

**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>Ned P. Devlin</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Ned P. Devlin (“Appellant”) appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated April 5, 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 IV and IX benefits.
2. Appellant seeks Matrix Level IV and IX benefits for exacerbation of reflex sympathetic dystrophy and osteoporosis, and a left tibial plateau fracture.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV and 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:

Appellant has not appealed the Final Determination regarding his EIF Matrix Level IV claim for exacerbation of reflex sympathetic dystrophy and osteoporosis, and a left tibial plateau fracture, or his Matrix Level IX claim for a left tibial plateau fracture. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and may not be further contested or appealed.

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 IX benefits, a complication or injury must be the result of a CRS.

There is no evidence that Appellant's reflex sympathetic dystrophy and osteoporosis were exacerbated by his February 22, 2001 CRS.

According to Dr. Shin's letter of June 7, 2000, Appellant had already been diagnosed with reflex sympathetic dystrophy and had been referred to Dr. Carden for pain management. Dr. Long's office note of November 7, 2001 outlines his severe osteoporosis, but does not in any way relate it to his CRS and, in fact, states that the etiology of his severe osteoporosis "is unclear to me." Dr. Long's letter of November 26, 2003 also does not causally relate exacerbation of his reflex sympathetic dystrophy and osteoporosis to his CRS. That letter states "Mr. Ned Devlin has had a downward course that has progressed since his original left total hip arthroplasty in August of 2000." However, his medical records indicate that this "downward course" began in 1998.

Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IX benefits for exacerbation of sympathetic dystrophy and osteoporosis that was not proven to be caused by his CRS.

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

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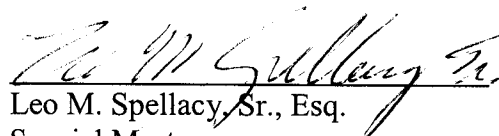
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will not be considered. Submissions are to be mailed to the following address:**

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 26 2004, then the Special Master's Decision is final and may not be further contested or appealed.

AUG 11 2004

Date



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