

**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>Lorraine Alston</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Lorraine Alston, by and through her attorney Robert E. Zaytoun, Esq. of the Law Firm Zaytoun & Miller (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated November 10, 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 V 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 V benefits.
2. Appellant seeks EIF Matrix Level V benefits for an alleged permanent injury to her back.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits.

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AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Lorraine Alston

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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.

Appellant seeks EIF Matrix Level V benefits for the aggravation and acceleration of a degenerative disc condition in her lumbar spine that required a fusion surgery.

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.

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". Those definitions are reiterated in Annex IV of the Settlement Agreement.

In his December 9, 2003 letter, Dr. Venters opines that "Mrs. Alston has suffered serious and debilitating permanent injury as a result of her Sulzer ordeal" and "Mrs. Alston has now experienced severe pain and disability as a result of the weakening of her spine at the L3-L4 level." However, there is no evidence that Appellant *required narcotics and/or use of a cane or walker; or that she required the use of a wheelchair or underwent an amputation*, as required by CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for EIF Matrix Level V benefits.

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

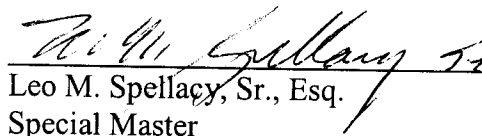
It is the Special Master's opinion, based upon the extremely limited amount of information provided in Appellant's appeal, that Appellant's fusion surgery could possibly be considered an extraordinary injury that might be compensable under Matrix Level IX if Appellant were to submit such a claim under Matrix Level IX.

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 3, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 17, 2004

Date

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