

**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>Everett Worth</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Everett Worth, by and through his attorney Jacqueline DeCarlo, Esq. of the Law Firm Hobbie, Corrigan, Bertucio & Tashjy ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated December 30, 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 III benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III , V and IX benefits.
2. Appellant has been deemed eligible for EIF Matrix Level V benefits.
3. Appellant also seeks EIF Matrix Level III benefits for his July 30, 2002 NAPRS and Matrix Level IX benefits for financial hardship.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III or IX benefits.

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After a thorough review of the appeal submitted by the Appellants 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.

Appellant did not appeal the Final Determination relating to his Matrix Level IX claim for financial hardship and, therefore, that claim will not be considered by the Special Master.

Appellant seeks EIF Matrix Level III benefits for his Non-Affected Product Revision Surgery of July 30, 2002.

Section 7(c) of CAP 27 and Annex IV of the Settlement Agreement state “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” may be eligible for benefits under Matrix Level III, and “the Claims Administrator may, at his discretion, extend this compensable time period by 180 days where a Class Member’s treating orthopedic surgeon causally relates (to a medical probability) the NAPRS to the APRS and/or to the original implantation of the Affected Product.”

It is not disputed that Appellant’s NAPRS occurred approximately 75 days after the maximum deadline prescribed by the Settlement Agreement and CAP 27.

Appellant’s argument that the time frame which defines the number of days within which a NAPRS must occur after an APRS in order for an APR to be eligible for compensation is arbitrary and capricious, and that the deadline (and extension) cannot be universally applied to all cases is erroneous. The Federal District Court has explained the importance of the deadlines prescribed in the Settlement Agreement [*In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, 01-CV-9000 at 17 through 20 (N.D.O. February 6, 2004) (Docket #1714)].

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. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for a NAPRS that occurred outside of the time frame prescribed by the Settlement Agreement and CAP 27.

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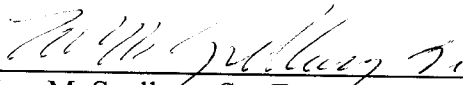
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In addition, the Settlement Agreement limits awards under Matrix Level IX to complications that were neither anticipated nor provided for in other Matrix Levels. Since Matrix Level III anticipates and provides benefits for Non-Affected Product Revision Surgeries, such claims are not eligible for Matrix Level IX benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level III 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 8, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 20, 2004
Date



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