

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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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)**
Scott Duerr)
) **Judge Kathleen M. O'Malley**

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Scott Duerr, by and through his attorney Andres C. Pereira, Esq. of the Law Firm Fleming & Assoc. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 10, 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 and V 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 a dislocation of the prosthetic femoral head of his left hip replacement that occurred on September 29, 2000, and Matrix Level V benefits for an alleged permanent nerve injury and "severe problems w/back which required fusion; loss of employment opportunities & income."
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV and 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.

Appellant seeks Matrix Level IV benefits for a dislocation that occurred on September 29, 2000, prior to undergoing an APRS on October 3, 2000.

By Order of the United States District Court, the Claims Administrator shall evaluate claims for EIF benefits according to the policies and procedures set out in Claims Administrator Procedure ("CAP") 27.

CAP 27 § 13(a)(3) states "...a Class Member who suffers a dislocation of the prosthetic femoral head **before** [emphasis added] ...the date of a CRS is ineligible for benefits under both Matrix Level IV and Matrix Level IX." Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IV benefits for a dislocation that occurred prior to his CRS.

Appellant also seeks Matrix Level V benefits for an alleged permanent nerve injury and "severe problems w/back which required fusion; loss of employment opportunities & income."

Section 9(d) of CAP 27 provides that "an injury shall be permanent only when the existence of that injury is demonstrated by physical examination and quantitative measures performed at least three hundred and sixty-five (365) days after a qualifying CRS." In addition, Section 9(e) of CAP 27 states, in pertinent part, "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 wheelchair or underwent an amputation". Those definitions are reiterated in Annex IV of the Settlement Agreement.

Appellant has not provided any medical records demonstrating a permanent injury by physical examination and quantitative measures performed at least 365 days after his revision surgery; nor has he submitted any evidence that he experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker; or that he required the use of a wheelchair or underwent an amputation, as required by CAP 27.

The October 3, 2003 letter from Dr. Perry only indicates that, in Dr. Perry's opinion, Appellant's numerous revision total hip surgeries have caused him severe injuries and permanent disability. The February 11, 2003 letter from Dr. Perry indicates that, in Dr.

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Perry's opinion, Appellant has a moderate injury. These letters do not indicate what the severe or moderate injury is, what quantitative measures were performed to determine the existence of the injury, or why it rises to the level of moderate or severe pursuant to the terms of the Settlement Agreement.

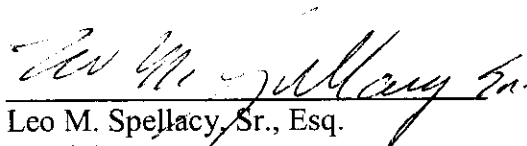
Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for EIF Matrix Level V benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's Matrix Level IV and V claim is hereby AFFIRMED.

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 February 11, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 27, 2004

Date


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