

**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>Dana Andersen</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Dana Andersen, on behalf of Class Member Frank Andersen, by and through her attorney Janie L. Jordan, Esq. of the Law Firm Mithoff & Jacks (“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 I benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level I benefits.
2. Appellant seeks EIF Matrix Level I benefits for a revision surgery allegedly indicated except for a medical condition.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level I 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:

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.

Annex IV of the Settlement Agreement provides that Class Members may apply for and receive benefits under Matrix Level I if "Affected Product Revision Surgery would be indicated but for a medical condition." CAP 27 §5(a) requires that, in order to be eligible for Matrix Level I benefits, the Class Member must demonstrate, through the submission of medical records, that an APRS is needed and that a medical condition exists that renders the performance of the revision surgery medically inappropriate.

The Special Master could find no evidence that an APRS was indicated for Mr. Andersen. The last office note from his orthopedic surgeon, dated April 6, 2000, indicates that "X-rays show good position of his left THA. He is having no pain. He is 6 months out."

A completed Physician Declaration Form, in and of itself, is not sufficient evidence to prove Appellant's claim, and the Physician Declaration Forms only state that he was medically contraindicated from undergoing a revision surgery. His medical records do not support his claim. Neither Dr. Stamper nor Dr. Mishler opine that an APRS was indicated.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for Matrix Level I benefits because there is no evidence that a revision surgery was indicated.

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

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:**

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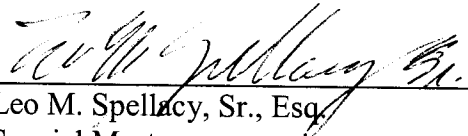
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

APR 20 2004

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

APR 05 2004

Date



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