

**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>Barbara G. Clarke</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Barbara G. Clarke, by and through her attorney Philip S. Lott, Esq. of the G. Eric Nielson & Associates Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 29, 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 III benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III benefits.
2. Appellant seeks EIF Matrix Level III benefits for a Non-Affected Product Revision Surgery.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III benefits.

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

By Order of the United States District Court, the Claims Administrator shall evaluate claims for EIF benefits according to the policies and procedures set forth in Claims Administrator Procedure (“CAP”) 27.

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 10, 2002. Appellant’s Green Form was submitted on December 26, 2002, more than a month after the deadline.

Appellant argues that her claim was not filed because a paralegal “may have lost the supporting documentation” and had to re-request the supporting documents.

Section 4.6(a) of the Settlement Agreement explicitly allows Appellants to submit a claim form with incomplete medical records, and the Settlement Agreement has extensive provisions for supplementing deficient claims. Appellant did not avail herself of the opportunity to submit a timely claim and supplement it at a later date with the necessary medical records.

Appellant has not submitted evidence of circumstances giving rise to a permissible extension of time in accordance with CAP 29. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for EIF benefits because her claim form was not submitted prior to the deadline prescribed by the Settlement Agreement.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF Matrix Level III 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**

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any such submission and will not be considered. Submissions are to be mailed to the following address:

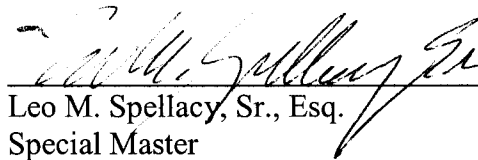
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

APR 30 2004

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

APR 15 2004

Date



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