

**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>Laura Beth Pottinger</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Laura Beth Pottinger, by and through her attorney Michael J. Ryan, Esq. of the Krupnick, Campbell, Malone, Buser, Slama, Hancock, Liberman & McKee Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 6, 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 EIF Matrix Level V benefits for an alleged permanent injury.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF 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.

Appellant seeks EIF Matrix Level V benefits for persistent pain, weakness, antalgic gait and loss of motion.

Section 9(d) of CAP 27 provides that an injury shall be permanent only when the existence of that injury is demonstrated by physical examination and quantitative measures performed at least 365 days after a qualifying CRS.

Appellant’s CRS was performed on July 6, 2001. She has submitted voluminous documents in support of her appeal, including medical records that have absolutely nothing to do with her claim; however, not one record from at least one year after her CRS has been submitted.

In addition, CAP 27 § 9(e) and Annex IV of the Settlement Agreement state, 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.”

A completed Physician Declaration Form, in and of itself, does not satisfy the documentary requirements of CAP 27 and the Settlement Agreement. In addition, her Physician Declaration Form describes the medical treatment that she has required as a result of the injury as physical therapy, medications, and functional restrictions, none of which rise to the level of Moderate as defined by the Settlement Agreement.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for EIF Matrix Level V benefits for an injury that Appellant has not proven is Permanent or Moderate, as required by CAP 27 and 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**

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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:

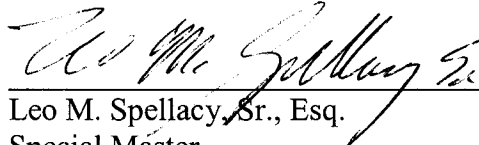
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

✓ 1 1 2004

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

APR 26 2004

Date



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