

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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

*This document relates to:
Helena Martin*

) **Civil Action No.: 01-CV-9000**
)
) **ALL CASES**
)
) **(MDL No. 1401)**
)
) **Judge Kathleen M. O'Malley**

NOTICE VACATING SPECIAL MASTER DETERMINATION

Upon consideration of the Appellant's Response to the Special Master Determination of January 14, 2004, the Special Master finds the arguments to be well taken.

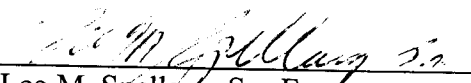
Appellant underwent an APRS on June 11, 2001. On May 23, 2002 Dr. George Nichols "reviewed with the patient that in view of her recurrent dislocations and the radial lucency that she is having that we need to again re-vise her acetabulum." Dr. Nichols then scheduled the revision surgery for the earliest available time his schedule permitted, which was June 24, 2002.

It is the Special Master's finding that although a NAPRS is to be had within 360 days of an APRS, the failure to perform said surgery within that timeframe was not under the control of the Appellant. Discovery of the need for additional surgery was made within the 360 days but the surgery could not be performed within the 360 days due to the physician's schedule. This should not preclude Appellant from participating in EIF Matrix Level III.

The Special Master Determination of January 14, 2004 is hereby VACATED.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level III claim is hereby REVERSED and this claim is remanded back to Appellee for consideration as an eligible Matrix Level III claim.

February 13, 2004
Date


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