

**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>Heda Van Deventer / Claim Number.</i>)	
<i>Philip Van Deventer / Claim Number</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members Heda Van Deventer and her spouse Philip Van Deventer, by and through their attorney, R. Jeffrey Neer, Esq. of the Law Firm Baker, Keener & Nahra (“Appellants”), appealed the decision of the Claims Administrator (“Appellee”) in rendering Final Determinations dated May 12, 2003 on Appellants’ claim for benefits from the Sulzer Settlement Trust.

Appellants appealed the decision of the Appellee, and contend that Appellee erred in his decision to award Settlement benefits in the amount of Zero Dollars (\$0.00) to Appellants.

The factual findings of this matter are as follows:

1. Appellants submitted an untimely Orange Form seeking APRS benefits and an untimely Yellow Form seeking Derivative Claimant benefits on November 12, 2002.
2. On January 31, 2003 Appellee issued Preliminary Determinations that Appellants were not eligible for Settlement benefits because their claims had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. Appellants submitted a letter dated February 6, 2003 contesting their Preliminary Determinations.
4. On April 4, 2003 Appellants’ submitted a request for a deadline extension under CAP 29.
5. On May 12, 2003 Appellee issued Final Determinations that Appellants were not eligible for Settlement benefits because their claims were not filed before the deadline.
6. Appellants have not submitted any evidence demonstrating that their failure to submit timely claim forms was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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After a thorough review of the appeal submitted by the Appellants and the response submitted by the Appellee, the Special Master finds as follows:

Appellee, Claims Administrator, did not abuse his discretion in denying Appellants' request for APRS and Derivative Claimant benefits.

Settlement Agreement 4.2(a) requires Class Members to submit an Orange Form within one hundred eighty (180) days after Trial Court approval. The Derivative Claimant must submit a Yellow Form within the same time period. Appellants claim forms were due postmarked no later than November 4, 2002. They submitted their claim forms on November 12, 2002.

On January 31, 2003 Appellee issued a Preliminary Determination that Appellants submissions were untimely and ineligible for benefits.

Appellants offered an explanation for the untimely filing and requested that the neglect causing the late filing be excused. They admit the neglect of their attorney and his office was the reason for the untimely filings.

CAP 29 explains how Appellee will exercise his discretion in granting an extension of a deadline. CAP 29 is consistent with Rule 60 of the Federal Rules of Civil Procedure and allows the Appellee to grant an extension for reasons such as surprise, inadvertence, or excusable neglect. As stated in *Carpenter* (Civil Action 01-CV-9000 MDL 1401), an attorney's unawareness of a clearly articulated deadline, a miscalculation, or a Class Member's reliance upon the advice of counsel are not a basis for an extension.

Appellee's responsibility is to allocate funds to those who follow the terms of the Settlement Agreement and to ensure that the corpus of the Trust is spent in accordance with the intent of the Parties to the Settlement Agreement.

Appellee's determination that Appellants did not present a permissible excuse for the delay in filing was not an abuse of discretion.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) in Attorney Fee benefits is hereby AFFIRMED.

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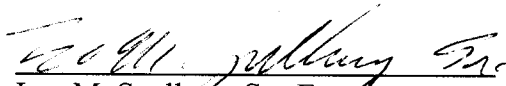
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Appellants and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by August 16, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

August 1, 2003
Date



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