

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

2004 JUN 21 AM 11:20  
CLERK OF COURT

**IN RE: SULZER HIP PROSTHESIS** ) **Civil Action No.: 01-CV-9000**  
**AND KNEE PROSTHESIS PRODUCT** )  
**LIABILITY LITIGATION** ) **ALL CASES**  
)  
*This document relates to:* ) **(MDL No. 1401)**  
*Mary Anne Bachman* )  
) **Judge Kathleen M. O'Malley**

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Mary Ann Bachman, by and through her attorney Zona Jones, Esq. of the Law Firm Provost & Umphrey ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated October 20, 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 resulting from her CRS.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V 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.

Section 9(d) of CAP 27 states, in pertinent part, "...an injury shall be permanent only when the existence of that injury is demonstrated by physical examination and quantitative measures performed at least three hundred and sixty-five (365) days after a qualifying CRS." That definition is reiterated in Annex IV of the Settlement Agreement.

Section 2 of CAP 27 requires Class members to provide every document required by the Claim Form. In addition, it states "In no event shall the Claims Administrator award EIF benefits to a Class Member who has not submitted all required documents or explained the absence of a required document pursuant to the requirements of this paragraph."

In her appeal, Appellant indicates that the Physician Declaration Form should be sufficient evidence to render her eligible for EIF Matrix Level V benefits. However, in accordance with the terms of the Settlement Agreement, a Physician Declaration Form in and of itself is not sufficient proof of a permanent injury. A Class Member must provide objective physical examination and quantitative measures demonstrating the permanent injury that is claimed. Appellant did not submit the information required by the Green Form within the time frame prescribed by the Settlement Agreement.

Appellant requests that the Special Master consider medical records submitted on September 18, 2003, more than 45 days after the date of the Preliminary Determination, and additional documents first submitted upon appeal. Section 3 of CAP 30 states "No evidence, documentary or testimonial, real or illustrative, may be introduced during the course of the appeal if it was not first submitted to the Claims Administrator within 45 days of the issuance of the Preliminary Determination, the contest of which gave rise to the Appealed Final Determination. Provided, however, that the Special Master may receive such evidence if the Class Member can show that through the exercise of due diligence the evidence in question could not have been adduced within 45 days of the issuance of the Class Member's Preliminary Determination...". Appellant only states that the documents provided for the first time upon appeal could not be obtained using

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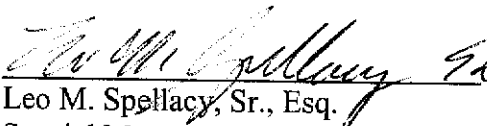
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reasonable efforts until after the deadline for submission of her claim; she does not provide any explanation as to why they could not have been obtained within the time frame prescribed by the Settlement Agreement, or why the documents submitted on September 18, 2003 were not submitted in a timely manner.

The Special Master, pursuant to CAP 30 § 5, requests the Appellant to explain why, through the exercise of due diligence, the information provided untimely could not have been adduced within 45 days of Appellee's Preliminary Determination. The response is to include what efforts were made to secure the documents, when those efforts were made, and when the documents were received. Appellant's response is to be filed with the Court, for the Special Master's review, and a copy is to be sent to the Claims Administrator, within fifteen (15) days of the date of this determination.

~~January 21, 2004~~  
Date

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