

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>Douglas E. Jolley</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Douglas E. Jolley, by and through his attorney Chris Johns, Esq. (“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 V benefits.
2. Appellant seeks Matrix Level V benefits for an alleged permanent nerve injury.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V 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.

The Settlement Agreement requires that a permanent injury be the result of a surgical complication of a CRS in order to be compensable under Matrix Level V.

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. Whitaker’s note of September 30, 2002 reads “I discussed the nerve injury from the first surgery vs the second”, which indicates that Appellant’s nerve injury may be the result of his implantation surgery rather than his CRS.

In addition, Appellant has not proven that he experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker, as required by CAP 27.

The Nerve Conduction Reports of Dr. Collier, Jr. dated January 16, 2003 categorizes Appellant’s decreased sensation as mild, and states that it cannot be substantiated on electrodiagnostic findings.

Appellant argues that Dr. Whitaker’s completion of a Physician Declaration Form renders Appellant eligible for Matrix Level V benefits. However, the Physician Declaration Form does not indicate that Appellant experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker, rather it states that the patient complains of anterior thigh and knee numbness.

There is no evidence that Appellant’s nerve injury is a result of his CRS or that it rises to the level of Moderate as defined by the Settlement Agreement and CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for EIF Matrix Level V benefits.

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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:**

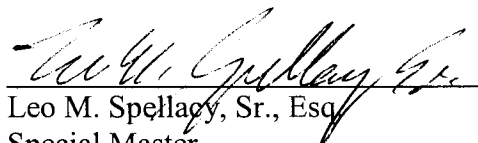
Leo M. Spellacy, Sr., Esq.  
Special Master to the Sulzer Settlement Trust  
c/o Liaison Counsel  
1600 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

**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