

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

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

*This document relates to:  
Linda Mediate*

) **Civil Action No.: 01-CV-9000**  
)  
) **ALL CASES**  
)  
) **(MDL No. 1401)**  
)  
) **Judge Kathleen M. O'Malley**

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Linda Mediate, by and through her attorney Thomas J. Brandi, Esq. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated December 30, 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 deny Appellant's claim for EIF Matrix Level IX benefits.

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 pain while ambulating, fear of future surgeries, and increased pain and weakness.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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Notice of Special Master Determination

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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:

The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator.

The Green Form itself specifically states "A timely *Blue* or *Orange Form* (whichever appropriate) must have been completed in addition to this EIF Benefits Form (*Green Form*)."

The Special Master decided the appeal regarding the tardiness of Appellant's Orange Form on July 24, 2003, and that issue cannot be appealed further.

Since Appellant did not file a timely Orange Form, as required by the Settlement Agreement, Appellee did not abuse his discretion in denying her claim for EIF benefits.

It should be noted that the merits of Appellant's EIF claim were not reviewed because the untimeliness of her Orange Form rendered her EIF claim invalid.

The Special Master would direct Appellant's to *In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, 01-CV-9000 (N.D.O. February 6, 2004)(Docket #1714) for more information regarding the reasons behind and importance of the deadlines prescribed by the Settlement Agreement.

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

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

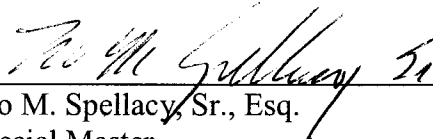
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If no response is received (postmarked) by \_\_\_\_\_, then the Special Master's Decision is final and may not be further contested or appealed.

**MAR 23 2004**

Date

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