

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

IN RE: SULZER HIP PROSTHESIS)	Civil Action No.: 01-CV-9000
AND KNEE PROSTHESIS PRODUCT)	
LIABILITY LITIGATION)	ALL CASES
)	
<i>This document relates to:</i>)	(MDL No. 1401)
<i>Helen Simon</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Helen Simon, by and through her attorneys Mark P. Rapazzini, Esq. and M. Elizabeth Graham, Esq. of the Law Firm Rapazzini & Graham (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 20, 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 seeks Matrix Level IX benefits for a contralateral injury, and for a flare-up of ulcerative colitis.
3. At the time of this appeal Appellant had not received a Final Determination regarding her Matrix Level IX claim for a flare-up of ulcerative colitis. Therefore, that claim is not being appealed at this time.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits for a contralateral injury.

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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.

It is not disputed that Appellant underwent a left total hip replacement on February 4, 2002, prior to the January 8, 2003 APRS of her right hip.

In her appeal, Appellant indicates that her contralateral injury was “Because of her failed, defective, recalled Sulzer implant.”

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 Procedures (“CAP”) 27.

Section 13(b)(2) of CAP 27 reads “The Claims Administrator shall consider for payment Claims of contralateral injury. To be eligible for payment under this Matrix Level [IX], a Class Member must show that he or she underwent an Affected Product Revision Surgery, *that as a result of the APRS*, the Class Member suffered injury to the opposite joint, and that the injury to the opposite joint required either the surgical implant of a prosthesis or the revision of an existing prosthetic implant to the contralateral joint.” [emphasis added]

Since Appellant’s contralateral injury was not a result of her APRS she is not eligible for Matrix Level IX benefits in accordance with the terms of CAP 27.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF Matrix Level IX claim for a contralateral injury 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:**

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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 JUN 11 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 27 2004

Date



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