

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

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members Billie Myers and her spouse Tom Myers (“Appellants”), appealed the decision of the Claims Administrator (“Appellee”) in rendering Final Determinations dated July 16, 2003 on Appellants’ claims for Unrevised APR and Derivative Claimant 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 Blue Form seeking Unrevised APR benefits and an untimely Yellow Form seeking Derivative Claimant benefits on November 22, 2002.
2. On April 15, 2003 Appellee issued Preliminary Determinations that Appellants were not eligible for Unrevised APR and Derivative Claimant benefits because their claims had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. On July 16, 2003 Appellee issued Final Determinations that Appellants were not eligible for Settlement benefits because their claims were not filed before the deadline.
4. Appellants have not submitted any evidence that demonstrates their failure to submit timely claim forms was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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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:

Since Final Determinations have not been issued on Extraordinary Injury claims, this decision relates only to Appellants' claims for Unrevised APR and Derivative Claimant benefits.

The Appellee did not abuse his discretion in denying Appellants request for Unrevised APR benefits and Derivative Claimant benefits.

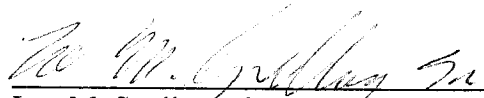
It is not disputed that Appellants' claim forms were filed on November 22, 2002, well after the September 5, 2002 deadline required by §4.1(a) of the Settlement Agreement.

In the absence of any specific circumstances under which a permissible extension of time may be granted, the Claims Administrator is obligated to follow the deadlines set forth in the Settlement Agreement.

Since there is no excusable neglect that caused Appellants untimely filings, by order of the Special Master Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

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 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