

**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>Sergie Sziminski</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Sergie Sziminski, by and through his attorney Gary M. Lang, Esq. of the Law Firm Feldstein Grinberg Stein & McKee (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 22, 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 III, V and IX benefits.
2. Appellant has been deemed eligible for EIF Matrix Level III benefits.
3. Appellant also seeks Matrix Level V and IX benefits for a permanent nerve injury.
4. 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:

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 § 13(a)(3) provides that “injuries contemplated by the Settlement Agreement or a CAP, but which are not compensable under the Settlement Agreement or the CAP in question, shall not be compensable pursuant to Matrix Level IX.”

Annex IV of the Settlement Agreement and CAP 27 anticipate and provide for permanent injuries under Matrix Level V. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IX claim for a permanent injury that must be claimed under Matrix Level V.

Section 9(e) of CAP 27 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.

Appellant has not proven that he experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker, as required by CAP 27 and the Settlement Agreement.

Dr. Sotereanos’ letter of October 24, 2002 only indicates that the injury is permanent; it does not reference the severity of the injury. In addition, the Physician Declaration Form indicates that the treatment for the permanent injury is a brace.

Because there is no evidence that Appellant’s permanent injury rises to the level of moderate or severe, as defined by the Settlement Agreement, 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 and IX claim is hereby AFFIRMED.

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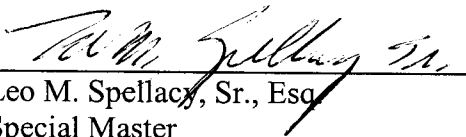
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 14 2004

Date



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