

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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U.S. 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**  
)  
*This document relates to:* ) **(MDL No. 1401)**  
*Elizabeth Costa-Khakbaz* )  
) **Judge Kathleen M. O'Malley**

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Elizabeth Costa-Khakbaz, by and through her attorney Rachel Abrams, Esq. of the Law Firm Hersh & Hersh ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 10, 2003 on Appellant's claim for Extraordinary Injury Fund ("EIF") benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his decision to award EIF Matrix Level IX benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IX benefits.
2. Appellant seeks EIF Matrix Level IX benefits for an abscess that required irrigation and debridement during her APRS.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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AND KNEE PROSTHESIS PRODUCT  
LIABILITY LITIGATION**

Notice of Special Master Determination

Elizabeth Costa-Khakbaz

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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 Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator.

By Order of the United States District Court, the Claims Administrator shall evaluate claims for EIF benefits according to the policies and procedures set forth in Claims Administrator Procedure ("CAP") 27.

Appellant seeks EIF Matrix Level IX benefits for an abscess that required irrigation and debridement during her APRS.

CAP 27 Section 13(b)(3) states, in pertinent part, "Catastrophic shall mean an injury that prevented the Class Member from engaging in an activity of daily living. Extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated."

There is no evidence that the abscess, or the irrigation and debridement of the abscess during her APRS, rises to the level of catastrophic as defined by CAP 27.

The Summary Medical Care Plan for Appellant's APRS indicates that the expected length of stay was five days, yet according to the Discharge Summary she was discharged home from the hospital on the fourth postoperative day. The Discharge Summary also states "She [Appellant] had no complications during her hospital stay." There is no evidence that the abscess or the irrigation and debridement of the abscess prevented her from engaging in an activity of daily living. A Physician Declaration Form, in and of itself, is not sufficient proof that a catastrophic and extraordinary injury occurred. Therefore, Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IX benefits.

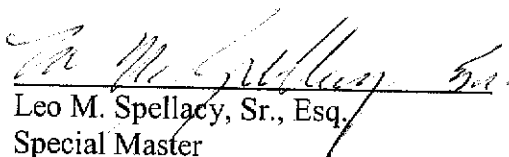
By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim is hereby AFFIRMED.

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 February 16, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 30, 2004

Date

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