

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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

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Civil Action No.: 01-CV-9000

ALL CASES

*This document relates to:
Victor Dale Maxam*

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Victor Dale Maxam, by and through his attorney Andres C. Pereira, Esq. of the Law Firm Fleming & Assoc. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated October 29, 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 IX 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 IX benefits.
2. Appellant seeks EIF Matrix Level IX benefits for lost wages.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

**IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
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Notice of Special Master Determination

Victor Dale Maxam

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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:

To clarify a procedural issue, Appellee's contention that Appellant did not file his appeal in a timely manner in accordance with CAP 30 is erroneous. Appellant requested an extension to file an appeal on November 25, 2003. The Special Master granted his request and extended the deadline for filing an appeal until December 19, 2003. Appellant filed his appeal on December 8, 2003; therefore, it is a timely appeal.

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.

CAP 27 § 13(b)(1) states, in pertinent part, that "...a loss of income is "catastrophic" if, in the judgment of the Claims Administrator, it results in direct economic loss, provable by objective evidence, of \$20,000 or more."

Appellant was untimely in submitting objective evidence in support of his claim. However, even if that evidence were to be considered, a statement from Appellant that most of his earnings are not shown on his W-2 forms due to a barter arrangement is not objective evidence and cannot be considered in the calculation of lost wages. Appellee, Claims Administrator, calculated Appellant's income from his W-2 forms for 1998 through 2002, and determined that Appellant's economic loss is approximately \$3,500. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's Matrix Level IX claim for an economic loss that falls well below the threshold required in CAP 27.

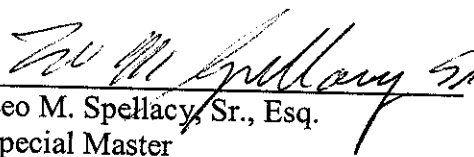
By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim is hereby **AFFIRMED**.

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 9, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 23, 2004

Date

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