

**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>Darrell Pennington</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Darrell Pennington, by and through his attorney Deborah Fleming-Gomez, Esq. of the Law Firm Clark, Charlton & Martino (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 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 V benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V benefits.
2. Appellant seeks Matrix Level V benefits for pain and instability.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for Matrix Level V 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.

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.

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.” That definition is reiterated in Annex IV of the Settlement Agreement.

Appellant has shown that the March 8, 2004 letter from Dr. McClimans could not have been adduced within 45 days of the issuance of the Preliminary Determination through the exercise of due diligence and, therefore, that letter was considered by the Special Master.

Both the March 8, 2004 letter from Dr. McClimans and the Physician Declaration Form indicate that the treatment required as a result of Appellant’s permanent injury is anti-inflammatory and pain medications.

There is no evidence that Appellant experienced pain, sensory loss or gait alteration *that required narcotics and/or use of a cane or walker* as required by the Settlement Agreement and CAP 27. Therefore, Appellee did not abuse his discretion in denying Appellant’s claim for EIF Matrix Level V benefits for a permanent injury that does not rise to the level of moderate as required by the Settlement Agreement..

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF Matrix Level V 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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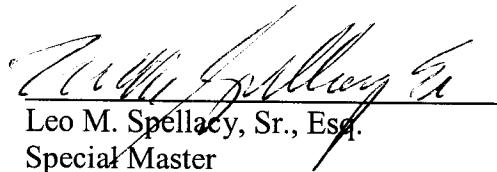
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Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

If no response is received (postmarked) by JUN 25 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 10 2004

Date


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