

**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>Robert Noel</i>)	
<i>Barbara Noel</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Robert Noel and his spouse Barbara Noel, by and through their attorney David A. Bernstein, Esq. of the Law Firm Horton, Barbaro & Reilly (“Appellants”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 27, 2004 on Appellants’ claim 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 and an untimely Yellow Form seeking Derivative Claimant benefits on July 11, 2003.
2. On November 16 2003 Appellee issued Preliminary Determinations that Appellants are not eligible for APRS 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 March 9, 2004 Appellee issued Final Determinations that Appellants are not eligible for Settlement benefits because they did not file their claims before the applicable 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:

The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator.

The Federal District Court has explained the importance of the deadlines prescribed in the Settlement Agreement [*In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, 01-CV-9000 at 1 through 20 (N.D.O. February 6, 2004) (Docket #1714)].

Appellants were required to file their claim forms by November 4, 2002. It is not disputed that their claim forms were filed on July 11, 2003. Their argument that the late filing should be excused because “not until June 2, 2003 did Claimants’ counsel receive the package of claim documents that were suppose to have been mailed to the Noels in 2002” is suspect because the Claims Administrator mailed three separate Notice Packets to Appellants’ counsel and a Notice Packet to Appellants’ home on March 23, 2002. In addition, CAP 29 § 5 specifically states that a Class Member’s unawareness of a clearly articulated deadline, miscalculation of a deadline, *or allegation that he or she did not receive adequate notice of the Settlement Agreement* at or before the time the Settlement Agreement received Trial Court Approval or Final Judicial Approval are not a permissible basis for an extension of time.

Absent circumstances under which a permissible extension of time may be granted, Appellee did not abuse his discretion in denying Appellants’ claims because they were not submitted in accordance with the deadline prescribed by the Settlement Agreement.

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 submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will not be considered. Submissions are to be mailed to the following address:**

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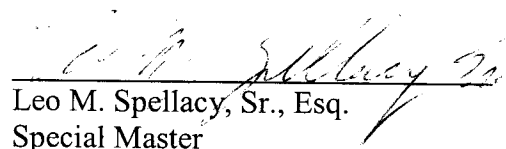
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Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

If no response is received (postmarked) by JUL 02 2004, then the Special Master's
Decision is final and may not be further contested or appealed.

JUN 17 2004

Date



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