

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
2003 JUL 24 PM 2:55
COURT REPORTER
CLEVELAND, OHIO

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

Civil Action No.: 01-CV-9000

ALL CASES

This document relates to:)
Linda Mediate)
Claim Number:)

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Linda Mediate, by and through her attorney Thomas J. Brandi, Esq. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated April 10, 2003 on Appellant's claim for benefits from the Sulzer Settlement Trust.

Appellant timely 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 November 6, 2002.
2. On January 31, 2003 Appellee did issue a Preliminary Determination that Appellant was not eligible for APRS benefits because the claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. On February 3, 2003 Appellant submitted a letter contesting the Preliminary Determination. On March 17, 2003 Appellant supplemented her contest with a memorandum.
4. On April 10, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because she did not file her claim before the deadline.
5. Appellant has not submitted any evidence that demonstrates that her failure to submit a timely claim form was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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

Notice of Special Master Determination

Linda Mediate

Claim Number:

Page 2 of 2

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 Settlement Agreement ("Agreement") identifies unambiguous deadlines, which are designed to control the timing and manner of applications for Settlement benefits. They ensure that all claims arrive within a measurable period of time, allow a value to be attached, and quantify the Trust's obligation to its beneficiaries.

The Appellee, Claims Administrator, is bound to implement the terms of the Agreement. The Agreement does not give the Appellee discretion to disregard the plain and unambiguous terms of the Agreement. To do so would be unfair to those Class Members who follow and obey the terms of the Agreement.

In this case, the deadline for submitting a claim was November 4, 2002. Appellant's submission was not postmarked until two full days after that deadline date.

Appellant's reliance on Delaware Law in claiming Appellee abused his discretion is misplaced. Measuring the timeliness of the submission of a Claim Form is a procedural practice, and Federal law, not Delaware law, controls.

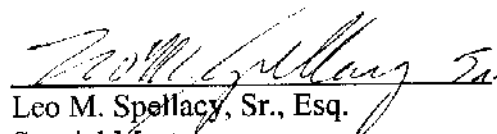
The Agreement provides a mechanism for timely filing incomplete forms. Appellant availed herself of this procedure but did so after the deadline prescribed in the Agreement.

Appellant has presented no evidence or explanation that rises to the level of excusable neglect and, therefore, Appellee did not abuse his discretion in denying Appellant's request for Settlement benefits.

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 August 8, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

July 24, 2003
Date


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