

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED

2003 JUL 11 PM 1:44

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

Civil Action No. 01-CV-9000 )  
CLEVELAND )

ALL CASES )

*This document relates to:* )  
*Kenneth G. Fogarty* )  
*Claim Number:* )

(MDL No. 1401)

Judge Kathleen M. O'Malley

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Kenneth G. Fogarty, by and through his attorney Michael L. Schrag, Esq. of the Law Firm Schrag & Baum ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated May 12, 2003 on Appellant's claim for benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his 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 submitted a Yellow Form seeking Derivative Claimant benefits on July 9, 2002.
2. On September 13, 2002 Appellee did issue Appellant a Guaranteed Payment Option payment of \$400, which was mailed on September 16, 2002.
3. Claims Administrator Procedure (CAP) 26, which clarifies the meaning of the term "significant other" as it is used in the Settlement Agreement, was approved on September 16, 2002.
4. On December 4, 2002 Appellee issued a Preliminary Determination that Appellant was not eligible for Derivative Claimant benefits because he had not proven that he was a Significant Other within the meaning of CAP 26.
5. On January 30, 2003 Appellant's attorney submitted a letter contesting the Preliminary Determination.
6. On May 12, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because he had not proven that he was a Significant Other within the meaning of CAP 26.

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Notice of Special Master Determination

Kenneth G. Fogarty

Claim Number:

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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:

Appellee did not abuse his discretion in denying Appellant's request for Derivative Claimant benefits because Appellee did not meet the criteria of CAP 26 as a Significant Other.

Appellee is required to adhere to the plain language of the Settlement Agreement.

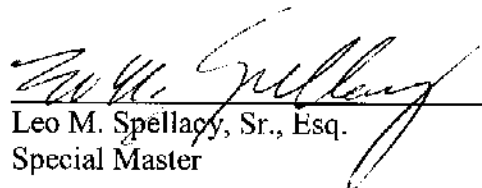
CAP 26, approved by Class Counsel on September 16, 2002, is applicable to Appellant. In order to qualify as a Significant Other and be eligible for Settlement benefits, the Claimant must prove there exists a legal impediment which prevents marriage to the associated APR. Appellant concedes that no such legal impediment exists between him and Ms. McClure.

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 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 July 28, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

July 11, 2003

Date

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