

**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>Denice Fox</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Denice Fox, by and through her attorney William Taylor, Esq. of the Law Firm Woods, Fuller, Shultz & Smith (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 21, 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 IV and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV and IX benefits.
2. Appellant seeks Matrix Level IV benefits for a wound infection and for the need for additional revision surgeries, and Matrix Level IX benefits for pain, distress, future revision surgeries and an infection.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV and IX 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.

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 November 7, 2002.

Appellant requests that her late filing be excused because "counsel had miscalculated the one hundred eighty day deadline."

The granting of an extension of time to excuse Appellant's late filing is specifically barred under CAP 29 § 5 "Certain Circumstances Not Permissible Basis for Extension of Time" (b) which states "the Class Member and/or his or her attorney was aware of how the Settlement Agreement or CAP in question prescribes a deadline should be calculated, but miscalculated by arithmetic or other error what the deadline was."

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's EIF claim because it was not submitted prior to the applicable deadline, as required by the Settlement Agreement.

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 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

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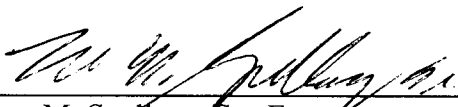
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If no response is received (postmarked) by JUN 01 2004, then the Special Master's
Decision is final and may not be further contested or appealed.

MAY 17 2004

Date

Special Master


Leo M. Spellacy, Sr., Esq.