

**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>John Bridges</i> |) | |
| |) | Judge Kathleen M. O'Malley |

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member John Bridges, by and through his attorney Robert T. Joyce, Esq. of the Joyce and Reyes Law Firm (“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 V benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V and IX benefits.
2. Appellant seeks EIF Matrix Level V benefits for a permanent nerve injury and for pain and gait alteration, and Matrix Level IX benefits for lower extremity impairment and lost wages.
3. Appellant has been deemed eligible for Matrix Level V benefits for pain and gait alteration.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits for a permanent nerve injury and Matrix Level IX benefits for lower extremity impairment and lost wages.

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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:

Appellant has appealed only the Final Determination regarding his Matrix Level V claim for a permanent nerve injury. Therefore, his Matrix Level IX claim for lower extremity impairment and lost wages will not be addressed by the Special Master and the Final Determination regarding that claim is final and cannot be further contested or appealed.

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.

The Claims Administrator has already granted Matrix Level V benefits where Appellant has demonstrated that he required the use of a cane for more than a year after his APRS. The injury at issue on appeal is a separate Matrix Level V claim for a permanent nerve injury

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 appeal, Appellant alleges that his permanent nerve injury is Moderate, and he states “To prove that we have a moderate permanent injury we must show that they have experienced pain and/or a sensory loss. We were able to establish both!”

Proving that Appellant experienced pain and/or a sensory loss does not satisfy the requirements of CAP 27 and the Settlement Agreement, which require that the pain, sensory loss or gait alteration *required narcotics and/or use of a cane or walker*. Appellant has not proven that his permanent nerve injury rises to the level of Moderate or Severe as required by CAP 27 and the Settlement Agreement. 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 Matrix Level V claim for a permanent nerve injury 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 be attached to any such submission and will not be considered. Submissions are to be mailed to the following address:**

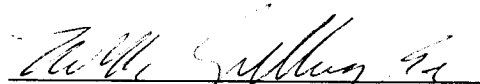
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

APR 09 2004

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

MAR 25 2004

Date


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