

**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>John Tidswell</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member John Tidswell, by and through his attorney Earl B. Hooten, II, Esq. of the C. Thomas Strickland & Associates Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 22, 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 II benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF benefits for Matrix Level II, III, IV, and V benefits.
2. Appellant seeks EIF Matrix Level II benefits for two alleged non-removal surgeries, Matrix Level III benefits for two alleged non-affected product revision surgeries, Matrix Level IV benefits for a dislocation, non-union of trochanteric osteotomy, and bone loss resulting in cage reconstruction, and Matrix Level V benefits for instability.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level II, III, IV and V 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:

Appellant has not appealed the Final Determination regarding his EIF Matrix Level II claim for his surgery of August 31, 2000, his Matrix Level III claim for his surgeries of September 5, 2000, February 8, 2001 and October 29, 2001, his Matrix Level IV claim for a dislocation, wound infection, non-union of trochanteric osteotomy, and bone loss resulting in cage reconstruction, or his Matrix Level V claim for instability. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and it may not be further contested or appealed.

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.

Annex IV of the Settlement Agreement and CAP 27 §6(a) define a Non-Removal Surgery as a surgical attempt to secure an Affected Product. The attempt to secure the Affected Product must include the use of screws, cement or some other means of attachment.

The procedure Appellant underwent on August 17, 2000 was a closed reduction of his left total hip arthroplasty dislocation. The procedure Appellant underwent on August 31, 2000 was an aspiration.

There is no indication in the Operative Report of either the August 17, 2000 or August 31, 2000 procedure that an attempt to secure the Affected Product was made using screws, cement or some other means of attachment.

Neither a closed reduction of a dislocation nor an aspiration qualify as a Non-Removal Surgery as defined by the Settlement Agreement and CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for Matrix Level II benefits for those procedures.

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

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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:**

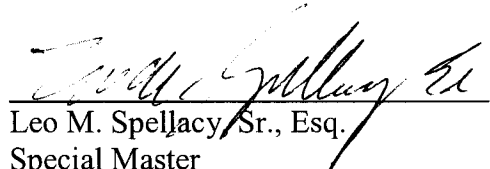
Leo M. Spellacy, Sr., Esq.  
Special Master to the Sulzer Settlement Trust  
c/o Liaison Counsel  
1600 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

**APR 30 2004**

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

**APR 15 2004**

\_\_\_\_\_  
Date

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