

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

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

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Joan Nelson, by and through her attorney Richard J. Plezia, Esq. of the Law Firm Abraham, Watkins, Nichols, Sorrels, Matthews & Friend (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated June 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 V and IX benefits.
2. Appellant seeks Matrix Level V benefits for a permanent nerve injury, and muscle atrophy and limp, and Matrix Level IX benefits for a dislocation that occurred on April 28, 2003.
3. Appellant has been deemed eligible for Matrix Level V benefits for muscle atrophy and limp.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits for a permanent nerve injury, and Matrix Level IX benefits for a dislocation.

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

Notice of Special Master Determination

Joan Nelson

Page 2 of 3

After a thorough review of the appeal submitted by the Appellant and the response submitted by the Appellee, the Special Master finds as follows:

Appellant has not appealed the Final Determination regarding her EIF Matrix Level V claim for a permanent nerve injury. Therefore, Appellee's Final Determination of ineligibility regarding that claim is final and may not be further contested or appealed.

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.

Appellant underwent a CRS on February 21, 2001. She is seeking Matrix Level IX benefits for a dislocation that occurred on April 28, 2003, more than two years following her CRS.

CAP 27 § 13(a)(3) provides that "injuries contemplated by the Settlement Agreement or a CAP, but which are not compensable under the Settlement Agreement or the CAP in question, shall not be compensable pursuant to Matrix Level IX."

Annex IV-2 of the Settlement Agreement and CAP 27 anticipated and provided for dislocations. CAP 27 § 8(c) states, in pertinent part, "Dislocations that occur more than ninety days from a CRS...are not compensable from the EIF."

Since dislocations are contemplated by Matrix Level IV, Appellee did not abuse his discretion in denying this Matrix Level IX claim. In addition, since Appellant's dislocation occurred more than 90 days after her CRS, she is not eligible for Matrix Level IV 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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AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Joan Nelson

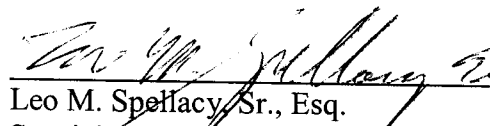
Page 3 of 3

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 **SEP 30 2004**, then the Special Master's Decision is final and may not be further contested or appealed.

SEP 15 2004

Date



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