

**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>Dale Oehler / Claim Number.</i>)	
<i>Sharon Oehler / Claim Numb</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members Dale Oehler and his spouse Sharon Oehler, by and through their attorney James G. O'Callahan, Esq. of the Law Firm Girardi and Keese ("Appellants), appealed the decision of the Claims Administrator ("Appellee") in rendering Final Determinations dated May 22, 2003 on Appellants' claims for benefits from the Sulzer Settlement Trust.

Appellants appealed the decision of the Appellee, and contend that Appellee erred in his decision to award a net benefit amount of Zero Dollars (\$0.00) to Appellants.

The factual findings of this matter are as follows:

1. Appellants submitted an untimely Blue Form seeking Unrevised APR benefits, an untimely Orange Form seeking APRS benefits, and an untimely Yellow Form seeking Derivative Claimant benefits on December 19, 2002.
2. On January 31, 2003 Appellee did issue Preliminary Determinations that Appellants were not eligible for Settlement benefits because their claims had not been submitted before the applicable deadline in accordance with the requirements of the Settlement Agreement.
3. On March 13, 2003 Appellants submitted a letter contesting the Preliminary Determinations.
4. On May 22, 2003 Appellee issued Final Determinations that Appellants were not eligible for Settlement benefits because they did not file their claims before the deadline.
5. Appellants have not submitted any evidence demonstrating that their failure to submit timely claim forms was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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

Notice of Special Master Determination

Dale Oehler / Claim Number:

Sharon Oehler / Claim Number:

Page 2 of 2

After a thorough review of the appeal submitted by the Appellants and the response submitted by the Appellee, the Special Master finds as follows:

Appellant herein admit their filings were untimely. They seek to excuse their late filings on family concerns and allegedly faulty information provided by the Claims Administrator's Office.

Appellee's obligation under the Settlement Agreement is to preserve the Trust for the benefit of those who comply with the deadlines, and to grant extensions when properly demonstrated.

In granting extensions he must examine the reasons for an extension in light of the applicable law.

The Special Master is to apply the abuse of discretion standard in reviewing the Final Determination of the Claims Administrator.

In examining Appellants' excuse based on family concerns the Appellee was justified in denying the extension by applying Settlement Agreement § 4.6(a) which allows for the filing of an incomplete form to be supplemented at a later date.

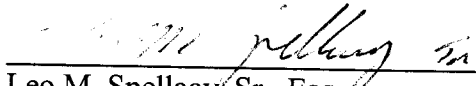
Appellee did not abuse his discretion in discounting the assertions that the Claim Administrator's Office gave erroneous information regarding the November 4, 2002 deadline. He properly considered the Call Center scripts giving information regarding the deadline, the deadline is prominently displayed on the first page of the Claim Forms, and the Settlement Agreement sets forth the date in clear language.

The Appellee did not abuse his discretion in denying the requested extension and by order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

Appellants 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 September 3, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

August 19, 2003

Date


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