

**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>Carol Myers</i>	)	
<i>Claim Number:</i>	)	<b>Judge Kathleen M. O'Malley</b>
	)	

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Carol Myers, by and through her attorney Chafica A. Singha, Esq. of the Law Firm Alley & Ingram (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated June 12, 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 November 7, 2002.
2. On January 31, 2003 Appellee did issue a Preliminary Determination that Appellant was not eligible for APRS benefits because her claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. On March 7, 2003 Appellant submitted a letter contesting her Preliminary Determination. In support of her contest, Appellant also submitted an affidavit from her attorney describing the circumstances surrounding her untimely submission.
4. On June 12, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because her claim was not filed before the deadline.
5. Appellant has not submitted any evidence that demonstrates her 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

Carol Myers

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 request for Affected Product Revision Surgery ("APRS") benefits.

The applicable section of the Settlement Agreement requires that the Orange Form be filed by November 4, 2002. Appellant did not file her Orange Form until November 7, 2002.

Appellant seeks to excuse the late filing on the inability to secure the proper medical information from Tampa General Hospital before filing the form.

While Appellee may excuse a late filing, the reasons articulated by Appellant do not rise to the level of excusable neglect.

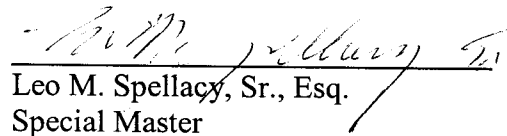
By the terms of the Settlement Agreement, §4.6(a), Appellant was permitted and required to submit an Orange Form with incomplete medical records and then supplement her claim at a later date.

Absent excusable neglect, Appellee is not allowed to disregard the explicit deadlines set forth in the Settlement Agreement.

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

August 22, 2003  
Date

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