

**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>Scott Stanley</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Scott Stanley, by and through his attorney Matthew M. Clarke, Esq. of the Law Firm Cappello & Noell (“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 IV and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV and IX benefits.
2. Appellant has been awarded Matrix Level IV benefits for two dislocations that occurred on February 5, 2001.
3. Appellant also seeks either Matrix Level IV or IX benefits for wearing a brace for seven weeks and for an infection.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV or IX benefits for wearing a brace for seven weeks and for an infection.

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

Notice of Special Master Determination

Scott Stanley

Page 2 of 3

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 Procedures (“CAP”) 27.

Wound Infection

CAP 27 § 13(a)(1) states that “Injuries such as bone, tissue or muscle loss...*infection*, deformed hip, knee or femur...are properly classified as Permanent Injuries and/or Major Complications which must be Claimed under Matrix Level IV or V, and to be compensable must meet the criteria of Matrix Levels IV or V to qualify for EIF benefits.”

Appellee did not abuse his discretion in denying Appellant’s claim for Matrix Level IX benefits for a wound infection that must be claimed under Matrix Level IV in accordance with the terms of CAP 27.

In order to qualify for Matrix Level IV benefits, CAP 27 § 8(b) provides that a wound infection must require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation. Appellant’s infection was aspirated and treated with antibiotics. Appellant concedes that the infection did not require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level IV benefits for a wound infection that did not require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation, pursuant to the terms of CAP 27.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s Matrix Level IV and IX claim for a wound infection is hereby AFFIRMED.

Brace

Appellant seeks either Matrix Level IV or IX benefits for having to wear a brace for 24 hours per day for seven weeks after his hip dislocated twice on the same day, approximately 11 days after his CRS.

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

Notice of Special Master Determination

Scott Stanley

Page 3 of 3

CAP 27 Section 13(b)(3) states, in pertinent part, "Catastrophic shall mean an injury that prevented the Class Member from engaging in an activity of daily living. Extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated."

The Special Master finds that there is sufficient evidence proving that the wearing of this specific brace for 24 hours each day for seven weeks did prevent Appellant from engaging in certain activities of daily living. In addition, there is no evidence that this complication is not unique compared to other Class Members.

It is the Special Master's opinion that this claim is more appropriately considered under Matrix Level IX. Therefore, by order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IV claim for the wearing of a brace is AFFIRMED. However, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim for the wearing of a brace is hereby REVERSED and that claim is remanded back to the Claims Administrator for further determination pursuant to the Settlement Agreement

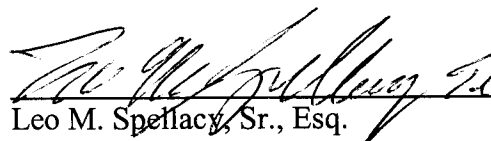
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 16 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 01 2004

Date


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