

**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>Christopher Kramer</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Christopher Kramer, by and through his attorney Andres C. Pereira, Esq. of the Law Firm Fleming & Assoc. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated May 19, 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 EIF Matrix Level IX benefits for bone deterioration causing leg length discrepancy.
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. When an act of discretion is under review the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

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.”

CAP 27 §13(a)(1) requires that “Injuries such as *bone*, tissue or muscle *loss*...*limb length discrepancy* [emphasis added], loss of flexibility, excessive bleeding, scarring, altered gait and decreased mobility are properly classified as Permanent Injuries and/or Major Complications which must be Claimed under Matrix Level IV or V, and to be compensable must meet the criteria of Matrix Levels IV or V to qualify for EIF benefits.”

Since Appellant’s bone loss and leg length discrepancy was contemplated by Matrix Level V, Appellee did not abuse his discretion in denying his Matrix Level IX claim.

Appellant has not submitted any evidence that his bone deterioration causing leg length discrepancy satisfies the requirements of Matrix Level V; therefore, he is not eligible for Matrix Level V benefits.

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:**

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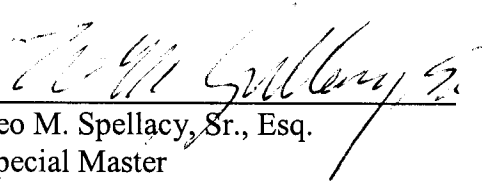
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

AUG 26 2004

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

AUG 11 2004

Date



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