

SCHEDULE B3 – QUEBEC ORDER PROVIDING NOTICE OF APPROVAL HEARING

SUPERIOR COURT

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-000543-104

Ben Wainberg

Plaintiff

v.

Zimmer Inc.
Zimmer GmbH
Zimmer Holdings, Inc.
Zimmer of Canada Limited

Defendants

JUDGMENT

1. The Plaintiff has filed a motion seeking authorization to institute a class action for the purpose of settlement and for approval of the notice that will advise class members of the hearing to approve the proposed settlement of this matter, as well as the approval of the manner of publication of the notice.
2. On reading the materials filed, and on hearing the submissions of counsel for the Plaintiff and the Defendants:
3. **THE COURT HEREBY:**
4. **GRANTS** Plaintiff's motion for authorization to institute a class action for settlement purposes and for approval of the form of notice that will advise class members of the hearing to approve the proposed settlement.
5. **DECLARES** that for the purposes of this Judgment, the definitions set out in the Settlement Agreement attached hereto as Schedule "1" apply to and are incorporated into this Judgment.
6. **AUTHORISES** the exercise of a class action against Defendants for the purposes of settlement only and subject to the conditions of the Settlement Agreement.

7. **ORDERS** that, for the purposes of the settlement, the Quebec Class Members are defined as all persons residing in Quebec who were implanted with the Durom Cup in Canada and who have not opted out of the Quebec Proceeding on or before the opt-out deadline set by the Quebec Court and who have not opted into the BC Proceeding, and their estates and family members.

8. **DESIGNATES** the Petitioner, Ben Wainberg, as the representative of the Quebec Class Members for the sole purpose of settlement.

9. **ORDERS** that Plaintiff's motion for settlement approval in this proceeding shall be heard on [date] at the Court House, Montreal, Quebec (the "Approval Hearing").

10. **APPROVES** the form and content of the Notice of Approval Hearing substantially in the form attached hereto as Schedule "2." The Notice of Approval Hearing shall be available in both English and French.

11. **APPROVES** the proposed manner of publishing the Notice of Approval Hearing described in the Notice Plan attached hereto as Schedule "3."

12. **DECLARES** that the Notice of Approval Hearing and dissemination thereof through the Notice Plan constitute fair and reasonable notice to the Quebec Class Members of the hearing to approve settlement in this action.

13. **DECLARES** that Quebec Class Members who wish to exclude themselves from this lawsuit and the settlement thereof may do so by delivering a written notice confirming that intention that includes their name, address, telephone number, and signature, to the Clerk of the Superior Court and Class Counsel at the following addresses on or before [date]:

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

By the Court.

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*, and was authorized for settlement purposes on [date].

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.

For Québec Residents Only: Excluding Yourself from the Class Action

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
www.callkleinlawyers.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 C – BC ORDER ON APPROVAL OF SETTLEMENT

No. S095493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS JONES and SUSAN WILKINSON

Plaintiffs

AND:

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

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
MR. JUSTICE BOWDEN) day, the th day of
)
)
)

THE APPLICATION OF the representative Plaintiff for approval of the settlement of this action pursuant to s.35 of the *Class Proceedings Act*, in accordance with the terms of the Settlement Agreement was heard this day in Vancouver, British Columbia.

UPON READING the representative Plaintiff’s application record, and upon hearing the submissions of counsel for the representative Plaintiff, _____, and counsel for the Defendants, _____, and upon being advised that the parties consent to this order,

THIS COURT ORDERS AND DECLARES that:

1. The definitions set out in the Settlement Agreement, which is attached as Schedule “A”, apply to and are incorporated into this Order.
2. The settlement of action, as set out in the Settlement Agreement, is fair and reasonable and in the best interests of the BC Class Members, and is hereby approved.
3. The Defendants shall pay the amounts required under the Settlement Agreement subject to the rights of termination in Section 8 of the Settlement Agreement.
4. The form and content of the Notice of Approval of Settlement to BC Class Members shall be substantially in the form which appears at Schedule “H” to the Settlement Agreement.
5. The BC Class Members shall be given notice of this order in accordance with the plan attached as Schedule “K” to the Settlement Agreement.
6. The notification plan described in paragraphs 4 and 5 of this Order satisfies the requirements of s. 19 of the *Class Proceedings Act*.
7. The Settlement Agreement and this Order are binding upon each BC Class Member, whether or not such person receives or claims compensation, including persons who are minors or are mentally incapable.
8. Crawford Class Action Services is hereby appointed as Claims Administrator.
9. Upon the Effective Date, the Releasees are forever and absolutely released by the Releasors from the Released Claims. The Releasors are barred from making any claim or taking or continuing any proceedings arising out of or relating to the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever,

including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.

10. This Court shall have continuing jurisdiction over the implementation and enforcement of the Settlement Agreement.

11. This action is dismissed without costs and with prejudice.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of
 party lawyer for the Plaintiffs
David A. Klein

Signature of
 party lawyer for the Defendants
Andrew Borrell

By the Court.

Registrar

SCHEDULE D- ONTARIO ORDER ON APPROVAL OF SETTLEMENT

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, made by the representative Plaintiff for approval of the settlement of this action pursuant to s.29 of the *Class Proceedings Act*, in accordance with the terms of the Settlement Agreement was heard this day in Toronto.

UPON READING the Representative Plaintiff's motion record, and upon hearing the submissions of counsel for the representative Plaintiff and counsel for the Defendants, and upon being advised that the parties consent to this order,

THIS COURT ORDERS AND DECLARES that:

1. The definitions set out in the Settlement Agreement, which is attached as Schedule A, apply to and are incorporated into this Order.

2. The settlement of action, as set out in the Settlement Agreement, is fair, reasonable, and in the best interests of the Ontario Class Members, and is hereby approved.
3. The Defendants shall pay the amounts required under the Settlement Agreement, subject to the Right of Termination set out in Section 8 of the Settlement Agreement.
4. The form and content of the Notice of Approval of Settlement to Ontario Class Members shall be substantially in the form which appears at Schedule H to the Settlement Agreement.
5. The Ontario Class Members shall be given notice of this order in accordance with the plan attached as Schedule K to the Settlement Agreement.
6. The notification plan described in paragraphs 4 and 5 of this order satisfies the requirements of s. 17 of the *Class Proceedings Act*.
7. The Settlement Agreement and this Order are binding upon each Ontario Class Member, whether or not such person receives or claims compensation, including persons who are minor or are mentally incapable.
8. Crawford Class Action Services is hereby appointed as Claims Administrator.
9. Upon the Effective Date, the Releasees are forever and absolutely released by the Releasers from the Released Claims. The Releasers are barred from making any claim or taking or continuing any proceedings arising out of or relating to the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.
10. This Court shall have continuing jurisdiction over the implementation and enforcement of the Settlement Agreement.
11. This action is hereby dismissed without costs and with prejudice.

Registrar

SCHEDULE E – QUEBEC ORDER ON APPROVAL OF SETTLEMENT

SUPERIOR COURT

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-000543-104

Ben Wainberg

Plaintiff

v.

Zimmer Inc.
Zimmer GmbH
Zimmer Holdings, Inc.
Zimmer of Canada Limited

Defendants

JUDGMENT

1. The Plaintiff has filed a motion seeking approval of the settlement reached in this proceeding, together with a motion authorizing this proceeding as a class action.
2. On reading the materials filed and hearing the submissions of counsel for the Plaintiff and the Defendants:

FOR THESE REASONS, THE COURT:

3. **DECLARES** that the definitions set out in the Settlement Agreement, attached as Schedule A, apply to and are incorporated into this Judgment.
4. **DECLARES** that the settlement of action, as set out in the Settlement Agreement, is fair, reasonable, and in the best interest of the Quebec Class Members, and accordingly, the Settlement Agreement is hereby approved pursuant to section 1025 of the *Code of Civil Procedure*, R.S.Q., c.C-25.
5. **DECLARES** that the Settlement Agreement constitutes a “transaction” pursuant to Article 1025 of the Code of Civil Procedure, which is binding on the parties and the Quebec Class Members.

6. **DECLARES** that subject to Article 1008 of the Code of Civil Procedure, any Quebec Class Member who has not opted out of the Quebec Class by the Opt-Out Deadline shall be bound by the Settlement Agreement and this Judgment.
7. **ORDERS** that the Defendants shall pay the amounts required under the Settlement Agreement subject to the Right of Termination set out in Section 8.1 of the Settlement Agreement.
8. **ORDERS** that the form and content of the Notice of Approval of Settlement to the Quebec Class Members shall be in the form attached as Schedule J to the Settlement Agreement. The Notice of Approval of Settlement to Quebec Class Members shall be available in both French and English.
9. **ORDERS** that Class Members shall be given notice of this Judgment in accordance with the plan attached as Schedule K to the Settlement Agreement.
10. **DECLARES** that this Judgment, including the Settlement Agreement, is binding upon each Quebec Class Member, including minors and persons who are mentally incapacitated, whether or not such person receives or claims compensation under the Settlement Agreement.
11. **DECLARES** that Crawford Class Action Services shall serve as the Claims Administrator.
12. **DECLARES** that upon the Effective Date, the Releasers forever and absolutely release the Releasees from the Released Claims. And for the consideration provided in the Settlement Agreement, the Releasers agree not to make any claim or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.
13. **ORDERS** that this action is hereby dismissed without costs and with prejudice.

By the Court.

Registrar

SCHEDULE F -- PHYSICIAN DECLARATION FORM

In completing this Form, you may consider the patient's medical records, charts, reports, diagnostic films, medical history, or other sources of information that physicians regularly and routinely rely upon in their practice. By signing this Form, you certify that all opinions set forth below are offered to a reasonable degree of medical certainty.

1. PHYSICIAN BACKGROUND

(First Name) (Middle Initial) (Last Name)

(Office Address)

(City) (Province) (Postal Code)

(Area Code & Telephone Number) (Fax Area Code & Number)

Check whether you are a/an:

- Orthopedic surgeon
- Cardiologist
- Neurologist
- Cardiothoracic surgeon
- Neurosurgeon
- Other _____

College of Physicians and Surgeons Registration Number: _____

2. PATIENT INFORMATION

State the name and birth date of the patient for whom you are providing the information contained in this Physician Declaration Form.

(First Name) (Middle Initial) (Last Name)

(Birth Date MM/DD/YYYY)

Are you one of the patient's treating physicians?

Yes No

If "Yes," state your role in the patient's medical care and treatment relative to his/her Durom Cup implant:

3. IMPLANT INFORMATION

State the reference and catalog numbers that correspond to the patient's Durom Acetabular Cup ("Durom Cup")

Date of Implantation (Right) _____
(MM/DD/YYYY)

Implant Reference/Catalogue Numbers _____
(if available)

Implant Lot Number _____
(if available)

Date of Implantation (Left) _____
(MM/DD/YYYY)

Implant Reference/ Catalogue Numbers _____
(if available)

4. REVISED PATIENT

Has the patient been diagnosed as requiring a revision surgery to replace the Durom Cup?

Yes No

If "Yes," please answer the remaining questions in section 4. If "No," please skip to section 8.

Date of the diagnosis: _____
(MM/DD/YYYY)

Has a revision surgery been scheduled? Yes No

If "Yes," date on which the surgery was scheduled: _____

(MM/DD/YYYY)

Has the surgery occurred? Yes No

If "Yes," date on which the revision surgery took place: _____
(MM/DD/YYYY)

Describe all reason(s) a revision surgery for the Durom Cup has been diagnosed and identify all testing or films taken and the results that support this diagnosis:

5. UNREVISED PATIENT WHERE REVISION SURGERY IS CONTRAINDICATED

If a revision surgery has not been scheduled or will not take place, is there a medical condition that prevents the patient from undergoing a revision surgery ("Contraindication")? Yes No

If "Yes," describe the Contraindication(s) that prevent(s) replacement of the Durom Cup, and state whether the Contraindication(s) is/are temporary or permanent:

Provide the date on which you determined that a revision surgery for the patient was Contraindicated:

(MM/DD/YYYY)

6. COMPLICATIONS RESULTING FROM REVISION SURGERY

Check here if the patient underwent a revision surgery or surgeries to remove his/her Durom Cup(s).

If you checked the box above, and the patient sustained any of the following complications during our after his/her revision surgery, please state the date on which the complication(s) occurred:

DATE
(MM/DD/YYYY)

- (a) A second revision (Right) _____
A second revision (Left) _____
- (b) A third revision (Right) _____
A third revision (Left) _____
- (c) Stroke that occurred within 72 hours after a
revision surgery to remove a Durom Cup as a result of
that surgery _____
- (d) Blood clot that occurred within 72 hours after a
revision surgery to remove a Durom Cup as a result of
that surgery _____
- (e) Infection in the revised hip that was diagnosed within 30
days after a revision surgery to remove a Durom Cup
and was caused by that surgery _____
- (f) Permanent nerve damage resulting from a revision
surgery to remove a Durom Cup _____
- (g) Death within 72 hours after a revision surgery
to remove a Durom Cup that resulted from that surgery _____

Please attach medical records to this form that confirm that the complication(s) noted above occurred. Such medical records may include, but are not limited to, operative reports, pathology reports, office records, and/or discharge summaries.

7. DECLARATION

I affirm that the foregoing representations are true and correct.

Executed on _____, 201__.

By: _____
Signature of Physician

Print Name

SCHEDULE G - EXTRAORDINARY EXPENSE FORM

Zimmer Durom Cup Hip Implant Class Action

The Settlement Agreement provides for the potential reimbursement of out-of-pocket expenses in excess of \$2,500 in connection with a revision surgery, post-revision complications, or medical treatment for claimants who have undergone a revision surgery or are medically precluded from undergoing a revision surgery.

If you have undergone a revision or are medically precluded from undergoing a revision and you wish to seek reimbursement for the out-of-pocket expenses you incurred that exceed \$2,500, please complete this form, attach the required receipts, and submit it along with your Claimant Declaration.

Please provide information below relating to each out-of-pocket expense you incurred, the total of which exceeds \$2,500. For each expense described below, please attach a receipt reflecting the expense to this form. Unsubstantiated expenses will not be considered for reimbursement. Please note:

1. The total extraordinary expense fund under the Settlement Agreement (“Extraordinary Expense Pool”) is \$50,000;
2. If the total amount of approved claims payable from the fund exceeds \$50,000, then each approved claim will be reduced on a pro-rata basis; and
3. Payments will not be made to claimants who are approved to receive payment from the Extraordinary Expense Pool until after all requests for reimbursement from the Extraordinary Expense Pool have been analyzed.

Date	Paid To	Type of Expense	Amount

Total Amount Claimed: \$ _____

SCHEDULE H – NOTICE TO BC CLASS MEMBERS

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*, and was authorized by the Quebec court on [date] in *Wainberg v. Zimmer GMBH*.

These actions have now been settled, and the courts have approved the settlement. For a copy of the settlement agreement, please contact Class Counsel or the Claims Administrator at the address 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.

To Make a Claim

To be entitled to a payment pursuant to the settlement agreement, class members must submit all required forms and documentation to the Claims Administrator on or before [deadline].

For More Information or to Obtain a Claim Form

Please contact Class Counsel or the Claims Administrator at the address below:

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

Claims Administrator:

Crawford Class Action Services

180 King Street S.

Waterloo, ON N2J 1P8

Telephone: 519-578-4053

SCHEDULE I – NOTICE TO ONTARIO CLASS MEMBERS

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*, and was authorized by the Quebec court on [date] in *Wainberg v. Zimmer GMBH*.

These actions have now been settled, and the courts have approved the settlement. For a copy of the settlement agreement, please contact Class Counsel or the Claims Administrator at the address 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.

To Make a Claim

To be entitled to a payment pursuant to this Settlement Agreement, class members must file a claim with the Claims Administrator on or before [deadline].

For More Information or to Obtain a Claim Form

Please contact Class Counsel or the Claims Administrator at the address below:

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

Claims Administrator:

Crawford Class Action Services

180 King Street S.

Waterloo, ON N2J 1P8

Telephone: 519-578-4053

SCHEDULE J – NOTICE TO QUEBEC CLASS MEMBERS

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*, and was authorized by the Quebec court on [date] in *Wainberg v. Zimmer GMBH*.

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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.

To Make a Claim

To be entitled to a payment pursuant to this Settlement Agreement, class members must file a claim with the Claims Administrator on or before [deadline].

For More Information or to Obtain a Claim Form

Please contact Class Counsel or the Claims Administrator at the address below:

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

Claims Administrator:

Crawford Class Action Services

180 King Street S.

Waterloo, ON N2J 1P8

Telephone: 519-578-4053

SCHEDULE K – PLAN FOR DISSEMINATION OF CLASS NOTICES

The Notices of Approval Hearing and the Notices of Settlement Approval (“Notices”) shall be disseminated by the following means:

1. Class Counsel shall send copies of the Notices by mail or email to all class members who have contacted Class Counsel regarding this action and provided their contact information.
2. Class Counsel shall post copies of the Notices to their respective websites.
3. Class Counsel shall forward copies of the Notices to all counsel in Canada who, to Class Counsel’s knowledge, have filed actions on behalf of their clients relating to the Zimmer Durom Cup.
4. Class Counsel shall arrange for publication of the Notices in the following publications (single insertion, ¼ panel), with such publication to occur as soon as reasonably feasible following the date of the Final Orders:
 - (a) Globe & Mail
 - (b) Vancouver Sun
 - (c) Edmonton Journal
 - (d) Calgary Herald
 - (e) La Presse (FR)
 - (f) Montreal Gazette (ENG)
 - (g) Le Journal de Montreal (FR)
 - (h) Montreal Metro News
 - (i) The Star Phoenix (Saskatoon)
 - (j) Regina Leader-Post
 - (k) Toronto Star
 - (l) Toronto Metro News
 - (m) Sudbury Star

- (n) Hamilton Spectator
- (o) Le Soleil
- (p) Le Journal de Quebec

SCHEDULE L—LIST OF COMPLICATIONS AND CORRESPONDING PAYMENT AMOUNTS

SECTION 1: DEFINITIONS

In this Schedule, the following is a Complication:

- (1) “Blood Clot” means a diagnosis made within 72 hours of a Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from a Revision Surgery.
- (2) “Death” means the class member died within 72 hours after a Revision Surgery as a result of the Revision Surgery.
- (3) “Permanent Nerve Damage” means nerve damage resulting from a Revision Surgery that has been declared permanent by the medical professional who signed the Physician’s Declaration.
- (4) “Infection” means any infection in the revised hip that is diagnosed within 30 days after a Revision Surgery and determined to have been caused by the Revision Surgery.
- (5) “Second Revision” means a surgery to remove a replacement hip implant that had been installed as part of a Revision Surgery because the replacement hip implant failed.
- (6) “Stroke” means a cerebrovascular incident or insult occurring within 72 hours of a Revision Surgery.
- (7) “Third Revision” means a surgery to remove a replacement hip implant that had been installed as part of a Second Revision because the replacement hip implant failed.

SECTION 2: CORRESPONDING PAYMENT AMOUNTS

2.1 The amounts payable under s. 4.2(4)(e) of the Settlement Agreement to Class Members who have suffered a Complication are as follows, but in no event shall a Class Member be awarded more than \$40,000 for all Complications sustained:

Complication	Payment
Infection	\$10,000 (CAD)
Permanent Nerve Damage	\$20,000 (CAD)

Second Revision	\$20,000 (CAD)
Blood Clot	\$10,000 (CAD)
Stroke	\$40,000 (CAD)
Third Revision	\$40,000 (CAD)
Death	\$40,000 (CAD)

2.2 The amounts payable at paragraph 2.1 of Schedule L are cumulative, but in no event shall more than \$40,000 be payable to a Class Member for Complications under this Schedule. Thus, regardless of the number of Complications a Class Member has, the Class member can recover only up to a total of \$40,000 for all Complications.

2.3 Only a Complication diagnosed on or before the Eligibility Deadline is compensable under this Settlement Agreement.

SCHEDULE M – HEALTH INSURER CLAIM FORM
Zimmer Durom Cup Hip Implant Class Action

1. Entitlement to Reimbursement

The Settlement Agreement provides for the potential reimbursement of \$15,000 (CAD) per Revision Surgery undergone by each BC Class Member, Ontario Class Member and Quebec Class Member in a Provincial Health Insurer's province, regardless of whether the BC Class Member, Ontario Class Member or Quebec Class Member seeks compensation under this Settlement Agreement.

2. Information Required for Reimbursement

Each Provincial Health Insurer will receive \$15,000 (CAD) for each Revision Surgery that a Class Member who submits a proper and approved claim for recovery under this Settlement Agreement underwent in the Provincial Health Insurer's province. Upon approval from the Claims Administrator, each Provincial Health Insurer is permitted to recover \$15,000 for each Revision Surgery that a Class Member who does not submit a proper and approved claim for recovery under this Settlement Agreement underwent in the Provincial Health Insurer's province, provided that the Provincial Health Insurer properly completes all information pertaining to such Class Members required by Schedule M and submits Schedule M to the Claims Administrator no later than 90 days after the Claims Deadline. All requests for compensation submitted by Provincial Health Insurers that do not meet the requirements of Schedule M will be denied.

3. Verification

- A. I, _____ (*name of individual completing verification*) submit this request for reimbursement on behalf of _____
_____ (*name of Provincial Health Insurer*) (hereafter “Provincial Health Insurer”). I affirm that I am a duly authorized representative of this Provincial Health Insurer and that the information provided herein, including the information in Table M1, was obtained from the business records maintained by Provincial Health Insurer.
- B. The complete list of individuals who underwent at least one Revision Surgery in the Provincial Health Insurer’s province but who did not properly submit a claim for compensation under the Settlement Agreement for whom Provincial Health Insurer seeks reimbursement, along with the required information relating to those individuals, is attached at Table M1. The total amount that the Provincial Health Insurer is claiming for reimbursement for these individuals is \$ _____ (CAD).
- C. I affirm under the penalties of perjury that the information submitted in this verification and in Table M1 is true and correct.
- D. I affirm under the penalties of perjury that the claims identified in Table M1 are not duplicative and that the Provincial Health Insurer did not receive compensation in the past from Defendants in connection with any of those claims.

Name

Date

Position

Provincial Health Insurer

Table M1: Claims for Reimbursement for Revised Class Members Who Did Not Submit a Proper and Approved Claim for Compensation Under the Settlement Agreement

Class Member Name	Patient Number	Implant Date (mm/dd/yyyy)	Implant Hospital	Cat./Ref. and Lot Numbers	Revision Date (mm/dd/yyyy)	Revision Hospital

SCHEDULE N – ELIGIBILITY REQUIREMENTS

Who is eligible to participate in the Settlement Class?

If you received a Durom Acetabular Component (“Durom Cup”) in Canada, then you are eligible to participate in the settlement.

The compensation that you are eligible to receive as a member of the settlement class will be determined based on your status on September 1, 2015. This is referred to as the “Eligibility Deadline.” You are required to submit your claim and the documentation required elsewhere in this Settlement Agreement on or before *[insert claims deadline date]*. This is referred to as the “Claims Deadline.”

How is eligibility determined?

In order to participate, you must provide Product Identification that confirms the reference number (sometimes referred to as “catalogue number”) and lot number of the device that was implanted, in addition to other documents required by the Settlement Agreement. Product Identification confirms that you were implanted with a Durom Cup. Product Identification can be found on the peel-and-stick label (the “Label”) from the Durom Cup that should be affixed to the medical record from your implant surgery (sometimes called the implant operative report). You can obtain your implant surgery medical record from the hospital where your implant surgery occurred or from your physician. To be eligible for settlement, the reference/catalogue number on the Label must be one of the following:

01.00214.044
01.00214.046
01.00214.048
01.00214.050
01.00214.052
01.00214.054
01.00214.056
01.00214.058
01.00214.060
01.00214.062
01.00214.064
01.00214.066

The image below is an *example* of Product Identification. Please note that not all product labels are identical to the example provided below, but they are all similar to it. This example is provided to help you identify the location of the reference and lot numbers of your device so that you can confirm that you are eligible for settlement.

REF 01.00214.050	EDI: 0100214050	
LOT 2420836	 2013-03 Qty: 001	
Metasul® Durom® Acetabular Component uncemented 50/ ø44 Code J		
CoCrMo (Protasul®-21WF) ISO 5832-12		
C.P. Titanium (Protasul®-Ti) ISO 5832-2		
		
+R84401002140501/13090242083606F		25955v02 - LB1v02
Zimmer GmbH, CH-8404 Winterthur, Switzerland / www.zimmer.com		

If, and only if, you are unable to obtain the Label because the implant surgery hospital could not locate it in your hospital medical records, then you may provide the following to prove that you received a Durom Cup:

- a. If the Durom Cup has been explanted from your body and it still exists, you must provide (1) a color photograph of the Durom Cup that shows the identification numbers on the edge of the Durom Cup, and (2) a Physician Declaration confirming that you were implanted with a Durom Cup and the date of the implantation;

OR

- b. If you cannot obtain a photograph because your Durom Cup is not within your possession, custody, or control, you must provide (1) a copy of your implant surgery operative report from the hospital where you were implanted, in which your surgeon confirms that you were implanted with a Durom Cup, and (2) a Physician Declaration confirming that you were implanted with a Durom Cup and the date of implantation.

Important Note: Failure to provide Product Identification in the manner stated above by the Claims Deadline insert date will render you ineligible to recover under this Settlement Agreement.

When will my status under the Settlement Agreement be determined? What if I have scheduled a revision surgery, but the revision surgery will not occur before the Eligibility Deadline?

The Eligibility Deadline is an absolute deadline unless, as of the Eligibility Deadline, you have a Scheduled Revision Surgery. A “Scheduled Revision Surgery” means that you have selected and confirmed a date with a surgeon on which you will undergo a surgery to remove the Durom Cup that was implanted in your hip (referred to as a “Revision Surgery”), but that date will occur after

the Eligibility Deadline. Note that a Scheduled Revision Surgery refers only to a surgery to remove the Durom Cup, and does not include revision surgeries performed for other reasons.

If you have a Scheduled Revision Surgery as of the Eligibility Deadline, then the determination of the compensation owed to you will be postponed until the Scheduled Revision Surgery occurs, provided that you submit a Physician Declaration by the Claims Deadline that confirms:

- a. That the physician signing the declaration determined that a revision surgery is required;
- b. The date on which your need for a Revision Surgery was diagnosed; and
- c. The date on which your revision surgery took place.

No compensation will be provided to you unless and until the revision surgery occurs.

What if I decide not to have a Scheduled Revision Surgery?

If the surgery is cancelled and not rescheduled because you have decided not to have the Scheduled Revision Surgery, you may receive compensation under the Settlement Agreement as an unrevised claimant. In that case, you will submit a Claimant Declaration on or before the Claims Deadline denoting that you are unrevised, and any compensation to which you are entitled will be determined accordingly.

What if I must cancel a Scheduled Revision Surgery because I am medically unable to proceed?

If the Scheduled Revision Surgery cannot occur due to a realistic medical risk to your life or health, as defined elsewhere in the Settlement Agreement, you may receive compensation under the Settlement Agreement as an unrevised claimant for whom revision is medically precluded. In that case, you will submit the appropriate documentation that reflects this status (as defined in the Settlement Agreement) on or before the Claims Deadline and your compensation will be determined accordingly.

Important note: The Eligibility Deadline is an absolute deadline for the determination of compensable injuries in all cases except for those individuals who have a properly documented Scheduled Revision Surgery. No other exceptions will be made.

Can the Claims Deadline be extended for any reason?

No, the Claims Deadline is an absolute deadline for which there are no exceptions.

SCHEDULE O - APPEAL PROTOCOL

The following procedure shall apply to appeals of decisions by the Claims Administrator that may be brought by a Class Member or the Defendants pursuant to section 4.4(5) of the Settlement Agreement (“Appealable Decisions”):

1. The party who seeks to appeal an Appealable Decision (the “Appellant”) shall submit to the Claims Administrator a written statement setting out the nature of, and the reasons for, the appeal (the “Appeal Statement”). The time for submitting an Appeal Statement is as follows:
 - (a) for a Class Member—within 30 days after the Appellant was deemed to have received the Class Administrator’s decision that is the subject of the Appeal Statement; and
 - (b) for Defendants—within 30 days after receiving notice of the Class Administrator’s decision under Section 4.3(8) of the Settlement Agreement.
2. Upon receipt of the Appeal Statement, the Claims Administrator shall send a copy of the Appeal Statement to the Defendants (c/o their counsel, where a Class Member is the Appellant) or to the affected Class Member (where the Defendants are the Appellant) (the “Respondent”) for review and consideration. The Respondent shall inform the Claims Administrator of whether it agrees or disagrees with the Appellant’s Appeal Statement within 30 days following the Respondent’s receipt of the Appeal Statement. If the Respondent agrees with the Appellant’s Appeal Statement, the Claims Administrator shall accept the Appellant’s position and change the decision accordingly.
3. If the Respondent disagrees with the Appellant’s Appeal Statement, then the Appellant shall have a right to appeal the Claims Administrator’s decision to one of the following private arbitrators (the “Arbitrator”):
 - (a) for all Class Members who reside outside of the Province of Quebec, the Honourable Marion J. Allan; or
 - (b) for all Class Members who reside in the Province of Quebec, The Honourable Marion J. Allan or The Honourable André Forget.
4. The Claims Administrator shall contact the applicable Arbitrator and ask the Arbitrator to provide a pre-estimate of its fee for conducting the appeal. As a pre-condition to submitting an appeal to the Arbitrator, the Appellant shall provide to the Claims Administrator (for forwarding to the Arbitrator) a cheque payable to the Arbitrator in an amount representing 50% of the Arbitrator’s pre-estimated fee for conducting the appeal.
5. The Claims Administrator shall send the Respondent a copy of the Appellant’s Appeal Statement and confirmation that the Appellant has provided payment of the Arbitrator’s fee. Within 30 days after receiving the Appeal Statement and notice of payment of the Arbitrator’s fee, the Respondent shall provide to the Claims Administrator a statement of

its position in response to the appeal (the “Responding Statement”) and a cheque payable to the Arbitrator in an amount representing the remaining 50% of the Arbitrator’s pre-estimated fee for conducting the appeal.

6. If the Respondent fails to provide the Claims Administrator with both its Responding Statement and 50% portion of the estimated Arbitrator’s fee within 30 days after the Respondent has received the Appeal Statement, the Appellant’s appeal shall be deemed to have been allowed.
7. Upon receipt of the Respondent’s Responding Statement and Arbitrator’s fee, the Claims Administrator shall send to the Arbitrator the Appeal Statement, the Responding Statement, and the two cheques respecting the Arbitrator’s fee.
8. The appeal shall be conducted entirely in writing. There will be no oral hearing of any appeal.
9. The Arbitrator shall consider the appeal and render a decision within 45 days following the Arbitrator’s receipt of the appeal material from the Claims Administrator. The Arbitrator shall provide the Appellant and the Respondent with written reasons in support of the appeal decision.
10. If the appeal is allowed, the Arbitrator shall order the Respondent to pay to the Appellant within 30 days following release of the appeal decision the entire amount of the arbitration fee that the Appellant had paid. If the appeal is dismissed, the Arbitrator shall order the Appellant to pay to the Respondent the entire amount of the Arbitrator’s fee which the Respondent had paid.
11. If the Arbitrator determines that success on the appeal was divided relatively equally between the Appellant and the Defendants, then the Arbitrator shall order that neither party shall have to reimburse the other for any portion of the Arbitrator’s fee which it had paid in advance of the appeal.
12. If the Arbitrator’s fee exceeds the amount of the pre-estimated fees that were paid by the Appellant and the Respondent in advance of the appeal, then the Arbitrator shall order the party that was unsuccessful on the appeal to pay the additional amount of the Arbitrator’s fee within 30 days after the date of release of the Arbitrator’s decision. If the Arbitrator determines that the success on the appeal was divided between the two parties relatively equally, then the Arbitrator shall order any additional fee to be paid in equal 50% portions by each of the Appellant and the Respondent within 30 days after the date of the Arbitrator’s decision.
13. The Arbitrator’s decision shall be final and binding. There shall be no right of appeal from the Arbitrator’s decision.