

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION

This document relates to:
Matthew Burner
Claim Number:

Civil Action No.: 01-CV-9000

ALL CASES

(MDL No. 1401)

Judge Kathleen M. O'Malley

2003 JUN 10 AM 11:52
CLERK OF COURT
CLEVELAND, OHIO

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Matthew Burner ("Appellant") appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated March 3, 2003 on Appellant's claim for benefits from the Sulzer Settlement Trust.

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

The factual findings of this matter are as follows:

1. Appellee received a request for a Notice Packet from Alison Burner, Appellant's wife, on July 17, 2002.
2. A Notice Packet, including claim forms, was mailed to Alison Burner, Appellant's wife, on July 19, 2002.
3. The Notice Packet was received by the Appellant on July 25, 2002.
4. Appellant submitted an untimely Blue Form seeking Unrevised APR benefits that was postmarked September 9, 2002.
5. On November 4, 2002 Appellee did issue a Preliminary Determination that Appellant was not eligible for Unrevised APR benefits because the claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
6. On December 2, 2002 Appellant submitted a letter contesting the Preliminary Determination.
7. On March 3, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because he did not file his claim prior to the deadline.
8. On April 7, 2003, five days after the deadline for doing so had passed, Appellant submitted a Notice of Appeal to the Court.
9. Appellant has not submitted any evidence that demonstrates that his failure to submit a timely claim form or Notice of Appeal was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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Notice of Special Master Determination

Matthew Burner

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:

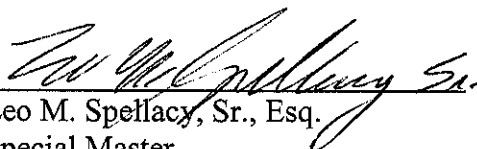
Appellee has not abused his discretion in denying Appellant's application for Unrevised APR benefits. The Settlement Agreement specifically states that deadline for submission of the Blue Form is on or before September 5, 2002. Appellee is bound to implement the terms of the Settlement Agreement. Appellant's contention that he was misled and impeded from filing on or before the filing deadline is not supported by the facts.

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 submit to the Court a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by June 25, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

June 10, 2003

Date


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