

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2004 JAN 21 AM 11:28

U.S. DISTRICT COURT OF OHIO
CLEVELAND

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)**
Andrew A. Mann)
) **Judge Kathleen M. O'Malley**

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Andrew A. Mann and his spouse Diane Mann, by and through their attorney Steven J. Brewer, Esq. of the Law Firm Gwilliam, Ivory, Chiosso, Cavalli & Brewer ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 5, 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 II and Matrix Level IV 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 II benefits and EIF Matrix Level IV benefits.
2. Appellant seeks EIF Matrix Level II benefits for an alleged NAPRS, and Matrix Level IV benefits for an alleged wound infection.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level II or IV benefits, and those claims are the subject of Appellant's appeal.

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

Notice of Special Master Determination

Andrew A. Mann

Page 2 of 2

After a thorough review of the appeal submitted by the Appellants 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.

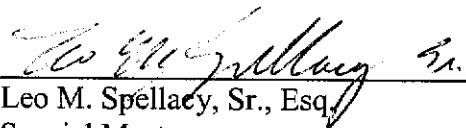
Appellant seeks EIF Matrix Level II benefits for an alleged non-removal surgery on May 6, 2002. Other than indicating that he is appealing the Final Determination of this claim, Appellant does not address this claim in his appeal. Appellee indicates that the Affected Product was removed during Appellant's surgery of May 6, 2002. Therefore, this was not a non-removal surgery but rather an APRS for which Appellant has been deemed eligible for benefits. Since Appellant did not undergo a non-removal surgery, Appellee, Claims Administrator, did not abuse his discretion in denying his claim for EIF Matrix Level II benefits.

Appellant also seeks EIF Matrix Level IV benefits for a wound infection. It is the Special Master's understanding that Appellant has been awarded EIF benefits for both of the surgeries that are the basis of this EIF Matrix Level IV claim (APRS benefits for his surgery of May 6, 2002 and Matrix Level IX benefits for his June 21, 2002 surgery). Since Appellant would not receive additional compensation if this claim were deemed eligible for benefits, its eligibility is irrelevant. Therefore, Appellee did not abuse his discretion in denying this claim.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level II and IV claims 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 5, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 21, 2004
Date


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