

**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>John Marcellino</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member John Marcellino, by and through his attorney Earl B. Hooten, II, Esq. of the C. Thomas Strickland & Associates Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 28, 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 II benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level II, III, IV, and V benefits.
2. Appellant has been deemed eligible for Matrix Level IV benefits for an infection and Matrix Level V benefits for a permanent injury.
3. Appellant also seeks Matrix Level II benefits for alleged Non-Removal Surgeries of April 5, 2001 and May 10, 2001, Matrix Level III benefits for an alleged Non-Affected Product Revision Surgery of April 24, 2001, and Matrix Level IV benefits for a direct injury to the genito urinary system, non-union of trochanteric osteotomy and abductor mechanism disruption.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level II, III, and IV benefits for those claims listed in number 3. above.

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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:

Appellant has only appealed the Final Determination regarding his EIF Matrix Level II claim for an alleged Non-Removal Surgery of April 5, 2001. Therefore, Appellee's Final Determination of ineligibility regarding his other claims is final and it 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.

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 and CAP 27 provide that Matrix Level II benefits are available to Class Members who have not undergone an APRS, but who have undergone a surgery wherein their treating surgeon has attempted to secure an Affected Product using screws, cement or some other means, as a result of non-traumatic loosening.

The Affidavit of Dr. Robert O. Pohl does not state that he attempted to secure Appellant's Affected Product during the April 5, 2001 procedure. The medical report of the April 5, 2001 procedure indicates that it was an aspiration of Appellant's hip. There could not possibly have been intent to secure the Affected Product because the procedure did not even involve an incision.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's Matrix Level II claim for a surgery that does not qualify as a Non-Removal Surgery according to the Settlement Agreement and CAP 27.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level II claim 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:**

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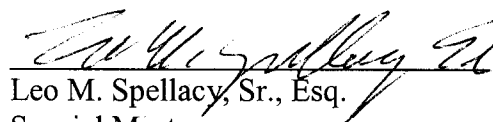
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Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

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

PR 15 2004

Date



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