

**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>Vincent B. Delgado</i>)	
<i>Claim Number: -----</i>)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Vincent B. Delgado, by and through his attorney Andres C. Pereira, Esq. of the Law Firm Fleming & Assoc. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated August 27, 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 September 3, 2002.
2. On August 25, 2000 Appellant underwent a non-removal surgery of his Affected Product.
3. On February 11, 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. On June 20, 2003, eighty-four days after the deadline to do so, Appellant contested the Preliminary Determination.
5. On August 27, 2003 Appellee issued a Final Determination denying Appellant APRS benefits because he had not undergone an APRS.

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AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Vincent B. Delgado

Claim Number: -----

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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 August 25, 2000 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.

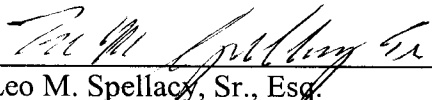
In addition, Appellant did not contest his Preliminary Determination within the timeframe allowed by the Settlement Agreement. Appellant could have, but did not, contest his Preliminary Determination and request an extension of time to submit additional information pursuant to CAP 29. Therefore, the March 3, 2003 letter from Dr. Rames cannot be considered. However, said letter supports Appellee's position because it states that Appellant underwent a "revision of his right hip that involved changing the acetabular liner and placing a larger sized head." In accordance with the terms of the Settlement Agreement, that surgery was a non-removal surgery, not an Affected Product Revision Surgery.

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 November 21, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

November 6, 2003
Date

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