

**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>Bobby J. Hancock</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Bobby J. Hancock, by and through his attorney Daniel L. Crawford, Esq. of the Law Firm Elias & Crawford (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated March 31, 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 and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V and IX benefits.
2. Appellant seeks Matrix Level V or IX benefits for pain, swelling and loss of motion with muscle atrophy.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V and IX benefits.

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

Notice of Special Master Determination

Bobby J. Hancock

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 (N.D.O. February 6, 2004) (Docket #1714)].

Appellee is charged with the obligation to apply the plain and unambiguous language of the Settlement Agreement uniformly and consistently to all Class Members. Adherence to the filing deadlines is one of those duties. Therefore, Appellee did not abuse his discretion in denying Appellant's claim for EIF benefits because the required Green Form was submitted approximately six weeks after the applicable deadline.

Section 4.3(a) of the Settlement Agreement requires that Appellant's Green Form be submitted no later than November 4, 2002. Appellant's Green Form was submitted on December 19, 2002.

Appellant does not deny that his claim form was filed untimely, but contends he was prevented from filing it prior to the deadline because the treating surgeon did not sign the Physician Declaration Form until December 16, 2002.

The Settlement Agreement has extensive provisions for supplementing deficient claims. Appellant did not avail himself of the opportunity to submit a timely claim and supplement it at a later date with the necessary Physician Declaration Form and/or medical records.

CAP 29 explains under which circumstances Appellee may grant an extension of time. Appellant has not submitted any evidence of circumstances giving rise to a permissible extension of time in accordance with CAP 29.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level V and IX 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:**

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

Notice of Special Master Determination

Bobby J. Hancock

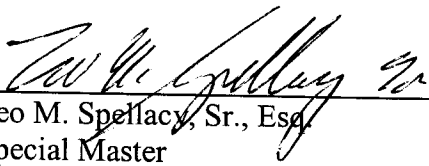
Page 3 of 3

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 JUL 30 2004, then the Special Master's
Decision is final and may not be further contested or appealed.

JUL 15 2004

Date


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