

**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>Nadine Sweeten</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Nadine Sweeten, by and through her attorney Jeffrey M. Byer, Esq. of the Law Firm Sandler, Lasry, Laube, Byer & Valdez (“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 IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IX benefits.
2. Appellant seeks Matrix Level IX benefits for an alleged lower back injury.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level 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:

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.

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 did not submit, with her appeal, any medical records supporting her claim for a lower back injury as a result of her CRS. The medical records she did submit contradict the “Declaration of David James Smith, M.D” which relates her lower back injury to her CRS. The Preoperative History and Physical from Appellant’s December 4, 2000 implantation surgery states “The patient...experiences chronic back pain.” The Pre-Anesthesia Evaluation completed by Appellant on November 28, 2000, prior to her being implanted with an Affected Product, indicates that her medical history includes back pain or injury, and the Pre-Anesthesia Evaluation completed by Appellant on March 6, 2001, prior to her APRS, indicates that her medical history includes lower back pain and injury.

Appellant did not prove that her lower back injury was caused by her CRS. Therefore, Appellee did not abuse his discretion in denying her claim for EIF Matrix Level IX benefits.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF Matrix Level IX 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

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If no response is received (postmarked) by JUN 11 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 27 2004

Date


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