

**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>Robert W. Hite</i>)	
<i>Claim Number:</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Robert W. Hite (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated July 24, 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 Orange Form seeking APRS benefits on February 3, 2003.
2. On April 15, 2003 Appellee issued a Preliminary Determination that Appellant was not eligible for APRS benefits because his claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. On May 13, 2003 Appellant submitted a letter contesting the Preliminary Determination.
4. On July 24, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because he did not file his claim before the deadline.
5. Appellant has not submitted any evidence that demonstrates that 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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AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Robert W. Hite

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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 claim for APRS benefits.

It is not disputed that the Orange Form seeking benefits was filed on February 3, 2003, well after the November 4, 2002 deadline required by §4.2(a) of the Settlement Agreement.

Despite having the Orange Form completed and signed in September 2002, Appellant's attorney erroneously placed the completed claim form in his office file rather than mailing it to the Claims Administrator.

CAP 29 explains under which circumstances Appellee may grant an extension of time. It follows the law and imputes the negligence of the attorney to the Appellant. To hold otherwise would create a situation wherein the attorney would be protected for his or her negligence.

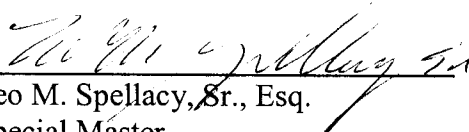
Appellant has not submitted any evidence of circumstances giving rise to a permissible extension of time in accordance with CAP 29.

By order of the Special Master, Appellee's Final Determination of 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 5, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

October 21, 2003

Date


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