

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

	:	Case No. 1:01-CV-9000
	:	
IN RE: SULZER HIP PROSTHESIS	:	(MDL Docket No. 1401)
AND KNEE PROSTHESIS	:	
LIABILITY LITIGATION	:	JUDGE O'MALLEY
	:	
	:	<u>MEMORANDUM AND ORDER</u>
	:	
	:	

Because the Court is not physically equipped to process and store certain materials recently submitted to it unnecessarily, the Court enters this Order to clarify what it will and will not accept for filing in connection with an appeal by a plaintiff, to the Special Master, of a benefit determination made by the Claims Administrator.

The Settlement Agreement in this case provides that: (1) a plaintiff shall obtain a determination of settlement benefits from the Claims Administrator; and (2) if dissatisfied with the Claims Administrator's

determination, the plaintiff may appeal the Claims Administrator's determination to the Special Master.¹

With regard to the second step listed above, the Settlement Agreement provides that the Court will accept for docketing and filing the "notices of appeal" filed by plaintiffs who pursue the second step listed above. This docketing is solely for the purpose of ensuring a thorough record. As made clear in the Court's Order dated February 6, 2004 (docket no. 1714), the Court has not reviewed, cannot review, and will not review the determinations made by the Claims Administrator or the Special Master; nor has the Court reviewed, or will the Court review, the documents upon which the Claims Administrator or the Special Master base their conclusions.

Accordingly, the Court now makes clear that plaintiffs seeking to appeal, to the Special Master, any determination of benefits by the Claims Administrator shall file with the Court **ONLY** the notice of appeal, which is limited to 10 pages in length. The Court **WILL NOT ACCEPT FOR FILING and WILL NOT DOCKET** any documents offered in support of these notices of appeal, including claim forms, exhibits, medical records, and separate briefs in support. To repeat, **THE COURT WILL DISCARD AND WILL NOT FILE** all documents offered in support of a plaintiff's notice of appeal, to the Special Master, of a Claims Administrator's benefit determination. The Court will also discard,

¹ Settlement Agreement at §4.6(f) provides:

Within thirty (30) days after the date of the Claims Administrator's Final Determination, the applicable Affected Product Recipient may appeal the Final Determination by filing a notice with the Federal District Court and serving a copy on the Claims Administrator. Such notice shall be written and be no more than ten (10) pages in length. The Claims Administrator shall have thirty (30) days to reply in writing. In the event of such an appeal, Class Counsel together with the Special State Counsel Committee shall appoint a special master (subject to the approval of the Court) to make a determination with respect to such Final Determination.

without review, any “courtesy copies” of notices of appeal or supporting documents.

If a plaintiff believes it is necessary to submit any documents in support of a notice of appeal, to the Special Master, of a benefits determination by the Claims Administrator, the plaintiff should send those documents to the Special Master at the following address:

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

As provided in the Settlement Agreement at §4.6(f), the plaintiff should also serve a copy of the notice of any such appeal and supporting documents on the Claims Administrator.

Finally, if a plaintiff previously submitted to the Court any such documents in support of an appeal to the Special Master of a Claims Administrator’s benefit determination, **the Court will forward those supporting documents to the Special Master. A plaintiff need not re-submit these supporting documents.** To repeat, the Court will not docket these documents or keep copies in its own files.

IT IS SO ORDERED.

s/Kathleen M. O’Malley
KATHLEEN McDONALD O’MALLEY
UNITED STATES DISTRICT JUDGE