

**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>Nicole Skillin</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Nicole Skillin, by and through her attorney Rhett D. Klok, Esq. of the Law Firm Motley Rice (“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 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 the probability of needing a revision surgery in the future.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX 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. 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.

Appellant alleges that CAP 27 redefines the eligibility criteria for the EIF fund, and that it is unfair that after her opt-out rights had been given up the EIF criteria changed, affecting her claim because it was interpreted as a “future injury.”

Annex IV of the Settlement Agreement outlines the compensation benefits payable from the EIF, and it vests the Claims Administrator with full discretion in awarding Matrix Level IX benefits. CAP 27, which was promulgated with the assistance of Class Counsel, clarifies how the Claims Administrator will exercise his discretion in awarding benefits from the EIF, it does not redefine the eligibility criteria for Matrix Level IX benefits. In addition, the United States District Court ORDERED the Claims Administrator to evaluate claims for EIF benefits according to the policies and procedures set forth in Claims Administrator Procedure (“CAP”) 27. The Special Master does not have the authority to nullify that Order.

Appellant also argues that because she is young and active, revision surgeries are inevitable and are expected to be sooner and more often than the average hip prosthesis recipient. Therefore, her claim should not be interpreted as a claim for future injuries, but rather as a current injury suffered as a direct result of her revision surgery.

In responding to Green Form question 16.A. What injury(ies) or damage(s) do you believe resulted from a CRS?, Appellant stated “Given Nicole’s young age and the life expectancy of the said devices under ordinary circumstances, she is fearful that she will require additional surgeries on this same hip and other future repercussions.”

Compensation under Matrix Level IX for the fear that she will require additional surgeries on the same hip and other future repercussions is specifically barred by CAP 27 § 13(a)(4) which provides that “Injuries or damages that have not occurred within the time periods allotted by the Settlement Agreement shall not be eligible for compensation.”

Despite the report from Dr. McAuley, who thoroughly explains the *potential* problems that may be facing Appellant because of her young age, she does not need a revision surgery at the present time, and she did not suffer any extraordinary or catastrophic injuries from her APRS that are affecting her currently. Therefore,

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Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IX benefits.

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

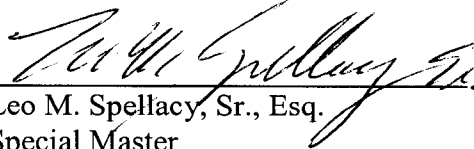
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 JUN 04 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 20 2004

Date


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