

**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>Harold Clark</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Harold Clark, by and through his attorney Edmund N. Anderson, Esq. (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 20, 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 V benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V benefits.
2. Appellant seeks Matrix Level V benefits for chronic hip pain.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits because his claim had not been submitted within the timeframe prescribed by the Settlement Agreement.

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

Notice of Special Master Determination

Harold Clark

Page 2 of 3

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 Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator.

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 at 17 through 20 (N.D.O. February 6, 2004) (Docket #1714)].

In accordance with Section 4.3(a) of the Settlement Agreement, the deadline for Appellant to submit a claim for EIF benefits was November 4, 2002. Appellant's Green Form was submitted on June 9, 2003, more than seven months after the deadline.

Appellant indicates that he "should be allowed the opportunity to rectify any procedural forms for eligibility and cure any defects in forms submitted for consideration under the Extraordinary Injury Fund" but he offers no reason why he should be allowed such an opportunity, nor has he provided an explanation as to why he should be granted an extension of time to render his Green Form timely pursuant to CAP 29. His appeal states "it was noted that these symptoms [chronic hip pain] occurred prior to the CRS." It is, therefore, reasonable to conclude that his chronic hip pain was not the result of being implanted with a Reprocessed Shell (which conclusion is supported by Dr. Gottschalk's letter of January 29, 2004) and, therefore, when he became aware of that fact that he had been implanted with a Reprocessed Shell has no bearing on the timeliness of his Matrix Level V claim.

Appellee did not abuse his discretion in denying Appellant's EIF claim because it was not submitted within the timeframe prescribed by the Settlement Agreement.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level V claim 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:**

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

Notice of Special Master Determination

Harold Clark

Page 3 of 3

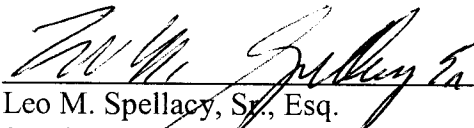
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

JUL 01 2004

If no response is received (postmarked) by _____, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 16 2004

Date


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