

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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

*This document relates to:
William J. Seilonen*

) **Civil Action No.: 01-CV-9000**
)
) **ALL CASES**
)
) **(MDL No. 1401)**
)
) **Judge Kathleen M. O'Malley**

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member William J. Seilonen, by and through his attorney David E. Tuszynski, Esq. of the Garland, Samuel & Loeb Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 29, 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, IV and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III, IV, and IX benefits.
2. Appellant has been deemed eligible for Matrix Level IV benefits for dislocations of July 7 and 12, 2001.
3. Appellant also seeks Matrix Level III benefits for his surgeries of January 12, 2002 and July 22, 2002; Matrix Level IV or IX benefits for multiple dislocations occurring between September 25, 2001 and July 14, 2002; Matrix Level IX benefits for bi-lateral elbow surgery, pain and disability, lost wages and medical expenses.
4. Pursuant to CAP 27 §13(b)(c), Appellee considered Appellee’s Matrix Level IX claim for pain and disability under Matrix Level V.
5. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III benefits for his surgeries of January 12, 2002 and July 22, 2002; Matrix Level IV or IX benefits for multiple dislocations occurring between September 25, 2001 and July 14, 2002; and Matrix Level IX benefits for lost wages and medical expenses.

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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:

In his response to Appellant's appeal, Appellee indicates that Appellant is eligible for Matrix Level IX benefits for lost wages. Therefore, this Determination will not address that claim. The Special Master hereby directs the Claims Administrator, if he has not already done so, to immediately furnish Appellant with a revised benefit determination regarding that claim, and Appellant retains his right to appeal that benefit determination in accordance with CAP 30.

Appellant has not received a Final Determination regarding his Matrix Level V claim for pain and disability or his Matrix Level IX claim for bi-lateral elbow surgery. Those claims are not being appealed at this time and will not be addressed in this Determination.

The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator.

Matrix Level III – Non Affected Product Revision Surgery

It is not disputed that Appellant's surgeries of January 12, 2002 and July 22, 2002 do not qualify as Non-Affected Product Revision Surgeries under the terms of CAP 27.

Appellant argues that the definition of a NAPRS contained in CAP 27 §7(a) is contrary to the definition contained in the Settlement Agreement and that the Claims Administrator has narrowed the definition of a 'non-affected product' from that contained in the Settlement Agreement.

CAP 27 was promulgated by the Claims Administrator *and Class Counsel*, and the Special Master does not have the authority to nullify the Order of the United States District Court that requires the Claims Administrator to evaluate claims for EIF benefits according to the policies and procedures set forth in Claims Administrator Procedure ("CAP") 27.

CAP 27 § 7(a) defines a Non-Affected Product as a "product that is not an Affected Product but which performs the same function as an Affected Product and which was implanted with the intention of replacing an Affected Product for a term not shorter than one year...For example, to qualify as having a Non-Affected Product, a Class Member who was first implanted with a Sulzer Inter-Op Shell Affected Product must have that shell removed and replaced by a product which physically takes the place of an Inter-Op Shell and performs the function of a prosthetic acetabular component. To qualify as having a NAPRS, the same Class Member must undergo a surgical removal of the Non-Affected Product."

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Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for Matrix Level III benefits for his surgeries of January 12, 2002 and July 22, 2002 because in neither surgery was the shell removed and replaced with a product that performs the function of a prosthetic acetabular component.

Matrix Level IV or IX - Multiple Dislocations

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-2 of the Settlement Agreement and CAP 27 anticipated and provided for dislocations. CAP 27 § 8(c) states, in pertinent part, "Dislocations that occur more than ninety days from a CRS...are not compensable from the EIF."

Appellant's CRS was performed on April 28, 2001. The dislocations that were deemed ineligible for EIF benefits occurred more than 90 days after his CRS on September 25, 2001, December 11, 2001, two times on January 3, 2002, May 8, 2002, May 30, 2002 and July 14, 2002.

Since dislocations are contemplated by Matrix Level IV, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's Matrix Level IX claim for dislocations. In addition, since Appellant's dislocations occurred more than 90 days after his CRS, Appellee did not abuse his discretion in denying his claim under Matrix Level IV.

Matrix IX – Medical Expenses

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."

Section 3.9(c) of the Settlement Agreement anticipated and provided for medical expenses of an APR necessitated by an Affected Product.

Since medical expenses are contemplated by the Settlement Agreement, they are not compensable under Matrix Level IX in accordance with CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IX claim.

However, the Claims Administrator shall review Appellant's claim as a claim for subrogation benefits and make such payments as required by the Settlement Agreement.

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By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF claim for Matrix Level III benefits, Matrix Level IV or IX benefits for multiple dislocations, and Matrix Level IX benefits for medical expenses 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:**

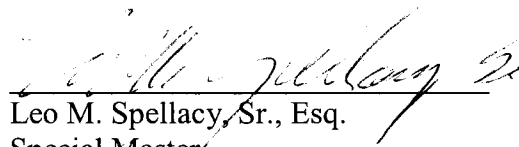
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

APR 30 2014

If no response is received (postmarked) by _____, then the Special Master's Decision is final and may not be further contested or appealed.

APR 15 2014

Date



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