

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>Sandra K. Collins</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Sandra K. Collins, by and through her attorney Tommy Jacks, Esq. of the Law Firm Mithoff & Jacks (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated April 19, 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 benefits.
2. Appellant seeks Matrix Level V benefits for an alleged musculoskeletal and nerve injury resulting in severe pain and functional limitation.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level 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.

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.

In order to be eligible for Matrix Level V benefits, the Settlement Agreement requires that a permanent injury must be the result of a CRS. There is no evidence that Appellant suffered from a permanent injury as a result of her December 17, 2001 CRS.

A Physician Declaration Form in and of itself is not sufficient proof of an injury, it must be supported by medical records and there is no indication in any of Appellant's medical records that she suffered from a nerve or musculoskeletal injury during her CRS.

Dr. Schoch's office note of July 24, 2002 indicates that that a car accident on July 8, 2002 was the cause of Appellant's pain and "Post revision THA on the left doing well prior to this injury." His office note of December 10, 2002 states "She ambulates without lateral support today; walking very well...She does not have any referred pain from the somewhat of a limp that she does have" and "She feels like she is doing very well" and "She had seen Dr. Powell in the past and received a TENS unit for some back pain she was having...She occasionally needs pain medicine for her back pain. She denies any pain or problems with the right hip." The Consult/History & Physical of June 19, 2003 states "she has a new level of increased pain beginning on April 4, 2003, which is the day of her third hip replacement."

Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level V benefits for an alleged permanent injury that was not causally related to her CRS.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level 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**

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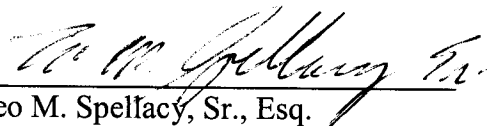
**any such submission and will not be considered. Submissions are to be mailed to the following address:**

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

If no response is received (postmarked) by AUG 06 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUL 22 2004

Date

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