

**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>Jewel B. Tucker</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Jewel B. Tucker, by and through her attorney Zona Jones, Esq. of the Provost & Umphrey Law Firm (“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 pain in right buttock, weakness, occasional radiation down right lower extremity to her toes.
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.

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 § 9(d) 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.

CAP 27 § 9(e) 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.”

A Physician Declaration Form, in and of itself, is not sufficient evidence to prove that Appellant suffered a Permanent Injury. In addition, Appellant’s Physician Declaration Form states that the treatment for Appellant’s alleged Permanent Injury is “medical monitoring” and “pain medication as required.” There is no indication that the pain medication is a narcotic and, therefore, it does not prove that she experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker.

Despite submitting extensive medical records with her appeal, there was not one medical record from at least 365 days after her January 26, 2001 CRS. In fact, the vast majority were medical records from the year 2000, prior to her CRS.

There is no evidence that Appellant suffered from a Permanent Injury. Therefore, Appellee did not abuse his discretion in denying Appellant’s claim for EIF 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:**

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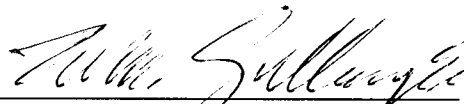
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Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

If no response is received (postmarked) by JUN 04 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 20 2004

Date


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