

**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>

**ORDER**

The Special Master has received Appellee's response to the Special Master's Determination of May 27, 2004 and Appellant's letter of June 18, 2004.

After reviewing again the appeal submitted by the Appellant and the response submitted by the Appellee, the Special Master finds as follows:

**Matrix Level IV – Removal of Broken Wire**

CAP 27 § 2 requires that "For each Matrix Level, Class Members must provide every document required by the Claim Form...In no event shall the Claims Administrator award EIF benefits to a Class Member who has not submitted all required documents or explained the absence of a required document pursuant to the requirements of this paragraph."

Section 11. (G) of the Claim Form for EIF benefits (Green Form) requires the following be submitted in order to complete an application for EIF benefits under Matrix Level IV: "The hospital records evidencing treatment of each Major Surgical Complication (for which compensation is sought) that should include, but not be limited to (where applicable), a preadmission/admission history and physical examination, an operating report, operative nursing notes, anesthesia records and a discharge summary."

Section 4.6 (d) of the Settlement Agreement requires that any additional information or documentation supporting a claim must be provided to the Claims Administrator within 45 days from the date of the Preliminary Determination.

Because the hospital records evidencing removal of the metallic cable were not provided to Appellee within 45 days of the Preliminary Determination, Appellant's claim was not complete and Appellee did not abuse his discretion in denying the claim.

CAP 30 § 3 states, in pertinent part, "No evidence, documentary or testimonial, real or illustrative, may be introduced during the course of the appeal if it was not first submitted to the Claims Administrator within 45 days of the issuance of the Preliminary

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

Notice of Special Master Determination

Carol Williamson

Page 2 of 2

Determination, the contest of which gave rise to the Appealed Final Determination.” Therefore, the Special Master cannot consider Exhibit G of Appellant’s appeal, which was not submitted to Appellee within 45 days of the date of the Preliminary Determination.

Appellant’s contention that the Claim Status Notification letter of December 16, 2002 proves that the necessary hospital records were submitted is erroneous. The Claim Status Notification letter states “it *appears* that you have submitted a complete Claim [emphasis added].” In addition, the September 11, 2003 Preliminary Determination very clearly indicates that the “Hospital Records evidencing treatment of MSC” are “Incomplete” and also advises Appellant exactly what Hospital Records were needed to complete this claim.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF Matrix Level IV claim for the removal of a broken wire 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:**

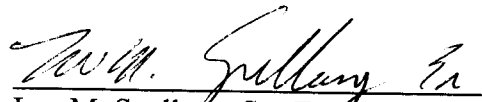
Leo M. Spellacy, Sr., Esq.  
Special Master to the Sulzer Settlement Trust  
c/o Liaison Counsel  
1600 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115

**JUL 30 2004**

If no response is received (postmarked) by \_\_\_\_\_, then the Special Master’s Decision is final and may not be further contested or appealed.

**JUL 15 2004**

\_\_\_\_\_  
Date

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