

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2004 JAN -9 AM 9:01

**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:
Mary C. Nelson*

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Mary C. Nelson, by and through her attorney Janie L. Jordan, Esq. of the Law Firm Mithoff & Jacks ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated October 20, 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 III benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant seeks EIF Matrix Level III benefits as a result of her November 20, 2000 surgery.
2. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III benefits.

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Notice of Special Master Determination

Mary C. Nelson

Page 2 of 2

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.

The fact that Appellant's Non-Affected Product was not removed and/or replaced during her November 20, 2000 surgery is not in dispute.

Appellant's argument that denying her EIF Matrix III claim under CAP 27 violates her due process because CAP 27 was enacted after she consented to the Settlement Agreement and after she submitted her EIF Matrix III claim, and that CAP 27 "changed the rules" is erroneous because Section 1.1 (hhh) of the Settlement Agreement defines a Non-Affected Product Revision Surgery as "a surgery (not indicated as a result of trauma) that was performed to **remove and/or replace** [emphasis added] a product that is not an Affected Product within one-hundred and eighty (180) days of an Affected Product Revision Surgery in respect of a hip or knee that previously underwent an Affected Product Revision Surgery."

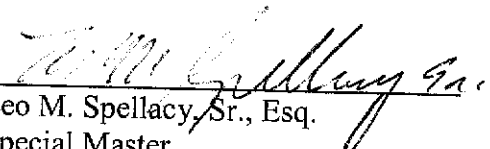
In accordance with the terms of the Settlement Agreement, Appellant did not undergo a Non-Affected Product Revision Surgery because her Non-Affected Product was not removed or replaced. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for EIF Matrix Level III benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level III 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 January 23, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 8, 2004

Date


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