

**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>Rose Alioto</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Rose Alioto, by and through her attorney Steven M. Tindall, Esq. of the Law Firm Loeff, Cabraser, Heimann & Bernstein (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 19, 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 III, IV and IX benefits.
2. Appellant has been deemed eligible for EIF Matrix Level III and IV benefits.
3. Appellant also seeks Matrix Level IX benefits for hemarthrosis and medical and home care expenses.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level 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:

Appellee issued a Final Determination of ineligibility regarding Appellant's Matrix Level IX claim for hemarthrosis, but is now reviewing that claim under Matrix Level V. If a Final Determination of ineligibility is issued for that claim under Matrix Level V Appellant has the right to appeal that Final Determination pursuant to CAP 30. If that Matrix Level V claim is appealed, Appellant may argue that claim is warranted under either Matrix Level V or IX.

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 seeks Matrix Level IX benefits for medical and home care expenses that she did not expend. She alleges that had she hired a home health care nurse for the time her children spent taking care of her, the cost would have been a minimum of \$24,720.

Neither the Settlement Agreement nor CAP 27 permits compensation for expenses that were not actually incurred.

In addition, in order to be eligible for Matrix Level IX benefits, CAP 27 Section 13(b)(3) requires that an injury be catastrophic and extraordinary. Extraordinary is defined as a complication that was unique compared to other Class Members similarly situated. The need for assistance from family members, friends or neighbors is certainly not unique amongst Class Members.

Appellee did not abuse his discretion in denying Appellant's Matrix Level IX claim for medical and home care expenses that were not incurred, or assistance that was not extraordinary.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim for medical and home care expenses is hereby **AFFIRMED**.

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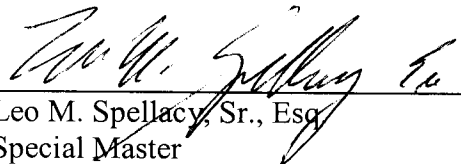
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to IN RE: be attached to any such submission 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 JUL 01 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 16 2004

Date


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