

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>Robert E. Cordova, Jr.</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Robert E. Cordova, Jr., by and through his attorney John P. Blumberg, Esq. (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated May 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 II, IV, V and IX benefits.
2. Appellant has been deemed eligible for Matrix Level II benefits for his surgery of February 7, 2001.
3. Appellant also seeks Matrix Level IV benefits for an abductor mechanism disruption, Matrix Level V benefits for a permanent nerve injury and for a paracentral disc protrusion, and Matrix Level IX benefits for his surgeries of February 7, 2001 and October 30, 2001.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV benefits for an abductor mechanism disruption, Matrix Level V benefits for a permanent nerve injury and for a paracentral disc protrusion, and Matrix Level IX benefits for his surgeries of February 7, 2001 and October 30, 2001.

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LIABILITY LITIGATION**

Notice of Special Master Determination

Robert E. Cordova, Jr.

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After a thorough review of the appeal submitted by the Appellant and the letter submitted by the Appellee, the Special Master finds as follows:

Section 4.6(f) of the Settlement Agreement and CAP 30 requires that Class Members give Notice of an Appeal, by filing a Notice with the Court and delivering a copy to the Claims Administrator, within 30 days of the issuance of an adverse Final Determination.

The fact that Appellant did not appeal the Final Determination regarding his EIF Matrix Level V claim within 30 days of its issuance is not in dispute.

Appellant indicates that the "Determination of Benefits dated May 20, 2004 was ambiguous as to various dates of Preliminary Determinations and Final Determinations, causing confusion as to the deadline within which to either contest the determination or file a Notice of Appeal" and that the late filing of Appellant's appeal was an "inadvertent mistake in determining the deadline to appeal the Claims Administrator's determination."

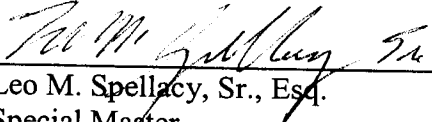
CAP 29 explains how Appellee is to exercise discretion in granting extensions. An attorney's unawareness of a clearly articulated deadline, miscalculation of a deadline, or a Class Members reliance on the attorney are not a basis for an extension. CAP 29 follows the law and imputes the negligence of the attorney to the Appellants. To hold otherwise would create a situation wherein the attorney would be protected for his or her negligence.

Appellant has not submitted any evidence of circumstances giving rise to a permissible extension of time in accordance with CAP 29. The Determination of Settlement Benefits dated May 20, 2004 very clearly indicates the date of the Preliminary Determination and Final Determination for each claim and also explains Appellant's right to appeal.

By order of the Special Master, Appellant's appeal is hereby DISMISSED because it was not submitted within the timeframe prescribed by the Settlement Agreement.

**AUG 03 2004**

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Date

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