

**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>Gertrude LaPointe</i> |) | |
| |) | Judge Kathleen M. O'Malley |

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Gertrude LaPointe, by and through her attorney Blaine J. Barrilleaux, Esq. of the Gauthier, Downing, LaBarre, Dean & Sulzer Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 20, 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 I benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level I benefits.
2. Appellant seeks EIF Matrix Level I benefits for an alleged revision surgery indicated but for a medical condition.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level I 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.

Annex IV of the Settlement Agreement provides that Class Members may apply for and receive benefits under Matrix Level I if “Affected Product Revision Surgery would be indicated but for a medical condition.”

Appellant has not proven that an APRS is indicated. Dr. Accardo’s note of November 4 2003 states that Appellant “would require revision surgery of her total hip dislocation but the surgery is contraindicated because of medical problems.” There were no medical records submitted supporting this statement. Appellant did introduce evidence that her polyethylene liner may require revision. The liner is not an Affected Product. There is no evidence that revision of a total hip dislocation is an Affected Product Revision Surgery.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level I benefits.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s claim for EIF Matrix Level I benefits 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

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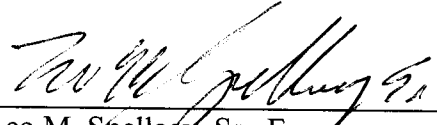
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If no response is received (postmarked) by _____, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 04 2004

Date



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