

**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>Maritta J. Jackson</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Maritta J. Jackson, by and through her attorneys Tim Maxcey, Esq. and Tony Edwards, Esq. of the Stipe, Harper, Laizure, Uselton, Edwards & Belote 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 IV and V benefits.

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 Matrix Level IV benefits for an alleged wound infection, and Matrix Level V benefits for a permanent limp.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV and V benefits.

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

Notice of Special Master Determination

Maritta J. Jackson

Page 2 of 3

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.

Matrix Level IV – Wound Infection

It is not disputed that Appellant’s CRS was performed on June 19, 2001.

The Special Master found no medical records evidencing a wound infection. The “Summary of Medical History of this Claim” provided by Appellant states that “Dr. Smith performed surgery due to infection” in February 2001. However, her Green Form indicates the Major Surgical Complication being claimed was recognized on May 17, 2001.

Section 8(b) of CAP 27 states, in pertinent part, “Wound infections which occur before a CRS [Covered Revision Surgery] ... are not compensable from the EIF”.

Whether the alleged infection was diagnosed in February or May 2001 is immaterial, as both of those dates are prior to her CRS, and a wound infection occurring prior to a CRS is not compensable under the EIF in accordance with CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this claim.

Matrix Level V – Permanent Limp

CAP 27 §9(e) 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.” That definition is reiterated in Annex IV of the Settlement Agreement.

Dr. Low’s letter of March 4, 2003 indicates that Appellant has some leg length discrepancy and that an orthopedic shoe has been prescribed. His letters of June 3 and August 7, 2003 both state that she is walking well.

There is no evidence that Appellant experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker, as required by CAP 27.

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

Notice of Special Master Determination

Maritta J. Jackson

Page 3 of 3

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for EIF Matrix Level V benefits for an injury that does not rise to the level of Moderate or Severe as required by the Settlement Agreement and CAP 27.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IV and 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:**

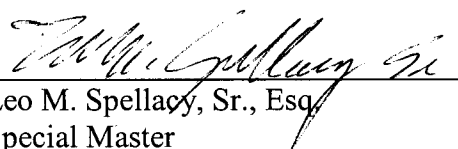
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

APR 30 2004

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

APR 15 2004

Date



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