

**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>Jane Livingston / Claim Number: 1</i>)	
<i>Walter Livingston / Claim Number</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members Jane Livingston and her spouse Walter P. Livingston, by and through their attorney Donald K. Greer, Jr., Esq. of the Law Firm of Marriott Casagrande Callahan Blair & Greer ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated August 8, 2003 on Appellant's claim for benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his decision to award a net benefit amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted an Orange Form seeking APRS benefits on September 5, 2002.
2. On November 4, 2002 Appellee issued Appellant a letter entitled "Claims Status Notification" which informed Appellant that in order to complete her Claim she was required to furnish proof of implantation of an Affected Product as required by Question 7 of the Orange Form.
3. On March 3, 2003 Appellee issued a Preliminary Determination that Appellant was not eligible for benefits because she had not proven "implantation of an Affected Product".
4. April 17, 2003 was the deadline for submitting additional documentation or information contesting the Preliminary Determination.
5. On June 12, 2003 Appellant submitted a letter from her attorney which indicated the lot number of the implant she received. This information was not provided as part of Appellant's hospital or medical records.
6. On August 8, 2003 Appellee issued a Final Determination denying Settlement benefits because Appellant did not prove she was implanted with an Affected Product as required by the Settlement Agreement.

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

Notice of Special Master Determination

Jane Livingston / Claim Number: 1

Walter Livingston / Claim Number: 2

Page 2 of 2

After a thorough review of the appeal submitted by the Appellant and the response submitted by the Appellee, the Special Master finds as follows:

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for Settlement benefits.

In seeking benefits for the revision of an Affected Product, Appellant must provide proof of the implantation of an Affected Product by providing the lot number of the implant. Question 7 of the Orange Form requires Claimant to produce medical records evidencing implantation of an Affected Product, including the lot number of the implanted device.

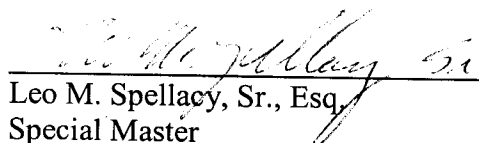
Despite being notified twice of the failure to follow the requirements of Orange Form Question 7, Appellant neglected to provide medical records that indicated the lot number of the implanted device within 45 days of the Appellee's Preliminary Determination.

The Appellant failed to provide timely documentation and sufficient documentation to prove implantation of an Affected Product, and Appellee was required to follow the plain language of the Settlement Agreement and deny Appellants' claim.

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 November 6, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

October 22, 2003
Date


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