

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

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Civil Action No.: 01-CV-9000

ALL CASES

*This document relates to:
Georgine Wysocki*

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Georgine Wysocki ("Appellant") appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 5, 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 IV 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 IV benefits as a result of a periprosthetic fracture that occurred prior to her APRS.
2. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for Matrix Level IV benefits.
3. In her appeal, Appellant requests that her claim be considered under Matrix Level IX.

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Notice of Special Master Determination

Georgine Wysocki

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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 forth in Claims Administrator Procedure ("CAP") 27.

CAP 27 § 8(h) provides that "Periprosthetic fractures that occurred more than thirty days after a CRS, or which do not require an open or closed reduction, are not compensable from the EIF."

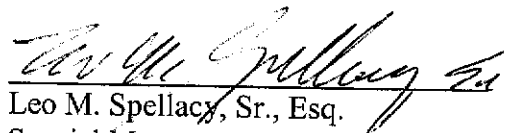
Appellant's periprosthetic fracture occurred 108 days before her CRS, and did not require an open or closed reduction. Therefore, Appellee, Claims Administrator did not abuse his discretion in denying Appellant's claim for Matrix Level IV benefits for a periprosthetic fracture.

The Settlement Agreement limits awards under Matrix Level IX to complications that were neither anticipated nor provided for in other Matrix Levels. CAP 27 §13(1) states that "injuries such as bone, tissue or muscle loss, nerve damage, *fracture*,... are properly classified as Permanent Injuries and/or Major Complications which must be Claimed under Matrix Level IV, and to be compensable must meet the criteria of Matrix Levels IV or V to qualify for EIF benefits." Therefore, this claim would not be compensable under Matrix Level IX.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's Matrix Level IV 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 February 5, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 21, 2004
Date


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