

**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>Alfredo Sak / Claim Number:</i>)	
<i>Teresa Sak / Claim Number:</i>)	Judge Kathleen M. O'Malley
)	

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members Alfredo Sak and his spouse Teresa Sak, by and through their attorney Carl A. McMahan, Esq., (“Appellants”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated June 10, 2003 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 Blue Form seeking Unrevised APR benefits, a timely Red Form seeking Uninsured APR benefits and an untimely Yellow Form seeking Derivative Claimant benefits on October 16, 2002.
2. On March 3, 2003 Appellee did issue Preliminary Determinations that Appellants were not eligible for Unrevised APR benefits and Derivative Claimant benefits because their claims had not been submitted in a timely fashion according to the requirements of the Settlement Agreement. In addition, the Preliminary Determination of Alfredo Sak indicated that he was not eligible for Uninsured APR benefits because he had not proven that he had undergone an APRS or that he was uninsured.
3. On March 7, 2003 Appellants submitted a letter contesting their Preliminary Determinations.
4. On June 10, 2003 Appellee issued Final Determinations that Appellants were not eligible for Settlement benefits because their claims were not filed before the applicable deadline, and they had not proven that they were eligible for Uninsured APR benefits..
5. 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.

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

Notice of Special Master Determination

Alfredo Sak / Claim Number

Teresa Sak / Claim Number:

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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:

Because Appellant Teresa Sak seeks Derivative Claimant benefits based upon the claim for Settlement benefits of her associated APR, Alfredo Sak, their appeals have been consolidated for purposes of the Special Master's Determination.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellants' claims for Unrevised APR, Uninsured APR and Derivative Claimant benefits.

The Settlement Agreement requires that Blue Forms must be filed on or before the date that is 120 days after Trial Court Approval, i.e. September 5, 2002. Appellants submitted their claim forms on October 16, 2002.

Absent excusable neglect, the Appellee is required to adhere to the filing deadlines of the Settlement Agreement. Appellants offer no explanation for the late filings and Appellee correctly denied their requests for settlement benefits.

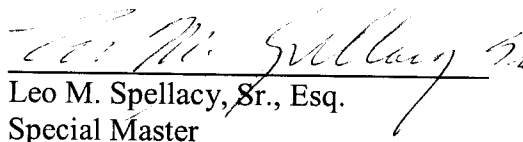
Further, Appellant Alfredo Sak has not demonstrated that he was implanted with an Affected Product. The handwritten note is not sufficient evidence that he received an Affected Product. A medical record identifying the Lot Number of the Affected Product was not submitted, and the note provided does not indicate it came from the doctor or the records administrator.

In order to be eligible for Uninsured APR benefits, the Class Member must demonstrate he was implanted with an Affected Product and that the Affected Product was the subject of a revision surgery. Since he has failed to do so, the Appellee was required to deny Appellant Alfredo Sak's request for Uninsured APR benefits.

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 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