

**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>Freddie Scott</i>)	
<i>Claim Number:</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Freddie Scott, by and through his attorney Paul Henry Kidd, Esq. of the Law Firm Kid-Culpepper (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated September 8, 2003 on Appellant’s claim for benefits from the Sulzer Settlement Trust.

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

The factual findings of this matter are as follows:

1. Appellant submitted an Orange Form seeking APRS benefits on July 15, 2003.
2. On May 27, 2003 Appellant underwent a non-removal surgery of his Affected Product.
3. On July 28, 2003 Appellee issued a Preliminary Determination that Appellant was ineligible for APRS benefits because he had not undergone an Affected Product Revision Surgery (APRS).
4. Appellant did contest the Preliminary Determination.
5. On September 8, 2003 Appellee issued a Final Determination denying Appellant APRS benefits because he had not undergone an APRS.

**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 Appellant and the response submitted by the Appellee, the Special Master finds as follows:

The Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for Affected Product Revision Surgery ("APRS") benefits as a result of his May 27, 2003 surgery.

In order to be eligible for APRS benefits, there must be a surgical removal and/or replacement of an Affected Product [see Settlement Agreement §1.1(g)]. An Affected Product is defined as certain Inter-Op Acetabular shells, Natural Knee II Tibial Baseplates, and reprocessed Inter-Op Shells that are identified by lot number on Annex I of the Settlement Agreement [see Settlement Agreement §1.1 (d)].

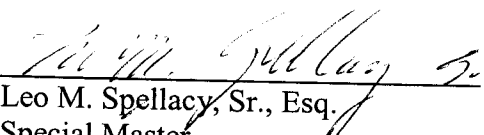
The operative report submitted by the Appellant indicates that only the acetabular liner was removed. The acetabular liner is not an Affected Product.

Since the Affected Product was neither removed or replaced, Appellant did not undergo an APRS pursuant to the terms of the Settlement Agreement, and does not qualify for benefits as set forth in Settlement Agreement §3.4.

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

Appellant 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 December 6, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

November 21, 2003
Date


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