

**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>Philip Vaccaro</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Philip Vaccaro, by and through his attorney Jeffrey W. Hightower, Jr., Esq. of the Law Offices of Windle Turley (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 2, 2003 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 I benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level I benefits.
2. Appellant seeks Matrix Level I benefits for an alleged revision surgery indicated but for a medical condition.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level I 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.

A Final Determination of ineligibility regarding Appellant's claim for Unrevised Affected Product Recipient benefits was issued August 20, 2003. In accordance with Section 2 of CAP 30, Appellant had until September 19, 2003 to file an appeal regarding that adverse Final Determination. He did not appeal that Final Determination and, therefore, it is final and may not be further contested or appealed, which renders the merits of his CAP 29 request moot.

The Green Form itself specifically states "A timely *Blue* or *Orange Form* (whichever appropriate) must have been completed in addition to this EIF Benefits Form (*Green Form*)."

Since Appellant did not file a timely Blue Form, as required by the Settlement Agreement, Appellee did not abuse his discretion in denying his claim for EIF Matrix Level I benefits.

It should be noted that the merits of Appellant's EIF Matrix Level I claim were not reviewed because the untimeliness of his Blue Form rendered that EIF claim invalid.

The Federal District Court has explained the importance of the deadlines prescribed in the Settlement Agreement [*In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, 01-CV-9000 at 1 through 20 (N.D.O. February 6, 2004) (Docket #1714)].

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:**

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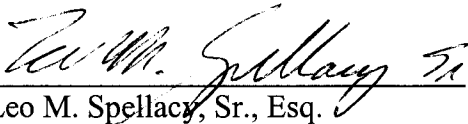
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Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

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

APR 26 2004

Date


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