

**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>CeCee C. Kane / Claim Num</i>)	
<i>Joseph Kane / Claim Numbe</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members CeCee C. Kane and her spouse, Joseph Kane, by and through their attorney Kevin P. Mahoney, Esq. of the Law Firm Roberts & Mahoney ("Appellants), appealed the decision of the Claims Administrator ("Appellee") in rendering Final Determinations dated May 19, 2003 and June 16, 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, an untimely Red Form seeking Uninsured benefits, and an untimely Yellow Form seeking Derivative Claimant benefits on December 26, 2002.
2. On February 4, 2003 and March 7, 2003 Appellee did issue Preliminary Determinations that Appellants were not eligible for Settlement benefits because their claims had not been submitted before the applicable deadline in accordance with the requirements of the Settlement Agreement.
3. On April 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 and June 16, 2003 Appellee issued Final Determinations that Appellants were not eligible for Settlement benefits because they did not file their claims before the deadline.

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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 the APRS and Uninsured APR claims of Appellant CeCee Kane and the Derivative Claimant claim of Joseph Kane, separately filed and consolidated for this opinion.

The eligibility of the Derivative Claimant is dependent on that of the associated APR.

Appellant does not dispute the fact that the claim was 51 days late, but seeks to excuse the late filing on her inability to procure the necessary medical records.

The Settlement Agreement (the "Agreement") anticipated this problem and allows for the timely filing of claim forms and later providing supplemental information to complete the claim.

The Agreement entered into by Class Counsel and approved by the Federal District Court imposes certain duties on the Appellee. The Claims Administrator is charged with the obligation to apply the plain and unambiguous language of the Agreement uniformly and consistently to all Class Members. Adherence to the filing deadlines is one of those duties. This allows the Appellee the ability to project the number of eligible claims and aids in his determination of benefit amounts to be paid on certain APRS and EIF claims.

While the time restrictions are an integral and necessary part of the Agreement, they are not inflexible.

In addition to allowing for supplemental filings, CAP 29 explains under which circumstances Appellee may grant an extension of time. It also lists specific circumstances the Federal Courts have considered as an insufficient basis for an extension. It prohibits consideration of an otherwise valid claim notwithstanding the error of a Class Member's attorney in making a timely submission because that Class Member was relying on the advice of counsel. Paragraph 7.c. of CAP 29 requires Appellee to consider "the reason for the neglect, if any, including whether such neglect was in the reasonable control of the Class Member requesting an extension of time." Appellant retained control over making a timely submission and the request for an extension was properly denied.

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

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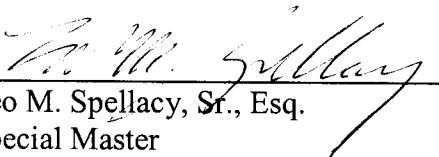
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Appellants and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received 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