

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

|                                     |   |                                     |
|-------------------------------------|---|-------------------------------------|
| <b>IN RE: SULZER HIP PROSTHESIS</b> | ) | <b>Civil Action No.: 01-CV-9000</b> |
| <b>AND KNEE PROSTHESIS PRODUCT</b>  | ) |                                     |
| <b>LIABILITY LITIGATION</b>         | ) | <b>ALL CASES</b>                    |
|                                     | ) |                                     |
| <i>This document relates to:</i>    | ) | <b>(MDL No. 1401)</b>               |
| <i>Earl Schooner</i>                | ) |                                     |
| <i>Claim Number:</i>                | ) | <b>Judge Kathleen M. O'Malley</b>   |
|                                     | ) |                                     |

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Earl Schooner, by and through his attorney David W. Zoll, Esq. of the Law Firm Zoll & Kranz (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated June 3, 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 factual findings of this matter are as follows:

1. Appellant submitted an untimely Blue Form seeking Unrevised APR benefits on October 4, 2002.
2. On February 20, 2003 Appellee did issue a Preliminary Determination that Appellant was not eligible for Unrevised APR benefits because his claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. On February 27, 2003 Appellant submitted a letter contesting his Preliminary Determination.
4. On June 3, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because his claim was not filed before the deadline.
5. Appellant has not submitted any evidence that demonstrates his failure to submit a timely claim form 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

Earl Schooner

Claim Number:

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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, Claims Administrator, did not abuse his discretion in denying Appellant's claim for Unrevised APR benefits.

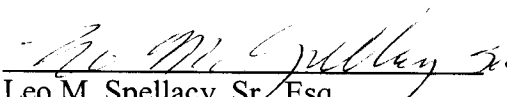
Settlement Agreement §4.1(a) provides that Class Members seeking Unrevised APR benefits must file a Blue Form within 120 days of the Trial Court Approval, i.e. September 5, 2002.

Appellant concedes that he did not file a Blue Form until October 4, 2002. His assertion that he thought he was to undergo an Affected Product Revision Surgery and, therefore, he would have 180 days to file a claim does not excuse the late filing. Settlement Agreement §3.6(a) provides that the Unrevised APR award does not bar a subsequent APRS award. The Settlement Agreement specifically provides for the filing of an Unrevised APR claim and an opportunity to later file for APRS benefits. Appellant did not avail himself of this opportunity and his reasoning does not form a basis for an extension of time.

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 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