

SCHEDULE B2 – ONTARIO ORDER PROVIDING NOTICE OF APPROVAL HEARING

Court File No. CV-10-40836500 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE PERELL)
)

DAY, THE
DAY OF ,
2015

B E T W E E N:

GLORIA McSHERRY

Plaintiff

-and-

ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION by the Plaintiff for an order approving the form of notice that will advise class members of the hearing to approve the proposed settlement, as well as the manner of publicizing such notice, was heard in Toronto.

UPON BEING ADVISED that the Plaintiff and the Defendants have entered into the Settlement Agreement attached hereto as Schedule “1” and that the Defendants have consented to the terms of this Order, **THIS COURT ORDERS** that:

1. For the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. The motion for approval of settlement in this proceeding shall be heard on [date] at the Osgoode Hall, 130 Queen Street West, Toronto, Ontario (the “Approval Hearing”).

3. The form and content of the hearing notice, substantially in the form attached hereto as Schedule “2”, is approved (the “Hearing Notice”). The Hearing Notice shall be available in both English and French.

4. The proposed manner of publicizing the Hearing Notice as described in Schedule “3”, is approved (the “Notice Plan”).

5. The Hearing Notice and the Notice Plan constitute fair and reasonable notice to the class of the Approval Hearing.

Registrar

Schedule “1”: Settlement Agreement

Schedule “2”: Notice of Approval Hearing

Were you, or a family member, implanted with a Zimmer Durom® Hip Implant in Canada?

This notice may affect your rights. Please read carefully.

Class action lawsuits were initiated in Canada regarding allegations that the Zimmer Durom hip implant, or “Durom Cup,” was defective, and that it failed prematurely. Specifically, a class action was certified by the British Columbia court on September 2, 2011 in *Jones v. Zimmer GMBH et al*, and by the Ontario court on September 24, 2014 in *McSherry v. Zimmer GMBH et al*. A proposed class action was also filed in Quebec as *Wainberg v. Zimmer GMBH*, but it has not yet been authorized.

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. The Defendants have also consented to the authorization of *Wainberg* as a class action; the *Jones* Action and *McSherry* Action already having been certified. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

Who is Eligible to Participate in the Settlement?

The settlement applies to all persons who were implanted with the Durom Cup in Canada who have not opted out of the *Jones*, *McSherry*, or *Wainberg* actions and/or who have affirmatively opted into the *Jones* action, and their estates and family members.

The Terms of Settlement

The settlement provides compensation to class members who timely submit all forms and documentation required under the Settlement Agreement, less deductions for legal fees. The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

Court Hearings and Your Right to Participate

Motions to approve the settlement agreement are scheduled to be heard by the British Columbia Court in Vancouver on [date] and the Ontario Court in Toronto on [date]. A motion to approve the settlement, and a motion to authorize the class action in *Wainberg* will be heard by the Quebec Court in Montreal on [date]. Class Counsel will also ask the courts to approve an award of fees and disbursements for their work in connection with *Jones*, *McSherry*, and *Wainberg* during the hearings.

Class members who do not oppose the settlement need not appear at the hearings or take any other action at this time to indicate their desire to participate in the settlement. All class members have the right to present arguments to the courts as regards the settlement, or to object to the settlement, by delivering a written submission to Class Counsel on or before [date]. A class member who wishes to object to the settlement shall provide in his or her objection:

- (a) The full name, current mailing address, fax number, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;

- (c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of his/her Durom Cup; and
- (d) Whether the person intends to appear at the relevant Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, fax number, and email address of counsel, and
- (e) A declaration under the penalty of perjury that the foregoing information is true and correct.

To Exclude Yourself from the Class Actions

If you are a resident of Quebec who has not already opted into the *Jones* action and you wish to exclude yourself from the *Wainberg* action, you must deliver a written submission declaring your intention to opt out of the class action to the Clerk of the Superior Court of Quebec and Class Counsel by registered or certified mail at the addresses below on or before [date]. Your submission must include your name and address. If you exclude yourself from the class action, you will not be entitled to receive compensation under the settlement agreement. If you previously opted into the class in the *Jones* action, you are entitled to compensation in connection with your Durom Cup only as provided in the settlement agreement. For all other class members, the deadline for you to have excluded yourself from these lawsuits has already expired.

Montréal Courthouse
 Clerk of the Superior Court of Québec
 Court file number: 500-17-081863-147
 1, Notre-Dame East
 Montréal (Québec) H2Y 1B6

Daniel Chung
 Merchant Law Group LLP
 10, Notre-Dame East
 Suite 200
 Montreal (Québec) H2Y 1B7

For Additional Information and a Copy of the Settlement Agreement:

Class Counsel in *Jones* and *McSherry* Actions

Klein Lawyers LLP
 Suite 400
 1385 West 8th Avenue
 Vancouver, BC V6H 3V9
 Telephone: 604-874-7171
 Facsimile: 604-874-7180
www.kleinlyons.com

Class Counsel in *Wainberg* Action:

Merchant Law Group LLP
 2401 Saskatchewan Drive
 Regina, Saskatchewan
 S4P 4H8
 Phone: 306-359-7777
 Fax: 306-522-3299
www.merchantlawgroup.com

Schedule “3” – Notice Plan

The Notice of Approval Hearing shall be disseminated by the following means:

1. Class Counsel shall send a copy of the Notice of Approval Hearing by mail or email to all class members who have contacted them, and those class members who have provided addresses to Class Counsel for the purposes of this litigation.
2. Class Counsel shall post a copy of the Notice of Approval Hearing and the Settlement Agreement to their respective websites.
3. Class Counsel shall forward a copy of the Notice of Approval Hearing to all counsel in Canada who, to Class Counsel’s knowledge, have filed litigation regarding the Zimmer Durom Cup.
4. Class Counsel shall issue the media release attached hereto as Schedule 4 with the Notice of Approval Hearing, and the media release will be distributed through Canada Newswire or Market Wired.
5. Class Counsel shall publish Notice of Approval Hearing in all publications listed in Schedule K to the Settlement Agreement.

Schedule “4”—Media Release

Zimmer Durom Cup Hip Implant Class Action Settlement

Subject to court approval, a settlement has been reached in the certified class actions involving Canadians who were implanted with the Zimmer Durom Cup hip implant. Class actions have been certified in British Columbia (*Jones v. Zimmer*) and Ontario (*McSherry v. Zimmer*). Certification is pending in a proposed class action filed in Quebec (*Wainberg v. Zimmer*), and the parties have consented to certification of that action.

The settlement applies to “all persons who were implanted with the Durom Cup in Canada” and their estates and family members.

The defendants to the three actions do not admit liability, but have agreed to a settlement providing compensation to class members with certain injuries upon approval after receipt of supporting documentation, less deductions for legal fees. Public health insurers are also entitled to compensation under the settlement agreement. Please refer to the settlement agreement for compensation details.

Motions to approve the settlement agreement will be heard by the Supreme Court of British Columbia in Vancouver on [date] and the Ontario Superior Court of Justice in Toronto on [date]. A motion to approve the settlement and to authorize the class action in *Wainberg* will be heard by the Quebec Superior Court in Montreal on [date]. At the hearings, Class Counsel will also ask the courts to approve payment of its fees and disbursements for its work in connection with the three actions.

Class members who do not oppose the settlement do not need to appear at the hearings to indicate their desire to participate in the settlement. Class members who oppose the settlement have the right to present arguments to the courts or to object to the settlement by delivering a written submission to Class Counsel on or before [date]. A class member who wishes to object to the settlement shall provide in his or her objection the following information: (a) the full name, current mailing address, fax number, telephone number, and email address of the person objecting; (b) a brief statement of the reasons for the objection; (c) a declaration that the person believes he or she is a member of the Class, and the reason for that belief, including, if available, the catalogue and lot numbers of his/her Durom Cup(s); (d) whether the person intends to appear at the relevant approval hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, fax number, and email address of his or her counsel; and (e) a declaration under the penalty of perjury that the foregoing information is true and correct.

For additional information and a copy of the settlement agreement, contact:

Class Counsel in *Jones* and *McSherry* Actions

Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Facsimile: 604-874-7180
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Class Counsel in *Wainberg* Action:

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