

**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>George Chism</i> |) | |
| |) | Judge Kathleen M. O'Malley |

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member George Chism, by and through his attorney Steven L. Saldo, Esq. (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 7, 2004 on Appellant’s claim for 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 APRS benefits.

The factual findings of this matter are as follows:

1. Appellant underwent an APRS on November 5, 2002.
2. Appellant submitted an untimely Orange Form seeking APRS benefits on June 11, 2003.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for Settlement benefits because his claim was not filed in a timely fashion according to the requirements of the Settlement Agreement.
4. Appellant has not submitted any evidence demonstrating that he filed a timely claim.

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AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

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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 Appellee did not abuse his discretion in denying Appellant's request for APRS benefits.

Appellant underwent an APRS on November 5, 2002. Therefore, the deadline for him to submit an Orange Form was May 5, 2003. Appellee did not receive his Orange Form, which was postmarked June 11, 2003, until June 13, 2003.

Appellant contends he submitted a timely Orange Form on December 30, 2002 and that it was "lost" by the Claims Administrator.

Appellant has not provided copies of the Orange Form allegedly submitted on December 30, 2002, or a receipt from the post office evidencing a postmark of December 30, 2002.

The Appellant, represented by counsel experienced in the Sulzer litigation, did not inquire about the status of his claim until almost six months after allegedly submitting an Orange Form on December 30, 2002.

Considering all the facts, the Appellee, Claims Administrator, adhered to the requirement of the Settlement Agreement and did not abuse his discretion.

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 a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will not be considered. Submissions are to be mailed to the following address:**

Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

