

**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>Claudia Brakebill</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Claudia Brakebill, by and through her attorney Nancy P. Adel, Esq. of the Law Firm Adel & Pollack (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 21, 2004 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 Matrix Level IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V and IX benefits.
2. Appellant seeks Matrix Level V benefits for leg length discrepancy and increased offset, and Matrix Level IX benefits for loss of income, leg length discrepancy and pain.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V and IX benefits.

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LIABILITY LITIGATION**

Notice of Special Master Determination

Claudia Brakebill

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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 Federal District Court has explained the importance of the deadlines prescribed in the Settlement Agreement [*In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, 01-CV-9000 (N.D.O. February 6, 2004) (Docket #1714)].

Section 4.6(d) of the Settlement Agreement provides that Class Members and/or the Plaintiff's Counsel shall have forty-five (45) days from the date of the Preliminary Determination by the Claims Administrator to provide any additional information or documentation supporting his/her position. If the Class Member and/or Plaintiff's Counsel does not contest the Preliminary Determination in accordance with Section 4.6(d), "**such Preliminary Determination shall be deemed to be a Final Determination in accordance with Section 4.6(e) and such Class Member and/or Plaintiff's Counsel shall have no further right to contest such Final Determination.**" [emphasis added]

A Preliminary Determination regarding Appellant's EIF claims was issued on September 12, 2003. Appellant had forty-five (45) days, or until October 27, 2003, to contest that Preliminary Determination.

Appellant sent a letter, dated October 30, 2003, indicating that she was contesting the Preliminary Determination. However, at no time did she submit any additional information or documentation supporting her position.

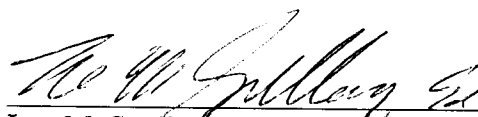
In addition, Appellant has never requested an extension of time to contest the Preliminary Determination as permitted under CAP 29, nor has she offered any explanation as to why the contest of her Preliminary Determination was not timely.

Therefore, in accordance with Section 4.6(d) of the Settlement Agreement, Appellee's Preliminary Determination of September 12, 2003 became a Final Determination on October 27, 2003 at which time Appellant forfeited her right to appeal that Final Determination.

By order of the Special Master, Appellant's appeal is hereby DISMISSED, and Appellee's January 21, 2004 Final Determination is final and may not be further contested or appealed.

JUN 15 2004

Date


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