

**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>Olean Tate</i>	)	
<i>Claim Number:</i>	)	<b>Judge Kathleen M. O'Malley</b>
	)	

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Olean Tate, by and through her attorney Jerald R. Olf, Esq. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated July 11, 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 September 11, 2002.
2. On February 20, 2003 Appellee did issue a Preliminary Determination that Appellant was not eligible for Unrevised APR benefits because her claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. On April 4, 2003 Appellant submitted a letter contesting her Preliminary Determination.
4. On July 11, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because her claim was not filed before the deadline.
5. Appellant has not submitted any evidence that demonstrates her failure to submit a timely claim form was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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LIABILITY LITIGATION**

Notice of Special Master Determination

Olean Tate

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:

The Appellee did not abuse his discretion in denying Appellant's claim for Unrevised APR benefits.

In order to qualify for benefits, Claimants must submit the appropriate claim forms within the times prescribed in the Settlement Agreement. Appellant was required to submit her claim form on or before September 5, 2002. Her submission on September 11, 2002 was untimely and is barred by the plain language of the Settlement Agreement.


Appellant's attorney admits that the claim form was filed late, and seeks to remedy his miscalculation on the basis of "excusable neglect".

CAP 29 explains how Appellee is to exercise discretion in granting extensions. An attorney's unawareness of a clearly articulated deadline, miscalculation of a deadline, or a Class Member's reliance on an attorney are not a basis for an extension.

Since there is no excusable neglect that caused Appellant's untimely filing, 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 October 22, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

October 7, 2003  
Date

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