

**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>Phil Newell</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Phil Newell, by and through his attorney J. Paul Gignac, Esq. of the Law Firm Arias, Ozzello & Gignac (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated November 10, 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 IX benefits in the amount of Zero Dollars (\$0.00) to Appellant.

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 a leg length differential.
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.

Appellant seeks EIF Matrix Level IX benefits for a leg length discrepancy.

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 § 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.”

Appellant’s contention that the basis for his claim is not provided for in Matrix Level I-VIII is incorrect. CAP 27 §13(a)(1) requires that “Injuries such as bone, tissue or muscle loss...*limb length discrepancy* [emphasis added], loss of flexibility, excessive bleeding, scarring, altered gait and decreased mobility are properly classified as Permanent Injuries and/or Major Complications which must be Claimed under Matrix Level IV or V, and to be compensable must meet the criteria of Matrix Levels IV or V to qualify for EIF benefits.”

Since Appellant’s leg length discrepancy was contemplated by Matrix Level V, Appellee, Claims Administrator, did not abuse his discretion in denying his Matrix Level IX claim.

Section 9(e) of CAP 27 states, in pertinent part, “To prove a Moderate injury, a Class Member must prove that he or she experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker. To prove a Severe injury a Class Member must prove that he or she required the use of a wheelchair or underwent an amputation.” Those definitions are reiterated in Annex IV of the Settlement Agreement.

Appellant’s leg length discrepancy requires him to use a shoe lift. However, he has not proven that he experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker; or that he required the use of a wheelchair or underwent an amputation, as required by CAP 27. Dr. Craviotto’s notes of March 5, 2001 and April 24, 2001 indicate that Appellant is “now walking without a cane.” There is no evidence that Appellant’s leg length discrepancy rises to the level of moderate or severe as defined by the Settlement Agreement and, therefore, he is not eligible for Matrix Level V benefits.

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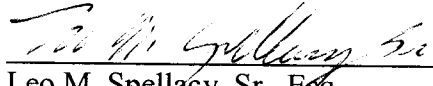
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By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to 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 March 3, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 17, 2004

Date



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