

**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>Nadene K. Bamsey</i>	)	
<i>Claim Number:</i>	)	<b>Judge Kathleen M. O'Malley</b>
	)	

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Nadene K. Bamsey, by and through her attorney Kenneth R. Dewell, Esq. of the Law Firm Pechota Leach & Dewell (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated July 8, 2003 on Appellant’s claim for benefits from the Sulzer Settlement Trust.

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

The factual findings of this matter are as follows:

1. Appellant submitted an untimely Orange Form seeking APRS benefits and an untimely Red Form seeking Uninsured APR benefits on November 27, 2002.
2. On January 31, 2003 Appellee issued a Preliminary Determination that Appellant was not eligible for Settlement benefits because her claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. On February 12, 2003 Appellant submitted a letter contesting the Preliminary Determination.
4. On July 8, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because her claim was not filed before the deadline.
5. Appellant has not submitted any evidence that demonstrates that her failure to submit a timely claim form was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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LIABILITY LITIGATION**

Notice of Special Master Determination

Nadene K. Bamsey

Claim Number:

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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 Appellee did not abuse his discretion in denying Appellant's request for APRS and Uninsured APR benefits.

Appellant does not deny that her claim forms were filed untimely, but contends that she and her attorney "were under the mistaken belief that the deadline for submission was June 5, 2003."

Paragraph 5 of CAP 29 specifically excludes an extension of time based on a Class Member and/or an attorney's unawareness or miscalculation of a deadline.

In addition, Appellant's counsel indicates that "The class settlement documents were prepared for Claimant's signature on September 30, 2003. Those documents, that is, the Orange Form, and the Red Form, were then signed by Nadene on October 3, 2002." The signed claim forms were not mailed to the Claims Administrator until November 27, 2003 because Appellant's counsel was waiting to receive back the completed Physician Declaration Form.

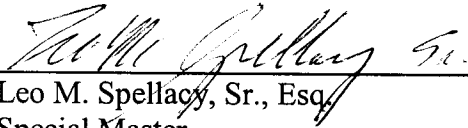
Section 4.6(a) of the Settlement Agreement specifically addresses this issue and allows for the timely submission of incomplete claim forms, and the Settlement Agreement has extensive provisions for supplementing deficient claims.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) 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 October 17, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

October 2, 2003

Date

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