

**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>Mitchell Rush</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Mitchell Rush, by and through his attorney Michael J. Ryan, Esq. of the Law Firm Krupnick, Campbell, Malone, Buser, Slama Hancock, Liberman & McKee (“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 and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V and IX benefits.
2. Appellant seeks EIF Matrix Level V benefits for femoral nerve damage, and Matrix Level IX benefits for loss of income.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V and 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:

Loss of Income

CAP 30 §3 requires that a Class member who desires to note an appeal must submit a document that identifies the provision of the Settlement Agreement or CAP that supports his or her claim, attach a narrative explanation in support of his or her position, and submit copies of any documents previously supplied to the Claims Administrator as proof of his or her eligibility for benefits.

Appellant has not submitted an appeal that conforms to the requirements of CAP 30. His appeal does not identify the provision of the Settlement Agreement or CAP that supports his loss of income claim. He did not include a narrative explanation in support of his position and, despite submitting voluminous documents with his appeal, not one of those documents relates to his loss of income claim.

Because there was no evidence for the Special Master to consider, Appellant's appeal of his Matrix Level IX claim for loss of income is hereby DISMISSED, and Appellee's January 21, 2004 Final Determination of ineligibility for that claim is final and may not be further contested or appealed.

Matrix Level V – Femoral Nerve Damage

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 § 9(e) 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."

A Physician Declaration Form, in and of itself, is not sufficient evidence to prove that Appellant's femoral nerve damage is either permanent or that it rises to the level of Moderate, as defined by the Settlement Agreement and CAP 27. In fact, Appellant's Physician Declaration Form does not answer any of the questions regarding the nature of the permanent injury (Questions F., G., and H. of the Physician Declaration Form). In addition, there were no medical records submitted from 365 days or more after Appellant's CRS, and none of the records submitted indicate that his femoral nerve

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damage caused pain, sensory loss or gait alteration *that required narcotics and/or use of a cane or walker* at least 365-days after his CRS.

There is no evidence that Appellant's femoral nerve damage is either permanent or that it rises to the level of Moderate, 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.

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

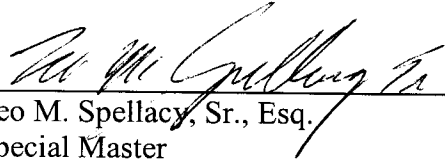
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision regarding Appellant's Matrix Level V claim. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will not be considered. Submissions are to be mailed to the following address:**

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 16 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 01 2004

Date


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