

**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>Grant L. Damron/ Claim Number: -----</i>)	
<i>Mary W. Damron / Claim Number:</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Grant L. Damron and his spouse Mary W. Damron, by and through their attorney Nathan D. Alder, Esq. of the Law Firm Christensen & Jensen (“Appellants”), appealed the decision of the Claims Administrator (“Appellee”) in rendering Final Determinations dated June 30, 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 a net benefit amount of Zero Dollars (\$0.00) to Appellants.

The factual findings of this matter are as follows:

1. Appellants submitted an Orange Form seeking APRS benefits and a Yellow Form seeking Derivative Claimant benefits on October 15, 2002 and October 10, 2002 respectively.
2. The operative report and implant record submitted with Appellants’ Orange Form show that the implanting surgeon attempted to use an Affected Product, but because it would not hold securely instead used a cemented poly component.
3. On February 20, 2003 Appellee issued Preliminary Determinations denying Appellants APRS and Derivative Claimant benefits because implantation of an Affected Product had not proven.
4. On April 4, 2003 Appellants contested their Preliminary Determinations.
5. On June 30, 2003 Appellee issued Final Determinations that Appellants are not eligible for Settlement benefits because implantation of an Affected Product, as defined by the Settlement Agreement, had not been proven.

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

Notice of Special Master Determination

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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:

Appellant Grant L. Damron underwent a right total hip arthroplasty on October 11, 2000. During the surgery, the surgeon attempted to “press fit” an Affected Product but when it was determined that “the bone stock was such that it would not hold securely, even with screws” it was removed and replaced during the same surgery with a “cemented poly component”, which is not an Affected Product.

The Appellee has determined that the temporary placement of an Affected Product and its removal during the same surgery does not satisfy Settlement Agreement § 1.1(g) definition of a “surgical removal and/or replacement of an Affected Product”, and that Appellant was not “implanted” with an Affected Product within the meaning of §1.1 (e).

The Appellee did not abuse his discretion in determining that “implantation” means that an Affected Product must remain in the recipient until the surgeon attempted to close the wound.

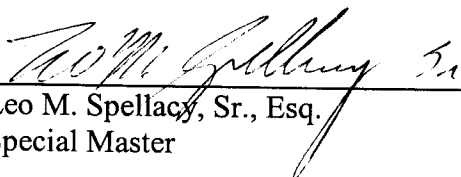
Further, this was not a revision surgery. No new surgery was required to remove the Affected Product; it was removed and replaced during the same surgery.

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 September 26, 2003, then the Special Master’s Decision is final and may not be further contested or appealed.

September 11, 2003

Date


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