

**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>Michele Campagna / Claim Number</i>)	
<i>Madia Campagna / Claim Number:</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members Michele Campagna and his spouse Madia Campagna, by and through their attorneys Anthony de los Reyes, Esq. and Andrew S. Goldwasser, Esq. ("Appellants"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated May 19, 2003 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 a net benefit amount of Zero Dollars (\$0.00) to Appellants.

The factual findings of this matter are as follows:

1. Appellants submitted an untimely Orange Form seeking APRS benefits and an untimely Yellow Form seeking Derivative Claimant benefits on November 8, 2002.
2. On November 12, 2002 Appellants submitted a letter acknowledging their untimely submission.
3. On January 31, 2003 Appellee did issue Preliminary Determinations that Appellants were not eligible for Settlement benefits because their claims had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
4. On March 31, 2003 Appellants submitted a declaration which states Appellants' attorneys were advised by the Office of the Claims Administrator that the deadline for submission of the claims was November 8, 2002.
5. On May 19, 2003 Appellee issued Final Determinations that Appellants are not eligible for Settlement benefits because they did not file their claims before the deadline.
6. Appellants have not submitted any evidence that demonstrates 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 appeal 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 Appellants untimely requests for APRS and Derivative Claimant benefits.

Settlement Agreement 4.2(a) requires Class Members to submit an Orange Form within one hundred eighty (180) days after Trial Court approval. The Derivative Claimant must submit a Yellow Form within the same time period. Appellants claim forms were due postmarked no later than November 4, 2002. They submitted their claim forms on November 8, 2002.

Appellants acknowledge that the filing were untimely and request that they be considered because of information provided by the Office of the Claims Administrator. Appellants contend that their legal assistant was misinformed of the filing deadlines by Eddie Bagnell of the Office of the Claims Administrator in mid-October 2002.

Appellee disputes this allegation. The information regarding the filing deadline of November 4, 2002 was well known by the Claims Administrator's Call Center, and hundreds of callers have been informed of the November 4, 2002 deadline. The Call Center scripts contain the correct deadline information. The Settlement Agreement, which is the controlling document, makes clear the deadline is November 4, 2002. That information is also in the Orange Form and on the Claims Administrator's website.

The responsibility for filing timely is with the Appellant and not the Office of the Claims Administrator.

The Claims Administrator is obligated to follow the terms of the Settlement Agreement and to preserve the corpus of the Trust for those who follow the terms of the Settlement Agreement and the deadlines imposed.

CAP 29 explains how Appellee is to exercise discretion in granting extensions. An attorney's unawareness of a clearly articulated deadline, miscalculation of a deadline, or a Class Members reliance on the attorney are not a basis for an extension.

Because Appellants failed to demonstrate that the untimely filings should be excused, by order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

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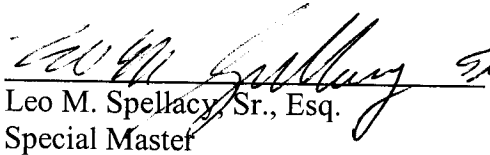
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Appellants and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by August 16, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

August 1, 2003

Date


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