

**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>Mary Vero / Claim Number</i>)	
<i>Frank Vero / Claim Number</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members Mary Vero and her spouse Frank Vero, by and through their attorney Jacqueline DeCarlo, Esq. ("Appellants), appealed the decision of the Claims Administrator ("Appellee") in rendering Final Determinations dated July 24, 2003 on Appellants' claims for benefits from the Sulzer Settlement Trust.

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

The factual findings of this matter are as follows:

1. Appellants submitted an untimely Blue Form seeking Unrevised APR benefits and an untimely Yellow Form seeking Derivative Claimant benefits on September 10, 2002.
2. On January 16, 2003 Appellee did issue Preliminary Determinations awarding Appellants Unrevised APR and Derivative Claimant benefits
3. On April 15, 2003 Appellee did issue Revised 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.
4. On July 24, 2003 Appellee issued Final Determinations that Appellants were not eligible for Settlement benefits because they did not file their claims before the deadline.
5. Appellants have not submitted any evidence that demonstrates that their failure to submit timely claim forms was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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

Notice of Special Master Determination

Mary Vero / Claim Number: 1000000000

Frank Vero / Claim Number:

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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:

The Appellee, Claims Administrator, did not abuse his discretion in denying Appellants untimely request for Unrevised APR and Derivative Claimant benefits.

Settlement Agreement §4.1(a) provides that Class Members seeking Unrevised APR benefits must file a Blue Form within 120 days of the Trial Court Approval, i.e., September 5, 2002. Appellants submitted their claim forms on September 10, 2002.

Appellee initially approved the request, but later notified Appellants of the denial based on an untimely filing. Appellee's initial mistake in approving the claim does not relieve the Appellants of their responsibility to file timely.

Appellants concede that they did not file their claim forms until September 10, 2002. Their assertion that they thought Mary Vero was to undergo an Affected Product Revision Surgery and that they would then have 180 days from that surgery to file their Claim Forms does not excuse the late filing.

Settlement Agreement §3.6(a) provides that an Unrevised APR award does not bar a subsequent APRS award. The Settlement Agreement specifically provides for the filing of an Unrevised APR claim and an opportunity to later file for APRS benefits. Appellant did not avail herself of this opportunity and her allegations do not form a basis for an extension of time.

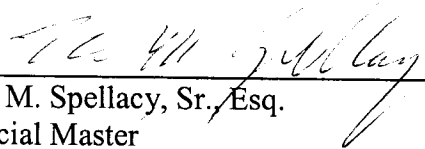
The Derivative Claim is dependent on the determination of the associated APR and is also untimely.

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

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 October 16, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

October 1, 2003

Date


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