

**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>Joanne Kukol</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Joanne Kukol, by and through her attorney Khaldoun A. Baghdadi, Esq. of the Walkup, Melodia, Kelly, Wecht & Schoenberger Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 2, 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 an injury to her right knee.
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:

Appellant's injury to her right knee is not a contralateral joint injury. A contralateral injury is an injury to the opposite joint, i.e. hip to hip; knee to knee.

Appellant's claim should have been considered under CAP 27 § 13(b)(3) "Other Claims Not Enumerated." To be eligible for Matrix Level IX benefits Appellant must prove that her injury was catastrophic and extraordinary, as those terms are defined by the Settlement Agreement and CAP 27.

Appellant suffered a tear of the medial meniscus of her right knee as result of physical therapy necessitated by the CRS on her left hip.

The injury, and subsequent surgical repair, was catastrophic in that it prevented her from engaging in an activity of daily living. According to Dr. Robert Gilbert she had a tremendous amount of pain, difficulty walking, and was unable to exercise.

Appellee has offered no evidence indicating that this injury was not unique compared to other Class Members similarly situated and, therefore, it also must be considered extraordinary.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim is hereby REVERSED and this claim is remanded back to the Claims Administrator as an eligible Matrix Level IX claim for further determination pursuant to the Settlement Agreement.

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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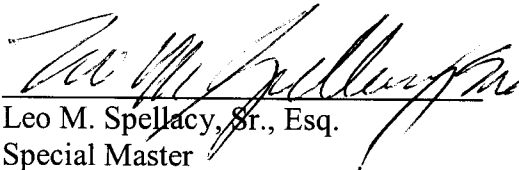
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If no response is received (postmarked) by JUN 16 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 01 2004
Date


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