

**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>Anita C. Sokol</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Anita C. Sokol, by and through her attorney Mark J. Homyak, Esq. of The Homyak Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 27, 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 I and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF benefits.
2. Appellant has been awarded Matrix Level IV benefits for her dislocation of August 12, 2002 and for the re-implantation procedure that she underwent on July 29, 2002.
3. Appellant also seeks Matrix Level I benefits for the period of time between when her Affected Product and when reimplantation occurred and Matrix Level IX benefits for a chronic infection that developed following her implantation surgery.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level I and 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.

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.

Matrix Level I – Revision Surgery Indicated But for a Medical Condition

Appellant seeks Matrix Level I benefits for the approximately 16 month period of time between when her Affected Product was removed (for which she was awarded APRS benefits) and when she was re-implanted a new prosthesis (for which she will receive Matrix Level IX benefits).

CAP 27 § 5(b) states “Class Members for whom APRS was at one time medically contraindicated, but who have undergone an APRS since that time, are not eligible for Matrix Level I benefits, provided that the Affected Product revised is the same as that which forms the basis of the Matrix Level I Claim.”

Appellant argues that since her Affected Product was removed during the March 25, 2001 surgery, the July 29, 2002 hip reimplantation was not a revision of the same Affected Product since the Affected Product had already been removed. It would follow, therefore, that the July 29, 2002 surgery was not a revision surgery because there was no Affected Product to revise; it was simply a re-implantation surgery, for which she has been awarded Matrix Level IX benefits.

Appellee, Claims Administrator did not abuse his discretion in denying Appellant’s claim for Matrix Level I benefits.

Matrix Level IX – Chronic Infection

Appellant seeks Matrix Level IX benefits for a serious wound infection that developed following her implantation surgery and the associated treatments and injuries caused by this now chronic infection.

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.”

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Matrix Level IV provides benefits for wound infections, and Matrix Level V provides benefits for permanent injuries.

Appellee did not abuse his discretion in denying Appellant's claim for Matrix Level IX benefits for injuries that must be claimed under Matrix Level IV and V.

The parties to the Settlement Agreement chose to compensate only injuries that are causally related to an APRS under Matrix Level IV and V. Section 8(b) of CAP 27 states, in pertinent part, "Wound infections which occur before a CRS [Covered Revision Surgery] ... are not compensable from the EIF" and Section 9 (f) of CAP 27 provides benefits for Class Members who have suffered a permanent injury as a result of a CRS.

Appellant's infection occurred prior to her CRS and, therefore, she is not eligible for EIF benefits for the infection, or the associated treatments and injuries.

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

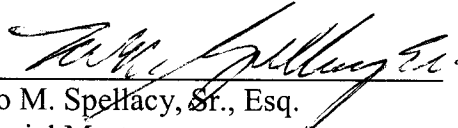
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 01 2004, then the Special Master's Decision is final and may not be further contested or appealed.

**MAY 17 2004**

Date

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