

**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>Conchita Odabashian</i> |) | |
| <i>Claim Number</i> |) | Judge Kathleen M. O'Malley |
| |) | |

NOTICE OF SPECIAL MASTER DETERMINATION

Conchita Odabashian, by and through her attorney Steven L. Saldo, Esq. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated July 1, 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 Special Master has reviewed Appellant's Notice of Appeal, Appellee's Response, Appellant's Supplemental Appeal, and Appellant's and Appellee's responses to the Special Master's Questions.

The factual findings of this matter are as follows:

1. Appellant submitted a timely Orange Form seeking APRS benefits on October 14, 2002.
2. Appellant's original submission contained no medical records in support of her claim.
3. On October 30, 2002 Appellee notified Appellant of the incomplete submission and during the permissible time to supplement her claim, Appellant did not submit any additional records.
4. On February 25, 2003 Appellee issued a Preliminary Determination denying Appellant APRS benefits because she had not proven that she had been implanted with an Affected Product, or that she had undergone a revision surgery for reasons other than trauma.
5. On April 11, 2003 Appellant submitted medical records that did not include the lot number indicating that she had been implanted with an Affected Product, or an operative report indicating that she had undergone a revision surgery.
6. On July 1, 2003 Appellee issued a Final Determination that Appellant was ineligible for APRS benefits.

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

Notice of Special Master Determination

Conchita Odabashian

Claim Number:

Page 2 of 3

7. On July 31, 2003 Appellant appealed the Appellee's Final Determination.
8. On September 2, 2003 the Appellee filed a response to Appellant's Notice of Appeal.
9. On September 22, 2003 the Appellant filed a Supplemental Appeal and Production of Documentation in Opposition to Final Determination of Claims Administrator.
10. On October 1, 2003 the Special Master posed questions to Appellant.
11. On October 16, 2003 the Appellee submitted a Supplemental Production of Documents in response to the Special Master's questions.
12. On October 21, 2003 the Special Master requested the Claims Administrator respond to Appellant's Supplemental Production of Documents filed October 16, 2003.
13. On October 28, 2003 Appellee responded to Appellant's Supplemental Production of Documents filed October 16, 2003 as requested by the Special Master.

After consideration of all of the various pleadings, exhibits and briefs filed in this matter, the Special Master has determined that the Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for APRS benefits.

Appellant did not timely submit documents proving that she was implanted with an Affected Product. Appellant's Orange Form submission of October 14, 2003 included no medical records of any type.

Appellant did not proffer, before October 16, 2003, any document showing the lot number of the Affected Product implanted in her during the September 26, 2000 surgery.

Settlement Agreement § 4.6(b) provides that claimants may cure deficiencies in their claims within 75 days of receiving notice that their claim is incomplete.

The Appellant was notified on October 30, 2002 that her claim was incomplete because she had not submitted evidence proving implantation of an Affected Product, or that she had undergone a revision surgery.

Settlement Agreement § 4.6(d) provides that Class Members shall have 45 days from the date of the Claims Administrator's Preliminary Determination to provide any additional information or documentation supporting their claim.

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

Notice of Special Master Determination

Conchita Odabashian

Claim Number:

Page of 3

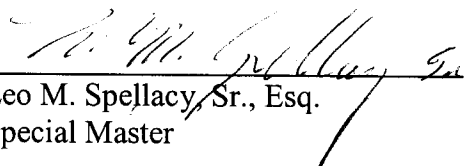
Appellant did not avail herself of either of these opportunities to provide the documentation necessary to complete her claim, and the Appellee did not abuse his discretion in denying her claim as incomplete.

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 December 6, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

November 21, 2003

Date


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