

**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>Elisabeth Wiener / Claim No.: 264865560</i>	)	
<i>Stanley Wiener / Claim No.: 061222828</i>	)	<b>Judge Kathleen M. O'Malley</b>
	)	

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Members Elisabeth Wiener and her spouse Stanley Wiener, by and through their attorney James Richard Hooper, Esq. (Appellants’), appealed the decision of the Claims Administrator (“Appellee”) in rendering Final Determinations dated July 11, 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 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 after the November 4, 2002 deadline.
2. On March 24, 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. On July 11, 2003 Appellee issued Final Determinations that Appellants were not eligible for Settlement benefits because their claims were not filed before the deadline.
4. 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:

The Appellee, Claims Administrator, did not abuse his discretion in denying the APRS and Derivative claims of the Appellants.

It is agreed that the claims were filed after the November 4, 2002 deadline.

In an attempt to excuse the neglect of their attorney, Appellants argue that the deadline set forth in the Settlement Agreement was imposed for a purely ministerial action and should be liberally relaxed. Such a procedure would be disruptive to the administration of the Trust, and would prevent the timely administration of the thousands of claims and the distribution of funds to those who chose to follow the timelines.

Appellants contend that the negligence of their attorney in failing to diary deadlines, giving faulty affidavits, illness, and the dismissal of the associate should be excused and not imputed to them.

CAP 29 follows the law and imputes the negligence of the attorney to the Appellants. To hold otherwise would create a situation wherein the attorney would be protected for his or her negligence.

The reasons for the neglect were under the control of Appellants' counsel and, unfortunately, those actions are attributable to Appellants.

It is the obligation of the Appellee to follow the terms of the Settlement Agreement and to distribute the Trust's funds accordingly. While he has some discretion, he must utilize it when considering all of the potential claimants and the available funds. He is required to make claim projections for the purpose of determining the amount of certain APRS and EIF benefits. To arbitrarily allow late claims would erode his responsibility.

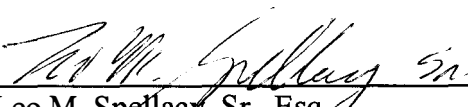
Appellant has failed to demonstrate reasons for excusable neglect, and by order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby **AFFIRMED**.

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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 October 17, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

October 2, 2003  
Date

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