

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
)
This document relates to:) (MDL No. 1401)
Bette DiBenedetto / Claim Number:)
Angelo DiBenedetto / Claim Number:) Judge Kathleen M. O'Malley

2003 JUN 10 AM 11:52
CLERK

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members Bette DiBenedetto and her spouse Angelo DiBenedetto, by and through their attorney Scott A. Telson, Esq. of the Law Firm of Lombardi and Lombardi ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated March 10, 2003 on Appellant's claim for benefits from the Sulzer Settlement Trust.

Appellant timely appealed the decision of the Appellee, and contends that Appellee erred in its decision to award a net benefit amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant timely submitted a Blue Form seeking Unrevised APR benefits and a Yellow Form seeking Derivative Claimant benefits on May 2, 2002.
2. In support of her claim and in response to Question 7 of the Blue Form, Appellant submitted an operative report dated April 4, 2000 that identified Bette DiBenedetto's surgeon as Dr. John Tozzi. This operative report is the only medical record submitted.
3. With her Blue Form Appellant also submitted a letter from Attorney Donna Lee Mantel dated April 11, 2002. Attorney Mantel represents Dr. Tozzi, and includes in her letter lot number 1403598 and catalog number 4360-00-053 and advised "that the information is obtained from the list that has been distributed by Sulzer and that Dr. Tozzi does not have any independent information as to the device inserted".
4. The lot and catalog numbers are not part of either hospital or medical records.
5. On September 19, 2002 Appellee issued a Preliminary Determination that Appellant was not eligible for benefits for failure to prove "implantation of an Affected Product".
6. November 4, 2002 was the deadline for submitting additional documentation or information contesting the Preliminary Determination.
7. On March 10, 2003 Appellee issued a Final Determination denying Settlement benefits because Appellant did not prove she was implanted with an Affected Product.

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

Notice of Special Master Determination

Bette DiBenedetto / Claim Number:

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8. On March 14, 2003, 130 days after the deadline for contesting the Preliminary Determination, Appellant submitted her Notice of Appeal which, for the first time, included a sheet containing product box stickers referring to prosthetic hip components. The sheet contains no markings linking it to the Appellant or indicating that it is part of a hospital or medical record.

After a thorough review of the appeal submitted by the Appellant and the response submitted by the Appellee, the Special Master finds as follows:

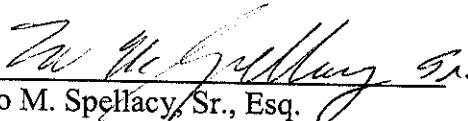
There is no evidence of an abuse of discretion by the Appellee in determining facts related to this claim, or in Appellee's interpretation of the Settlement Agreement. The Appellant failed to provide timely documentation or sufficient documentation to prove implantation of an Affected Product and entitlement to Unrevised APR benefits.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to submit to the Court a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by June 25, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

June 10, 2003

Date


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