

**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>Charles Barr</i>)	
<i>Jeffrey Holsey</i>)	Judge Kathleen M. O'Malley
<i>Eva Morgan</i>)	
<i>Sharon Fournaris</i>)	
<i>Jimmy Don Moore</i>)	

NOTICE OF SPECIAL MASTER DETERMINATION

Because the issue regarding the timeliness of the appeal is exactly the same in each of these appeals, they have been combined for purposes of the Special Master's Determination.

Class Members Charles Barr, Jeffrey Holsey, Eva Morgan, Sharon Fournaris and Jimmy Don Moore, by and through their attorney Donna J. Bowen, Esq. of the Law Firm Slack & Davis ("Appellants"), appealed the decision of the Claims Administrator ("Appellee") in rendering Final Determinations dated between October 20, 2003 and February 20, 2004 on Appellants' claims for Extraordinary Injury Fund ("EIF") benefits from the Sulzer Settlement Trust.

Section 4.6(f) of the Settlement Agreement states "Within thirty (30) days after the date of the Claims Administrator's Final Determination, the applicable Affected Product Recipient may appeal the Final Determination by filing a notice with the Federal District Court and serving a copy on the Claims Administrator."

Appellants were issued Final Determinations regarding their EIF claims between October 20, 2003 and February 20, 2004. In accordance with the terms of the Settlement Agreement, their Notices of Appeal were required to be filed within 30 days of the date of the Final Determination. Their Notices of Appeal were not filed until June 4, 2004, substantially after that deadline.

Appellants' request that their appeals be considered timely because the delay in filing these appeals "is wholly the result of inadvertent mistake, which was made in good faith, on the part of Claimant's attorney."

However, counsel does not provide a reasonable explanation for her failure to follow the clear and unambiguous requirements of the Settlement Agreement and CAP 30 in filing timely appeals for her clients.

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CAP 29 § 5(d) prohibits the granting of an extension of time due to a Class Member's reliance on their attorney.

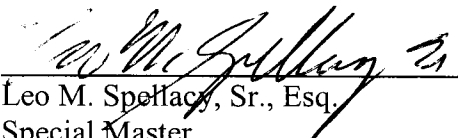
CAP 29 follows the law and imputes the negligence of the attorney to the Appellants. To hold otherwise would create a situation wherein the attorney would be protected for his or her negligence.

Appellants' request for an extension of time in which to file an appeal is DENIED and Appellants' appeals are hereby DISMISSED.

Appellee's Final Determinations regarding Appellants' claims for EIF benefits are final and may not be further contested or appealed.

JUN 15 2004

Date


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