

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

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

*This document relates to:  
Roberto Cosme*

) **Civil Action No.: 01-CV-9000**  
)  
) **ALL CASES**  
)  
) **(MDL No. 1401)**  
)  
) **Judge Kathleen M. O'Malley**

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Roberto Cosme, by and through his attorney John D. Malkowski, Esq. of the Kennedy Law Group (“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 benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level I benefits.
2. Appellant seeks Matrix Level I benefits for an alleged revision surgery that is indicated but for a medical condition.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF benefits.

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AND KNEE PROSTHESIS PRODUCT  
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Notice of Special Master Determination

Roberto Cosme

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)].

A Final Determination of ineligibility regarding Appellant's claim for Unrevised Affected Product Recipient benefits was issued June 13, 2003. In accordance with Section 2 of CAP 30, Appellant had until Monday, July 14, 2003 to file an appeal regarding that adverse Final Determination. He did not appeal that Final Determination until February 27, 2004.

Appellant's appeal regarding the Final Determination of ineligibility for Unrevised Affected Product Recipient benefits is hereby DISMISSED because it was filed more than seven months past the deadline. The Claims Administrator's Final Determination of ineligibility regarding that claim is final and may not be further contested or appealed.

The Green Form itself specifically states "A timely *Blue* or *Orange Form* (whichever appropriate) must have been completed in addition to this EIF Benefits Form (*Green Form*)."

Since Appellant did not file a timely Blue Form, as required by the Settlement Agreement, Appellee did not abuse his discretion in denying his claim for EIF benefits.

It should be noted that the merits of Appellant's EIF claim were not reviewed because the untimeliness of his Blue Form rendered his EIF claim invalid.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF 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**

**IN RE: SULZER HIP PROSTHESIS  
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Notice of Special Master Determination

Roberto Cosme

Page 3 of 3

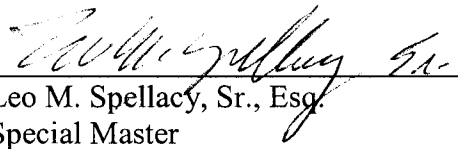
**any such submission and will not be considered. Submissions are to be mailed to the following address:**

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

If no response is received (postmarked) by APR 30 2007, then the Special Master's Decision is final and may not be further contested or appealed.

APR 15 2007

Date

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