

**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>Martha Carrion</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Martha Carrion, by and through her attorney Daniel E. Barenbaum, Esq. of the Law Firm Loeff, Cabraser, Heimann & Bernstein (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 22, 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 IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III and IX benefits.
2. Appellant has been deemed eligible for Matrix Level III benefits.
3. Appellant also seeks Matrix Level IX benefits for wage loss and bone loss.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX 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.

Bone Loss

CAP 27 § 13(a)(1) states that “Injuries such as bone, tissue or muscle loss...are properly classified as Permanent Injuries and/or Major Complications which must be Claimed under Matrix Level IV or V, and to be compensable must meet the criteria of Matrix Levels IV or V to qualify for EIF benefits.”

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level IX benefits for bone loss that must be claimed under, and meet the criteria of, Matrix Level IV or V in accordance with the terms of CAP 27.

CAP 27 § 8(k) provides that “The Claims Administrator shall award [Matrix Level IV] Benefits in every case provided that he finds, in his discretion, and in the totality of the circumstances, that a Class Member suffered a Major Surgical Complication that was catastrophic and extraordinary. Catastrophic shall mean that the complication suffered prevented the Class Member from engaging in an activity of daily living. Extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated. ”

Appellant has not proven that her bone loss prevented her from engaging in an activity of daily living and, therefore, it does not rise to the level of catastrophic as required by the Settlement Agreement and CAP 27. In addition, bone loss is a common occurrence during hip replacement surgery; it is not unique compared to other Class Members similarly situated. Because Appellant’s bone loss does not rise to the level of catastrophic and extraordinary as defined by the Settlement Agreement and CAP 27, she is not eligible for Matrix Level IV benefits.

In order to be eligible for Matrix Level V benefits, a Permanent Injury must be either Moderate or Severe, as defined by the Settlement Agreement and CAP 27 § 9(e), which state “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

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wheelchair or underwent an amputation.”

Appellant has not submitted any evidence that her bone loss caused pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker; or that it required her to use a wheelchair or undergo an amputation. Therefore, Appellant is not eligible for Matrix Level V benefits for an injury that is not Moderate or Severe, as required by CAP 27 and the Settlement Agreement.

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

Wage Loss

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. Acceptable objective evidence of economic loss may include...loss assessment statements prepared by experts qualified to analyze financial injury.”

Appellant submitted a loss assessment statement prepared by Allman Economic Analysis, which qualifies as objective evidence pursuant to CAP 27.

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.”

According to the statement prepared by Allman Economic Analysis, Appellant’s economic loss (excluding possible future loss of income) totals \$38,566, which is greater than the \$20,000 threshold required by CAP 27.

By Order of the Special Master, Appellant’s EIF Matrix Level IX claim for wage loss is hereby REVERSED and that claim is remanded back to the Claims Administrator for further determination pursuant to the Settlement Agreement

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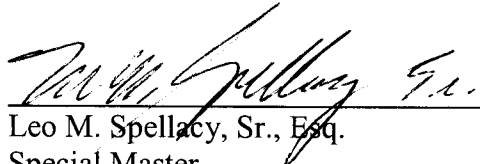
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Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

If no response is received (postmarked) by JUN 01 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 17 2004

Date


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