

**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>Timothy Hartnett / Claim Number:</i>	)	
<i>Patricia Hartnett / Claim Number:</i>	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Members Timothy Hartnett and his spouse Patricia Hartnett, by and through their attorney Charlotte E. Glinka, Esq. of the Law Firm Keches & Mallen (“Appellants”), appealed the decision of the Claims Administrator (“Appellee”) in rendering Final Determinations dated May 19, 2003 on Appellants’ claims for benefits from the Sulzer Settlement Trust.

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

The factual findings of this matter are as follows:

1. Appellants submitted an untimely Orange Form seeking APRS benefits and an untimely Yellow Form seeking Derivative Claimant benefits on November 6, 2002.
2. On January 15, 2003 Appellee did issue Preliminary Determinations that Appellants were not eligible for Settlement benefits because their claims had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. On May 19, 2003 Appellee considered and denied Appellants’ request for an extension of the APRS filing deadline under the requirements of CAP 29 because Appellants had not presented facts sufficient to warrant an extension of the filing deadline.
4. On May 19, 2003 Appellee issued Final Determinations that Appellants are not eligible for Settlement benefits because they did not file their claims before the deadline.

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Notice of Special Master Determination

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

Appellee, Claims Administrator, did not abuse his discretion in denying Appellants' request for APRS and Derivative Claimant benefits.

It is not disputed that Appellants filed their claims on November 6, 2002. The Settlement Agreement provides that Appellants claims must be postmarked one hundred and eighty (180) days after Trial Court approval, i.e., November 4, 2002.

Appellants seek to excuse their late filing on their interpretation of 180 days and the holding of *Pioneer Inv. v. Brunswick Assocs.*, 507 U.S. 380, 396 (1993).

The four factors outlined in the *Pioneer* case do not favor the Appellants' request for an extension.

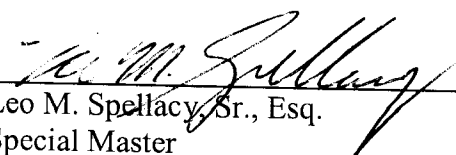
The terms of the Settlement Agreement are explicit and are for the benefit of all Class Members. To deviate would prejudice the Class Members who have complied and prevent the Appellee from making projections of the total number of valid claims.

Further, the reason for the miscalculation was in control of the Appellants and CAP 29 (paragraph 5) prohibits Appellee from granting an extension of time when the Class Member or his/her attorney was aware of the deadline and miscalculated by arithmetic the actual deadline.

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

Appellants 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 August 26, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

August 11, 2003  
Date

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