

**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>Kathleen S. Dunn</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Kathleen S. Dunn, by and through her attorneys J. Preston Strom, Jr., Esq. and Mario A. Pacella, Esq. of the Strom Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 21, 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 IX benefits.
2. Appellant seeks Matrix Level IX benefits for an 80% misalignment of her back (scoliosis).
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level 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:

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.

Section 16.H. of the Green Form requires “A completed ‘Physician Declaration’ from your treating surgeon wherein he/she causally relates the injury/damage (for which compensation under Matrix Level IX is sought) to a CRS” be submitted to complete an application for EIF Matrix Level IX benefits. The Physician Declaration form submitted by Appellant does not satisfy this requirement because her physician does not indicate an injury or complication under any of the Matrix Levels, nor does he causally relate Appellant’s scoliosis to her CRS.

In fact, the letter from her orthopedic surgeon, Dr. Chillag, dated August 23, 2002 states “...I can’t say with any degree of medical certainty whether your spine problem is related to your hip or not. The changes on your x-ray are longstanding” and the December 4, 2004 letter from Dr. Guram, an internist, states “She [Appellant] has numerous medical problems including ...degenerative arthritis” and “It is difficult to say whether her hip surgeries caused these changes, but she denies any other traumatic events during this time period.”

Because Appellant did not submit a properly completed Physician Declaration form, her claim for EIF Matrix Level IX benefits is not complete and the merits of her claim are immaterial. If the claim were to be considered on its merits, however, her medical records do not prove that her scoliosis is a result of her CRS.

Appellee did not abuse his discretion in denying Appellant’s claim for EIF Matrix Level IX benefits.

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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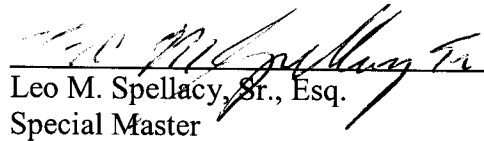
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 JUN 11 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 27 2004

Date


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