

**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>Harold Susskind</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Harold Susskind, by and through his attorney Tommy Jacks, Esq. of the Law Firm Mithoff & Jacks (“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 persistent hip pain.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits.

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AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Harold Susskind

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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. When an act of discretion is under review, the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

A completed Physician Declaration Form does not prove the existence of a permanent injury. Medical records supporting the existence and severity of an alleged permanent injury must be submitted in order to qualify for Matrix Level V benefits.

There were no medical records submitted that prove Appellant's alleged permanent injury rises to the level of Moderate or Severe, as required by the Settlement Agreement and CAP 27. Therefore, Appellee did not abuse his discretion in denying Appellant's claim for 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. **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 01 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 17 2004

Date


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