

**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>Robert Tieman</i>)	
<i>Mary Tieman</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members Robert Tieman and his spouse Mary Tieman, by and through their attorney Steven J. Brewer, Esq. of the Gwilliam, Ivary, Chiosso, Cavalli & Brewer Law Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 29, 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 II benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level II, IV and IX benefits.
2. Appellant seeks Matrix Level II benefits for an alleged Non-Removal Surgery, Matrix Level IV or IX benefits for a dislocation, and Matrix Level IX benefits for his surgeries of August 19, 2000 and March 28, 2001.
3. Appellant issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level II, IV and IX benefits.

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

Notice of Special Master Determination

Robert Tieman

Mary Tieman

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.

The Federal District Court has explained the importance of the deadlines prescribed in the Settlement Agreement [*In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, 01-CV-9000 at 17 through 20 (N.D.O. February 6, 2004) (Docket #1714)].

Section 4.6(d) of the Settlement Agreement provides that Class Members and/or the Plaintiff's Counsel shall have forty-five (45) days from the date of the Preliminary Determination by the Claims Administrator to provide any additional information or documentation supporting his/her position. If the Class Member and/or Plaintiff's Counsel does not contest the Preliminary Determination in accordance with Section 4.6(d), **“such Preliminary Determination shall be deemed to be a Final Determination in accordance with Section 4.6(e) and such Class Member and/or Plaintiff's Counsel shall have no further right to contest such Final Determination.”** [emphasis added]

The fact that Appellant did not contest the Preliminary Determination regarding his EIF claim within forty-five (45) days of its issuance is not in dispute.

Appellant argues that he should be granted an extension under CAP 29 which would render his submissions of November 19 and 20, 2003 timely.

CAP 29 §9 very clearly outlines the procedure for requesting an extension of time. It requires that “A Class Member who seeks an extension of time pursuant to this CAP shall submit a written request for such extension to the Claims Administrator...by 60 days from the day the Class Member learns that he or she has, or will, failed to meet a deadline prescribed by the Settlement Agreement of applicable CAP. The request shall include a statement explaining the lateness of the submission and the date on which the Class Member discovered the submission was, or would be, late.”

Appellant did not request an extension of time from the Claims Administrator in accordance with the requirements of CAP 29 §9. His first request for such an extension is from the Special Master, upon appeal, well after the 60-day deadline for requesting such an extension had expired.

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

Notice of Special Master Determination

Robert Tieman

Mary Tieman

Page 3 of 3

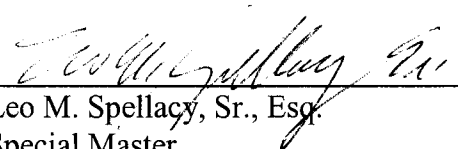
CAP 30 §3 states, in pertinent part, “No evidence, documentary or testimonial, real or illustrative, may be introduced during the course of the appeal if it was not first submitted to the Claims Administrator within 45 days of the issuance of the Preliminary Determination, the contest of which gave rise to the Appealed Final Determination.” Therefore, the Special Master cannot consider Appellant’s request for an extension of time submitted for the first time upon appeal.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level II benefits because the Preliminary Determination was not contested within the timeframe prescribed by the Settlement Agreement and an extension of time pursuant to CAP 29 was not requested of the Claims Administrator within 60-days of learning that he had or would fail to meet the deadline in which to contest his Preliminary Determination.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s EIF claim is final and may not be further contested or appealed.

APR 15 2011

Date


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