

**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>D. Frank Green, Jr.</i>)	
<i>Claim Number</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member D. Frank Green, Jr. (“Appellant”) appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated August 20, 2003 on Appellant’s claim for benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his decision to award a net benefit amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted an untimely Yellow Form seeking Derivative Claimant benefits on November 25, 2002.
2. On December 27, 2002 Appellee issued a Preliminary Determination that Appellant was not eligible for Derivative Claimant benefits because his claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. On January 7, 2003 Appellant submitted a letter contesting the Preliminary Determination.
4. On August 20, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because he did not file his claim prior to the deadline.
5. Appellant has not submitted any evidence that demonstrates his failure to submit a timely claim form was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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LIABILITY LITIGATION**

Notice of Special Master Determination

D. Frank Green, Jr.

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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:

Appellee did not abuse his discretion in denying Appellant's application for Derivative Claimant benefits.

The Settlement Agreement requires a Derivative Claimant to submit a Yellow Form in order to be eligible for benefits, and the deadline for submitting said Yellow Form is the same date as the Derivative Claimant's associated APR's claim deadline.

In this case, Appellant's associated APR's claim form was due on or before November 4, 2002; and, therefore, the deadline for Appellant's claim form was also November 4, 2002. Appellant's claim was filed on November 25, 2002, substantially after the November 4 deadline.

Appellant acknowledges that his filing was untimely and requests that it be considered because he was unaware that he needed to file a claim separate from that of his wife.

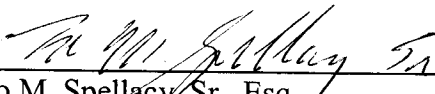
CAP 29 explains how Appellee is to exercise discretion in granting extensions of filing deadlines for reasons related to surprise, inadvertence, or excusable neglect.

Appellant has not demonstrated excusable neglect sufficient to grant an extension of the filing deadline.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by November 21, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

November 6, 2003
Date



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