

**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>Steven R. Warren</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Steve Warren, by and through his attorneys Laurie B. Horvitz, Esq. and Nathan I. Finkelstein, Esq. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated January 21, 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, V and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level II, V and IX benefits.
2. Appellant seeks EIF Matrix Level II benefits for two alleged non-removal surgeries, Matrix Level V benefits for a permanent nerve injury, and Matrix Level IX benefits for debridement procedures of April 21, 2000, July 8, 2000, and his surgery of November 28, 2000.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level II, V and IX benefits.

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

Notice of Special Master Determination

Steven R. Warren

Page 2 of 3

Appellant has not been issued a Final Determination regarding his Matrix Level IX claim for his surgery of November 28, 2000. Therefore, that claim will not be addressed in this Determination.

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 Procedure (“CAP”) 27.

Matrix Level II and IX – Procedures of April 21, 2000 and July 8, 2000

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 procedures Appellant underwent on April 21, 2000 and July 8, 2000 were irrigation and debridement procedures, and do not qualify as Non-Removal Surgeries 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.

In addition, 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.” Since the irrigation and debridement procedures of April 21, 2000 and July 8, 2000 were the result of a wound infection that occurred prior to his CRS, Appellant’s claim for EIF benefits (either Matrix Level IX or IV) are specifically barred by the terms of CAP 27.

Matrix Level V – Permanent Nerve Injury

In order to be eligible for benefits under Matrix Level V, a Class Member must prove that the injury is either Moderate or Severe, as defined by the Settlement Agreement and CAP 27. Section 9(e) of CAP 27 states, in pertinent part, “To prove a Moderate injury, a Class Member must prove that he or she experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker. To prove a Severe injury a Class Member must prove that he or she required the use of a wheelchair or underwent an amputation.”

The Physician Declaration Form of Dr. Caulfield states “Mr. Warren has severe loss of sensation and strength to his foot. Use of a cane is medically required on occasion.”

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

Notice of Special Master Determination

Steven R. Warren

Page 3 of 3

Appellant's medical records do not support Dr. Caulfield's statement. The April 16, 2001 Orthopaedic Note of Dr. Lennox states "He is walking full weightbearing without an assistive device. He is walking smoothly and has no complaints of pain. He is back to work." The January 28, 2002 Orthopaedic Note of Dr. Khanuja indicates "he is about 13 months out from a revision of his right total hip after a failed acetabulum. He has no complaints. He is really doing well. He feels some calcifications he states along the lateral aspect of his hip and he has decreased sensation over the dorsum of the foot, but nothing dramatic." Even Dr. Caulfield's notes of October 7, 2003 describe the injury as "annoying" and states "His strength appears adequate."

A Physician Declaration Form, in and of itself, is not sufficient evidence to prove the existence or severity of a permanent injury. Appellant's medical records support the existence of a permanent nerve injury; however, there is not a single indication, in any of the medical records submitted, that Appellant's nerve injury rises to the level of Moderate as defined by the Settlement Agreement. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for EIF Matrix Level V benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level II, V and IX claims 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:**

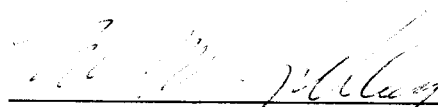
Leo M. Spellacy, Sr., Esq.  
Special Master to the Sulzer Settlement Trust  
c/o Liaison Counsel  
1600 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

**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