subluxations, potential need for abduction brace, and groin pain.

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

Notice of Special Master Determination

Judy Schuler

Page 2 of 3

Appellant has not appealed the Final Determination regarding her claim for EIF Matrix Level IX benefits for an unstable hip, potential need for abduction brace, and groin pain. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and it may not be further contested or appealed.

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 argues that CAP 27 § 13(a)(3) "directly controverts the language of the SA that she [Appellant] agreed to accept in good faith." However, Annex IV-6 of the Settlement Agreement itself restricts eligibility under EIF Matrix Level IX to complications that were "neither anticipated, nor provided for under Matrix Levels I-VIII."

Matrix Level IV anticipated and provides for dislocation(s)/subluxations(s) [see Settlement Agreement Annex IV-2].

Since Matrix Level IV contemplates subluxations, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's Matrix Level IX claim.

In addition, CAP 27 § 8 (c) requires that "Class Members must submit documentation proving that the dislocation required a reduction under general anesthesia or intravenous sedation. Dislocations that occur more than ninety days from a CRS and dislocations that do not require a reduction under general anesthesia or intravenous sedation are not compensable under the EIF."

It is not disputed that Appellant's multiple, partial subluxations did not require a reduction under general anesthesia or intravenous sedation. Therefore, Appellant is not eligible for Matrix Level IV benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim for multiple, partial subluxations is hereby **AFFIRMED**.

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

Notice of Special Master Determination

Judy Schuler

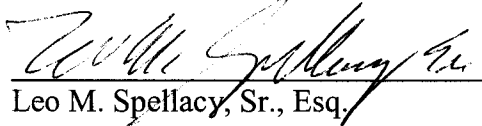
Page 3 of 3

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 MAY 11 2004, 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