

**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>Marguerite McNeill</i>)	
<i>Claim Number:</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Marguerite McNeill, by and through her attorneys Jeffrey J. Rogers and David L. Bjorgaard of the Law Firm Hirsh, Bjorgaard & Rogers (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated May 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 Attorney Fee benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant timely submitted an Orange Form seeking APRS benefits on November 4, 2002. Submitted with the Orange Form was a contingent attorney fee contract dated September 22, 2002
2. On January 16, 2003 Appellee issued a Preliminary Determination awarding Appellant APRS benefits but \$0.00 in Attorney Fee benefits because the contingent attorney fee contract Appellant had submitted was not entered into on or before February 2, 2002.
3. In a letter dated February 12, 2003 Appellant’s attorney indicated that he would be supplementing Appellant’s claim in regards to the Attorney Fee benefit.
4. Appellant had until March 2, 2003 to supplement her claim to prove eligibility for an Attorney Fee benefit.
5. On March 21, 2003, almost three weeks after the deadline, Appellant submitted a second contingent fee contract that was dated prior to February 2, 2002.
6. On May 20, 2003 Appellee issued a Final Determination approving Appellant’s APRS claim but denying her claim for Attorney Fee benefits because she did not prove her eligibility for this benefit in a timely fashion in accordance with the requirements of the Settlement Agreement.

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AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Marguerite McNeill

Claim Number:

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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, Claims Administrator, did not abuse his discretion in denying Appellant's claim for Attorney Fee benefits.

The Settlement Agreement provides for the allowance of Attorney Fee benefits provided certain requirements are met.

In order to qualify for a contingent Attorney Fee benefit the attorney contract must be entered into prior to February 2, 2002. Any contract dated later than February 2, 2002 provides for an Attorney Fee benefit based on an itemization of time.

Appellant initially submitted a contingent fee contract dated September 22, 2002, and on January 16, 2003 was advised by Appellee that she was not entitled to a contingent fee Attorney Fee benefit.

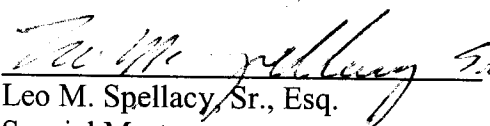
Appellant then had forty-five (45) days from that date, until March 2, 2003, to provide additional information to support her request. Appellant's March 21, 2003 submission of a different contingent fee contract dated before February 2, 2002 was untimely and cannot be considered.

Appellant offered no explanation why the forty-five (45) day period should be extended. The Appellee is required to follow the specific language of the Settlement Agreement and CAP 30 and deny Appellant's Attorney Fee request as untimely.

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

Appellant and Appellee have fifteen days from the date of this decision to submit to the Court a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by September 3, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

August 19, 2003
Date


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