

**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>Louis Milardo</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Louis Milardo, by and through his attorney Michael J. Ryan, Esq. of the Law Firm Krupnick, Campbell, Malone, Buser, Slama, Hancock, Liberman & McKee (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 21, 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 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 Matrix Level IX benefits for chronic pain and left thigh numbness.
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. When an act of discretion is under review the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

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.

In order to be eligible for Matrix Level IX benefits, CAP 27 Section 13(b)(3) requires that an injury be catastrophic and extraordinary. Catastrophic is defined as an injury that prevented the Class Member from engaging in an activity of daily living; and extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated.

Appellant has not offered any evidence that his chronic pain and left thigh numbness are either catastrophic or extraordinary.

In addition, Appellant’s APRS was on his right hip and his medical records indicate that his pain is associated with his left hip.

There is no evidence that Appellant suffered a catastrophic or extraordinary injury, or that his chronic pain and left thigh numbness are in any way related to his Affected Product or CRS. Therefore, Appellee did not abuse his discretion in denying Appellant’s claim for EIF Matrix Level IX benefits.

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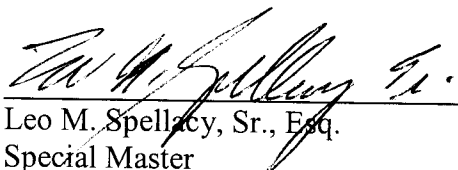
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Leo M. Spellacy, Sr., Esq.  
Special Master to the Sulzer Settlement Trust  
c/o Liaison Counsel  
1600 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

If no response is received (postmarked) by JUL 01 2004, then the Special Master's  
Decision is final and may not be further contested or appealed.

**JUN 16 2004**

\_\_\_\_\_  
Date

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