

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FILED
2003 JUN 10 AM 11:52
CLERK OF COURT

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>Barry L. Risdall</i>)	
<i>Claim Number:</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Barry L. Risdall ("Appellant") appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated March 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 its 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 a Yellow Form seeking Derivative Claimant benefits on April 24, 2002.
2. In his Yellow Form submission, Appellant checked the box indicating that he was the significant other of his associated APR. Appellant did not indicate he was the spouse, at common law or otherwise, of his associated APR.
3. Appellant's associated APR was awarded two thousand dollars in Unrevised APR Settlement benefits after properly submitting two Blue Forms relating to two separate implants of Affected Products.
4. On September 19, 2002 Appellee did issue a Preliminary Determination that Appellant was not eligible for Derivative Claimant benefits because he had not proven that he was a Significant Other within the meaning of CAP 26.
5. On November 26, 2002, more than three weeks after the deadline for doing so passed, Appellant submitted a letter contesting the Preliminary Determination.
6. On March 10, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because he had not proven that he was a Significant Other within the meaning of CAP 26.
7. On March 20, 2003, more than four months past the deadline for submitting additional information in support of his claim, Appellant's associated APR telephoned the Claims Administrator's Call Center and stated that she and Appellant are married at common law.

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

Notice of Special Master Determination

Barry L. Risdall

Claim Number:

Page 2 of 2

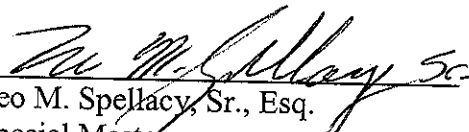
After a thorough review of the appeal submitted by the Appellant and the response submitted by the Appellee, the Special Master finds as follows:

Appellee did not abuse his discretion in denying Appellant's derivative claim. Appellant is not a Derivative Claimant and the plain and unambiguous language of CAP 26 bars his request. The oral statement of the associated Unrevised APR claimant regarding a common law marriage was untimely and cannot be considered for the first time on appeal. Furthermore, Appellant's claim is time barred. Appellant did not contest the September 19, 2002 Preliminary Determination within forty-five (45) days of the date it was issued.

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 submit to the Court a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by June 25, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

June 10, 2003
Date


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