

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

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>H. Milano Mellon, M.D.</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member H. Milano Mellon, M.D., by and through his attorney Robert M. Lott, 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 lost wages.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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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.

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 argues that the objective evidence required to complete his claim for lost wages "could still have been corrected at the time of the Preliminary Determination had Appellant been made aware of the missing documentation. Appellant had no knowledge that anything was wrong." The Preliminary Determination very clearly states "Additional Comments: You have made a Claim for lost wages. You must submit W-2 forms (or other applicable tax forms) for at least two years prior to the lost wages claimed and for each year for which you are claiming lost wages. You must also submit a statement or medical records from your treating doctor that causally relates your inability to work to the implantation of an affected product and indicates the time frame during which you were physically unable to work, and if applicable, you must disclose any worker's compensation or disability benefits you have received. CAP 27 permits an Extraordinary Injury Fund award of lost wages to the extent the loss exceeds \$20,000."

Appellant was notified of the missing material on September 10, 2003. On October 3, 2003 Appellant sent additional documents, but did not include the required tax forms, physician statement attesting to casualty, or disclosures pertaining to disability payment.

A Final Determination denying lost wage benefits was made on December 30, 2003.

The tax documents were submitted on January 16, 2004, well after the 45-day period following the Preliminary Determination had expired, and Appellant's failure to read his Preliminary Determination, which indicates exactly what was necessary to complete his claim for lost wages, is not a circumstance that gives rise to a permissible extension of time pursuant to CAP 29.

The Appellee, Claims Administrator, following the terms of the Settlement Agreement, did not abuse his discretion in denying Appellant's Matrix Level IX claim for lost wages.

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

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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

**APR 07 2004**

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

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