

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

*This document relates to:
Earl Schooner*

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Civil Action No.: 01-CV-9000

ALL CASES

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Earl Schooner, by and through his attorney David W. Zoll, Esq. of the Zoll & Kranz Law Firm ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated January 23, 2004 on Appellant's claim for Extraordinary Injury Fund ("EIF") benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his decision to deny Appellant's claim for EIF Matrix Level I benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level I benefits.
2. Appellant seeks EIF Matrix Level I benefits for a revision surgery that is indicated but for a medical condition.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level I benefits.

**IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
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Notice of Special Master Determination

Earl Schooner

Page 2 of 3

After a thorough review of the appeal submitted by the Appellant 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.

Appellant argues that his application for EIF Matrix Level I benefits was timely under CAP 18. That is not disputed. However, the Green Form itself specifically states "A timely *Blue* or *Orange Form* (whichever appropriate) must have been completed in addition to this EIF Benefits Form (*Green Form*)."

The Special Master decided the appeal regarding the tardiness of Appellant's Blue Form on August 22, 2003, and that issue cannot be appealed further.

Since Appellant did not file a timely Blue Form, as required by the Settlement Agreement, he is not eligible for EIF benefits. Therefore, Appellee did not abuse his discretion in denying his claim for EIF Matrix Level I benefits.

It should be noted that the merits of Appellant's EIF claim were not reviewed because the untimeliness of his Blue Form rendered her EIF claim invalid.

The Special Master would direct Appellant's to *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) for more information regarding the reasons behind and importance of the deadlines prescribed by the Settlement Agreement.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF claim is hereby AFFIRMED.

Appellant 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:**

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

**IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
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Notice of Special Master Determination

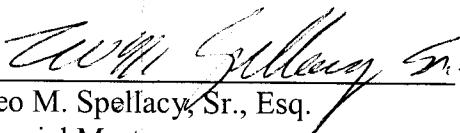
Earl Schooner

Page 3 of 3

If no response is received (postmarked) by APR 12 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAR 26 2004

Date


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