

**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>Rita Vance</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Rita Vance, by and through her attorneys Stephen J. Fearon, Jr. and Daniel R. Lapinski, Esq. of the Law Firm Squitieri & Fearon (“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 IV and IX benefits.
2. Appellant has been deemed eligible for Matrix Level IV benefits for dislocations of October 19, 2001 and October 20, 2001
3. Appellant also seeks, and Matrix Level IX benefits for bone loss, wage loss, stress and depression, and exacerbation of diabetes.
4. 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:

Appellant has not appealed the Final Determination regarding her EIF Matrix Level IX claims for bone loss, stress and depression, and exacerbation of diabetes. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and may not be further contested or appealed.

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.

CAP 27 § 13(b)(1) states, "For the purposes of this CAP, a loss of income is "catastrophic" if, in the judgment of the Claims Administrator, it results in direct economic loss, provable by objective evidence, of \$20,000 or more."

Appellant has not proved that she suffered a wage loss greater than \$20,000 as a complication of her Affected Product. The Calculation of Catastrophic Loss of Income submitted by Appellant was not prepared by "experts qualified to analyze financial injury" and objective evidence supporting each of the line items in that calculation was not provided.

Appellee has reasonably concluded, through a review of Appellant's W-2 forms, that her lost income totals \$19,389. Therefore, Appellee did not abuse his discretion in denying Appellant's Matrix Level IX claim for wage loss that does not meet the \$20,000 threshold as required by CAP 27.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim for wage loss 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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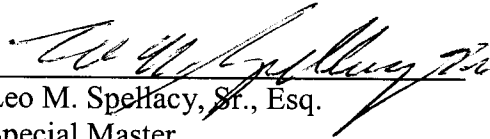
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Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

If no response is received (postmarked) by JUN 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