

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2004 JAN -8 AM 9:01

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

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Civil Action No.: 01-CV-9000

ALL CASES

*This document relates to:
Deborah Brumbaugh*

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Deborah Brumbaugh, by and through her attorneys Ken Suggs, Esq. and Gerald D. Jowers, Jr., Esq. of the Law Firm Suggs & Kelly ("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 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 income.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits for lost income.

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Notice of Special Master Determination

Deborah Brumbaugh

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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.

The Special Master cannot ascertain, either from the Notice of Appeal or the Response of the Claims Administrator, when Appellant was implanted with an Affected Product. However, according to the wage analysis included in the Notice of Appeal, Appellant's wages were \$9,606.56 less in 2002 than in 2001, and that was the only year she earned less than she did the prior year. CAP 27 § 13(b) (1) states, in pertinent part, that "...a loss of income is "catastrophic" if, in the judgment of the Claims Administrator, it results in direct economic loss, provable by objective evidence, of \$20,000 or more."

Appellant's possible future loss of income cannot be considered in accordance with Cap 27 § 13(a)(4) which states "Injuries or damages that have not occurred within the time periods allotted by the Settlement Agreement shall not be eligible for compensation."

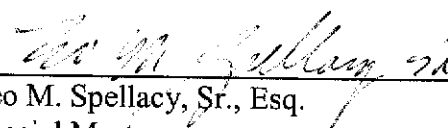
Because Appellant's loss of income is well below the \$20,000 threshold required by CAP 27, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IX benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim for loss of income 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 January 23, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 8, 2004

Date


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