

**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>John Humphrey</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member John Humphrey, by and through his attorney Andres C. Pereira, Esq. of the Fleming & Assoc. 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 V benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III, IV and V benefits.
2. Appellant has been deemed eligible for EIF Matrix Level III and IV benefits.
3. Appellant also seeks EIF Matrix Level V benefits for an alleged Permanent Injury.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits.

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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.

Appellant alleges that “Correspondence from Paul M. Spezia, D.O. together with Physician Declaration Form with regard to Mr. Humphrey’s Wound Infection” and “Medical Records of Treating Surgeon... should be more than adequate and sufficient evidence that the injury forming the basis of Mr. Humphrey’s Matrix Level V claim is permanent and either Moderate or Severe.”

CAP 30 §3 requires that a Class member who desires to note an appeal must submit copies of any documents previously supplied to the Claims Administrator as proof of his or her eligibility for benefits.

CAP 27 §9(d) states “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.”

Appellant did not include either the correspondence from Dr. Spezia or the Physician Declaration Form with his appeal, and the Special Master cannot consider documents that are not provided to him.

There is no evidence that Appellant suffered a Permanent Injury that rises to the level of Moderate or Severe as required by the Settlement Agreement and CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level V claim.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF Matrix Level V 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:**

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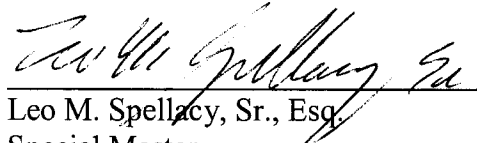
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Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

If no response is received (postmarked) by APR 20 2004, then the Special Master's Decision is final and may not be further contested or appealed.

APR 05 2004

Date


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