

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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CLERK OF COURT
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

*This document relates to:
Traute Waltrip*

) **Civil Action No.: 01-CV-9000**
)
) **ALL CASES**
)
) **(MDL No. 1401)**
)
) **Judge Kathleen M. O'Malley**

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Traute Waltrip, by and through her attorney Eric Berg, Esq. of the Law Firm Hatch and Parent ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 10, 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 award EIF Matrix Level V benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV and V benefits.
2. Appellant seeks EIF benefits for heterotopic ossification that occurred after her revision surgery.
3. Appellant has been deemed eligible for EIF Matrix Level IV benefits.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits.

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Notice of Special Master Determination

Traute Waltrip

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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 out in Claims Administrator Procedure ("CAP") 27.

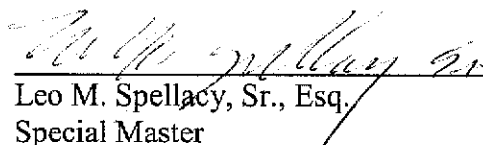
Section 9 (e) of CAP 27 states "To prove a Moderate injury, a Class Member must prove that he or she experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker." That definition is reiterated in Annex IV of the Settlement Agreement.

Appellant has not submitted any evidence proving that she experienced pain, sensory loss or gait alteration *that required narcotics and/or use of a cane or walker*; as required by CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for EIF Matrix Level V benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's Matrix Level V claim is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by February 16, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 30, 2004
Date


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