

**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>Phillip Grimes</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Phillip Grimes, by and through his attorneys Thomas Pirtle, Esq., Michael J. Lowenberg, Esq. and M. Michael Meyer, Esq. (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 14, 2004 on Appellant’s claim for Affected Product Revision Surgery (“APRS”) benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his decision to deny Appellant’s claim for APRS benefits.

The factual findings of this matter are as follows:

1. Appellant submitted an Orange Form seeking APRS benefits.
2. Appellant seeks APRS benefits for his revision surgery of June 13, 2003.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for Settlement Benefits because his APRS was not performed within the timeframe prescribed by the Settlement Agreement.

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

Notice of Special Master Determination

Phillip Grimes

Page 2 of 3

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

The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator. When an act of discretion is under review, the reviewing party may not substitute its own notion of what is right for those of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

The Federal District Court has explained the importance of the deadlines prescribed in the Settlement Agreement [*In re Sulzer Hip Prosthesis and Knee Prosthesis Product Liability Litigation*, 01-CV-9000 at 1 through 20 (N.D.O. February 6, 2004) (Docket #1714)].

CAP 29 § 2 provides “This CAP shall not be construed to permit the Claims Administrator to extend the date by which any injury, otherwise compensable by the terms of the Settlement Agreement, may occur.”

The Appellee has the responsibility of enforcing the terms of the Settlement Agreement. He is obligated to follow its terms, and is not permitted to ignore or alter the content of the agreement entered into between the Class Members and Sulzer.

Section 3.4(b) of the Settlement Agreement prescribes the deadlines with respect to when Affected Product Revision Surgeries must occur. Appellant seeks to have the June 5, 2003 deadline for undergoing an APRS on an Inter-Op Shell extended. However, nothing in Section 3.4(b) of the Settlement Agreement permits the Appellee to extend the June 5, 2003 deadline.

The Appellee adhered to the plain, unambiguous requirements of the Settlement Agreement, and did not abuse his discretion in denying Appellant’s claim for APRS benefits for a revision surgery that occurred after June 5, 2003.

By order of the Special Master, Appellee’s Final Determination of ineligibility for Appellant’s APRS claim is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will not be considered. Submissions are to be mailed to the following address:**

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

Notice of Special Master Determination

Phillip Grimes

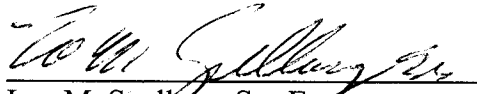
Page 3 of 3

Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

If no response is received (postmarked) by JUN 04 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 20 2004

Date


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