

**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>Clydine Adams</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Clydine Adams, by and through her attorney Laddie Buholz, 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 IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV, V and IX benefits.
2. Appellant seeks Matrix Level IV benefits for leg length discrepancy and limp, Matrix Level V benefits for a permanent nerve injury, and Matrix Level IX benefits for lucent line under left lateral tibia that will require future surgery, and a contralateral injury.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV, V and IX 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 her EIF Matrix Level IV claim for leg length discrepancy and limp, her Matrix Level V claim for a permanent nerve injury, or her Matrix Level IX claim for lucent line under left lateral tibia that will require future surgery. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and 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. When an act of discretion is under review the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

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.

In order to be eligible for Matrix Level IX benefits for a contralateral injury, CAP 27 § 13(b)(2) requires that the injury to the opposite joint be the result of an APRS.

A Physician Declaration Form, in and of itself, is not sufficient evidence that the infection that caused Appellant's contralateral injury was the result of her APRS. In addition, Appellant's medical records do not support her claim. Dr. Saunders consultation report of February 16, 2003 and the History and Physical Examination report of May 21, 2003 both indicate that Appellant has a prior history of Staphylococcal infection of the right total knee arthroplasty. Dr. Lutarewych's consultation report of July 9, 2003 indicates that she has "persistent infection of the right total knee replacement."

It is certainly reasonable to conclude from Appellant's medical records that the infection of her right knee, which resulted in revision surgery, is more likely related to the prior infections in her right knee than the APRS on her left knee that was performed more than 18 months earlier.

Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IX benefits for a contralateral injury.

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

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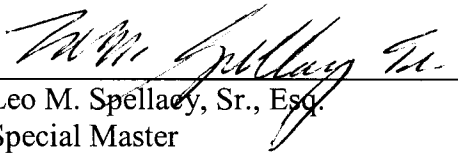
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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

If no response is received (postmarked) by JUN 01 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 17 2004

Date



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