

**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>Debbie Carey</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Debbie Carey, by and through her attorney Ronald A. Brown, Esq. of the Law Firm Brown & Crouppen (“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 IV and V benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level I, II, IV, and V benefits.
2. Appellant has not received a Final Determination regarding her Matrix Level I and II claims. Therefore, those claims cannot be appealed at this time and will not be addressed in this Determination.
3. Appellee seeks Matrix Level IV benefits for a wound infection and Matrix Level V benefits for a permanent injury.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV and 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. When an act of discretion is under review the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

Section 1.1(x) of the Settlement Agreement defines a Covered Revision Surgery (“CRS”) as “an Affected Product Revision Surgery, Non-Affected Product Revision Surgery and Additional Non-Affected Product Revision Surgery.”

Appellant’s contention that “if this Court would choose to do so, it has the discretion to classify Ms. Carey’s August 28, 2003 surgery as being eligible for the benefits of Matrix IV and V” is incorrect. Neither the Claims Administrator nor the Special Master has the authority to change the Settlement Agreement’s clear and unambiguous definition of CRS.

Appellant’s surgery of August 28, 2003 does not qualify as a CRS pursuant to the terms of the Settlement Agreement. In fact, Appellant has not undergone a CRS.

The Settlement Agreement provides that a Major Surgical Complication or Permanent Injury must *relate to a CRS* to be compensable under EIF Matrix Level IV or V.

Since Appellant has not undergone a CRS, her wound infection and permanent injury cannot be the result of a CRS and, therefore, Appellee did not abuse his discretion in denying her claim for EIF Matrix Level IV and V benefits.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF Matrix Level IV and V 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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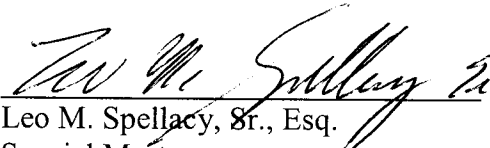
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

JUL 01 2004

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

JUN 16 2004

Date


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