

**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>William Turner</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member William Turner, by and through his attorney Glenn Zuckerman, Esq. of the Law Firm Weitz & Luxenberg (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 20, 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 V and IX benefits.
2. Appellant has been deemed eligible for Matrix Level V benefits for chronic pain and gait alteration.
3. Appellant also seeks Matrix Level V benefits for an alleged permanent nerve injury, and Matrix Level IX benefits for being implanted with an Affected Product 10 months after the recall was announced, and for lost wages.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for Matrix Level IX benefits for being implanted with an Affected Product 10 months after the recall was announced.
5. Appellant’s claim for EIF Matrix Level V benefits for an alleged permanent nerve injury and Matrix Level IX benefits for lost wages are not subject to this appeal.

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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.

Section 3.4(a) of the Settlement Agreement provides that “Class Members who have undergone or who undergo Affected Product Revision Surgery within the time periods set forth in Sections 3.4(b) and (c) below shall be entitled to receive an *aggregate* payment value of \$160,000 for each such Affected Product for which such Class Member undergoes Affected Product Revision Surgery...”

Appellant has been awarded APRS benefits for both his October 15, 2001 revision surgery and his December 11, 2001 revision surgery. In accordance with Section 3.4(a) of the Settlement Agreement, his APRS awards are the total benefit to which he is entitled for those surgeries.

In addition, CAP 27 § 13(a) addresses “Claims That Will Not Be Eligible Under Matrix Level IX” and CAP 27 § 13(a) (1) provides that “Claims of Physical Damage to the Class Member Contemplated by Other Sections of the Settlement Agreement” are not eligible for Matrix Level IX benefits. Implantation of an Affected Product and Affected Product Revision Surgery is certainly contemplated by the Settlement Agreement and, therefore, Matrix Level IX benefits are not available to further compensate Appellant for being implanted with an Affected Product.

Appellee did not abuse his discretion in denying this EIF Matrix Level IX claim.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF Matrix Level IX claim for being implanted with an Affected Product 10 months after the recall was announced 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 16 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 01 2004

Date



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