

**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>Edward A. Tomczek</i>)	
<i>Claim Number:</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Edward A. Tomczek, by and through his attorney Edwin N. Storz, Esq. (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated July 16, 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 Settlement benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted an untimely Orange Form seeking APRS benefits on November 25, 2002.
2. On April 15, 2003 Appellee issued a Preliminary Determination that Appellant was not eligible for Settlement benefits because his claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. Appellant submitted a letter dated May 28, 2003 contesting the Preliminary Determination.
4. On July 16, 2003 Appellee issued a Final Determination that Appellant was not eligible for Settlement benefits because his claim was not filed before the deadline.
5. Appellant has not submitted any evidence demonstrating that his 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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AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Edward A. Tomczek

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:

Appellant submitted his claim on November 25, 2002, and admits the filing was untimely but urges that the neglect causing the untimely filing should be excused.

Appellant's counsel miscalculated the deadline and was waiting for the Physician Declaration Form because he "desired to file all the documents together."

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

In addition, the Settlement Agreement allows for the timely filing of claim forms and later providing supplemental information to complete the claim. Appellant did not avail himself of the opportunity to submit a timely claim and supplement it at a later date with the necessary Physician Declaration Form.

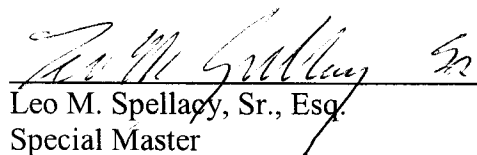
Appellant has not satisfied the requirements for an extension of the filing deadline under CAP 29.

Appellee followed the terms of the Settlement Agreement and CAP 29 and did not abuse his discretion in denying Appellant's claim for Settlement benefits.

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