

**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>Richard Lawrence</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Richard Lawrence, by and through his attorneys Steven E. Fineman, Esq. and Wendy R. Fleishman, Esq. of the Law Firm Lieff Cabraser Heimann & Bernstein (“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 and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V and IX benefits.
2. Appellant seeks Matrix Level V benefits for an alleged permanent nerve injury and infection, and Matrix Level IX benefits for prolonged pain, ambulation difficulty and likelihood of third surgery.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V and IX benefits.

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

Notice of Special Master Determination

Richard Lawrence

Page 2 of 3

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 has not appealed the Final Determination regarding his EIF Matrix Level IX claims for prolonged pain, ambulation difficulty, and likelihood of third surgery. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and may not be further contested or appealed.

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.

Section 9(d) of CAP 27 states, in pertinent part, "If it is clear, in the judgment of the Claims Administrator and from the totality of the circumstances, that the Class Member is likely to recover from the injury, the injury shall not be compensable under Matrix Level V."

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 of the Settlement Agreement.

In the letter submitted with his appeal, Appellant himself states "I am doing very well right now and am able to walk several miles at a brisk pace on moderate woodland terrain...the knee itself is virtually pain free most of the time. (I get mild twinges of pain from time to time)."

There is absolutely no evidence that Appellant suffered a permanent injury that rises to the level of moderate or severe as required 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.

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

Notice of Special Master Determination

Richard Lawrence

Page 3 of 3

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level V claim is hereby AFFIRMED.

Pursuant to the request of Appellant, this Special Master Determination is not to be posted on the official Sulzer Settlement website.


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

If no response is received (postmarked) by JUN 01 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 17 2004

Date


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