

**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>Kathryn Alford</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Joan Sullivan, on behalf of Class Member Kathryn Alford, by and through her attorney Zona Jones, Esq. of the Law Firm Provost & Umphrey (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 30, 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 deny Appellant’s claim for EIF benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a Green Form seeking EIF benefits on November 4, 2002.
2. On July 18, 2003 Appellee issued a Preliminary Determination denying claimant EIF benefits because most of the claim form was not completed and she had not specified a Matrix Level claim or identified an injury on her Green Form.
3. The timeframe for contesting Appellant’s Preliminary Determination expired on September 1, 2003.
4. On September 30, 2003, 29 days after the deadline for contesting her Preliminary Determination had passed, Appellant submitted an amended Green Form, along with medical records allegedly in support of her claim.
5. On December 30, 2003 Appellee issued a Final Determination that Appellant is not eligible for EIF benefits because she had not contested the Preliminary Determination before the deadline.
6. Appellant has not submitted any evidence demonstrating that her failure to timely contest the Preliminary Determination was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Kathryn Alford

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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.

Appellee did not abuse his discretion in denying Appellant's request for EIF benefits

Appellant did not submit an amended Green Form or proof of her alleged injury within forty-five (45) days of the Preliminary Determination regarding her claim for EIF benefits as required by Section 4.6(d) of the Settlement Agreement. Therefore, in accordance with Section 4.6(d) of the Settlement Agreement, the Preliminary Determination became final.

Appellant admits the September 30 submission was untimely, but argues that the incorrect calendaring of the deadline should be excused.

CAP 29 § 5(b) prohibits the granting of an extension of time if "the Class Member and/or his or her attorney was aware of how the Settlement Agreement or CAP in question prescribes a deadline should be calculated, but miscalculated by arithmetic or other error what the deadline was."

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF benefits 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:**

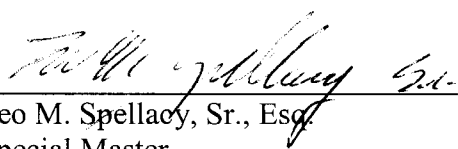
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

APR 07 2004

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

MAR 23 2004

Date


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