

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>Carol Williamson</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Carol Williamson, by and through her attorney C.L. Mike Schmidt, Esq. of The Schmidt 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 IV and V benefits.

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 Matrix Level IV benefits for an alleged non-union of trochanteric osteotomy and removal of a broken wire, and Matrix Level V benefits for bone loss.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for Matrix Level IV and V 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 IV claim for non-union of trochanteric osteotomy. Therefore, Appellee's Final Determination of ineligibility regarding that claim is final and it may not be further contested or appealed.

Matrix Level V – Bone Loss

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.

Section 9(d) of CAP 27 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.

Appellant's CRS was performed on September 25, 2001. She has submitted voluminous documents in support of her appeal; however, not one record from at least one year after her CRS has been submitted.

In addition, in order to be eligible for Matrix Level V benefits, a Permanent Injury must be either Moderate or Severe, as defined by the Settlement Agreement and CAP 27 § 9(e), which state “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. To prove a Severe injury a Class Member must prove that he or she required the use of a wheelchair or underwent an amputation.”

Appellant has not submitted any evidence that her bone loss caused pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker; or that it required her to use a wheelchair or undergo an amputation.

Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level V claim that Appellant has not proven is permanent, moderate or severe.

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

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Matrix Level IV – Removal of Broken Wire

Appellee alleges that Appellant did not submit any surgical records associated with the procedure underwent to remove a broken wire, or explain the absence of those records. In addition, Appellee indicates that the broken wires appear to be related to Appellant's implantation surgery, not her CRS.

Exhibit G of Appellant's appeal is the medical record evidencing the removal of the metallic cable on April 11, 2002. In addition, the Presbyterian Clinic office note of February 22, 2002 (Exhibit D page 8 of Appellant's appeal), the Lemmon Clinic office note of April 18, 2002 (Exhibit D page 10 of Appellant's appeal), and the report from Appellant's April 4, 2002 sonogram (Exhibit D not numbered page 16 of Appellant's appeal) all support the Physician Declaration Form, which states this Major Surgical Complication was diagnosed on February 22, 2002, and also indicate that this broken wire was indeed a result of her CRS.

Pursuant to CAP 30 §5 Appellee is requested to advise the Special Master as to whether or not the above referenced documents were submitted within forty-five (45) days of the Preliminary Determination. If they were submitted, why were they not sufficient to prove this Matrix Level IV claim?

Appellee has fifteen (15) days from the date of this Notice to respond to the Special Master's request.

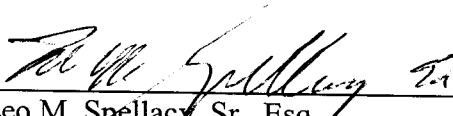
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision regarding Appellant's Matrix Level V claim for bone loss. **Such submissions may not be more than three pages in length. Exhibits 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

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

**MAY 27 2004**

\_\_\_\_\_  
Date

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