

**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>Adrian Vantussenbroek</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Adrian Vantussenbroek, by and through his attorney Bradley H. Parker, Esq. of the Law Firm Parker & McConkie (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 2, 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 award EIF Matrix Level V benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted claims for EIF benefits under several Matrix Levels.
2. Appellant has been awarded Matrix Level IV benefits for his wound infection and evacuation of hematoma, and for dislocations of September 11, 2001, September 15, 2001, and September 29, 2001.
3. Appellant also seeks EIF benefits for pain and instability.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits for pain and instability.

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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.

By Order of the United States District Court, the Claims Administrator shall evaluate claims for EIF benefits according to the policies and procedures set out in Claims Administrator Procedure (“CAP”) 27.

Appellant has only appealed the Final Determination denying his Matrix Level V claim for pain and instability.

Pain

Section 13(a)(2) of CAP 27 provides that claims requesting compensation for pain or mental anguish associated with an APRS, CRS, or implantation surgery will not qualify for payment from the EIF. Compensation for pain or mental anguish associated with these injuries is deemed to be included in the benefit award from the Affected Product Revision Surgery Fund or the Unrevised Affected Product Recipient Fund. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for EIF benefits for pain associated with his CRS.

Instability

Section 2 of CAP 27 requires Class Members to provide *every* document required by the Claim Form. It also states that “If a particular document does not exist, or cannot, through the exercise of due diligence be located, Class Members must describe the efforts made to secure the document and submit a written statement from the physician or other records custodian that explains the absence of the required document, attests to the content of the document if known, and articulates the basis for this conclusion” and “In no event shall the Claims Administrator award EIF benefits to a Class Member who has not submitted all required documents or explained the absence of a required document...”

For Matrix Level V claims, the Claim Form, or Green Form, outlines specific documents that must be submitted in support of a claim.

Appellant did not provide the following documents relating to his claim for instability, as required by the Green Form and CAP 27:

- Hospital records evidencing treatment of the permanent injury, including history and physical, operative report, operative nursing notes, anesthesia records, and discharge summary.
- Quantitative Study / Objective Physical Exam
- Medical records of permanent injury treating surgeon.

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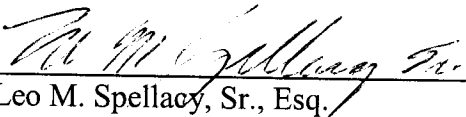
No medical records were submitted in support of Appellant's claim. In fact, the office notes provided for the first time upon appeal do not even speak to the issue of a permanent injury, but rather relate to Appellant's need for an anti-inflammatory and an injection of the right hip.

The completed Physician Declaration Form and the October 10, 2003 letter from Dr. Rasmussen do not meet the documentary requirements of CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for EIF Matrix Level V benefits.

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

Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by March 3, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 17, 2004  
Date

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