

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

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>H.B. Sparks, Jr.</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member H.B. Sparks, Jr., by and through his attorney Zona Jones, Esq. of the Law Firm Provost & Umphrey (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 30, 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 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 is not eligible for EIF Matrix Level V benefits.

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

Notice of Special Master Determination

H.B. Sparks, Jr.

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 seeks EIF Matrix Level V benefits for right buttock pain, which he alleges is a Permanent Injury.

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 February 6, 2001. Appellant has submitted voluminous documents in support of his appeal, including medical records dating back to 1977 that have absolutely nothing to do with his claim; however, not one record from at least one year after his 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 is not sufficient evidence that Appellant’s injury rises to the level of Moderate as required by CAP 27 and the Settlement Agreement. There is no evidence that the “pain medication” to which Dr. Clark refers is a narcotic, or that it was required one year or more after his CRS.

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.

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

Notice of Special Master Determination

H.B. Sparks, Jr.

Page 3 of 3

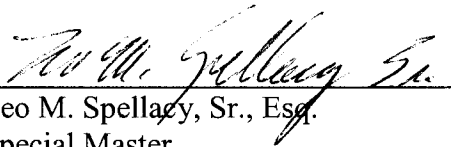
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will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

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 **APR 07 2004**, then the Special Master's Decision is final and may not be further contested or appealed.

**MAR 23 2004**

Date

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