

**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>Nolan Cook</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Nolan Cook, by and through his attorney James L. Redman, Esq. (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated November 14, 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 IV 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 IV and V benefits.
2. Appellant seeks EIF Matrix Level IV benefits for heterotopic ossification, and Matrix Level V benefits for his permanent injury resulting from the heterotopic ossification.
3. Appellant has been deemed eligible for Matrix Level V benefits.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV benefits.

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

Notice of Special Master Determination

Nolan Cook

Page 2 of 3

After a thorough review of the appeal submitted by the Appellants 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.

Appellant seeks EIF Matrix Level IV benefits for heterotopic ossification.

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.

CAP 27 § 8(e) states, in pertinent part, “To receive compensation, Class Members must also show that either the heterotopic ossification required surgical repair or that the heterotopic ossification, as demonstrated by an x-ray, is properly classified as Grade IV as provided in the Settlement Agreement. Heterotopic ossification that is milder than Grade IV or which does not require surgical repair is not compensable under the EIF. Prophylaxis radiation treatment of a Grade I, II, or III heterotopic ossification is not surgical repair and is not compensable under the EIF.”

Despite his physician’s completion of the Physician Declaration Form, there were no medical records submitted that prove Appellant’s heterotopic ossification is Grade IV, as demonstrated by x-ray. In fact, the medical records submitted in support of his claim indicated that he required only radiation therapy to treat his heterotopic ossification.

Dr. Davison’s letter of December 18, 2003 cannot be considered pursuant to CAP 30 §3 which provides that “No evidence, documentary or testimonial, real or illustrative, may be introduced during the course of the appeal if it was not first submitted to the Claims Administrator within 45 days of the issuance of the Preliminary Determination, the contest of which gave rise to the Appealed Final Determination.” Even if that letter were considered, it supports Appellant’s claim for a permanent injury, which claim has been deemed eligible for Matrix Level V benefits, but it does not support Appellant’s claim that his heterotopic ossification is Grade IV, as demonstrated by x-ray.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for EIF Matrix Level IV benefits.

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

**IN RE: SULZER HIP PROSTHESIS  
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LIABILITY LITIGATION**

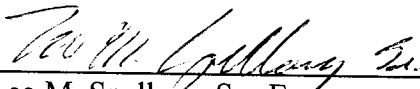
Notice of Special Master Determination

Nolan Cook

Page 3 of 3

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 March 3, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 17, 2004  
Date

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