

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2004 JAN 21 AM 11:28

U.S. DISTRICT COURT
CLEVELAND

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:
William Nix*

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member William Nix, by and through his attorney Alvin Wolff, Jr., Esq. ("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 V 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 V benefits.
2. Appellant seeks EIF Matrix Level V benefits for an alleged injury to his left wrist.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits.

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

Notice of Special Master Determination

William Nix

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:

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.

Appellant underwent a CRS on April 23, 2001. In order to be eligible for EIF benefits under Matrix Level V, Appellant was required, by the terms of CAP 27 and the Settlement Agreement, to submit medical records that evidenced the existence of his alleged permanent injury through physical examination and quantitative measures performed at least three hundred and sixty-five (365) days after his qualifying CRS. [CAP 27 §9(d) and Settlement Agreement Annex IV]

Appellant underwent a surgery on his left wrist on March 5, 2002. The most recent medical record submitted was a doctor's note dated June 25, 2002 that states "Mr. Nix is now four months status post limited left wrist arthrodesis. He notes some ongoing pain over the ulnar aspect of the wrist. Otherwise, he feels that he has been doing quite well...Overall, Mr. Nix appears to be doing quite well. He has completed his course of physical therapy. At this point, I believe that he should be able to resume activities as tolerated. We will see him back on a prn basis."

Annex IV of the Settlement Agreement states that "compensation under this Matrix Level V will be based upon the severity of the permanent injury." CAP 27 §9(e) provides that the Claims Administrator shall consider medical records or other reliable evidence created **on or after** the date that is 365 days after the qualifying CRS. 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.

There is no evidence that the pain noted by his doctor on June 25, 2002 requires Appellant to use narcotics. In fact, his medical records indicate that he last received narcotic pain medication on March 12, 2002, and it is reasonable to assume that pain was related to his surgery of March 5, 2002, not the wrist injury that is the basis of this claim. The Special Master did not find any evidence that the injury to Appellant's left wrist rises to the level of Moderate as required by the Settlement Agreement and CAP 27. Therefore, Appellee, Claims Administrator did not abuse his discretion in denying Appellant's claim for EIF Matrix Level V benefits.

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

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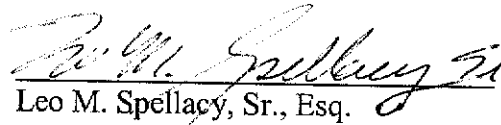
William Nix

Page 3 of 3

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 February 5, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 21, 2004

Date


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