

**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>John Bella</i>)	
<i>Marion and Thomas O'Brien</i>)	Judge Kathleen M. O'Malley
<i>Michael and Arlene Fein</i>)	
<i>Antonio and Marta Kalosidian</i>)	
<i>Morris and Cassie Brown</i>)	
<i>Dennis and Mary Riordan</i>)	
<i>Michael Sciascio</i>)	

NOTICE OF SPECIAL MASTER DETERMINATION

Because the issues raised in all of the referenced appeals are identical, they have been consolidated for purposes of the Special Master's Determination.

Class Members John Bella, Marion and Thomas O'Brien, Michael and Arlene Fein, Antonio and Marta Kalosidian, Morris and Cassie Brown, Dennis and Mary Riordan, and Michael Sciascio, by and through their attorney Frank V. Floriani, Esq. of the Law Firm Sullivan Papain Block McGrath & Cannavo (Appellants"), appealed the decision of the Claims Administrator ("Appellee") in rendering Final Determinations 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 Settlement benefits in the amount of Zero Dollars (\$0.00) to Appellants.

The factual findings of this matter are as follows:

1. Appellants submitted untimely Blue Forms, Orange Forms, Red Forms and/or Yellow Forms seeking Unrevised APR benefits, APRS benefits, Uninsured APR benefits, and/or Derivative Claimant benefits after the applicable deadline.
2. Appellee issued Preliminary and Final Determinations that Appellants were not eligible for Settlement benefits because their claims were not filed in a timely fashion according to the requirements of the Settlement Agreement.
3. 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.

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

The Appellee, Claims Administrator, did not abuse his discretion in denying the Unrevised APR, APRS, Uninsured APR, and Derivative claims of the Appellants.

It is not disputed that the claims were filed months after the applicable deadline.

Appellants contend that the negligence of their attorney, which resulted in the late filings, should be excused and not imputed to them.

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.

The reasons for the neglect were under the control of Appellants' counsel and, unfortunately, those actions are attributable to Appellants.

Appellant has not submitted any evidence of circumstances giving rise to a permissible extension of time in accordance with CAP 29.

Appellants O'Brien and Fein also submitted claims for EIF benefits. The Green Form itself clearly indicates that in order to be eligible for EIF benefits "A *timely* [emphasis added] Blue or Orange Form (whichever appropriate) must have been completed in addition to this EIF Benefits Form (Green Form)." Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying those requests for EIF benefits because the associated Blue or Orange Form was untimely.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

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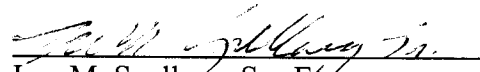
Michael Sciascio

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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 March 1, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 13, 2004

Date


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