

**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>Alan G. Taylor</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Alan Taylor (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 29, 2003 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 benefits for his surgeries of July 9, 2002 and April 8, 2003.

The factual findings of this matter are as follows:

1. Appellant submitted several claims for EIF benefits.
2. Appellant has been deemed eligible for EIF Matrix Level III benefits for his surgery of April 30, 2002, and Matrix Level IX benefits for loosening of the patellar component requiring a patellectomy
3. Appellant also seeks Matrix Level III benefits as a result of a Non-Affected Product Revision Surgery (“NAPRS”) of July 9, 2002 and an Additional Non-Affected Product Revision Surgery (“ANAPRS”) of April 8, 2003.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III benefits for the NAPRS of July 9, 2002 or the ANAPRS of April 8, 2003.

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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:

Appellant has not been issued a Final Determination on his Uninsured Affected Product Recipient (Red Form) claim. Therefore, that claim cannot be appealed at this time and will not be addressed in this Determination.

In addition, medical expense subrogation claims are governed by Section 3.9 of the Settlement Agreement. The Claims Administrator shall review Appellant's claims for subrogation benefits and make such payments as required by the Settlement Agreement.

In his response to Appellant's appeal, Appellee indicates that Appellant is eligible for Matrix Level IX benefits for a patellectomy surgery that Appellant underwent on August 26, 2003. Therefore, the Special Master will not address that issue. 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.

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 Procedure ("CAP") 27.

Appellant seeks EIF Matrix Level III benefits for a NAPRS that he underwent on July 9, 2002.

Section 7 of CAP 27 and Annex IV of the Settlement Agreement provide that "Class Members who have undergone a Non-Affected Product Revision Surgery on or before the date that is one hundred and eighty (180) days after the date of an APRS," and "Class Members who have required one or more Additional Non-Affected Product Revision Surgeries (after the first NPRS) on or before the date that is three hundred and sixty-five (365) days after the date of the APRS" may be eligible for benefits under Matrix Level III.

CAP 27 §7(c) and Annex IV of the Settlement Agreement permit the Claims Administrator, at his discretion, to extend the compensable time period by 180 days where a Class Member's treating orthopedic surgeon causally relates (to a medical

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Settlement Agreement and CAP 27, in order to be eligible for EIF Matrix Level III benefits, the latest possible date for Appellant to have undergone his first NAPRS would have been 360 days after his APRS, or May 30, 2002. It is not disputed that Appellant's NAPRS was performed on July 9, 2002, 40 days after that deadline.

The latest possible date for Appellant to have undergone an Additional NAPRS would have been 545 days after his APRS, or December 1, 2002. It is not disputed that Appellant's ANAPRS was performed on April 8, 2003, 128 days after that deadline.

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.

Appellee, Claims Administrator, does not have the authority to extend the EIF Matrix Level III deadline for undergoing a NAPRS past the deadlines prescribed by the Settlement Agreement and CAP 27 and, therefore, did not abuse his discretion in denying Appellant's claim for EIF Matrix Level III benefits for his surgeries of July 9, 2002 and April 8, 2003.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level III claim for his surgeries of July 9, 2002 and April 8, 2003 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

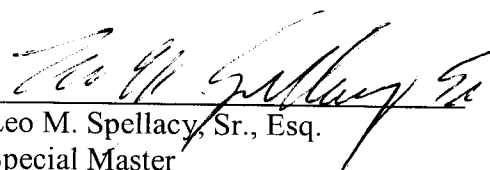
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If no response is received (postmarked) by \_\_\_\_\_, then the Special Master's Decision is final and may not be further contested or appealed.

MAR 10 2004

Date

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