

**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>Joyce Miller</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Joyce Miller, by and through her attorney Patricia M. Meisenheimer, Esq. of the Law Firm Bracken, Margolin & Gouvis (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated March 5, 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 V benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V benefits.
2. Appellant seeks Matrix Level V benefits for a permanent nerve injury.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V 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.

CAP 27 § 9 and the Settlement Agreement provide that Class Members who have suffered a permanent injury *as a result of a CRS* may be eligible for Matrix Level V benefits.

The Physician Declaration Form and Dr. Kurtz’s June 13, 2002 letter that indicates Appellant’s nerve injury occurred “Subsequent to the revision acetabular surgery” are not supported by her medical records, which provide overwhelming evidence that her nerve injury existed prior to her May 9, 2001 CRS.

Dr. Kurtz’s office note of September 7, 2000 reads “Some posterior buttock and posterior thigh pain. She [Appellant] feels this is sciatic nerve irritation. It was sustained after her Chiari osteotomy performed in 1978.” His office note of January 18, 2001 states “Buttock pain is not likely related to her Sulzer acetabular component...I believe her symptoms are probably coming from the lumbar spine.” His office note of March 6, 2002 states “All of her significant symptoms appear to be related to either lumbosacral spine or sciatic nerve itself...it is my opinion, at this time, that the hip prosthesis itself is doing fine, and is not contributing significantly to any of her symptoms” and his office note of April 19, 2001 reads “She [Appellant] had had previous sciatic neuropathy at the time of Chiari performed in 1978. She has had a series of epidural steroid injections which have alleviated the buttock and radicular type pain in her left lower extremity...” and also “Thus, she has a clear picture in her mind of two different components of pain...One is related to the lumbar spine degenerative changes and possibly previous sciatic neuropathy...The second component of pain is the groin...and is that component of her pain that will be addressed by revision of the left acetabular component...” Dr. Epstein’s letter of April 11, 2002 reads “she [Appellant] had a ‘Sulzer hip’ placed in August of 2000 that resulted in the onset of burning dysesthesia that has persisted.” Dr. Haimovic’s report of March 28, 2002 indicates that “Prior to the operation [APRS] she experienced severe agonizing pain in the left buttock, posterior thigh and calf.”

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Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level V benefits for a nerve injury that clearly existed prior to her CRS and, therefore, was not the result of her CRS.

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

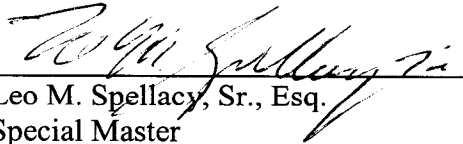
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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

If no response is received (postmarked) by JUN 18 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 03 2004

Date

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