

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE: SULZER HIP PROSTHESIS) **Civil Action No.: 01-CV-9000**
AND KNEE PROSTHESIS PRODUCT)
LIABILITY LITIGATION) **ALL CASES**
)
This document relates to:) **(MDL No. 1401)**
Paul Lambert, Jr.)
) **Judge Kathleen M. O'Malley**

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Paul Lambert, Jr. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated October 10, 2003 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 award EIF Matrix Level V benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V benefits.
2. Appellant seeks EIF benefits for an alleged permanent injury involving muscle weakness and a limp.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits.

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

Notice of Special Master Determination

Paul Lambert, Jr.

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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 out in Claims Administrator Procedure ("CAP") 27.

Section 9(e) of CAP 27 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. To prove a Severe injury a Class Member must prove that he or she required the use of a wheelchair or underwent an amputation". Those definitions are reiterated in Annex IV-1 of the Settlement Agreement.

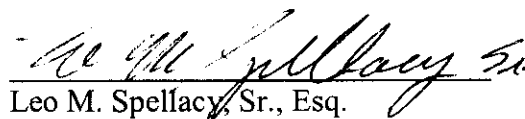
Appellant has not alleged either a moderate or severe injury, and has not proven that he experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker; or that he required the use of a wheelchair or underwent an amputation, as required by CAP 27. In fact, the medical report dated November 19, 2003 that Appellant submitted with his appeal indicates that "he [Appellant] is not taking any pain medication...He is not using any canes or crutches for ambulating around. His symptoms are mild to occasional moderate." Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for EIF Matrix Level V benefits since Appellant's injury does not rise to the level of Moderate or Severe as required by the terms of the Settlement Agreement.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by February 11, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 27, 2004

Date


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