

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>Ana Nicipurenko</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Ana Nicipurenko, by and through her attorney Gary L. Wilkins, Esq. of the Law Firm Wilkins, Frohlich, Jones, Hevia, Russell, Hanaoka & Mizell ("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 IX benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted claims for EIF Matrix Level V and Matrix Level IX benefits.
2. Appellant is eligible for EIF Matrix Level V benefits.
3. Appellant also seeks EIF benefits for lost wages.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits because her lost income was less than \$20,000.00.

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LIABILITY LITIGATION**

Notice of Special Master Determination

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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.


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(b)(1) states, in pertinent part, that "...a loss of income is "catastrophic" if, in the judgment of the Claims Administrator, it results in direct economic loss, provable by objective evidence, of \$20,000 or more." Since Appellant's alleged economic loss is approximately \$4,000, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's Matrix Level IX claim pursuant to the terms of CAP 27.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's economic loss claim under Matrix Level IX 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