

**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>Phillip Grimes</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Phillip Grimes, by and through his attorneys Thomas Pirtle, Esq., Michael Lowenberg, Esq. and M. Michael Meyer, Esq. of the Law Firm O'Quinn, Laminack & Pirtle ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated June 8, 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 the APRS he underwent on June 13, 2003.
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.

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.

CAP 27 § 13(a)(3) provides that “injuries contemplated by the Settlement Agreement or a CAP, but which are not compensable under the Settlement Agreement or the CAP in question, shall not be compensable pursuant to Matrix Level IX.”

It is not disputed that Appellant’s surgery of June 13, 2003 was an Affected Product Revision Surgery, as that term is defined by the Settlement Agreement.

Section 3.4 of the Settlement Agreement anticipated and provided for Affected Product Revision Surgeries.

Therefore, Appellee did not abuse his discretion in denying Appellant’s request for EIF Matrix Level IX benefits for an APRS.

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

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

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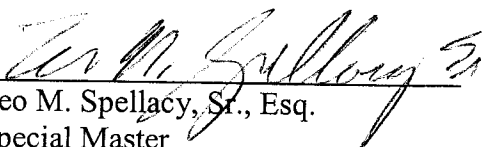
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If no response is received (postmarked) by _____, then the Special Master's Decision is final and may not be further contested or appealed.

SEP 14 2004

Date



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