

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: SULZER HIP PROSTHESIS  
AND KNEE PROSTHESIS PRODUCT  
LIABILITY LITIGATION

*This document relates to:  
Donna Boogaard*

Civil Action No.: 01-CV-9000

ALL CASES

(MDL No. 1401)

Judge Kathleen M. O'Malley

2001 JAN 30 AM 10:41  
CLERK OF COURT  
KATHLEEN M. O'MALLEY

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Donna Boogaard, by and through her attorneys Timothy J. Tornga, Esq. and Elizabeth Joy Fossil, Esq. of the Law Firm Varnum, Riddering, Schmidt & Howlett ("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 IX 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 IX benefits.
2. Appellant seeks EIF Matrix Level IX benefits for lost wages.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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Notice of Special Master Determination

Donna Boogaard

Page 2 of 2

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.

Appellant seeks EIF Matrix Level IX benefits for a confirmed economic loss of \$17,608.97 and interest on that loss in the amount of \$2,451.15.

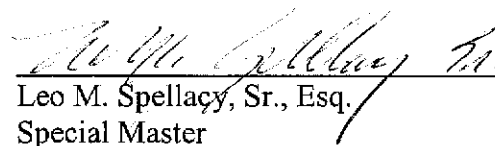
Appellant's contention that the \$20,000 required threshold amount is fundamentally unfair, and the imposition of this threshold was, therefore, an abuse of discretion by the Claims Administrator is erroneous. Neither the Claims Administrator or the Special Master have the authority to nullify the Order of the United States District Court that requires the Claims Administrator to evaluate claims for EIF benefits according to the policies and procedures set forth in Claims Administrator Procedure ("CAP") 27.

CAP 27 § 13(b)(1) states that "...a loss of income is "catastrophic" if...it results in direct economic loss, provable by objective evidence, of \$20,000 or more." Settlement Agreement benefits are not subject to pre- or post-judgment interest. Therefore, Appellant's confirmed economic loss is less than \$20,000, and Appellee, Claims Administrator, did not abuse his discretion in denying this claim pursuant to the terms of CAP 27.

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

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 February 16, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 30, 2004  
Date

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